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Chairwoman

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MAJORITY – (202) 225-4527



ROBERT C. "BOBBY" SCOTT, VA  
Ranking Member

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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 Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Walsh:

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 your agency during the 117th Congress to which you failed to respond:

1. Letters dated November 2, 2021, and February 23 and July 19, 2022, on your inappropriate participation in labor-management issues;
2. A July 21, 2022, letter requesting you produce the calendars of senior Department of Labor (DOL) officials; and
3. A September 26, 2022, letter to Assistant Secretary for Occupational Safety and Health Douglas Parker on the Occupational Safety and Health Administration's (OSHA) continued consideration of a permanent COVID standard for health care employees.

Also enclosed are of copies of letters Committee Republicans sent to which DOL chose not to provide full responses:

1. An October 14, 2021, letter requesting information about OSHA's vaccine mandate;
2. Letters dated October 18 and December 21, 2021, requesting information about DOL's plans for returning to regular, in-person work;

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January 12, 2023

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3. Letters dated March 8 and September 30, 2022, requesting information about the White House Task Force on Worker Organizing and Empowerment;
4. A June 15, 2022, letter requesting information about DOL's implementation of EO 14019, "Promoting Access to Voting";
5. A July 22, 2022, letter requesting information on a directive from DOL's Office of Federal Contract Compliance Programs which would have infringed on the attorney-client privilege; and
6. An October 5, 2022, letter examining the propriety of OSHA's "Workers' Voice Summit."

The Committee expects DOL 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. DOL 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

November 2, 2021

Delivered via Email

The Honorable Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Ave., NW  
Washington, D.C. 20210

Dear Secretary Walsh,

The Department of Labor (DOL) oversees approximately 180 laws granting the Occupational Safety and Health Administration, the Wage and Hour Division, the Office of Labor-Management Standards (OLMS), the Employee Benefits Security Administration, and the Employment and Training Administration enforcement and regulatory power over a wide swath of the American workforce. Combined, these agencies regulate some facet of every employer in this country. As such, your actions need to comport with your office, your oath, and the demonstration of impartiality in both appearance and in form, refraining from bestowing fear or favor to any parties. As Secretary of Labor, you committed in your confirmation hearing to being a “collaborator” between all parties. Much of your testimony recited how you operated that way as the Mayor of Boston. As Secretary of Labor, your portfolio is larger and broader, including civil and criminal enforcement activity. We write to express our deep concerns about your recent participation in strike activity underway at a Kellogg Company facility.

On October 27, 2021, you participated in the strike activity conducted by the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union in Lancaster, Pennsylvania, who orchestrated a walkout at Kellogg beginning on October 5, 2021. On your official DOL Twitter account, you acknowledged a tweet from *New York Times* reporter Steven Greenhouse and tweeted that you would be on the picket line.<sup>1</sup> Ironically, even Mr. Greenhouse acknowledged in his tweet that it is “very rare for a Secretary of Labor to go to a picket line to show their support.” At the event, you proudly stated, “It might be a little different for a secretary of labor of the United States of America coming out and standing on a picket line. But if you have it in your blood, you have it in your blood.”<sup>2</sup>

Given the dispute between the two parties, which focuses on wages, pensions, and working conditions, all regulated by DOL, your one-sided participation in the strike undermines

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<sup>1</sup> <https://twitter.com/SecMartyWalsh/status/1453387260775186433>

<sup>2</sup> [https://lancasteronline.com/business/local\\_business/u-s-labor-secretary-walsh-visits-kellogg-strikers-in-lancaster-voices-support-for-worker-rights/article\\_a44481d0-374a-11ec-b6cc-9713be39d7fa.html](https://lancasteronline.com/business/local_business/u-s-labor-secretary-walsh-visits-kellogg-strikers-in-lancaster-voices-support-for-worker-rights/article_a44481d0-374a-11ec-b6cc-9713be39d7fa.html)

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November 2, 2021

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commitments you made during your confirmation process, and tacitly and inappropriately inserts the federal government into this ongoing labor dispute. For example, in response to questions for the hearing record regarding OLMS, notably an office with criminal enforcement authority, you stated, "I do believe that the Department's enforcement and regulatory actions need to be even-handed, and I commit to transparency in that process." Moreover, you testified, "Throughout my career, I've led by listening, collaborating, and building partnerships." Yet, standing in solidarity with a union to support a strike sends the opposite message.

When there was a major strike during the Obama Administration, former Secretary of Labor Thomas Perez worked with both the employer and the union to ensure almost 40,000 Verizon workers reached a fair collective bargaining agreement. In contrast, it appears your actions in this instance only supported the interests of organized labor. Now that you have weighed in on behalf of striking workers, which may involve several issues within the jurisdiction of DOL, we seek the following information by November 12, 2021, to understand how you plan to honor your prior commitments to work with all parties. When responding, please include a response to each question below as we have asked them, rather than in a narrative format.

1. Will you commit to recuse yourself from all enforcement actions undertaken by DOL related to Kellogg, the company subject to the strike?
2. Will you commit to recuse yourself from all enforcement actions undertaken by DOL related to the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union?
3. Did you seek ethics advice prior to this visit? Provide any guidance or advice you received on the legality of this visit or your ethical obligations related to this visit.
4. Did you participate in this strike on personal time? If not, why not?

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  
Subcommittee on Employment  
and Workplace Safety



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

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VACANCY

February 23, 2022

The Honorable Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Walsh:

Recent news stories have reported on your ongoing interest in actively participating in labor-management disputes, possibly including Major League Baseball and the West Coast ports.<sup>1</sup> We have previously written concerning your involvement in labor-management disputes—particularly on the side of striking workers.<sup>2</sup> We write today seeking answers to our previous letter, asking additional questions, and expressing our concerns about your apparent one-sided interest in labor-management negotiations on behalf of organized labor.

On October 27, 2021, you joined members of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union on the picket line during their strike activity at Kellogg's Lancaster, Pennsylvania, plant.<sup>3</sup> Your participation clearly demonstrated a one-sided view of labor-management relations, harmed the integrity of your office, and called into question the neutrality of the Department of Labor (DOL) by inappropriately inserting the federal government on one side of a labor dispute. For more than 70 years, federal labor law has struck a careful balance between the right of labor unions to organize and bargain collectively on behalf of employees, the right of employers to respond to those organizing and bargaining efforts, and the

<sup>1</sup> Nick Niedzwiadek & Eleanor Mueller, *Walsh Wants His Turn At Bat*, POLITICO PRO, Feb. 14, 2022, <https://subscriber.politicopro.com/newsletter/2022/02/14/walsh-wants-his-turn-at-bat-00008514>; Eleanor Mueller et al., *Wheeling-and-Dealing Walsh*, POLITICO PRO, Jan. 28, 2022, <https://subscriber.politicopro.com/newsletter/2022/01/wheeling-and-dealing-walsh-00003093>.

<sup>2</sup> Letter from Sen. Richard Burr, Ranking Member, S. Comm. on Health, Educ., Lab. & Pensions et al., to Martin J. Walsh, Sec'y of Lab. (Nov. 2, 2021), [https://republicans-edlabor.house.gov/UploadedFiles/Burr\\_Foxx\\_Braun\\_Allen\\_to\\_Walsh\\_re\\_picket\\_line\\_110221.pdf](https://republicans-edlabor.house.gov/UploadedFiles/Burr_Foxx_Braun_Allen_to_Walsh_re_picket_line_110221.pdf).

<sup>3</sup> Tim Mekeel, *'I Stand With You Today': U.S. Labor Secretary Walsh Visits Kellogg Strikers In Lancaster*, LANCASTERONLINE, Oct. 27, 2021, [https://lancasteronline.com/business/local\\_business/u-s-labor-secretary-walsh-visits-kellogg-strikers-in-lancaster-voices-support-for-worker-rights/article\\_a44481d0-374a-11ec-b6cc-9713be39d7fa.html](https://lancasteronline.com/business/local_business/u-s-labor-secretary-walsh-visits-kellogg-strikers-in-lancaster-voices-support-for-worker-rights/article_a44481d0-374a-11ec-b6cc-9713be39d7fa.html).

The Honorable Martin J. Walsh

February 23, 2022

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right of employees to refrain from participating in or funding union activity. Your actions risk disrupting that balanced framework.

On November 2, 2021, we wrote to you with Sen. Richard Burr (R-NC), Ranking Member of the Senate Committee on Health, Education, Labor and Pensions, and Sen. Mike Braun (R-IN), Ranking Member of the Subcommittee on Employment and Workplace Safety, requesting information about your participation in the Kellogg's strike. The information we requested is critical to our understanding of what ethics advice you received from DOL's Office of Legal Counsel prior to your participation in the Kellogg's strike and of what your plans are for participating in enforcement actions following your October visit to the Kellogg's plant. We have been waiting for your response to these important questions for more than three months. We again request you respond to our previous questions.

Given your stated interest in participating in future labor disputes, please respond to these additional questions:

1. Have you received requests from any individual or group, either formally or informally—including but not limited to the White House—seeking your participation in strikes or other labor-management activity since becoming Secretary of Labor? If so, please provide such information.
2. Will you commit to recuse yourself from all investigations and enforcement actions related to any party involved in a strike or other labor-management activity at which you participated or appeared or may participate or appear in the future?
3. Will you commit to seeking ethics advice prior to each such visit or participation? We request any guidance or advice you have received on the legality of such actions and your ethical obligations related to these visits prior to your participation or appearance.

