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ADDRESSING CONCERNS ABOUT THE INTEGRITY OF THE U.S. DEPARTMENT OF LABOR'S JOBS REPORTING

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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ADDRESSING CONCERNS ABOUT THE INTEGRITY OF THE U.S. DEPARTMENT OF LABOR'S JOBS REPORTING

Wednesday, June 6, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 9:36 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, McHenry, Jordan, Chaffetz, Walberg, Lankford, Labrador, DesJarlais, Gowdy, Guinta, Kelly, Cummings, Kucinich, Tierney, Clay, Connolly, Quigley, and Speier.

Staff Present: Ali Ahmad, Majority Communications Advisor; Will L. Boyington, Majority Staff Assistant; Molly Boyl, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; David Brewer, Majority Counsel; Sharon Casey, Majority Senior Assistant Clerk; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Tyler Grimm, Majority Professional Staff Member; Jennifer Hemingway, Majority Senior Professional Staff Member; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Mark D. Marin, Majority Director of Oversight; Laura L. Rush, Majority Deputy Chief Clerk; John A. Zadrozny, Majority Counsel; Jaron Bourke, Minority Director of Administration; Kevin Corbin, Minority Deputy Clerk; Ashley Etienne, Minority Director of Communications; Jennifer Hoffman, Minority Press Secretary; Carla Hultberg, Minority Chief Clerk; Chris Knauer, Minority Senior Investigator; Lucinda Lessley, Minority Policy Director; and Davida Walsh, Minority Counsel.

Chairman ISSA. Good morning. The Oversight Committee will come to order.

We on the Oversight Committee exist to secure two fundamental principles: first, Americans have a right to know the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

When President Obama took office, he promised the American people to have a more transparent administration, the most transparent administration in history. From that point on, this was a standard that the Obama Administration would be held to. Almost four years later, more and more it seems that their own actions, the actions of this Administration, say just the opposite is true.

The U.S. Department of Labor, led by Secretary Hilda Solis, has unilaterally changed the method by which the media accesses the Bureau of Labor Statistics jobs data. This unprecedented action has serious freedom of the press implications. Let there be no doubt we appreciate the need for simultaneous release of this sensitive information. But that has been accomplished for more than a generation through a procedure that was as effective and more acceptable to the media itself.

The abrupt nature of this change, coupled with the absence of a clear explanation and a lack of public input, raises key questions about who made this decision to implement this change and why? Did that individual have the authority of law?

As the Committee has examined this, this isn't the first time the issue has come up concerning the Labor Department's reach into the Bureau of Labor Statistics. You will recall the DOL received $500 million in stimulus funds to train workers for so-called green skills. But an audit by the inspector general found the program to be an utter failure and represented a tremendous loss to the taxpayer. This included training for occupations that are hardly green, such as welder, sheet metal workers, and machine operator. Certainly, those are jobs that may be needed, the skills are valuable, but they are certainly not all of a sudden green after hundreds of years of being around as a profession.

Aside from the excuse that perpetrated the Department of Labor, they have been using the guise of green jobs to justify ongoing funding of the President's green agenda. However, the standard they have invented includes counting as a green job, in addition to the welder, college professors are now green, environmental reporters are now green, policy experts at any think tank can be green. In fact, lobbyists can be green.

Now, I have been in Washington for nearly 12 years. There is a lot of green with lobbyists. None of it should be counted as an environmentally green job.

There are 33 times as many so-called green jobs in the septic tank and—you can't make these things up, guys—septic tank and portable toilet servicing industry as there are in solar, energy, and utility areas. More than 160,000 of these green jobs are related to school bus drivers.

Using these tactics to manipulate the number to mislead the American people is nothing short of embarrassing and a betrayal of the standards that President Obama established for his administration. Transparency begins with honesty. You cannot send out false propaganda and then say you are transparent. The truth is essential. The barest of the truth is essential; unfiltered if you are to be transparent.

We all appreciate this Administration has an opinion, and this Chairman has an opinion that is sometimes different. We are entitled to our opinions. We are not entitled to our facts.

Is it any wonder why there is such concern now that Secretary Solis's department wants to unilaterally change and control how the press receives job numbers from the Bureau of Labor Statistics? Of course, when invited to appear today to explain why this change in freedom of the press would occur, Secretary Solis, in no uncertain terms, turned down all invitations and offered us alternatives. We appreciate those who are here as alternatives; however, ultimately, if you are the Secretary of Labor, the buck should stop with you. If it doesn't stop there, where can the Americans believe it stops? It doesn't stop at the White House if the Secretary allows something to happen and then doesn't have an answer.

We will hear more about that here today and I hope it will send a clear message to the Administration.

With that, I recognize the distinguished Ranking Member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I thank you for holding today's hearing, which appears to focus on two very different topics involving the Department of Labor and Bureau of Labor Statistics.

The first topic is the integrity of the Department of Labor's job reporting. The Department of Labor strikes a balance between preventing the unauthorized release of key economic data and providing journalists with access to that data ahead of time so that they can prepare their stories with context about the broader employment situation. This balance is very important. We are the public's eyes and ears, so it is critical that they have the access necessary to ensure that they have a thorough and accurate understanding so that they can place it in context.

A leak of this data could have negative consequences. For example, in the hands of certain traders, early access to this data, even if just by a few seconds, could allow their powerful trading algorithms to manipulate and market and reap millions of dollars. That is why the Department and other data reporting agencies employ procedures to prevent unauthorized releases.

Recently, the Department of Labor hired Sandia National Laboratories, which oversees the security of our nuclear arsenal, to evaluate whether changes were needed to meet the new security requirements of today's constantly changing technological environment. Sandia found significant vulnerabilities in the Department's procedures and recommended steps to mitigate those risks. Sandia also warned that those seeking to break current security controls are profit driven, technically sophisticated individuals or organizations who may have considerable resources at their disposal. Acting on Sandia's recommendations, the Department announced new controls on hardware and software in the lockup environment.

In addition, the Department has now excluded specific firms that sought access to sell data to Wall Street traders a fraction of a second before other traders see it. Initially, some in the media complained that the Department's proposed changes were too restrictive, and these complaints appear to be the impetus for today's hearing.

Over the past month, however, the Department has worked with press outlets to accommodate their concerns while enhancing secu-

rity. We anticipate that there will be additional announcements regarding these ongoing discussions soon.

The second topic of today's hearing appears to be how the Department of Labor calculates the number of green jobs in the United States economy. This is the third hearing the Majority has called on this topic and the third time the Department of Labor officials have testified before us. Last July, the Brookings Institution issued an important report on green jobs with the following findings: first, green jobs employ almost 2.7 million Americans, more than the fossil fuel industry and twice the size of the bioscience sector; second, they said the green economy has expanded at greater rates than the economy as a whole. They went on to say that the green economy offers considerable and more highly paid opportunities for low-and middle-skilled workers.

Finally, they said, fourth, the green economy is manufacturing and export intensive, both of which are critical for America's future.

Since this report was issued, the Bureau of Labor Statistics estimated that the number of green jobs is even higher, reporting that over 3 million that helped rebuild our economy. This really should be welcomed by policymakers in Congress. Unfortunately, this Committee seems more intent on challenging the methodologies used by the Bureau of Labor Statistics rather than helping put people back to work.

I thank the witnesses for being here yet again today and I look forward to your testimony.

With that, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

I would take note that although the Ranking Member mentioned the DOL report, the Sandia report has not been made available to us under any circumstances. So notwithstanding the gentleman's assertions, until the Department of Labor makes that report available to us, we will consider it be a CYA document held close against Congress.

I hope the gentleman will join with me in issuing a subpoena if they will not deliver that document they allege is the impetus for his closing.

Mr. CUMMINGS. I would be happy to cooperate if the Chairman is willing to consult with us on the subpoena. I would be happy to talk about it and, if it is warranted, I certainly would join you.

Chairman ISSA. I thank the gentleman.

Members will have seven days in which to submit opening statements for the record.

We will now recognize our first panel.

Mr. Daniel Moss is the Executive Editor for Economics and International Government at Bloomberg News. Welcome.

Mr. Rob Doherty is the General Manager, United States, for Reuters News. Also, welcome.

Ms. Lucy Dalglish is the Executive Director at the Reporters Committee for Freedom of the Press. Also, welcome.

Dr. Keith Hall is the former Commissioner of the Bureau of Labor Statistics and is currently a Senior Fellow at the Mercatus Center.

And, last but not least, Ms. Diane Furchtgott-Roth is the former Chief Economist of the United States Department of Labor and a current fellow at the Manhattan Institute.

Welcome all. Pursuant to our Committee's rules, would you please rise to take the oath and raise your right hands?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Let the record reflect that all answered in the affirmative, to the best of their ability.

Please be seated.

Now, many of you are returning to testify; a couple of you it may be your first. We have members that will be coming in and out. We estimated about half an hour for your opening statements, so try to stay as close to five minutes as you can. We will have your entire opening statement, plus additional material you may wish to submit to support anything you say here today, included in the record without objection, so you only need to summarize because, for the record, all that you have submitted will be on the record.

Mr. Moss.

WITNESS STATEMENTS

STATEMENT OF DANIEL MOSS

Mr. MOSS. Chairman Issa, Congressman Cummings, members of the Committee, I thank the Committee for the opportunity to appear today and I want to express my particular appreciation to the Committee for its engagement in this issue.

Bloomberg News provides data, news, analytics to decision makers and industry beyond finance. Bloomberg News is delivered through the Bloomberg Professional Service through television, radio, mobile, the Internet, and two magazines, Bloomberg Business Week and Bloomberg Markets. We are syndicated in hundreds of newspapers globally. We cover the world with more than 2,000 reporters and editors in 146 bureaus in more than 70 countries. We are experts at publishing economic statistics and disseminating market-moving information.

Media stakeholders are making progress, Mr. Chairman, with the Department of Labor in arriving at a place that will not undermine the First Amendment, will not reduce transparency and accuracy of critical data, or create unacceptable cybersecurity risks. While no conclusive agreement has been reached, the movement that we have seen would not have been possible without the engagement of members of this Committee and committees and members in both chambers of both parties. We are particularly thankful to Senator Blunt for his engagement.

On April 10, without the notice and comment period dictated under the Administrative Procedures Act, the DOL announced a dramatic policy shift: henceforth, reporters and editors would be required to use only government software, government hardware, government lines, government notebooks, and government pens. The use of modern news-producing software, with the greater accuracy and context it provides, would be prohibited. All transmission

would be via the internet, not through secure lines. The Department of Labor would own and operate the lines, control Internet access, and control Internet connections, creating a single point of failure because all news organizations would share the same infrastructure.

Although the policy change was unprecedented, it was presented as nonnegotiable, a fait accompli. News organizations were required to remove their software, hardware, and dedicated lines from the Department by June 15.

This proposal threatens the First Amendment. The Government would literally own the reporters' notebook. Unlike any other Federal agency, the Department of Labor is requiring that reporters write news articles on government-owned and operated computers on a regular basis, which would give the Government unfettered access to reporters' notes and draft. No administration anywhere should have access to a reporter's thoughts, drafts, or notes as a condition for covering the news, let alone news of such importance.

The order also threatens national security. House, Senate, and the Administration have rightly spent a great deal of time attempting to address potential cybersecurity threats. Protecting our financial markets from disruption from cyber attack has been a key part of that discussion.

In the world in which we now live, for the Department of Labor to deliberately force the transmission of data away from secure, dedicated lines and, instead, mandate its transmission via the Internet is inexplicable. The vulnerability of the Internet to even accidental disruption is a large part of the reason why news organizations have invested in their own secure lines. The prospect of a deliberate disruption, potential spoofing, potential market manipulation are real.

In August last year, the Department of Labor's website went down following the release of the monthly employment situation. The unemployment rate was unavailable for one hour.

If the April 10 order, Mr. Chairman, goes into effect, the result would be potentially catastrophic. This proposal will increase market vulnerability and volatility. In the modern era of computerized trading, people compete in nanoseconds. Studies of the 2010 Flash Crash illustrate how quickly small incidents can result in major disruptions.

When the Department of Labor hosted a conference call on April 16, ostensibly to answer media questions on the new policy, I asked, "what is the problem you think, you imagine this will prevent?" The Department of Labor's response was, I think we are going to move on. Operator, we'll take the next question.

The alleged rationale for the new policy has gradually slipped out in dribs and drabs, ultimately, relying n a report by Sandia National Laboratories, which, as the Chairman noted, has not been publicly released.

The DOL has alleged its new policy is necessary because unauthorized people planted unauthorized equipment in the Department's communications closet. But this is an argument for enforcing the existing policy, not imposing draconian new rules.

The Sandia report speaks of those who oppose the Department's recommendations as adversaries. That is according to a summary,

Mr. Chairman, which has circulated on the Hill. It notes that although they are willing to bend and potentially violate the law, violence is unlikely as an operational method. Does the Department believe the media are adversaries? What rules and laws are we likely to break? On what evidence or experience is such a statement based?

Sandia continues, stating the apparent root cause for the issues driving this assessment is the possible presence of algorithmic traders and/or their agents in the press lockup facility. Has the lockup been infiltrated by hedge funds? The public, press, and Congress would be entitled to that information. Is it that difficult to distinguish between an authentic news organization and a hedge fund? Most significantly, if the root cause of the issues driving this assessment is the possible presence of algorithmic traders, why not just expel them from the lockup? Why threaten to erode the First Amendment?

In summary, Mr. Chairman, this proposal does undermine the First Amendment; it reduces transparency; it potentially reduces the accuracy of the data; increases market volatility; imposes a cybersecurity threat.

Given the DOL's refusal to extend the current June 15 date for removing equipment, the calendar will dictate our shortly seeking an injunction unless a comprehensive overall agreement is reached. An understanding has been reached amongst technical officials of the news organization and some technical staff at Labor. Labor is still to get back to us on a number of issues, including rules for the lockup. Until an overall agreement is reached in the format of the April 10 letter, the order stands.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Moss follows:]

TESTIMONY OF DANIEL MOSS, EXECUTIVE EDITOR, ECONOMY AND INTERNATIONAL GOVERNMENT

BLOOMBERG NEWS

BEFORE THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

OF THE U.S. HOUSE OF REPRESENATATIVES

REGARDING THE DEPARTMENT OF LABOR'S PROPOSED POLICIES ON

THE DISSEMINATION OF ECONOMIC DATA TO THE PUBLIC

JUNE 6, 2012

INTRODUCTION. Chairman Issa, Congressman Cummings and Members of the Committee. My name is Daniel Moss. I am the Executive Editor for Economy and International Government at Bloomberg News. I thank the Committee for the opportunity to appear today, and I want to express my particular appreciation to the Committee for its engagement on this issue. As part of Bloomberg LP, Bloomberg News – like Bloomberg Law, Bloomberg Government, Bloomberg New Energy Finance and Bloomberg BNA – provides data, news and analytics to decision makers in industries beyond finance. Bloomberg News is delivered through the Bloomberg Professional service, television, radio, mobile, the Internet, two magazines, Bloomberg Businessweek and Bloomberg Markets, and is syndicated in hundreds of newspapers globally. In covering the world with more than 2,300 news and multimedia professionals at 146 bureaus in 72 countries, we are experts in disseminating market moving information.

As I prepare this testimony, media and public interest groups appear to be making progress with the Department of Labor in arriving at policies on the dissemination of critical data that will hopefully not undermine the First Amendment, reduce the transparency and accuracy of critical data or create unacceptable cybersecurity risks. While no conclusive agreement has been reached, the movement we have seen would not have been possible without the engagement of this Committee, as well as the engagement of other Committees and Members – both Democrats and Republicans, in both the House and the Senate. We are particularly grateful to Senator Blunt for his engagement.

WHAT IS THE "LOCK-UP? A little background will help to make clear why the Department's April 10th proposed policy on the dissemination of employment statistics resulted in a firestorm of criticism and questions. Government agencies in the U.S. and Europe have developed a process known as a "lock-up". For at least the last 15 years, the Department of Labor (DOL) has utilized a lock-up to ensure the simultaneous release of monthly unemployment numbers and other economic indicators, including inflation reports. Over a dozen news organizations are cleared to participate in the release. Participating organizations arrive at the Department of Labor at 7:30 a.m. on the morning in which numbers are

disseminated. At 8:00 a.m., participants surrender their mobile communications devices (blackberrys, phones, etc.) which are locked in a box at the front of the room. Communication is cut, and participants are locked in the room without the capacity to communicate to the outside world. Participants receive these numbers at 8:00 a.m. and are only able to utilize their own software to produce news stories that include historic context and analysis to accompany the release of the numbers. At 8:30 a.m. the DOL throws the switch permitting the simultaneous transmission of these stories via participants' own dedicated lines. The release is simultaneous, secure, and accompanied by context to enhance usefulness and accuracy. Other agencies of the U.S. Government -- and indeed foreign agencies throughout the developed world – manage the release of market moving news via processes very similar to those that are, theoretically, currently utilized by DOL.

The Government has recognized that giving the media meaningful pre-release access to economic data serves important public interests, including promoting a level playing field for all market participants, improving public understanding of the data and public confidence that the information transmitted is objective, credible and certain. The institutionalization of these lockups was spurred in 2000 with the enactment of the "Information Quality Act" which directed OMB to issue Government-wide information quality guidelines to ensure the "utility…of information collected for statistical purposes." (44 U.S.C. 3504 (e)). OMB has acknowledged that "Our Nation relies on the flow of objective, credible statistics to support the decisions of governments, businesses, households and other organizations," and that a loss of trust in the integrity of the statistical system could "decrease the quality of statistical system products," and "foster uncertainty about the validity of measures our nation uses to monitor and assess its performance and progress." (OMB Policy Directive 4: Release and Dissemination of Statistical Products Produced by Federal Agencies, 73 FR 12622 (March 7, 2008)). In its Statistical Directive 4, OMB noted that giving the media pre-release access to data fostered, "improved public understanding of the data when they are first released and the accuracy of any initial commentary about the information contained in the product." (Id.) Along with stressing the importance of enhancing the utility of information and the accuracy of initial reporting, the Directive stresses the importance of simultaneous release of data to all interested parties and that the elements of an effective dissemination program include a variety of avenues for data dissemination, chosen to reach as broad a public as reasonably possible.

The public has been well-served by this policy. Allowing the media to have meaningful pre-release access to economic data helps ensure a "level playing field" so that all market participants can make trading decisions based on fully-explicated data. Otherwise, sophisticated market participants would be able to gain an informational advantage by analyzing and distilling complex data more quickly than others.

DOL's PROPOSED APRIL 10TH POLICY. Without an appropriate notice-and-comment period, the DOL announced a dramatic new policy on April 10th. Henceforth, reporters would be required to use only government owned software, hardware, and lines. Indeed,

reporters would be required to use government pens and notebooks. The use of modern news-producing software – with the greater accuracy and context it provides -- would be prohibited. All transmission will be via the internet, not via secure, redundant lines. The DOL would own and operate the data lines, internet access and internet connections – creating a single point of failure as all news agencies share the same infrastructure. Although this policy is unprecedented, the policy was presented as non-negotiable and a fait accompli. All news organizations cleared to participate in the DOL lockup were directed to remove their software, hardware, and dedicated lines from the DOL by June 15, 2012.

The problems outlined today would have been avoided had the DOL followed appropriate notice-and-comment rules of the Administrative Procedures Act (the "APA"). They did not. Under the APA, an agency cannot impose "rule" changes – which include procedural changes that impact the rights of third parties – without formally giving the public notice of the proposed rule changes and an opportunity to comment on them. The flaws in the DOL's proposed lock-up rules illustrate the risks that agencies run when they ignore the statutory framework for rule-making. First, the notice-and-comment requirement ensures that agency rules are tested through exposure to a period of diverse public comment. Second, it ensures fairness to the parties affected by the proposed agency rules. Third, it gives the affected parties an opportunity to develop evidence in the record to support their objections to the rules. Here, the DOL ignored the Congressional directive embodied in the APA, and instead forced news media to try to negotiate changes to the proposal under the pressure of arbitrary deadlines, and without a full opportunity to help the DOL understand how a less draconian approach could serve its legitimate interests without trampling on cherished First Amendment rights.

PROBLEMS WITH THE DOL'S APRIL 10TH POLICY—THREAT TO THE FIRST AMENDMENT. Under the DOL proposal, the government would own and control the reporters' notebook. This is an unheard of intrusion of government into one of most cherished freedoms. Except in those rare cases where it is ordered by a judge, unpublished newsgathering information is uniformly protected from compelled disclosure under the First Amendment. Unlike any other federal agency, the Department of Labor has asked that reporters write news articles on government-owned and operated computers, which gives the government unfettered access to reporters' notes and drafts. We wish to make clear our view that no Administration should have access to a reporter's thoughts, drafts and notes as a condition of covering the news, let alone news of such importance. The DOL's proposal that reporters– rely solely on DOL computers and software, instead of their own proprietary data and analysis, effectively moves an independent press into a position uncomfortably close to that of a government deputized captive distributor.

PROBLEMS WITH THE DOL APRIL 10TH POLICY—REDUCED ACCURACY. Machines supplied by the DOL for news agencies to use in the lock-up events would be preinstalled with software owned by the DOL. Reporters would be deprived of needed background research and historical data, sometimes proprietary in nature, which resides in their

own machines. Reporters would also be deprived of statistical interpretation tools to automate validation and fact-checking support to ensure accuracy. With the proposed DOL lock-up mechanism, none of these tools would be available, thus increasing the likelihood of mistakes.

PROBLEMS WITH THE DOL'S APRIL 10TH POLICY—THREAT TO NATIONAL SECURITY. The House, Senate, and the Administration have understandably spent a great deal of time this year attempting to address potential cybersecurity threats. Protecting our financial markets from disruption by cyber attack has been a key component of that discussion. Indeed, concerns about security are one reason why media companies in the financial realm have spent enormous sums installing secure, dedicated lines -- lines that entirely avoid the internet and its inherent vulnerabilities. In the world in which we live, for the DOL to affirmatively force the transmission of critical data away from secure, redundant, dedicated lines and instead mandate its transmission via the internet is inexplicable. To ensure the safety of these market-moving numbers, the DOL proposes using a common uplink from the DOL to the Internet, over which each news agency will communicate the data released from the lock-up event. Fundamentally, this represents a single-point-of-failure as an attacker anywhere in the world can cause traffic floods on the DOL network that would prevent any data from entering or exiting for the duration of the attack. This type of attack (referred to as a "distributed denial-of-service or DDoS attack) happens routinely and are typically executed from thousands of infected machines spread across the world, thus making it a long and labor-intensive process to mitigate the attack and return normal service to the affected network.

The vulnerability of the internet to even accidental disruption is a large part of the reason why news organizations have invested in these secure lines. Recently, the DOJ website was hacked, and government agencies regularly confront hacking that ranges from mere nuisance to serious problem. The prospects of deliberate disruption – and potential spoofing and market manipulation -- should be carefully weighed before moving to a less secure system. Indeed, even without sabotage, the Bureau of Labor Statistics website has crashed during the release of unemployment numbers. In August of 2011 the unemployment rate was not available online for over an hour ("the reason the website was down is that the service was overwhelmed by the number of inquires," said BLS spokeswoman Stacey Standish). This event last August was an inconvenience, not a catastrophe, because multiple news organizations, utilizing their own dedicated lines, were able to deliver this highly sensitive data to the market instantaneously. If the DOL's April 10th policy goes into effect, the next comparable failure will have grave consequences.

PROBLEMS WITH THE DOL'S APRIL 10TH POLICY – INCREASED MARKET VOLATILITY AND MARKET VULNERABILITY. The increased vulnerability of the internet -- coupled with the vagaries of internet routing which make it impossible to guarantee simultaneous delivery of this information – will result in increased market volatility and market vulnerability. The predictable monthly release of DOL numbers triggers an immediate surge in trading volume across asset classes, including the U.S. Treasury market, where average daily

volume for primary dealers exceeds $400 billion a day and where rates set the benchmark for consumers and businesses.

In the modern market of computerized trading, traders compete in nanoseconds. Studies of the May 6, 2010 "Flash Crash" -- in which major equity indices plummeted 6% in a matter of minutes for reasons that are still unclear – illustrate how quickly small incidents can cascade into major disruptions in computerized markets. As the Securities and Exchange Commission ("SEC") and Consumer Financial Trade Commission ("CFTC") reported in, "Findings Regarding the Market Events of May 6, 2010," "One key lesson is that under stressed market conditions, the automated execution of a large sell order can trigger extreme price movements…the interaction between automated execution programs and algorithmic trading strategies can quickly erode liquidity and result in disorderly markets." Under the best case scenario, the combination of the non-simultaneous release of information --- and investors reacting to incomplete information – will create uncertainty and excessive volatility (i.e., market movement driven by quirks in the distribution of data, not an assessment of the data) and increased risk of market manipulation. These market inefficiencies and asymmetry of information raise basic questions regarding the appearance of fairness of the markets and jeopardizes participation in the financial markets. Under the worst case scenario, confusion surrounding the accuracy of employment numbers could trigger cascading computerized sell orders and a market meltdown.

WHAT PROBLEM IS THE DOL'S APRIL 10TH POLICY DESIGNED TO ADDRESS? When the DOL hosted a call on April 16th -- ostensibly to answer media questions on the new policy – I asked, "What is the problem you think, you imagine this will prevent? The DOL's response was, "I think we're going to move on. Operator, we'll take the next question."

The alleged rationale for the new policy has grudgingly slipped out in drips and drabs. DOL has stated that two journalists committed violations of existing policies and were disciplined. However, despite repeated questioning, the identities of the individuals, the nature of the offense, and the nature of the discipline have not been revealed. Without that information, it is unclear if the DOL proposal would actually address the alleged problem.

The DOL has alleged that its new policy is necessary because unauthorized individuals have planted unauthorized equipment in the lockup's communications closet. However, this is an argument for actually enforcing DOL's existing policy – which prohibits such conduct – not imposing the draconian new proposal advanced by the DOL. We concur that that it is a problem if, post 9/11, a government agency has no idea what equipment resides in their building and who has placed it there. Regardless, this problem is not addressed by the DOL's April 10th policy.

SANDIA REPORT. In recent weeks the DOL has begun referring to a consultant's report prepared by Sandia National Laboratories as providing the rationale and template for the April 10th policy. Of course, no one outside of DOL – not the Congress, the media, or the public

that actually paid for the report – has been permitted to see it, and indeed DOL has not permitted Sandia to answer questions regarding the Report. DOL has circulated to the Hill a one-page "Executive Summary" dated August 2011. It's one brief page leads to a host of new questions.

The Sandia Report speaks of those who may oppose their recommendations ("adversaries") and notes that, "although they are willing to bend and potentially violate rules and law, violence is unlikely as an operational method." Does the DOL believe the media are "adversaries"? What rules and laws are we likely to break? On what evidence or experience is such a statement based?

The Sandia Summary continues by stating, "the apparent root cause for the issues driving this assessment is the possible presence of algorithmic traders and/or their agents in the press lockup facility." Has the lockup been infiltrated by hedge funds? The public, press and Congress are entitled to this information. Is it that difficult to distinguish between an authentic news organization and a hedge fund?

Most significantly, if the, "root cause of the issues driving this assessment" is the possible presence of algorithmic traders in the lockup, we suggest the DOL should have removed these individuals from the lockup back in August of 2011. Why wait until April 2012, to enunciate a policy that utilizes a grenade instead of a scalpel? Matching the medicine to the malady is usually critical and common sense. In this context, it is more than that: it is constitutionally compelled. Content-based restrictions are subject to "strict scrutiny", which require that the restrictions be "narrowly tailored" to serve a "compelling state interest." If the "root cause" of the DOL's concerns is the need to keep hedge funds from masquerading as news organizations, remedying that discrete problem could be easily done without promulgating the complex, destructive, and unconstitutional policy promulgated by the DOL.

The fact that we still face so many questions regarding what is driving this policy reminds us of the value of a transparent process. As discussed earlier, under the Administrative Procedures Act, an agency's substantive rules are subject to a notice-and-comment requirement. If the law had been followed here, or even if a serious, informal consultation had occurred, I suspect identifying direct solutions to discrete problems would have been simple.

MEDIA PROPOSAL. Since the announcement of these hearings -- and the fast-approach of the date by which an injunction would need to be sought to avoid the June 15th removal of the media's lines and equipment – discussions with the DOL have been productive. The Associated Press, Bloomberg LP, Dow Jones and Reuters jointly made a proposal to the DOL based on structures similar to the Departments of Agriculture and Commerce. While we have not been provided with information sufficient to permit us to assess all of DOL's concerns, I believe our proposal fully addresses the DOL's stated concerns.

CONCLUSION. We appreciate the Committee's engagement on this issue. The DOL policy announced April 10th represents a dramatic change from current practice, a change that

raises serious questions regarding freedom of the press and market stability. The DOL proposal would diminish security, end the simultaneous delivery of data, reduce transparency and accuracy, increase market volatility and distrust of the markets while undermining the First Amendment. We are hopeful that the proposal made by the Associated Press, Bloomberg LP, Dow Jones and Reuters – a proposal based on proven systems at the Departments of Commerce and Agriculture that address DOLs stated concerns -- will be acceptable. In the alternative, we urge that the DOL institute a rulemaking that would – with the participation of the public in a transparent process – permit us to devise a system that addresses demonstrable concerns without dangerous, unintended consequences.

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Chairman ISSA. Thank you.
Mr. Doherty.

STATEMENT OF ROBERT DOHERTY

Mr. DOHERTY. Mr. Chairman, Ranking Member Cummings, members of the Committee, thank you for inviting me to testify today on the new policies and procedures the Labor Department is planning for its press lockups. My name is Rob Doherty. I am General Manager in the United States for Reuters, which is the news division of Thompson Reuters.

Reuters is the largest international news agency in the world. We have more than 2900 full-time journalists in 200 bureaus around the world reporting in 20 languages. Globally our audience includes more than 1700 text media and 600 TV clients, over 35 million visitors to Reuters websites each month, and more than 400,000 financial professionals who subscribe to Thompson Reuters desktop products.

