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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

November 14, 2018

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Acosta:

On March 6, 2018, the Wage and Hour Division (WHD) at the Department of Labor (DOL) initiated the Payroll Audit Independent Determination (PAID) program as a limited six-month pilot. The PAID program allows employers to self-audit and self-report overtime and minimum wage violations and then pay workers their stolen wages without paying additional interest or penalties to workers. The program raised serious concerns as it enables employers to violate minimum wage and overtime protections and then allows them to avoid both legal action and providing employees with interest or damages for their stolen wages—in essence, enabling employers to take, with impunity, an unauthorized, illegal, and interest-free loan from their workers. In addition, it is our understanding that rather than follow through and pause the PAID program at the end of its six-month pilot to determine its effectiveness and impact on workers—as DOL clearly indicated it would upon launching the program—it has instead chosen to extend it for another six months. We write to call on DOL to immediately stop accepting employer applications to the PAID program in order to evaluate the effectiveness and impact of the program.

WHD performs the crucial function of safeguarding workers' rights to the minimum wage and overtime pay, which is central to DOL's mission to "foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States" and to "assure work-related benefits and rights."¹ Every year workers experience wage theft at the hands of their employers, which is estimated to cost workers over \$50 billion per year.² In fact, DOL knows all too well the staggering extent of wage theft, having recently reported that WHD recovered \$304 million in stolen wages in fiscal year 2018 alone.³ This dollar amount represents a mere fraction of what is rightfully owed to workers. By using the PAID program to abdicate its authority to pursue interest or damages, DOL is shortchanging these workers and inadvertently encouraging employers to violate the Fair Labor Standards Act (FLSA).

¹ *About Us*, U.S. DEPT. OF LABOR, <https://www.dol.gov/general/aboutdol> (last visited Oct. 24, 2018).

² Brady Meixell & Ross Eisenbrey, *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*, ECONOMIC POLICY INSTITUTE (Sept. 11, 2014), <https://www.epi.org/files/2014/wage-theft.pdf>.

³ *News Release: U.S. Department of Labor Announces Record \$304 Million in Recovered Wages for Workers in Fiscal Year 2018*, U.S. DEPT. OF LABOR (Oct. 9, 2018), <https://www.dol.gov/newsroom/releases/whd/whd20181009>.

While we have multiple, serious concerns with the PAID program—including the fact that DOL is not proactively informing workers in states with higher minimum wages or greater overtime pay protections that they may be owed more in back pay than DOL is able to recover on their behalf under the PAID program—it is surprising and alarming that DOL has chosen to extend the program without evaluating its effectiveness, including the impact on workers and limited agency resources. This is in direct conflict with comments by WHD Acting Administrator Bryan Jarrett, who specifically stated upon launching the program that WHD “will implement the PAID pilot program nationwide for approximately six months, after which it will carefully evaluate the program and consider future options.”⁴ This statement can only be reasonably read to mean that DOL intended to conduct the PAID program as a six-month pilot that DOL would then evaluate before deciding whether to continue, alter, or discontinue the program. DOL’s decision on October 9th to extend the PAID program without such an evaluation is, therefore, deeply disturbing.⁵

We therefore call on DOL to do what it told workers, the regulated community, and Congress it would do and immediately stop accepting employers into the PAID program, close out all open audits, and conduct a meaningful evaluation of the program’s effectiveness. Further, in order to understand what impact the PAID program has had on workers, we request that you provide us with answers to the following questions:

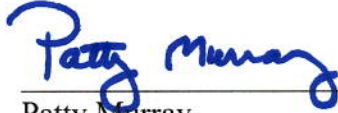
1. From March 6, 2018 to today, how many employers applied to the PAID program?
2. From March 6, 2018 to today, how many employers were accepted into the PAID program, and how many employers were rejected?
3. Of those employers that were rejected, what were the specific reasons for each rejection?
4. Of the total accepted applications, how many cases have been concluded by DOL?
5. In the cases that have been concluded, how many workers were provided with back pay in each case?
6. In the cases that have been concluded, how much back pay did each worker receive in every case? What was the breakdown of minimum wage and overtime back pay provided to each worker?
7. In the cases that have been concluded, how many workers who were owed back pay because their employer violated the minimum wage requirements of the FLSA worked in states with a minimum wage higher than \$7.25? What was the total amount of lost wages owed to those workers, including under their state’s higher minimum wage?

⁴ Bryan Jarrett, *Dept. of Labor’s New PAID Program a Win-Win-Win for Employer, Taxpayers, Employees*, THE HILL (March 6, 2018), <https://thehill.com/opinion/white-house/376886-dept-of-labors-new-paid-program-a-win-win-for-employers-taxpayers>.


⁵ *News Release: U.S. Department of Labor Announces Record \$304 Million in Recovered Wages for Workers in Fiscal Year 2018*, U.S. DEPT. OF LABOR (Oct. 9, 2018), <https://www.dol.gov/newsroom/releases/whd/whd20181009>.

We look forward to receiving your answer by no later than November 28. If you have questions about this request, please contact Joe Shantz or Carly Rush, Democratic staff on the Health, Education, Labor, and Pensions Committee, at 202-224-0767.

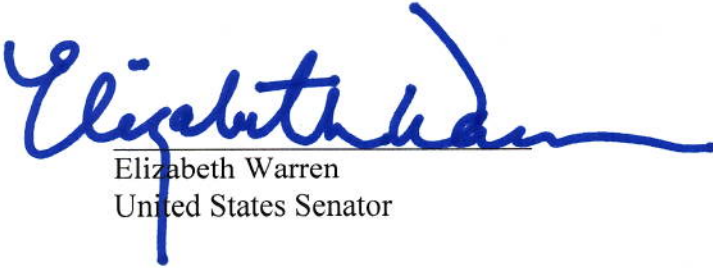
Sincerely,



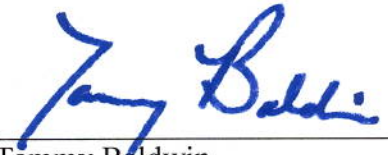
Patty Murray
United States Senator
Ranking Member, Senate Health, Education,
Labor, and Pensions Committee



Robert P. Casey, Jr.
United States Senator



Elizabeth Warren
United States Senator



Tammy Baldwin
United States Senator