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May 30, 2014

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

Dear Secretary Perez:

The Department of Labor's (DOL) Civil Rights Center (CRC) is significantly changing its processes for investigating and adjudicating allegations of discrimination against workers seeking job training and employment services. To better understand these changes, we request documents and communications relating to the development, implementation, and effect on states and other organizations that deliver workforce development services.

CRC's Office of External Enforcement (OEE) is responsible for enforcing nondiscrimination and equal opportunity laws against recipients of financial assistance from DOL.¹ Beginning in Fiscal Year (FY) 2012, CRC leadership found OEE programs deficient and instituted swift changes. CRC leadership's primary impetus for instituting changes to OEE's programs was a lack of adverse findings and settlement agreements over the preceding ten year period, even though they believe CRC will likely receive no fewer than 1,300 discrimination complaints during FY 2014.²

We understand CRC leadership's estimate for FY 2014 was based on a "Myth and Facts" document posted on the Equal Employment Opportunity Commission's (EEOC) website pertaining solely to the claimant process for federal employees.³ In this document, EEOC states

¹ Equal opportunity requirements include those found in the *Workforce Investment Act of 1998* § 188, the *Civil Rights Act of 1964* tit. 4, the *Rehabilitation Act of 1973* § 504, the *Age Discrimination Act of 1975*, the *Education Amendments Act of 1972* tit. 10, the *Americans with Disabilities Act of 1990* tit. 2, Subpart A, and Executive Orders 13160 and 13166.

² U.S. Dep't of Labor-Departmental Management, Fiscal Year 2014 Congressional Justification ("DOL Civil Rights"), at 98. (Apr. 2013). Available at: <http://www.dol.gov/dol/budget/2014/PDF/CBJ-2014-V3-02.pdf>.

³ *Id.* EEOC, "What You Should Know: Myths and Facts about the Federal Sector Equal Employment Opportunity Process." Available at: http://www1.eeoc.gov/eeoc/newsroom/wysk/federal_sector_eeo_process.cfm?renderforprint=1. (Accessed May 30, 2014)

discrimination may occur in up to 33 percent of federal sector equal employment opportunity cases, 66 percent of cases filed contained issues of discrimination not having to do with harassment, and most complaints are not frivolous.⁴

Many of the changes made to OEE programs stem from a government-wide meeting of the directors of federal agencies' civil rights offices, which you organized in your previous capacity as Assistant Attorney General of Civil Rights.⁵ At this meeting, advocacy group representatives claimed some applicants had been the victims of discrimination when seeking government benefits, raising concerns that some states do not adequately provide information and materials for applicants with limited English proficiency or disabilities.⁶ In the case of DOL-related programs, CRC identified potential violations by states providing unemployment insurance benefits and workforce development services.⁷ As a result, CRC made significant changes to OEE programs, prioritizing investigations alleging discrimination against claimants with limited English proficiency and disabilities and increasing enforcement actions on state unemployment insurance systems.⁸

While we support efforts to more effectively implement laws protecting workers and those seeking job training from discrimination, we are concerned by CRC's changes to OEE programs. Proper implementation of these laws requires a neutral CRC to investigate and adjudicate allegations. As we reviewed materials from DOL concerning changes to OEE's compliance reviews, we noted employee advocacy groups seemed to be the only non-federal government entities consulted.⁹ Further, we understand some of the information used by CRC to make its changes came from an organization that had already filed a discrimination claim against a state unemployment insurance system,¹⁰ yet we are unaware of any attempts by CRC to solicit the opinions of other stakeholders, including states and other workforce development service providers.

On June 5, 2013, the Committee on Education and the Workforce was contacted by Florida's Department of Economic Opportunity (DEO), the agency in charge of implementing reemployment services for Florida's unemployment insurance system. Florida DEO alleged that CRC may not be fulfilling its role as a neutral investigator or arbiter.¹¹ According to the Florida DEO, the Miami Workers Center filed a complaint with CRC in 2011 alleging Florida DEO's application and initial skills review were discriminatory against individuals with limited English proficiency and disabilities. After a lengthy investigation, CRC issued an Initial Determination against Florida DEO that it was not in compliance with its obligations under applicable civil

⁴ *Id.*

⁵ Presentation notes by Denise Sudell, Senior Policy Advisor, U.S. Dep't of Labor, Civil Rights Center (Sept. 21, 2012) (on file with the Committee)

