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Divider Title: **Affirmative Action**

AFFIRMATIVE ACTION:

Q. There is an ongoing debate in this country concerning nothing more than reverse discrimination affirmative action. Many Americans believe affirmative action is unfair as it sanctions discriminatory action against one group of citizens in favor of another group. In March 1996 the President said he favored "mending not ending" affirmative action, but it appears that the federal government is promoting preferential treatment in the form of quotas.

A.
- o The President said that he supports affirmative action to guarantee equal opportunity and that is flexible and fair. I support that position.
- o Executive Order 11246, signed by President Johnson and supported by every Administration since, requires that federal contractors recruit, hire and promote qualified workers regardless of race, gender, or other impermissible factors. In enforcing that order, the OFCCP works with contractors to ensure that they do not intentionally or unintentionally discriminate.
- o It is my understanding that the OFCCP throughout its many years of enforcement, has not and does not require quotas or set-asides based on race or gender.
- o The OFCCP may, if necessary, ask contractors to engage in appropriate outreach and recruitment to ensure a broad pool of candidates for jobs. This mission is consistent with ensuring equal opportunity for all Americans.

Q. The Secretary of Labor has been assigned by the President to enforce the Federal contractor provisions of Executive Order 11246. Why should the American taxpayer be required to continue to pay for the enforcement of these provisions which create unnecessary, unfair and burdensome requirements on Federal contractors?

A.

- The Executive Order has been supported by every Administration, Republican and Democrat, since its inception in 1964 because it guarantees equitable use of taxpayer dollars. American taxpayers expect that their hard-earned dollars are being put in the hands of businesses that provide equal opportunity for all Americans, and that do not discriminate.

- The federal role in ensuring equal opportunity has paid off many times. Many federal contractors are recognized as leaders in eliminating barriers to hiring and promotion of women and minorities. Equal opportunity in the workforce promotes economic growth and improves tax revenues. Affirmative action has helped expand non-traditional job opportunities for people with disabilities, women and minorities.

- Finally, I recognize that laws can sometimes appear unfair or burdensome. The Administration's efforts to"mend" affirmative action will make sure that the laws are enforced fairly and consistently. As someone who has operated a business, I will look carefully to make sure that the Department is only asking for necessary information and that it is helping federal contractors understand and meet their requirements. I understand that there are ongoing efforts to get input from the contractor community and to streamline such requirements.

Q. There seems to be duplication of effort and overlap among the various civil rights agencies. One recent example of these overlapping jurisdictions involves Texaco where the company agreed to a significant settlement with the Equal Employment Opportunity Commission, but it is still under investigation by the Office of Federal Contract Compliance Programs. Why is it that companies have to face this "piling on" by government agencies?

A.
- OFCCP is responsible for working with federal contractors to promote opportunity and to prevent discriminatory policies and practices. These obligations include the development of affirmative action plans that monitor and evaluate the contractors' equal opportunity efforts. OFCCP promotes fulfillment of these obligations by conducting compliance reviews of employment practices, and thus aims to prevent discrimination.

- The EEOC responds to complaints of individuals in the private sector who believe they have been victims of discrimination. The EEOC investigates these complaints and may seek appropriate remedies if they are found to have merit.

- Since the OFCCP investigations of Texaco are not closed, I cannot comment on the specifics, but can tell you that OFCCP's compliance reviews involve different factors -- for instance, a glass ceiling review -- and different facilities than are at issue in the court case.

- It is important for agencies not to "pile on" one company, but there are also occasions where the two agencies are able to complement each others work so as to prevent duplicative efforts.

Q. When it comes to creating diversity in the workplace, affirmative action is not the best remedy. In business, green is the operating factor. Even the Glass Ceiling Commission, chaired by Secretary Reich, concluded that breaking the glass ceiling is an issue related to the bottom-line. For this reason, corporations have every incentive to create diversity. Isn't the best and fairest way to create diversity in the workplace to allow the market to naturally correct the problem?

A.

- I agree wholeheartedly that it is in American businesses' financial interest to recruit, hire and promote a diverse and qualified workforce. That is why many leaders in corporate America have reached out to include women and minorities -- it makes economic sense. We can and should recognize exemplary businesses that promote diversity and we can and should educate employers about the positive benefits of a diverse workforce.

- Nevertheless, it is sad but true that discrimination still persists in many workplaces. The highly publicized Texaco case is one example. Even recently, federal contractors have paid millions to compensate victims of discrimination. That is why the federal government must continue to provide leadership in ensuring equal opportunity.

Q. How do you see the Adarand and Piscataway, cases of reported reverse discrimination, impacting on the Federal government's affirmative action policies? What changes have been implemented to address these decisions?

A.

- DOJ has reviewed the Executive Order program and concluded that the Executive Order affirmative action program is consistent with the constitutional requirements articulated in Adarand.

- Neither case affects the OFCCP enforcement of its laws.

Q. How do you plan to "mend" affirmative action programs so that companies are not confronted with either paying unwarranted settlements or unnecessary legal fees?

A.

- First, let me say that I have worked with business people for many, many years. This experience has showed me that you can achieve positive results in this area by cooperation and education.

