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COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
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October 26, 2016

The Honorable Thomas E. Perez
 Secretary
 Department of Labor
 200 Constitution Avenue
 Washington, D.C. 20210

Dear Secretary Perez:

Pursuant to Rule X of the U.S. House of Representatives, the Committee on Education and the Workforce (Committee) commenced on October 13, 2015, an oversight inquiry into the development of an "investigatory tool" by the Department of Labor (Department) to determine whether employers have joint liability for violations of workplace safety laws.¹ From the Department's initial two-page response² through its latest revelation that there are an additional 3,300 pages of yet-unproduced responsive documents, the Committee has patiently shown good faith throughout this inquiry. Nevertheless, more than a year later, the Department *still* has not produced all responsive documents; and, many of the documents it has produced contain redacted information. The Department has provided no legal justification for these failures.

In recent communications, Department staff has proposed to provide all responsive documents in an unredacted form for an *in camera* review by Committee staff. This *in camera* review was intended specifically to protect the confidentiality of certain complainants who had requested confidentiality. The Committee expressed an openness to this proposal, so long as the conditions for review did not frustrate the Committee's oversight. However, there has not been agreement on the conditions surrounding this review.

¹ Letter from the Hon. John Kline, Chairman, H. Comm. on Educ. and the Workforce, and the Hon. Tim Walberg, Chairman, H. Subcomm. on Workforce Protections, to the Hon. Thomas E. Perez, Sec'y, U.S. Dep't of Labor (Oct. 13, 2015), available at: http://edworkforce.house.gov/uploadedfiles/10-13-2015-perez_osh_multiemployer_citation_policy.pdf.

² Letter from Mr. Adri Jayaratne, Acting-Asst. Sec'y for Congressional and Intergovernmental Affairs, U.S. Dep't of Labor, to the Hon. John Kline, Chairman, H. Comm. on Educ. and the Workforce, and the Hon. Tim Walberg, Chairman, H. Subcomm. on Workforce Protections (Nov. 18, 2015) (on file with Committee).

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To date, more than a year after our initial inquiry, the Department has not asserted executive privilege or any other legal reason to deny production of these documents in an unredacted form to the Committee. Instead, the Department has expressed an “interest in protecting from public disclosure the identity of complainants to whom it has promised confidentiality.” As explained in a recent staff communication, the Committee is entitled to these documents and “has no interest in publicizing personal information about complainants.”

Therefore, the Committee will accept production of these documents with the following information redacted: names, personal addresses, personal telephone numbers, and personal e-mail addresses of individual complainants. This good faith accommodation would both satisfy the Committee’s need for this information pursuant to its Constitutional oversight responsibilities and protect complainant confidentiality. Production of these documents with these redactions also obviates the need for an *in camera* review.

The Committee also notes the 1501 pages that have been provided to date contain numerous redactions apparently of more than merely complainant information. Under the terms of this accommodation, the Committee expects all previously-produced documents to be produced with only the information specified above redacted. Similarly, all previously unproduced documents should be produced with only the specified information redacted. Again, doing so would fulfill the Department’s agreement to provide the unredacted documents so long as individual complainant names are protected.

The Committee believes this is a mutually satisfying solution. Further, the Committee believes these redactions can be made expeditiously because all responsive documents have purportedly been gathered. However, if the Department fails to produce all responsive documents – or inappropriately redacts the documents it does provide – by November 4, 2016, the Committee will be forced to consider compulsory process to compel production.

If you have any questions about this request, please contact Loren Sweatt, Joe Wheeler, or Andy Banducci 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 Robert C. “Bobby” Scott, Ranking Member