We look forward to your response with the information we requested in our November 20, 2021 letter and in this letter by no later than March 9, 2022. Thank you for prompt attention to our inquiry.

Sincerely,



Virginia Foxx  
Ranking Member



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

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July 19, 2022

The Honorable Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington DC, 20210

Dear Secretary Walsh:

Last month the Committee on Education and Labor held a hearing where you testified about the policies and priorities of the Department of Labor (DOL).<sup>1</sup> During the hearing, I asked you directly about your participation in strike activity at the Kellogg's plant in Lancaster, Pennsylvania, on October 27. Following this exchange, I expected you to promptly send me the information we discussed at the hearing. However, after several weeks of silence from DOL, I find myself again needing to request this information.

The June hearing was not our first exchange about this matter. I have twice written to you since November seeking information about your participation in the Kellogg's strike.<sup>2</sup> Not only have you failed to respond in writing to either of those letters but you were also unprepared to discuss the requests made in those letters during the hearing.<sup>3</sup> In addition, I have yet to receive any of the materials you agreed to provide in response to my questions about your seeking advice from DOL's Office of Legal Counsel (OLC) attorneys regarding your visit to the Kellogg's plant. Specifically, I asked you to provide me any written guidance or advice you received on either the

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<sup>1</sup> *Examining the Policies and Priorities of the U.S. Department of Labor: Hearing Before the H. Comm. on Educ. & Lab.*, 117 Cong. (2022), <https://edlabor.house.gov/hearings/06/07/2022/examining-the-policies-and-priorities-of-the-us-department-of-labor>.

<sup>2</sup> Letter from Sen. Richard Burr et al. to Martin J. Walsh, Sec'y of Lab. (Nov. 2, 2021), [https://republicans-edlabor.house.gov/uploadedfiles/burr\\_foxx\\_braun\\_allen\\_to\\_walsh\\_re\\_picket\\_line\\_110221.pdf](https://republicans-edlabor.house.gov/uploadedfiles/burr_foxx_braun_allen_to_walsh_re_picket_line_110221.pdf); Letter from Reps. Virginia Foxx & Rick W. Allen to Martin J. Walsh, Sec'y of Lab. (Feb. 23, 2022), [https://republicans-edlabor.house.gov/uploadedfiles/02-23-2022\\_letter\\_to\\_sec\\_walsh.pdf](https://republicans-edlabor.house.gov/uploadedfiles/02-23-2022_letter_to_sec_walsh.pdf).

<sup>3</sup> In response to my question, "Will you commit to responding comprehensively in writing all the questions in my previous two letters by the end of this week?" you responded, "I don't know what questions are in your letter."

The Honorable Martin J. Walsh

July 19, 2022

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legality of this visit or on your ethical obligations related to the visit, and you responded in the affirmative.<sup>4</sup> I am dismayed that you have not provided any of the promised information.

Your silence on this issue has been deafening. If you have fulfilled your obligations to follow legal and ethical procedures on the matter of your visit to the Kellogg's plant, why are you unwilling to provide evidence to support this? Furthermore, my concerns do not end with that visit. As I noted in my February 23 letter, your participation in additional labor-management disputes makes it even more important for Members of Congress and the public to understand whether you are meeting your obligations to receive ethics advice from OLC whenever you plan to engage in labor-management disputes as well as to understand whether you recuse yourself from participating in enforcement actions against parties whose disputes you involve yourself in.<sup>5</sup>

Your disregard for Congress and its oversight responsibilities is inexcusable. I have been seeking answers to my questions on this matter for more than eight months. Please provide the materials you promised during the June 12 hearing as well as full responses to the questions in my November and February letters by no later than August 2.

Thank you for your attention to this important matter.

Sincerely,



Virginia Foxx  
Ranking Member

Enclosures

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<sup>4</sup> *Examining the Policies and Priorities of the U.S. Department of Labor*, *supra* note 1.

<sup>5</sup> Letter from Reps. Virginia Foxx & Rick W. Allen, *supra* note 2.



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July 21, 2022

The Honorable Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington DC, 20210

Dear Secretary Walsh:

As Republican Leader of the Committee on Education and Labor, it is my duty to ensure transparency and accountability from senior government officials. Following 10 months without requested information, it is this duty that leads me again to request information about Department of Labor (DOL) Chief of Staff Daniel Koh.

Since October, I have written to you on three occasions requesting copies of Mr. Koh's official calendars.<sup>1</sup> At no time has DOL provided me with these calendars or posted them on DOL's website, as I have also requested. On July 19, I learned that Mr. Koh is leaving DOL to serve as White House Deputy Cabinet Secretary.<sup>2</sup> His move to a significant role in the White House makes my inquiries about his tenure as chief of staff at DOL even more important.

Your failure to provide the requested information about Mr. Koh's calendars is another example of your apparent lack of respect for Congress and its oversight responsibilities. You are apparently unwilling to provide Members of Congress with as much consideration as you would for anyone making a request under the *Freedom of Information Act*.

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<sup>1</sup> Letter from Rep. Virginia Foxx to Martin J. Walsh, Sec'y. of Lab. (Oct. 18, 2021), [https://republicans-edlabor.house.gov/uploadedfiles/10-18-2021\\_letter\\_to\\_sec\\_walsh.pdf](https://republicans-edlabor.house.gov/uploadedfiles/10-18-2021_letter_to_sec_walsh.pdf); letter from Reps. Virginia Foxx & James Comer to Martin J. Walsh, Sec'y. of Lab. (Dec. 21, 2021), [https://republicans-edlabor.house.gov/UploadedFiles/12.21.2021\\_Letter\\_to\\_Sec.\\_Walsh.pdf](https://republicans-edlabor.house.gov/UploadedFiles/12.21.2021_Letter_to_Sec._Walsh.pdf); Letter from Rep. Virginia Foxx to Martin J. Walsh, Sec'y. of Lab. (Apr. 1, 2022), [https://republicans-edlabor.house.gov/uploadedfiles/04.01.22\\_-\\_letter\\_to\\_walsh.pdf](https://republicans-edlabor.house.gov/uploadedfiles/04.01.22_-_letter_to_walsh.pdf).

<sup>2</sup> Rebecca Rainey, *Top Staffer for Labor Chief Walsh Departs DOL for White House*, BLOOMBERG L., July 19, 2022, <https://www.bgov.com/next/news/RF9YNJDWLU69>.

The Honorable Martin J. Walsh

July 21, 2022

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Please honor my previous requests by providing me with copies of Mr. Koh's calendars and posting them online before he takes his position at the White House, or at minimum by no later than August 4. In addition, I request DOL begin posting the official calendars of Ms. Allison Zelman on its website within two weeks of the beginning of her tenure as DOL chief of staff and no later than two weeks after the close of each month.

Sincerely,



Virginia Foxx  
Ranking Member

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JOAQUIN CASTRO, TEXAS  
MIKIE SHERRILL, NEW JERSEY  
ADRIANO ESPAILLAT, NEW YORK  
KWEISI MFUME, MARYLAND



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

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September 26, 2022

The Honorable Douglas L. Parker  
Assistant Secretary  
Occupational Safety and Health Administration  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Assistant Secretary Parker:

On June 21, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) mandating workplace COVID-19-related precautions for covered employers in the health care industry,<sup>1</sup> which the agency subsequently withdrew on December 27, 2021.<sup>2</sup> You testified before the Committee on Education and Labor that the agency is working to finalize the ETS as a permanent COVID-19 standard for the health care industry and expects to issue a final standard this fall.<sup>3</sup> In light of President Biden's recent proclamation regarding the end of the pandemic, the impracticality of the forthcoming regulatory scheme, and OSHA's questionable legal authority, we write to express our strong disapproval of your decision to move forward with this ill-advised rule and urge your agency to abandon it.

<sup>1</sup> Occupational Exposure to COVID-19; Emergency Temporary Standard, 86 Fed. Reg. 32,376 (June 21, 2021).

<sup>2</sup> OSHA, STATEMENT ON THE STATUS OF THE OSHA COVID-19 HEALTHCARE ETS (Dec. 27, 2021), <https://www.osha.gov/coronavirus/ets>.

<sup>3</sup> *Examining the Policies and Priorities of the Occupational Safety and Health Administration: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 117th Cong. (2022) (statement of Douglas L. Parker, Assistant Sec'y of Lab. for Occupational Safety & Health, Dep't of Lab.).

On September 18, President Biden proclaimed in a 60 Minutes interview that “the pandemic is over.”<sup>4</sup> He continued, “[I]f you notice, no one’s wearing masks. Everybody seems to be in pretty good shape ... and so I think it’s changing.”<sup>5</sup>

It appears that OSHA did not get the President’s memo. At the same time President Biden proclaimed the pandemic over, his own administration continued to move forward with a COVID-19 rulemaking, not only reviving a regulatory scheme against health care industry employers that expired back in 2021 but also making the standard permanent. This is the height of foolishness. Our health care industry is strained enough as it is without the Biden administration demanding additional and burdensome COVID-19 requirements. It is overdue for Washington bureaucrats to stop using the pandemic as a pretense to increase top-down federal control over the workplace.