⁶ *Id.*

⁷ *Id.*

⁸ See DOL Civil Rights, *supra* 2, at 94 - 96.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter from Mr. Robert N. Sechen, Esq., Gen. Couns., Fla. Dep't of Economic Opportunity, to the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce ("Florida DEO letter") (June 5, 2013). (Letter enclosed for your review)

rights laws and has discriminated against individuals with limited English proficiency and disabilities.¹² The Miami Workers Center's allegation and pending complaint concerning the Florida DEO appears to come from the same advocacy organization that assisted CRC in changing its OEE programs, as described by materials from DOL.¹³

Florida DEO's description of CRC's investigation and Initial Determination, if accurate, is troubling. Florida DEO states documents associated with CRC's Initial Determination made reference to ex parte meetings, document exchanges, and communications between CRC and the Miami Workers Center, indicating collaboration between CRC and the center. Additionally, CRC's investigation relied on test calls to the Florida DEO conducted by the Miami Workers Center attorneys instead of CRC personnel. Finally, CRC's investigators interviewed a number of Florida DEO staff without the presence of DEO counsel.¹⁴

OEE's purpose is to ensure DOL-supported programs "do not discriminate intentionally or unintentionally."¹⁵ However, the question of intentional or unintentional discrimination should be considered when CRC negotiates remedies with states/other workforce development service providers. In the case of the Florida DEO, intake and initial skills assessments were implemented in accordance with guidance issued from DOL's Employment Training Administration (ETA).¹⁶ It appears neither ETA nor Florida DEO intentionally discriminated against individuals with limited English proficiency or disabilities, yet we understand CRC has consistently sought a conciliation agreement from Florida DEO admitting guilt in each of CRC's findings instead of seeking other possible remedies to address potential shortcomings in Florida DEO's unemployment insurance intake and initial skills assessments.¹⁷

Our current understanding of the changes made to OEE programs suggests CRC has moved away from a process that ensures allegations are investigated and adjudicated without bias. To better understand these changes, please contact committee staff to arrange a briefing and provide the following **no later than June 13, 2014**:

1. All documents and communications relating to the development of CRC's new investigation and adjudication processes;
2. All documents and communications relating to the implementation of CRC's new investigation and adjudication processes;

¹² *Id.* According to CRC's website, a written "Initial Determination" that outlines the Findings of Fact, the reasons for the determination and the steps the respondent must take to remedy (fix) the violation. The respondent has the opportunity to review the Findings of Fact and present evidence that could lead to a reversal of the determination, and/or to agree to conciliate (negotiate) and remedy the violation without being forced to do so. If the respondent neither produces additional evidence nor agrees to conciliate, CRC will issue a written Final Determination. Available at <http://www.dol.gov/oasam/programs/crc/external-enforce-faq.htm>. (Accessed May 30, 2014)

¹³ See DOL Civil Rights, *supra* 2, at 95.

¹⁴ *Id.*, at 3-4.

¹⁵ See DOL Civil Rights, *supra* 2, at 98.

¹⁶ Notice of Disputing Findings of Act and Conclusions of Law for the Fla. Dep't of Economic Opportunity, *Miami Workers Center v. Fla. Dep't of Economic Opportunity*, CRC Complaint No. 12-FL-048, at 4-6.

¹⁷ See Florida DEO letter, *supra* 10, at 4.

The Honorable Thomas E. Perez

May 30, 2014

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3. Identify all individuals, organizations, and agencies the department met with when developing and implementing CRC's new investigation and adjudication processes; and
4. All documents and communications relating to CRC's case against Florida DEO.

If you are unable to provide the requested information by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Joe Wheeler or Mandy Schaumburg of the committee staff at (202) 225-4527.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



VIRGINIA FOXX
Chairwoman
Subcommittee on Higher Education and
Workforce Training



TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Enclosures

CC: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

Responding to Committee Document Requests

1. In complying with this request, you should 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. Requested 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 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., 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 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 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), you 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 an explanation of why full compliance is not possible.
12. 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.
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 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 1, 2009 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.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
19. 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.

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.

