COMMITTEE ON EDUCATION & THE WORKFORCE

COMMITTEE STATEMENT

Opening Statement of Rep. Kevin Kiley (R-CA), Chairman
Subcommittee on Workforce Protections
Hearing: "Cutting Corners at WHD: Examining the Cost to Workers, Small Businesses, and the Economy"
July 18, 2023

(As prepared for delivery)

There is broad agreement across party lines that the American economy is on the wrong track. After two and a half years of unprecedented spending and unconstrained regulation, 90 percent of Americans remain worried about high prices and 88 percent are worried about the future of the economy. Fewer than 1 out of 3 Americans approves of President Biden's handling of the economy.

Yet, rather than correct course, this administration has decided to brand its record of failure with a new moniker: Bidenomics.

The administration is engaged in an extensive public relations campaign asking Americans not to believe their eyes when they go to the grocery store or the gas pump, or their ears when they hear of small businesses closing, paychecks shrinking, young people dropping out of the workforce, supply chains in chaos, and U.S. competitiveness on a steady decline.

This exercise in delusion was captured in a recent tweet by the president: "Right now, real wages for the average American worker is higher than it was before the pandemic, with lower wage workers seeing the largest gains. That's Bidenomics." Community Notes commenters were quick to correct the record, with the consensus stating: "Real wages remain lower (not higher) than before the pandemic." In fact, workers have suffered a 3.16 percent decline in real earnings during the Biden presidency.

That's why 58 percent of Americans are living paycheck-to-paycheck and 70 percent are stressed about their finances. The bottom 50 percent of American households need to earn $5,000 more this year just to have the same purchasing power they did in 2019.

In a recent study by the Federal Reserve, the share of adults who said they were worse off financially than a year earlier rose to 35 percent, the highest level since the question was first asked in 2014. Wealth inequality, meanwhile, is at one of its highest levels since the Fed began measuring it 34 years ago.

The failure of Bidenomics is not just the result of misconceived economic ideas. The administration has also aggressively availed itself of any and all available tools to impose its agenda – whether lawful or not. Indeed, a disturbing habit of this administration has been to do by undemocratic means that which it cannot accomplish by democratic means. For example, on student loan forgiveness, President Biden originally said, "I don't think I have the authority to do it," and then went ahead and did it anyway by executive order. The Supreme Court, of course, recently struck that order down.

With the new Congress declining to pass further harmful economic policies, the administration has increasingly relied on aggressive agency rulemaking. One of the rules to be discussed today, concerning independent contracting, was offered by the administration after Congress chose not to enact a functionally similar proposal contained in the PRO Act.

Perhaps worst of all, President Biden has kept his nominee for Labor Secretary, Julie Su, at the helm of the Labor Department as Acting Secretary even as the Senate has declined to confirm her for nearly five months. Today, I am again calling on the president to withdraw the nomination of Ms. Su and nominate a Labor Secretary who will be on the side of American workers.

These, then, are the key features of Bidenomics: policies that increase the size, scale, and intrusiveness of the federal bureaucracy; that are implemented without regard to lawful authority; that diminish opportunity to the detriment of workers, small businesses, and consumers; and that are justified based on delusions and misrepresentations. Today's hearing focuses on an agency that epitomizes these key features of Bidenomics and is doing substantial damage all on its own: the Department of Labor's Wage and Hour Division (WHD).

As an initial matter, it should be noted that the WHD's rulemaking process has departed substantially from the legal obligations imposed by Congress. Repeatedly, WHD has refused to comply with the *Regulatory Flexibility Act.* The law requires federal agencies to submit a report called an initial regulatory flexibility analysis, upon making rules which impose significant economic costs on small businesses. The analysis must be comprehensive, including descriptions of who and what are impacted by the law and why and how the agency is acting.

Biden and Su's WHD acts as though this law doesn't exist. In at least four rulemaking cases, it has neglected to produce the required analysis before imposing economic costs on American small businesses. Each of those rules was repudiated by the Small Business Administration Office of Advocacy.

President Biden also signed an executive order in April to redefine what constitutes a "significant regulatory action." The president doubled the threshold from $100 million to $200 million with the stroke of a pen. The effect of this is to exempt potentially dozens of regulations from a meaningful economic impact review.

Our witnesses today will be discussing four specific WHD rules that are characteristic of Bidenomics and will have its characteristically damaging economic effects. The first is the previously mentioned independent contractor standard, which nationalizes and mirrors my home state of California’s disastrous AB 5 law. In previous hearings, we’ve heard testimony from California freelancers about all of the livelihoods that have been destroyed by the law.

Turning AB 5 into national policy would multiply these losses. The Chamber of Progress published an economic analysis which shows that an AB-5-like federal policy would cost the full-time or part-time jobs of between 3.2 and 3.8 million independent contractors. Yet WHD’s delusional, legally deficient analysis fails to even consider these far-reaching harms – even though the experience of California has already proven they will be the reality.

The second WHD rule is an update to Davis-Bacon regulations that impermissibly expands coverage to new industries without the required analysis. The third rule regulates tipping, putting the burden on employers to determine when employees are doing tip-producing work and when they aren’t, and then meticulously track their work minute by minute. The final rule increases to $15 the minimum wage for federal contractors or any business that contracts with the federal government, even a small restaurant in a national park.

Each of these regulations embodies the fundamental failings of Bidenomics. This Committee will continue to do everything in our power to mitigate the damage by providing robust oversight, insisting on adherence to the law, and advocating for a new economic direction – one that empowers workers, expands opportunity, supports small businesses, and unlocks the limitless potential of the American workforce.