- When discrimination occurs, the law recognizes that victims should be compensated appropriately. This is consistent with the way we enforce other laws, and this should not be different.

Q. What due process protections are there for contractors after a compliance review by OFCCP?

A. o While I am not familiar with all details of the process of compliance reviews enforced by the OFCCP, I do know that there are many opportunities for a contractor to present information and to appeal any unfavorable determinations. These appeals include both administrative review <u>and</u> federal court review. I firmly support due process protections and will look closely to make sure that the Department's review process provides sufficient opportunity for the company to present its view.

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Divider Title: **Health**

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

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

A: As Labor Secretary, I would like to continue to work with Congress in the bi-partisan manner that was established on health issues in the 104th Congress.

- Broadly speaking, I will continue the Department's mission to seek ways to ensure that workers have secure, affordable and quality health care benefits.
- I will work to ensure that the Kassebaum-Kennedy bill is implemented in a timely and streamlined manner.
- As co-chair of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry, I am committed to exploring ways to enhance protections and quality for both consumers and purchasers.
- I will work to support the President's interests in proposals that provide health insurance continuation for workers in between jobs.

I look forward to working with you on these critical issues.

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: The Administration is very concerned about the decline in workers' health care coverage. For this reason, the Administration has taken a number of steps to make affordable health care benefits available to workers employed in businesses of all sizes. The Administration is not proposing a mandate on employers.

- As part of the Administration's efforts to increase coverage for small businesses, the Administration has consistently supported increasing the deduction for health insurance expenses for the self-employed.

- In the Kennedy-Kassebaum Act of 1996, the deduction for health insurance of the self-employed was increased from 30 percent to 80 percent over the period from 1997 to 2006.

- The Administration also seeks to assist small employers in obtaining affordable health care coverage through grants to the States to help create purchasing cooperatives.

- The President also has expressed an interest in making sure that workers who are become unemployed and are in between jobs do not lose their benefits.

ADDITIONAL CHANGES TO THE HEALTH CARE SYSTEM

QUESTION: Last year, Congress and President Clinton recognized that private sector health plans needed some changes. Congress passed and the President signed into law the Kassebaum-Kennedy bill as well as those dealing with new mothers and mental health parity. What other changes do you think need to be made to these private sector health plans?

ANSWER: The Administration is very pleased with the bi-partisan cooperation that marked the health legislative activities in the 104th Congress.

The President has expressed support for several other initiatives that would enhance health benefit security for workers. These include:

- Support for anti-gag legislation that would prohibit restrictions on medical communications between providers and patients.

- In the FY '97 budget, the Administration supported 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 for small employers.

- 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 ERISA health plans, such as the kind of information employers and consumers need to be informed purchasers of health care.

IMPLEMENTATION OF HIPAA (Kennedy-Kassebaum)

QUESTION: As the Department of Labor, HHS, and Treasury implement the Kennedy-Kassebaum Act, what steps will you take to insure that the implementing regulations do not impose unreasonable costs on employers? What will you do to assure proper inter-agency coordination of this process?

ANSWER: I understand that the Department is taking a number of steps to ensure that the HIPAA regs are handled in a reasonable fashion.

- A guiding principle in drafting the regulations is achievement of a delicate balance between the interests of workers and employers. The aim is not to make the program complicated or costly, but rather to ensure that participants will get good and useful information about their rights.
- I understand that the Department has already issued a model notice to assist employers and plan administrators in notifying participants of the changes made by HIPAA.
- You can be assured that I will do all that I can do, in coordination with the other two agencies, to make sure that the regulations are completed on the contemplated timetable of April 1, 1997.

BACKGROUND NOTES ON DOL ACTIVITIES:

- The three agencies (DOL, HHS and Treasury) have been meeting since HIPAA was signed into law in August 1996 and are actively drafting all of the regulatory sections. In addition, an inter-agency group is developing a Memorandum of Understanding to govern not only the drafting of the regulations but interpretation and enforcement of HIPAA and the regulations.
- In addition, we have issued a question and answer pamphlet designed to help the average participant better understand the changes under the new health legislation.
- Finally, the three agencies have published a request for comments from the public and regulated entities for their views on the HIPAA portability provisions and are reviewing the comments received as part of the deliberations on the regulations.

- The important dates to remember are as follows:

  -The major HIPAA regs will be released April 1, 1997. These are interim final and will be finalized at a later date. (Please note there is no statutory deadline).

  -The major provisions of the law go into effect July 1, 1997, but for the most plans won't be effective until January 1, 1998 when their health plan year begins.

AFFORDABILITY OF COVERAGE FOR SMALL BUSINESSES

QUESTION: Congressmen Goodling and Fawell have announced that they intend to introduce a bill that will expand health care coverage for small businesses by allowing Multiple Employer Welfare Arrangements (MEWAs) to be exempt from state laws and instead regulated by the Department of Labor. What is your position on this proposal?

ANSWER: The Administration shares the Congressmen's interests in providing new opportunities for small businesses to purchase health care at affordable rates. The President's FY '97 budget sought to achieve this goal by providing grants to states to establish voluntary purchasing cooperatives so that small employers could ban together to pool risks and form a large purchasing coalition.

