VIRGINIA FOXX, NC
Chairwoman

MAJORITY – (202) 225-4527

ROBERT C. "BOBBY" SCOTT, VA
Ranking Member

MINORITY – (202) 225-3725

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

January 12, 2023

The Honorable Jennifer A. Abruzzo
General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Dear General Counsel Abruzzo:

The Members of the 118th Congress were recently sworn in and, with this new Congress, we have new leadership in the House of Representatives. As the newly elected Chair of the Committee on Education and the Workforce, it is my responsibility to ensure accountability and transparency from federal agencies under the Committee's jurisdiction. With this letter, I am officially putting you on notice that your agency has an obligation to provide timely and complete responses to inquiries and requests made by the Committee.

During the first two years of the Biden administration, agencies have failed to comply fully with congressional oversight letters. I hope that this will end and we can expect robust responses from you in a timely manner to every letter sent from the Committee or its members. Enclosed are copies of letters Committee Republicans sent to which the National Labor Relations Board (NLRB) chose not to provide full responses:

1. A May 12, 2022, letter requesting information about the reinstatement of employee Gerald Bryson at an Amazon warehouse; and
2. A June 27, 2022, letter requesting information about your "Captive Audience" Field Memorandum.

The Committee expects the NLRB to provide timely and complete responses to each letter enclosed. You are instructed to respond in writing by no later than January 27, 2023, with your plans for responding to each letter. Enclosed is a copy of the Committee's instructions to be followed for responses to oversight requests. The NLRB is expected to comply with them as it responds to each of the letters cited in this letter

and all others issued by the Committee during the 118th Congress. Failure to do so may result in the Committee taking more robust actions to ensure compliance with its oversight requests.

Sincerely,

Virginia Foxx
Chairwoman

Enclosures

Congress of the United States

Washington, D.C. 20515

May 12, 2022

Delivered via Email

The Honorable Jennifer Abruzzo
General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570-0001

Dear Ms. Abruzzo:

We write regarding a petition filed by one of the regional offices under your supervision on behalf of the National Labor Relations Board (NLRB or "the Board") seeking to reinstate immediately Gerald Bryson, a discharged Amazon employee, to his former position, and pleading for other injunctive relief under Section 10(j) of the National Labor Relations Act (NLRA).[1] We found the petition disturbing in many respects, not least in the manner to which it excludes relevant factual information. Incontrovertible evidence documents Mr. Bryson hurling a number of sexually charged, degrading obscenities at a female coworker on the picket line prior to his termination. For the NLRB to characterize such bigotry as protected concerted activity under Section 7 of the NLRA demonstrates gross ignorance of federal civil rights law. We are also concerned the Board's filing of the petition a week before a union election at Amazon's Staten Island warehouse was an attempt to influence unduly the outcome of the election.

On April 6, 2020, while protesting outside an Amazon fulfillment center in Staten Island (hereinafter "JFK8"), Mr. Bryson participated in a verbal altercation with a female coworker. The altercation consisted of Mr. Bryson hurling misogynistic and sexist epithets. Mr. Bryson accused the female coworker of "selling herself for two dollars" and referred to her as a "gutter bitch" and a "crack ho." Despite a pause in which the female coworker refused to continue engaging, Mr. Bryson continued to urge her to "get off the fentanyl," that she "need to be tested" and was "disgusting." The bigotry of Mr. Bryson's comments also extended to calling his female coworker "ignorant and stupid" as well as a "crack-head ass" and "queen of the swamp." Mr. Bryson hurled all these slurs through a loudspeaker, amplifying these epithets throughout the parking lot so as to magnify his coworker's humiliation. A video documenting the behavior soon became available for public consumption on Facebook.[2]

The conduct described is unacceptable in any modern workplace. Mr. Bryson, by hurling these epithets in a public forum via a loudspeaker so as to isolate and humiliate his female coworker, may have created a hostile, abusive work environment prohibited by Title VII of the Civil Rights Act of 1964. As stated

[1] National Labor Relations Board v. Amazon.com Services LLC, No. 1:22-cv-01479 (EDNY 2022) (petition of Kathy Drew King, Regional Director of Region 29, on and behalf of the National Labor Relations Board).
[2] https://www.facebook.com/bella.nagengast/videos/1079803845739201.

