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June 28, 2018

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

Dear Secretary Acosta:

We are following up regarding the Department of Labor's (the Department) March 6, 2018, letter in response to our January 18, 2018, letter about union "worker centers" and their regulation through the Office of Labor Management Standards (OLMS) under the *Labor-Management Reporting and Disclosure Act* (LMRDA or the Act).

As you know, the Committee has a long-standing interest in this important issue, and accordingly, the Health, Employment, Labor, and Pensions Subcommittee held a hearing examining this topic on April 26, 2018. At the hearing, members of the Committee and witnesses discussed the growth of worker centers and their evolution into *de facto* labor organizations. Witnesses also discussed how having worker centers comply with the LMRDA would confer benefits upon the workers these groups claim to represent. Finally, the question of how worker centers have avoided compliance with the LMRDA was considered.

In his testimony at the hearing, labor attorney Stefan Marculewicz explained why it would benefit employees for worker centers to be governed by the worker protections in the LMRDA:

A goal of many worker centers is to ensure that employers of their members comply with the basic laws that offer protections to workers. It is not unreasonable to expect worker centers to do the same. Ultimately, the benefits of the laws that govern labor organizations flow to the workers they represent, and,

as such, there simply is no viable justification for worker centers not to comply with them.¹

In our January 2018 letter, we inquired about the Department's plans to "establish an updated and modernized test for determining if a worker center is considered a labor organization under the LMRDA." We request that the Department provide information regarding whether it has taken any steps since March 6, 2018, to update or modernize the test and, if not, when we can anticipate the Department doing so.

Also in our January 2018 letter, we asked that the Department "initiate investigations and enforcement against worker centers that are subject to reporting requirements under the LMRDA but do not file reports." The Department's March 2018 response indicated that "OLMS will open an investigation or an inquiry" when it "receives a complaint or some other credible indication." We request the following additional information as to how this process works:

- Can OLMS potentially open investigations based on information gained from an audit?
- Can OLMS potentially open investigations based on information made public in media reports?
- What constitutes a "credible indication" that a violation of the LMRDA has occurred?

The Department also stated in its March 2018 response letter that "OLMS was directed to look into whether worker centers are acting as labor organizations covered by the LMRDA." We request the following additional information regarding the status of this inquiry.

- Which administration directed OLMS to look into whether worker centers are acting as labor organizations covered by the LMRDA, and when did this occur?

Additionally, the Department's response stated that "OLMS considers the facts on a case-by-case basis, ordinarily following an investigation." Accordingly, we would like to understand the analysis that is used by OLMS in these case-by-case inquiries. Under Section 3(i) of the LMRDA, a "labor organization ... includes any organization ... in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers"² Section 030.0610 of the OLMS Interpretive Manual states that "an organization in which employees participate need not actually deal with employers" as long it exists for the purpose of doing so. In other words, actual negotiations or efforts to negotiate a collective bargaining agreement are not required to qualify as an organization that exists for the purpose, in whole or in part, of dealing with employers. As such, it would appear that many worker centers fall within the "dealing with an employer" language in Section 3(i) by making demands of an employer or otherwise trying to induce an employer to take certain actions, even if no formal negotiations occur.

¹*Worker-Management Relations: Examining the Need to Modernize Federal Labor Law: Hearing Before the Subcomm. on Health, Emp't, Labor, and Pensions of the H. Comm. on Educ. and the Workforce, 115th Cong. (Apr. 26, 2018) (written statement of Stefan Marculewicz at 4).*

² 29 U.S.C. § 402(i).

Section 3(i) of the LMRDA also considers whether employees “participate” in the organization to be a factor in considering whether it is a labor organization. We understand “participation” in this context to mean “to take part in.” Accordingly, employees would not need to be part of the governance or operations of an organization for it to be considered a labor organization. As such, many worker centers would fall within the “employees participate” language of 3(i), as employees often take part in worker centers in a variety of ways.

Section 3(j) of the LMRDA³ gives five examples to clarify Section 3(i)’s statement that labor organization “means a labor organization engaged in an industry affecting commerce.” It is our understanding that these five examples are not an exhaustive list. Under basic rules of statutory construction, it would seem that 3(j) is illustrative in nature, rather than limiting. An organization might not fit neatly into one of the five examples in 3(j), but still might be a labor organization under the LMRDA. Is our understanding of Section 3(i) and Section 3(j), as outlined in the above paragraphs, consistent with the Department’s interpretation?

Ensuring that workers are provided with the transparency and accountability owed to them under the LMRDA is a priority for the Committee. Regardless of whether an organization labels itself as a worker center or a labor union, it should still be required to comply with the worker-centric protections of the LMRDA if it is operating as a labor organization under the Act. We remain keenly interested in the Department’s efforts to promote compliance with the LMRDA for all affected stakeholders.

Thank you for your attention to this important matter. We look forward to your response to these questions by July 13, 2018. If you should have questions about this request, please contact Joe Wheeler or Geoff MacLeay on the Committee staff at 202-225-7101.

Sincerely,



Virginia Foxx
Chairwoman



Tim Walberg
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions

³ 29 U.S.C. § 402(j).