Rick Scott
GOVERNOR



Jesse Panuccio
EXECUTIVE DIRECTOR

June 5, 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce
United States House of Representatives
2439 Rayburn House Office Building
Washington, D.C. 20515

RE: *Request for Congressional Oversight of the Conduct of the United States Department of Labor Civil Rights Center*

Dear Chairman Kline:

This letter serves to bring to your attention problems with, and the potential politicization of, investigatory functions at the United States Department of Labor, and to request that the House of Representatives exercise its oversight authority to determine whether USDOL is acting outside the proper bounds of its legislative delegation of authority.

The Florida Department of Economic Opportunity's (DEO) reemployment assistance (RA) program has recently been the target of an investigation and Initial Determination by the U.S. Department of Labor's Civil Rights Center (USDOL CRC). The investigation was launched by USDOL after it received a 2011 complaint from the Miami Workers Center (MWC), a political advocacy group whose stated purpose is to "to create a progressive political and social environment in South Florida." The MWC complaint alleged that changes to Florida's RA program—requiring online applications and completion of an initial skills review—discriminated against persons with limited English proficiency and persons with disabilities.

Over the past month, DEO has carefully reviewed the Initial Determination and the underlying evidence relied upon by the USDOL. DEO's conclusion is that the Initial Determination is seriously flawed, resulting from a highly questionable investigatory process calculated to reach a predetermined result. Rather than serve as a neutral arbiter, USDOL appears to have collaborated with the political group that filed the complaint. Accordingly, DEO respectfully requests that Congress exercise its oversight authority over what appear to be several instances of investigative misconduct by USDOL. These instances violate the generally accepted principle that federal investigations must be fair, impartial, apolitical, and not predetermined. The questionable conduct outlined below raises serious concerns both about USDOL policies and procedures, as well as about the specific conclusions it reached in this particular investigation.

Florida Department of Economic Opportunity | Office of the General Counsel

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Although not an exhaustive list, highlighted below are some of the most concerning aspects of USDOL's investigation. In addition to requesting congressional oversight, DEO has filed a request with USDOL's Office of Inspector General to review USDOL's policies and practices to determine whether there was any abuse or misconduct.

1) In Initiating and Conducting Its Investigation, USDOL May Have Inappropriately Collaborated with a Political Group and its Attorneys

The Initial Determination references several ex parte meetings, emails, and communications between USDOL and MWC. USDOL has refused to provide materials related to its communications with MWC or its attorneys.

Additionally, the investigator in this case—USDOL CRC's Acting Chief of External Enforcement—has published a PowerPoint presentation that quotes Assistant Attorney General Thomas Perez as “calling for a Government-wide meeting of Directors of Federal civil rights offices with representatives of advocacy groups.”¹ This initiative indicates that USDOL—rather than neutrally enforcing the law and acting as an impartial arbiter of complaints—collaborates with political advocacy groups to initiate complaints and allegations of noncompliance with USDOL laws and regulations. Indeed, the Initial Determination relies on test calls that were orchestrated by MWC attorneys, not by the USDOL; yet USDOL accepted them at face value, without further inquiry. The acceptance of this clearly biased evidence with no independent verification or corroboration—combined with the many secret communications between USDOL and MWC—creates the strong appearance of inappropriate collaboration between USDOL and MWC.

2) USDOL CRC's Acting Chief of External Enforcement Has Publicly Stated or Endorsed the Notion that Political Bias Taints the Investigatory Work of USDOL

USDOL CRC's Acting Chief of External Enforcement has publicly made or endorsed politically and ideologically charged statements about her role at the Department of Labor. The Acting Chief's biography on one website² states in pertinent part:

In her paying job, she's an attorney working underground (read: within the system) to keep the evil overseers of the Bush administration from dismantling U.S. federal civil rights laws.

In other words, the USDOL CRC's Acting Chief of External Enforcement has publicly stated or endorsed the notion that she brings a political and ideological agenda to her civil-rights enforcement role in the federal government. Based on what DEO has uncovered to date, it appears that this political and ideological bias has manifested itself in the questionable investigatory practices and conclusions at issue here.

¹ Full text is available at <http://www.naswa.org/assets/utilities/serve.cfm?gid=313963d3-8bed-4364-b89e-cb10b8fbfb85>.

² Full text is available at <http://prismcomics.org/profile.php?id=142>.