On April 10th, the Labor Department notified our Washington bureau chiefs and other news organizations about major changes they plan for the operation of its lockups. Dan has covered those changes in detail, so I won't repeat those. But, needless to say, we were taken aback by the planned changes. They were dramatic, announced without any advanced notice, and with no real explanation of the rationale, and, importantly to us, without any prior consultation with the affected news organizations.

I want to be clear on two points. First, we believe lockups are extremely useful in promoting accurate and authoritative dissemination of sensitive data because they provide journalists time to better understand the information before sending it to the public. Second, we fully acknowledge the responsibility of the Department of Labor to implement lockup rules to guard against premature release of information. It is in everyone's interest that the Department do so.

Indeed, we believe the lockup procedures now in place have been effective in preventing early release of the Labor Department data. But despite that apparent success, the Department plan announced in April would require us to use government equipment to do our work as a matter of routine, something we, as an independent news organization, fundamentally oppose.

Additionally, the changes announced by the Department in April would represent a major step backward technologically for new organizations and for the dissemination of critical data through recognized news channels. That would imperil the ability of news organizations to provide such information to the public in a reliable, accurate, and timely way, and lead to confusion in the public and in the financial markets that rely on the Department's data. To gauge the importance of that data to the public in general and the markets in particular, one needs to look no further than last Friday's unemployment report.

Years of development work have gone into automating our software to ensure it works with our proprietary editorial system and redundant private communications lines to speed the delivery of crucially important information to millions of our readers and subscribers across the globe. Our software allows journalists to effi-

ciently and accurately incorporate new material from Department news releases, as well as to provide historical data that puts that new material in context. This would be lost if lockup participants must use a Department-provided standard configuration computer and a Department-provided Internet service provider, and it would be lost without any assurance that new procedures would materially decrease the probability of premature leaks. And, as Dan said, you can make an argument that it would actually increase the difficulties with the disseminate of the data.

Because of these concerns, we joined with three other news organizations, Bloomberg, The Associated Press, and Dow Jones, in requesting a meeting with the White House to voice our opposition to the April 10 announcement. We are also hoping to better understand the Labor Department's concerns and to see if we could find a way that the Department could met its responsibility to prevent early release of data without the draconian changes it was planning.

We now have had a series of what I would describe as constructive meetings with the Labor Department officials and staff, and those meetings have left us optimistic that we will be able to agree on procedures and policies that, while not perfect and not the status quo we would prefer, would, in our view, represent a workable compromise and allow news organizations to disseminate information from the lockup quickly, reliably, and accurately. But as Dan has made the point, we are not there yet. We still are hoping we can complete an agreement in time for the July 6th deadline set by Labor. If not, we will be asking the Department for a short delay to allow any agreed changes to be implemented in the least disruptive way possible.

And I want to underscore that as we discuss other issues and reach agreement on other issues, the timing is really an important issue for us. It is now June 6th. As Dan said, the equipment starts coming out on June 14th and 15th. The new procedure goes in place July 6th, which, by the way, is the next unemployment report, which will be hugely watched. Talking to our technical staff, they think it is nearly impossible to do this the right way and be ready for July 6th. So if we are able to reach an agreement on the larger issues, the technical issues, and go forward, I hope the Department will be willing to be flexible on the implementation date.

Thank you again for your invitation to address the Committee and for your continued interest in this issue, and I would be happy to answer any of your questions.

[Prepared statement of Mr. Doherty follows:]

Testimony of Rob Doherty

General Manager, United States, Reuters

Before The

House Committee on Oversight and Government Reform

on

"Addressing Concerns about the Integrity of the U.S. Department of Labor's Jobs Reporting"

June 6, 2012

Mr. Chairman, Ranking Member Cummings, members of the Committee: Thank you for inviting me to testify before the committee on the new policies and procedures the Labor Department is planning for its press lock-ups to release economic data.

My name is Rob Doherty, and I am general manager in the United States for Reuters, the news division of Thomson Reuters.

Reuters is the largest international news agency in the world. We have more than 2,900 full-time journalists in 200 bureaus around the world reporting in 20 languages. Globally, our audience includes more than 1,700 text media and 600 TV clients, over 35 million visitors to Reuters websites each month and more than 400,000 financial professionals who subscribe to Thomson Reuters desktop products. In the United States, Reuters reaches millions each month in print, online or via video.

On April 10, the Labor Department notified our Washington bureau chief about major changes planned for the operation of its lockups, a highly controlled and secure environment where credentialed reporters are allowed to preview embargoed economic data for a fixed-period of time, usually 30 minutes, before disseminating the data and stories about the data to the public.

Chief among the changes announced by the Labor Department was that news organizations would no longer be able to use their own computers, software and communications lines to file information from the lock-ups. Instead, news organizations would be required to use standard configuration computers and telephone equipment – including hardware, software, cabling and

wiring – supplied by the Department, and be required to transmit their stories over the Internet instead of over private communications lines. The changes would be effective on July 6, when the June unemployment report is released.

We were taken aback by the planned changes, which were dramatic, announced without advance notice and with no real explanation of the rationale – and without any prior consultation with the affected news organizations.

I want to be clear on two points. First, we believe lockups are extremely useful in promoting accurate and authoritative dissemination of sensitive data because they provide journalists time to better understand the information before sending it to the public.

Second, we fully acknowledge the responsibility of the Department of Labor to implement lock-up rules to guard against the premature release of information. It is in everyone's interest that the Department do so.

Thomson Reuters takes embargoes seriously and we have always intended to comply with the Department's lock-up procedures. But our company, after a hardware re-configuration, did inadvertently uncover a defect in the Department's equipment that resulted in two unintentional early releases of data from our machines in the Labor lockup in late 2008. We brought the problem to the attention of the Department as soon as we were aware of it, a fix was implemented, and there have been no issues in the three and a half years since.

Indeed, we believe the lock-up procedures now in place have been effective in preventing early release of Labor Department data. But, despite that apparent success, the Department plan announced in April would require us to use government equipment to do our work as a matter of routine – something we, as an independent news organization, fundamentally oppose.

Additionally, the changes announced by the Department in April would represent a major step backward technologically for news organizations and for the dissemination of critical data through recognized news channels. That would imperil the ability of news organizations to provide such data to the public in a reliable, accurate and timely way and lead to confusion in the public and in the financial markets that rely on the Department's data. To gauge the importance of that data to the public in general and the markets in particular, one needs to look no further than last Friday's unemployment report.

Years of development work have gone into automating our software to ensure it works with our proprietary editorial system and redundant private communications lines to speed the delivery of crucially important information to our millions of readers and subscribers across the globe. Our software allows our journalists to efficiently and accurately incorporate new material from Department news releases, as well as provide historical data that puts the new

information in context. All of this would be lost if lock-up participants must use a Department-provided standard configuration computer and a Department-provided Internet service provider. And it would be lost without any assurance that the new procedures would materially decrease the probability of premature leaks of data.

Because of these concerns, we joined three other news organizations – Bloomberg, the Associated Press and Dow Jones – in requesting a meeting with the administration to better understand their concerns and to see if we could find a way that the Department could meet its responsibility to prevent early release of it data without the dramatic changes it was planning.

We have now held a series of constructive meetings with Labor Department officials and staff. Those meetings have left us optimistic that we will be able to agree on procedures and policies that while not perfect – and not the status quo we would prefer – would, in our view, represent a workable compromise for all parties and allow news organizations to disseminate information from the Labor lock-up quickly, reliably and accurately. We are hoping we can complete an agreement in time for the July 6 deadline set by Labor. If not, we will be asking the Department for a short delay to allow any agreed changes to be implemented in the least disruptive way possible.

Thank you again for your invitation to address the committee and for your continued interest in this issue. I would be happy to answer your questions.

Chairman ISSA. Thank you.
Ms. Dalglish?

STATEMENT OF LUCY DALGLISH

Ms. DALGLISH. Thank you. Chairman Issa, Ranking Member Cummings, and members of the Committee, thank you for the opportunity to testify today. I am Lucy Dalglish, Executive Director of the Reporters Committee for Freedom of the Press. For more than 40 years, the Reporters Committee has provided free legal and advocacy services to protect the rights of journalists working where United States law applies.

I am happy to testify today on behalf of the Sunshine in Government Initiative, of which the Reporters Committee is a member. SGI is a coalition of media associations promoting greater transparency in government.

Thank you, Mr. Chairman, for holding this hearing. We strongly object to the changes the United States Department of Labor announced less than two months ago. The Department's approach, as proposed in April, makes the release of market-moving information less reliable, less secure, more prone to errors and inaccuracies, and less equitable as it reaches the public.

Last month, the Sunshine in Government Initiative urged the Labor Department to suspend these changes, clarify the concerns with the current process, and work with us to address those concerns. Since then, only your attention to this issue has helped bring about productive discussions between the media entities and the Labor Department. Quite honestly, we are bewildered by the Labor Department's announcement on April 10th, without consulting with any of the media involved, about these dramatic changes that will have a devastating impact on journalists' ability to inform the public in a timely and useful manner. It took the interest of this Committee to spur what we understand to be protective discussions between the journalists in the lockup and the Department.

As you know, Mr. Chairman, since its formation after 9/11, SGI has worked with you and others on Capitol Hill and across the Executive Branch to work through problems, and we remain committed to working with the Department on this issue. But let me be clear; we do not wish for the Labor Department to maintain procedures that would advantage one media entity over another, or make it easier to break embargoes. We are hopeful that the Labor Department can address vulnerabilities in the current lockup procedures with ongoing dialogue. While these conversations continue, let me describe how the announced changes would undermine the integrity of the high-profile economic indicators released to the public.

First, the Labor Department's announced approach raises cybersecurity concerns. Releasing this data through an online connection may allow an Internet hacker to target the release and change key numbers as they leave the Department, or a denial of service attack could delay release to some or all.

Second, the Labor Department's new approach would likely be less reliable than the current practice. Currently, at least two media organizations have built redundant system hardware. If a circuit fails, a second circuit already installed in the network re-

routes data traffic. If a secure line fails, duplicate dedicated cabling in place carries the traffic. Even attempting to duplicate these secure systems on government-owned computers would be costly to taxpayers.

Last, the Department's new approach would make errors more likely. Without their own equipment, preloaded spreadsheets and custom software to digest the data, journalists would have to type this information relying on memory or handwritten notes. This dramatically increases the chance of errors. Markets that measure time in microseconds surely will react to wrong data before any correction can be issued.

No one begrudges the Federal Government from moving quickly, if need be, to address immediate security concerns, but the Labor Department should first explain its concerns and consider the perspective of journalists and the public before making such a dramatic and permanent procedural change. The media takes government interference with its work product very seriously. So does the Constitution. In fact, the First Amendment obligates the government to allow journalists to operate independently from government control. Requiring journalists to draft and publish stories using government-owned computers loaded with government-controlled software simply crosses a line the First Amendment clearly drew to separate the press from the government.

In conclusion, Mr. Chairman, we are committed to working with this Committee and the Labor Department to find a resolution that serves the public interest. Thank you.

[Prepared statement of Ms. Dalglish follows:]

Testimony of Lucy A. Dalglish, Executive Director

Reporters Committee for Freedom of the Press

on behalf of

the Sunshine in Government Initiative

before the

House Oversight and Government Reform Committee

On "Addressing Concerns about the Integrity of the U.S. Department of Labor's Jobs Reporting"

June 6, 2012

Chairman Issa, Ranking Member Cummings, and members of the Committee,

Thank you for the opportunity to testify today. I am Lucy Dalglish, executive director of the **Reporters Committee for Freedom of the Press**. For more than 40 years, the Reporters Committee has provided free legal advice, resources, support and advocacy to protect the First Amendment and Freedom of Information rights of journalists working in areas where U.S. law applies, regardless of the medium in which their work appears.

I am happy to testify today on behalf of the **Sunshine in Government Initiative**, of which the Reporters Committee is a member. SGI is a coalition of media associations promoting greater transparency in government. Other members of SGI are the **American Society of News Editors**, **The Associated Press**, **Association of Alternative Newsweeklies**, **National Newspaper Association**, **Newspaper Association of America**, **Online News Association**, **Radio-Television Digital News Association** and **Society of Professional Journalists**.

Thank you, Mr. Chairman, for holding this hearing. We strongly object to the changes to the procedures for releasing economically significant information through "press lock-ups" that the U.S. Department of Labor announced less than two months ago. The Department's approach as proposed in April makes the release of market-moving information less reliable, less secure, more prone to errors and inaccuracies, and less equitable as the information reaches the public. In a letter we sent to the Labor Department on May 8, 2012, we urged the Labor Department to suspend these changes, clarify the concerns it has with the current practice and work with us to address those concerns.

Since then, your attention to this issue has helped bring about productive discussions between media entities and the Labor Department. We are hopeful that the Labor Department can address any concerns or vulnerabilities in current lock-up procedures with dialogue with media groups, clear agreements, and narrowly tailored additions, as appropriate, to safeguards already in place. The focus of this testimony will be on identifying how the current process works, how the media have worked to ensure reliable and secure dissemination of market-moving information and the moment of release, and how the announced changes would undermine those efforts.

Let me clarify one thing at the outset: We do not wish for the Labor Department to maintain procedures that would advantage one media entity over another or to make it easier to break embargoes. In fact, we are concerned the announced procedures would both create winners and losers and undermine the security and reliability of the process. As a coalition broadly representing journalists, we encourage any "lock-up" procedures to foster simultaneous release at a pre-determined time and a strong embargo.

Let me briefly explain the strengths of the current procedures and risks we see in the Labor Department's announced plan.

The current process helps assure accurate information reaches the public at the moment it becomes public.

The procedures currently in place help the Labor Department meet federal requirements to release economically significant data with as much information as possible to foster public understanding at the moment the information is released. On September 25, 1985, the Office of Management and Budget revised Statistical Policy Directive 3 ("Compilation, Release, and Evaluation of Principal Federal Economic Indicators"). That Directive was revised to

> ensure that the Federal data and estimates used to assess current economic conditions meet high standards of reliability and usefulness and that agencies release them to the public in a fair and orderly manner. [1]

[1] "Statistical Policy Directive 3: Compilation, Release, and Evaluation of Principal Federal Economic Indicators," Office of Information and Regulatory Affairs, Office of Management and Budget. *Federal Register,* Vol. 50, No. 186 (September 25, 1985).

In 2008, OMB further supplemented that directive with Statistical Policy Directive 4, which among other things required that federal agencies disseminating statistical information "must ensure that all users have equitable and timely access to data that are disseminated to the public."[2]

Under the practice that has been in place, journalists have an opportunity to enter a secure room and make preparations prior to the release of the economically significant data. As Statistical Policy Directive 4 notes,

> the purpose of pre-release access is to foster improved public understanding of the data when they are first released and the accuracy of any initial commentary about the information contained in the product.

Upon entering the Labor Department's designated room, the so-called "lock-up," journalists relinquish smartphones and other personal effects, then sit down at workstations with previously installed equipment that they own to ensure the equipment is working properly. They then check with editors or colleagues to make last-minute preparations. To prevent early leaks, during this time journalists do not have the soon-to-be released figures.

Thirty minutes prior to the release of the data, those journalists in the lock-up are cut off from the outside world. The Labor Department flips its "kill switch" and networks are disconnected. At that point, the Labor Department distributes the new information, both on paper and electronically via a CD-ROM, to lock-up participants. Recipients may not disclose the information outside the room – and physically should not be able to – until the designated release time. Journalists, working from their own equipment, have at their disposal historical data and formulas that provide additional information and context at the moment the data is released to the public.

During this busy embargo period, these media entities may have several people in the lock-up working on the release: one working on a headline, another on graphs and tables putting the data in helpful context, and another writing the text of the article explaining what the information reveals about

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[2] "Statistical Policy Directive 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies." Office of Information and Regulatory Affairs, Office of Management and Budget. *Federal Register*, Vol. 73, No. 46 (March 7, 2008).

the economy and what its impact may be. There may even be a fourth reviewing and editing to catch mistakes and clarify wording.

Then, at the precise moment of public release, the Labor Department flips the "kill switch" once more and reconnects network access. At this point, the data and accompanying information that the journalists put together is sent via secure, dedicated transmission lines to media company servers, where it is further disseminated to a broad audience.

This process works well to help the public best understand the meaning of the numbers they are seeing at the moment it is announced. It is vital to the markets and to the public that this information be accurate at the time it is released and that the public have the broadest possible access to information to understand these indicators at the moment they are released.

To foster secure, reliable and accurate information at the moment of release, media entities have installed redundant, dedicated circuits and transmission lines, so that if a circuit fails, another carries the traffic to ensure the information flows. One media entity estimated it has spent millions of dollars to ensure this system works. Others likely have similar systems.

These redundant hardware systems and detailed procedures help ensure the information is locked up before the release time and flows to the public at that moment the Labor Department has designated. They help ensure reliable, secure, timely dissemination of market-moving information to a broad audience.

The Labor Department's new approach is less reliable, less secure and more likely to foster inaccuracy and errors.

On April 10, 2012, the Labor Department announced that on or around June 15, media entities will have to rip out their equipment from the lock-up. In its place, journalists will have to share a single Internet line maintained by the government and use government computers installed with word processing, Internet browsing and basic file transfer protocol (FTP) software.

First, the Labor Department's approach raises cybersecurity concerns. We are concerned these changes will make the release process vulnerable to cyberattacks and disrupt markets. An Internet hacker might target the release and change key numbers as it leaves the Labor Department. Or a denial-of-service attack against some participants could delay release to some or all. Journalists would likely restore their systems at different times. This could disrupt markets where decisions are made in

microseconds. Under current procedures, in contrast, the information travels through multiple dedicated lines to multiple outside servers, limiting the disruptive potential for hacking.

Second, the Labor Department's new approach would likely be less reliable than current practice. Currently, at least one media organization participating in the lock-up has built redundant system hardware to ensure the information gets out at the moment the labor Department releases it. If a circuit fails, a second circuit already installed in the network re-routes data traffic. If a line fails between the lock-up and the media outlet's central servers, duplicate, dedicated cabling in place carries the traffic. Duplicating these secure systems would be costly to taxpayers.

Third, the Department's new approach would make errors more likely. As we understand it, under the new procedures journalists would log onto a government-owned server that stores the new figures about to be released. It is unclear whether the system would provide the same redundancy that the media entities have invested in.

At that time, the journalists would be preparing headlines, stories, and charts to provide context to the new information by typing in key information from paper notes or from memory. Without their own equipment, pre-loaded spreadsheets and custom software to digest the data, journalists would type this information relying on memory or handwritten notes. This dramatically increases the chance of "fat finger" errors finding their way to the public. No correction after wrong data is released can prevent errors from affecting markets that measure time in microseconds.

No one begrudges the federal government for moving quickly if need be to address an immediate security concern, but the Labor Department should first explain its concerns and consider the perspective of journalists and the public before making such dramatic, permanent procedural changes. The media takes government interference with its work product very seriously. So does the Constitution. In fact, the First Amendment obligates the government to allow journalists to operate independently from government control. Requiring journalists to draft and publish stories using government-owned computers loaded with government-controlled software simply crosses a line the First Amendment clearly drew to separate the press from the government.

Conclusion

The current procedures for releasing key market-moving statistical data includes safeguards to help ensure a secure, reliable and accurate means for broadly disseminating information to the public at the moment that key economic data is released. The Labor Department should specifically identify any vulnerabilities or concerns it may have about the procedures and work with lock-up participants to build additional safeguards as appropriate.

We remain concerned the Labor Department's announced changes will result in the dissemination to the public of market-moving information in a less secure, less reliable and less accurate manner.

We have urged the Labor Department to suspend these changes until they can assure any changes are at least as good as current practice and give lock-up participants adequate lead time to adjust without threatening the accuracy, reliability, or security of the releases. We are committed to working with the Labor Department to find a resolution that serves the public interest.

We appreciate the oversight this Committee has provided to help engage all parties in productive discussions in recent days, and look forward to working with you to ensure the integrity of the process going forward.

Thank you again, Mr. Chairman, for the opportunity to testify today and I'd be happy to take your questions.

Sunshine in Government Initiative

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May 8, 2012

The Honorable Hilda Solis
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Solis:

As a coalition of media organizations promoting the free flow of information, we write to express our serious concerns regarding the new "U.S. Department of Labor Press Lock-ups Policy Statement and News Organization Agreement" that was issued on April 10, 2012. The new policy threatens to undermine the accurate, complete and timely dissemination of independently produced news. We urge the Labor Department (DOL) to reconsider and delay implementing this new policy, better explain the problem the Department is attempting to address, and engage affected parties and the public before implementing any changes to current practice.

Specifically, we would like to meet with Department representatives to better understand the Department's concerns with current practice, discuss our concerns with the Department's new approach, and explore reasonable alternatives that avoid unnecessarily infringing on journalists' ability to independently report timely, accurate information to the public.

Formed in 2005, the **Sunshine in Government Initiative** is a coalition of media groups committed to promoting policies that ensure the government is accessible, accountable and open. Members include the **American Society of News Editors**, **The Associated Press**, **Association of Alternative Newsweeklies**, **National Newspaper Association**, **Newspaper Association of America**, **Online News Association**, **Radio-Television Digital News Association**, **Reporters Committee for Freedom of the Press** and **Society of Professional Journalists**.

For many years, media organizations have supported procedures to facilitate simultaneous release of sensitive government data that affect markets, and pre-embargo access is essential for media to disseminate information in a timely, accurate and independent manner. The public has benefited enormously from the process the Department currently uses. The practice used to this point ensures the simultaneous release of information while also providing time that enables reporters to place the new data in meaningful context. Distribution occurs through redundant, dedicated lines, assuring security and the timely release of information. This combination of simultaneous release, data placed in accurate context, and security is why other agencies

of the U.S. Government which manage the release of market moving news use processes very similar to those currently used by DOL.

Under DOL's new policy, however, participants would be required to remove their software, hardware, and dedicated lines from the DOL by June 15, 2012. Reporters would be required to use only government owned software and hardware. The use of modern news-producing software would be prohibited. All transmission would be via the internet, not via secure, redundant line. The DOL would own and operate the data lines, internet access and internet connections. As the government grows more concerned about cybersecurity, the proposed policy would create a single point of failure.

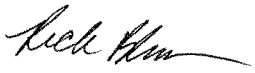
This new policy also would have the practical impact of inhibiting the quality, accuracy and independence of news reporting. Unpublished newsgathering information is privileged and protected from compelled disclosure under the First Amendment. Requiring news organizations to draft news articles on government-owned and government-operated computers would give the government unfettered access to unpublished draft news stories and will necessarily inhibit journalists from producing thorough, timely and accurate reporting based on market-moving information.

While the Department has alluded to alleged security breaches, the Labor Department has yet to explain its specific concerns this new policy proposes to address. The parties directly affected and the public cannot evaluate whether any change in procedure, including the new approach the Department announced, is appropriate to address the underlying problem.

We are committed to working with you to better understand any concerns about the current practice and explore reasonable, mutually acceptable solutions, and we would welcome a dialogue to better understand this problem and explore less drastic alternatives. Most immediately, we urge you to delay this policy change and meet with interested media representatives to discuss our concerns.

We thank you for your consideration and I look forward to hearing from you soon.

Sincerely,



Rick Blum, Coordinator
Sunshine in Government Initiative

Cc Senator Michael Enzi
Senator Chuck Grassley
Senator Tom Harkin
Senator Kay Bailey Hutchison
Senator Patrick Leahy
Senator Jay Rockefeller
Congressman John Conyers
Congressman John Kline
Congressman George Miller
Congressman Lamar Smith
Congressman Fred Upton
Congressman Henry Waxman

Chairman ISSA. Thank you.
Dr. Hall.

STATEMENT OF KEITH HALL

Mr. HALL. Good morning, Chairman Issa and Ranking Member Cummings and members of the Committee. My name is Keith Hall and I am a Senior Research Fellow at the Mercatus Center at George Mason. Most recently I was the Commissioner of the Bureau of Labor Statistics from 2008 to 2012. In my testimony today, I would like to talk about the Bureau of Labor Statistics and its role in disseminating economic data.

First of all, let me note that the Bureau of Labor Statistics is an independent Federal statistical agency and, as such, it is tasked not only with collecting, compiling, and producing economic data, but also with disseminating the data and explaining it to the public. There are a number of principles which any Federal statistical agency follows: it is to disseminate data in both a transparent and independent manner, with no bias of any type; they are also tasked with creating a level playing field for the release of data, meaning that nobody has an advantage of getting the data earlier, ahead of other people. In addition, they are responsible for the security of the data, and that is everywhere, including inside the lockup room.

In fact, the Bureau of Labor Statistics has the responsibility to decide whether or not to even have a data lockup. And I am making this distinction because this is the independent Federal statistical agency, this is not the Department of Labor that I am talking about.

Traditionally, news media were considered by statistical agencies as the most effective distributor of economic statistics to the public. Wire services were the most practical and fair distributor to media outlets, and for this reason press lockups were designed decades ago to provide the most important economic data to wire service reporters. Wire service reporters would get to look at the data ahead of release time, under lockup conditions; they would get to ask clarifying questions; they would get to write their stories on a typewriter; and then when the release time came, reporters would all race to a bank of telephones and call in their stories. And that is essentially how the lockup runs today, despite tremendous changes in technology.

Today, now, most new economic data is actually disseminated to the public through a statistical agency website or by email. Lockup continues for the most important economic data, but technology now has changed and I think it has made it difficult to maintain adequate security inside the lockup. In particular, automatic computer trading now has made BLS data, employment release data like employment release data from BLS, extremely valuable and fractions of a second makes a big difference in financial markets.

Also, lockup participants may now have specialized computer equipment and software that links to automated trading models. When I was commissioner, back in 2009, I read one particular article, and I am going to quote from it, and this caused me a great deal of concern: "Key economic indicators are released to financial markets through a small and exclusive group of accredited news agencies. A trading model can now read the specially formatted

data and enter into a trading position immediately, before the larger market has had time to read the release on news wires and digest its meaning."

This, to me, raised concerns over whether or not we had a level playing field coming out of the lockup. I have a number of recommendations on this, but let me also mention a second thing, quickly, as well.

Emerging technology constantly changes and agencies like BLS that are tasked with disseminating data need to be able to take advantage of new technology and new methods of disseminating data. For example, social media is a relatively new method of disseminating economic data and other statistical agencies at the moment have free access to use social media. I believe BLS should be allowed to freely use social media and any other new method of dissemination without having to compromise its position as an independent, objective provider of data, free from filtering by the Office of the Secretary, free of bias in its presentation, and free from actual or perceived parts in intervention. That is my first recommendation.

Second, with respect to press lockups, I have a number of things I mention here that are just common sense and long overdue: having a lockup agreement, having adequate control of the lockup room. A number of those things have not been in place; they need to be put in place right away. One of the things that I have a particular problem with is TV journalists are now actually allowed to break the lockup and leave the room and, in fact, go outside before the data is released to set up for cameras. I think that is a security concern, so I think that ought to end right away.

Most importantly, though, I think that the Bureau of Labor Statistics should be given full oversight authority for conducting all its press lockups, developing and maintaining policy and procedures, and have the authority to establish and implement credentialing and confidentiality protocols for participating news organizations and employees.

Let me just say to some degree this is not just my opinion; this is the opinion of the Office of Management and Budget, at least if you believe the OMB Federal Statistical Policy Directives Number 3 and 4, who make it clear, as I mentioned before, that it is BLS's responsibility to determine whether or not there is a lockup and it is their responsibility to actually disseminate the data, and they are the ones who are responsible for the confidentiality.

Thank you.

[Prepared statement of Mr. Hall follows:]

"ADDRESSING CONCERNS ABOUT THE INTEGRITY OF THE U.S. DEPARTMENT OF LABOR'S JOBS REPORTING"
JUNE 6, 2012

Keith Hall
Senior Research Fellow, Mercatus Center at George Mason University

United States House of Representatives Committee on Oversight and Government Reform

Good Morning Chairman Issa, Ranking Member Cummings, and members of the committee. My name is Keith Hall, and I am a Senior Research Fellow at the Mercatus Center at George Mason University. Most recently, I was the Commissioner of the Bureau of Labor Statistics from 2008-2012. In my testimony today, I would like to talk about the Bureau of Labor Statistics (BLS) and its role in disseminating economic data.

The bureau is an independent statistical agency responsible for measuring labor market activity, working conditions, and price changes in the economy. It is an important part of their mission to not only collect, compile, and produce accurate and timely economic data, but also to help disseminate this information to support public and private decision-making.

I would like to discuss two areas of data dissemination that have significantly changed in recent years. The first is the public release of data to news reporters under prerelease, so-called "lockup" conditions. New technology has had such a significant impact on press lockups that it is necessary to reconsider how—or even *if*—these should continue in the future. The second is the dissemination of economic data and other BLS information through social media. It is my belief that statistical agencies like BLS should be free to fully utilize social media and any other future methods of dissemination without any restrictions that may affect their reputation as an independent, credible source of economic information.

The Press Lockup

Statistical agencies are tasked with ensuring that all users have equitable and timely access to data. They now release economic data in a number of new ways, the most common being through an agency website. Traditionally, however, the news media was considered the most effective distributor of economic statistics to the public, and "wire services" were the most practical and fairest distributor to media outlets. As a result, press lockups have long been a mechanism through which wire services receive—under carefully controlled conditions—the most important data about thirty minutes in advance of their announced release.

Through such a lockup, a wire reporter can:

- digest the new information,
- ask clarifying questions, and
- compose a factually accurate, lucid story that can be distributed to media outlets and can serve as the basis for wider news coverage.

As important as "equitable and timely access" to data is, the Office of Management and Budget (OMB) makes clear that data security is the top priority, and is the responsibility of a statistical agency. In fact, OMB directives state that prerelease data can be shared in a lockup only if the statistical agency head has established security arrangements to "ensure that there is no unauthorized dissemination or use."

During my time at BLS, it became increasingly difficult to provide fair and timely access to data through a press lockup while at the same time maintaining adequate security arrangements. Technology and markets have changed significantly. Lockup participants may now have access to specialized computer equipment and software that links them directly to automated trading models. This effectively allows financial market transactions to be driven from inside lockups. Quoting from a 2009 article in a financial trader magazine (*The Trade News*): "Key economic indicators are released to financial markets through a small and exclusive group of accredited news agencies.... A trading model can now 'read' the specially-formatted data and enter into a trading position immediately, before the larger market has had time to read the release on newswires and digest its meaning."