both by requisite case law and an amicus brief submitted by the Equal Employment Opportunity Commission (EEOC), "an employer is liable for the hostile work environment created by a coworker if the employer failed to act reasonably to prevent harassment or to correct harassment about which it knew or should have known."[3] Relevant case law makes clear that an employer is liable for the harassing conduct of its employees if it fails to protect employees from predatory workers.[4] Employers also bear the obligation of preventing and correcting harassment in the workplace that has not yet risen to the level of pervasive hostility, with EEOC regulations imposing on employers a similar obligation to "take all steps necessary to prevent sexual harassment from occurring" including the imposition of "appropriate sanctions."[5] JFK8 was well within its rights to sanction Mr. Bryson for his abhorrent, bigoted behavior, as failure to take such corrective action may have led to legal liability. For the NLRB to assert in its petition that Mr. Bryson's appalling, sexist behavior qualifies as protected activity requiring immediate reinstatement demonstrates severely misplaced priorities.

Judge Millett, an Obama appointee on the D.C. Circuit, rebuked the NLRB for similar actions, condemning the "cavalier and enabling approach that the Board's decisions have taken toward the sexually and racially demeaning misconduct" of employees during strikes.[6] Judge Millett also alluded to the Board's history of permitting "sexually and racially disparaging conduct that… encapsulates the very type of demeaning and degrading messages that for too much of our history have trapped women and minorities in a second-class workplace status."[7] The concurring opinion also admonished Board decisions that had continually "given short shrift to gender targeted behavior, the message of which is calculated to be sexually derogatory and demeaning" while noting the obvious—that "[s]uch language and behavior [has] nothing to do with attempted persuasion about the striker's cause."[8]

In response to these longstanding concerns, the NLRB issued a decision reversing the Board's disturbing trend of conflating sexually and racially demeaning behavior with protected union activity. In General Motors, the Board disagreed with the "flawed principle that Section 7 activity is analytically inseparable from abusive conduct committed in the course of Section 7 activity."[9] Such a standard conflicted with employers' duty to comply with antidiscrimination laws to the point of being "wholly indifferent to employers' legal obligations to prevent hostile work environments on the basis of protected traits."[10] To rectify this flaw, the NLRB applied a burden-shifting framework "for cases where the General Counsel alleges that discipline was motivated by Section 7 activity, and the employer asserts that it was motivated by abusive conduct," with the General Counsel required to establish, with sufficient evidence, "a causal relationship between the discipline and the Section 7 activity."[11] In doing so, the Board made clear that the NLRA "offers no specific protection for abusive conduct" and honored "the employer's

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[3] Brief of the Equal Employment Opportunity as Amicus Curiae in General Motors LLC, 369 NLRB No. 127 (2020); see also Vance v. Ball State Univ., 570 U.S. 421, 424, 427 (2013) (holding that an employer is liable for the harassing behavior of an employee's co-worker if it was negligent in controlling working conditions).
[4] See Doe v. Oberweis Dairy, 456 F.3d 704, 716 (7th Cir. 2006) (holding that an employer is liable for the harassing conduct of a coworker employee if it "failed to have and enforce a reasonable policy for harassment").
[5] 29 C.F.R. § 1604.11(f)
[6] Consolidated Communications, Inc. v. NLRB, 837 F.3d 1, 21-24 (D.C. Cir. 2016) (Millet, J. concurring).
[7] Ibid. at 21.
[8] Ibid. at 21-22.
[9] General Motors, 369 at *15.
[10] Ibid. at *11.
[11] Ibid. at *15-*16.

right to maintain order and respect" while ensuring "employees' Section 7 rights continue to be protected."[12] By directly contradicting its own precedent, the Board ignores Judge Millet's admonitions and "signals that, when push comes to shove, discriminatory and degrading stereotypes can still be a legitimate weapon in economic disputes."[13]

Moreover, the timing of this suit, a mere week before a union election was held at JFK8, indicates that the Board attempted to influence unduly the election's outcome. The purpose of injunctive remedies under Section 10(j), as stated in your own memo, is to "ensure that employees' rights will be adequately protected from remedial failure due to passage of time."[14] Yet, 23 months have elapsed since Mr. Byson's public display of bigotry, and your office has only now filed the injunction in federal court. The NLRB is required by federal law to conduct union representation elections "'under conditions as nearly ideal as possible'—so called laboratory conditions—in order to provide employees the opportunity to express their uninhibited desires regarding representation."[15] By filing this petition seeking reinstatement of Mr. Bryson and alleging a litany of employer misconduct a mere week before voting begins, the NLRB has jeopardized the neutral laboratory conditions necessary for an impartial election.