Indeed, had USDOL neutrally reviewed readily accessible data, it would have found that the languages in which DEO's online claims are successfully filed accurately represent Florida's population. This data indicates that DEO processed over 3.4 million phone calls in 2012 and that 668,664 individuals successfully entered the RA system and filed a claim during 2012, including:

- 602,352 claims filed using the English application;
- 61,046 claims filed using the Spanish application;
- 5,266 claims filed using the Creole application; and

Additionally, 8,783 claimants utilized free translation service for inquiries and/or help with claims. Failing to consider this information in the Initial Determination renders its conclusions regarding systemic discrimination mathematically and statistically questionable. Indeed, rather than considering the system-wide statistics, the Initial Determination repeatedly relies on unsworn anecdotes of single instances to draw broad conclusions about the entire Florida RA system.

For example, the Initial Determination states:

Evidence provided by Complainant's attorneys indicates that ... at least one claimant with a visual impairment was denied benefits to which he was otherwise entitled, because he and the family member who helped him file his claim online were unaware of the existence of the exemption. Other claimants with disabilities may have been similarly denied benefits, because of DEO's failure to notify them of the existence of the exemption. We therefore determine that the ISR requirement ... tends to screen out persons with disabilities from fully and equally enjoying the benefits of the Respondent's UC program.

This kind of rank speculation—leaping from a single allegation to conclusions about other hypothetical instances and then about the entire system—would not pass muster in a first-year college statistics class, much less in a supposedly impartial and careful federal investigation.

In sum, USDOL's willful disregard of statistically significant evidence, in favor of unsworn anecdotal evidence, suggests that political and ideological bias has manifested itself in USDOL's investigation.

3) USDOL's Use of Inappropriate and Threatening Tactics Against DEO Employees

Specific investigatory and regulatory practices employed by USDOL during the course of this investigation were inappropriate and violated fundamental notions of due process.

First, during the course of USDOL's investigation, CRC's Acting Chief of External Enforcement, an attorney, interrogated several of DEO's program staff members out of the

presence of DEO counsel. As a general matter, such a practice by a federal agency violates the spirit of an open, impartial investigation. Indeed, such a practice calls into question USDOL's compliance with the basic rules that govern the professional practice of attorneys. *See* District of Columbia Bar, Rule of Professional Conduct 4.2; Rules Regulating the Florida Bar, Rule 4-4.2. But even worse is that in this case DEO specifically requested, during USDOL's initial meeting at DEO, that a DEO attorney be present for all USDOL interviews with DEO staff. USDOL simply ignored this request for basic fairness and due process.

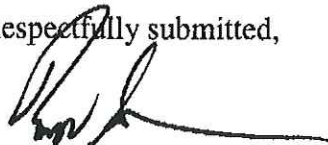
Second, since the issuance of the Initial Determination, DEO has endeavored to work with its federal partners at USDOL to ascertain the validity of the Initial Determination and to implement any improvements to Florida's RA system that may be warranted. DEO has requested that USDOL respect the due process rights of a state agency by producing documents relevant to the investigation and by granting the extensions of time necessary to respond in a careful, diligent manner. Unfortunately, USDOL has refused to act in a cooperative manner. It has repeatedly withheld documents, refused to grant extensions, and refused to consider alternative procedures and remedies.

Third, and instead of acting cooperatively, USDOL has attempted to coerce DEO into signing a "conciliation agreement" admitting to each and every finding in USDOL's flawed investigation. For example, during a conference call on May 29, 2013, the Director of USDOL CRC advised DEO attorneys to consider the public-relations implications of USDOL issuing a final determination in this matter and threatened to publicize such an action based on USDOL's "new policy" to make public all final determinations. Such tactics are improper, retaliatory, intimidating, and are far below acceptable standards of conduct.

Based on what DEO has uncovered thus far, USDOL's investigatory policies and practices raise serious concerns about politicization of a federal process that should be neutral, arms-length, and display due accord for the due process rights of all parties involved. In this case, this flawed process has resulted in a federal agency recklessly maligning the reputations of hundreds of hard-working state employees, who come to work each day to fulfill a mission of helping unemployed Floridians get back to work.

Based on the foregoing, DEO respectfully requests that the House of Representatives exercise its oversight authority regarding the investigatory policies and practices of USDOL.

Respectfully submitted,



Robert N. Sechen

General Counsel

Florida Department of Economic Opportunity