In my opinion, this has significantly raised the value of newly released economic data, such as from the monthly BLS employment release, and raised serious questions about whether the lockup remains an equitable method of data dissemination. Moreover, it seems the very concept of the media has become less clear and has complicated the credentialing process designed to screen access to the lockup room. Good or bad, I believe this will lead to a dramatic increase in competition inside the lockup room.

Social Media

The value of BLS data rests vitally on its credibility as an independent, objective provider of data. It is therefore important that its data be free of bias in its presentation and distributed free of any perceived partisan intervention. The BLS should also remain distinct from those parts of the Department of Labor (DOL) that carry out law enforcement and policy-making activities.[1] Therefore, BLS should not be required to be part of the Department's so-called "Centralized Social Media" policy.

By end of 2010, dozens of BLS staff had developed an ambitious plan for using social media that included the use of Twitter, Facebook, Qs and As about BLS data on the website, LinkedIn, blogging, Wikipedia, podcasts, video sharing, website applications to solicit comments and reviews on BLS products, and photo sharing. This has all been on hold because BLS has not been able to carry out these social media activities independently and on the BLS website.

This social media plan has been on hold even though BLS maintains its own independent website where its data can be accessed directly by public users. And to be clear—the public is very interested in accessing BLS data. The bureau answers literally thousands of phone and email questions per month on their data from customers that contact it directly. In 2011, for example, BLS answered approximately 40,000 direct public inquires. To my knowledge, no other statistical agency has been denied the ability to disseminate data through social media. I don't believe that blocking BLS access to social media is any different in principal than closing down its independent website or not allowing BLS to answer email or phone questions about its data without first being screened by DOL.

Recommendations for BLS Press Lockups

Because of the changing nature of the news lockup due to technological advances, I believe that the following changes for BLS lockups are long overdue:

- A written comprehensive lockup agreement that holds both news organizations and individual reporters and producers accountable for rule violations.
- An established, comprehensive set of rules of behavior and procedures for BLS, Employment and Training Administration (ETA), and DOL information and public affairs staff.
- Specified criteria for participation in press lockups.
- Secured IT and communications equipment in a locked cabinet.

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[1] See Principles and Practices for a Federal Statistical Agency from the National Academy of Sciences. It is considered the authoritative guide for federal statistical agencies like BLS.

- A policy that prohibits media organizations from accessing the lockup room for maintenance activities without a BLS IT security specialist present.
- A policy such that no portable electronic devices are allowed in the lockup rooms.
- A policy where press agencies are entitled to only one work station unless there is extra room for more.
- A requirement that all news agency representatives (TV journalists included) to remain within a secure facility inside the Francis Perkins Building until release time.

Additionally, since OMB gives responsibility to the statistical agency for both maintaining adequate security and creating a level playing field in the dissemination of data, BLS should be given oversight authority for conducting all of its press lockups, developing and maintaining policy and procedures, and the authority to establish and implement credentialing and confidentiality protocols for participating news organizations and employees. This has the additional benefit of eliminating the appearance of conflict between spreading the Secretary's message to the press and maintaining security in the lockup room.

I also support the consideration of either replacing all news agency equipment with DOL owned-and-maintained work stations or even designating the first release of data to the BLS public website. In the latter option, the lockup room could still be maintained but the release time for the room would come only after the release first appears on the BLS website.

Conclusion

For BLS to effectively disseminate data directly to the public and maintain credibility as an independent, objective provider of data, DOL should not interfere with BLS' dissemination of economic data through any means. This includes all products printed or electronic. DOL should comply fully with OMB Statistical Policy Directive #4 and revoke their centralized social media policy.

Chairman ISSA. Thank you.
Ms. Roth.

STATEMENT OF DIANA FURCHTGOTT–ROTH

Ms. FURCHTGOTT-ROTH. Thank you very much for inviting me to testify here today. I was asked to talk about green jobs, and it is a very topical time to be discussing green jobs because we just got the employment news on Friday which showed that the number of jobs in the economy rose by only 69,000, following an increase of 77,000 in April. The unemployment rate rose to 8.2 percent and has been above 8 percent for well over three years.

Well, America might not be good at creating jobs, but it excels at relabeling jobs as green jobs. It is much easier to redefine an existing job as a new job, a green job. How many jobs has our government relabeled as green? The Bureau of Labor Statistics decides which jobs are green and which are not, and they identified 3.1 million in 2010, the latest year available, in a release in March 2012. Americans may have toiled for decades at the same job, unaware that a Federal agency might some day designate that job green.

I would like to argue that we should focus on job creation, rather than green jobs, because we have over 12 million unemployed. Our broadest rate of unemployment is 14.8 percent. If people want to buy green products, such as Priuses, because the price of gasoline is high, they will do so. Much emphasis on green has driven jobs overseas. Just two examples: incandescent light bulbs. The ban on incandescent light bulbs has resulted in the closure of those factories and the new CFLs, the new fluorescent are all made in China. So there are green jobs, but green jobs for China.

Many solar panels, wind turbines that are required by law are made overseas in places such as China. Coal is produced here, but we are increasingly not being allowed to use it. China is using our coal and produces less than 1 percent of its electricity from renewables. So it makes these products with coal and then sends them to us, which reduces our jobs.

So BLS decides which jobs are green, and sometimes these jobs qualify for tax preferences or subsidies. For example, our transportation policy is based on green jobs, with 20 percent of the Highway Trust Fund reserved for mass transit. Tax subsidies are given to electric vehicles both for companies to produce them and for Americans to buy them.

BLS has defined green jobs as "jobs in businesses that produce goods or provide services that benefit the environment or conserve natural resources" or as in "jobs in which workers' duties involve making their establishment's production processes more environmentally friendly or use fewer natural resources."

So in order for a firm to be considered green, they have to meet one of five goals, namely, energy from renewable sources; energy efficiency; pollution reduction or removal; natural resources conservation; and environmental compliance, education, training, and public awareness.

So I was particularly interested when I came in today to see this cup here. Now, this just is a cup, but on it it says "We have the power to save energy." So this fits in with number five, environ-

mental compliance education compliance, education, training, and public awareness. So now people who produce these cups, they would be considered to have green jobs, but that hasn't meant a total increase in jobs in the economy, it is just a matter of relabeling.

In agriculture, for example, one of the main categories of workers are 36,000 organic farmers and growers, and their workers are credited with accomplishing both natural resource conservation and creating energy from renewable sources. So when a farmer produces corn to eat, that is not counted as a green job, but when he produces corn for ethanol, that is counted as a green job.

With farming, it is possible to calculate the percentage of employment that is dedicated to ethanol or organic produce, but in other areas it is not so clear. One example is wood chips used for biomass. How many workers are employed by the timber industry to create wood chips? Wood chips are largely a byproduct of milling, and milling is not considered a green job. Yet, according to a Labor Department definition, the 33,000 wood product manufacturing jobs are called green because companies can sell the wood chips for biomass.

I have many other examples in my testimony, but I see that my time has run out. Thank you very much.

[Prepared statement of Ms. Furchtgott-Roth follows:]

Green Jobs in the U.S. Economy

Diana Furchtgott-Roth
Senior Fellow, Manhattan Institute

Chairman Issa, Ranking Member Cummings, members of the Committee, I am honored to be invited to testify before you today on the subject of BLS's efforts to measure green jobs. I am a senior fellow at the Manhattan Institute. From 2003 until April 2005 I was chief economist at the U.S. Department of Labor. From 2001 until 2002 I served at the Council of Economic Advisers as chief of staff. I have also been a senior fellow at the Hudson Institute and a resident fellow at the American Enterprise Institute. I have served as Deputy Executive Secretary of the Domestic Policy Council under President George H.W. Bush and as an economist on the staff of President Reagan's Council of Economic Advisers.

Introduction

Many people take two ideas as a matter of uncritical belief:

> (1) Government "investment" in green jobs helps Americans and America's economy; and
> (2) Such "investment" will enable America to keep pace with economic rivals such as China.

Neither concept is true. Rather, government spending to promote green jobs harms the economy by raising energy prices. Such higher prices act in the same way as a tax, reducing production and employment. Some green jobs may be created, but many more manufacturing and energy-intensive jobs are eliminated or driven offshore. This makes Americans worse off, rather than better off, and puts America at a disadvantage compared to China and other countries that eschew uneconomic policies.

Green jobs are the most recent reappearance of a perennial idea—industrial policy to promote certain industries. Industrial policy has failed in the past, in America, Japan, Russia, and numerous other countries across the globe and across the centuries. Today, green jobs initiatives result in a higher cost of energy to businesses, driving them to locate in other countries, and to households, who can afford fewer goods.

Federal Definitions of Green Jobs

As we have seen from the employment numbers for May, released on June 1, creating new jobs is hard work. The number of jobs in the economy increased by only 69,000 in May, following an increase of 77,000 in April. The unemployment rate rose to 8.2 percent, and has been above 8 percent for well over three years.[1]

The United States government may not be good at creating jobs, but it excels at relabeling existing jobs as green jobs. It is easier to simply redefine an existing job as a new job, a "green job." How many jobs has our government relabeled as green? The Bureau of Labor Statistics at the Department of Labor decides which jobs are green and which are not. They have identified 3.1 million green jobs in 2010, the latest year available, released in March.[2] Many Americans may have toiled for decades at the same routine job, unaware that a federal agency may one day designate their job as "green."

The Bureau of Labor Statistics is responsible for the federal definition of green jobs under Title X of the Energy Independence and Security Act of 2007, signed into law by President George W. Bush. The bill authorized funding for green-collar job training in the areas of retrofitting buildings, installing solar panels and setting up wind farms, and building energy efficient buildings, among others.

The bill authorized funds for states to offer grants for labor management training programs and apprenticeships, in order to coordinate green jobs programs with union officials.[3] Other sections contained incentives for construction of green buildings, with particular reference to federal buildings.[4]

BLS decides which jobs are green. Sometimes these jobs qualify for tax preferences or subsidies. For example, our transportation policy is based on green jobs, with 20 percent of Highway Trust Funds reserved for mass transit. Tax subsidies are given to electric vehicles, both for companies to produce them and Americans to buy them.

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[1] Bureau of Labor Statistics, "News Release: The Employment Situation-May 2012." Last modified June 1, 2012. Accessed June 1, 2012. http://www.bls.gov/news.release/pdf/empsit.pdf.

[2] Bureau of Labor Statistics, "News Release: Employment in Green Goods and Services-2010." Last modified March 22, 2012. Accessed June 1, 2012. http://www.bls.gov/news.release/pdf/ggqcew.pdf.

[3] "Energy Independence and Security Act of 2007." H.R. 6, 110th Congress, December 13, 2007. Section 1002 (2) (D) (ii) and Section 1002 (3) (A) (vi) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h6eas2.txt.pdf

[4] Ibid, Section 431 and 432.

BLS has defined green jobs either as "jobs in businesses that produce goods or provide services that benefit the environment or conserve natural resources," or as "jobs in which workers' duties involve making their establishment's production processes more environmentally friendly or use fewer natural resources."

Included are long lists of potential jobs that might qualify. The BLS aggregated the number of jobs within the renewable sources industry, such as wind, biomass, geothermal, and solar. Within the private utility industry, there were a total of 65,700 jobs counted as green. Of these, 4,700 jobs were in renewable energy. Wind energy generated the most with 2,200 jobs. Biomass followed wind energy as the second highest producer of jobs with 1,100 jobs, followed by geothermal, with 600 jobs and solar power, with 400 jobs. The manufacture of energy efficient products, and those that pertain to pollution reduction and recycling, account for 45,791 green jobs across a range wide range of manufactured products. Jobs in conservation qualify, such as organic farming, land and water management.

BLS has compiled a list of 333 detailed industry groups that can be classified as green. Many jobs in those industries qualify as green jobs and those who are employed in those industries can be counted as "green workers."[5]

In order for the firms in that industry to be considered "green" they have to meet one of five goals, namely (1) Energy from Renewable Sources, (2) Energy Efficiency, (3) Pollution Reduction and Removal, (4) Natural Resources Conservation, (5) Environmental Compliance, Education, and Training and Public Awareness. BLS describes examples of work that people in the particular industries could be performing to be classified as "green workers."

In agriculture, for instance, one of the major categories of workers are 36,611 organic farmers and growers, whose workers are credited with accomplishing both natural resource conservation and creating energy from renewable sources. The biggest economic contributor from this category is likely to be producers of corn. When a farmer produces corn to eat this is not counted as a green job. But when he produces it for ethanol—the Department of Agriculture estimates that for the 2010/2011 marketing year 45 percent of the U.S. corn crop was used for ethanol—he has a green job.[6]

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[5] List of NAICS codes, and whether industry qualifies as green, accessed November 4, 2011, http://www.bls.gov/green/final_green_def_8242010_pub.xls

[6] "World Agriculture Supply and Demand Estimates," USDA, last revised November 9, 2011, http://www.usda.gov/oce/commodity/wasde/latest.pdf

What if the farmer produces some corn to eat, and other corn to make ethanol, as countless corn producers do? By Agriculture Department definitions, the farmer has a green job. As long as the farmer sells at least some corn to ethanol producers, he is green.

A farmer who grows hundreds of acres of corn to feed Americans or starving people around the world has not yet risen to the sufficient moral level to be labeled a green worker. But if she were to sell some corn to a processor to produce ethanol to fuel a Cadillac SUV on the other side of America, the farmer is counted as a green worker.

The 20,605 organic producers of fruits and vegetables count as green jobs, but owners of large farms do not. Unlike most green jobs, many organic farmers are low-paid and unskilled. Measurement of the workers in this area is imprecise, since farming is a seasonal workforce with highly varying annual demand. Similarly, businesses that purchase locally produced food are considered green—but not if they import food from other countries.[7]

What if a business sells some locally-produced food, and some from overseas? Just as with corn producers, if even a few workers are engaged in selling local produce then the business can count itself as green. Calculations do not include self-employed workers, however. Hence, if an employee of a green farm strikes out on his own, and becomes self-employed, then a green job is lost—even if he is selling organic produce.[8]

With farming, it is possible to calculate the percentage of employment that is dedicated to ethanol or organic produce, but in other areas the numbers are not so clear. One example is "wood chips used for biomass." How many workers are employed in the timber industry to create wood chips? Wood chips are largely a byproduct of milling, and milling is not considered a green job. Yet according to the Labor Department's definition, the 33,214 wood product-manufacturing jobs are considered green because companies can sell the wood chips for biomass.

Electricity production is another gray area. The 4,665 men and women who produce renewable energy are clearly green. But what about increasing the efficiency of a power plant that uses fossil fuels, such as oil, coal, or natural gas?

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[7] "Measuring Green Jobs," US Bureau of Labor Statistics, accessed November 10, 2011, http://www.bls.gov/green/#faqs

[8] List of NAICS codes, and whether industry qualifies as green, accessed November 4, 2011, http://www.bls.gov/green/final_green_def_8242010_pub.xls

After all, since the introduction of electricity, its production has been getting gradually more efficient, as new technology replaces old.

Those energy efficiency operations that qualify as green jobs include construction of Leadership in Energy and Environmental Design (LEED) certified structures, installation of energy efficient windows, and manufacturing and repairing Energy Star appliances. LEED certifications, granted by the U.S. Green Building Council, a non-profit organization,[9] and Energy Star certifications granted by the Environmental Protection Agency and the Department of Energy,[10] are national standards.

It is puzzling to say that any of the 81,950 "green" construction workers are doing any different job installing a gas insulated window, rather than a traditional pane window. Installing a "Lo-Flo" toilet is a green job, but a regular toilet is just plumbing.[11] Like many of the workers the government is trying to capture, these workers would still be needed, even if there was no concept of a green economy. What is different: the Labor Department may provide funding for "retraining" workers to install this different toilet.

Another baffling class of green workers is public transportation, which employs 241,877. Buses and trains are included, but not taxis. But in many cases building and operating a rail line uses more energy than buses. And in other cases it makes more sense to take a taxi than a bus. Further, if rail service is green, should not planes be included? The carbon emissions of planes per mile travelled are substantially less per mile of travel than those of cars.[12]

Many industries in the federal government's categories border on the absurd. Table 1 shows a few examples.

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[9] "LEED Rating System Development." U.S. Green Buildings Council. Accessed January 13, 2012. http://www.usgbc.org/DisplayPage.aspx?CMSPageID=2360

[10] "About Energy Star." Energystar.gov website. Accessed November 15, 2011. http://www.energystar.gov/index.cfm?c=about.ab_index

[11] McMahon, Brett. Testimony on The Green Jobs Debacle: Where Has All of the Taxpayers' Money Gone?" before the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending. November 2, 2011. http://oversight.house.gov/images/stories/Testimony/11-2-11_RegAffairs_McMahon_Testimony.pdf

[12] "Carbon Calculator," The Carbon Fund, accessed November 10, 2011, http://www.carbonfund.org/site/pages/carbon_calculators/category/Assumptions

People who work in museums have green jobs, but only in environment and science museums. There are 22,510 people with these so-called green jobs. A job in an art gallery is not a green job. The securities and commodity exchange industry counts as green—but only for emissions allowance trading. News syndicates employing 23,197 people are green—as long as they publish environmental media. Book publishers are green, if they issue environmental books or training manuals. Does this testimony qualify as environmental content, since it is about green jobs, so does this make Congress a green organization? Am I, writing these words, doing a green job?

It is not clear why the federal government needs to make these distinctions between green jobs and other jobs. It might be less expensive for someone in the environmental movement to manage the classification system. This would mean that the green jobs movement could proceed without imposing the cost on the federal government. To cite one potential comparison, private Jewish religious organizations decide which foods can carry a kosher certification, then individuals decide which foods they want to purchase.

The green job designations have more psychological than economic effects. These labels are unlikely to change the behavior of businesses or consumers—although they do serve an advertising and public relations function. Businesses want to be more efficient to cut their costs, and consumers do the same, seeking products to help them reduce their fuel bills.

The entire exercise is an attempt to justify government initiatives, while in practice doing nothing to make America more efficient. The sector that has gained jobs is the federal bureaucracy, with taxpayer funds used for workers who create memos and manuals. This does not help to contribute to any of the major goals of green jobs outlined by the Bureau of Labor and Statistics.

Green Jobs in the States

In addition to BLS, states also have their own methodologies of green job definitions. States have not done any better than the federal government at crafting green jobs definitions. Many states, including Arizona, Idaho, Maryland, and others drew upon or simply adapted the BLS definition, and others creating their own definitions.

The Department of Labor's Employment and Training Administration released a Solicitation for State Labor Market Improvement (LMI) Green Jobs Grants in July 2009,

which led many states to form consortiums and study the green jobs within their states and regions.[13]

The Rocky Mountain & Northern Plains Green Job Consortium (Utah, Montana, Wyoming, South Dakota, Nebraska and Iowa) defined a green job as "one in which an employee produces a product or service that improves energy efficiency, expands the use of renewable energy, and/or supports environmental sustainability."[14]

Another consortium, the Mid-Atlantic Regional Collaborative, consisting of Maryland, Virginia and the District of Columbia, concluded that

> "Green jobs are jobs involved in economic activities that help protect or restore the environment or conserve natural resources. These economic activities generally fall into the following categories: Renewable Energy; Energy Efficiency; Greenhouse Gas Reduction; Pollution Reduction and Cleanup; Recycling and Waste Reduction; Agricultural and Natural Resources Conservation; Education, Compliance, Public Awareness and Training."[15]

Louisiana and Mississippi partnered in surveying green jobs in their states in 2009. To be a green firm in Louisiana or Mississippi, employees should spend more than 50 percent of their time in one of seven green activity categories, specifically renewable energy; energy efficiency; greenhouse gas reduction; pollution prevention and clean-up; recycling and waste reduction; sustainable agriculture; natural resource conservation and coastal restoration; and education, compliance, public awareness and training supporting the other categories.[16]

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[13] "Solicitation for Grant Applications - Labor Market Improvement Green Job Grants Consortium States Submittal Summary." Employment Security Department, Washington State. July 2009. Accessed November 8, 2011. http://www.wtb.wa.gov/Documents/LMEAconsortiumapps.pdf

[14] "The Northern Plains & Rocky Mountain Consortium Final Report." *Northern Plains and Rocky Mountain Consortium.* 2011. http://researchingthegreeneconomy.org/docfolder/publications/The%20Northern%20Plains%20&%20Rocky%20Mountain%20Consortium%20Final%20Report.pdf

[15] "What is a Green Job?" *MARC Regional Green Jobs* website. Accessed November 8, 2011. http://www.marcgreenworks.com/gsipub/index.asp?docid=398

[16] "The Greening of Louisiana's Economy: Summary of Survey Results." Louisiana Workforce Commission. September 2011. http://lwc.laworks.net/sites/LMI/GreenJobs/Reports/Louisiana_Survey_Results.pdf#Method

Alabama created its own definition of green jobs as those where jobs relate to the identifiable green activities of "increasing energy efficiency; producing renewable, clean transportation and fuels; agriculture and natural resource conservation; pollution prevention and environmental cleanup; and research, consulting and environmental support."[17]

Other states which worded their own definitions include Pennsylvania and Oregon. Pennsylvania defines green jobs as "those that promote energy efficiency, contribute to the sustainable use of resources, prevent pollution and reduce harmful emissions or clean up the environment."[18] Oregon has a similar definition.[19]

Some states have lengthy and highly-specific definitions. For example, California's extensive working definition is based on the following **GREEN** acronym:

> **G**enerating and storing renewable energy
> **R**ecycling existing materials
> **E**nergy efficient product manufacturing, distribution, construction, installation, and maintenance
> **E**ducation, compliance and awareness
> **N**atural and sustainable product manufacturing

New Jersey perhaps has the most accurate definition, saying "It turns out that, in most cases, a green job is not an entirely new job, but a traditional job that contributes to reducing carbon emissions or pollution or otherwise benefiting the environment."[20]

Some definitions of green jobs specify that they consider green jobs to be full-time positions which pay a living wage. For example, Wisconsin gave out grants to companies to create green jobs, defined as "full-time jobs in businesses that

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[17] "Alabama Green Definitions." Alabama Department of Industrial Relations website. Accessed November 8, 2011. http://www.greenjobsinalabama.com/gsipub/index.asp?docid=417

[18] "The Pennsylvania Green Jobs Report Part 1." Pennsylvania Workforce Development Commission. Accessed November 8, 2011. http://www.portal.state.pa.us/portal/server.pt/directory/center_for_green_careers/134700?DirMode=1

[19] "The Greening of Oregon's Workforce: Jobs, Wages and Training." Oregon Employment Department Workforce and Economic Research Division. June 2009. Accessed November 8, 2011. http://www.qualityinfo.org/pubs/green/greening.pdf

[20] "Green Jobs." *New Jersey Next Stop...Your Career* website. Accessed November 8, 2011. http://www.state.nj.us/njnextstop/home/greenjobs/

manufacture clean energy products (for example wind, solar, biofuels, and advanced electrical storage systems) or otherwise help reduce the consumption of fossil fuels."[21] But most state definitions, following the lead of the Labor Department, do not clarify how much time must be spent on "green activities" to qualify a position as a green job. This means that either that the person's entire workday is focused on such green activities, or that having one green duty bumps a job into the green category.

A report of the Northern Plains and Rocky Mountain Consortium found that only 26 percent of employees reported spending all of their efforts on green activities, and only 48 percent of employees reported spending half or more of their time on green activities. In other words more than half of employees counted as green are not spending half their time on green activities.

Universities are examples of the easy creation of so-called green jobs. Many colleges have environmental studies programs and would therefore qualify as an industry where green goods and services are classifies under NAICS code 611310, "colleges and universities."[22] Some have renamed their civil engineering departments "Departments of Environmental Engineering," and some ask their cafeterias to compost scraps. But these actions do not require hiring new employees.

Would the people who instituted composting be counted as new green jobs because they instituted this new system as one of their duties? Would the workers who now put food scraps in a compost heap rather than a trash bag count as green jobs? What about the social media coordinator who announces this practice as a victory for the environment on the college's Facebook page? The list of potential relabeled jobs goes on.

The ambiguity of the definitions of green jobs is one reason why efforts to create them have been so unsuccessful.

Conclusion

Green jobs sometimes are eligible for government subsidies giving them an advantage over other jobs. Yet green jobs often are not economically viable. They are frequently a waste of taxpayer resources, a drain on the federal budget.

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[21] "State Energy Program - Recovery Act (SEP-ARRA) - Clean Energy Business Loan Program." Wisconsin Department of Commerce. Accessed November 8, 2011. http://commerce.wi.gov/BD/BD-SEP-ARRA.html

[22] "Green Goods and Services Industries by NAICS Code." Federal Register Notice For Public Comment: September 21 2010. Accessed November 8, 2011. http://www.bls.gov/green/final_green_def_8242010_pub.pdf

For several years the public has been told that "green energy" – an expansive term that embraces renewable energy, pollution reduction, and conservation – will create jobs in America, lots of jobs. And that the federal government must subsidize green energy to create these jobs.

But no one knows what green jobs are.

Neither the federal government nor state governments can agree on the function or characteristics of a green job, although so many people seem to want them. Some green jobs, such as home insulators, have been around for decades and are being renamed as green jobs. Other jobs, such as manufacturing electric vehicles, are green jobs, but come at the expense of ending other auto industry jobs. Jobs in clean coal production are green jobs, but jobs in coal mining are not.

Not only is there no clear federal definition of a green job, but states have their own definitions. This means that federal grants to states to create green jobs don't produce even results.

Federal and state governments relabel traditional jobs, in an attempt to convince themselves and the public that such jobs exist. America has not succeeded in creating many green jobs, or many jobs that are not green. Last week's employment numbers show that we need a new approach.

Thanks very much for listening, and I would be glad to answer any questions.

Table 1: Industries where Green Goods and Services are Classified

NAICS 2007	Title	Examples
712110	Museums	Environment and science museums
712130	Zoos and botanical gardens	Botanical gardens, zoos
551114	Managing offices	Headquarters for environment-related companies
541810	Advertising agencies	Environmental advertising for public awareness
541820	Public relations agencies	Environmental public relations for awareness
541922	Commercial photography	Environmental photography
523130	Commodity contracts dealing	Emissions allowance trading
523140	Commodity contracts brokerage	Emissions allowance trading
523210	Securities and commodity exchanges	Emissions allowance trading
515120	Television broadcasting	Environmental content for TV broadcasting
515210	Cable and other subscription programming	Environmental content for cable distribution
519110	News syndicates	Environmental news media
511130	Book publishers	Environmental or training books/manuals
511140	Directory and mailing list publishers	Industry association directories or mailing lists
511199	All other publishers	Environmental or association calendars, etc

August 24, 2010. Source: Bureau of Labor Statistics: Industries where Green Goods and Services are Classified. http://www.bls.gov/green/final_green_def_8242010_pub.pdf

Chairman ISSA. Thank you. Thank you all for your testimony.

Dr. Hall, I am going to begin with you because you do see a need for reform in the lockup, but what you said earlier is of concern to me. The Office of Management and Budget has a set of guidelines; it makes every effort to make sure that the Bureau of Labor Statistics is independent.

Carl Fillichio, do you know who he is?

Mr. HALL. Yes, I do.

Chairman ISSA. Does he work for the Bureau of Labor Statistics?

Mr. HALL. He works for the Secretary of Labor.

Chairman ISSA. So he is in fact a political appointee, non-confirmed, working for the Secretary of Labor, and he is the person that came up with this policy, isn't he?

Mr. HALL. Yes, he is.

Chairman ISSA. Okay. So they violated OMB guidelines. It is being directed from the Department of Labor. This is in fact not the independent agency intention that you worked for so long and hard, and you have been very candid with us in the past. It is your job to count the green jobs you are told to count, so you accurately account for the numbers. It is somebody else's decision about whether they are green or not under a definition. So we have enjoyed your honesty, but your honesty here says it is supposed to be one way. It clearly wasn't, isn't that correct?

Mr. HALL. That is correct. I do think the Bureau of Labor Statistics should be responsible for running the lockup.

Chairman ISSA. By the way, would you ever have thought that the Department of Labor or Bureau of Labor Statistics would be left of Brookings, able to come up with more green jobs, even then one of the great liberal think tanks? You need not answer that one.

Mr. Moss, you are one of the companies that invested heavily in proprietary lines in order to send out in a timely basis, aren't you?

Mr. MOSS. Yes.

Chairman ISSA. Okay. So you did so for two reasons. One was clearly to ensure that your story didn't fail to go out and I guess the second one is to make sure you got it out at least as fast as anyone else, if not a few seconds faster, isn't that right?

Mr. MOSS. Mr. Chairman, we are not interested in getting it out faster than anybody else.

Chairman ISSA. But you at least want to tie the fastest.

Mr. MOSS. We have an interest——

Chairman ISSA. Mr. Doherty, next to you, is shaking his head yes, so I am assuming he wanted to.

Mr. MOSS. We have an interest in transmitting the information as instantaneously as the lockup rules will allow.

Chairman ISSA. Okay.

Mr. Doherty, you also obviously have an interest in absolutely, positively not being beat to the newsstand.

Mr. DOHERTY. I would just repeat what Dan said. Our interest is to get the information out as quickly as we can to all of our clients within the rules of a lockup.

Chairman ISSA. And, Ms. Dalglish, you are sort of representing the umbrella here for a moment. Dr. Hall was very kind in saying that, one, most of the statistics actually just go out on the news wire; they are not important enough so they go out, everybody gets

them at the same time and they look at them. But the most important are subject to this lockup, historically, until today.

Let me ask you one question. If in fact the Bureau of Labor Statistics simply starting pumping this all out through their internet, wouldn't in fact it be worse for these most critical information because then the hedge fund with the best computer diagnosing what is very predictably exactly the same raw statistics would then make the decision on market interruptions and trade during those first few seconds?

Doesn't the plethora of different news organizations, with different opinions, reporting in a different fashion, reaching sometimes different conclusions on raw data actually negate the advantage of a hedge fund, because ultimately looking at any one of these services doesn't guarantee him anything? Doesn't give him the wrong information as much as it gives him somebody's opinion. And isn't a dozen or a hundred opinions a better safeguard against a radical market move than a single piece of fact?