Further, as many stakeholders have already pointed out to OSHA, issuing a permanent COVID-19 regulatory standard mandating precautions that cannot easily be updated is unwise given ever-changing Centers for Disease Control and Prevention (CDC) guidance. OSHA itself has acknowledged that evolving CDC recommendations have resulted in inconsistencies with the initial health care industry ETS, necessitating OSHA to re-open its public comment period to collect more up-to-date information.<sup>6</sup> Adding additional and permanent OSHA requirements for the health care industry on top of evolving CDC guidance is unnecessary and would cause widespread confusion among health care employers and workers without improving workplace safety.

Lastly, we question OSHA’s legal authority for continuing to pursue a long-expired ETS as the basis for a permanent COVID-19 regulation. In granting the agency emergency rulemaking authority, the *Occupational Safety and Health Act* (OSH Act) requires OSHA to replace an ETS with a permanent standard *no later than six months* after publication in the Federal Register.<sup>7</sup> OSHA published the initial health care industry ETS in June 2021, subsequently withdrew it, and is now attempting to publish a permanent standard more than a year later. This is blatantly disregarding the law. If OSHA wishes to pursue this ill-advised and unnecessary rule as a permanent standard, it must do so through the normal rulemaking process outlined in the OSH Act.<sup>8</sup> It cannot assert emergency powers simply to fast-track rulemaking, as the Coalition for Workplace Safety explains:

A withdrawn proposal is not a viable basis for issuing a permanent standard. Utilizing a withdrawn ETS as the proposal for pursuing a permanent standard defies the basic principles of notice required by both the APA [*Administrative Procedure Act*] and the OSH Act. If it chooses to pursue a permanent standard addressing Occupational Exposure to COVID19 in Healthcare Settings, the

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<sup>4</sup> Scott Pelley, *President Joe Biden: The 2022 60 Minutes Interview*, CBS NEWS, Sept. 18, 2022, <https://www.cbsnews.com/news/president-joe-biden-60-minutes-interview-transcript-2022-09-18/>.

<sup>5</sup> *Id.*

<sup>6</sup> Occupational Exposure to COVID–19 in Healthcare Settings, 87 Fed. Reg. 16,427 (Mar. 23, 2022).

<sup>7</sup> 29 U.S.C. § 655(c)(3).

<sup>8</sup> *Id.* § 655(b).

The Honorable Douglas L. Parker  
September 26, 2022  
Page 3

Agency must first issue a proposal with accompanying regulatory text, seek public comment, and comply with other appropriate rulemaking procedures.<sup>9</sup>

Given President Biden's declaration of the end of the pandemic, the potential COVID-19 health care industry rule's impracticality, and OSHA's lack of authority, we urge OSHA to cease rulemaking on this ill-advised standard immediately. OSHA's exploitation of the pandemic as an excuse to increase federal control over the workplace is damaging to America's workers and job creators. We therefore request that you send us written assurance by no later than October 11, confirming that OSHA is not working on issuing a permanent COVID-19 standard for the health care industry.

Thank you for your attention to our request.

Sincerely,



Virginia Foxx  
Ranking Member



Fred Keller  
Ranking Member  
Subcommittee on Workforce Protections

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<sup>9</sup> Letter from Coalition for Workplace Safety (CWS) to Douglas L. Parker, Assistant Sec'y of Lab., OSHA (Apr. 22, 2022), <https://www.regulations.gov/comment/OSHA-2020-0004-2053>. CWS is comprised of associations and employers that believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. See ABOUT THE COALITION, <https://workingforsafety.com/about-cws/>.

# Congress of the United States

Washington, DC 20515

October 14, 2021

The Honorable Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

Dear Secretary Walsh:

We are conducting oversight of the Biden Administration’s announced COVID-19 vaccine-and-testing mandate on American employees and employers. On September 9, 2021—in an unprecedented action—President Biden announced that he had authorized the U.S. Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA) to promulgate and enforce a mandatory vaccine-and-testing emergency temporary standard (ETS) covering all private employers of 100 or more employees.<sup>1</sup> This rule will cover roughly 80 million American workers.<sup>2</sup> President Biden’s authoritarian mandate imposes troubling and probably illegal constraints on American businesses and their employees. It is just the latest example of President Biden and his Administration breaking promises and making decisions with no thought towards implementation or real-world impacts.<sup>3</sup>

On December 5, 2020, then President-elect Biden promised vaccines would not be required.<sup>4</sup> Later, on May 14, 2021, White House Press Secretary Jen Psaki said “[the Biden Administration] [is] not currently considering federal mandates.”<sup>5</sup> And on July 29, 2021, when asked about the federal government requiring vaccines for all Americans, White House COVID-19 Response Coordinator Jeff Zients said “[n]o. That’s not an authority that we’re exploring at all.”<sup>6</sup> Yet only a few weeks later, President Biden did an about-face, abruptly announcing a national vaccine-and-testing mandate—a mandate never before imposed on employers or the American workforce.

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<sup>1</sup> Exec. Order No. 14043, 86 Fed. Reg. 50989 (Sept. 9, 2021); Exec. Order No. 14042, 86 Fed. Reg. 50985 (Sept. 9, 2021).

<sup>2</sup> See Julia Zorthian, *Labor Department Officials Frustrated with White House over COVID-19 Vaccine-and-Testing Mandate*, TIME (Sept. 27, 2021) (“*Labor Department Officials Frustrated with White House*”).

<sup>3</sup> See e.g., Erin Banco, et al., *Tensions mount between CDC and Biden health team over boosters*, POLITICO, Sept. 13, 2021.

<sup>4</sup> *Joe Biden: Covid vaccination in US will not be mandatory*, BBC NEWS (Dec. 5, 2020).

<sup>5</sup> The White House, Press Briefing, *Press Briefing by Press Secretary Jen Psaki and Chair of the Council of Economic Advisers Cecilia Rouse, May 14, 2021* (May 14, 2021), available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/05/14/press-briefing-by-press-secretary-jen-psaki-and-chair-of-the-council-of-economic-advisers-cecilia-rouse-may-14-2021/>.

<sup>6</sup> *The Situation Room*, CNN (July 29, 2021), available at <https://transcripts.cnn.com/show/sitroom/date/2021-07-29/segment/01>.

Although the Biden Administration claims it was prepared for the emergence of the Delta variant of the COVID-19 virus,<sup>7</sup> it appears to have had no coherent plan for response to such a development. The sudden announcement of the vaccine-and-testing mandate demonstrates the Administration's unpreparedness. And in the wake of the announcement, the list of questions is endless. Not all American employers have the luxury to wait for answers. They have been blind-sided by the President's mandate.<sup>8</sup> Some are laying off workers based on vaccine refusals.<sup>9</sup> Making matters worse, non-compliance with the mandate could cause employers to confront fines of \$136,532 per violation under existing law<sup>10</sup>—and legislation pending in Congress proposes to raise the level of fines to \$700,000 per violation.<sup>11</sup> Moreover, the nation's small businesses continue to face severe labor force issues and cannot find workers for open positions. Concerns over the vaccine-and-testing mandate's logistics and potential for business- and job-destroying fines are valid.

The legality of the President's private-sector vaccine-and-testing mandate is also highly questionable. OSHA does have limited authority to issue ETSs to impose emergency workplace requirements. But it is doubtful this authority includes the power to mandate that private-sector employees take vaccine injections into their bodies—as opposed to the power to require practices limited in their effect to the workplace.<sup>12</sup> It also remains to be seen whether an ETS as strict as that described by the President can be justified as “necessary,” consistent with 29 U.S.C. § 655(c)(1)—as opposed to a more flexible standard that would, for example, fully account for what is needed to protect those who already have natural immunity to COVID-19. Further, OSHA does not appear to have the wherewithal to enforce the President's private-sector vaccine-and-testing mandate.<sup>13</sup>

To help our Committees understand the Biden Administration's plans to implement its vaccine-and-testing ETS for the private sector, we request the following documents and information as soon as possible but no later than October 28, 2021, for the time period January 20, 2021, to the present, unless otherwise noted below.

1. All documents and communications referring or relating to OSHA regulations or guidance to American employees and employers for the surveying of employee vaccination and testing status.

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<sup>7</sup> The White House, Press Release, *FACT SHEET: President Biden to Announce New Actions to Get More Americans Vaccinated and Slow the Spread of the Delta Variant* (July 29, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>.

<sup>8</sup> Zachary Halaschak, *Biden's vaccine mandate spells confusion and worry for some employers*, YAHOO! NEWS, Sept. 16, 2021.

<sup>9</sup> Leslie Josephs, *Nearly 600 United Airlines employees face termination for failing to comply with vaccine mandate*, CNBC, Sept. 28, 2021; *United Airlines Begins Terminating Hundreds Of Unvaccinated Employees*, CBS SF BAY AREA, Sept. 29, 2021.

<sup>10</sup> Memorandum to Regional Administrators from Patrick Kapust, Acting Dir., Directorate of Enforcement Programs, U.S. Dept of Labor (Jan. 8, 2021), available at <https://www.osha.gov/memos/2021-01-08/2021-annual-adjustments-osh-civil-penalties>.

<sup>11</sup> See 29 U.S.C. subsec. 666(a); H. Rep. 117-130, Book 2, *Build Back Better Act: Report of the Committee on the Budget, House of Representatives* at 1579 (sec. 21004) (Sept. 27, 2021).

