

DEPARTMENT OF LABOR

2020 Regulatory Plan

Executive Summary: Recovering from the COVID-19 Pandemic and Getting Americans Back to Work

The Department of Labor's mission is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. The Department advocates for employees by ensuring that employers are held accountable for their legal obligations, while helping employers understand and comply with the many laws and regulations affecting their workplaces.

The Department continues to focus on creating jobs and ensuring employee protections, while supporting the labor market's bounce-back to its historic pre-pandemic levels. Before the COVID-19 pandemic, the unemployment rate was at a 50-year low, and African Americans, Asian Americans, Hispanic Americans, and persons with disabilities all matched or achieved their lowest unemployment rates on record. During an unbroken streak of monthly job growth under President Trump, Americans were coming off the sidelines of the labor market and wages were rising, with low-income workers' wages rising most quickly.

As the pandemic that originated in China began to take hold in the U.S., the Labor Department moved swiftly to work with the White House, other federal agencies, and the Congress to protect and support the millions of affected workers. Departmental agencies provided guidance to the States on flexibilities they had in their unemployment programs to assist workers and families affected by the virus, quickly implemented the first-ever paid leave requirements for the private sector under the Families First Coronavirus Response Act, and launched the most substantial federal unemployment assistance program in U.S. history, pursuant to the CARES Act. The Department mounted an intensive effort to show workers and employers how to protect their workplaces from the coronavirus, and responded to thousands of complaints and calls of concern regarding the virus in the workplace. Every agency in the

Department played a role in addressing the challenges posed by the virus, from the crucial workplace insights provided by the Bureau of Labor Statistics, to the Women's Bureau's response to particular hurdles the virus has posed for women in the workplace. Through the Department's efforts, millions of Americans have received supplemental federal unemployment benefits, and millions more have begun returning safely to the workplace.

The Department has furthered these goals while avoiding placing unwarranted regulatory burdens on business investment and job creation. Eliminating unnecessary regulations was central to the labor market's historic strength before COVID-19, and remains crucial as the recovery continues. The Department will continue to pursue deregulatory efforts that support growth and job creation, and which promote regulatory simplicity and clarity.

At the same time, the Department will continue to impartially and effectively enforce the laws under its jurisdiction. A vigilant enforcement program is vital to its mission, and employers that disregard their legal responsibilities will be subject to enforcement. Meantime, for the vast majority of employers that do aim to keep their workplaces safe and honor their wage and pension obligations, the Department provides transparent, easily accessible, and concise compliance assistance. The Office of Compliance Initiatives and Employer.gov gives employers the resources they need to fully comply with their legal obligations, and Worker.gov makes employees aware of their rights.

The Department of Labor's Regulatory Plan for Accomplishing These Objectives

In FY 2019, the Department issued numerous final rules that reduced regulatory burdens on American businesses and their employees, leading to \$7.96 billion in present value cost savings under Executive Order 13771 accounting. From FY 2017 through FY 2019, the Department ranked as the second-most deregulatory agency in the federal government with \$11.86 billion in savings, which was 23 percent of the Trump Administration's overall savings across 25 departments and agencies. Over that period, the Department took more than 12 deregulatory actions for every significant regulatory action, which exceeded the Administration's overall ratio of nearly 8-to-1. At the same time, in FY 2019, the Department increased workplace safety inspections and set records for the collection of back wages and recoveries for benefit plans.

The Department continues to clarify regulatory obligations by prioritizing notice-and-comment rulemaking over sub-regulatory guidance. Since President Trump signed Executive Order 13891 in October 2019, the Department has rescinded nearly 3,200 guidance documents that were obsolete, harmed economic growth, or claimed binding legal authority without statutory or regulatory basis. The remaining guidance is now housed in a single, consolidated, and searchable online database. Through this and other ongoing changes, the Department's regulatory processes and requirements are becoming more transparent.