Ms. DALGLISH. Mr. Chairman, I really have to confess I don't know a lot about how hedge funds operate, but I can tell you that by having multiple news organizations in that lockup disseminating that information I believe there are safeguards for the public, and I also believe that the independence of those news organizations is a benefit to the public, rather than having the Government just being the only source of the information as it gets out, whether it be to the public or to the hedge funds. I think there is value in having multiple news organizations digesting and disseminating this information.

Chairman ISSA. And to the two news organizations represented here today, if you are given no tools, if you are given information in a short period of time basically to report what you are given, aren't you in fact an arm of propaganda? The difference between propaganda and independent news, isn't it the value added that your reporters can bring, either through their years of experience or, in fact, the information they bring in that helps them take raw data and turn it into opinionated factual news?

Mr. MOSS. Well, Mr. Chairman, the advantage of the lockup as it is currently run at the Department of Labor, and at Commerce, Agriculture, and agencies disseminating statistics around the world, is that it allows us to publish information with as much context and supporting data and as many superlatives as we can. What we publish at 8:30 sharp goes beyond one headline and one number; we endeavor to tell the story both behind the number, on top of it, and underneath it.

Mr. DOHERTY. And I would just add that one important part that we didn't talk about, in the April 10th order that Labor put out, although we are in talks about changing this, is that there was no internet access at all, even in the half an hour or so that leads up to the lockup starting. That is important because it allows our journalists to do a variety of things, but one of those is to see what is happening around the world, and add that context. And even if it is breaking at the last minute, 7:45 that they are in the internet, and with everything happening today in the Euro zone, that sort of information is invaluable; it can really provide some context to the stories.

Chairman ISSA. Thank you.

I recognize the Ranking Member for his questions.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Hall, it is good to see you again. I just want to make sure we are clear, because sometimes I don't want the wrong, inaccurate information to be in the headlines tomorrow. The Bureau of Labor Statistics is a nonpartisan statistical agency, is that right?

Mr. HALL. That is right.

Mr. CUMMINGS. Did the Department, to your knowledge, and you just left. When did you leave the Department of Labor Statistics?

Mr. HALL. In January of this year.

Mr. CUMMINGS. Yes. Did the Department of Labor or any other entity within government that is focused on the development and advancement of policy interfere with BLS's development of a methodology for counting green jobs?

Mr. HALL. No, they didn't. They were very good about letting us do our work and staying at arm's length.

Mr. CUMMINGS. And as I listened to the testimony, clearly, I understand and sympathize with the news organizations. I understand exactly what you are saying. It seems like we have a question here of balance. Any time anything gets out of balance, you usually run into problems. But it appears to me that our security procedures are not equal to what technology can be used to do with the data. I think Mr. Hall described what happened, how this thing first came about 40 years ago, and now technology has changed dramatically since then. Would you agree with that, Mr. Hall?

And then I will go to you, Mr. Moss.

Mr. MOSS. Congressman, the Department of Labor has a master switch that controls communications into and out of the room. No news headline or story can be published until the Labor official literally flicks that master switch at 8:30.

Mr. CUMMINGS. Mr. Hall, did you have a comment?

Mr. HALL. Well, that is absolutely true. One of my concerns, though, and one of my concerns with the whole lockup room came from an extraordinary number of incidents out of the lockup room over the past few years that involved this sort of struggling with the technology coming out, and I do think that there is a need to sort of, at a minimum, really review the security in that lockup room.

Mr. DOHERTY. Congressman, I would add that is why these discussions we have been having with the Labor Department are focused on that. They have needs and, as I said in my testimony, we understand they have the responsibility and the right to set up lockup rules. I think our view would be that the April 10th announcement, plan, whatever you want to call it, didn't strike that balance, and we are hoping to in these negotiations.

Mr. CUMMINGS. And I am hoping that that happens too, and I am going to urge the Secretary to try to move that along so that you all can come up with an agreement. Sometimes I think it is a matter of people sitting down and working out things. Not everything has to be legislated. As a matter of fact, it moves a lot slower sometimes when you have to depend on the legislature.

According to a joint news statement issued on December 9th, 2008, by the then Commissioner of Bureau Statistics, Keith Hall,

and the then Assistant Secretary of Labor for Public Affairs, "data from the November 2008 employment situation news report that was scheduled for release Friday, December 5th, at 8:30 a.m. EST was inadvertently transmitted from the lockup facility approximately 25 seconds early."

The news release states that a similar early transmittal occurred on December 3rd, 2008, involving the data on productivity and cost. The news release clarifies that "a wire service bureau chief informed us that his outlet had inadvertently released data from the lockup facility early to subscribers on both occasions" and that the Department of Labor confirmed this claim. Finally, the news release states the early transmissions were accidental and followed a recent technical change in hardware configuration.

Dr. Hall, you were Commissioner of the Department of Labor Statistics at the time these leaks occurred, is that right?

Mr. HALL. That is correct.

Mr. CUMMINGS. What can you tell us specifically about how that occurred? In particular, how were the leaks accidental and what circumstances allowed such accidental leaks to take place?

Mr. HALL. As I recall, the news agency was allowed access to the room without any BLS technicians, and they replaced a cable from their computer to that box, and it turns out that cable inadvertently bypassed the security on the box. And the company didn't mean to do that, they were just trying to increase their connectivity, I suppose. So since then we have tried very hard to, what we would still like, and this is why it is one of my proposals, to not let people into the room and mess with the equipment without a BLS technician there so that sort of thing doesn't happen——

Mr. CUMMINGS. And were those leaks detected at the time they occurred?

Mr. HALL. They were not.

Mr. CUMMINGS. Mr. Doherty, you write in your testimony Thompson Reuters "takes embargoes very seriously and we have always intended to comply with the Department's lockup procedures, but our company, after a hardware reconfiguration, did inadvertently uncover defects in the Department's equipment that resulted in two unintentional early releases of data from our machines and the Labor lockup in late 2008."

What can you add to what Mr. Hall said about how the leak occurred? Also, your statement indicates "a defect in the Department's equipment resulted in two unintentional early releases." Was the fault in this matter with the Department or with your firm?

Mr. DOHERTY. My understanding, and I wasn't part of this at the time, but my understanding is we did configure our hardware. My understanding is that the way that interfaced with the lockbox and how that was cabled at the Department led to the inadvertent releases. As I say, and Mr. Hall said, the first release wasn't detected by anyone, it certainly wasn't detected by us.

The second we realized and immediately made that known to the Department. We worked with them to figure out what the problem was, a fix was implemented, and as I say in my testimony, we are aware of no other issues in the three and a half years since and

the Department has 8 to 10 lockups a month, so that would be roughly 350 lockups or so since there was that problem.

Mr. CUMMINGS. One last question. Dr. Hall, as a former commissioner of the BLS, do you believe that the steps the Department of Labor announced to improve the security of economic data during the prerelease embargo period are necessary?

Mr. HALL. I think most of them are necessary. The one aspect would be replacing the equipment. That is a pretty dramatic step. I do think that was worth considering and I do think that is a possible solution. I also think it is a possible solution to release the data on the website and then open up the lockup room so it runs a little bit behind the website so people get to write their stories and get it out, but there won't be quite such a rush to move trading from inside the lockup room.

I am not sure for sure, I think it is something that should be done. I do think it should be considered and should be discussed.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. And just for the record, when these lapses occurred, who was president of the United States?

Mr. HALL. I believe it was during the Obama administration. But we did have a lapse, to be fair——

Chairman ISSA. November of 2008, who was president?

Mr. HALL. Oh, 2008, I'm sorry. It was the 2008 one. Yes, that was the——

Chairman ISSA. Okay, I just want to make sure that this is so long ago that President Bush is responsible for the leak and yet, three and a half years later, we have a fix proposed. I guess that is quick and dramatic action.

Dr. Des Jarlais is recognized.

Mr. DES JARLAIS. Thank you, Mr. Chairman, and I really appreciate you holding the hearing on this topic right now. As everyone is well aware, this is an election year and I don't think that anyone who follows statistics doesn't realize that the number one issue facing our Country are jobs and the economy, and that is what people are looking to in leadership to make their decision this fall.

So I think these numbers are extremely important and I think this hearing is very timely. The one thing the American people do agree on is that Congress is not doing a very good job, and I think their trust factor for Congress is very low, so the one thing they should get are the facts on these numbers. I often wonder why we focus so much on unemployment numbers rather than employment numbers, and I just wonder if anybody on the panel would have a comment why we don't look at employment numbers, the number of people actually employed.

Mr. MOSS. Congressman, that is an argument for allowing the news organizations to publish as much context, as much full information at 8:30 sharp as possible.

Congressman, Mr. Chairman, and Representative Cummings, if I may return to a point that Dr. Hall made, he was talking about unauthorized access to the room——

Mr. DES JARLAIS. Mr. Moss, we will get back to that. I actually do have a line of questioning for all you.

Mr. MOSS. Excuse me.

Mr. DES JARLAIS. Okay.

So, anyway, I just think that there is such a disparity in unemployment numbers, whether it is 8.2, who is unemployed, who is underemployed, and when we are talking about getting to the truth so people can make a decision on who they want to lead this Country, we should provide the facts to them.

Mr. Moss, I will ask you this. On a scale of 1 to 10, how would you rate the Department of Labor's transparency in conducting the change to its lockup policy?

Mr. MOSS. Congressman, I am here as a journalist, not a mathematician. I would just say that it leaves a lot to be desired. The Department has relied on a Sandia report that has not been made available.

Mr. DES JARLAIS. Mr. Doherty, what would you rate that?

Mr. DOHERTY. Well, again, I think, going backwards, based on what we have been able to achieve by having discussions, the discussions that we in the media have had with the Labor Department, I think everybody would have been better served if those discussions had taken place prior to April 10th, as opposed to in response to what was put out on April 10th.

Mr. DES JARLAIS. Okay. Well, again, with the uncertainty facing our Country and the importance for this transparency and these numbers, the Sandia National Labs was asked to review the Department of Labor's data security procedure.

Mr. Moss or, actually, Mr. Doherty, is it correct that the Department of Labor is justifying the change to the lockup procedure by citing the findings of this National Lab report, Sandia?

Mr. DOHERTY. Yes.

Mr. DES JARLAIS. Okay. Have you seen a full copy of that report?

Mr. DOHERTY. I have not.

Mr. DES JARLAIS. All right. To your knowledge, has anyone outside the Department seen a full copy of that report?

Mr. DOHERTY. I don't know, sir.

Mr. DES JARLAIS. Okay. In an Executive Summary, the report implies that organizations or news organizations like yourselves are adversaries to the Department of Labor. Do you believe that you are adversaries to the Department?

Mr. MOSS. I do not, sir.

Mr. DOHERTY. Nor do I.

Mr. DES JARLAIS. Okay. Are you personally aware of any security deficiencies with the Department's lockup procedures?

Mr. MOSS. Congressman, this brings me back to a point I wanted to make in response to Dr. Hall, if I may.

Mr. DES JARLAIS. Okay. Yes, sir.

Mr. MOSS. Dr. Hall referred to one of the problems being unauthorized access to the room. That is an argument for the enforcement of an existing policy, not the replacement of that policy with something very draconian. Access to the room is supposed to take place with a technically proficient Department of Labor official, and we are comfortable with that.

Mr. DES JARLAIS. Ms. Dalglish, the Department of Labor's new policy for its lockup facility would require all reporters to use own government-owned and government-operated software, hardware, and wiring. Is this action permissible under the First Amendment?

Ms. DALGLISH. Dr. Des Jarlais, I don't believe so, and I think it raises substantial First Amendment problems. As you know, the First Amendment is designed to allow the press to operate independently. When you are using government-owned hardware and software, and you have no control over what it does and you have no knowledge of, perhaps, in an extreme circumstance, you don't know what they are able to monitor from your work. You don't know what they are taking; you don't know what they are putting into it. You have no control what goes out. I think it is a very frightening prospect.

Mr. DES JARLAIS. To your knowledge, do any other government agencies require reporters to use equipment, tools owned by the government?

Ms. DALGLISH. I can't think of one off the top of my head. It is possible, but I am not aware of one.

Mr. DES JARLAIS. Okay. So, in your opinion, this government ownership could be problematic for the freedom of the press?

Ms. DALGLISH. For freedom of the press and for the public's right to get independently gathered and digested and disseminated information.

Mr. DES JARLAIS. Thank you.

Dr. Hall, as you probably know, the current head of the Office of Public Affairs, Mr. Fillichio, has not been confirmed by the Senate, as he is technically a senior advisor, do you recall if during the Bush Administration that position was occupied by someone who was Senate confirmed?

Mr. HALL. Yes, I believe it was.

Mr. DES JARLAIS. Okay. Then, Dr. Hall, given the importance of these numbers, as I have talked about earlier, both economically and politically, do you think it is right that the process for the release is being overseen by a non-confirmed political appointee?

Mr. HALL. No, I don't, and I think the most important thing is that BLS has the responsibility for security of the lockup room and for disseminating data with a level playing field, yet they don't have the authority to make changes because they don't run the lockup room.

Mr. DES JARLAIS. All right, thank you. And I thank you all for being here today.

Mr. Chairman, I yield back.

Chairman ISSA. Thank you.

With that, we go to the gentleman from Virginia, Mr. Connolly, for five minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And thank you to our panel for being here today. I especially want to welcome Dr. Hall from the great university, George Mason University, in Northern Virginia, in my district. So we are delighted to have you here.

Maybe, Dr. Hall, I could begin with you. I am listening to your testimony, and if I could infer from what you were saying, when you talked about how originally this process was established, the lockup, and the control of data, and reporters waiting at their trusty typewriter to get it out, I think you were leading us to believe that technology maybe has passed us by, and I am looking at, just as legitimately, I think, Ms. Dalglish has warned us about,

gee, even with the best of intentions, government insisting on transfer to all of their technology and their government-controlled computers compromises the First Amendment rights of the fourth estate.

Government also has a legitimate concern, after all, the media are profit-making entities that have motives that go beyond just the First Amendment sometimes. And I am reading from the executive summary of the Sandia report and it says, although DOL operations, BLS, and OPA personnel are doing due diligence in their efforts to monitor the press lockup facility, their efforts are complicated by the presence of non-DOL IT equipment and communications lines in this facility. The opaque nature of this equipment and DOL operations, BLS, and OPA stakeholders is a major impediment to ensuring that embargo data are not released prior to authorization.

In your opinion, Dr. Hall, from your experience, is that a legitimate concern?

Mr. HALL. Yes, it is.

Mr. CONNOLLY. So we have to balance that with the legitimate First Amendment concerns we have heard here from the three witnesses on your right.

Mr. HALL. Absolutely.

Mr. CONNOLLY. And might that be the motivation of the Department of Labor in these new regulations? I will withhold judgment as to whether they went too far or whether better notification could have been given and whether the press should have been brought in earlier to dialogue about that. But that might have been their motivation, not the hobnail, voodoo government on the necks of the media trying to strangle the First Amendment.

Mr. HALL. Sure In fact, I absolutely support generally the recommendations. The only thing about the IT equipment, I think it is worth considering having government equipment in there, but I think it probably should be studied a bit more. I happen to think that there is a bigger policy issue here for the Federal statistical agencies. They need to decide whether or not it is advisable to have trading come out of lockups. And I think that question needs to be——

Mr. CONNOLLY. Do we even need a lockup? I mean, given technology, why have a lockup at all? There is no First Amendment right, I might add, to being in a lockup.

Mr. HALL. That is right.

Mr. CONNOLLY. But why have one at all? Why not just post something on the Web at 8:30 and everybody can have at it?

Mr. HALL. No, absolutely. I think the issue at least for BLS is we want to disseminate the data and we want to give people a chance to write accurate stories and be able to ask questions and get those stories right. That was originally the idea of the lockup. But you are absolutely right. In fact, like I said, most economic data is in fact just put up on the Web.

Mr. CONNOLLY. I think the inference to be drawn from your testimony is that is where you were leading us, from that typewriter to today's fast-moving, 24/7 news world with the technology advancing. Might the Government have enough concern, and that is

that leaks or unfair advantage to somebody in terms of information is enormous power?

I am looking at a letter, for example, that was submitted by the Republican ranking member of our counterpart committee in the Senate, Senator Collins of Maine, writing to Secretary Solis expressing concern about the unusual trading activity reported in the Wall Street Journal just prior to the release of the unemployment data in the month of May. Is that also a legitimate concern of Government, that, gee, we don't want to somehow give an unfair advantage to somebody that might move markets, fairly or unfairly, and do damage in a broader economic sphere and favor one entity over another? Does the Government have a legitimate concern about that?

Mr. HALL. Oh, absolutely, and that is one of the principles for a statistical agency, is to help do its best to create a level playing field and not have that happen.

Mr. CONNOLLY. Final question. We heard the testimony of your seatmate there on the left, Ms. Furchtgott-Roth. When you were at BLS, did you see untoward and capricious interference by the Department of Labor forcing you to redefine existing jobs arbitrarily as green?

Mr. HALL. No, not at all.

Mr. CONNOLLY. Not at all? I thank you. My time is up.

Chairman ISSA. Thank you.

We now go to the gentleman from South Carolina, Mr. Gowdy, for five minutes.

Mr. GOWDY. Thank you, Mr. Chairman. I would yield my time to the Chairman, who is so well versed in all the issues related to this hearing.

Chairman ISSA. You are too kind. You are going to go a long way on this Committee.

[Laughter.]

Chairman ISSA. Ms. Furchtgott-Roth, I don't think I heard you say that this was about interference. I think that your statement, and we have a second panel, had to do with the fact that a substantial number of what Dr. Hall put out, this 3.1 million green jobs, are in fact jobs that have been around for generations. Isn't that true?

Ms. FURCHTGOTT-ROTH. Yes.

Chairman ISSA. I mean, septic tank cleaners, in fact, are not a new profession, is that right?

Ms. FURCHTGOTT-ROTH. Yes. In fact, the Federal definition of green jobs was under Title X of the Energy Independence and Security Act of 2007, which was signed into law by President George Bush, which gave BLS the instruction to do this. But, nevertheless, it does result in relabeling of jobs. Someone who is putting in a low-flow toilet, for example, that is a green job. A regular toilet is not a green job. What we need to be focusing on is just creating jobs. This is not something we should be worrying about.

Chairman ISSA. Dr. Hall, I think the reason that there is controversy about the green jobs is, in fact, a lot of them came out of "stimulus money" and the claim that stimulus was working included the claim of those green jobs. Wouldn't you agree that, as an observer, that was a lot of where your information got used?

Mr. HALL. It seems that way, yes.

Chairman ISSA. Okay, so one of my questions, and probably the most important question, is if I relabeled all of these jobs, since most of them, such as diesel repair person repairing a mass transit bus, since that was a green job 50 years ago, wouldn't it be fair, if we wanted to get accuracy, that we would go back all those generations and we would simply have this rise and fall of, as close as we could, the same job year over year? So wouldn't we have found, as a result, that at the beginning of this recession we lost green jobs?

Mr. HALL. Absolutely, it is quite possible. A new data series doesn't really tell you about the past, so you really don't get an idea of what has changed over time.

Chairman ISSA. So the, if you will, propaganda value or the disingenuous part of green jobs is we are not talking about the fact that green jobs undoubtedly, since it includes welders and, like I say, people that empty septic tanks and people who mill wood, since there were jobs lost in those areas, we lost those jobs and then we got them back. So when you score 3.1 million new jobs, some of those are jobs that undoubtedly were lost and then reclaimed.

Mr. HALL. Oh, absolutely.

Chairman ISSA. Thank you.

Mr. Moss, I am going to return to a line because this is the committee of transparency and it is the reason that we will continue having not only these hearings, but we will continue to push to not have the kind of behavior, and I can't remember what the gentleman of Virginia used in relation to boot, but his allegation, but the press historically gets treated one way. When the press gets changed to another way and you feel it impinges on your freedoms, isn't that in fact at the core of where the press must push back and force government to justify two things: one, the need to do it and, two, pursuant to the First Amendment, the right to do it?

In this case, haven't they failed both tests? They failed to give you the specific need of why they needed to do it and they certainly have not shown where the specifics of forcing you to use government equipment, government lines, bring in no key fobs, et cetera, et cetera, and, of course, then have the access to your typed material on their computers so they can look at your material later if they choose to, hasn't that in fact crossed that First Amendment question, as well as the not stating the need?

Mr. MOSS. Mr. Chairman, the DOL, in its discussions with the media, has highlighted the need for security. We understand that. It is our belief, based on some of the proposals we have discussed with the DOL, that the stated concerns about security can be addressed and the media's First Amendment rights protected. We have had some productive discussions. There are some areas where we are close. We are not there yet.

Mr. Chairman, may I just make two quick points in response to Congressman Connolly's remarks?

Chairman ISSA. Of course.

Mr. MOSS. Firstly, regarding Dr. Hall's response to your question, sir, he said that some efforts had been complicated by non-

Department of Labor lines. Again, that is an argument for enforcing the existing policy.

The other point I would make, sir, and Mr. Chairman, is that under the proposals that we are currently negotiating with the Department of Labor, Department of Labor technical staff will be able to install equipment that is owned by the news organization.

Chairman ISSA. If I could ask unanimous consent for just one more question, because Mr. Doherty—thank you.

Mr. Doherty, you have been involved and are more knowledgeable of the negotiations. At a minimum, wouldn't the government be able to "specify" and approve equipment coming into the lock area, rather than, say, as Sandia apparently says in this confidential finding, that they can't know? In fact, isn't it something where part of the negotiations could be that they will approve and specify in advance any equipment coming in? Doesn't the government effectively have that ability to negotiate what comes into the room, thus never being surprised that they didn't know what you were using?

Mr. DOHERTY. Yes, and that is part of our discussion.

Chairman ISSA. Thank you.

With that, we go to the gentleman from Massachusetts, Mr. Tierney, for five minutes.

Mr. TIERNEY. Thank you.

Thank you all for your testimony here this morning. I want to follow up on something that Mr. Connolly was following on that. There was an op ed recently by a financial advisor, former journalist named Larry Elkin. Some of you may have seen it. He said that outfits such as Bloomberg, Dow Jones, and Reuters compete fiercely for subscribers who pay a lot of money for split-second access to market-moving information.

So, Mr. Doherty and Mr. Moss, who receives the first access to the reports on employment data from your outlets, is it the general public or is it subscribers to the service that you offer?

Mr. MOSS. Subscribers to the Bloomberg Professional Service are included in the public, sir.

Mr. TIERNEY. Thank you.

Mr. Doherty?

Mr. DOHERTY. The same with us, sir. And it should be noted that everything goes out at 8:30 at the same time, so whether it is a story or a table or data, it all leaves the lockup at 8:30, or whenever the Department of Labor pushes that switch.

Mr. TIERNEY. Are there any incentives, do you think, for some people, at least, to try to get that data out a split second earlier than their competitors? It seems there is a lot of money moving around. If somebody could do that, there would be a certain advantage to that.

Mr. MOSS. Congressman, right now the Department of Labor has a master switch——

Mr. TIERNEY. No, no, I understand that. What I am asking you is the more general question: Is there a real concern that if somebody were to get that information out quicker than others, they would have an unfair advantage?

Mr. CONNOLLY. Would my colleague yield?

Mr. TIERNEY. Yes.

Mr. CONNOLLY. I would just point out that Mr. Doherty testified a little earlier "we want to get that information out as fast as possible to our clients."

Mr. TIERNEY. Of course. And that is the only point I am trying to make. There is an advantage of getting it out quickly. If you get it out quicker than your competitors, that is a good thing for you.

Mr. DOHERTY. Absolutely. But as I said earlier, as well, in that earlier response, everything that we do needs to be done within the rules.

Mr. TIERNEY. Obviously.

Mr. DOHERTY. And as has been said a couple times, DOL has control——

Mr. TIERNEY. I think one of the important points that Mr. Connolly made was that the Department of Labor isn't under any obligation to provide prerelease access at all, correct? There is no legal or constitutional requirement that the Department of Labor issue that information prematurely or earlier than one fell swoop.

Mr. DOHERTY. That is correct. But as we said earlier, we think lockups are important.

Mr. TIERNEY. But I think they do that and I think The Office of Management and Budget made clear they do it because they think there is a value in fostering improved public understanding of the data and that there is a value to having accuracy for any initial commentary, and that, I think, you folks agree with, right?

Mr. MOSS. Congressman, if I may.

Mr. TIERNEY. Briefly, please.

Mr. MOSS. Our attorneys have looked into this question, because it is something that the DOL has brought up in our discussions. It is our belief that once a agency establishes a policy that affects a substantive right, in this instance the First Amendment, an agency cannot arbitrarily change that without due process of a proper notice and comment period.

Mr. TIERNEY. That is not the question. The question was whether they were under any initial obligation to share it at all. They can go through their due process and come back to the point that they are just going to issue it once and everybody is going to get it, and that is it, without any prerelease information. I don't think there is any disagreement with your lawyers or any other lawyer on that.

But I agree with you, what you are working for is a process that strikes the balance that Mr. Cummings was talking about, one that allows for securing it so nobody gets an unfair advantage and one that makes sure that you get that ability to have a better public understanding and more accuracy in your initial commentary. You have been working towards that with the Department, have you not?

Mr. MOSS. We have, sir. The discussions have been productive.

Mr. TIERNEY. Exactly. I guess that is my next point, that I think you have indicated that you have held a series of constructive meetings, Mr. Doherty, and you were left optimistic that you are going to be able to agree on procedures and policies, is that right?

Mr. DOHERTY. We are hopeful that we will finish it, yes, sir.

Mr. TIERNEY. Mr. Moss, you said that even as you prepared the testimony today, the media and the public interest groups appear to be making progress. Do you agree with that?

Mr. MOSS. We are not there yet, but we have made progress.

Mr. TIERNEY. So the current status is that you are almost there. Have you got an agreement in principle?

Mr. MOSS. I am not sure I would say we are almost—well, I think we are getting close on some issues, sir.

Mr. TIERNEY. And have you agreed to ensure security and still try to allow you to choose your own hardware and software?

Mr. MOSS. Those are amongst the proposals we have made.

Mr. TIERNEY. Okay. And that proposal also would be the Department would still control the physical access to the hardware?

Mr. MOSS. They would install it and manage it.

Mr. TIERNEY. Okay. And if that agreement were to go into effect, would that allow you to continue to prepare your news reports and statistical data appropriately? Would that be a direction in which you would want to move?

Mr. MOSS. There is no—sir, at the moment, there is no formal comprehensive agreement——

Mr. TIERNEY. But there is one that you are working on, right?

Mr. MOSS. If we were to work toward and arrive at something——

Mr. TIERNEY. Well, how close are you? How close are you?

Mr. MOSS. On the technical issues?

Mr. TIERNEY. Yes.

Mr. MOSS. I am told we are close. There are some issues that DOL has said they would get back to the news services on. We are awaiting DOL comments on rules of the lockup.

Mr. TIERNEY. And are you feeling good; all parties are working in good faith?

Mr. MOSS. I do believe everyone is working in good faith.

Mr. TIERNEY. Good. Okay, thank you.

I yield back, Mr. Chairman.

Chairman ISSA. I guess I will go to the gentleman from Pennsylvania, Mr. Kelly.

Could you yield to me for just one second?

Mr. KELLY. Certainly. Go ahead, Chairman.

Chairman ISSA. Mr. Moss, Mr. Doherty, were those discussions fruitful during the period prior to this Committee taking a direct interest in it? Were you having the same level of discord, where you were resolving that an arbitrary rule perhaps wasn't going to be the final judgment?

Mr. MOSS. Congressman, it is my understanding that the interest of the Committee has been vital in that process.

Chairman ISSA. Thank you.

Mr. Kelly.

Mr. KELLY. I thank the Chairman.

One of the things that I have been looking at, I try to look at the statistics and I know that what I did previously was in the automobile business, and we always looked at markets and we looked at markets that were available to us, and we kind of looked at the definitions and then we looked at the statistics, but they only mattered if they were actually accurate and they actually had some type of credibility.

And my questions come on the green jobs initiative. I am trying to understand, Dr. Hall. Does BLS not count blue collar jobs or

white collar jobs, but BLS was asked to begin counting green jobs? Now, do you believe that BLS was asked to begin counting green jobs for political reasons?

Mr. HALL. I think it was for policy reasons. I think there was a good deal of interest in green occupations and I think there was clearly going to be some policy, at least policy debates on the issue.

Mr. KELLY. And I understand that. So in order to give credibility to the policy, then we had to come up with metrics that made sense. So when you talk about green jobs that were created, do you think we have actually done a great job with that? Has there been a good, positive ROI?

Mr. HALL. Well, I think part of the issue is that BLS was not trying to feed into a particular policy. It didn't have policies in mind. And they took two approaches: looking at green industries and then green occupations. I think part of the problem is those two things get mixed.

But what they were trying to do was they were trying to be helpful. We were trying not be helpful. We were trying to make a definition, a fairly broad definition so that people could use this data, people could even make up their own definitions of green jobs—there were a million definitions around—and use the data to piece together their own definitions and use that for policy.

Mr. KELLY. I understand that. But whenever you change the definition of what a person is doing and you game it or shade it so that the answer that you are looking for can be supported by data that you very carefully craft to come up with the answer that you want, and that is the problem that I have with this. I am trying to understand it. If we are really looking to develop policies or develop the future of the Country and say, boy, there is a great jobs market out there, and a guy that drove a bus before, if he went from driving a regular fuel bus to a propane bus, we created a green job. We didn't create a job, we just shifted a person from one category to another.

And I think for people like me, I think you want to see some type of positive return on your investment, and I get the feeling that a lot of what we are looking at was a policy that, while it was well intended, hasn't really created the jobs that the Administration thought it would create. I have no problem with that; I have made a lot of mistakes in my life. The only thing is I just didn't keep on that path if I thought it was wrong. And the reason I couldn't do it is because I was using my own money.

But this has been very bothersome to me. So tell me how do you get from one position to another position and say, well, this supports what it is that we are doing? That is, I think, the problem that the American people have with this. Because if we are truly talking about creating jobs, if we are talking about making an environment that is more conducive to creating jobs, this doesn't do it.

