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January 19, 2016

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

On October 13, 2015, we wrote to you regarding the Department of Labor's (Department) draft memorandum to expand liability for workplace safety and health violations of franchisors under the *Occupational Safety and Health Act* (Act).¹ Among other requests, the Committee's letter specifically requested the Department to provide information and a briefing related to the Solicitor of Labor's (Solicitor) work with the Occupational Safety and Health Administration (OSHA) and other agencies within the Department to modify OSHA's multiemployer citation standard, the Department's communications with the National Labor Relations Board (NLRB) and outside stakeholders related to this modification, and the Department's legal justification under the Act for the proposed changes.

On November 18, 2015, Adri Jayaratne, Acting Assistant Secretary for Congressional and Intergovernmental Affairs, provided a two-page response to the Committee's request. The Department's response denied any new OSHA guidance had been created, provided very little relevant information, and, in some cases, ignored the Committee's specific requests.² Furthermore, the letter stated the "Department did not coordinate with the [NLRB]" in preparing the draft memorandum. In communications immediately following the Committee's receipt of the letter, the Department described its letter as the Department's "complete response."³

¹ Letter from the Hon. John Kline, Chairman, H. Comm. on Educ. and the Workforce, and the Hon. Tim Walberg, Chairman, H. Subcomm. on Workforce Protections, to the Hon. Thomas E. Perez, Sec'y, U.S. Dep't of Labor (Oct. 13, 2015), available at: http://edworkforce.house.gov/uploadedfiles/10-13-2015-perez_osh_multiemployer_citation_policy.pdf.

² Letter from Mr. Adri Jayaratne, Acting-Asst. Sec'y for Congressional and Intergovernmental Affairs, U.S. Dep't of Labor, to the Hon. John Kline, Chairman, H. Comm. on Educ. and the Workforce, and the Hon. Tim Walberg, Chairman, H. Subcomm. on Workforce Protections (Nov. 18, 2015) (on file with Committee).

³ Notwithstanding this initial response, the Department subsequently provided information relevant to some of the Committee's inquiries; however, even though specifically and repeatedly prompted about the Committee's interest in the communications between the Department and the NLRB, the Committee has received no indication the Department intends to produce materials responsive to this portion of our inquiry.

In contrast, the Committee has received new information that raises concerns about the veracity of the Department's November 18 response, as well as subsequent communications. On January 13, 2016, the Committee received a letter signed by Jennifer Abruzzo, Deputy General Counsel, National Labor Relations Board, which enclosed a number of documents and communications produced "in response to a *Freedom of Information Act* (FOIA) request seeking, in part, communications between the Office of the General Counsel and the Department of Labor regarding the joint-employer standard."⁴ Based on this new information, the Committee has learned:

- On April 29, 2015, Alex van Schaick, an attorney in the Solicitor's office, invited Richard Griffin, General Counsel, National Labor Relations Board, to speak during a June 1, 2015, panel discussion regarding the "fissured workplace." Hosted by the Department's honors attorneys, the panel was to take place at the Department's main offices. Mary Beth Maxwell, Principal Deputy Assistant Secretary for Policy, as well as representatives from two regional offices of the Solicitor, were expected to participate on the panel. Mr. van Schaick stated part of the panel discussion would involve "innovative enforcement and legal strategies to address violations of workers' rights in this context." Mr. Griffin agreed to participate.
- On June 3, 2015, Deborah Greenfield, Deputy Solicitor, invited Mr. Griffin to participate in a video conference with the Solicitor's "Executive Committee." The Executive Committee includes senior executive leaders of the Solicitor's National Office Divisions and Regional Offices and their deputies. Mr. Griffin was invited to discuss the NLRB's "fissured workplace/franchisee cases." Mr. Griffin agreed and suggested a June 24 date for the video conference.
- On July 13, 2015, Ann Rosenthal, Associate Solicitor for Occupational Safety and Health, emailed Mr. Griffin and referenced OSHA investigating complaints against McDonald's franchises. After referencing Mr. Griffin's engagement with the Solicitor's executive staff, Ms. Rosenthal sought to communicate with someone within Mr. Griffin's office to "compare notes." Mr. Griffin responded by suggesting Ms. Rosenthal should "first talk to Deputy General Counsel Jennifer Abruzzo, who is very familiar with the litigation."

Among other requests in our October 13, 2015, letter, the Committee sought "[a] list of all meetings held between the [D]epartment and the NLRB, and all associated documents and communications, related to the consideration of the new standard under any federal law." The information the Committee has now received through the NLRB should have been produced by the Department pursuant to this inquiry.

This information clearly demonstrates the Department and the NLRB communicated directly on joint employer policies. This communication has been at the center of the Committee's oversight

⁴ Letter from Ms. Jennifer Abruzzo, Dep. Gen. Counsel, Nat'l Labor Relations Bd., to the Hon. John Kline, Chairman, H. Comm. on Educ. and the Workforce, the Hon. Lamar Alexander, Chairman, S. Comm. on Health, Educ., Labor, and Pensions, and the Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs (Jan. 13, 2016) (on file with Committee).

inquiry from the beginning. Even the Department's repeated assurances of "no coordination" between the two agencies are now suspect. This new information — and the Department's unwillingness over a period of months to fully cooperate with the Committee's request — calls into question the Department's respect for Congress's constitutional oversight authority.

In light of this new information, we renew our request for all documents, communications, and information responsive to our October 13, 2015, request. We expect any future production responsive to this inquiry will include, but will not be limited to, all materials related to:

1. Mr. Griffin's participation in the June 2015 panel discussion on "fissured workplaces" hosted by the Department's honors attorneys;
2. Mr. Griffin's participation in the June 2015 video conference with the Solicitor's executive staff; and
3. The July 13, 2015, email exchange between the Solicitor's office and the NLRB, including all materials relating to any subsequent meetings or discussions resulting from or in connection with the July 13 email. These materials should include, but are not limited to, notes, planning communications, lists of attendees, and meeting summaries.

Please provide all responsive materials **no later than January 26, 2016**. If you have any questions or comments, please contact Loren Sweatt or Joe Wheeler of the Committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Enclosure

CC: The Honorable Robert C. "Bobby" Scott, Ranking Member