<sup>12</sup> 29 U.S.C. subsec. 655(c).

<sup>13</sup> David Shepardson, *Biden vaccine mandate will test OSHA, U.S. workplace regulator*, Reuters (Sept. 13, 2021).

2. All documents and communications referring or relating to COVID-19 testing options for American employees and employers who will be subject to the vaccine-and-testing mandate.
3. All documents and communications referring or relating to costs to American employees and employers to implement and enforce the planned vaccine-and-testing mandate.
4. All documents and communications regarding the federal government's internal analysis and assessments of the economic impacts of the planned vaccine-and-testing mandate on American employees and employers.
5. All documents and communications referring or relating to time-off requirements for employees who will be subject to the planned vaccine-and-testing mandate.
6. All documents and communications referring or relating to telework requirements for employees who will be subject to the vaccine-and-testing mandate.
7. All documents and communications referring or relating to OSHA guidance for employer-employee communications regarding the planned vaccine-and-testing mandate.
8. All documents and communications referring or relating to religious, medical, natural-immunity-based, or other possible exemptions for employees from the planned vaccine-and-testing mandate.
9. All documents and communications referring or relating to OSHA guidance on written compliance plans which American employers may adopt with regard to the planned vaccine-and-testing mandate.
10. All documents and communications referring or relating to DOL's resources and budgetary needs to enforce the planned vaccine-and-testing mandate.
11. All communications between or among DOL employees and White House employees referring or relating to the design, implementation or enforcement of the planned vaccine-and-testing mandate or alternatives to it.
12. All communications between or among DOL employees referring or relating to the design, implementation or enforcement of the planned vaccine-and-testing mandate or alternatives to it.
13. All communications between or among DOL employees and Office of Information and Regulatory Affairs employees referring or relating to the design, implementation or enforcement of the planned vaccine-and-testing mandate or alternatives to it.



The Honorable Martin J. Walsh

October 14, 2021

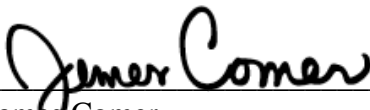
Page 4

14. All documents and communications between or among DOL employees and White House or Department of Justice employees concerning the legality of issuing a vaccine-and-testing mandate through an ETS under the *Occupational Safety and Health Act*.

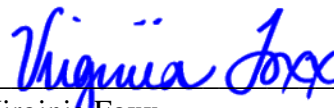
Thank you for your attention to this important request. To make arrangements for document delivery, or to ask any related follow up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074, Committee on Education and Labor Republican Staff at (202) 225-4527 or the Small Business Committee Republican Staff at (202) 225-5821.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Education and Labor has authority over labor standards, including workplace safety. Additionally, under the same House Rule, the Committee on Small Business shall have the authority to “study and investigate on a continuing basis the problems of all types of small business.” Thank you in advance for your cooperation with this inquiry.

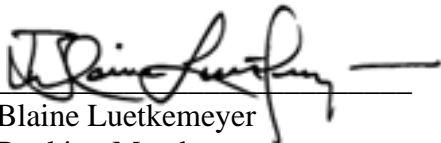
Sincerely,



James Comer  
Ranking Member  
House Committee on Oversight  
and Reform



Virginia Foxx  
Ranking Member  
House Committee on Education  
and Labor



Blaine Luetkemeyer  
Ranking Member  
Committee on Small Business

cc: The Honorable Carolyn B. Maloney, Chairwoman  
Committee on Oversight and Reform

The Honorable Robert C. Scott, Chairman  
Committee on Education and Labor

The Honorable Nydia M. Velázquez, Chairwoman  
Committee on Small Business

# Congress of the United States

Washington, D.C. 20515

October 18, 2021

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Secretary Walsh:

We write to express our deep concern that the Department of Labor (DOL) has failed to reopen for in-person business, and we request specific information regarding your decision-making in this regard. In March 2020, DOL ceased its regular operations to protect its staff from the then-unknown threats of COVID-19. This change in operations resulted in the vast majority of DOL's personnel being put on telework status. At the time, with much unknown about transmission and before vaccines were widely available, this change for DOL personnel, as well as for workers in public and private work situations across the country, was appropriate. However, it was understood that remote work status was to be a *temporary* protective measure and not a new way of life for federal workers.

It is now October 2021. On April 19, the White House COVID-19 Response Team announced all people age 16 and older are eligible for the COVID-19 vaccine.<sup>1</sup> Under safety protocols developed by businesses around the country with the well-being of their workers and customers the top priority, workplaces are re-opening at a steady pace. Yet plans and deadlines for a return to work for DOL personnel announced in August have not been implemented—with the deadline for 50 percent occupancy by September 7 having long since passed. We now understand that further plans for a phased return to in-person work on October 7 and November 8 have both been scuttled by a new plan to *begin* phasing-in workers on January 3, 2022.<sup>2</sup> If these new phase-in plans take three months to be implemented, some DOL staff will have not seen their desks in two years.

Under its previous leadership, DOL was taking affirmative steps to lead by example and return to in-person business. As early as June 2020, most of DOL's senior leadership, appointees,

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<sup>1</sup> See THE WHITE HOUSE, PRESS BRIEFING BY WHITE HOUSE COVID-19 RESPONSE TEAM AND PUBLIC HEALTH OFFICIALS, (Apr. 19, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/19/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-30/>.

<sup>2</sup> See Ian Kullgren & Ben Penn, *Punching In: How Unions Are Handling the PRO Act in Budget Talks*, BLOOMBERG GOV'T, July 19, 2021, <https://www.bgov.com/core/news/#!/articles/QWHKU4DWX2PT>; Ben Penn, *Labor Department Delays Staff Office Returns by Three Months*, BLOOMBERG GOV'T, Sept. 22, 2021, <https://www.bgov.com/core/news/#!/articles/QZUQKUT1UM0W>.

and career and non-career Senior Executive Service (SES) staff had returned to in-person service in Washington, D.C.<sup>3</sup>

Under the Biden administration, DOL has reverted to having most of its workers who are not enforcement personnel work remotely. We are particularly concerned that DOL's senior leadership—including you and Deputy Secretary Julie Su—are not reporting to work in the national office daily and may be living somewhere other than the Washington, D.C., metropolitan area. According to your own calendar, during nearly your first five months as Secretary, you spent only 30 days in Washington, D.C.<sup>4</sup>

The mission of the Department is “to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”<sup>5</sup> As the department with direct jurisdiction over the workforce, DOL has a particular duty to lead by example and re-open for in-person business. DOL also has that obligation to every worker around the country who has either returned to their worksites or had never left in the first place.

Accordingly, we ask you to bring as many DOL personnel and contractors as possible back to in-person service immediately. We also request you provide the following information:

1. All documents and communications since January 20, 2021, regarding plans to return DOL federal workers and contractors to in-person work status;
2. Daily Francis Perkins Building and Bureau of Labor Statistics entry and exit data (raw numbers only) from January 21, 2021, through September 30, 2021;
3. A list of all individuals who hold presidentially appointed positions, are in the SES, or hold Schedule C appointments and have the Washington, D.C. region as their duty station but are not regularly residing in the Washington, D.C. region;
4. An explanation of whether DOL has ensured all employees are being paid in accordance with the locality in which they reside and from which they work instead of where their official duty station is;
5. Your monthly schedules from August 1 through September 30, 2021;
6. Deputy Secretary Su's monthly schedules; and
7. Chief of Staff Daniel Arrigg Koh's monthly schedules.

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<sup>3</sup> See Ben Penn, *DOL to Begin Reopening Offices, Sending Senior Staff Back*, BLOOMBERG L., June 16, 2020, <https://news.bloomberglaw.com/daily-labor-report/dol-begins-reopening-offices-sends-senior-staff-back-next-week>.

<sup>4</sup> DOL-WIDE FOIA LIBRARY, SECRETARY OF LABOR MARTY WALSH'S MONTHLY SCHEDULE, <https://www.dol.gov/general/foia/readroom>.

<sup>5</sup> DOL, ABOUT US, <https://www.dol.gov/general/aboutdol#:~:text=Our%20Mission,work%2Drelated%20benefits%20and%20rights>.

The Honorable Martin J. Walsh

October 18, 2021

Page 3

We look forward to your response with the information we requested by November 1, 2021. If you have any questions regarding this request, please contact Joe Wheeler with the Committee on Education and Labor at (202) 225-4527.

Thank you for your attention to this important matter.

Sincerely,



Virginia Foxx  
Ranking Member  
House Committee on Education and Labor



James Comer  
Ranking Member  
House Committee on Oversight and Reform



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



Jody Hice  
Ranking Member  
Subcommittee on Government Operations



Fred Keller  
Ranking Member  
Subcommittee on Workforce Protections

# Congress of the United States

Washington, D.C. 20515

December 21, 2021

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Secretary Walsh:

On October 18, Reps. Rick Allen (R-GA), Jody Hice (R-GA), and Fred Keller (R-PA) joined us in writing you to express concerns about the Department of Labor's (DOL or Department) failure to reopen for in-person business.<sup>1</sup> More than a month past our letter's stated deadline for a response, your Department on December 6 finally sent its reply.<sup>2</sup> Unfortunately, the Department's letter did not adequately address our concerns and failed to provide most of the documents we requested. To better understand DOL's plans to reopen for in-person business and the serious implications of the Department being closed for so long, we are requesting this information again.