The Administration is concerned that the MEWA proposal put forth by the Congressmen would weaken protections for workers and families covered by these plans by removing them from many of the state protections that currently govern these plans (e.g. solvency). The Department is concerned it would not have the resources to monitor what would be essentially insurance entities.

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 of which, if you are confirmed as Secretary of Labor, you will serve as co-chair. What issues do you believe such a Commission should address? What is the status of the appointments to this Commission?

ANSWER: First, I would like to say that I am very excited at the prospects of co-chairing the health commission. I have a keen interest and commitment to issues of quality and consumer protection.

- These issues also are of vital interest to many of the groups the Department works with. Employers and unions view these issues as purchasers of care as well as consumers.

- As you are aware, quality was an important issue for several members of the 104th as evidenced by the passage of the bills to protect new mothers and mental health parity.

The Advisory Commission will address the important issues of quality and consumer protections in health care.

- It will provide an opportunity to bring together some of the best minds in the field to analyze and make recommendations on: (1) what information purchasers and consumers need to make informed decisions about health care; (2) whether individuals have access to the appropriate treatments and services; and (3) what consumer protections are necessary to ensure quality care.

- The President has received an extraordinary amount of interest from individuals who could make valuable contributions to the Commission's work and is considering an impressive pool of individuals for appointment to the Commission.

- I hope that the Advisory Commission will be up and running early this year.

CONSUMER PROTECTIONS AND MANAGED CARE

QUESTION: Should the same consumer protection that the government is applying to Medicare and Medicaid beneficiaries apply to self-insured health care plans regulated under ERISA? If not, what other steps should be taken to enhance consumer protection in health care as part of or outside of the President's Commission on health care quality?

ANSWER:

- It is vitally important that workers and their families can rely on their health insurance coverage when they need high quality, cost-effective care.

- It is equally important to ensure that employers and unions are encouraged to sponsor health benefit plans for workers so that working Americans and their families can have the security of health care coverage.

- I believe that individuals who receive health care coverage through private employee benefit plans do not fare worse than individuals who receive health care coverage through such public programs as Medicare and Medicaid. However, in so doing we must work to ensure that we don't provide disincentives for employers and unions to provide benefits.

- I understand that the Department is reviewing whether HCFA's proposals could achieve such a balance.

- I will look into these matters if I am confirmed by the Senate.

NOTE: The Department administers the Employee Retirement Income Security Act (ERISA), which governs private, employer-sponsored pension and welfare benefit plans. Health benefit plans sponsored by private sector employers fall under the scope of ERISA.

- Employers and unions that sponsor health benefits do so voluntarily; not federal law requires employers or unions to provide health benefits to workers.

- In 1993, 74% of private sector workers were in firms that sponsored a health benefit plan.

- As you know, managed care options have been a part of Medicare and Medicaid health care service in this country for a long time. As a result, the Health Care Financing Administration has developed a series of steps to enhance beneficiary protection in managed care arrangements.

HEALTH CARE FOR THE UNEMPLOYED (Workers in Transition)

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

ANSWER:

- Since the beginning of President Clinton's Administration, the American economy has become more productive and competitive. As with other periods of change, the period has brought with it relocations and job change.

- With the passage of Kassebaum-Kennedy, we have addressed the issue of health insurance portability. However, those workers who are temporarily displaced by workplace changes may not be able to afford their health care in between jobs.

- Our proposal, offers premium subsidies for up to six months, is designed to help these workers afford continuing coverage who had coverage under their previous jobs. The goal is to provide a safety net for nearly three million Americans annually.

HEALTH CARE FOR THE UNEMPLOYED (Workers in Transition)

QUESTION: What limits are built into the President's proposed Workers in Transition Health Care Initiative?

ANSWER:

- This entitlement is not open-ended. The initiative is a capped entitlement to states meaning that the federal costs could never exceed the amount specified in the legislation.

- In addition, the insurance subsidy will last for not longer than 6 months. The goal is to provide a safety net for the nearly 3 million Americans, including 700,000 children, who lose health coverage yearly because of job loss.

- Many of these Americans will be able to obtain health insurance elsewhere (from a working spouse, for example), and will, therefore, not qualify for the President's proposal. While others estimate that the costs of this proposal are somewhat higher, those estimates assume that workers will remain on unemployment for the full six months. It is unreasonable to assume that workers will pass up a job in order to receive the subsidy for the full six months.

- Further, this proposal is designed as a demonstration project for four years. If it is determined by Congress and the President to have been effective in extending health care coverage, then the program can be extended. This program is envisioned as an incremental program, designed to help those Americans with insurance weather the transition between jobs.

HEALTH CARE FOR CHILDREN

QUESTION: Recent studies show that 10 million children have no health insurance coverage. What do you believe should be done to enhance health care coverage for children? Will this issue be a priority for you as Secretary of Labor?

ANSWER:

- The most effective way to reach these children is to continue our efforts to make good jobs available to their parents. There is no higher priority for a Secretary of Labor.
- The Administration's record of job creation speaks for itself, but we must also focus on the quality of jobs to ensure that they come with benefits.
- Children in low-income families are most effectively covered through the Medicaid program.
- Under current law, all poor children up to age 13 are eligible for Medicaid.
- Eligibility for older children will phase in by 2002, which should address a substantial portion of this problem among children in poor families. The President is also working to find new ways to cover additional children.