The decision of your office to pursue this petition shows a blatant disregard for the rights of employees to engage in a workplace free from harassment and discrimination. The NLRB's obvious attempt to contravene recent Board precedent by filing the petition runs the risk that employers will now be forced to violate federal antidiscrimination laws to avoid unfair labor practice liability. President Biden's pronouncement in a recent speech before the National Building Trades Union of "Amazon, here we come" further cements our concern that the NLRB will be employed as a weapon of intimidation to impose unionization, rather than protect workers' rights of free association.[16] Therefore, in accordance with assurances you gave during your confirmation process that you will be fully compliant with all oversight requests, we require the following information by May 23, 2022. When responding, please include a response to each question below, rather than in a narrative format.

1. At what point were you and Kathy Drew King, the Regional Director for Region 29, made aware of Mr. Bryson's harassing conduct?

2. Part of the duty of the Office of the General Counsel, and indeed of any attorney as an officer of the court, is to be transparent with any forum or tribunal in disclosing requisite facts and case law, even those not advantageous to the attorney's position. To that end, regarding the petition filed by the Regional Director of Region 29 in the Eastern District of New York:[17]

    a. Why was no reference made to Mr. Bryson's misogynistic rhetoric or any of the sexually degrading epithets hurled at a coworker outside of the JFK8 warehouse?

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[12] Ibid. at *16.
[13] Consolidated Communications, 837 F.3d at 22.
[14] Memorandum GC 21-05, "Utilization of Section 10(j) Proceedings". Office of the General Counsel. August 19, 2021.
[15] Professional Transp., Inc., 370 NLRB No. 132, at *2 (2021).
[16] https://mobile.twitter.com/kenklippenstein/status/1511763627325415432
[17] National Labor Relations Board v. Amazon.com Services LLC, No. 1:22-cv-01479 (EDNY 2022) (petition of Kathy Drew King, Regional Director of Region 29, on and behalf of the National Labor Relations Board).

b. Why was there no reference made within the petition to In re General Motors, a binding Board decision that separated abusive, prejudiced employee conduct from Section 7 protected activity and mandated application of a burden-shifting framework to cases involving abusive conduct?

c. Why was there no attendant analysis applying the Wright Line burden-shifting framework mandated by In re General Motors, particularly as to the requirement that the General Counsel must prove "the employer had animus against the Section 7 activity" and establish "a causal relationship between the discipline and the Section 7 activity"?

3. How is the failure to conduct this analysis in the petition not a professional and ethical dereliction on the part of the General Counsel's office?

4. Based on the pleading, it appears there was no action on this case from May 2021, when witness testimony was last taken in the trial before an Administrative Law Judge, to March 17, 2022, when the petition requesting Mr. Bryson's reinstatement was filed in federal court. Is that correct? If so, why was there no action taken during this time?

5. Why did the Board opt to file this petition a mere week before a union election was to be held at the facility despite this incident having occurred in April of 2020, and did the Board consider the implications of such an action, and its potential to interfere with the then-pending election?

6. Please provide all communication between your office and the Region 29 office related to the Amazon Staten Island election.

Thank you for your attention to this matter.

Sincerely,

Richard Burr
Ranking Member
Senate Committee on Health, Education, Labor and Pensions

Virginia Foxx
Ranking Member
House Committee on Education and Labor

Mike Braun
Ranking Member
Subcommittee on Employment and Workplace Safety

Rick W. Allen
Ranking Member
Subcommittee on Health, Employment, Labor and Pensions

Congress of the United States

Washington, D.C. 20515

June 27, 2022

Delivered via Email

The Honorable Jennifer Abruzzo
General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570-0001

Dear Ms. Abruzzo:

On April 7, 2022, you issued Memorandum 22-04, "The Right to Refrain from Captive Audience and other Mandatory Meetings." The memorandum discards decades of case law and National Labor Relations Board (NLRB or Board) precedent that supports an employer's First Amendment right to educate its employees about unionization. Instead, your memo characterizes such constitutional rights as "at odds with fundamental labor law principles, [the Board's] statutory language and our congressional mandate." We write once again to object to your flagrant disregard of applicable case law and precedent and to express our grave concern with your unconscionable efforts to further a partisan objective.