Mr. HALL. Right. I think the first thing I would like to say is one of the things I learned quickly when I was at the Bureau of Labor Statistics is you can produce the best data you want, the best data you can and explain it, but you can't control how people use the data. They are going to use it however they are going to want to use it. And that is true with all BLS data. In fact, my big goal was that we at least make sure that when people use the data, they

know when they are using it wrong, even if they want to go ahead and use it wrong to begin with. So that is sort of an impossible thing for BLS to sort of control.

Mr. KELLY. Ms. Roth, how do you feel about that?

Ms. FURCHTGOTT-ROTH. Well, first of all, I am an economist, so I don't feel. But looking at the numbers——

Mr. KELLY. Well, let me put it this way. As an American taxpayer, because that is what we all are, regardless of whether you are sitting up here or you are sitting down there, we are responsible to people to pay all these bills as hardworking American taxpayers. So I have to tell you how I feel, and I feel at times that we are so separated from reality in this town, I need to know, okay, you use whatever term you want to use, but what is the result of this? Do we have any positive answers?

Ms. FURCHTGOTT-ROTH. No. No. I think the whole concept doesn't make sense. For example, in the transportation area, buses and trains are green jobs, but taxis are not green jobs. But sometimes it makes more sense to be able to take a taxi, rather than build an expensive rail line. So there isn't any point in adding any of these together. Or science museums, for example, vis-a-vis another museum. A science museum is a green job; another kind of museum isn't a green job. The American people want just jobs, and I don't think they mind if they are green. With unemployment over 12 million, with the unemployment rate above 8 percent for over three years in a row, we just need lots of regular jobs. We shouldn't worry about whether they are green, blue, red, whatever.

Mr. KELLY. Well, we are looking for red, white, and blue jobs; it doesn't have to be any other color than that. I appreciate your answers and I yield back, Mr. Chairman. Thank you.

Chairman ISSA. I thank the gentleman.

With that, we go to the gentleman from Missouri, Mr. Clay, for five minutes.

Mr. CLAY. Thank you, Mr. Chairman. Le me start with Dr. Hall.

Doctor, can you describe the work that went into developing the BLS's methodology for counting green jobs and what were the expert sources the BLS consulted when developing this methodology for counting green jobs?

Mr. HALL. Sure. First, let me say that the folks at BLS are experts in conducting surveys and collecting data, they are not experts in what is green and what is not green. So BLS spent a good deal of time talking with Federal agencies who are involved with green things, I guess; spent some time looking at how some of the States are defining green jobs and found how they were finding it useful, and with the private sector.

So the idea was to sort of try to vett ideas on what should or shouldn't be included in green jobs and come up with a definition that was sort of—that had some logic to it. But I will say, though, one thing that is pretty clear is that there is no one definition; there is clearly an arbitrariness to it at some point. I thought it was important, and I think we did, we erred a little bit on the side of broader, because our goal was to be useful to people. We weren't thinking of ourselves as being the definitive folks who determined what is green and what is not green.

Mr. CLAY. And let's be clear that the Department of Labor Statistics is a nonpartisan statistical agency. Did the Department of Labor, or any other entity within government that is focused on the development and advancement of policy, interfere with the BLS's development of the methodology of counting green jobs?

Mr. HALL. No, they did not. In fact, we went to some of the agencies to talk with them about what they thought maybe should be in a green job or considered a green job or not, but it was entirely up to BLS as to what to include or not include.

Mr. CLAY. Ms. Roth, you evidently do not agree with the Federal policy to promote renewable energy technology or invest in green jobs, but, as you know, today's hearing is not about that policy. The hearing title plainly says that the hearing is about DOL's reporting of jobs figures, which includes the definition and the number of green jobs calculated by the Bureau of Labor Stats. On that topic——

Chairman ISSA. Would the gentleman yield?

Mr. CLAY.—what you——

No, I am not going to yield. Let me finish my question.

Chairman ISSA. I just don't think you intended to disparage the lady's intent. That was the only reason——

Mr. CLAY. No, no. No. Let me——

Chairman ISSA. I thought you couldn't have meant that.

Mr. CLAY. Mr. Chairman, can I get some more time? Thank you.

On that topic, this is what you say in your testimony: Federal and State governments re-label existing jobs in an attempt to convince themselves and the public that such jobs exist. This entire exercise is an attempt to justify government initiative.

You have heard Dr. Hall testify that the BLS, which he led as a President Bush appointee until recently, is an independent statistical agency, not influenced by politics and disinterested in policy formation. Yet, you accuse BLS in engaging an attempt to justify government initiative.

Ms. Roth, did you mean to accuse Dr. Hall and the BLS of engaging in the biased activity of promoting certain policies?

Ms. FURCHTGOTT-ROTH. Well, I would say that Dr. Hall is my very good job, and I would not want to accuse him of anything other than trying to do the utmost good with the data. But I think before you came in I showed this cup here, which says "The power to save energy." And this fits in with a definition of green jobs: environmental, compliance, education, training, and public awareness. It is ludicrous to say that there are more jobs created because we are drinking out of these cups than if we were drinking out of plain white cups.

We should be concerned with increasing employment in the United States. We, taxpayers spend a great deal of money, they pay a great deal of money, and they should get the best value, and the best value should be job creation as a whole, rather than dividing the jobs into green jobs and other jobs.

Mr. CLAY. Now, do you have any anecdotal evidence of where it has just been a huge boondoggle? I know in Missouri we have a certain wind farm that was created by one of the President's bundlers. Could you point to something like that and say there has been no jobs created? Do you have any anecdotal evidence to that?

Ms. FURCHTGOTT-ROTH. Well, there is Solyndra, a company that received——

Chairman ISSA. I would ask the gentleman have an additional 15 seconds. Without objection.

Mr. CLAY. Thank you.

Ms. FURCHTGOTT-ROTH. There is Solyndra, that received $535 million and then went bankrupt. You had a hearing last month on Bright Source Energy that showed involvement in the highest levels at the White House and the approval of that loan guarantee. These are all green jobs. Meanwhile, coal is not green, but employs many, many Americans. We have 200 years of inexpensive natural gas that we could be mining and giving Americans lower household utility bills. Wind and solar might be green jobs, but they result in high electricity bills for households.

Mr. CLAY. What about the Keystone pipeline, would you count that as green jobs?

Ms. FURCHTGOTT-ROTH. I would say this is something that should be approved so that we can bring more oil down from Canada——

Mr. CLAY. Would that be characterized as a green job?

Ms. FURCHTGOTT-ROTH. Under BLS, would you think a pipeline would be a green job?

Mr. CLAY. No, no, I am asking you now.

Ms. FURCHTGOTT-ROTH. I don't know that—I believe that construction of the Keystone pipeline would not be a green job, even though it would create more jobs for our refineries in the Gulf of Mexico.

Mr. CLAY. Thank you.

Chairman ISSA. We now go to the gentleman from New Hampshire, Mr. Guinta. Could you yield to me for just 10 seconds?

Mr. GUINTA. I would be happy to.

Chairman ISSA. Thank you.

I might make note that Hilda Solis, now the Secretary, was a sponsor of the Count Green Jobs bill, which got put into the act. So the very idea that this is not political, when in fact our former colleague is responsible for it and now oversees, making sure that the numbers come out. I think we have to be honest; it is all about politics, it has always been all about politics. And to answer your question on pipeline, quite frankly, the President was standing in front of green empty pipelines when he went to Oklahoma, so they probably would count as green just because of the color of the pipelines.

Mr. CLAY. Mr. Chairman? Mr. Chairman?——

Chairman ISSA. With that, we go to—it is the gentleman from New Hampshire's time.

Mr. TIERNEY. Would the gentleman from New Hampshire yield to me for 15 seconds?

Mr. GUINTA. No, thank you, I do need to get to my questions. So I appreciate the Chairman yielding me back the time.

I am glad we are actually having this discussion, and I wanted to address my comments and questions to Ms. Furchtgott-Roth. I personally believe that there is some politicism in this particular issue. Other people may disagree, and they are fair to have their point of view and their perspective, and I respect that.

But you said something in your earlier testimony that I think is very important. Why distinguish a green job from a job? A job is a job is a job, and we are in an economic climate where we just saw our job growth for the last month at 69,000. The unemployment rate has now jumped a tenth of a percent, and we have CBO estimates that they could meet or exceed 8.5 percent by the end of the year. So people at home, at least in New Hampshire, aren't distinguishing between a green job or a job. What they are looking for is a career.

So, to that end, the Department of Labor receives a $500 million grant in stimulus funds to train workers in green skills. I probably would not have done that had I been in the position to make that decision, but that being said, the $500 million was appropriated. I think we have 189, somewhere around there, different programs that we are now training for careers in this related field.

I guess my question to you would be has there been an economic benefit to these green job training? Have we seen a demonstrable or have we seen a specific economic benefit to our economy?

Ms. FURCHTGOTT-ROTH. I would say that there has been practically no benefit to the green jobs training. The assistant inspector general at the Department of Labor testified in June 2011 that, at that time, there were only 1,366 green jobs trainees that had been in their jobs for six months afterwards, which was a very low return. The cost was over $100,000 per job trained.

If you want to look at where there is low unemployment, you look at North Dakota, with an unemployment rate of 3 percent, the lowest in the Country. There is a boom because of fossil fuels, hydro-fracking, natural gas development, and I believe there are very few—I don't know of any green job trainees in North Dakota. But there is so much business you can't even get a motel or a hotel room there. The same with Eagle Ford, south of San Antonio in Texas.

Mr. GUINTA. And then of the people who were trained, do you have a percentage or a number as to how many of those were people currently employed or incumbent employees?

Ms. FURCHTGOTT-ROTH. I do not have that percentage offhand, but I could get back to you on that.

Mr. GUINTA. Would it surprise you if it was about half?

Ms. FURCHTGOTT-ROTH. That would not surprise me.

Mr. GUINTA. Okay. And then, finally, do you have, or if you don't have it here, how could we find—I am curious to know, of the people who were trained, how many of them actually are now working for an employer that got a DOE loan?

Ms. FURCHTGOTT-ROTH. I don't have that information with me, but I could look for it and see if it is available and get back to you.

Mr. GUINTA. That would be wonderful, and I would yield back the balance of my time to the Chairman.

Chairman ISSA. Would the gentleman yield?

Mr. GUINTA. Yes, please.

Chairman ISSA. Back to that point, though, we are not debating green jobs; we are debating whether in fact what they are calling green jobs are green jobs here. If you drive a bus, you have a green job. If you sell used sporting goods, you have a green job. If you do—well, we already went through this—septic tank emptying, it

is a green job. If you work at the Salvation Army recycling clothes, it is a green job.

No problem with any of these, but when people say there have been 3.1 million green jobs produced, aren't they, in fact, talking about jobs that have been around since before anyone in this room was born, and, in fact, those jobs rise and fall and have very little to do with anything unless you look at them in context over a long period of time with a same job analysis, as an economist?

Ms. FURCHTGOTT-ROTH. That is correct, yes. The science museums were in place beforehand; now they are labeled green jobs, so they are part of this green job creation, even though they were there beforehand. The same with the cup manufacturers; they just didn't put this log on the cup.

Chairman ISSA. Thank you.

The gentlelady from California, Ms. Speier, is recognized for five minutes.

Ms. SPEIER. Thank you, Mr. Chairman.

I am pretty perplexed by this entire discussion, and maybe you on this panel can shed some light. What happens with this lockup is that you get information at 8:00, you have a half hour to digest it, and at 8:30 you release it to your clients and to the public. That is how I understand it. And all of the time, effort, money, extra efforts, extra expenses that go into creating this lockup could be erased if we just had the Department of Labor issue these statistics at 8:30, you then digest it, and rather than get the information at 8:30, the traders on Wall Street get it at 9:00. And what have we gained or lost as a result of that?

I would suggest that this is all about what works for Wall Street, and I would like to ask a question of the two representatives from Bloomberg and Reuters, Mr. Moss and Mr. Doherty. Why would anyone subscribe to your newsletters if they weren't getting some benefit in terms of accessing information before the public? In response to one question asked earlier, you said that your information is provided to your clients and to the public at the same time. So could you answer for me why would anyone subscribe to your newsletters if they are not getting some kind of advantage?

Mr. DOHERTY. Well, you know, how we send it out is one thing, and, as I said, everything goes out at 8:30. How people receive it and use it is totally up to them. So as to how they would use it, that is where the benefit would come in. As I mentioned earlier, the information does go out to a variety of places; it would go out to people on Wall Street, and not just Wall Street, but the financial community worldwide. It would also go out to media clients, who can use it on their websites. It also goes out to the consumers via Reuters.com. But I think the idea is how people use that information once they have it is what the difference is.

I would say, to your comment, that if BLS or the Department of Labor put things out at 8:30, it wouldn't be things to the general public; people would be grabbing that information and putting it out as quickly as they could, and without the benefit of having had that half hour to digest it and make some judgments as to the importance of the data.

Mr. MOSS. This is not just about Wall Street. Our subscribers throughout the Country and throughout the world include people

managing the pension funds of teachers and firefighters; they include universities and other places of higher education; they include philanthropic ventures; they include coffee makers; they include airlines.

Ms. SPEIER. It is all about making money, though, isn't it?

Mr. MOSS. Our concern here is about ensuring that the public continues to receive something that they have been receiving for more than a decade and that the public is fully informed and able to make its decisions accordingly, remains fully informed.

Mr. DOHERTY. And I would say——

Ms. SPEIER. I still would like an answer to the question why should I subscribe to your service if you are presenting it to the public and to your clients at the same time.

Mr. MOSS. If you have an interest in economic statistics and the full context, not just what the unemployment rate is or what the payroll creation or the structure may be in any particular month, then you want a news service that provides you with as much context, analysis, and data as possible. The lockup facilitates the transmission of just that at 8:30 sharp.

Mr. DOHERTY. And I would say, in terms to your point, people subscribe to us for a variety of reasons. People can get our coverage of Congress, of the White House on the Internet as well, but other people do pay for that coverage.

Ms. SPEIER. I will yield the rest of my time to Mr. Tierney, if he wanted to ask that additional question

Mr. TIERNEY. Thank you very much. I knew the Chairman really wanted to do that because he had about 8 minutes extra, and I knew he wanted to give at least half a minute to another member of the panel, so I thank you for doing that.

I make a point here, just that the Green Jobs Act, which Ms. Solis cosponsored with me, was not about creating jobs, it was about training people with the skills and education needed to take the jobs that were created. So I just didn't want to conflate the two and I want to make that distinction on that.

Also, there have been about 100 new renewable energy and energy efficiency manufacturing plants that opened up in this Country since 2009, a number of them in my district, that were telling us they needed people able to do those jobs and asking for that job training program. So I make that distinction on that.

And I guess the only ones not interested in making sure that the green energy and energy efficiencies industries thrive at the Republican party, because I note the emphasis the Department of Defense is putting on green energy right now for a number of reasons, safety of our troops being one——

Chairman ISSA. The gentleman will suspend.

Mr. TIERNEY. I thought you might want to finish that.

Chairman ISSA. Pursuant to the rule, as you know, you may do a great many things; you may not disparage the intent of members of either party or any individuals here.

Mr. TIERNEY. Did you feel disparaged, Mr. Chairman?

Chairman ISSA. To make a comment about the intent——

Mr. TIERNEY. Well, I am asking you to clarify. Did you feel disparaged?

Chairman ISSA. Yes, I did.

Mr. TIERNEY. And how did you feel disparaged?

Chairman ISSA. For the same reason that when the gentlelady just down the dais went to the Floor for a long period of time, if the gentleman would please refrain from violating the rules of the House.

Mr. TIERNEY. Well, help me out here. Tell me how you felt disparaged.

Chairman ISSA. The gentleman may continue for his 15 seconds.

Mr. TIERNEY. I have had my 15 seconds, but I would use the rest of it to yield to you to tell me how you felt disparaged.

Chairman ISSA. To allege that we don't care about energy, when in fact what we are seeing is people emptying sewage out of porta-potties being counted as green jobs is in fact——

Mr. TIERNEY.—personal issue by you, is that correct?

Chairman ISSA. You disparaged——

Mr. TIERNEY.—about seeming that the Republican party——

Chairman ISSA. You disparaged the Republican party. The gentleman's time has expired.

We now go to the gentleman from North Carolina, Mr. McHenry, for five minutes.

Mr. MCHENRY. Well, I can't follow up those fireworks.

Chairman ISSA. Don't try.

Mr. MCHENRY. I won't, Mr. Chairman. I do respect—I try to respect my colleagues, even if they are wrong. But the question—in North carolina——

Dr. Hall, you might be the right person for me to ask, based on your experience with BLS. I am deeply concerned about our statistical agencies. We should be a light for the rest of the world on how governments keep track of data, whether it is labor statistics, whether it is our census, whether it is these very key, important pieces of data that we need to have very clear understandings of strikes and balls, you know, the whole thing. So I am very concerned about both the strength of that data and the independence of it, and then making sure that release is done well and correctly, the public has this information.

My colleague asked about why you would subscribe to Bloomberg or Reuters, or whatever these different services are, and I subscribe to a whole variety of services in my office so I can have data assembled in a way that I can consume it better than maybe what is on the website. Maybe putting 50 pieces of data together that are all publicly available and giving you good analysis. I think the free market works in that regard that we can actually have access to that.

In North Carolina, Dr. Hall, we have this issue, for State level data, Governor Beverly Purdue in North Carolina, who is a governor who has had a variety of issues, but in this circumstance she released the State unemployment data in a private group. She was speaking to a Rotary Club and released this data before her office put it out officially to the wider variety. How is that done at the State level? Is there a great latitude that governors have on putting out the State level data? And what is that relationship?

Mr. HALL. Sure. BLS works with State partners to collect the employment data, and one of the things that happens is, because we are working with the State labor agencies and they are helping

us, they themselves get the data ahead of time, it is before BLS has done some things. So they get the data before the release. And because they are not Federal employees, we can't really control what they do with the data.

We can ask them, for example, when they write the data up and present it, we can ask them to try not to be political. Sometimes they are in how they describe the data, something I wouldn't be comfortable with. And sometimes, as is in this case, it appears like the State office may have shared the data with the governor, who then shared it. I happen to think that is a little bit of a problem and it is something that is sort of falling between the cracks because of this marriage between the Federal and the State governments.

Mr. MCHENRY. Well, there are penalties. The Confidential Information Protection and Statistical Efficiency Act of 2002 carries a fine of $250,000, up to five years in prison, or both, for breaking that. It has been hashed out in the newspapers and my understanding is that the governor didn't violate that law. Has there been any action in terms of fines or penalties for release of this type of data?

Mr. HALL. Not that I know of, and I am not an expert in the law, but that law you mentioned, I believe it governs Federal employees.

Mr. MCHENRY. Okay.

Mr. HALL. And the Federal handling of data.

Mr. MCHENRY. So that goes to the State latitude.

Mr. HALL. Yes.

Mr. MCHENRY. So to that regard, you served in a previous administration, but do you think that this Administration has been too lax in its release of the monthly unemployment numbers?

Mr. HALL. No, I don't think there is any issue with anything with the release other than the technology has changed and it has made it harder to control the security of the release.

Mr. MCHENRY. Okay. Thank you. Thank you so much.

With that, Mr. Chairman, I would be happy to yield the 33 seconds I have.

Chairman ISSA. I thank the gentleman.

Dr. Hall, you keep talking about the security, the security, the security. Ultimately, if no wireless device is allowed in the room and if wires do not accidentally or inadvertently bypass controls of a switch, and you don't let a reporter walk outside to set up his camera, if you don't do those things, you still have the same level of security you have always had, which are people, 10 times a month or more, when convenient to the Bureau of Labor Statistics, when you want them there, because otherwise you just release directly, but when you want them there, you put them in a room and, in fact, you don't give them access to send out information until you turn the switch.

So I understand the technology. I spent a lot of time growing up in business in technology, but this doesn't sound like technology where it just oozes out. Ultimately, the failures that we heard about were mechanical failures, weren't they?

Mr. HALL. Yes, they were. Let me just say that BLS sees value in the lockup, because we are not only tasked with disseminating the data, but they also want people to get it right. They want a

chance to explain it so that it is reported correctly and then, when it is disseminated, it is disseminated correctly, there aren't mistakes made, et cetera. So there is real value in the lockup. Our concern is just that it needs to be done in a secure environment.

Now, the taking out of equipment out of the room, I can tell you what is really behind that. It is an effort to get traders out of the lockup, automatic traders. So there was a decision, in my opinion, to get the traders out of there and have a lockup without traders in there. That decision is kind of a really critical policy level decision for statistical agencies.

I know of two agencies that have traders in the lockup. USDA has traders in the lockup, they have commodity trading that come out of there. They, for years, have encouraged that. They are trying to facilitate traders working out of the lockup; it is on purpose. They have much higher levels of security and they take care of things better. What this is, this is an effort, to some degree, to sort of bail on allowing the trading and try to get it——

Chairman ISSA. Thank you. Thank you.

Mr. Jordan.

Mr. JORDAN. I would be happy to yield time to the Chairman.

Chairman ISSA. Then I will pick up where I left off, which works out really well here.

I started on a line, though, and I want to continue it. It is in the Bureau of Labor Statistics' interest to have lockups, and that is why they have them.

Mr. HALL. Absolutely.

Chairman ISSA. When it is not in their interest, they simply put the information out.

Mr. HALL. Yes.

Chairman ISSA. Okay. When I watch CNBC, Bloomberg, and other services, all the various—I came out of business, so I used to have multiple TVs in my office that distracted me from everything. But, in fact, when I would watch those, I would hear people trying to analyze your very statistics after the lockup had ended, after the numbers were out, and they were arguing, often, Quintanilla and others, they were arguing back and forth about whether it really meant something, how it dealt with the previous revision, since you are somewhat famous for having a set of statistics and a revised set and a revised, revised set. And all of that takes analysis that is far beyond the number, doesn't it?

Mr. HALL. Yes, it does.

Chairman ISSA. And whether, as Ms. Speier mentioned, there is a financial interest by people watching it or simply a businessman trying to figure out whether my forecast for future products is going to go a different way and I may want to reconsider how much I stock up on inventory for Christmas, whatever the reason is, your facts, your statistics in a vacuum are dangerously useless if you don't have people who can make secondary evaluations and turn them into meaningful information with comment, dialogue, and perspective.

Mr. HALL. Absolutely. It is a very important part of BLS. It is also one of the reasons why BLS is tremendously available directly from the public. You can call us, et cetera. This is why I thought it was really important that nobody stands between BLS and the

public in not only disseminating the data, but being able to describe it and help people understand it.

Chairman ISSA. Well, I am going to close with just one question for Mr. Moss and Mr. Doherty. If this rule, as it was originally requested, were to take effect, in which your people are put into a room with only essentially a typewriter of modern making, a PC with Word on it, and no reference data, no ability to bring in anything more than they happen to have in their head, wouldn't the quality of your reporting from your two major news services go down, and wouldn't the differentiation of your services be narrowed, meaning wouldn't you tend to look more alike if all you had was your source material and a half hour to scratch up what you could on a typewriter?

Mr. MOSS. Mr. Chairman, that would be very detrimental to the quality, accuracy, and context of what is now published at 8:30. For one reason, we would not be able to bring our software, which helps us with historical context, it helps us formulate tables, reams of data on everything from participation rate to gender to industries.

Chairman ISSA. Mr. Doherty?

Mr. DOHERTY. I would just add not just that, but the quantity of information we are able to put out at 8:30 would drop dramatically because we would be doing a lot more by hand, as opposed to things that are done by the software automation.

Chairman ISSA. Thank you.

In closing, I know there has been a lot of controversy here on how we count and what we count as green jobs, and we will have more of that on the second panel, but I would like to thank the representatives of the press, both broadly and specifically. It is unusual to have the press before this Committee. It is not a standard for us to be asking you questions. And we really appreciate being able to get the answers.

But it is so important that what you do and the fact that, as a businessman, I never subscribed to your services. I wasn't looking at it in that detail. I wasn't worried about making a trade immediately. But the things I read in the Journal, in paper, and so on, in the days and weeks afterwards I knew were affected by the quality of your initial reporting; not by the source data itself, but by the analysis of the source data. So on a personal basis I want to thank you for pushing back to make sure that people in all aspects of life have the opportunity to have a free and differentiated press coming out of those lockups.

With that, I thank you. We are going to stand in recess for about five minutes while they reset for the second panel.

[Recess.]

Chairman ISSA. We now recognize our second panel. Mr. Carl Fillichio is the Senior Advisor for Communications and Public Affairs at the United States Department of Labor. Mr. Fillichio has not been through the Senate confirmation hearing, despite the fact that he is responsible for conducting his duties, he is responsible for those conducted during the Bush Administration by a Senate-confirmed Assistant Secretary of Public Affairs.

Mr. John Galvin is the Acting Commissioner of the Bureau of Labor Statistics; and the Honorable Jane Oates is the Secretary of

Employment and Training Administration at the United States Department of Labor.

Again, pursuant to the rules of the Committee, would you please rise to take the oath? Raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Thank you.

Let the record reflect that all witnesses answered in the affirmative.

You are much more skilled, perhaps, than the members of the press, so I know that you will understand that your full statements are being placed in the record, and summarize when the light begins to go yellow and finish when the light turns red, if you possibly could.

Mr. Fillichio.

STATEMENT OF CARL FILLICHIO

Mr. FILLICHIO. Mr. Chairman, Ranking Member Cummings, and members of the Committee, thank you very much for the opportunity to share with you the efforts we are taking regarding the release of important national economic data.

At the Department of Labor, we take our security responsibility seriously and we value the critical role the press plays in disseminating this information. The Office of Management and Budget's Statistical Directive No. 3 permits, but does not require or recommend, prerelease access to the news media of principal Federal economic indicators. Should an agency elect to prerelease, OMB requires it to establish the security necessary to ensure that there is no premature dissemination of the data prior to the designated release time.

We provide what is called press lockups solely for the purpose of serving the public. Reporters are sequestered and given the data on an embargo basis at 8:00 a.m., and have 30 minutes to examine the data and prepare their stories for 8:30 a.m. release. We believe that the lockups facilitate good journalism and a more enlightened public debate. Through press lockups, we release all principal Federal economic indicators produced by the Bureau of Labor Statistics, as well as an unemployment insurance weekly claims report produced by the Employment and Training Administration.

Our lockups have evolved since the mid-1980s, when reporters would congregate behind a closed door in a DOL office and were provided with paper copies of the report. Since then, obviously, technology used by the news media to transmit economic data has evolved rapidly.

In 2001, the Department took steps towards implementing additional data security controls in response to speculation that movement in the markets prior to 8:30 a.m. was the result of premature leaks. Not long after, automation in trading became prevalent and we began to hear directly from traders eager to know which news organization had prerelease access to the numbers.

Over the years there have been different types of violations of security protocols, technological and otherwise, and the Department

addressed them accordingly, but in 2011 more than a decade had passed since we undertook a thorough review of our policies, our procedures, and protocols regarding the lockup.

We understand that there is an intense competition to provide information first to investors and to the general public. We also know that the competition now extends to making the raw data available to subscribers trading on it through algorithms, which is not the purpose of the lockup. But we very much believe that it is possible to balance our commitment to contribute to an informed public debate with an equally strong commitment to prevent the premature release of economic data. So we recently announced new security protocols that will give participating news organizations the continued opportunity to write their stories in a secure lockup environment, while taking additional precautions to prevent early release.

Last year we entered into a Memorandum of Understanding with Sandia National Laboratories to identify potential vulnerabilities in our lockup and provide mitigation options for vulnerabilities identified. Sandia is a government-owned entity, recognized as a leader in preventing technological surprise, anticipating threats, and providing science-based system engineering solutions.

Sandia began its work in July and provided the report to us in August of last year. The report included recommendations that we: one, replace the variety of privately owned equipment with standardized equipment that will significantly reduce the possibility of data leaks; two, secure standardized phone data lines that are physically off limits to news media organizations; and, three, require that reporters' electronic devices and personal effects be stored outside of the lockup room.

In addition, we announced new credentialing processes ensuring that reporters in our lockup represent primarily journalistic enterprises and produce time-sensitive summaries and analysis of department data to a broad audience. The decision on credentials were handled by a committee of career employees, and neither editorial nor political viewpoints were considered in the process. Concurrently, I instituted internal rules regarding DOL personnel who staff the lockups, including prohibiting noncareer employees in the lockup facilities.

Some media organizations have expressed concern that our plan would not permit the use of their private, individual high-speed data lines, their customized publishing software, and their personal computers and other hardware. We met with the news organizations on May 15th and then brought them and our technical experts together for discussions on May 23rd, May 30th, and June 1st.

These meetings have been productive and I am encouraged by the progress that we have made towards a solution that addresses our security mandates, as well as the media's business and journalism goals. We are also working with the news organizations on a code of conduct for reporters who participate in our lockup, and we are on track to institute new and additional safeguards based on Sandia's recommendations, in consultation with representatives from the Associated Press, Bloomberg News, Dow Jones News Wire, and Thompson Reuters.

Technology is going to continue to change at a rapid pace and adjustments to protect the integrity of our data must be made on a continuing basis. I believe that we have laid a great foundation to move forward.

Mr. Chairman, thank you again for the opportunity to testify, and I am pleased to answer your questions.

[Prepared statement of Mr. Fillichio follows:]

STATEMENT OF
CARL FILLICHIO
SENIOR ADVISOR FOR COMMUNICATIONS AND PUBLIC AFFAIRS
U.S. DEPARTMENT OF LABOR

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

June 6, 2012

Thank you, Chairman Issa and Ranking Member Cummings, for this opportunity to come before the committee and share with you the security measures the U.S. Department of Labor has taken and is taking to ensure the integrity of the process by which important national economic data are released by the department to the American people.

Last year, the department entered into a memorandum of understanding with Sandia National Laboratories to conduct a thorough assessment of the department's print/wire service media lock-up facility. Sandia is a government-owned, contractor-operated entity widely recognized as a national leader in preventing technological surprise, anticipating threats, and providing innovative, science-based system engineering solutions.

Effective July 6, 2012, with the release of the June 2012 Employment Situation Report, the department will institute new and additional safeguards based on Sandia's recommendations to ensure that sensitive economic data are not prematurely released.