The Department's regulatory plan will continue to make employers' legal obligations clear and easily identified, while respecting the rule of law. The Regulatory Agenda is consistent with the requirements of Section 1 of Executive Order (EO) 13771 "Reducing Regulation and Controlling Regulatory Costs," 82 FR 9339 (January 30, 2017), which recognizes that "it is essential to manage costs associated with the governmental imposition of private expenditures required to comply with Federal Regulations."

The Department's Regulatory Priorities, by Agency

The Department's Employment and Training Administration (ETA) oversees administration of federal job training and worker dislocation adjustment programs, federal grants to states for public employment service programs, unemployment insurance benefits, and foreign labor certifications. ETA proposes to update its regulations regarding the H-2A non-immigrant visa program by making necessary technical improvements and streamlining the overall function of the program.

The Office of Federal Contract Compliance Programs (OFCCP) ensures that federal contractors and subcontractors take affirmative action to ensure equal employment opportunity, and prevents contractors from discriminating on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. OFCCP has strengthened regulatory clarity and fairness by codifying certain procedures OFCCP uses to resolve potential violations of law. Additionally, OFCCP proposes to clarify the scope and application of the religious exemption under Executive Order 11246 so that religious organizations with federal contracts better understand how they may properly continue to act in accordance with their sincerely held religious beliefs. The Department

also proposes to implement Executive Order 13831, “Establishment of a White House Faith and Opportunity Initiative,” to provide clarity regarding the rights and obligations of faith-based organizations participating in the Department’s programs.

The Department’s Employee Benefits Security Administration (EBSA) works to protect the benefit plans of workers, retirees, and their families. In one rule directed primarily at retirement benefits, EBSA is protecting benefits by requiring plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action. In a second primarily retirement-related proposal, EBSA proposes to modernize fiduciary practices related to proxy voting and other exercises of shareholder rights associated with ERISA plan investments in order to protect the interests of participants and beneficiaries by ensuring that proxy voting decisions and other exercises of shareholder rights are solely in the interest of, and for the exclusive purpose of providing plan benefits to, participants and beneficiaries.

Additionally, EBSA, along with the Departments of HHS and Treasury, issued final rules to implement portions of the Executive Order 13877, “Improving Price and Quality Transparency in American Healthcare to Put Patients First,” by requiring group health insurers to make available health care prices and enrollee cost-sharing information so that enrollees, employers, and other stakeholders can better understand potential out-of-pocket costs and make more informed healthcare purchasing decisions. And, EBSA proposes to provide greater flexibility for certain grandfathered health plans to make changes to certain types of cost-sharing requirements without causing a loss of grandfather status.

The Occupational Safety and Health Act (OSH Act) serves to assure safe and healthful working conditions for working men and women. The Occupational Safety and Health Administration (OSHA) proposes to initiate the small entity review panel authorized by the Small Business Regulatory Enforcement Fairness Act to protect workers in the healthcare setting from workplace violence. There is a higher reported rate of these incidents in healthcare than in other sectors, which to date OSHA has addressed under the OSH Act’s General Duty Clause. The small entity panel ensures that OSHA hears

the real world impact of regulatory options from affected stakeholders in addition to an assessment of the costs and benefits of those options.

The Wage and Hour Division (WHD) administers numerous laws that establish the minimum standards for wages and working conditions in the United States. WHD proposes to update how to determine independent contractor status under the FLSA—which would include explaining that independent contractors are workers who, as a matter of economic reality, are in business for themselves as opposed to being economically dependent on the potential employer for work. Additionally, WHD proposes to revise the Department’s existing “dual jobs” regulation to provide greater clarity regarding an employer’s ability to take a tip credit to satisfy minimum wage obligations for time spent by a tipped employee performing duties that are related to the employee’s tipped occupation.

The Office of Labor-Management Standards (OLMS) promotes union democracy through standards for union officer elections and trusteeships. It also furthers financial integrity in labor unions and safeguards union assets, in part through reporting and disclosure requirements for labor unions and other entities. OLMS proposes to modernize the annual financial reports filed by labor organizations.

Finally, the Department implemented the requirements from Executive Order 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” by updating the process for issuing and using guidance documents.