NOTE: Most of the current 9.8 million children without health insurance are in low-income working families. More than half of these children are in families headed by a full-time worker. Only about 20% are in families not headed by a worker.

RETIREE HEALTH CARE

QUESTION: Secretary Reich indicated that he believed some changes needed to be made in ERISA to address the growing problem of termination of retiree health benefits. Do you agree that legislative changes are needed in ERISA to address this problem and is this an initiative you will try to pursue if you are Secretary of Labor?

ANSWER: I know the Department has filed *amicus curiae* briefs in several cases involving the reduction of retiree health benefits and has observed a recent trend in the courts that tends to favor employers in disputes involving whether a promise of lifetime health benefits has been made.

I want to review this issue before making any commitments. I will work with Congress on any proposals that are introduced and will continue to monitor court cases involving retiree health benefit promises.

HMO'S AND MEDICAL MALPRACTICE

QUESTION: A recent *New York Times* article discussed a number of medical malpractice lawsuits where ERISA preemption 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 Court did not address it.

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

ANSWER: Most fundamentally, I agree that HMOs should not be able to use ERISA preemption as a defense to medical malpractice claims.

- I will examine this issue further.
- Before committing to any legislative proposal, I would want to examine where the courts are on this issue.

BACKGROUND NOTE: The recent article 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."

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Divider Title: **Pensions**

ROLE OF LABOR SECRETARY WITH RESPECT TO PRIVATE PENSION SYSTEM

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

A: As Labor Secretary, I will be committed to expanding and protecting this nation's private pension system.

- 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.

Expand Pension Coverage and Portability

Less than half of the private sector workforce is covered by a private pension plan. We can and must do better than that. We must work to help all Americans face a more secure retirement.

- While the pension provisions contained in the minimum wage bill are a step in the right direction, more can be done to expand pension coverage.

- At the same time, we need to try and make the pension system more portable. Workers who change jobs should not lose their pensions.

Protect Pension Security

At the same time we work to expand coverage and portability, we must work to make sure that the pension system is secure.

- No working American should ever lose a pension benefit due to fraud and abuse.

- As Secretary of Labor I would take my enforcement responsibilities under the Employee Retirement Income Security Act very seriously.

I very much look forward to working with you on these critical issues.

NEED FOR INCREASED RETIREMENT SAVINGS

Q: Are retirement savings adequate in America? If not, what do you propose to address the problem. Secretary Reich launched a Retirement Savings Campaign while he was Secretary of Labor. Is this an appropriate role for the Department of Labor and do you intend to continue to make it a priority if you are confirmed as Secretary of Labor?

A:

- Huge numbers of baby boomers are moving toward retirement.
- With more Americans living longer, there is increased concern about them saving enough money to maintain their standard of living through retirement.
- Twenty percent of Americans have absolutely nothing saved for their retirement in any kind of investment or savings vehicle.
- In a recent CBS news poll, 76% of Americans think that most people will face a financial crisis when they retire.
- Although others have suggested that the situation is not quite so dire, the fact remains that the savings rate in the United States lags well behind our national competitors.
- Secretary Reich launched the Retirement Savings Campaign for the purpose of educating Americans and raising public awareness about what is needed to successfully prepare for retirement.
- The campaign was the first organized public/private/government partnership of its kind to address savings as a social concern and has been remarkably successful.
- To date more than 200 partner organizations representing federal agencies, savings groups, trade and professional associations, labor unions, community groups, and private sector organizations have joined the effort and formed the American Savings Council, a non-profit organization, to carry-out the campaign's mission.
- As a result of the campaign's broad outreach, an incredible amount of public and media interest in the campaign's messages and materials has developed. More than two million campaign brochures have been distributed to individuals and businesses. Public Service Announcements have appeared in over 80,000 issues of magazines and newspapers nationwide.
- I will continue to support the campaign aggressively. It is evidence of what can happen when government takes a leadership role during the early stages of an initiative and serves as a catalyst for action.

TAX EQUITY: PENSION SYSTEM

Q: About $66 million per year in tax subsidies is provided by the federal government to encourage private pension coverage, yet 51 million private sector workers are not earning a pension in their current job, and women are more than twice as likely as men not to have pension coverage. Do you believe our tax subsidies are being spent in the most cost effective manner? Should we be examining ways to modify the tax incentive to encourage expanded coverage for more American workers?

A: The current tax treatment of pension savings, which defers taxation of savings in qualified[1] retirement plans until the point at which benefits are actually received by a worker, is an extremely important element of our retirement system and should be preserved.

- These incentives have been a key factor in the tremendous growth in the level of savings through pension funds over the past several decades.

- The vast majority of persons earning and receiving benefits are of moderate income.

The basic problem we face is not one of the ineffective use of the tax subsidies but how we can expand the number of workers who are able to take advantage of them.

Last year the President proposed a number of changes to simplify the tax qualification rules for plans, many of which were enacted into law in the minimum wage bill. Expanding coverage through these and other approaches will continue to be a priority for me.