Let me state emphatically: At the U.S. Department of Labor, we take our security responsibilities seriously. We also value the critical role the press can play in disseminating information to the public. In an age of rapid technological change, we believe it is prudent to regularly review our security protocols, processes and procedures, and make any changes necessary to ensure a secure and level playing field in the transmission of key economic data to the public.

THE "LOCK-UP"

The Office of Management and Budget's Statistical Policy Directive No. 3 permits – but does not require or recommend – pre-release access to the news media of principal federal economic indicators. Should an agency elect to provide pre-release, OMB requires it to establish security protocols necessary to ensure there is no premature dissemination of the data prior to their designated release time.

The department provides press lock-ups solely for the purpose of serving the general public by facilitating the news media's ability to read, review, analyze and ask questions about the data as they prepare news stories explaining the economic reports. We believe the press lock-ups are important because they facilitate good journalism and a more enlightened public debate about key economic indicators.

The department uses a press lock-up to release all Principal Federal Economic Indicators produced by the Bureau of Labor Statistics, as well as an Unemployment Insurance Weekly Claims report produced by the Employment and Training Administration. Specifically, these include:

- the Employment Situation Report (BLS),
- the Consumer Price Index (BLS),
- Real Earnings (BLS),
- the Employment Cost Index (BLS),
- the Producer Price Index (BLS),
- Productivity and Costs (BLS),
- U.S. Import and Export Indexes (BLS), and
- Unemployment Insurance Weekly Claims (ETA).

Currently, the department's Office of Public Affairs maintains separate lock-up facilities for print/wire service and broadcast journalists at its headquarters at the Frances Perkins Building in Washington. Participating reporters are given the data on a strictly embargoed basis at 8 a.m. and then have 30 minutes to examine the data and prepare their stories for 8:30 a.m. dissemination.

The department's first lock-ups, which began in the mid-1980s, took place in Office of Public Affairs work space. Reporters would congregate in an office in our first floor suite at DOL headquarters; the door was shut, and a subject matter expert handed out paper copies of the report. At 8:30, the reporters would use department-provided landline phones to call stories into their newsrooms.

In 1988, a special facility was constructed at DOL headquarters to hold the press lock-ups. Within a few years, news organizations began installing their own computers to transmit their stories. In the beginning, there were no equipment restrictions. By 1992, the department required that each computer either be connected to a switch that toggled between on and off, or that the computer be disconnected from the wall outlet until a signal was given to re-connect.

Between 2001 and 2002, the department took steps toward implementing additional data security controls in response to public speculation that movement in the markets prior to 8:30 a.m. was the result of leaks of the numbers in the department's reports. A master wall switch was installed to allow the department centralized control over transmission. The switch was connected to each privately owned computer in the room via a department-provided standardized device known as a "black box." Additionally, the

department installed an atomic wall clock synchronized to the Naval Observatory Master Clock to ensure that transmission happened at exactly 8:30. The department also invested in insulation shielding for the walls of the room to block wireless communication to the outside world, but it is important to note that this measure is not effective against today's more advanced wireless technologies.

During these years, news organizations also installed their own data lines at the department's headquarters. Some used dial-up modems; others had connections with faster speeds. As a way of leveling the playing field, the department flipped the master switch a full minute before the end of the embargo to allow all systems to warm up. This was called "the honor minute."

Parallel to this arrangement, automation in trading became more prevalent and we began to hear directly from traders eager to know which news organizations had pre-release access to the numbers, especially the monthly Employment Situation Report. At the same time, many of the organizations in the lock-ups sought to increase the speed of their lines and expressed worries that the black boxes attached to their computers might be infinitesimally slower than those attached to their competitors' equipment. It is important to note that the "black box" speeds were identical. Although transmission during the "honor minute" — the time between 8:29 and 8:30 a.m., when connectivity had been enabled – was prohibited, department staff observed precluded activities such as pushing keyboard buttons, speaking into telephones and sending instant messages.

As a result, the "honor minute" was abolished in June 2008; from that point forward, the master switch was flipped at 8:30 a.m. precisely. At that time, the department also implemented additional security upgrades: News organizations were required to provide dedicated computers for their use in the room, ending their ability to bring portable computers on the day of a lock-up. They were required, for the first time, to ensure that their computers were free of wireless technologies. And they were required to deposit all handheld electronic devices, such as cell phones and BlackBerries, into a container at the front of the room. Reporters were also required to log off their computers before leaving the room so as to prevent remote changes to their computers while the room was unoccupied.

Finally, a practice of escorting television reporters from the room seven minutes before the end of the embargo to reach their outdoor posts for live reports at 8:30 was discontinued. On an interim basis, TV journalists were moved to a secure room closer to the reporting patio. Later, in the spring of 2010, a second lock-up facility was built adjacent to the outside patio, allowing TV personnel to exit just two minutes before 8:30. This adjacent room allowed secure access directly from the facility onto the reporting patio, avoiding potential interaction with passers-by. Under this updated protocol, while in this separate lock-up room dedicated solely to them, the TV news reporters are given a code word or phrase to accommodate sound checks. However, they may not otherwise speak to or interact with anyone between 8:28 and 8:30. Two security guards ensure that both the indoor and outdoor areas are clear. The department also installed two additional atomic clocks — one indoor, one outdoor — for the television lock-up.

Collectively and over time, these measures addressed some of the security concerns with the lock-up. But by 2011, more than a decade had passed since the department had undertaken a holistic and thorough review of its policies, procedures and protocols regarding press lock-up security.

SECURITY CHALLENGES

By 2011, technology and financial trading based on BLS data had taken quantum leaps forward. A comprehensive security review relative to this new reality was overdue.

We understand that there is intense competition among media outlets to provide information to investors and the general public. We also know that the competition now extends to providing the raw data to subscribers trading on it through algorithms, which is not the purpose of the lock-ups. However, we believe it is possible to balance our agency's commitment to contribute to an informed public debate with an equally strong commitment to prevent the premature release of economic data. As such, the department recently announced new security protocols that will give participating news organizations the continued opportunity to write and deliver their stories in a secure lock-up environment, while taking additional precautions to prevent unauthorized data transmission before the embargo is lifted.

Due to the rapid technological advances of recent years, news organizations continuously have installed increasingly more complex computer configurations in the print lock-up room, as well as sought to increase the speed of their data lines. Accordingly, a steady flow of contractors and other visitors are in and out of both DOL's lock-up facility and our telephone closets to make technological modifications. It has become increasingly challenging to ensure that the technical work performed on behalf of news organizations complies with our data security policy or to ensure that news organizations cannot – and have not – intentionally or accidentally bypassed security controls intended to prevent outside communication of embargoed economic data prior to the authorized release time.

Over the years, there have been different types of violations of security protocols, technological and otherwise. For example:

- A news organization installed a fiber optic line through one of the department's fiber optic hook ups, located in a DOL phone closet, despite having been told repeatedly that use of fiber optic cable was not allowed.

- A news organization asked to disconnect and replace the "black box" supplied by DOL to disable Internet activity during the embargo period. While we explicitly denied this request, it was later discovered that the news organization had ignored this directive and replaced the "black box" without permission.

- Numerous media organizations failed to comply with DOL's requirement that they inventory and label their data lines located in the lock-up facility.

- On two separate occasions, a wire service inadvertently transmitted sensitive employment and productivity data to its subscribers during the embargo period. The problem was related to a computer cable connection.

- A lock-up participant was sanctioned for retrieving his BlackBerry from a storage container and using it during the embargo period. Following that incident, the containers used to hold electronics were replaced with lockboxes.

- A reporter had his credentials temporarily revoked for using a mobile device to take a photograph during the lock-up.

- Participating media organizations have contacted the department frequently to voice concerns that competitors may have gained unfair advantage in speed of transmission or have surreptitiously broken embargoes.

The rapid speed at which markets can integrate information has strengthened the financial incentive to violate the terms of pre-release access for the purpose of providing non-public data to paid subscribers. This reality violates a core principal of the federal statistical system of releasing data to the general public in a manner that prevents unauthorized dissemination or use. Algorithmic trading introduces new security variables into a lock-up system not originally designed to guard against market-moving disruptions that could be caused by the release of government data to certain traders just seconds before the rest of the general public. A few years ago, a few seconds here or there would not have had much of an impact. Today, fractions of a second can equate to millions or even billions of dollars in market movements.

THE DEPARTMENT'S RESPONSE

In April of 2011, the department entered into a memorandum of understanding with Sandia National Laboratories to identify potential vulnerabilities in our press lock-up facility, provide mitigation options for vulnerabilities identified, and assist in mitigation verification regarding any changes we decided to make to the lock-up. Sandia provided the department a report and series of recommendations in August of last year.

DOL has focused on three proposals to enhance security in the print lock-up, based on these recommendations:

- Replace the variety of privately-owned equipment with standardized equipment that will significantly reduce the possibility of data leaks;

- Secure standardized phone/data lines that are under departmental control and physically off-limits to news organizations; and

- Require that reporters' electronic devices and personal effects be stored in lockers outside of the lock-up facility.

In addition, the department re-evaluated its criteria for granting press credentials to the lock-up facilities (print and TV), consistent with one of Sandia's recommendations, and began the credentialing process anew. The department announced publicly on April 10 that the issuance of new credentials, to be effective July 6, would be based on whether organizations are primarily journalistic enterprises and publish or broadcast time-sensitive summaries and analysis of department data that is likely to contribute significantly to public understanding through the dissemination of original news, analysis and/or opinion to a broad public audience.

The requests and decisions on credentials were handled by a committee of career employees. Neither editorial nor political viewpoints were considered in making credentialing decisions.

Concurrently, I instituted additional internal rules regarding Office of Public Affairs personnel who staff the lock ups. Of particular note is that non-career federal employees are no longer permitted to staff the lock-ups. As a result, even though I am responsible for the security and management of the lock-ups, I am not allowed in the lock-up rooms when we release data.

GOING FORWARD

My principles for conducting a secure lock-up are straightforward: The lock-up must serve the public interest. The public interest is served by the widest possible distribution of important economic data. The public interest is served when data are accurate, unbiased and disseminated in a non-political way. That is why in the case of principal federal economic indicators such as the monthly jobs numbers, OMB Statistical Policy Directive No. 3 does not permit any administration official to comment on the figures until at least one hour after they are made public.

On April 10, I sent a letter to news media organizations that were currently credentialed for the lock-up, notifying them of the changes that would be made over the coming months. Simultaneously, my office widely disseminated a notice to all media organizations inviting interested outlets to request press lock-up credentials. I also hosted a conference call with interested media on April 16 and posted the recording of the call, along with a transcript, on our website.

The department's plan to implement reforms based on Sandia's recommendations prompted concern on the part of some news organizations that are credentialed for the lock-up. In particular, a few organizations expressed concern that the plan would not permit the use of their private, individual high-speed data lines, their customized publishing software and their personal computers and other hardware.

To learn more about the concerns of news organizations, we met with news organizations on May 15. That session led to an agreement that DOL and the news organizations should bring their technical experts together for discussions about possible ways to accommodate the concerns of news organizations while continuing to mitigate security risks. Three such meetings were held, on May 23, May 30 and June 1.

These meetings have been productive and I am encouraged by the progress we have made toward a solution that addresses the department's security mandates, as well as the media organizations' business and journalistic goals.

The news organizations and DOL share the same goal of informing the public as quickly as possible. In that regard, I am also pleased to report to the committee that DOL will amplify its announcement of the key indicators we release. Currently, for example, the Employment Situation data are posted at about 8:30 a.m. on the BLS website and a few minutes later on the DOL website. Starting July 6, links to this all-important data will be posted at 8:30 on the DOL website and through social media. These postings will be "just the facts" links to the BLS report; there will be no commentary. These announcements by DOL, combined with news media accounts, will help ensure that current economic data are made immediately available to the public and will help inform decisions in the private, nonprofit and public sectors in the United States and worldwide.

As technology continues to change at a rapid pace, the department is committed to making continuing adjustments to secure and protect the integrity of our government's key economic indicators. Thank you again for the opportunity to testify today. I would be pleased to answer any questions you may have.

Chairman ISSA. Thank you.
Mr. Galvin.

STATEMENT OF JOHN M. GALVIN

Mr. GALVIN. Good morning, Chairman Issa, Ranking Member Cummings, and distinguished members of the Committee. I appreciate the opportunity to appear today to discuss the methods used by the Bureau of Labor Statistics to protect economic statistics prior to their official release to the public.

Immediately upon the official release date and time of BLS statistical products, the BLS widely disseminates these products to the public through the BLS website and an email subscription service. Prior to that official release the BLS spares no effort in securing the confidential information from unauthorized disclosure or use.

The BLS is responsible for protecting two types of confidential information: respond and identifiable information, and prerelease information. Respond and identifiable information is collected from businesses and households under a pledge of confidentiality and is protected from unauthorized disclosure and use by the Confidential Information Protection and Statistical Efficiency Act of 2002. After that collection, the information is aggregated in a manner which allows its release to the public through a statistical report, while ensuring respondent identities are not disclosed.

Prior to its release to the public, the aggregated statistical report is considered prerelease information. The Office of Management and Budget exercises authority for coordination of the Federal statistical system and dissemination of its outputs. Consequently, the handling of prerelease information is governed by OMB statistical policy directives.

Specifically, OMB Policy Directives 3 and 4 govern all BLS prerelease information. Directive 3 applies to our handling of principal Federal economic indicators, or PFEIs. The Bureau produces seven of these PFEIs. All our other data are governed by OMB Policy Directive No. 4.

The BLS has strong internal policies and procedures in place to ensure the integrity and confidentiality of the data we compile, store, analyze, and provide to the public. BLS employees and contractors are informed of these policies and procedures in annual training. Furthermore, the BLS restricts access to confidential information to only those individuals who need the information to carry out program missions. BLS policy explicitly prohibits employees from using their access to these data for personal financial gain. The BLS information systems that store and process confidential information have implemented security controls to meet or exceed those required for moderate systems by the Federal Information Security Management Act. Personal identification cards are used for all physical access to the BLS building and to specific locations, housing, critical telecommunications equipment, and IT equipment.

OMB Statistical Policy Directive 3 allows for sharing of prerelease PFEI information in a lockup arrangement. In such an arrangement, prerelease access is provided within the confines of a secure physical facility 30 minutes prior to the publicly an-

nounced release time. Participants are not permitted to leave the lockup room until the information has been released to the public. No external communication is allowed during the lockup. BLS has used a secure prerelease arrangement to provide prerelease data access to the Office of the Secretary of Labor and to the Joint Economic Committee of Congress. BLS uses the Department of Labor lockup facility to provide secure prerelease data access to credentialed members of the media.

In 2011, DOL, with the full support of BLS, entered into an MOU with Sandia National Laboratories for a vulnerability assessment of the DOL lockup facility. That assessment identified vulnerabilities that the BLS and the Department of Labor plan to eliminate with the changes to the lockup facility scheduled to go into effect on July 6th, 2012. BLS and the Department of Labor are working with participating news organizations to finalize solutions based on the Sandia report recommendations that satisfy the government's need to protect the prerelease data from unauthorized dissemination and use, but also facilitate timely and informative analysis of the data by the media.

In summary, the reputation and credibility of the BLS depends on our ability to release economic data to the public in a fair and orderly manner. The BLS has strong internal policies and procedures to ensure the security of our sensitive prerelease information. The BLS agrees with the Sandia report recommendations and fully supports the Department of Labor's implementation of these recommendations.

Thank you again, and I would be pleased to answer any questions you may have.

[Prepared statement of Mr. Galvin follows:]

STATEMENT OF
JOHN M. GALVIN
ACTING COMMISSIONER
BUREAU OF LABOR STATISTICS
U.S. DEPARTMENT OF LABOR

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

June 6, 2012

Good morning, Chairman Issa, Ranking Member Cummings, and distinguished members of the Committee. I appreciate the opportunity to appear today to discuss the methods used by the Bureau of Labor Statistics (BLS) to protect economic statistics prior to their official release to the public. Immediately upon the official release date and time of BLS statistical products, the BLS widely disseminates those statistical products to the public through the BLS website and an email subscription service. Prior to that official release to the public, the BLS spares no effort in securing the confidential information from unauthorized disclosure or use.

The BLS is responsible for protecting two types of confidential information: respondent identifiable information and pre-release information. Respondent identifiable information is collected from businesses and households by the BLS under a pledge of confidentiality and is protected from unauthorized disclosure and use by the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002. This information is then aggregated in a manner which allows its release to the public through a statistical report while ensuring respondent identities are not disclosed. Prior to its release to the public, the aggregated statistical report is considered pre-release information. OMB exercises authority for coordination of the Federal statistical system to ensure the integrity, objectivity, impartiality, utility, and confidentiality of

information collected for statistical purposes. Consequently, the handling of pre-release information is governed by Statistical Policy Directives of the Office of Management and Budget (OMB).

Specifically, OMB Statistical Policy Directives 3 and 4 govern all BLS pre-release information. Statistical Policy Directive No. 3 applies to statistical agency handling of Principal Federal Economic Indicators (PFEIs). The BLS produces seven PFEIs as designated by OMB: the Employment Situation, the Producer Price Indexes, the Consumer Price Index, Real Earnings, Productivity and Costs, the Employment Cost Index, and the U.S. Import and Export Price Indexes. All other BLS economic data are governed by OMB Statistical Policy Directive No. 4. These Statistical Policy Directives require that each statistical agency shall be responsible for establishing procedures to ensure that there is no premature release of information or data estimates during the time required for preparation of the public report, and that at the announced time the data are released in a fair and orderly manner.

Summary of BLS policies and procedures. The BLS has strong internal policies and procedures in place to ensure the integrity and confidentiality of the data it compiles, stores, analyzes, and provides to the public. BLS employees and contractors are informed of these policies and procedures in annual data confidentiality and security training. Furthermore, the BLS restricts access to confidential information to only those individuals who need the information to carry out program missions. BLS policy explicitly prohibits employees from using their access to these data for personal financial gain. The BLS information systems that store and process confidential information have implemented security controls to meet or exceed those required for "Moderate" systems by the Federal Information Security Management Act

(FISMA) and as detailed by National Institutes of Standards and Technology (NIST) Special Publication 800-53 *Recommended Security Controls for Federal Information Systems.* These security controls are continuously monitored and any identified weaknesses are addressed promptly. BLS has also implemented physical access controls to ensure that only authorized individuals are granted access to the building and to the information systems servers and work areas. Personal identification key cards are used for all physical access to the building and to specific locations housing critical telecommunications and IT equipment, and information systems. All computer servers which store PFEI pre-release information reside in a special Sensitive Data Section of the Bureau's Data Center, featuring enhanced physical security. Access to this section is restricted to authorized employees who have full background investigations and a business need to enter the area.

BLS has an extensive set of policy directives governing data confidentiality and security. Some of the standards prescribed by these directives include:

- Documenting the security procedures for the production of news and information releases, reviewing those procedures regularly, and updating them as needed.
- Providing written instructions as well as on-going security training to employees responsible for handling pre-release information, both primary and backup staff.
- Utilizing a checklist for each publication cycle to ensure accountability and implementing "redundant execution" processes requiring multiple independent actions in the final step that releases these data.
- Setting and monitoring permissions for electronic access to pre-release information.
- Prohibiting unsecured electronic transmissions of pre-release information.

- Prohibiting access to BLS networks using personally owned equipment.
- Using secure methods for transferring pre-release information from one office to another within BLS.
- Printing advance copies of news releases only on BLS premises.
- Maintaining detailed records of each transfer of pre-release information outside the BLS.

Additional security standards applicable to PFEI statistical programs include:

- Requiring more rigorous background investigations for those employees and contractors with access to pre-release information.
- Controlling physical access to restricted access areas, permitting only "authorized persons" to enter restricted areas.
- Prohibiting access to top-level PFEI pre-release information while teleworking.

Sharing of pre-release information in a lock-up. OMB Statistical Policy Directive 3 allows for sharing of pre-release PFEI information in a lock-up arrangement. In such an arrangement, pre-release access is provided within the confines of a secure physical facility thirty (30) minutes prior to the publically announced release time. Participants are not permitted to leave the lock-up room until the information has been released to the public. No external communication is allowed during the lock-up. BLS has used a secure pre-release arrangement to provide prerelease data access to the Office of the Secretary of Labor and to the Joint Economic Committee. BLS uses the Department of Labor (DOL) lock-up facility to provide secure pre-release data access to credentialed members of the media.

Planned changes to the DOL lock-up facility. In 2011, DOL, with the full support of BLS, entered into an MOU with Sandia National Laboratories for a vulnerability assessment of the DOL lock-up facility. That assessment identified vulnerabilities that the BLS and DOL plan to eliminate with changes to the lock-up facility scheduled to go into effect on July 6, 2012. Recommended actions from the Sandia report include:

- Replace computers and other IT equipment in the DOL lock-up facility with DOL owned equipment and remove the private data lines currently in use.
- Prohibit anyone other than DOL personnel from entering communications closets without a technically knowledgeable DOL escort.
- Provide/train technically knowledgeable escorts.
- Require personal items be kept in lockers outside of the DOL lock-up facility.

BLS and DOL are working with participating news organizations to finalize solutions based on the Sandia report recommendations that satisfy the Government's need to protect the pre-release data from unauthorized dissemination or use and also facilitate timely and informative analysis of the data.

Past prerelease breaches. On two occasions in the late 1990s the BLS experienced breaches in which PFEI data were accidently posted on the BLS website in advance of their scheduled release. Since that time, significant management controls have been put into place that have prevented any further major breaches from occurring.

While we are aware of two separate Security and Exchange Commission inquiries related to heightened trading activity just prior to BLS Employment Situation releases in 2004 and 2007, neither inquiry traced the trading to a prerelease breach.

No BLS employee has ever been prosecuted for using pre-release information for personal financial gain. Furthermore, to the best of our knowledge, no BLS employee has even been suspected of engaging in such activities.

In summary, the reputation and credibility of the BLS depends upon our ability to release economic data to the public in a fair and orderly manner. The BLS has strong internal policies and procedures to ensure the security of our sensitive pre-release information. The BLS agrees with the Sandia recommendations and fully supports DOL's implementation of these recommendations. Thank you again for the opportunity to testify today. I would be pleased to answer any questions you may have.

Chairman ISSA. Thank you.

Ms. Oates.

STATEMENT OF THE HONORABLE JANE OATES

Ms. OATES. Thank you. I appreciate the opportunity to come and talk with you and update you on the progress of your investigation——

Chairman ISSA. We still are really not able to hear you. Could you pull the mic to where it is sort of in front of you? Thank you.

Ms. OATES. I am so sorry. It is the first time in my life I have been told to speak up.

Chairman ISSA. And one of the amazing things is you project perfectly to the dais, but this wonderful woman over here, who is off to your side, is the only person that makes your presence permanent.

Ms. OATES. I will be much more attentive to you, madam.

Chairman ISSA. Thank you.

Ms. OATES. So good morning again, and thanks for the opportunity to update you on our progress on your investments and the ability to train workers for good jobs in green industries and other industries.

The Department plays a critical role in ensuring that we have a prepared workforce for the economy of today and tomorrow, an economy that deals with all sectors, including green. Over the last few years, we have made a number of strategic investments to ensure that, as the green sector grows, businesses will have the talent they need to prosper.

Strong partnerships with employers have been critical to these investments from the very beginning. That is why the Department required that grantees work closely with employers to assess the real employment needs of their local areas, and we encourage grantees to be flexible throughout the full life cycle of the grant.

In some communities employer needs have changed since the grants started, and grantees have made adjustments to continue to ensure that their projects are aligned with employer needs, such as providing training for additional occupations that require the same skill sets, but were with different employers than they had originally anticipated.

The Department is also committed to making sure these investments work. We have implemented a number of new processes to monitor progress and intervene as necessary to improve grant outcomes and hold grantees accountable, including a performance-based process for identifying and prioritizing grantees with high technical assistance needs.

We provide technical assistance through several mechanisms, including in-person meetings and workshops, facilitated peer learning conference calls, webinars, and case studies examining promising practices implemented by our highest performing grantees. Technical assistance covers many topics, including the basics of proper reporting and accounting procedures, but also focusing heavily on job placement and employer engagement strategies.

Some of the grants to train workers in green industries did take longer to get off the ground than the grantees planned, but through the strong partnerships with businesses, increased flexibility to

meet those local needs, the targeted technical assistance that I have outlined, and our comprehensive communications with grantees, the investments are now paying off.

Through the Recovery Act, the Department invested nearly $500 million, directed by Congress, in 189 green job training and related programs to help train workers for careers in sustainable manufacturing, energy efficient construction, biofuels, and other renewable energy sources. These grants have served, and are still serving today, more than 99,000 workers. To date, more than 65,200 have completed training, and of those 88 percent have received an employer or industry recognized credential such as a certificate or degree.

Despite tough economic times, after completing their training, more than 25,200 workers have already found new jobs, with 81 percent of them in green training related jobs. It is important to note that of the over 99,000 workers who have received services, almost 49,000 were incumbent workers and were not necessarily seeking new positions, but looking to attain credentials that would help them improve the productivity of their employer and basically help them keep their job.

To date, 29,899 incumbent workers that have completed training have received a credential. While some incumbent workers who received green job training did find new positions, for incumbent workers that did not find new jobs, we estimate through the data we collect that at least 90 percent of those workers retained their current job, which may have included advancement potential.

Similar to the upward trends in performance, the current expenditures reflect increased grant activity. As of the quarter ending March 31st, 2012, 62 percent of these grant programs have ended and been closed out, and 68 percent of the total funds for all grantees have been expended. This represents more than a twofold increase, compared to the 29 percent expenditure rate cited by the OIG in the September 2011 report. In the coming months we expect the positive trend to continue.

To ensure we learn as much as possible from these investments, the Department is conducting formal evaluations of the green training grants. The interim report for the qualitative evaluation of the training focus grants was recently published and included a descriptive analysis of eight grantee projects. In the essence of time, we will keep you up to date on those through your Committee staff.

Thanks again for inviting me and I look forward to answering any questions.

[Prepared statement of Ms. Oates follows:]

STATEMENT OF
JANE OATES
ASSISTANT SECRETARY
EMPLOYMENT AND TRAINING ADMINISTRATION
U.S. DEPARTMENT OF LABOR

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

June 6, 2012

Good Morning Chairman Issa, Ranking Member Cummings, and Members of the Committee. Thank you for the opportunity to discuss the Department of Labor's efforts to train workers for good, sustainable jobs in green industries.

The President has made clear that an economy built to last needs an all-of-the-above approach to energy policy – one with strategic investments in a clean energy economy designed and produced by American workers. The Department's investments in green job training support a clean energy future that both reduces our dependence on foreign energy and supports sustainable green jobs in the United States. I'm pleased to update you on the progress of those investments.

Through the Recovery Act, the Department invested nearly $500 million in 189 green job training and related programs to help train workers for careers in solar, wind, biofuels, and other renewable energy sources. These grants have served and are still serving more than 99,000 workers. To date, 65,200 have completed training and of these, 88% have received an employer or industry-recognized credential, such as a certificate or degree. Despite tough economic times, after completing their training, more than 25,200 workers have already found new jobs, with 81% of them in green training-related jobs. It is important to note that of the over 99,000 workers who have received services, almost 49,000 have been incumbent workers, and thus were not necessarily seeking a new position. To date, 29,899 incumbent workers that have completed training have received a credential. While some incumbent workers who received green jobs training did find new positions, for incumbent workers that did not find new jobs we estimate that at least 90% of these workers retained their current job, which may include increased advancement opportunities, wages, or job responsibilities as a result of the training received.

All three types of Recovery Act grants that focus on green jobs training are providing services that align with the needs of local employers–Energy Training Partnership, State Energy Sector Partnership, and Pathways out of Poverty. These grantees were asked to identify the occupations on which they would focus, helping ensure that participants receive training in the specific skills that employers need. Grantees are required to have employer partners that are involved with their projects, further tying grant projects to business needs.

Many of these grants have ongoing training activity, with some of the programs not finishing until 2013. As the economy continues to strengthen and growth industries emerge, we have encouraged grantees to modify training plans and curricula to meet the needs of local green energy employers. In some communities employer needs have changed since grants started, and grantees have made adjustments to continue to ensure that their projects are aligned with employer needs, such as providing training for additional occupations that are in demand in their local areas. This flexibility ensures these grants, which have already helped thousands of people, will continue to help more people.

In addition, grantees continue to recruit additional employer partners into their projects, helping to take advantage of new areas of economic growth and increase employment opportunities for program participants. A number of grantees have also added more paid work experience or internships to their projects, enabling more participation in "earn-and-learn" activities.

To monitor progress and take necessary actions to improve grant outcomes and hold grantees accountable, the Employment and Training Administration (ETA) has implemented a number of new processes. Federal Project Officers (FPO) conduct standardized on-site monitoring and desk reviews of grantees, and we follow a performance-based process for identifying and prioritizing grantees with high technical assistance needs. Grantees receive technical assistance through a coordinated effort of ETA, ETA regional offices, and the National Governors Association Center for Best Practices (NGA).

ETA provides technical assistance through several mechanisms, including in-person conferences and workshops, facilitated peer-learning conference calls, webinars on key program topics, and case studies examining promising practices implemented by high-performing grantees. Our coordinated technical assistance efforts cover a wide range of topics, from proper reporting and accounting procedures, to effective strategies for serving targeted populations. To help grantees address challenging economic conditions, our technical assistance has also focused heavily on job placement and employer engagement strategies.

In addition to monitoring the progress of these grants, the ETA is conducting formal evaluations of the green jobs training grants. These evaluations will help assess the outcomes and impact of the grants, and will provide relevant information to practitioners as well as policy makers. The department recently published its interim report for the qualitative evaluation of the training-focused grants, which included a descriptive analysis of eight grantee projects (in addition to green jobs training grants, it includes grants funded through the Health Care and Other High Growth and Emerging Grants Solicitation for Grant Applications (SGA)). This report presented an overview of the grants program with overall statistics for four SGAs and summarized the major themes emerging from the site visits and focus groups conducted to date in eight sites.