In our letter, we sought an explanation of why DOL's previous plans and deadlines to return most DOL personnel were not met and of what DOL's future plans are. DOL's reply was wholly unresponsive. While the Department's letter noted "plans to increase [DOL personnel's] on-site presence beginning in January 2022," it provided no specificity about how these plans would be implemented beyond a scheduled reentry of no later than March 7, 2022.<sup>3</sup> Further, DOL's response did not provide any of the requested data regarding the daily presence of employees at the Frances Perkins Building or the Bureau of Labor Statistics in Washington, D.C. We therefore have no basis to verify DOL's claim that personnel presence has increased since January 2021.

We also continue to be very concerned that DOL is paying employees working from alternative work sites at locality-pay rates that do not align with their physical work locations. In response to our previous request for information on this important matter, the Department's December 6 letter suggests that DOL has paid some of these employees improperly since March 2020, is doing so now, and will continue to do so until March 7, 2022, due to a failure to acknowledge the true location of DOL employees' worksites. In addition, the December 6 letter

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<sup>1</sup> Letter from Virginia Foxx, Ranking Member, H. Comm. on Educ. & Lab. et al., to Martin J. Walsh, Sec'y. of Lab. (Oct. 18, 2021), [https://republicans-edlabor.house.gov/uploadedfiles/10-18-2021\\_letter\\_to\\_sec\\_walsh.pdf](https://republicans-edlabor.house.gov/uploadedfiles/10-18-2021_letter_to_sec_walsh.pdf).

<sup>2</sup> Letter from Michelle Rose, Dep. Asst. Sec'y. of Lab., to Virginia Foxx, Ranking Member, H. Comm. on Educ. & Lab. (Dec. 6, 2021).

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

implies DOL will address this issue regarding locality pay only for workers with formal and permanent “remote work arrangements,” not for any expanded number of teleworkers that DOL intends to allow going forward.<sup>4</sup> This situation is very concerning to us on both counts, as it should be to all taxpayers. We therefore request a more complete explanation of DOL’s current and planned future policies about ensuring its employees—career and non-career alike—are paid at the locality rate of where they reside and from which they work, instead of the locality rate of their duty station of record.

In addition, our October 18 letter raised concerns about your own failure to be present in Washington, D.C. to conduct business on behalf of America’s workers and employers. We noted that you only spent 30 days in Washington, D.C. during your first five months as Secretary.<sup>5</sup> The Department’s December 6 letter did not address our concerns, and your daily calendars for August and September demonstrate that your in-person attendance at the Frances Perkins Building in Washington, D.C. became even less frequent during those months.<sup>6</sup> Specifically, your calendar shows that you spent fewer than two full days in Washington, D.C. for the entire month of August. Including the eight days you were apparently working in Washington, D.C. in September, you were here just 40 days over the course of your first six months as Secretary of Labor.

Our concerns about your lack of attendance in Washington, D.C. are compounded by recent articles highlighting your unusual approach to leading DOL. A November 17, 2021, POLITICO article pointed out that your atypical living arrangement, which is substantially based in Boston, Massachusetts, has “raised eyebrows” within the Biden administration.<sup>7</sup> Further, a December 1, 2021, POLITICO article outlined your political ambitions and those of your chief of staff, Daniel Koh, stating that “allies are telling Democrats in [Massachusetts] that the labor secretary is considering returning home to mount a bid [for governor].”<sup>8</sup> American workers should always be the primary focus of the Secretary of Labor. We are concerned that your calendars suggest your focus is elsewhere.

In our October 18 letter, we wrote, “As the department with direct jurisdiction over the workforce, DOL in particular has a duty to lead by example and re-open for in-person business. DOL also has that obligation to every worker around the country who has either returned to their

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<sup>4</sup> Current Office of Personnel Management (OPM) guidance distinguishes between “telework” and “remote work.” Under OPM’s guidance, “teleworkers” may claim locality pay at higher rates applicable to their “official” workstations, as long as they report to those locations at least twice per pay period. U.S. Office of Personnel Management, *2021 Guide to Telework and Remote Work in the Federal Government* at 31, 58 (Nov. 2021). OPM advises that “remote workers,” by contrast, should be paid at locality rates applicable to their alternative work locations, because they do not report as frequently to what otherwise would be their official workstations. *Id.* At a minimum, adherence to this costly policy should be reconsidered at DOL and elsewhere if telework is to be expanded substantially post-pandemic.

<sup>5</sup> Letter from Virginia Foxx, *supra* note 1.

<sup>6</sup> DOL-WIDE FOIA LIBRARY, SECRETARY OF LABOR MARTY WALSH’S MONTHLY SCHEDULE, <https://www.dol.gov/general/foia/readroom>.

<sup>7</sup> Alex Thompson et al., *Where’s Marty Walsh Sleeping?*, POLITICO, Nov. 17, 2021, <https://www.politico.com/newsletters/west-wing-playbook/2021/11/17/wheres-marty-walsh-sleeping-495141>.

<sup>8</sup> Alex Thompson et al., *Marty Walsh Is Weighing A Run For Massachusetts Governor*, POLITICO, Dec. 1, 2021, <https://www.politico.com/news/2021/12/01/marty-walsh-massachusetts-governor-523620>.

worksite or never left in the first place.”<sup>9</sup> Our concerns about DOL’s ability in its current posture to conduct business on behalf of workers and employers and your failure to reopen the Department for in-person business have only increased. We request that you fully respond to our October 18 letter by providing the unproduced documents we requested in that letter:

1. All documents and communications since January 20, 2021, regarding plans to return DOL federal workers and contractors to in-person work status;
2. Daily Frances Perkins Building and Postal Square Building<sup>10</sup> entry and exit data (raw numbers only) from January 21, 2021, through September 30, 2021;
3. A list of all individuals who hold presidentially appointed positions, are in the Senior Executive Service, or hold Schedule C appointments and have the Washington, D.C., region as their duty station but are not regularly residing in the Washington, D.C., region;
4. An explanation of whether DOL has ensured all employees are being paid in accordance with the locality in which they reside and from which they work instead of where their duty station of record is;<sup>11</sup> and
5. Chief of Staff Daniel Arrigg Koh’s schedules.

We look forward to your response with the information we requested by January 6, 2022. If you have any questions regarding this request, please contact Joe Wheeler with the Committee on Education and Labor at (202) 225-4527 and Daniel Flores with the Committee on Oversight and Reform at (202) 225-5074.

Thank you for your attention to this important matter.

Sincerely,



Virginia Foxx  
Ranking Member  
Committee on Education and Labor



James Comer  
Ranking Member  
Committee on Oversight and Reform

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<sup>9</sup> Letter from Virginia Foxx, *supra* note 1.

<sup>10</sup> The October 18 letter referred to the Bureau of Labor Statistics, which is housed in the Postal Square Building.

<sup>11</sup> The October 18 letter referred to the duty station of record as the “official duty station.”

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*Chairman*

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JULIA LETLOW, LOUISIANA  
CHRIS JACOBS, NEW YORK  
VACANCY

March 8, 2022

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Walsh:

On April 26, 2021, President Biden signed an executive order establishing a Task Force on Worker Organizing and Empowerment (Task Force) which named you as its vice-chair.<sup>1</sup> On February 7, 2022, the Task Force released a report to the President including its recommendations (Report).<sup>2</sup> The Report's recommendations appear to satisfy two overriding objectives of the Biden administration: empowering union bosses and expanding the size of the federal government. Not only does the Report represent a waste of both time and taxpayer resources, but also it explicitly instructs government agencies to bias themselves for the benefit of unions. We write to express our concerns about the Report's recommendations and the negative impacts they present for workers and employers, including small businesses, and to request additional information on the activities of the Task Force.

The Report represents another attempt by the Biden administration to alter the implementation of federal labor law. Specifically, it upsets the careful and longstanding balance of the right of labor unions to organize and bargain collectively on behalf of employees, the right of employers to respond to those organizing and bargaining efforts, and the right of employees to choose not to participate in or fund union activity. The Report contains several recommendations that will needlessly complicate federal employment, raise costs and restrictions involving government contacting and grantmaking, and decrease economic opportunities for workers and businesses.

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<sup>1</sup> Exec. Order No. 14,025, 86 Fed. Reg. 22829 (Apr. 26, 2021). This oversight letter is directed to you as Secretary of Labor and as Vice-Chair of the Task Force. Please provide comprehensive responses and requested materials in both capacities.

<sup>2</sup> WHITE HOUSE TASK FORCE ON WORKER ORGANIZING AND EMPOWERMENT, REPORT TO THE PRESIDENT (Feb. 7, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/02/White-House-Task-Force-on-Worker-Organizing-and-Empowerment-Report.pdf>.



The Report doubles down on the administration's preference for threatening employers and workers with heavy-handed enforcement initiatives. Specifically, it recommends the Department of Labor (DOL) prioritize policies that hinder workers' abilities to choose when, where, and how they work.<sup>3</sup> Failing to recognize that many workers want to work as independent contractors, the Report recommends several measures DOL can take to classify independent contractors as employees, thereby subjecting them to union harassment. This Report and DOL's implementation will threaten the flexibility and economic opportunity that independent contractor status provides to millions of workers.