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[1] Plans that satisfy certain tax code rules "qualify" for favorable tax treatment.

TRENDS IN PENSION COVERAGE

Q: 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?

A: The changing nature of retirement income for working Americans is an important issue and one I intend to focus on at the Department.

- 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.

- I agree that there has been a shift away from defined benefit plans and I understand that the Department is looking into the reasons for and impact of this fact.

- 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.

Note:

Details on Trend

1) There has been modest decline in the number of workers in defined benefit plans.

2) Today, approximately the same number of workers are in defined benefit plans as are in defined contribution plans.

3) The number of defined benefit plans insured by PBGC has declined from 112,000 in 1985 to 55,000 today. Most of this decline has been in smaller and middle size plans.

Reasons for Trend

Two factors have caused the rapid expansion of defined contribution plans:

1) as the workforce has grown, nearly all of the new pension coverage has been in defined contribution plans; and

2) many employers already sponsoring a defined benefit plan have added a 401(k).

PENSIONS FOR LOW-WAGE WORKERS

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

A: Expanding the availability and coverage of lower and moderate wage workers is a top priority of the Administration.

- A key aspect of this effort is to facilitate the ability of small firms to provide pension coverage because the majority of workers without coverage are employed by small firms.

- 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.

- As Secretary of Labor, I will to work to do all I can do to ensure that the lower wage workers at employers with these new plans are brought into the system.

In conjunction with these efforts to lower costs and simplify the regulatory burden for employers, we are also focused on the need to educate all workers about the importance of retirement savings. Toward this end DOL, with over 200 public and private partners, initiated a Retirement Savings Education Campaign last year. I will continue this effort to bring more workers into the retirement system.

PENSION PORTABILITY

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

A: We consider the problem of enhancing the portability of pension benefits to be one of the central issues that will need to be addressed if we are to successfully expand the private retirement income system.

- Last year the Administration proposed a variety of ways to improve portability, some of which were included in the minimum wage legislation. In addition, through the regulatory authority provided to the Treasury Department, steps were taken to facilitate the ability of employers to accept the transfer of benefits for new workers.

- These successes represent a good start which I intend to build on. I want to be engaged in a policy dialogue with interested representatives of employers and workers and to work with Congress to advance useful proposals in this area.

401(k) PLAN PROTECTION: EMPLOYER STOCK

Q: 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?

A: I believe that we need to work together to see that situations like the Color Tile case are not repeated.

- As I understand it right now, there are no statutory restrictions on the percent of employer securities that a 401(k) plan may hold.
- I know that there have been legislative proposals by Senators Boxer, Daschle and others to impose limits. These measures represent a reasonable approach to this issue.
- I look forward to working with the Congress to deal with this issue.

Note:

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.

- In reaction, Senator Boxer introduced legislation to establish limits on the investment of 401(k) plan assets in employer securities and real property.
- On September 12, 1996, Secretary Reich sent a letter to Senator Boxer expressing the Administration's support in principle for legislative changes.
- Details need to be worked out between the Administration and the Congress.

ECONOMICALLY TARGETED INVESTMENTS

Q: Should the federal government encourage pension investment in economically targeted investments (ETIs)?

A: ETIs are generally defined as investments that provide risk adjusted rates of return to plan participants, as well as collateral benefits such as job generation, affordable housing, revitalization of infrastructure, and small business development.

- Pension funds in the United States hold over $5 trillion in assets. They are an increasingly important force in the American economy.

- As major owners of corporate America, pension plans need to be concerned with the growth and stability of the nation's economy. Pension plans are also a growing source of funds for investments in small business -- an important source of job creation in this country.

- Further, as long-term investors, with investment time horizons reaching forty years or more, pension plans need to be concerned that the capital is made available that will allow these small businesses to grow into the Fortune 500 companies of the future. We believe that investing in our future is a goal worth advancing for the benefit of American workers and their families.

- Pension fund managers and trustees, however, and not the government, must make investment choices that are suitable for the circumstances of the particular fund. ETIs are strategies to invest pension fund assets to produce competitive rates of return while boosting the economy and creating stable jobs so that workers can retire with adequate pensions.

- In 1995, 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 rates of return. This has been a longstanding position of the Department through more than twenty years of Democratic and Republican administrations.

DASCHLE PENSION PROPOSAL

Q: What is your view of the comprehensive Daschle pension bill? In light of the recent enactment of the pension simplification proposals as part of the minimum wage bill, do you believe the 105th Congress should enact additional pension legislation and if so, in what areas of pension policy?

A: We are supportive of Senator Daschle's efforts. The current bill includes many provisions from the President's Retirement Savings and Security Act proposal of April 1996 that were not enacted as part of the Small Business Job Protection Act of 1996, provisions that we believe are a significant enhancement of the legislation.

- In particular, we strongly support the requirement that the new simplified nondiscrimination tests for plans require at least a 1% of payroll employer contribution for all workers. This would ensure at least a minimal benefit even for workers who cannot afford to save.

- We hope that the 105th Congress will act quickly to advance the ERISA Enforcement and Improvement Act of 1997 to strengthen audits and enhance protections for plans under ERISA.