The Department has worked in close partnership with the energy and utilities sector since 2007 to understand and meet their workforce needs. ETA convened the Energy Skilled Trades Summit in conjunction with the Southern Governors' Association with over 300 participants representing industry, economic development, education, and workforce communities. State teams discussed major workforce challenges faced by the industry and developed action plans.

Twenty-five of these state teams are now fully functional state consortiums supporting this critical workforce.

As part of its support for the energy and utilities sector, the Department partnered with the Center for Energy Workforce Development (CEWD) to validate and prepare the energy generation, transmission and distribution competency model. A competency model is a collection of competencies that together define successful performance in a particular work setting. Competency models are the foundation for important human resource functions – such as recruitment and hiring, training and development and performance management – because they specifically define what is essential to train and develop a diverse, talented candidate pool.

The energy utility industry needed a mechanism that could be used by educators, workforce investment professionals, and businesses to articulate the skills required to perform key work so that effective screening of candidates can occur and training courses can be developed to prepare candidates for employment in the industry. The energy competency model is a critical tool in this effort. The Department has also added green competencies to the energy generation model, advanced manufacturing, residential and commercial construction, and automation competency models. In addition, the team is working with industry representatives and federal agency partners, including the Department of Energy, on a renewable energy competency model that will be available in the fall of 2012 to lay the foundation for the renewable sectors workforce.

More recently, the Department of Labor has also supported the Center's Get into Energy Career Pathways for Skilled Utility Technicians, a project with support from the Bill and Melinda Gates Foundation. CEWD is preparing to test a pathways model to attract low income young adults, ages16-26, to the energy sector. We helped the Center make connections to State and Local Workforce Investment Boards (WIBs) to test this pathways model in multiple jurisdictions within California, Florida, Georgia, Indiana, Minnesota, North Carolina, Ohio, and Washington. The model is providing a roadmap for entry into skilled utility technician positions in the energy industry with pathways to higher-level jobs in a variety of work settings.

The Department has also worked to ensure that all of our investments have as large of a reach, and make as much of an impact, as possible. For example, in June 2010, the Department awarded a $4.9 million Community-Based Job Training grant to Westmoreland Community College (PA) and its consortium partners in West Virginia and Ohio to establish a tri-state Marcellus Shale Training Network (Marcellus ShaleNET) to develop, deploy, and disseminate a common curriculum specifically endorsed by industry for six high priority occupations in the natural gas drilling and production industry. Marcellus ShaleNet brings WIBs, their One-Stop Career Centers, industry, and training providers together to build a Marcellus-wide industry-recognized uniform training and certification program, aggregating and augmenting existing curricula, and adopting best practices as identified. The project is developing comprehensive tools for use by the One-Stop Career Centers that present a realistic picture of the work, screening and assessment tools to more quickly identify specific attributes needed for the positions, and a comprehensive pre-employment program for those who move past initial screening including an industry orientation, basic safety training, and job readiness skills.

Currently, 20 educational institutions across Ohio, New York, Pennsylvania, and West Virginia are approved to offer ShaleNET training, and as of March 31, 2012 nearly 60 companies have hired 164 graduates of the ShaleNET program.

Working collaboratively with American businesses to develop a strong and vibrant workforce is critical to growing and sustaining our Nation's economy. Through its local delivery systems in every region of the country, the Department of Labor is helping regions use local labor market information to drive strategic investments that prepare workers for good paying jobs in all fields, including green industries, an approach that clearly relies on strong partnerships with employers in order to be successful. Through these efforts, and the work we have done to implement comprehensive oversight, accountability, and technical assistance strategies, we believe our grantees have the necessary tools help American workers succeed in today's economy.

Thank you again for inviting me here today, and I would be happy to answer any questions you may have.

Chairman ISSA. Thank you.

We now recognize the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman.

Good morning, all of you. Actually, it is good afternoon, approaching quickly on it. Let me try to run through a few things.

Ms. Oates, you got a chance to chat a little bit about the definition. That was initially the first hurdle for what is a green job, in forming a definition. Did you feel like that is solidified at this point, that we have a definite definition of what a green job is now?

Ms. OATES. To be honest with you, we take whatever definition is given to us and get that information out, but our focus is really on relying on States and local areas to tell us where the employers have needs, filling that skills gap that we hear, and having our grantees respond to that.

Mr. LANKFORD. So let me just run a couple things.

Ms. OATES. Sure.

Mr. LANKFORD. If they work at a solar manufacturing plant, green job; wind manufacturing plant, green job; the energy, the actual production of those, electricity, hydroelectric dam, I assume that is a green job. What about a custodian that puts in fluorescent light bulbs? They used to put in incandescent, now they put in fluorescent?

Ms. OATES. Again, sir, that is not my job. My job in Employment and Training is to make sure that if a local area needs somebody who can work with natural gas or put in a fluorescent light bulb——

Mr. LANKFORD. But you understand where I am on this? The difficulty of trying to find out, getting them ready for a green job.

And let me tell you the perspective for me, because I visited one of the programs, got a chance to walk through, see the training, met some great folks that are very dedicated to training people that are unemployed to get employed. In my conversation with them, they had just finished up, they just graduated a group out, so we were able to talk about how many people got placed. My conversation with them was how many of the individuals in this program were placed in a green job.

They hesitated and responded back to me all the skills are transferrable, which, great. They ended up in a job, but they couldn't name a single person that ended up in a green job, or, if they worked the numbers right, for instance, if they ended up in home repair, they said, well, they will replace windows, so that is a green job; or they will end up in waste collection, so that is a green job; or this individual now works at a used book store and that is a green job because it is recycled materials.

The challenge is not employment, the challenge is the number of what is a green job and what is not, and that seems to be a very fluid number in this process. Based on the definition, almost anything could be considered a green job at this point, if you had some connection to it at some point.

Ms. OATES. Again, Congressman, maybe it could be better directed to someone else, this question. My concern, my charge when I took this job was to make sure that job training was aligned to the needs of employers. And if that guy wants to hire somebody for $10 an hour to replace fluorescent bulbs, that is what my training

providing should do. As you know, we had the chance to talk a little bit in your district and I was amazed that what was happening with natural gas and what was happening with some of the things like that, and I was thrilled that our training programs were working on that. But I was equally thrilled when I visited Sonic, that we were also getting people that they needed in their back room functions at the Sonic headquarters there in Oklahoma.

So, again, I understand this is a political debate. I hope you would agree my job is to make sure my training programs are meeting the needs of local employers.

Mr. LANKFORD. I absolutely agree. It is only a political debate because it is designated for just green jobs, and that is the challenge of it, to try to determine are we doing job training, are we trying to focus in on a specific sector. And even when we had the chance to chat at the career tech, it was this ongoing challenge, even when I visited with some of the leaders there, to say they have programs that are focused on that, but they also have challenges based on, when people graduate, trying to place them in a green job, and it is trying to redefine what is that definition and how does that really get accomplished and how do they track those numbers back.

I was at a wind farm a few weeks ago, and when I was out there I asked how many people do you employ total. It is a huge wind farm. It was 12. So when we train people in trying to do repair on a wind farm, there is not a large population of people that are needed on that, and all of them formerly had done something else and been trained onsite to do that job. So that is the push and the pull on that, is how do we get around the training-related employment type figure of it.

Now, there is a difference between trying to just employ people and trying to target for an industry that may or may not be there actually for employment, and that is the challenge of it. So that is not the push and pull. I want it to be a growing sector.

Your comment also about incumbent workforce is a great comment about half the people that are in the program were already trained, they are just getting retrained for something else within the same company on that. That helps them be able to keep a job, but it is a challenge for people, when we have such massive unemployment, to focus in on why don't we train people that are unemployed on that one. How did that work out for you as far as retraining and training? How did you all make the decisions on that?

Ms. OATES. So I don't know how familiar you are with how we award grant money. First of all, usually you are pretty prescriptive, as this was. I didn't make the decision how to spend this money; I tried to enact what Congress told me to do. And then we change the way we panel. Previously, our paneling had been three Federal workers, mostly retirees. I really felt that in this changing economy we needed to shift that and have two outside experts on every panel that we open to the general public and one Federal worker. So I don't even see the grants until they are awarded. So part of that is that we are really looking at the strength of the applicant, the local training provider, the local government, the State government to really make a case for what the need is.

Now, we know that oftentimes six months or a year could elapse between when you really started writing that grant and when the

money is awarded. That is why this flexibility. So we said to people, when they were writing these grants, in the instruction, in the request for applications, that you need to look at what the greatest need is. Quite frankly, in some States it was definitely getting unemployed people trained because there were job vacancies. In other States there weren't job vacancies, but there were threats that employers were going to leave the State or that companies were changing the way they did business. So they made a strong enough case that that panel said incumbent worker training, making sure we are doing layoff aversion is the most important thing in that local area, and they made that case strongly enough that they were awarded.

And as we see, some of them really hit the nail on the head and some of them we have had to be really spending much more time with in technical assistance. The wind farm example is a great one. Some people who had no—not in Oklahoma, but in other neighboring States who had no experience with wind farms before thought they were going to have thousands, hundreds of jobs, and when they found out there were three technicians per shift and that is all they were going to need to service these, they were shocked.

So we then went in to real overdrive to connect them with the local utility companies who were looking to green up, and they actually have been able to hire new people. It is a very graying industry and it is an industry that is everywhere. So we have been able to work with CEWD to redirect some of those workers because the training was the same that they would get if they were doing wind power technician stuff, but the jobs weren't there.

Mr. LANKFORD. I yield back.

Ms. OATES. Thank you.

Chairman ISSA. Thank you. I guess that means that they didn't get real green jobs by the definition of the public, but they did get jobs that they got trained for. So the good news is your training worked; the bad news is the scoring of 3.1 million green jobs had to include all kinds of things that people didn't think were green in order to hit some hypothetical political number, which I think is what you were talking about when you said this is a political discussion.

Ms. OATES. Mr. Chairman, at least we got the chance to talk a little bit. We don't know each other at all, so please take this with the great respect that it is given. My job is to make sure the training matches the job vacancy needs, and whether they are green or white collar or blue collar jobs, that is for the local areas to decide and for the statisticians and the researchers to say which was what. My job, and I think you would, I hope, agree with me, is to make sure that we are not wasting taxpayers' money training people for jobs that don't exist.

Chairman ISSA. We couldn't agree with you more.

With that, which one of you, I believe Mr. Lacey is next for five minutes.

Mr. CLAY. Thank you, Mr. Chairman.

Look, I hope we can agree that green jobs are a new emerging economy. If we can grow jobs in this sector, this can, more than

likely, help our economy in job creation. I would just hope we on this Committee and in this room can agree on that simple aspect.

Chairman ISSA. Would the gentleman yield?

Mr. CLAY. Sure.

Chairman ISSA. I think in my wholeheartedly agreeing with Ms. Oates, what I was really saying is out of 120 million workers, 12 million of whom don't have jobs, there is nothing we could think of as more acceptable in Federal dollars than finding people who either don't have a job or would lose a job without training and get them trained. I think in our discussion of the green versus the green in one's pocket, we are all for keeping green in one's pocket by making sure they have the skills in order to do the jobs that are available. That is where you and I agree more than you will ever admit.

Mr. CLAY. So you do agree that this is an important sector of the economy that has the potential for growth.

Chairman ISSA. No, actually, the gentlelady had, if the gentleman would continue yielding, she actually said that she found often that the windmills didn't create very many jobs, but the public utility had some very good jobs and they were able to get it. So I think where we are agreeing is that you should fit people into jobs that exist, or are likely to exist, and that is what these training programs are for. And I think that is where we can all applaud the work that she is trying to do to use local boards to make sure that this money ends up training people for jobs that exist.

Mr. CLAY. So, Mr. Chairman, no matter where the jobs are created in the green economy, then that has to be a positive impact for job growth. Thank you.

Chairman ISSA. That is all your time.

Mr. CLAY. Assistant Secretary Oates, on March 13th of this year, Secretary Solis sent a letter to the Chairman of this Committee, and I am assuming you are familiar with that letter.

Ms. OATES. I will get familiar, sir.

Mr. CLAY. On page 8 of this letter, in response to the question of how many jobs had been created with Recovery Act money, Secretary Solis writes this: "In your letter, you further claim that the Recovery Act green jobs program cost $121,856 per trainee retaining a job. That calculation, which appears to be based on a preliminary and incomplete retention data cited by the OIG in its reporting, does not accurately portray the per trainee costs. The Department believes that the most accurate method for calculating the actual cost per a participant is to divide the total number of funds expended by these grants by the total number of participants who receive education training through the grants once the grants are over. Assuming that the targets for the numbers of participants who receive education training under these grants are met, this results in an approximate green jobs training cost per participant of $3,777."

Assistant Secretary, if I am reading the Secretary's response to the Chairman correctly, DOL never spent anywhere near $120,000 per job, but actually spent considerably less, about $4,000 per trainee, is that correct?

Ms. OATES. That is correct, Congressman.

Mr. CLAY. Okay. Can you detail for this Committee the types of skills provided in these training programs and how you believe they will assist trainees to keep a job or get a job if they do not have one?

Ms. OATES. Absolutely. I mean, we take applicants from where their clients are and where they want them to be, so for some of our programs there is some basic IT or basic adult literacy. But for most of them, because we have put a targeted concentration on industry recognized credentials, they are getting credentials that industry is saying they need. That is why they are staying longer in training and that is why it is costing us a little more. For many of our participants, that means things like getting the entry level credential they need and getting a higher level credential as well.

Mr. CLAY. And how does the roughly $4,000 that DOL is spending to train workers to keep jobs or get jobs compare with the cost associated with being unemployed?

Ms. OATES. Well, I mean, it is definitely a savings on so many ways. They are not on unemployment, they are not on any other government subsidies; but they are also productive members of their communities. So our whole vision is on reemployment, getting people back to work as quickly as possible, and some of the strategies that we have used, like on-the-job training or our registered apprenticeship programs, put them to work while they are being trained.

Mr. CLAY. Thank you so much for your response.

Mr. Chairman, it seems to me that the cost of training employees so they can retain or find employment is clearly a wise and cost-effective investment, and I applaud DOL's effort for making this modest investment.

Chairman ISSA. Would the gentleman yield for a question?

Mr. CLAY. Sure.

Chairman ISSA. The debate that you brought up in the question that we sent to the Department of Labor versus the answer, between over $100,000 per job actually created, in other words, someone who got a job, and the $3,000 estimated to be how much will be applied per trainee, which is important, the $3,000 of training or the $100,000 for each job that actually occurs?

Mr. CLAY. I actually think that that data is rather inaccurate and incomplete. I mean, if you look at the actual costs of training these applicants, it is far less than $120,000. And as the Secretary testified, it is more cost-effective, instead of these people having to draw unemployment.

Chairman ISSA. Well, I guess I would ask the same question, though. If training costs $3,000 per person, but you look at the amount of people who get jobs, it is $100,000 per jobs.

Mr. CLAY. But you are lumping in all kinds of other costs here that are not associated with the training or retraining of workers. A laid off worker with typical skills, $3,777.

Chairman ISSA. Well, we are looking at how much was expended per trainee. But $100,000 per permanent job created.

Mr. CLAY. You are counting the grants. The grants to individual companies. That is what is going on here. That is how—that is your calculation of it. I don't agree with it.

Chairman ISSA. Well, I assume we will agree to disagree.

Mr. Ranking Member, would you like to go next? Mr. Tierney is recognized for five minutes.

Mr. TIERNEY. Thank you, Mr. Chairman.

Ms. Oates, I am looking at some of the data around this and some of the information. First of all, would it sound reasonable to you, our statistic here, that about 100 new United States renewable energy and energy efficiency manufacturing plants have opened up in the United States since 2009?

Ms. OATES. That is the data that we have seen as well, sir.

Mr. TIERNEY. And that is just one broad study. There are others as well, if I am not mistaken, correct?

Ms. OATES. Yes.

Mr. TIERNEY. Because I know in our State in particular we have done that. Are you also showing that States that have made their own investment, sort of leveraged Federal investments in this area have had a particular boon in the clean energy manufacturing and efficiency areas?

Ms. OATES. Without a doubt, some States have really pushed to get businesses to grow there. I think Massachusetts is an example. But I also think North Carolina has pushed to get the lithium battery business there is well documented, as well as their push to get Siemens. So I definitely think States have been aggressively looking at how to attract foreign investment and how to incubate and grow American business as well.

Mr. TIERNEY. And one of the grants—you give energy training partnership grants, I notice on that, so a range of whole careers on that. One is the hybrid electric auto technician career.

Ms. OATES. That is right.

Mr. TIERNEY. Are there particular skills and education people have to have to be employed in the hybrid electric auto technician area?

Ms. OATES. In the plants that I visited, they have been totally reformatted. They use different equipment. The body stays the same, but the engine and mechanism is totally different. So there has been a real need to upgrade the skills of both incumbent workers and recruit new workers with different skills that fit the needs of that industry now.

Mr. TIERNEY. I know in my district alone, but in the Commonwealth of Massachusetts as well, we put a tremendous number of people together on weatherization projects on that and that they did need particular training for that. A number of the companies, as well as some of the communities that were involved in that, made comment to that and asked for these resources. Are you finding that to be generally true throughout the Country in weatherization projects, that it requires a particular set of skills and education to be able to perform those tasks?

Ms. OATES. Absolutely. And while some of those skills, like using a blow door and doing insulation would be seen as entry level skills, we have seen a trend now through our work with CEWD that the folks that enter that career path went on to go to some of their Centers for Excellence, which we don't fund, and went on to work and get permanent good jobs in utility industries.

Mr. TIERNEY. We have a lot of people in our State doing wind and energy auditing, which has become a very active field on that.

Ms. OATES. Especially at the Cape.

Mr. TIERNEY. Especially at the Cape, exactly right. That takes a particular skill set and education as well, does it not?

Ms. OATES. Absolutely. And a higher academic skill set than many of the other jobs that would have been seen in these sectors in the past. People have to know how to use handheld IT devices.

Mr. TIERNEY. And solar panel installers. We have some up in the old Lucent plant I think you are familiar with up in the Andover area, where those companies are doing very, very——

Ms. OATES. That is right. Four layoffs ago, right.

Mr. TIERNEY. Four layoffs ago. But those companies which fill a lot of that building now, some of them are installing panels. They do everything from the panel installation to actually the claws that connect the panels to the rooftops on that. They are all asked to help with training their employees because it was a special skill set and education level, is that correct?

Ms. OATES. That is correct. And you know the problem when you bring up Lucent, Congressman, that is exactly the trend we are seeing around the Country. Places that used to employ 6,000 people are now starting to incubate smaller businesses that hire a fraction of those people, and getting their needs, filling their skills gaps is much more difficult than it was talking to the HR director at Lucent 15 years ago.

So it has really become much more complicated for all boots on the ground, the people that we pay through the money that you give us, through State and local areas, the WIBs and the one-stops, it has become much more laborious for them to go to employers that employ 50 people and really understand what they need. That is why we are pushing industry-recognized credentials.

Mr. TIERNEY. And part of what you do is allow job seekers to really connect with the jobs that are out there, that is part of the Workforce Investment Board responsibility.

Ms. OATES. That is correct.

Mr. TIERNEY. And I have watched that happen. One thing is the training; the other is, in a tough economy, trying to connect people with the jobs that exist.

But in our district, and you can correct me if I am wrong because I know you have been up there, we have found a significant number of new jobs in the energy efficiency area and the energy manufacturing area, so our Workforce Investment Boards have actually been connecting people and trying to do more training that allows for internships and apprenticeships that give them some income while they are getting the skills and education, and then a transition because the employer now is familiar with the perspective employee and can bring them on. Is that something you have noticed as well?

Ms. OATES. That is absolutely right. And some of the models that are in Massachusetts are the same as California, quite frankly, and Maryland, that if you want to get a dislocated worker immediately to pay attention to upgrading their skills, you have a much better opportunity to do that if you put them in on-the-job training, because they don't want to sit home, they want to get back to work; and they are afraid, in this economy, if they sit home too long, there is not going to be a job. So they want to get back to work,

and those programs in all three of your States, quite frankly, have been the most productive.

Mr. TIERNEY. Thank you.

Chairman ISSA. Thank you.

The gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Mr. Chairman, I yield back.

Chairman ISSA. Ms. Oates, the gentleman from Massachusetts listed a number of jobs. Weren't most of those jobs jobs that in fact rely on subsidies? In other words, the boom in the industry of insulating new windows, that was a stimulus program, so you were creating job training for jobs that were created under the Stimulus Act in that case. That is where the boom in that industry has been.

Now, don't get me wrong, it is an energy savings, I am all for it, but the fact is some of the jobs that you are job training, the green jobs, were linked hand-in-hand with stimulus. To the extent they were windmills, they were mandated by State law to get a certain renewable, they were funded, they were given subsidies, and then you were producing training. So you were, in a sense, directly an arm of providing green jobs for green stimulus money that had created green opportunities for business. Solyndra and all the others, in one way or the other, benefited from either mandates to do or stimulus money or grants, correct?

Ms. OATES. I hesitate to say correct, sir. Again, with all due respect, I was educated in Massachusetts, I went to Boston College, and Massachusetts has been at the forefront of looking at how to do energy conservation——

Chairman ISSA. Right. But we are having a discussion about 3.1 million jobs that are constantly being touted by this Administration. Those jobs in fact include people who empty porta-potties, they include who print on a cup that says power savings. So not only do we have the misleading figures because we are counting jobs that have been around for generations. You testified here today that your green jobs, you went to find where there was a job opening, not necessarily where there could be.

What we are trying to understand is how significant is it when they claim 3.1 million jobs, and it appears as though it is not significant at all; that these are, to a great extent, $100,000 to create per job that is "lasting a year" and, at the end of the day, you simply took the money and did a jobs training program as the jobs existed. You weren't "training" for some magical new jobs; you were training for jobs that happened to exist, and if it was somebody operating a piece of software while working for a power company out on the power lines, you did it.

So I am all for what you are doing. I just want to make sure that we define that when the President is constantly touting 3 million new jobs, or Secretary Solis is, they are touting jobs that, under the definition, I think we would have a hard time finding them.

Let me switch subjects.

Ms. OATES. Sir, if I may. I can't answer making an if-then clause. So I just don't know if the people that we trained in Massachusetts with our dollars, and we trained a lot of them, were being trained for jobs that existed because of other government subsidies. I don't disagree with you, but I think you were asking me to say that those jobs were only created because of——

Chairman ISSA. Well, some of them were. That is all I was asking.

Ms. OATES. Yes, I don't disagree that there were jobs created everywhere. But I hope that we don't train for jobs because they get a Federal subsidy. We train for job——

Chairman ISSA. Let me run you through some questions here because you are here because we are having a green jobs counting discussion. Someone who assembles turbines, is that a green job?

Ms. OATES. Wind turbines?

Chairman ISSA. Yes, wind turbines.

Ms. OATES. I think we would call any kind of sustainable manufacturing fitting the definition——

Chairman ISSA. Does someone who sweeps the floor in a facility that makes solar panels, is that a green job?

Ms. OATES. I will give that to Jack, if you don't mind.

Chairman ISSA. Mr. Galvin?

Mr. GALVIN. We define—we have a two-part definition——

Chairman ISSA. We already had the briefing on that, so just answer the question. If you are sweeping the floor in a solar panel production facility, is that a green job?

Mr. GALVIN. If you ask me for the number of health care jobs in the United States, I will give you the employment from the health care industry.

Chairman ISSA. Look, Mr. Galvin, Mr. Galvin, you did not want to come here as a witness. You are not a delighted witness, so let's go through this. I asked you a question; you know the answer. Would you please answer it? If you sweep the floor in a solar panel facility, is that a green job?

Mr. GALVIN. Yes.

Chairman ISSA. Thank you. If you drive a hybrid bus, public transportation, is that a green job?

Mr. GALVIN. According to our definition, yes.

Chairman ISSA. Thank you. What if you are a college professor teaching classes about environmental studies?

Mr. GALVIN. Yes.

Chairman ISSA. What about just any school bus driver?

Mr. GALVIN. Yes.

Chairman ISSA. What about the guy who puts gas in the school bus?

Mr. GALVIN. Yes.

Chairman ISSA. How about employees at a bicycle shop?

Mr. GALVIN. I guess I am not sure about that.

Chairman ISSA. The answer is yes, according to your definition. And you have a lot of them.

What about a clerk at the bicycle repair shop?

Mr. GALVIN. Yes.

Chairman ISSA. What about someone who works at an antique dealer?

Mr. GALVIN. I am not sure about that either.

Chairman ISSA. The answer is yes. Those are recycled goods; they are antiques, they are used.

What about someone who works at the Salvation Army in their clothing recycling and furniture?

Mr. GALVIN. Right, because they are selling recycled goods.

Chairman ISSA. Okay. What about somebody who opened a store to sell rare manuscripts?

Mr. GALVIN. What industry is that?

Chairman ISSA. People sell rare books and manuscripts, but they are rare because they are old, so they are used.

Mr. GALVIN. Okay.

Chairman ISSA. What about workers at a consignment shop?

Mr. GALVIN. That is a green job.

Chairman ISSA. Does the teenage kid who works full-time at a used record shop count?

Mr. GALVIN. Yes.

Chairman ISSA. How about someone who manufactures railroad rolling stock, basically train cars?

Mr. GALVIN. I don't think we classified the manufacturer of railcars——

Chairman ISSA. Forty-eight point 8 percent of jobs in manufacturing railcars counted, according to your statistics.

About half of the jobs that are being used to build trains. Okay, how about just one more here. What about people who work in a trash disposal yard? Do garbage men have green jobs?

Mr. GALVIN. Yes.

Chairman ISSA. Okay, I apologize. The real last last is how about an oil lobbyist. Wouldn't an oil lobbyist count as having a green job if they are engaged in advocacy related to environmental issues?

Mr. GALVIN. Yes.

Chairman ISSA. Thank you.

With that, I go to the Ranking Member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. As I sit here and I listen to all of this, I live in the inner city of Baltimore and I think about, Ms. Oates, all of the young men and women who I see every day, I will see them this evening when I go home, and all they want is a job. If they get a shot at any of the jobs that the Chairman just mentioned, they would die for it. They want dignity; they want a job. They want to take care of their families; they want a job. They are not trying to get to Disney World; they are just trying to get to the local park with their family. They are not trying to buy $200 tennis shoes; they just want to buy a $10 pair at the bargain store. They want a job.

Job training, I think, is very, very important, and I want to applaud you for your efforts because I know of them, and I know that you don't just wear green today; you believe in what you are doing, and I appreciate it.

In May, the seasonally adjusted national unemployment rate for people whose highest educational qualification is a high school diploma was 8.1 percent and the rate for those without a high school diploma was 13 percent. The unemployment rate for people with a bachelor's degree or higher educational qualification was 3.9 percent. Given these numbers, it is critical that this Congress do everything in its power to create and support sustainable good paying jobs for working and middle class Americans.

William Dudley, the President of the Federal Reserve Bank of New York, said at the quarterly regional economic press conference one of the problems facing America's middle skilled workers is job polarization. He stated this: Over the past three decades, job oppor-

tunities have become increasingly concentrated in high wage, high skill occupations and low wage, low skill occupations, while job opportunities or those in the middle have been shrinking. At the same time, he says, there has been a growing gap in wages between jobs that pay the most and those that pay the least. Taken together, this phenomenon is often referred to as job polarization.

According to President Dudley, there are steps we can take to address this problem, and he said this: More than ever before, jobs are requiring a greater degree of knowledge and skills. In order to adapt to these changes, it is increasingly important for workers to acquire and upgrade their skills, whether through formal education or other forms of training.

Mr. Fillichio and Assistant Secretary Oates, can you describe the programs within DOL and ETA, for example, the Workforce Investment Act programs, that have helped employee middle skilled workers transition to new careers? Briefly.

Ms. OATES. Sure. I would be happy to start, Carl, if you have something to add.

ETA is really the part of the Department of Labor that does the lion's share of this work, although we do it with our friends at Vets and Office of Disabilities and Women's Bureau as well, but I think basically, to sum things up, we are really focusing on credentials, industry-recognized credentials that employers want. We are partnering with our friends both at HHS, mainly in Children and Families, the folks that are transitioning from TANF and our partners at Education. So, for instance, take somebody who has worked for 20 years. They could work in a factory and make a good salary, and that factory went away. Their high school diploma, if they have one, may not be enough to get them a new job in a new sector. But it is ridiculous for them to have to go to adult basic education and job training separately.

We have created integrated programs where people can upgrade their reading and math skills and their IT skills at the same time they are learning the new trade. So the easiest example for me to give you is somebody who doesn't read very well, but wants to get into health care. They don't need to learn to read a menu today; we shouldn't be paying for that. We should be teaching them how to read using medical vocabulary. And that is what we have done. We have those programs in Baltimore City and Baltimore County right now so that a 40-year-old who is dislocated doesn't have to learn to read before they can learn medical vocabulary or billing and coding.

So those are the kinds of things we have done.

Mr. CUMMINGS. And that is a very practical thing because that is real. I think a lot of folks just think that—I have heard all kinds of things like people don't want to work and there are people who can easily get jobs if they wanted to. There is a lack of jobs, unfortunately.

When I was listening to what you were saying a little bit earlier, I was thinking about the training. Training is very, very important and, unfortunately, training dollars have been slashed tremendously under Republican budgets, and I am just wondering if you are going to get somebody on their feet and make sure that they do not become a detriment to society and lose their dignity, I think

one of the things that we could do, and I think this is what Mr. Dudley was saying, is you have to give them some kind of training. Some folks think that folks can just walk into a job and automatically do a job.

I think what employers want, we often talk about what employers want. I think, and you can correct me if I am wrong, I think what employers want is a trained employee. They want someone who is going to come to work, going to do the job, going to do it well, and if they can have a trained employee from the very beginning, I assume that that would save them some money, and that is one of the reasons why they want a trained employee. Is that right?

Ms. OATES. Absolutely. It costs employers a fortune when somebody leaves after four or five weeks because they weren't the right fit for that job.

Mr. CUMMINGS. The other thing, the flip side of that is when they have to train, if they can find programs or whatever to train these folks before they get there, then they don't have to spend resources training people, is that right?

Ms. OATES. That is exactly right.

