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

September 23, 2024

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su:

The Committee on Education and the Workforce (Committee) is continuing to conduct oversight and seek information about the Biden-Harris administration's efforts to eliminate the independent contractor model and classify as many workers as possible as employees—a shift that would drastically increase the federal government's control over the American workforce. Even though the Committee previously asked the Department of Labor (DOL) for specific data to provide it with a better understanding of whether the Biden-Harris administration's implementation of the *Fair Labor Standards Act* (FLSA) complies with Congress's intent, DOL has failed to provide complete and adequate responses to assist the Committee in its consideration of possible legislation related to classification of workers.

For months, the Committee has engaged with DOL officials, seeking information about misclassification and the workers and businesses that are being impacted. On February 14, 2024, Wage and Hour Division (WHD) Administrator Jessica Looman testified during the Subcommittee on Workforce Protections hearing titled "Examining the Policies and Priorities of the Wage and Hour Division."¹ On March 26, 2024, the Committee submitted Questions for the Record (QFR) following Administrator Looman's testimony.² DOL's responses to these QFRs were due by April 26. DOL submitted its responses on April 30, but it did not provide comprehensive answers to the Committee's QFRs.

¹ *Examining the Policies and Priorities of the Wage and Hour Division: Hearing Before the H. Subcomm. on Workforce Protections of the H. Comm. on Educ. & the Workforce*, 118th Congress (Feb. 14, 2024) [Feb. 14 hearing], <https://www.youtube.com/watch?v=nimrGO2sAMI>.

² Email from Alex Knorr, Comm. Staff, to Liz Watson, Asst. Sec'y of Lab. (Mar. 26, 2024) (on file with Comm.); Feb. 14 hearing (responses to QFRs), <https://docs.house.gov/meetings/ED/ED10/20240214/116795/HHRG-118-ED10-20240214-QFR001.pdf>.

The following day, you testified before the Committee at a hearing titled “Examining the Policies and Priorities of the Department of Labor.”³ On May 17, the Committee submitted QFRs following your May 1 appearance before the Committee where classification of independent contractors in DOL’s January 2024 final rule⁴ was a topic of discussion.⁵ Notably, part of the Committee’s inquiry was focused on the following questions:

1. Since January 20, 2021, how many instances of misclassification have WHD inspectors found? How many instances of misclassification across each occupation have been subject to investigation?
2. How many misclassification enforcement investigations has WHD initiated for each specific industry sector since January 20, 2021?
3. Has DOL initiated any investigations related to misclassification based on its coordination with the National Labor Relations Board (NLRB) and the Federal Trade Commission (FTC)?⁶ If so, how many investigations has DOL undertaken, broken down by each specific industry segment?

Your responses to these QFRs were due on June 17. On July 1, the Committee followed up with DOL, noting that the responses to the QFRs were nearly two weeks past due and requesting an update. One week later, on July 8, DOL provided its responses, which included none of the requested data. Accordingly, on August 8, the Committee again requested that DOL provide full responses to these three sets of questions and warned that if it did not receive complete responses by August 22, it would consider compulsory action.⁷

On September 6, DOL transmitted a response to the Committee’s August 8 letter that once again failed to provide complete answers to the Committee’s requests.⁸ For instance, in response to the Committee’s requests for the number of misclassifications DOL has found (including “across each occupation”) and enforcement investigations, DOL only provided the total number of workers receiving back wages and damages for being misclassified and data about cases for a narrow selection of industries—construction, health care, and food services. It is unclear both why DOL chose to provide only partial information in response to this request and what it chose

³ *Examining the Policies and Priorities of the Department of Labor: Hearing Before the H. Comm. on Educ. & the Workforce*, 118th Congress (May 1, 2024) [May 1 hearing], <https://www.youtube.com/watch?v=0Pe-umFxOGc>.

⁴ Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 Fed. Reg. 1638 (Jan. 10, 2024).

⁵ Email from Alex Knorr, Comm. staff, to Liz Watson, Asst. Sec’y of Lab. (May 17, 2024) (on file with Comm.); May 1 hearing (responses to QFRs), <https://docs.house.gov/meetings/ED/ED00/20240501/117036/HHRG-118-ED00-20240501-QFR001.pdf>.

⁶ WHD, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION AND THE NATIONAL LABOR RELATIONS BOARD (Dec. 8, 2023), <https://www.dol.gov/agencies/whd/flsa/national-labor-relations-board-mou>; FED. TRADE COMM’N, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR AND THE FEDERAL TRADE COMMISSION (Aug. 30, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/23-mou-146_oasp_and_ftc_mou_final_signed.pdf.

⁷ Letter from Chairwoman Foxx to Julie A. Su, Acting Sec’y of Lab. (Aug. 8, 2024), https://edworkforce.house.gov/uploadedfiles/08.08.24_dol_misclassification_data.pdf.

⁸ Letter from Liz Watson, Asst. Sec’y of Lab., to Chairwoman Foxx (Sept. 6, 2024) (on file with Comm.)

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to leave out. Moreover, the response did not substantively address the Committee's question regarding DOL's coordination with the NLRB and the FTC.

In providing only a curated response to the Committee's straightforward requests, DOL continues to refuse this Committee's attempt to provide a complete picture of DOL's actions to the American public. DOL has again failed to provide the information needed for the Committee to review the Biden-Harris administration's implementation of the FLSA—particularly as it relates to classifying independent contractors as employees. Given DOL's repeated failures, the Committee must now resort to compulsory action.