Note:

If you are asked about the inclusion of the Kennedy-Bingaman employer mandate to provide for payroll deduction of employee retirement savings accounts, you could say that the Administration has not supported such a mandate to date, and at the present time is reviewing policy options for increasing pension coverage and portability without requiring a mandate.

BINGAMAN-JEFFORDS PENSION PRO-SAVE PROPOSAL

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

A: I share the goals of improving portability and expanding coverage among workers in firms that do not currently sponsor pension plans.

- 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.

- I am optimistic that if we work together we can develop creative new approaches that will enable us to improve portability and expand coverage.

COMMISSION ON RETIREMENT INCOME POLICY

Q: 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?

A: I believe it is important that all Americans have a safe and secure retirement.

- The growth and security of private pensions are important parts of our retirement income policy.
- At this time, however, I am not prepared to endorse proposals for the creation of a Commission on Retirement Income Policy.
- There are several advisory bodies, representing a broad range of interests, available to the Secretary of Labor on pension policy. Before creating another, I would like to work these in the development of pension policy.

Note:

The establishment of this Commission is strongly opposed by organized labor.

PENSION SECURITY - AUDIT BILL

Q: Are private pensions secure? What steps would you take to enhance the security of the private pension system?

A: There has been tremendous growth in benefits and in the number of workers covered in the private pension system, and it is more secure than ever.

- The Labor Department is proud of its record of progress in safeguarding private pensions in President Clinton's Administration. In particular, the Retirement Protection Act, enacted in 1994, and the Department's ongoing 401(k) enforcement program and revised regulations have clearly improved pension security.

The Audit Bill

- However, there is always room for improvement. One of my top priorities is to improve the auditing of pension plans, and the President has proposed legislation that would make significant improvements in this area.

- I am pleased **Chairman Jeffords sponsored** this in the 104th Congress.

In addition to the audit legislation, I want to enhance our enforcement program. I intend to continue Secretary Reich's focus on the handling of workers' contributions to 401(k) plans to continue to ensure that there are not abuses in this area.

I also will continue to educate workers and retirees about their pension rights.

Note:

The proposed legislation would strengthen ERISA audits in several ways:

- Close the loophole for "limited scope" audits, which provide no overall assurance that plan assets are handled properly.

- Require prompt reporting if criminal acts are discovered during an audit.

- Enhance the extent to which auditors' work is subject to peer review to improve the standards applied to auditors and quality of their work.

- Make it clear that the pension benefits of a wrongdoer can be used to repay losses resulting to innocent participants, and remove impediments to getting money restored to plans by encouraging settlements to enforcement cases.

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Divider Title: **Social Security/Medicare**

FUTURE OF SOCIAL SECURITY

QUESTION: The Secretary of Labor is one of the trustees for the Social Security Trust Fund. Assuming current policy, when the baby boomers begin to retire, estimates are that costs to the Fund will exceed payroll and tax contributions and that the trust fund will be depleted by around 2030. Given these projections, what steps do you believe should be taken to address this serious national problem?

ANSWER: 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.

- We must make certain that the system continues to provide meaningful benefits to all workers.

- There is no crisis in Social Security, but there are long-term financing concerns that will be far easier to resolve if we start in the near term.

However, it is critical that we resolve these concerns through a bipartisan process.

SOCIAL SECURITY ADVISORY COUNCIL REPORT

QUESTION: What is your view of the recently released Advisory Council report on Social Security? Do you believe some privatization of the social security system is an answer to the long-term solvency problem?

ANSWER: The Advisory Council worked hard and raised some important questions about the finances of Social Security, but it was completely split on what to do about them. As the country, through a bipartisan process, reviews the possibilities that have been suggested by the Commission and others, we will judge them based on the principles that have served 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 and it must remain an effective safety net, providing a bulwark for all Americans against disability and the risks of poverty in their retirement years; and

- Social Security's finances must be sound.

MEDICARE TRUST FUND

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

ANSWER: I strongly agree with the President that we must continue our commitment to addressing both the short-term and the long-term financing challenges of the Medicare Trust Fund.

As a Trustee, I would work to address the short-term challenges of the Trust Fund immediately.

- One of the President's goals is to balance the Federal budget by 2002 and to extend the life of the 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 through excessive hospital, doctor, and other provider cuts. 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.

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Divider Title: **CPI**

CONSUMER PRICE INDEX

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?.

(Member Interest: Given the visibility of this issue, although it's not directly in Committee's jurisdiction, it will be asked, most likely by Jeffords, since he is also a member of the Breaux/Chafee Bipartisan Coalition that supported an adjustment to the CPI. Gregg could also ask this question.)

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 The BLS already has an ongoing effort to improve the CPI. This effort has identified many of the problems discussed by the Boskin group and has come up with a number of solutions -- some of which have already been implemented, others of which will be addressed in the next two years.

- 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. Ideally a consensus will emerge about the required changes.

CONSUMER PRICE INDEX

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

(Note: This is your basic script for responding to the general question about your position on Boskin. This is likely to be asked during courtesy calls.)