The memo is replete with inaccurate, unsupported claims and glaring omissions. For example, it inaccurately claims that mandatory meetings in which an employer expresses anti-union views "inherently involve an unlawful threat that employees will be disciplined or suffer other reprisals if they exercise their protected right not to listen to such speech."[1] Without specific evidence of coercion or threats, you generally assert that the Board was "incorrect" in allowing employers to communicate anti-union views in mandatory meetings. The memo claims such meetings are contrary to "basic principles of labor law." Most ominous is your general characterization of mandatory employer sponsored information meetings as a "license to coerce."

Such assertions and characterizations run contrary to Board precedent and Congress's statutory command. The ability of an employer to communicate its views on unionization via mandatory meetings is a long-standing right that has been upheld by the Board for decades and is embodied within the statutory language of the *National Labor Relations Act* (NLRA). Section 8(c) of the

[1] General Counsel Memorandum 22-04, "The Right to Refrain from Captive Audience and Other Mandatory Meetings." April 7, 2022.

NLRA explicitly states that "the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of [this Act], if such expression contains no *threat of reprisal or force or promise of benefit*."[2] Section 8(c) was codified as an amendment to the NLRA following passage of the *Taft-Hartley Act of 1947*, which aimed to eliminate the disproportionate influence unions imposed on the workplace.[3] Embodying as it did the reforms of the *Taft-Hartley Act*, the Board has held that an employer has a long-standing right to communicate its views on unionization under both the legislative history and statutory language of Section 8(c).[4] For nearly a century, Board and circuit court precedent have held that an employer does not commit an unfair labor practice simply by expressing antipathy toward unions in compelled meetings absent threats of reprisal, acts of intimidation, or promises of benefit.[5] These decisions were in accordance with the *Taft-Hartley Act*'s legislative purpose of "guarantee[ing] to employers as well as unions the right of free speech,"[6] and of prohibiting the Board from "constru[ing] utterances containing neither threats nor promises of benefit an unfair labor practice standing alone or as making some act which would otherwise be legal an unfair labor practice."[7]

The memo cites the Supreme Court's decision in *NLRB v. Gissel Packaging Co.*[8] as standing for the proposition that mandatory employer-sponsored meetings unlawfully impair employee choice due to an inherent "inequality of bargaining power" between an employer and employee. As with much of the memo, this citation lacks context and contains convenient omissions. The portion of *Gissel* cited within the memo concerned an employer's right to resist unionization. In its opinion, the Court clearly held that "an employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or a Board."[9] While noting the obvious—"that an employer's rights cannot outweigh the equal rights of the employees to associate freely"—the Court held that "an employer is free to communicate to his

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[2] 29 U.S.C. § 158(c) (emphasis added).

[3] See H.R. Rep. No. 510, 80th Cong. 1st Sess., at 45, *reprinted in* Legislative History at 549, 1947 U.S. Code Cong. Serv. 1135, 1151 (in which the House – Senate conference on H.R. 3020, later enacted as Section 8(c) of the Taft-Hartley Act specifically noted that "[t]he practice which the Board has had in the past of using speeches and publications of employers concerning labor organizations and collective bargaining arrangement *as evidence*, no matter how irrelevant or immaterial, that some later act of the employer had an illegal purpose gave rise to the necessity for this change in the law.")(emphasis added).

[4] Babcock and Wilcox, 77 NLRB 577, 578 (1948).

[5] See NLRB v. Prescott Indus. Prod. Co., 500 F.2d 6, 8, 10-11 (8th Cir. 1974)(holding that a discharge of an employee was lawful when employee's pro-union activity interfered with management's "right to deliver an anti-union speech"); Litton Sys. Inc., 173 NLRB 1024, 1030 (1968)(holding that "[a]n employee has no statutorily protected right to leave a meeting which the employees were required by management to attend on company time and property to listen to management's noncoercive antiunion speech"); Hicks Ponder Co., 168 NLRB 806, 811-12, 815 (1967).

[6] NLRB v. FW Woolworth Co., 214 F.2d 78, 79-80 (6th Cir. 1954).

[7] Supplemental Analysis of Labor Bill as passed by Conference Committee, submitted by Senator Robert Taft, June 12, 1947, 93 Congressional Record 7002.

[8] 395 U.S. 575, 617 (1969).