Mr. CUMMINGS. Another thing that is very interesting is that when we look at these folks, the ones that I talk about, the ones that I see every day, while they may train in these areas, they are given skills that hopefully are transferrable. In other words, they may not have a job today, or they may get a job and the job may not last but so long, but at the same time they get skills and hopefully, as I tell folks all the time, sometimes you have to tread water until you can swim. So I assume that that is part of your philosophy, too; even if you can't get something right away, what you want to try to do is make sure that you give them the skills to be able to fend for themselves and hopefully get a job.

Ms. OATES. That is exactly right. And we do it on a core competency model so that, for instance, the same basic core competencies could be for construction as well as the utility areas. And then as people demonstrate through the acquisition, passing a test, performance-based test usually, to get an industry-recognized credential, that is what makes it really transferrable. It is not just that Jack said Jane could do the job; Jane has an industry-recognized credential, an assessment that she can show a new employer.

Mr. CUMMINGS. So whether you call it a green job, a blue job, or a purple job, the fact is that they get training and hopefully they will be able to acquire a job.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

We now go to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Galvin, you are the Acting Commissioner of the Bureau of Labor Statistics.

Mr. GALVIN. Correct.

Mr. CONNOLLY. The Chairman made note a little while ago that our former colleague, now the Secretary of Labor, was herself the author of some of the environmental legislation that seems to guide the whole issue of classification of green jobs. Just to clear that up,

has the Secretary herself personally intervened to ensure that jobs, green jobs get classified or reclassified as such?

Mr. GALVIN. No, she has not. In developing our definition, we did a very thorough survey of what other Federal statistical agencies around the world had done. We looked at what various States had done. We talked to, as Mr. Hall said earlier, experts in other Federal cabinet agencies with sort of a green portfolio, the Environmental Protection Agency, the Department of Energy, for example.

We came forth with a draft definition, published it in the Federal Register Notice for comment by the American public, got something like 150 comments, processed them, made some changes, and then came out with our final definition. In all of our responsibilities, we have complete independence in the development of——

Mr. CONNOLLY. The Secretary hasn't called saying, hey, don't make me look bad because I am the author of that legislation?

Mr. GALVIN. No.

Chairman ISSA. Would the gentleman yield for a second?

Mr. CONNOLLY. Yes.

Chairman ISSA. Thank you.

Mr. TIERNEY. As the other author of that legislation, and I can tell you as the one who started the legislation and was happy to be joined by the Secretary, this did not start as a subset of the Recovery Act; this started as a separate bill when my State made clear to me, through the employers or whatever, that they had emerging technology areas in clean energy and clean technology and clean manufacturing, and had a need for people that were trained in that area.

I would suggest that there is a good showing that the global energy efficiency and renewable use industry internationally is going to grow by billions of dollars, going from 3 percent to 15 percent of energy generation on that time by clean energy by 2035. Some $6 trillion of money will be invested. And this Country wanted to be a leader in that area internationally, and my State, North Carolina, and others wanted to be a leader within this Country.

Mr. CONNOLLY. I thank my colleague.

Chairman ISSA. If that were the case, we needed to have people that were able to take those jobs because you need capital and a workforce that can do it.

Mr. CONNOLLY. I thank my colleague.

Chairman ISSA. Thank you.

Mr. CONNOLLY. And let me ask my colleague what year was that legislation before the stimulus?

Mr TIERNEY. I think we started drafting that in 2008, early 2009, but I think 2008.

Mr. CONNOLLY. Okay. I thank my colleague.

But in listening to some of the comments and some of the questions about this, is the idea of classifying jobs in a particular category sui generis? I mean, it is unique to green jobs, it has never happened before in the BLS, Mr. Galvin?

Mr. GALVIN. No, absolutely not.

Mr. CONNOLLY. Oh, when else has it happened?

Mr. GALVIN. Well, you know, we have——

Mr. CONNOLLY. Quickly, Mr. Galvin.

Mr. GALVIN. Okay. Really, our insight for defining green jobs are two that came from our previous efforts to define high-tech jobs.

Mr. CONNOLLY. Would IT jobs be an example? Including the existing jobs, but reclassified so that we have a broad band category to identify what people are doing, is that correct?

Mr. GALVIN. Correct.

Mr. CONNOLLY. Now, what about the criticism that in our eagerness to classify and reclassify jobs as green jobs, we have taken century-old jobs that were there long before anyone thought of them as green jobs, sewer jobs and all kinds of jobs that seem silly, and we are just tripping over ourselves to redefine things as green so we have a good number? Why would the BLS be doing that?

Mr. GALVIN. Well, the BLS put the data together in a way which clearly breaks down each industry's worth of green jobs, and users who disagree with regards to our judgments regarding some industries, as to whether they are producing green outputs or not, can remove the employment associated with those industries from our numbers. But, again, this was an exercise just like defining high-tech jobs. There is no OMB definition for high-tech; it was our responsibility to look at existing jobs, decide which ones we wanted to classify as high-tech, and then count them up.

Mr. CONNOLLY. So despite the negative inferences to the contrary, what you are trying to do, as you have done before in the modern economy, is aggregate jobs in some broad classification so we can better understand the nature of the workforce and what people are doing, and create a baseline so we can measure is it growing or shrinking.

Mr. GALVIN. Correct. To provide usable, measurable definitions and data.

Mr. CONNOLLY. Sounds socialistic to me.

My time is up. Thank you.

Chairman ISSA. Thank you.

I now recognize myself.

Mr. Galvin, when you were doing high-tech jobs, did they include a portable toilet emptying people? Did they include people who manufactured steel? Did they include people who did garbage job or ran recycling centers, sold used high-tech equipment? Were those high-tech jobs?

Mr. GALVIN. Not that I recall.

Chairman ISSA. Okay, so as is probably not true, but has been attributed to the late Joe Stalin, it is not the vote that counts, it is he who counts the votes. Ultimately, it is about whether or not the count is selective or whether it is not.

You are not a political appointee, you are a career professional. If you were given the ability to reduce, for greater accuracy, true high-tech, would the number be smaller than it was in the past, since the gentleman mentioned that? In other words, if you could say, well, I would like to really make this very focused on high-tech, could you make the number a little smaller and reflect more directly "high-tech?" And I know high-tech is a tough one. Let's say biotech. If you were going to try and do biotech, you probably wouldn't include the person sweeping the floor in biotech; you would try to only look at the jobs created for which those high skills and what we assume biotech is about.

In the case of green jobs, when we count nearly 50 percent of everybody making a box car for a train as high tech and everyone driving a transit bus, aren't we in fact inflating the number beyond what is the reasonable expectation by somebody who hears a quote, 3.1 million new green jobs?

Mr. GALVIN. No, in that methodology we are counting green jobs the same way we count jobs in any industry.

Chairman ISSA. Okay, I guess we are just going to assume that emptying porta-potties is a green job and that it is a fair counting, and I guess we will go on.

Mr. Fillichio, you are probably the most important person here today. I assume you have read the Sandia Lab report?

Mr. FILLICHIO. I have, sir.

Chairman ISSA. Would you agree to provide this Committee a copy of that report, a full copy?

Mr. FILLICHIO. Mr. Chairman, the Department of Labor's lockup is still operating under the conditions that Sandia looked at, so it wouldn't be prudent to release the report just yet. As you know, we are trying very hard to change that system on July 6th. After July 6th, or after the situation that we have where we no longer are operating under what Sandia looked at, we would be happy to explore with the Committee how to release that.

Chairman ISSA. So you are refusing to give us the information based on an assumption that we cannot look at your vulnerabilities and your proposed rulemaking and make an analysis? I am not asking to post it on the website; I am asking you to release it to the Ranking Member and myself.

Mr. FILLICHIO. Mr. Chairman, we are dealing with security issues, and making that report public while we are still operating——

Chairman ISSA. We are not asking you to make it public. Will you make it available to this Committee?

Mr. FILLICHIO. I would——

Chairman ISSA. Our people asked and your people said no, so I am asking you.

Mr. FILLICHIO. If I could get back to you today, Mr. Chairman, I would consult with our staff and we will get back to you today on that, if it is just to the two of you.

Chairman ISSA. We are looking at it being an embargo document, but it is very hard to look at your rules and your negotiations without knowing what was in that report.

Mr. FILLICHIO. I understand, sir.

Chairman ISSA. Thank you.

I am going to ask you just a few questions. I am old tech geek, so I apologize if these don't seem like the questions you expected. But was there any reason that you couldn't have come up with a standard that, for example, instead of your producing at your cost a line for these folks to send out T1, T3, whatever you are sending out, couldn't you have in fact specified and had specific standards and limitations, but had these reporting entities use their own dime to produce their own lines? Is there any reason that you could not have put the burden on, if you will, the editorial folks?

Mr. FILLICHIO. Mr. Chairman, the way that the lockup is set up, the burden is shared by almost everybody, with most of the burden carried by the Department of Labor.

Chairman ISSA. Well, let me ask you the question. What is the cost of operating the lockups? You use them 10 times a month. What is the budget for that?

Mr. FILLICHIO. There is no set budget; it comes out of——

Chairman ISSA. So you don't know what it costs to do lockups?

Mr. FILLICHIO. I don't, sir.

Chairman ISSA. Do you know what the cost of the Sandia report was?

Mr. FILLICHIO. I do, sir.

Chairman ISSA. How much was that?

Mr. FILLICHIO. We entered into a Memorandum of Understanding with Sandia. We obligated a little over $184,000; we spent $70 of it. I think we will spend probably $20 more in the next phase of this——

Chairman ISSA. So it is a contract of performance where they come back and forth, so it is an ongoing contract.

Mr. FILLICHIO. And we will probably not use about $80,000 to $90,000 of that money.

Chairman ISSA. Use what you need to be secure. I don't think anyone from the dais is disagreeing with that part.

Well, let me just ask the hypothetical. If you have private sector willing to spend their own money to move data, and this is a burst data, this is dated in which you don't use the bandwidth at all for hours and hours, and then you need a tremendous amount and, as was mentioned earlier, you had a fairly catastrophic crash of your own system. If you have private enterprise willing to spend their own money, wouldn't it, from a tactical standpoint of protectors of the taxpayers, wouldn't it be better to put the burden on them, whenever possible, to pay their own way, rather than, as is proposed, that you have the taxpayers pay for their dissemination of information?

Mr. FILLICHIO. Mr. Chairman, one of the things that we have been exploring over the past month is better ways than what we proposed. And as you well know, we are in a much better place with the media organizations. I know that there are some rules where we cannot accept, there were some proposals made by the media organizations that would constitute a gift to the Federal Government, and we couldn't accept that. But I think we are being very creative and very innovative, and balancing our security concerns with their business and public responsibilities to find a solution

Chairman ISSA. We could probably just come up with a tax. That is how we do gifts to the Government, we just tax them. So I am sure there is a creative way to do that.

Let me just close with a question that is most important for this hearing and why we wanted you here today. Would you commit to this Committee to stay the June 15th deadline unless a final agreement is met, and then reset that deadline for this transition to a date sufficient for whatever is agreed to? In other words, here we are less than two weeks away. If you were to implement your rule today, without change, it would be a very short period of time.

Quite frankly, I think both the Ranking Member and I would be concerned. Would you agree to have a rolling stay on that while these negotiations that both of you have said have been fruitful so that we can have confidence that it will in fact be, as I am sure you really want it, a mutual buy-in by the fourth estate and yourself?

Mr. FILLICHIO. Mr. Chairman, I am very anxious for this to work, and I am very anxious for you to have confidence in the security of our data and the security of our processes, our procedures, and our protocols. We are exploring with the media organizations fudging the time line a little bit, where we can get some things done by July 6th. We would prefer to. The more we can get done by July 6th, I think the better off we would be.

Chairman ISSA. So translating that, I think, for both of us, we certainly are not asking—if you have anything that is agreed with in this get-together with the press involved, we have no problem with implementing. But to the extent that you have not resolved issues, could you stay it and inform the Committee on a periodic basis of, if you will, the new date while you continue to negotiate additional items?

Mr. FILLICHIO. I would be very happy to.

Chairman ISSA. I would be pleased. Thank you.

Mr. CUMMINGS. Would the Chairman yield?

Chairman ISSA. Yes, I would yield to the gentleman.

Mr. CUMMINGS. I just want to say that, Mr. Fillichio, I agree with what the Chairman just said. It seems like there is an issue of balance and it sounds like the parties are acting in good faith, and I just think it is the right thing to do to have that flexibility until you all can get done what you say you are going to get done. I am glad you said what you said and I am urging you all to provide that flexibility so that nobody will be, I don't want to say penalized because that is not the right word, but nobody should suffer as a result of the inability to get this worked out.

I have full faith and confidence that it will be, but at the same time I think it is important that we give the media folks the comfort of knowing that they have room to do that without suffering any kind of undue hardship.

Chairman ISSA. I thank the gentleman.

I thank you for your bearing with us on a hearing that uncommonly was somewhat on two unrelated, but related, somewhat, subjects. It is not often, but thank you for being here for both of our hearings.

We stand adjourned.

[Whereupon, at 12:49 p.m., the committee was adjourned.]

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Opening Statement
Ranking Member Elijah E. Cummings

Hearing on "Addressing Concerns about the Integrity of the U.S. Department of Labor's Jobs Reporting"

June 6, 2012

Mr. Chairman, thank you for holding today's hearing, which appears to focus on two very different topics involving the Department of Labor and the Bureau of Labor Statistics.

The first topic is "the integrity of DOL's jobs reporting." The Department of Labor strikes a balance between preventing the unauthorized release of key economic data and providing journalists with access to that data ahead of time so they can prepare their stories with context about the broader employment situation.

This balance is important. The media are the public's eyes and ears, so it is critical that they have the access necessary to ensure that they have a thorough and accurate understanding so they can place it in context.

A leak of this data could have negative consequences. For example, in the hands of certain traders, early access to this data—even if just by a few seconds—could allow their powerful computer trading algorithms to manipulate markets and reap millions of dollars.

That is why the Department and other data reporting agencies employ procedures to prevent unauthorized releases.

Recently, the Department of Labor hired Sandia National Laboratories—which oversees the security of our nuclear arsenal—to evaluate whether changes were needed to meet the new security requirements of today's constantly changing technological environment.

Sandia found significant vulnerabilities in the Department's procedures and recommended steps to mitigate those risks. Sandia also warned that those seeking to break current security controls are "profit-driven, technically sophisticated individuals or organizations who may have considerable resources at their disposal."

Acting on Sandia's recommendations, the Department announced new controls on hardware and software in the lock-up environment. In addition, the Department has now

excluded specific firms that sought access to sell data to Wall Street traders a fraction of a second before other traders see it.

Initially, some in the media complained that the Department's proposed changes were too restrictive, and these complaints appear to be the impetus for today's hearing. Over the past month, however, the Department has worked with press outlets to accommodate their concerns while enhancing security. We anticipate that there will be additional announcements regarding these ongoing discussions.

The second topic of today's hearing appears to be how the Department of Labor calculates the number of "green jobs" in the U.S. economy. This is the third hearing the majority has called on this topic and the third time Department of Labor officials have testified before us.

Last July, the Brookings Institution issued an important report on "green jobs" with the following findings:

- First, green jobs employ almost 2.7 million Americans—more than the fossil fuel industry and twice the size of the bioscience sector.
- Second, the green economy has expanded at greater rates than the economy as a whole.
- Third, the green economy offers considerable and more highly paid opportunities for low and middle-skilled workers.
- Fourth, the green economy is manufacturing and export intensive, both of which are critical for America's future.

Since this report was issued, the Bureau of Labor Statistics estimated that the number of "green jobs" is even higher, reporting that over three million jobs that have helped rebuild our economy.

This news should be welcomed by policymakers in Congress. Unfortunately, this Committee seems more intent on challenging the methodologies used by Bureau of Labor Statistics rather than helping put people back to work.

I thank the witnesses for being here yet again today, and I look forward to their testimony.

U.S House of Representatives
Committee on Oversight and Government Reform
Hearing on "Addressing Concerns About the Integrity of the U.S. Department of Labor's Jobs Report"
Questions for the Record

1. **How much does the Department spend each month to run its lock-up facilities? What are the costs associated with each embargo lock-up maintained by the Department? How many personnel are involved in managing the embargo lock-up, and at what cost? How much of these costs are covered by news organizations seeking to participate in the lock-ups conducted by the Department, and how much is covered by the Department?**

The primary costs of running the lock-up facility include staff time, office supplies, utility charges, and monthly rental fees (the Department rents its headquarters building from the General Services Administration). DOL facility staff report that rental and security charges are $1,519 a month for the 700 square foot lock-up facility. Utility charges are not easily measured but facility staff considers them to be negligible (less than one-tenth of one percent of utility costs for the building). Supplies per month are under $200.

Because the number of lock-ups per month varies, and the number of staff required to manage and provide technical expertise at each lock-up depends on the nature of the news release, it is difficult to quantify specific costs related to staff time.

For example, each month the Department may hold 12 lock-ups, most lasting 30 minutes each and requiring total staffing for one hour and 45 minutes each, accounting for time spent from when members of the news media arrive to when they leave. An additional half hour is required about once a month when the Bureau of Labor Statistics (BLS) and the Employment and Training Administration (ETA) have releases on the same day. The print media component of the lock-up requires the presence of two staff members from the Office of Public Affairs (OPA) to manage the proceedings (this assignment is rotated among about 11 staff members, ranging in grade from GS-7 to GS-15), and several senior-level staff members from BLS and ETA to provide technical expertise, depending on the release. The television component of the lock-up – which occurs with less frequency – is overseen by one OPA staff member.

The Department also permits news organizations to come in for a two-hour technical maintenance window each week, which requires the presence of staff from OPA and BLS information technology specialists. Additionally, the GS-15 OPA employee responsible for running the lock-up and her staff spend a varying number of hours each week responding to inquiries from the credentialed news organizations.

Estimated staff costs have been broken down in the chart below:

DOL Agency	Cost Per Month*	Cost Per Lock-up**
BLS	$10,000	$2,000
OPA	$15,000	$1,000
ETA	$300	$75

*The "Cost Per Month" column encompasses both staff time related to actual lock up events, as well as staff time for related activities outside scheduled lock-ups.
**The "Cost Per Lockup" encompasses staff time related to actual lock up events.

BLS, OPA, and ETA cover 100 percent of their own costs for the lock-up facility. None of the costs are either paid directly or reimbursed by any outside organization.

2. **Using the internet and social media, the Department could disseminate BLS reports by simply posting them in their entirety on the BLS and Department websites. Would the general public be able to access the BLS reports and data as readily as they do today if no lock-ups were conducted?**

BLS has disseminated its data directly to the public via its website since 1994. The BLS website includes additional data for each news release that cannot be provided in the lock-up facility due to the volume of data. Currently, about four million customers visit the BLS website each month to obtain this information. The elimination of the lock-up facility would not impact the ability of the general public to access BLS data from the website.

3. **Should organizations that participate in the lock-up process pay some of the costs associated with lock-ups if they continue?**

Under prevailing law (31 U.S.C. § 3302(b)), DOL would be required to deposit any funds received from participating news organizations into the Treasury, "without deduction for any charge or claim." Thus, DOL would not be able to use such funds to defray costs associated with running the media lockups.

July 30, 2012

Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143
ATTN: Sharon Casey

Dear Chairman Issa:

Attached please find answers to the questions posed on July 16 by Ranking Member Elijah Cummings and Representative Jackie Speier.

Sincerely,

Robert Doherty
General Manager, United States
Reuters News

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Q1: Why does your firm need pre-release access to embargoed principal economic indicators? How does such early access by your organizations benefit the broader taxpaying population?

A: Thomson Reuters believes pre-release access is important in promoting accurate dissemination of such sensitive information because it provides journalists with the necessary time to review and understand the information – and, at times, to pose questions about it to government experts – before transmitting their stories. For example, the monthly unemployment report released on July 6 included a 2 ½-page news summary and 35 pages of accompanying information. The Consumer Price Index report released on July 17 included a two-page news summary and 37 pages of accompanying information. The pre-release access allowed our journalists time to go through those documents and then to publish accurate, informed and reasonably detailed stories that were available on Reuters.com and other free websites after the embargo was lifted at 8:30 a.m. Our initial story on CPI was 15 paragraphs in length, two-thirds of which was new information; our July 19 story on weekly jobless claims included contextual information from a department expert explaining why claims data in July is volatile. We believe it benefits the public to have access to these types of informed stories soon after the embargo is lifted. We believe that simply putting out the reports on a government website in lieu of a lock-up could increase the chances of reporting errors because, despite their best efforts, journalists would have no time to review the reports on a pre-release basis before quickly sending out initial stories on this newsworthy information. We also believe it would delay the transmission of full stories because, rather than having time to complete stories in a lock-up, journalists likely would initially file just a paragraph or two to get out first word. Further, we would be concerned that it could prove hard to access a website maintained by the government as the only source of the data because the site could be overstressed by the demands placed upon it by interested members of the public, including individual and institutional investors, and the media that would no longer have pre-release access.

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Q2: How much revenue does your company earn from subscribers who receive reports on principal economic indicator data developed by your company in a lock-up situation? How much revenue does your company receive from releasing the data to high-frequency, computer-automated traders? How many paid subscribers receive data and analysis on principal economic indicator data developed by your firm in a lock-up situation?

A: Thomson Reuters generates income from subscribers to its news feeds, including customers to its agency businesses, subscribers to its financial and professional terminals, and subscribers to algorithmic feeds. None of those products include only information from DOL lock-ups or U.S. Government lock-ups. Among those receiving stories and data from U.S. Government lock-ups as part of the information they receive from our company would be some of our global audience of 400,000 financial professionals, 1,700 text media clients and 600 TV clients. Overall, we estimate that our news reaches over 1 billion people per day.

Q3: How much trading volume is associated your company's release of the data to paid subscribers? How long after the end of an embargo period are analyses developed by your firm made available to paid subscribers and at what time are these same analyses made available to the general public without a subscription?

A: We have no estimate of how much trading of any instrument is associated with our publications in connection with this or any other story or data set we publish. We do not embargo the information – headlines, story, table, data – we provide from the Labor lock-up. It is released as soon as possible after the Department turns on its master wall switch. The story we file from the lock-up goes to our team at Reuters.com, our free public site, who then post it for the large global audience that reads Reuters online. Reuters.com will also publish a "breaking news" banner headline from the lock-up on a major economic report ahead of the full story. Additionally, we provide the story, either directly or through our online reports, to media subscribers, many of whom have websites that are free to the public. (Our July 26 weekly jobless claims story, for example, was posted to The Huffington Post's Money page at 8:31 a.m.) Our stories can also found be via a news aggregator like Google, which the public can access for free. Coverage of weekly jobless claims on July 19 provided the main business headline on Google News shortly after the data was released. Within 30 minutes, Google News reported the story from 50 sources, including lock-up participants Reuters, the Associated Press, Bloomberg, and Dow Jones and various media sites using the news agency stories. Reuters estimates we reach millions of U.S. consumers through our own website and partners like Yahoo!, MSNBC.com and Huffington Post.

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Q4: Principal economic indicator data are developed with the use of public funds and meant for broad public access. How does providing a select group of news organizations with pre-release access to principal economic data ensure a "level –playing field"?

A: The Labor Department has told news organizations it "embraces the goal of maximizing the public's access to informed discussions about the data when they are released by providing pre-release access for the press to final statistical products." As indicated in our previous answer, we believe the presence of Reuters and other news agencies in the lock-ups assures the widest possible publication of this crucial data as it is released because stories produced by these trusted news sources are available on multiple free sites.

Q5: How do you propose preventing high-frequency, computer-automated traders from taking advantage of the early release process when technology outpaces data protection efforts.

A: Thomson Reuters understands the responsibility of the Department of Labor to implement lock-up rules to guard against any premature release of the information and believes it is in everyone's interest that the Department does so. We have worked with the Department over the last few months as it has moved to implement changes it believes necessary to improve the security of its lock-up and protect its data. Some changes took place on July 6. Others will take effect on Sept. 5. We will abide by lock-up rules designed to prevent premature release of the Department's data and continue to work with the Department if it believes additional changes are necessary.

Q6: Would you agree that technology has outpaced the need for DOL to provide pre-release access to principal economic indicator data in a lock-up setting during an embargo period? If so, why and, if not, why not?

A: No, we would not agree. For the reasons provided in our answer to your first question, we believe lock-ups remain essential to promoting accurate and authoritative stories about this important data. Advances in technology cannot substitute for allowing journalists a brief period of time to review the data being released, to ask questions of Department experts if necessary to make sure they understand the data and put it in context, and to double-check the information is correct before they publish their stories. Embargoes are used in many instances by government agencies and private sources to ensure journalists have the time needed to digest complex information to produce stories that are clear to readers.

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Q7: Would you be willing to release to the public at no cost all reports and analyses generated by your firm during pre-release access to principal economic indicators in a lock-up setting?

A: As mentioned in our answers to questions 1 and 3, we already provide our main story and, often, our main headline, from the lock-up free to the public via Reuters.com. The story also is available at no cost to the public on free sites of other media organizations that take the Reuters service, as well as via Google News. We would not make the data and tabular material we provide paid subscribers available free to the public just as we limit distribution of much of the content we produce to paying customers.

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Answers from Mr. Daniel Moss, Executive Editor, Economy, Bloomberg News

Hearing before the U.S. House of Representatives' Committee on Oversight and Government Reform

"Addressing Concerns about the Integrity of the U.S. Department of Labor's Jobs Reporting"

1. Why does your firm need pre-release access to embargoed principal economic indicators? How does such early access by your organizations benefit the broader taxpaying population?

A—"The Information Quality Act of 2000" directed OMB to issue government-wide guidelines to ensure the quality and utility of data collected for statistical purposes. OMB has stressed that giving media pre-release access to data fosters "improved public understanding of the data when they are first released and the accuracy of any initial commentary about the information contained in the product." Congress got it right in 2000, and the broader public has benefited from this increased accuracy. In our case, the more than 310,000 subscribers to the Bloomberg Professional service (BPS) benefit; the members of the general public whose pension funds and personal accounts are managed by professional investors utilizing the BPS benefit; the millions who access Bloomberg content via Bloomberg Television, Bloomberg radio, Bloomberg websites, Bloomberg mobile applications, Bloomberg Businessweek or Bloomberg Markets magazines benefit; and those who access this content thru any of the hundreds of newspapers in which Bloomberg News is syndicated benefit.

2. How much revenue does your company earn from subscribers who receive reports on principal economic indicator data developed by your company in a lock-up situation? How much revenue does your company receive from releasing the data to high-frequency, computer-automated traders? How many paid subscribers receive data and analysis on principal economic indicator data developed by your firm in a lock-up situation?

A—The Bloomberg Professional service is a subscription service which provides clients with access to in-depth news and information – including more than 40,000 analytics, data on millions of financial instruments, and more than 5,000 stories daily – for a single fee of $1,500 per month. Given the subscription model, it can't be discerned what revenue could be attributed to reporting the release of lock-up data, or what revenues are received from algorithmic traders. We believe it is fair to conclude that no one subscribes to the BPS simply or primarily to receive lock-up information. All of our subscribers receive the same data and analysis developed in the lock-up. Non-subscribers also receive much of this data and analysis, including via the Bloomberg website.

3. How much trading volume is associated {with} your company's release of the data to paid subscribers? How long after the end of an embargo period are analyses developed by your firm made available to paid subscribers and at what time are these analysis made available to the general public without a subscription?

A—The monthly employment numbers are truly "market moving". They serve as a benchmark for a substantial volume of trading. That said, it is extremely difficult to estimate what trading volume is connected to a particular story from a given news agency. Much of the analysis we develop for paid

subscribers is simultaneously placed on our website and hence available to the general public. (Since our subscribers receive data and analysis via dedicated lines with low-latency, they will receive this data several seconds before it appears on the internet, even though the analysis is distributed simultaneously.)

4. Principal economic indicator data are developed with the use of public funds and meant for broad access. How does providing a select group of news organization with pre-release access to principal economic indicator data ensure a "level playing field"?

A—We applaud the observation that data developed with public funds is meant for broad, simultaneous, public access. This is an idea which – while self-evident to us – has been threatened or repudiated in many government forums.

To understand how the lock-up provides a "level playing field" let us project what would happen in a modern market if the lock-up didn't exist, and if market moving numbers were simply posted to the internet. At least three things would occur: (1) a small number of algorithmic trading firms would "co-locate" expensive trading equipment next to the nearest internet server, granting them a substantial advantage in markets which trade in fractions of seconds; (2) firms that are large enough to have their own research capacity would be poised to rapidly analyze numbers, giving them an advantage over smaller firms which lack that capacity, as well as an advantage over the general public; and (3) the website posting the numbers would be prone to crash, either due to sheer capacity issues (as occurred at DOL with the release of employment numbers last August); or thru cyber attacks. By contrast, the lock-up process --- with news agencies utilizing their own software, hardware and dedicated lines – permits a large tranche of the market to receive the data simultaneously, with accurate analysis that puts the public and small firms that lack a research capacity on a similar footing to larger firms, while ensuring the data is transmitted securely. As anticipated by OMB in implementing "The Quality Information Act" the lockup had clearly encouraged a "level playing field" for distributing important data.

5. How do you propose preventing high-frequency, computer-automated traders from taking advantage of the early release process when technology outpaces data protection efforts?

A—Technology has not outpaced data protection efforts. Over the course of this extensive debate, critics of the lockup have failed to cite a single instance of a deliberate effort to deploy advanced technology to circumvent the "kill-switch" and the current lockup rules. Interestingly, the Sandia Report – which DOL argued served as the basis of their April proposal – states that the "root cause for the issues driving this assessment is the possible presence of algorithmic traders and/or their agents in the press lockup facility." It is not hard to distinguish between authentic news gathering organizations – which employ reporters and broadly distribute a work product – and traders. While there has been no demonstrated leakage, certainly tightening access to the lockup – as DOL has done – is prudent.

6. Would you agree that technology has outpaced the need for DOL to provide pre-release access to principal economic indicator data in a lock-up setting during an embargo period? If so, why, and if not, why not?

A—See above.

7. Would you be willing to release to the public at no cost all reports and analysis generated by your firm during pre-release access to principal economic indicator data in a lock-up setting?

A—We do release to the public at no cost – via Bloomberg's website – the analysis generated during the lockup.

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