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, which are so crucial to the economy of this country, 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, if not impossible, 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. As JEC Chairman Saxton said at the February 10th JEC hearing, "The Bureau of Labor Statistics (BLS) is one of the most objective, professional, and respected statistical agencies in the world. Protecting this national treasure and its integrity is important to all of us policy makers, as well as to the general public."

o As Secretary, I intend to work with Commissioner Abraham and the BLS staff to ensure that we have the right environment, including the necessary resources, to carry out our work in this area, and will work with BLS to make sure that our efforts are proceeding in a timely and effective manner.

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Divider Title: **Safety and Health**

THE NEW OSHA

Question:

OSHA has long been one of the most feared and hated of all federal agencies. Almost every businessman in my state thinks it is more interested in fining employers than in helping to protect the safety and health of employees. Do you have any ideas for changing OSHA's attitudes and behavior?

Answer:

OSHA is already moving in the right direction. OSHA's reinvention initiatives have made enormous progress in improving worker safety and health, and I intend to continue that progress. The most important initiatives include:

* Cooperative Compliance Programs. The Maine 200 program and other cooperative compliance programs are helping OSHA change the behavior of thousands of employers that have real safety problems while conducting traditional wall-to-wall inspections only among the most recalcitrant. The programs are evolving, but the results so far include impressive improvements in injury rates.

* Common sense rules in plain English. Some regulations have been rewritten, and all rules are now accompanied by extensive compliance assistance materials.

* Targeted enforcement. Now that OSHA developed site-specific injury data, inspections can be targeted where the problems are. OSHA won't waste its time and resources -- or those of the employer -- visiting safe workplaces.

JOE DEAR'S SUCCESSOR

Question:

Joe Dear began to make some welcome changes in OSHA, but he has left the agency. What are you looking for in a successor?

Answer:

The criteria I will use in making my recommendation to the President will include the following factors:

* The most important factor is a strong commitment to the safety and health of America's working men and women.

* A good manager

* Someone who will listen to and understand the needs of workers and employers alike

* Someone committed to the OSHA reinvention initiatives.

* Someone with a thick hide

* Getting a new Assistant Secretary for OSHA in place will be one of my highest priorities. I hope to make a recommendation to the President soon after I'm confirmed.

OSHA REFORM -- CODIFYING THE "NEW OSHA"

Question:

Don't you think it makes sense to codify in the law the positive changes Joe Dear has made administratively at OSHA over the last several years? If not, why not?

Answer:

* The New OSHA reinvention initiatives have shown that legislation is not necessary to effectuate significant change at the agency. The President and I have no intention of turning back on those changes. Cooperative compliance programs, targeted enforcement, and plain English rules, are the right way to go.

* OSHA's reinvention is an ongoing process. Right now the agency needs flexibility to continue to develop new programs and modify existing ones. We are still learning what works and what doesn't work.

* There may be other changes that can't be made administratively. I welcome your ideas and look forward to working with the Committee.

[Cautionary note: Do not suggest any willingness to deal now with OSHA reform legislation.]

ERGONOMICS

Question:

What, if anything, have you learned from OSHA's experience with the ergonomics regulations it drafted two years ago? Do you intend to pursue those regulations?

Answer:

* I understand that OSHA plans to adopt a broad-based campaign to address repetitive stress injuries (RSIs). OSHA's approach will consist of education, research, enforcement, and rulemaking to combat RSIs.

* I think this second rulemaking effort will have to be different from its earlier effort. My sense is that OSHA tried to tackle too much at once. A more incremental regulatory approach might make more sense, with OSHA focussing first on the industries that have the most serious problems.

* RSIs are too big a problem to ignore. BLS estimates that there are over 700,000 lost workday injuries and illnesses related to repetitive stress injuries each year.

* Work-related RSIs account for an estimated one out of every three dollars spent on workers' compensation -- about $20 billion a year.

* Many employers have proven that there are effective solutions that not only reduce RSIs but can even save employers money. But many others have not taken such steps.

WHY HAVE OSHA'S INSPECTION NUMBERS DROPPED?

Question:

OSHA's inspection numbers have fallen dramatically, from 42,000 in 1994 to only 29,000 in 1995, and 24,000 last year. Does OSHA still have a commitment to enforcement? How do you explain this drop?

Answer:

* It's my understanding that these reductions in the number of inspections were primarily caused by the budget rescissions, government shutdowns, and uncertainty OSHA faced over the last two years.

* In March or April of 1995, OSHA was faced with a $16 million rescission, which necessitated a hiring freeze and a curtailment of enforcement-related travel. In 1996, OSHA operated with a 33% cut in its enforcement budget for 6 months.

* Now that OSHA's budget has been restored, the number of inspections will increase significantly, and I plan to focus on it.

OSHA and SMALL BUSINESS

Question:

The sector that has the greatest problems with OSHA is small business. OSHA's regulations put enormous burdens on small businesses, who have trouble even knowing what the rules and regulations are, let alone coming into compliance with them. OSHA's penalties hit small businesses harder, too. What can be done to lighten this burden?

Answer:

* Based on my recent work with small businesses as the White House Public Liaison, I am particularly sensitive to their concerns.

* OSHA is doing a lot already. The consultation program for small business -- run by the States with OSHA providing 90% of the funds -- has made 120,000 visits in the last 5 years.

