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May 24, 2021

The Honorable Marty Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Walsh:

On January 21, President Biden issued an executive order (EO) on "Protecting Worker Safety and Health" which directed the Secretary of Labor to consider whether an Occupational Safety and Health Administration (OSHA) emergency temporary standard (ETS) on COVID-19 was needed and instructed the agency to issue an ETS by March 15 if the Secretary deemed it necessary. On April 26, the Department of Labor (DOL) sent a draft OSHA ETS to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for regulatory review. We write to express our strong disapproval of your decision to move forward with this ill-advised and unnecessary rulemaking. We do so in light of the current state of the COVID-19 pandemic, recent Centers for Disease Control and Prevention (CDC) guidance for fully vaccinated individuals, numerous state actions relaxing restrictions on non-essential businesses, and pro-active actions by businesses around the country to limit workplace exposure to COVID-19 since the start of the pandemic.

Thanks to Operation Warp Speed, there are currently three COVID-19 vaccines authorized for emergency use by the U.S. Food and Drug Administration in the United States, and all individuals over the age of 12 are eligible for vaccination. As of May 19, 2021, more than 275 million vaccines have been administered in the United States, and over 60 percent of adults have

received at least one dose of a vaccine.¹ On May 13, 2021, based on the current trajectory of vaccination in the United States and scientific studies proving the efficacy of vaccines preventing the spread of COVID-19, the CDC issued updated guidance stating vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.² In response to this guidance, several states, including New York, Virginia, and Massachusetts, have already lifted COVID-19-related restrictions, and major retailers including Walmart, Target, Costco, and Trader Joe's are no longer requiring masks for fully vaccinated employees and customers.³

Given the latest and ever-evolving science and current state of the virus, it is unfathomable that OSHA would continue to pursue this rigid, one-size-fits-all national "emergency" regulation. Now more than ever, an ETS is a completely unnecessary response that would only tie the hands of business owners who have already taken extraordinary and unprecedented efforts to mitigate the spread of the virus in the workplace. It would also severely disrupt the U.S. economic recovery by forcing businesses, consumers, and workers to adhere to an unnecessary, ill-timed, and sweeping government regulation.

Once issued, this OSHA regulation will almost immediately differ significantly from rapidly changing CDC COVID-19 guidance. In fact, it is unlikely the draft OSHA ETS, sent to OIRA for review on April 26, reflects the CDC's latest guidance or makes any clear distinctions between what precautions are required for fully vaccinated employees versus those who are not fully vaccinated.

Further, the *Occupational Safety and Health Act* only grants OSHA authority to issue an ETS without utilizing the regular rulemaking process if the Secretary of Labor determines two legal requirements are met: (1) workers are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or from new hazards; and (2) an ETS is necessary to protect workers from that danger. Well over a year since the pandemic was declared, every worker in the United States is eligible for vaccination, and businesses have been authorized by federal and state governments to relax restrictions based on the latest science from the CDC. It is therefore highly unlikely DOL could demonstrate that COVID-19 is presently a grave danger to workers or that an ETS, which would place new mandates on employers that do nothing to improve workplace safety outcomes, is necessary to protect workers.

As such, we urge DOL to stop working on this ill-advised rule immediately and notify OIRA that an ETS on COVID-19 will not be published. Instead, we encourage DOL to continue working with CDC on COVID-19 guidance and update OSHA's guidance to align with the latest science

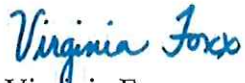
¹ CDC, COVID-19 DATA TRACKER, COVID-19 VACCINATIONS IN THE UNITED STATES (May 21, 2021), <https://covid.cdc.gov/covid-data-tracker/#vaccinations>.

² CDC, WHEN YOU'VE BEEN FULLY VACCINATED, HOW TO PROTECT YOURSELF AND OTHERS (May 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

³ Kelly Tyko, *Home Depot, Lowe's, Best Buy, Kohl's and Costco no longer require masks for vaccinated customers*, USA TODAY (May 17, 2021), <https://www.usatoday.com/story/money/shopping/2021/05/14/mask-mandate-stores-change-fully-vaccinated-cdc-no-masks-indoors/5102169001/>.

to ensure the nation's economic recovery continues and Americans can continue to return to work.

Sincerely,



Virginia Foxx
Ranking Member



Joe Wilson
Member of Congress



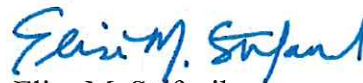
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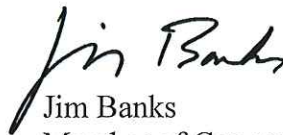
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