The Report also recommends expanding the use of costly and unnecessary project labor agreements (PLA) on certain federal construction projects.<sup>4</sup> Government-mandated PLAs reduce competition from small, minority, and other qualified contractors and inflate the cost of federal construction, resulting in fewer construction projects being built.<sup>5</sup> It is unconscionable that the Biden administration would enact such a harmful policy which rewards special interests and effectively shuts out the 87 percent of construction workers who choose not to belong to a union.<sup>6</sup>

We are further concerned by the Report's recommendations to expose workers to union organizing and harassment while also imposing additional reporting requirements from employers of all sizes. These efforts are reminiscent of the Obama administration's discredited 2016 "Persuader Rule," and will stifle the free speech of employers when talking to workers about the merits of joining a union.<sup>7</sup> These requirements will also have a chilling effect on attorney-client privilege, leaving small employers without legal recourse or the ability to secure counsel when dealing with immensely complicated labor laws. These recommendations are clearly intended to benefit union leaders and organizers at the expense of workers who will subsequently be less informed about a decision with enormous impact on their livelihoods and families.

In sum, the Task Force's Report is another example of the Biden administration missing an opportunity to support workers. Workers and businesses need more freedom to pursue opportunities for growth. Instead of focusing on the desires of union bosses, the Task Force and DOL should remove regulatory barriers that keep businesses from hiring and workers from making their own decisions. We therefore seek information about the Task Force and the time, attention, and resources it has squandered on the Report. Moreover, we request any information regarding the people and organizations outside of the government who contributed to the Report's recommendations.<sup>8</sup> Please provide the following information by March 22, 2022:

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<sup>3</sup> *Id.* at 28-29.

<sup>4</sup> *Id.* at 33-34, 37-38.

<sup>5</sup> *See, e.g.*, WILLIAM F. BURKE & DAVID G. TUERCK, THE BEACON HILL INST., THE EFFECTS OF PROJECT LABOR AGREEMENTS ON PUBLIC SCHOOL CONSTRUCTION IN CONNECTICUT (Jan. 2020), <https://beaconhill.org/wp-content/uploads/2020/02/CT-PLA-FinalRev-2020-0211.pdf>.

<sup>6</sup> U.S. BUREAU OF LAB. STATISTICS, UNION AFFILIATION OF EMPLOYED WAGE AND SALARY WORKERS BY OCCUPATION AND INDUSTRY (Jan. 20, 2022), <https://www.bls.gov/news.release/union2.t03.htm>.

<sup>7</sup> REPORT TO THE PRESIDENT, *supra* note 2, at 22.

<sup>8</sup> Exec. Order No. 14,025, *supra* note 1, § 2(f) ("Consistent with the objectives of this order and applicable law, the Task Force may gather relevant information from labor organizations, other worker advocates, academic and other experts, and other entities and persons it identifies that will assist the Task Force in accomplishing the objectives of this order.").

The Honorable Martin J. Walsh

March 8, 2022

Page 3

1. A list of all Task Force meetings—including the dates, meeting minutes, and attendees for each meeting;
2. A list of all meetings and communications with people and organizations held outside of the official Task Force meetings—including the dates and notes taken during such meetings or communications;
3. A list of all people and organizations that contributed policy ideas to the Task Force for consideration;
4. A description of the selection process by which a person or organization was able to take part in the Task Force or the development of the Report;
5. A list of all people and organizations that expressed an interest in contributing to the Task Force or the Report;
6. A list of all ideas that were offered, but not ultimately included, in the Report, including the Task Force's reasoning for not including such ideas;
7. An accounting of all resources used for operating the Task Force and producing the Report—including the amount of funding and the full-time equivalent workers used;<sup>9</sup> and
8. A cost analysis of how the Report's recommendations will impact the federal budget and the economy if they are adopted.

Thank you for your attention to this matter.

Sincerely,



Virginia Foxx  
Ranking Member



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

Cc: Vice President Kamala D. Harris

---

<sup>9</sup> This inquiry is not limited to resources used by DOL. Please provide comprehensive responses that include an accounting of all resources used by all federal agencies for the work of the Task Force.

MAJORITY MEMBERS:

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COMMITTEE ON  
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September 30, 2022

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BRAD FINSTAD, MINNESOTA  
JOE SEMPOLINSKI, NEW YORK

The Honorable Martin J. Walsh  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Walsh:

We write to bring to your attention *West Virginia v. Environmental Protection Agency (EPA)*, a recent Supreme Court decision that clarified the limitations of certain agency actions.<sup>1</sup> Although Article I, Section 1 of the Constitution vests “all legislative powers” in Congress, the Biden administration has largely relied on executive action to advance its radical agenda. For example, in his first year in office, President Biden issued more executive orders<sup>2</sup> and approved more major rules<sup>3</sup> than any recent president. Such reliance on the administrative state undermines our system of government. Our founders provided Congress with legislative authority to ensure lawmaking is done by elected officials, not unaccountable bureaucrats. Given this administration’s track record, we are compelled to underscore the implications of *West Virginia v. EPA* and to remind you of the limitations on your agency’s authority.

In *West Virginia v. EPA*, the Court invoked the “major questions doctrine” to reject an attempt by the EPA to exceed its statutory authority.<sup>4</sup> As the Court explained, “precedent teaches that there are ‘extraordinary cases’ ... in which the ‘history and breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.”<sup>5</sup> Under this

<sup>1</sup> *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

<sup>2</sup> FED. REGISTER, EXECUTIVE ORDERS, <https://www.federalregister.gov/presidential-documents/executive-orders>.

<sup>3</sup> *How Biden Has Made Policy With Short-Term, Costly Rules: Charts*, BLOOMBERG L. (May 2022), <https://news.bloomberglaw.com/environment-and-energy/how-biden-has-made-policy-with-short-term-costly-rules-charts>.

<sup>4</sup> *West Virginia*, 142 S. Ct. at 2608-2614.

<sup>5</sup> *Id.* at 2608 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 129, 159-160 (2000)).

doctrine, an agency “must point to ‘clear congressional authorization’ for the power it claims.”<sup>6</sup> However, the EPA could not point to such authorization. Rather, the EPA “‘claim[ed] to discover ... an unheralded power’ representing a ‘transformative expansion in [its] regulatory authority’ in the vague language of an ‘ancillary provision’ of the Act ... that was designed to function as a gap filler.”<sup>7</sup> Notably, such discovery “allowed [EPA] to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself.”<sup>8</sup> As a result, the Court rejected the EPA’s attempt to exceed its statutory authority so plainly.

Unfortunately, EPA’s attempt to invent new authorities is not unusual for the Biden administration. Recently, the Supreme Court struck down both the Centers for Disease Control and Prevention’s attempt to impose an eviction moratorium<sup>9</sup> and the Occupational Safety and Health Administration’s (OSHA) attempt to impose a vaccine-or-testing mandate.<sup>10</sup> Thankfully, in *West Virginia v. EPA*, the Court made clear that such reliance on the administrative state will no longer be allowed. To be clear, “the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people’s representatives.”<sup>11</sup> In the United States, it is “the peculiar province of the legislature to prescribe general rules for the government of society.”<sup>12</sup>

From the very beginning of the Biden administration, the Department of Labor (DOL) has actively engaged in making regulatory changes—often skewing its policies in favor of union bosses and trial lawyers. Throughout 2021, the Biden administration used COVID-19 as an excuse to expand government regulations. DOL hastily and inappropriately attempted to withdraw the Trump administration’s sensible proposed rule classifying independent contractors and employees under the *Fair Labor Standards Act* (FLSA).<sup>13</sup> Following the federal district court’s reinstatement of the Trump-era rule,<sup>14</sup> DOL announced new rulemaking on independent contractors without using the usual process of publishing in the regulatory agenda or in the Federal Register, but via a post on the Wage and Hour Division’s blog.<sup>15</sup> We are also aware DOL is writing needless regulations to revise overtime rules under the FLSA and to expand and distort the application of *Davis-Bacon Act* wage requirements to new federal construction

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<sup>6</sup> *West Virginia*, 142 S. Ct. at 2609 (citation omitted).

<sup>7</sup> *Id.* at 2610 (citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> *Alabama Ass’n of Realtors v. HHS*, 141 S. Ct. 2485 (2021).

<sup>10</sup> *NFIB v. OSHA*, 142 S. Ct. 661 (2022).

<sup>11</sup> *West Virginia*, 142 S. Ct. at 2626 (Gorsuch, J., concurring).

<sup>12</sup> *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 136 (1810).

<sup>13</sup> *Independent Contractor Status Under the FLSA: Delay of Effective Date*, 86 Fed. Reg. 12,535 (Mar. 4, 2021); *Independent Contractor Status Under the FLSA: Withdrawal*, 86 Fed. Reg. 24,303 (May 6, 2021).

<sup>14</sup> *Coalition for Workforce Innovation v. Walsh*, No. 21-130 (E.D. Tex. Mar. 14, 2022) (mem. & order vacating rule).