[9] Id.

employees any of his *general* views about unionism or any of his specific views about a particular union, so long as the communications do not contain 'a threat of reprisal or force or promise of benefit.'"[10]

In other words, the Court in *Gissel*, far from asserting that mandatory meetings are presumptively coercive, upheld an employer's First Amendment rights to speak against unionization, so long as the employer imparts only general views and confines any economic predictions to those based on objective fact to avoid the appearance of impropriety or coercion. We also note the irony of citing *Gissel* to upend decades of Board precedent to suit your personal preferences on employer speech, while also, in a signed brief, seeking to discard *Gissel*'s standard for issuing bargaining orders.[11] Such selective and inaccurate invocation of precedent only further undermines public confidence in the Office of the General Counsel.

In previous correspondence, Senator Burr impressed upon you the impropriety of using memoranda to impose policy preferences beyond the Board's statutory authority. Senator Burr cautioned you that replacing decades of case law and legislative text with one's own personal views and preferences undermines the Board's reputation, risks the prospect of frivolous litigation, and distracts the Board from its fundamental mission. During your tenure as general counsel, you have attempted to issue through memoranda what Congress has most purposefully refrained from implementing via statute. Your office has asserted that the Board is endowed with unlimited remedial powers neither contemplated nor envisioned by Congress, and in Memorandum 22-04, you propose to eviscerate 75 years of Board precedent upholding an employer's First Amendment rights.

Granting the Board nearly unlimited remedial make-whole measures and classifying mandatory employer-sponsored meetings as unfair labor practices were both proposals in the *Protecting the Right to Organize Act* (PRO Act), which Congress has conspicuously chosen not to pass. We do not believe it mere coincidence that you are now attempting to implement these policies via memoranda. Memorandum 22-04 bizarrely refers to 75 years of precedent upholding mandatory employer meetings as an "anomaly in labor law," yet it fails to acknowledge that such precedent was implemented in response to Congress's passage of the *Taft-Hartley Act*, a statute enacted by the people's representatives for the specific purpose of remedying the arbitrary power unions had in the workplace.[12] We do not believe such an omission to be a mere oversight.

While you may prefer passage of the PRO Act along with repeal of the *Taft-Hartley Act*, neither has occurred. It is a violation of separation of powers constitutional principles for any Senate-

[10] Id.
[11] Brief in Support of General Counsel's Exception to the Administrative Law Judge's Decision In Support of Respondents, Cemex Construction Materials Pacific and International Brotherhood of Teamsters. April 11, 2022.
[12] See Holo-Krome Co. v. NLRB, 907 F.2d 1343, 1347 (2nd Cir. 1990) (holding it improper for NLRB to refer to employer's lawful expressions of opinion during representation election as a basis for finding antiunion animus as "the 1947 amendments to the NLRA reflect a . . . shift in favor of employer rights."); Pittsburgh Steamship Co. v. NLRB, 180 F.2d 731, 735 (6th Cir. 1950)("[Section] 8(c) of the Taft-Hartley Act was specifically intended to prevent the Board from using unrelated non-coercive expressions of opinion on union matters as evidence of a general course of unfair labor conduct "), *aff'd* 340 U.S. 498, 71 S.Ct. 453, 95 L.Ed. 479 (1951).

confirmed executive branch official to implement policy Congress has refused to enact or to ignore existing law simply based on policy preferences. Congress, through carefully crafted legislation, has granted the Board sufficient tools to preserve an employee's right of free association. It is not for the General Counsel to expand or limit its authority as the current occupant personally sees fit.

Therefore, commensurate with our oversight responsibilities and with the assurances you gave the Senate during your confirmation, we request answers to the following inquiries by July 12, 2022. When responding, please include a response below each question rather than in a narrative format.

1. What is the process for drafting published memoranda, and does the Office of the General Counsel consult any outside groups before the issuance of a memorandum? If so, please provide a list of all outside groups consulted.
    a. Does any official from the White House or other federal agencies, or any other figures aligned with the administration, provide input or advice on the contents of these memos?
    b. If so, furnish their names as well as any correspondence the Board or Office of the General Counsel has had with administration officials, political appointees, or others.
    c. Has any member of the Board discussed with you or your staff that your published memos may be pushing the limits of statutory authority? If so, please explain and provide all documents and communications related to such discussions.

