



MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Chairwoman

JOE WILSON, SOUTH CAROLINA
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JIM BANKS, INDIANA
JAMES COMER, KENTUCKY
LLOYD SMUCKER, PENNSYLVANIA
BURGESS OWENS, UTAH
BOB GOOD, VIRGINIA
LISA C. MCCLAIN, MICHIGAN
MARY E. MILLER, ILLINOIS
MICHELLE STEEL, CALIFORNIA
RON ESTES, KANSAS
JULIA LETLOW, LOUISIANA
KEVIN KILEY, CALIFORNIA
AARON BEAN, FLORIDA
ERIC BURLISON, MISSOURI
NATHANIEL MORAN, TEXAS
JOHN JAMES, MICHIGAN
LORI CHAVEZ-DEREMER, OREGON
BRANDON WILLIAMS, NEW YORK
ERIN HOUGHIN, INDIANA

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Ranking Member

RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
GREGORIO KILILI GAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
SUSAN WILD, PENNSYLVANIA
LUCY MCBATH, GEORGIA
JAHANA HAYES, CONNECTICUT
ILHAN OMAR, MINNESOTA
HALEY M. STEVENS, MICHIGAN
TERESA LEGER FERNÁNDEZ,
NEW MEXICO
KATHY E. MANNING, NORTH CAROLINA
FRANK J. MRVAN, INDIANA
JAMAAL BOWMAN, NEW YORK

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

February 10, 2023

The Honorable Jenny R. Yang
Director
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Release of EEO-1 Data

Dear Director Yang:

I have serious concerns that the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has not provided federal contractors, especially smaller employers, with sufficient information and time to object to having their confidential data released pursuant to a *Freedom of Information Act* (FOIA) request from the Center for Investigative Reporting, a left-of-center journalism organization. OFCCP's failures could result in disclosing employers' and employees' sensitive, confidential information without due process.

The Employer Information Report (EEO-1) requires federal contractors with 50 or more employees to submit demographic workforce data to the Equal Employment Opportunity Commission (EEOC) and OFCCP, including data by race, ethnicity, sex, and job categories. The Type 2 Consolidated EEO-1 report combines data from employers with different locations into one report, and these reports can reveal the private information of individual employees, especially for smaller employers. It is a crime for any EEOC officer or employee to disclose this information, and OFCCP may not have the authority to make such disclosures.¹

Last week, OFCCP published a list of 13,521 employers who are recorded by the agency as not objecting to the disclosure of Type 2 EEO-1 data for the years 2016-2020 (non-objector list) in response to the FOIA request. On February 7, OFCCP extended the deadline to February 17 for

¹ 42 U.S.C. § 2000e-8(e).

employers to notify OFCCP that they are wrongly on the non-objector list.² However, I am concerned OFCCP has not taken the necessary steps to notify federal contractors, especially smaller employers, that the non-objector list may have errors or that employers were required to submit objections previously to prevent their sensitive data from being released.

It has come to my attention that an alarming number of employers on the list have submitted objections to OFCCP but are still included as non-objectors. This alone shows that much more time is needed to correct the list and for employers to ensure their non-objector status is recorded.

It further appears that many employers were not aware of the pending FOIA request at OFCCP. The agency must do a much better job of informing federal contractors, especially smaller employers, about their rights and obligations. I am also aware that OFCCP has not provided information to all relevant employers about what data will be disclosed in response to the FOIA request. These employers could not determine whether to submit objections because they did not know what information OFCCP would turn over. Employers who were unaware of the FOIA request or were not provided sufficient information about the potential disclosure should be allowed additional time to submit objections regarding their Type 2 EEO-1 data being disclosed.

For these reasons, I request that OFCCP re-open the period for employers to submit objections to the Type 2 EEO-1 data being released for **60 days**. I also request that OFCCP extend the deadline for employers to notify the agency they are wrongly on the non-objector list by **60 days**. I further request that OFCCP immediately ensure that every employer on the non-objector list is notified of their status as a non-objector and of what they must do to submit objections or correct the record if they are wrongly on the list. Please respond by **February 14** indicating whether OFCCP will reopen the period for submitting objections and extend the deadline for notifying the agency that the non-objector list has an error.

In addition, to understand more fully the process OFCCP has undertaken in response to the FOIA request, please respond to the following requests and questions in writing by **February 24**:

1. Provide all notices and communications from OFCCP to employers regarding their potential obligations to submit objections with respect to the FOIA request.
2. What percentage of employers on the non-objector list have been informed that they are on the list? How many employers on the list have not been informed about the FOIA request and their potential obligations?
3. What steps did OFCCP take to inform employers that they needed to submit objections so that their sensitive Type 2 EEO-1 data is not disclosed? When did OFCCP take those actions?

² OFCCP EXTENDS DEADLINE FROM FEBRUARY 7, 2023, TO FEBRUARY 17, 2023, FOR FEDERAL CONTRACTORS TO ASSERT TYPE 2 EEO-1 DATA SHOULD NOT BE RELEASED, <https://www.dol.gov/agencies/ofccp/submitter-notice-response-portal>.

The Honorable Jenny R. Yang

February 10, 2023

Page 3

4. What actions is OFCCP planning to take to ensure employers are fully informed of their rights and obligations with respect to the FOIA request?

Thank you for your attention to these requests.

Sincerely,



Virginia Foxx
Chairwoman

Enclosure

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 Secretary 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, reflect s, 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.