<sup>15</sup> See Kathleen Dailey, *Business Groups Get Trump Independent Contractor Rule Reinstated*, BLOOMBERG L., Mar. 15, 2022, <https://news.bloomberglaw.com/litigation/business-groups-get-trump-independent-contractor-rule-reinstated>; DOL, *MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS UNDER THE FLSA*, (June 3, 2022), <https://blog.dol.gov/2022/06/03/misclassification-of-employees-as-independent-contractors-under-the-fair-labor-standards-act>.

projects.<sup>16</sup> Further, as Vice-Chair of the so-called “Task Force on Worker Organizing and Empowerment” (Task Force), you have taken part in writing a plan to weaponize government power strictly in favor of unions.<sup>17</sup>

As the committee of jurisdiction overseeing the execution of labor and employment laws, we assure you we will exercise our robust investigative and legislative powers not only to reassert our Article I responsibilities forcefully but also to ensure the Biden administration does not continue to exceed Congressional authorizations. Accordingly, to assist in this effort, please provide the following information no later than October 17, 2022:

1. A list of all pending DOL rulemakings and the specific Congressional authority for each pending rulemaking;
2. A list of all expected DOL rulemakings and the specific Congressional authority for each expected rulemaking;
3. A list of all pending rulemakings, including but not limited to those undertaken by DOL, resulting from recommendations included in the Task Force’s February 2022 report<sup>18</sup> and the specific Congressional authority for each pending rulemaking; and,
4. A list of all expected rulemakings, including but not limited to those undertaken by DOL, resulting from the Task Force report and the specific Congressional authority for each expected rulemaking.

Sincerely,



Virginia Foxx  
Ranking Member



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

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<sup>16</sup> OFF. OF INFO. & REG. AFF., DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, OUTSIDE SALES AND COMPUTER EMPLOYEES, RIN 1235-AA39, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1235-AA39>; *id.* UPDATING THE DAVIS-BACON AND RELATED ACTS, RIN 1235-AA40, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1235-AA40>.

<sup>17</sup> Exec. Order No. 14,025, 86 Fed. Reg. 22829 (Apr. 26, 2021). This oversight letter is directed to you as Secretary of Labor and as Vice-Chair of the Task Force. Please provide comprehensive responses and requested information in both capacities.

<sup>18</sup> WHITE HOUSE TASK FORCE ON WORKER ORGANIZING & EMPOWERMENT, REPORT TO THE PRESIDENT (Feb. 7, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/02/White-House-Task-Force-on-Worker-Organizing-and-Empowerment-Report.pdf>.

The Honorable Martin J. Walsh

September 30, 2022

Page 4



Fred Keller  
Ranking Member  
Subcommittee on Workforce Protections



Russ Fulcher  
Ranking Member  
Subcommittee on Civil Rights and  
Human Services



Mariannette Miller-Meeks  
Ranking Member  
Subcommittee on Higher Education and  
Workforce Investment

Cc: Vice President Kamala D. Harris

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

June 15, 2022

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Walsh:

We write today to inquire about the Executive Order on Promoting Access to Voting, E.O. 14019, which President Joe Biden signed on March 7, 2021, and to share our concerns about the lack of constitutional and statutory authority for federal agencies to engage in any activity beyond its stated mission, including federal voting access and registration activities. On March 29, 2022, Committee Republican Leaders sent a letter of inquiry to the Directors of the Domestic Policy Council and the Office of Management and Budget and, to date, received no response.<sup>1</sup>

We are certain you agree with us that every eligible voter who chooses to vote must have the opportunity to vote, and that every lawful vote must count, and increased voter registration and participation is a goal we share. Yet, our system requires that our actions must comport always with the Constitution and other federal law. According to Article I, section 4 of the Constitution, states have the primary role in establishing election law and administering elections.<sup>2</sup> And, to the extent the Elections Clause contains a federal “fail-safe,”<sup>3</sup> it is the Congress to whom the Constitution delegates that power, not the President. The President’s role is limited to enforcing enacted legislation passed by Congress; therefore, the President must exercise great restraint when attempting to act on election law.

We are concerned that this Executive Order goes beyond the power of the President and the statutory authority given to federal agencies, specifically (1) Directing federal agencies to assist states with voter registration if a state requests assistance; (2) Expanding the use of vote.gov and

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<sup>1</sup> Letter from Rep. Rodney Davis et al. to Susan E. Rice, Dir., Domestic Policy Council, & Shalanda Young, Dir., Off. of Mgmt. & Budget (Mar. 29, 2022) <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408179>.

<sup>2</sup> Ranking Member Rodney Davis, *The Elections Clause: States’ Primary Constitutional Authority Over Elections*, Report, U.S. H. of Reps., Comm. on H. Admin. Republicans (Aug. 12, 2021), [https://republicans-cha.house.gov/sites/republicans.cha.house.gov/files/documents/Report\\_The%20Elections%20Clause\\_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf](https://republicans-cha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf).

<sup>3</sup> Even Congress’ role in this space is secondary, and Congress must restrain itself from acting improperly and unconstitutionally.

suggesting agencies add a link to it on their websites; and (3) Proposing ways to increase federally funded government employee participation in the voting process.

As laudable as expanding access to information about voter registration is, it is not under the purview of the more than 180 statutes that authorize DOL and its programs. DOL was created in 1913 by “An Act to create a Department of Labor.”<sup>4</sup> Its purpose was “to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.” Numerous laws since 1913 have added program and enforcement responsibilities to DOL such that it is now comprised of multiple entities that provide services related to worker protection, income support, workforce development, and labor statistics. DOL has critical work to do on behalf of workers. It is inappropriate for DOL to turn its attention to issues for which it has not been statutorily directed to undertake.

We request you respond in writing to the following questions:

1. Has DOL submitted a plan in response to the Executive Order? If yes, has the agency made any updates to the plan originally submitted? If so, what changes have been made? Please provide copies of the plan submitted, including any and all changes.
2. What statutory authorities enable DOL to engage in voter registration and share election information? How does engaging in activities related to voter registration further the agency’s mission?
3. Has DOL estimated the amount of funding it will require to implement these plans? If so, please send the estimate. Where will the funding come from?
4. The Executive Order directs agencies to consider soliciting and facilitating approved, third-party organizations and state officials to provide voter registration services on agency premises. What are the criteria for such approval, including the responsible parties or clearance process for such approval? Please provide a list of third-party entities that have been solicited and a list that have been approved, to date.
5. Which states, if any, have requested assistance for voter registration from DOL, and, specifically, what assistance have they requested?
6. Have proper steps been taken to ensure that the actions taken by DOL employees do not violate the *Hatch Act*? If so, please provide a detailed description of the steps taken.
7. Have you taken part as a member of the Native American Voting Rights Steering Group, on which you were made a member under Section 10(b) of the Executive Order? If so, please provide information about your participation, including but not limited to dates and minutes of meetings.

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<sup>4</sup> Pub. L. 62-436.



The Honorable Martin J. Walsh

June 15, 2022

Page 3

We share the same goal of protecting every eligible citizen's right to vote and that every lawful vote must count. However, we must follow the paradigm as established by the Constitution. States have the primary role in establishing election law with Congress playing a secondary role. As the federal government, we must exercise caution to ensure the actions we take are constitutional.

We look forward to hearing from you. Rules of the House of Representatives give the Committee on Education and Labor oversight of DOL and the Committee of House Administration oversight of federal elections. Please respond by July 11, 2022. Please send your response and any questions you may have to Joe Wheeler, Professional Staff Member, of the Committee on Education and Labor at [Joseph.Wheeler@mail.house.gov](mailto:Joseph.Wheeler@mail.house.gov) and Caleb Hays, General Counsel and Deputy Staff Director, of the Committee on House Administration at [Caleb.Hays@mail.house.gov](mailto:Caleb.Hays@mail.house.gov).

Sincerely,



Virginia Foxx  
Ranking Member  
Committee on Education and Labor



Rodney Davis  
Ranking Member  
Committee on House Administration



James Comer  
Ranking Member  
Committee on Oversight and Reform



Bryan Steil  
Ranking Member  
Subcommittee on Elections



Glenn Thompson



Tim Walberg



Glenn Grothman



Elise Stefanik



Rick W. Allen



Jim Banks



Russ Fulcher



Fred Keller



Mariannette Miller-Meeks




Burgess Owens



Lisa C. McClain



Diana Harshbarger



Victoria Spartz



Scott Fitzgerald

# Congress of the United States

Washington, D.C. 20515

July 22, 2022

Delivered via Email

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue  
Washington, D.C. 20210

Dear Secretary Walsh,

Attorney-client privilege is one of the oldest common-law privileges.<sup>1</sup> This privilege “encourage[s] full and frank communication between attorneys and their clients and thereby promotes broader public interests in the observance of law and the administration of justice.”<sup>2</sup> We write to understand why a recent directive from the Office of Federal Contract Compliance Programs (OFCCP) seeks to eviscerate this privilege through its compliance reviews regarding pay equity audits and to ask whether OFCCP considered the unintended consequences of removing legal protections of such an audit.<sup>3</sup>

Without notice or public comment, OFCCP issued Directive 2022-01 indicating that it may require federal contractors to provide OFCCP information protected by attorney-client privilege. In particular, the Directive states that where “a contractor conducts a dual-purpose pay equity audit or analysis of employment processes...that implicates both legal concerns and OFCCP compliance [it] may request those records....” Even more disturbingly, the Directive threatens contractors should they attempt to withhold documents from OFCCP based on attorney-client privilege, stating “[f]ailure to provide the required pay equity audit will be considered by OFCCP as an admission of noncompliance with these regulatory requirements.” This assertion not only unfairly places a federal contractor in legal jeopardy; it also undermines the very purpose of attorney-client privilege—to encourage frank discussions between the attorney and client that promote the public interest and assure adherence to the law.