House Rule X vests the Committee with the jurisdiction and responsibility to “review and study on a continuing basis ... the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction.”⁹ This includes the Committee's obligation to investigate the Biden-Harris administration's implementation of the FLSA and whether it is being implemented in accordance with Congress's intent and to make legislative changes as warranted.¹⁰

Please find attached a subpoena compelling you to provide the materials delineated in the attached schedule of documents no later than 12:00 p.m. on October 7, 2024.

Sincerely,



Virginia Foxx
Chairwoman

Enclosures

⁹ RULES OF THE U.S. HOUSE OF REPRESENTATIVES, Rule X cl. 2(b)(1)(A) (118th Cong.) (2023); *see also* Rule X cl. 1(e) (outlining the Committee's jurisdiction), https://cha.house.gov/_cache/files/5/3/5361f9f8-24bc-4fbc-ac97-3d79fd689602/1F09ADA16E45C9E7B67F147DCF176D95.118-rules-01102023.pdf.

¹⁰ *See Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020) (citations omitted).

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Acting Secretary Julie A. Su

You are hereby commanded to be and appear before the
Committee on Education and the Workforce



of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2176 Rayburn House Office Building, Washington, DC 20515

Date: October 7, 2024

Time: 12:00 p.m.

- to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To the U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 18th day of September, 2024.

Virginia Foxx

Chairman or Authorized Member

Attest:

Kevin F. McAuliffe

Clerk

PROOF OF SERVICE

Subpoena for

Acting Secretary Julie A. Su

Address U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210

before the Committee on Education and the Workforce



*U.S. House of Representatives
118th Congress*

Served by (print name) Mindy Barry

Title General Counsel

Manner of service email

Date _____

Signature of Server _____

Address _____

In accordance with the attached Schedule instructions and definitions, you, Julie A. Su, Acting Secretary, U.S. Department of Labor (DOL), are required to produce the following documents and records in your possession, custody, or control, in unredacted form, from January 20, 2021, to present:

1. Documents sufficient to show:
 - a. the total number of instances of misclassification that Wage and Hour Division (WHD) inspectors have found; and
 - b. the occupation involved in each misclassification referenced in item 1(a).

2. Documents sufficient to show:
 - a. the total number of misclassification enforcement investigations that WHD has initiated; and
 - b. the industry involved in each misclassification enforcement investigation referenced in item 2(a).

3. Documents sufficient to show:
 - a. the total number of misclassification enforcement investigations that DOL has jointly undertaken with the National Labor Relations Board; and
 - b. the industry involved in each misclassification enforcement investigation referenced in item 3(a).

4. Documents sufficient to show:
 - a. the total number of misclassification enforcement investigations DOL has jointly undertaken with the Federal Trade Commission; and
 - b. the industry involved in each misclassification enforcement investigation referenced in item 4(a).

Instructions for Responding to a Subpoena

U.S. House Committee on Education and the Workforce

118th Congress

1. In complying with the U.S. House Committee on Education and the Workforce's (Committee) subpoena, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the subpoena has been or is also known by any other name or alias than herein denoted, the subpoena should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. All documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (.pdf) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - b. Alternatively, the production should consist of single page Tagged Image Files (.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.
 - c. Document numbers in the load file should match document Bates numbers and .tif file names.
 - d. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

- e. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

- f. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
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 the subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the subpoena was served.
 8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
 9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. This subpoena 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 should be produced immediately upon subsequent location or discovery.
 11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
 12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 2176 of the Rayburn House Office Building or provided electronically to the Majority General Counsel at mindy.barry@mail.house.gov and the Minority Staff in Room 2101 of the Rayburn Office Building or provided electronically to the Minority General Counsels at ilana.brunner@mail.house.gov and christian.haines@mail.house.gov.

13. If compliance with the subpoena cannot be made in full by the date specified in the subpoena, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the subpoena, and provide an explanation for why full compliance is not possible by that date.
14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (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.
15. In the event that a portion of a document is redacted on the basis of privilege, provide a privilege log containing the following information concerning any such redaction: (a) the privilege asserted; (b) the location of the redaction in the document; (c) the general subject matter of the redacted material; (d) the date, author, and addressee of the document, if not readily apparent; and (e) the relationship of the author and addressee to each other.
16. If any document responsive to this subpoena 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.
17. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, produce all documents which would be responsive as if the date or other descriptive detail were correct.
18. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
19. Unless otherwise specified, the period covered by this subpoena is from January 20, 2021, to the present.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, 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.

Schedule Definitions

21. The term “document” in the subpoena, the schedule, or the instructions 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 calls, meetings or other communications, 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.

22. The term “communication” in the subpoena, the schedule, or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
23. The terms “and” and “or” in the subpoena, the schedule, or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that 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.
24. The terms “person” or “persons” in the subpoena, the schedule, or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
25. The term “identify” in the subpoena, the schedule, or the instructions, 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.
26. The terms “referring” or “relating” in the subpoena, the schedule, or the

instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.

27. The terms “you” and “your” in the subpoena, the schedule, or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.
28. The term “DOL” in the subpoena, the schedule, or the instructions includes, but is not limited to, the Department of Labor, each of its subsidiaries, divisions, groups, or other entities, and any current or former employee, officer, director, contractor, agent, or other representative of the Department of Labor or any of its subsidiaries, divisions, groups, or other entities.
29. The term “Administration” means and refers to any department, agency, division, office, subdivision, entity, official, administrator, employee, attorney, agent, advisor, consultant, staff, or any other person acting on behalf or under the control or direction of the Executive Branch of government.
30. The term “WHD” refers to the Wage and Hour Division agency within the DOL.
31. The term “misclassification” in the subpoena, the schedule, or the instructions refers to instances when an employer treats a worker who is an employee under the *Fair Labor Standards Act* as an independent contractor.

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