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September 19, 2013

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

Dear Secretary Perez:

On August 27, 2013, the U.S. Department of Labor (the department) announced its plans to finalize two new regulations concerning hiring and employment policies of federal contractors and subcontractors.¹ These regulations will change requirements for hiring protected veterans and individuals with disabilities under the *Vietnam Era Veterans' Readjustment Assistance Act of 1974* (VEVRAA) and Section 503 of the *Rehabilitation Act of 1973* (Section 503), respectively. Though these regulatory changes have not yet been published in the *Federal Register*, we understand the requirements will take effect 180 days following publication.² To ensure these regulations protect veterans and individuals with disabilities, we are requesting documents and communications relating to the rulemaking.

The Committee on Education and the Workforce has conducted oversight on these regulations since inception. The committee's oversight activities are essential to our common goal of effectively administering and enforcing federal contractors' nondiscrimination and affirmative action requirements. In June 2011, we wrote to the department regarding its notice of proposed rulemaking (NPRM) on changes to VEVRAA, specifically requesting additional time for public comment.³ Though the department extended the period for public comment, the extension was for a fraction of the time requested.⁴ Following the department's December 2011 NPRM concerning changes to Section 503, we wrote in January and July of 2012 to express our

¹ Press Release, U.S. Department of Labor (Aug. 27, 2013). *Available at:* <http://www.dol.gov/opa/media/press/ofccp/OFCCP20131578.htm> (Accessed on Sept. 13, 2013)

² *Id.*

³ Letter from the Honorable John Kline, Chairman, House Committee on Education and the Workforce, to the Honorable Hilda L. Solis, Secretary, U.S. Department of Labor (June 17, 2011)(on file with the committee)

⁴ On June 22, 2011, the U.S. Department of Labor published notice in the *Federal Register* that the period for public comment would be extended for an additional 14 days. *Available at:* <http://www.gpo.gov/fdsys/pkg/FR-2011-06-22/pdf/2011-15620.pdf#page=1> (Accessed on Sept. 17, 2013)

concerns about the proposed regulation, request additional information, and ask for an extension of the public comment period.⁵ Though the department allowed an additional 14 days for public comment, it again failed to provide the 60 day-extension requested by the committee on behalf of stakeholders.⁶

The department's responses were inadequate at best, and we continue to have concerns – both substantive and procedural – about the department's rulemaking. Specifically, the department has failed to provide information concerning its statutory authority under VEVRAA and Section 503 for establishing a numerical hiring "benchmark" or "utilization goal" for protected veterans and individuals with disabilities, respectively. The department's responses regarding how it provided interested stakeholders with the opportunity to engage in in-person meetings with administration officials have been inadequate. Finally, given the department's failure to grant the 60-day extensions for public comment periods on each rulemaking requested by the committee and many stakeholders, it appears that in a haste to regulate, the department did not provide interested stakeholders with an appropriate length of time to study and comment on these regulations. These glaring shortcomings in the department's rulemaking process only underscore our concerns regarding the likely consequences of these new rules on workers and federal contractors and subcontractors.

In light of our continued concerns, we respectfully ask you to provide the following **no later than October 2, 2013**:

1. All documents and communications addressing the department's belief that it has the statutory authority under VEVRAA and Section 503 to establish a numerical "hiring benchmark" or "utilization goal" standard;
2. All documents and communications addressing the department's belief that it has the statutory authority to require contractors to ask job applicants to self-identify as a qualified individual with a disability, including all documents and communications with the Equal Employment Opportunity Commission regarding the legality of asking disability-related questions in light of the statutory prohibition in the ADA;

⁵ Letter from the Honorable John Kline, Chairman, House Committee on Education and the Workforce, and the Honorable David. P. Roe, Chairman, Subcommittee on Health, Employment, Labor, and Pensions, to the Honorable Hilda L. Solis, Secretary, U.S. Department of Labor (Jan. 27, 2012) *Available at*: <http://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=276956>. Letter from the Honorable John Kline, Chairman, House Committee on Education and the Workforce, and the Honorable David. P. Roe, Chairman, Subcommittee on Health, Employment, Labor, and Pensions, to the Honorable Hilda L. Solis, Secretary, U.S. Department of Labor (Jul. 31, 2012) *Available at*: <http://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=305336>

⁶ On February 12, 2012, the U.S. Department of Labor published notice in the *Federal Register* that the period for public comment would be extended for an additional 14 days. *Available at*: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-10/pdf/2012-3106.pdf#page=1> (Accessed on Sept. 17, 2013)

3. All documents and communications between the department and the Office of Management and Budget relating to the NPRM and final regulatory changes to VEVRAA and Section 503;
4. Lists of all stakeholders who requested in-person meetings with administration personnel concerning these regulations, including the identification of the stakeholders who received meetings and the basis for which stakeholders who did not receive meetings were denied;
5. All documents and communications relating to the department's decision to publicly release the final regulations in draft form before their publication in the *Federal Register*; and
6. A list of the inconsistencies, if any, between the draft final regulations and the versions to be published in the *Federal Register*, and an explanation of the inconsistencies between the draft regulations and the final versions.

If you are unable to provide the requested information by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Molly Conway and/or 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, Committee on Education and the Workforce

Ms. Patricia A. Shiu, Director, U.S. Department of Labor, Office of Federal Contract Compliance Programs