2. Please furnish a summary of how these memoranda are crafted, formulated, and issued, from beginning to end.
    a. Are NLRB career attorneys consulted?
    b. Do they inform you of applicable precedent?
    c. All your memos urge implementation of the policy preferences of a variety of liberal interest groups. When drafting them, did you consult with officials, subordinates, or other representative from Harvard University's Labor and Worklife Program, the National Employment Law Project, or any other liberal interest group?

3. In Memorandum 22-04, you characterize the right of employers to hold mandatory meetings against unions—a right that has been enshrined in law for 75 years—as an "anomaly." Yet you neglected to mention that such a right was enshrined in Board precedent and federal law following passage of the *Taft-Hartley Act* in order to remedy the disproportionate, often intimidating influence unions imposed on the workplace.
    a. Did your office consult primary and secondary sources concerning the *Taft-Hartley Act* or any court decisions interpreting Section 8(c) before issuing the memo?

   b. How does such a wholesale refusal to recognize and analyze the *Taft-Hartley Act*, passage of which was the impetus for the Board to recognize a right to mandatory employer meetings, not undermine the Board's reputation for impartial legal analysis?
   c. How is such a refusal not a dereliction of duty on your part as General Counsel who is responsible for interpreting the Board's statutory authority?

4. As General Counsel, do you not consider circuit court opinions to be binding?
   a. Does advising the Board to adopt a position directly contrary to circuit court opinion risk further litigation and the waste of taxpayer dollars?
   b. Were the Board to adopt your position of holding mandatory employer meetings to be an unfair labor practice in violation of Section 7 of the NLRA, would numerous circuit courts of appeal, including the 8th Circuit, disagree with this position?
   c. Would circuit courts of appeal overturn their binding precedent simply based on the recommendation of an administrative agency?

5. Memorandum 22-04 cites *Gissel* to support the assertion of fundamental "unequal bargaining power in the workplace" that should prohibit mandatory employer meetings.
   a. Why did the memo omit *Gissel*'s upholding of free speech?
   b. Why was the Supreme Court's holding not addressed further?
   c. Was your invocation and inaccurate reliance on *Gissel* to curtail employer speech self-serving when contrasted with your Office's stated position of abandoning adherence to *Gissel*'s holding on bargaining orders?
   d. Taken cumulatively, how does the memo's misuse of *Gissel* not further erode confidence in the General Counsel's Office?

6. Please provide all documents and communications, including but not limited to draft versions, related to Memorandum 22-04 "The Right to Refrain from Captive Audience and other Mandatory Meetings."

Thank you for your attention to this matter.

Sincerely,

Richard Burr
Ranking Member
Senate Committee on Health, Education, Labor and Pensions

Virginia Foxx
Ranking Member
House Committee on Education and Labor

Mike Braun
Ranking Member
Subcommittee on Employment
and Workplace Safety

Rick Allen
Ranking Member
Subcommittee on Health, Employment,
Labor and Pensions

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your agency's possession, custody, or control, whether held by you or other past or present employees of the executive branch, or a representative acting on your behalf. Your response should also produce documents that you have a legal right to obtain, that the agency has a right to copy or to which you have access, or 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 on Education and the Workforce (the "Committee").

2. If 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., email, 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, question number, or request number 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—either inside or outside of the executive branch—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), the agency's staff 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 a written explanation of why full compliance is not possible.

12. In the event that a document or portion of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or redaction: (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 other agency employees, 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 20, 2021, 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. Such submission shall include an explanation as to why the information was not produced originally.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. If physical documents are to be delivered, two sets of documents should be delivered, one set to the Majority Staff in Room 2176 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building during Committee office

hours (9am-5pm, unless other arrangements are made) and signed by members of the respective staffs upon delivery.

19. Upon completion of the document production, the agency's written response should include a written certification, signed by the agency head or his or her designee, 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.

20. If the agency does not expect to produce all documents responsive to this letter by the date requested, the agency's staff shall consult with the Committee as soon as it is known the agency cannot meet the deadline, but no later than 24 hours before the due date to explain: (1) what will be provided by the due date, (2) why the agency believes certain materials cannot be produced by the due date, and (3) the agency's proposed timeline for providing any omitted information.

21. The agency's response to questions and request should be answered or provided in separate document and not included inside a narrative response.

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.

7. The term “agency” means any department, independent establishment, or corporation of the federal government. For the purposes of responding to oversight requests, the Committee expects information to be provided from all sub-agencies of an agency and not just the information that is immediately available to the addressee or the addressee’s immediate sub-agency.