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COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES

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June 16, 2011

The Honorable Hilda L. Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, Northwest  
Washington, DC 20210

Dear Secretary Solis:

The Wage and Hour Division (WHD) has commenced a new lawyer referral system with the American Bar Association (ABA) (hereafter "the referral system"). On behalf of the House Committee on Education and the Workforce, we are requesting information to gain a better understanding of the referral system and its implementation.

During Fiscal Year 2010, more than 40,000 workers contacted WHD to report possible violations of the laws it administers, including the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA).<sup>1</sup> However, WHD estimated it declined to pursue or resolve approximately 10 percent of the minimum wage, overtime, and family medical leave claims brought before it during that year.<sup>2</sup> In lieu of further action, WHD notified these workers they had a right of public action under FLSA and FMLA and could consult a private attorney.<sup>3</sup>

On November 19, 2010, Vice President Biden announced WHD had reached an agreement with the ABA's Standing Committee on Lawyer Referral and Information Service to refer workers with unresolved claims to ABA-approved attorneys.<sup>4</sup> It is our understanding that when a worker is notified that WHD has completed its investigation but will not pursue the claim any further, the worker is provided:

<sup>1</sup> Bridge to Justice: Wage and Hour Connects Workers To New ABA-Approved Attorney Referral System, Wage and Hour Division, available at <http://www.dol.gov/whd/resources/ABAReferralPolicy.htm> (November 23, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Vice President Biden Announces New Initiative to Help Homeowners, Veterans, and Workers Access Legal Services, The White House, available at <http://m.whitehouse.gov/the-press-office/2010/11/19/vice-president-biden-announces-new-initiatives-help-homeowners-veterans-> (November 19, 2010).

- A letter which includes the WHD case number, the violations found, and back wages owed;
- A toll-free number to call and instructions on how to use the ABA-Attorney Referral System; and
- An authorization form to allow the claimant or their attorney to have additional information from the WHD case file.

In addition, we understand WHD could provide the ABA's toll-free number to claimants as early as the initial complaint intake process, the complaint review, or employer-conciliation stages should WHD determine the complaint does not meet the current national or regional office's priorities or is beyond a field office's abilities due to budget constraints or workload.<sup>5</sup>

The WHD is responsible for protecting more than 135 million workers, and we share its sincere desire to assist workers when they have not been treated fairly under the law.<sup>6</sup> However, in light of the WHD-ABA agreement's potential impact on so many cases, it seems surprising that no more information has been publically released since WHD issued its "Frequently Asked Questions" document in November 2010. Therefore, we respectfully ask you to direct all DOL agencies responsible for drafting and implementing the WHD-ABA agreement to provide the following information and responses in a single letter to the Committee **no later than Thursday, June 30, 2011**:

- 1) All agreements between WHD and the ABA regarding implementation of the referral system;
- 2) All internal or external communications and a list of all meetings between the Department of Labor (DOL) and the ABA and ABA representatives concerning the drafting or implementation of the referral system;
- 3) A list of all budgets and expenditures associated with the drafting and implementation of the referral system;
- 4) The criteria WHD uses to refer cases versus investigating them in house;
- 5) The percentage of the time WHD informs a complainant of the ABA toll-free number and referral system at the intake, complaint review, employer-conciliation, and post-investigation stages;
- 6) The number of referrals made to ABA-approved attorneys since December 13, 2010, making note of the industry sectors, field office areas, type of complaints, and attorneys involved in these referrals;

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<sup>5</sup> Bridge to Justice: Wage and Hour Connects Workers To New ABA-Approved Attorney Referral System, Wage and Hour Division, available at <http://www.dol.gov/whd/resources/ABAREferralPolicy.htm> (November 23, 2010).

<sup>6</sup> Fiscal Year 2012 Congressional Budget Justification, Wage and Hour Division, WHD-14, (February 14, 2011).

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- 7) The number of referrals in which ABA-approved attorneys agreed to represent workers referred by WHD since December 13, 2010, making note of the industry sectors, type of cases, field office areas, attorneys involved, and case outcomes; and
- 8) All memoranda by federal government officials, including the Office of Solicitor or Department of Justice, evaluating the ethical or legal propriety of the referral system.

Furthermore, we ask you to respond to the following questions:

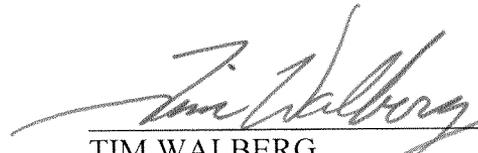
- 1) Has WHD's intake process changed to accommodate implementation of the referral system? If so, how has it changed?
- 2) Does WHD consider a case to be closed at the time when a claimant is made aware of the referral system?
- 3) The Committee understands many Freedom of Information Act requests to DOL have either not been answered or take a significant amount of time to be cleared. Does this referral system create an expedited process for ABA-referred attorneys?
- 4) Will WHD include the results of cases referred to, and subsequently handled by private attorneys when it reports its own enforcement and back wage collections data?
- 5) Are referrals by the Department to private attorneys strictly limited to those cases involving violations of the FLSA and FMLA? If not, please provide the Committee with a list of any other statutes which include a private right of action that have been referred to private attorneys.
- 6) Have other DOL agencies considered adopting similar joint agreements with the ABA? If so, please provide the Committee with any internal or external communications and a list of all meetings between the DOL personnel and the ABA.

Thank you for your attention to this matter. If you have any questions or comments please contact Joe Wheeler of the Committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE  
Chairman  
Committee on Education and the Workforce



TIM WALBERG  
Chairman  
Subcommittee on Workforce Protections

Enclosure

CC: The Honorable George Miller, Senior Democratic Member

### **Responding to Committee Document Requests**

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i. e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one *CD*, hard drive, memory stick, thumb drive, box or folder is produced, each *CD*, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.