The chilling effect of the Directive is clear. A well-intended employer who might otherwise proactively engage in an internal pay equity audit would likely now choose not to conduct such an audit fearing repercussions from the federal government. An employer would also likely refrain from voluntarily initiating audits or hiring pay discrimination consultants to identify pay

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<sup>1</sup> <https://www.crs.gov/Reports/RS22588?source=search&guid=ddb80b46254d44f1b5f4f52dbe56f5f7&index=0>.

<sup>2</sup> *Ibid.*

<sup>3</sup> [Directive \(DIR\) 2022-01 | U.S. Department of Labor \(dol.gov\)](#).

The Honorable Martin J. Walsh

June 22, 2022

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or promotion disparities and subsequently curing them of their own volition. As many contractors adhere to their equal opportunity obligations through voluntary compliance, this Directive seems to contradict what OFCCP should be interested in achieving to promote fair pay practices. To understand better how you reached the conclusion that the attorney-client privilege should no longer apply within the context of OFCCP pay audits, please provide the following information by July 28, 2022:

1. All documents and communications, including communications with any external stakeholders, White House personnel, or inter-agency partners, related to the Directive.
2. An explanation of whether any White House personnel directed or encouraged Department of Labor (DOL) personnel to issue this directive, including any communications between DOL personnel and White House personnel and meeting minutes and notes about the Directive.
3. An explanation of why this Directive was not published as part of notice-and-comment rulemaking under the *Administrative Procedure Act*.
4. Any/all enforcement guidance or directives given to OFCCP auditors explaining how asserting privilege will negatively impact a compliance review.
5. A description of penalties employers will incur if they refuse to provide an audit or analyses asserting attorney-client privilege.

Thank you for your attention to the matter.

Sincerely,



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



Virginia Foxx  
Ranking Member  
House Committee on Education and Labor

# Congress of the United States

Washington, D.C. 20515

October 5, 2022

Delivered via Email

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue  
Washington, DC 20210

Dear Secretary Walsh:

The Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) recently concluded its "Workers' Voice Summit" (Summit).<sup>1</sup> We write to express our concerns about the inappropriate nature of this event and to seek information.

Stakeholders have expressed their concerns about the lack of transparency surrounding the Summit. Held for three days beginning on September 27, information about this meeting and its registration process were apparently closed to a large segment of OSHA's constituency. This is troubling as the event also involved a wide swath of DOL subagencies, including the Office of the Solicitor (SOL), the Office of Policy, the Wage and Hour Division, the Bureau of International Labor Affairs, and the Women's Bureau. A description of the event suggests it was for workers who felt "abandoned and marginalized."<sup>2</sup> Not only was the registration closed to many interested parties, but there was also no opportunity to listen to the summit, as would have been afforded in a public hearing pursuant to the *Occupational Safety and Health Act of 1970* (OSH Act).<sup>3</sup> As this was a taxpayer funded summit, this exclusivity is particularly inappropriate and concerning.

One of the main objectives of the Summit was to "strengthen existing ties between the department and labor unions, [and] worker centers" among other entities.<sup>4</sup> It is hard to imagine a need for OSHA to strengthen its ties with labor unions. On May 25, 2022, OSHA agreed to honor the request of the AFL-CIO to extend the comment period for the controversial proposed rule titled "Improve Tracking of Workplace Injuries and Illnesses." OSHA's Federal Register notice stated this was being done solely at the request of the AFL-CIO.<sup>5</sup>

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<sup>1</sup> OSHA, WORKERS' VOICE SUMMIT, <https://www.osha.gov/workersvoice>.

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

<sup>3</sup> See OSH Act § 6(b)(3); 29 U.S.C. § 655(b)(3) (requiring a public hearing when requested during rulemaking).

<sup>4</sup> WORKERS' VOICE SUMMIT, *supra* note 1.

<sup>5</sup> 87 Fed. Reg. 31,793, 31,794 (May 25, 2022).

By comparison, duly elected Members of Congress and a variety of industry sectors have asked for comment period extensions only to be consistently rebuffed by DOL.<sup>6</sup> Ironically, the May 2022 Federal Register notice appeared on the same day OSHA Assistant Secretary Doug Parker testified before the House Committee on Education and Labor where he stated, “We are also committed to engaging with stakeholders on emerging threats and workplace hazards that have historically been overlooked.”<sup>7</sup>

We have also heard stakeholders’ concerns about DOL’s apparent lack of interest in cooperating or interacting with an entity unless it is a union or is affiliated with one. This is problematic as it means that DOL is ignoring the 93 percent of the workforce that is not unionized.<sup>8</sup> It is true the Summit’s announcement stated that “if you are an employer or employer’s representative, please look out for other opportunities to engage with the department.”<sup>9</sup> However, there were no dates or descriptions of what those opportunities might be. Further, it is unclear whether employers will be given the same time or secrecy as worker advocates. We seek assurances that DOL and all its subagencies are prepared to engage actively with a larger segment of stakeholders than just unions.

In addition to the concerns raised by stakeholders about access, we have serious concerns about OSHA holding its conference at the time it did and with such a select group of people—namely Democrats’ campaign donors. With the Summit being held just over a month before the elections, we are concerned that such an event amounted to a pep rally for the Biden administration and Congressional Democrats. At best, the decision to hold such an event and when it took place can only be described as “ill-timed,” and we consider this activity to be highly inappropriate and unethical.

Finally, we are confused by DOL’s decision to hold the Summit—presumably a large event—when DOL has not returned its staff to daily, onsite, in-person work because of COVID-19 concerns. This Summit is another example of DOL deciding to do what it wants, when it wants, for whatever reason it wants, without regard for consistency, its actual mission, propriety, or taxpayers.

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<sup>6</sup> See, e.g., Letter from Jessica Looman, Acting Admin, Wage & Hour Div., Dep’t of Lab., to Sen. Richard Burr (Apr. 14, 2022) (denying request for extension of comment period on proposed Davis-Bacon rule), <https://www.regulations.gov/document/WHD-2022-0001-2455>; Letter from Jessica Looman, Principal Deputy Admin., Wage & Hour Div., to Whom It May Concern (Apr. 10, 2021) (denying requests for extension of comment period on proposed withdrawal of independent contractor rule), <https://www.regulations.gov/document/WHD-2020-0007-3615>; Letter from Jessica Looman, Principal Deputy Admin., Wage & Hour Div., to Whom It May Concern (Apr. 10, 2021) (denying requests for extension of comment period on proposed rescission of joint employer rule), <https://www.regulations.gov/document/WHD-2021-0003-0275>.

<sup>7</sup> *Examining the Policies and Priorities of the Occupational Safety and Health Administration: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 117 Cong. (2022) (Parker statement).

<sup>8</sup> BUREAU OF LAB. STATISTICS, UNION MEMBERS 2021 (Jan. 20, 2022), <https://www.bls.gov/news.release/pdf/union2.pdf>.

<sup>9</sup> See WORKERS’ VOICE SUMMIT, *supra* note 1.

Please provide responses by October 14, 2022, to the following questions and information regarding the Summit. When responding, please include a response to each question below as asked, rather than in a narrative format.

1. A list of all attendees.
2. A run-of-show of the Summit's events.
3. All remarks prepared for DOL staff and video presented to Summit attendees.
4. All handwritten and electronic notes taken by DOL staff during the Summit.
5. An explanation of why DOL believes a three-day summit can be held with very limited public participation and without any transparency.
6. An explanation of where the Summit was held and, if it was held on federal property, all determinations by DOL and the Office of Personnel Management pertaining to why allowing a large number of participants on federal property is permissible when DOL has not returned to daily, onsite, in-person work.
7. A precise explanation of how OSHA and any other subagencies paid for the planning, holding, and conducting of the Summit.
8. All advice provided by SOL regarding the legal and ethical propriety of holding the Summit, including but not limited to compliance with the following:
  - a. The hearing provisions of the OSH Act;<sup>10</sup>
  - b. The *Government in the Sunshine Act of 1976*;<sup>11</sup>
  - c. The *Federal Advisory Committee Act*;<sup>12</sup> and,
  - d. The *Hatch Political Activity Act*.<sup>13</sup>
9. An explanation of what policy changes OSHA or any other subagencies intend to implement based on the Summit.

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<sup>10</sup> OSH Act § 6(b)(3); 29 U.S.C. § 655(b)(3).

<sup>11</sup> Pub. L. No. 94-409 (1976).

<sup>12</sup> Pub. L. No. 92-463 (1972).

<sup>13</sup> Pub. L. No. 76-252 (1939).

The Honorable Martin J. Walsh

October 5, 2022

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10. An explanation of when employers and employer representatives will be provided with a similar opportunity to “lift their voice” to DOL.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Burr', with a long horizontal flourish extending to the right.

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

A handwritten signature in blue ink, reading 'Virginia Foxx' in a cursive style.

Virginia Foxx  
Ranking Member  
House Committee on Education and Labor



## **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.