* OSHA's standards and compliance materials are being made available on the internet so that most small businesses will have easy access to them.

* Compliance assistance materials are published for every rule and a special small business outreach program is developed for every rule.

* Small businesses get penalty reductions of up to 60% based on size alone, and greater reductions are under consideration. Small businesses that have a good safety and health program can get penalty reductions of 80% for good faith.

* The regulations often have special provisions for small business. The new Methylene Chloride rule gives small businesses four years to come into compliance with some requirements.

* The smallest businesses, those with 10 or fewer employees, are exempt from routine safety inspections.

* OSHA may be able to do more to help small businesses, and I am open to ideas you might have. But we must never forget that the employees in small businesses need help, too. Small businesses, in general, have a much higher fatality rate than larger businesses. The problem is how to balance these sometimes competing concerns.

BUSINESS'S COMPLAINTS ABOUT OSHA

Question:

You have worked as the White House Public Liaison and have heard a great deal, no doubt, about OSHA from the business community. What are the complaints that you think are valid and that you intend to address if you are confirmed as Secretary?

Answer:

* I *have* heard valid complaints, and so have the President and Vice-President. It's true that OSHA has nitpicked some employers. And too often, the agency failed to distinguish between responsible employers and genuinely negligent ones. Unions and workers have had those complaints, too, and others as well.

* That's precisely why OSHA reinvention has been so important to the President. I believe OSHA has changed and is continuing to change. OSHA is targeting the most dangerous workplaces and hazards and it's doing more than ever before to give help and give recognition to responsible employers.

* It's been my job to listen to the public's concerns and make them known to the President. I intend to keep listening, and I intend to find a new head of OSHA who will follow through on the changes Joe Dear and Secretary Reich have implemented.

COST-BENEFIT ANALYSIS

Question:

Reasonable people try to adopt the optimal solution--the one that maximizes benefits while minimizing costs. Why shouldn't OSHA and every other regulatory agency consider both the costs and benefits of the available options before determining what regulation or standard to issue?

Answer:

* I agree. The costs and benefits of regulatory proposals do have to be taken into account. And in fact, OSHA does consider the costs and benefits of every regulation it promulgates.

* President Clinton strengthened cost-benefit review through an Executive Order, and OSHA, like every agency, performs a separate analysis of the economic impacts of its rules on small businesses, with a goal of minimizing adverse impacts.

* But in passing the OSH Act in 1970, Congress declared that worker safety and health should be a priority above other regulatory considerations. We must continue to recognize this important principle.

* A strict cost-benefit analysis would overturn this important principle and treat human life and limb as just another cost of doing business.

Member interest: Cost-benefit analysis has been a particular concern of Senator Gregg, but any Republican Senator might raise this issue.

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Divider Title: **Corporate Issues**

Corporate Welfare

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

A. When we are working so hard to balance the budget, everything must be looked at including corporate welfare. The Administration already has cut $70 billion in such subsidies.

Corporate Welfare

Q. What other corporate subsidies do you propose cutting?

A. A wide range of subsidies have been identified by the Progressive Policy Institute, the CATO Institute, the AFL-CIO, and Rep. Kasich, among many others who bridge the ideological spectrum. Congressional leaders and the Administration are weighing all these options in the effort to design and approve the FY98 Budget.

Corporate Welfare

Q. Are there any corporate subsidies that you feel are off -limits?

A. This Administration has supported tax incentives that promote growth, are fair, efficiently targeted, and paid for.

Corporate Responsibility

Q. What is a good corporate citizen?

A. Most American corporations will say that their workforce is their greatest asset; good corporate citizens will take actions that prove that they mean it.

They will do so by:
Investing in their workers
Promoting family-friendly policies
Ensuring a safe and healthy workplace
Offering health and pension benefits, and
Promoting employee participation and labor/management cooperation

Good corporate citizens are doing good by their workers while doing good by the bottom line.

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. And 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.

Corporate Responsibility

Q. What are some examples of good corporate citizens?

A. There are many. A growing number of leading CEOs are designing their workplaces to accommodate employee needs. Many were on display at the Conference. A few come to mind:

- 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

Q. So, can you name a few "bad guys?"

A. Most companies want to do right by their employees. More and more are looking to industry leaders for direction. We should be focusing on these positive examples, and searching for opportunities for productive partnerships.

The Clinton Administration is committed to doing just that, as evidenced by last year's extension of employer-provided education assistance, also called Section 127. While I think we can learn from the mistakes that companies make, I prefer to focus on the positive.

Corporate Responsibility

Q. Do you anticipate continuing the corporate responsibility theme?

A. The activities of the Department of Labor are focussed on helping corporations to act responsibly. Stopping sweatshops, enforcing wage laws, eliminating discrimination, and promoting training are all elements of "corporate responsibility."

In addition, I support 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.

Corporate Responsibility

Q. Why does government have a role in the determination of standards of acceptable corporate behavior in the first place? Won't the market produce the behaviors that society deems most appropriate?

A. There is clearly a public interest in promoting good corporate citizenship.

Most companies want to do right by their employees. They look to industry leaders for direction. It's our job to focus on these positive examples, and promote them, to provide models to companies trying to do the right thing.

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