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Description of document:	Each written response or letter from the Department of Labor (DOL) Office of Congressional and Intergovernmental Affairs (OCIA) to a Congressional Committee (not a congressional office or Committee Chair), 2012-2013
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U.S. Department of Labor

Office of the Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

Re: FOIA Request No. # 716956

This letter is in response to your Freedom of Information Act (FOIA) request of April 20, 2013. We apologize for the delay in the response. Your request was made pursuant to the Freedom of Information Act, 5 U.S.C. 552. In your request, you asked for:

1. *A copy of each written response or letter from the Department of Labor to a Congressional Committee (not a Congressional Office) (or Committee Chair) in calendar years 2012 and 2013 to date. By this, I mean one-time type responses to Committee inquiries.*

This response pertains to the Office of Congressional and Intergovernmental Affairs (OCIA) correspondence and does not reflect communications with other agencies within the Department that will respond separately. Our search of the records maintained in OCIA found 62 pages that are responsive to your request which are enclosed. Non-responsive portions have been redacted as well as personal identifying information pursuant to FOIA Exemption 6.

As the Disclosure Officer, I believe that we have been responsive to your request. You may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, including any supporting statements or arguments. To facilitate processing, you may wish to fax your appeal to (202) 693-5538. The appeal should include a copy of your initial request and a copy of this letter. The appeal must be addressed to:

Solicitor of Labor
U. S. Department of Labor
200 Constitution Avenue, N. W., Room N-2428
Washington, D. C. 20210

If mailed, both the envelope and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal."

Sincerely,

Margaret M Cantrell

Margaret M. Cantrell
Disclosure Officer

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

February 8, 2012

The Honorable John Kline
Chairman, Committee on Education
and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable Phil Roe, M.D.
Chairman, Subcommittee on Health,
Employment, Labor and Pensions

Dear Chairman Kline and Chairman Roe:

I am writing in response to your January 27, 2012, letter to Secretary Hilda L. Solis, regarding the Department's Notice of Proposed Rulemaking (NPRM) on the Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities published in the *Federal Register* on December 9, 2011.[1]

Section 503 of the Rehabilitation Act of 1973, codified as amended at 29 U.S.C. § 793, requires covered federal contractors to "take affirmative action to employ and advance in employment qualified individuals with disabilities."[2] As required by the section, through delegation by the President to the Secretary of Labor,[3] the Department promulgated implementing regulations.[4] The current implementing regulations have appeared at 41 C.F.R. part 60-741 since 1996,[5] with amendments last promulgated in 2005 (the "Section 503 regulations").[6]

The Department's Extensive Section 503-Related Outreach

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published the December NPRM after considering significant input from a wide-variety of sources. Prior to publishing this NPRM, OFCCP conducted multiple town hall meetings, webinars, and listening sessions with individuals from the contractor community, state employment services, disability organizations, and other interested parties. OFCCP sought input about the aspects of the current Section 503 regulations that have worked well, those aspects that could be improved, and the possibility of new requirements that could help to effectuate the goal evidenced in Section 503 of increasing the employment opportunities for individuals with disabilities among federal contractors.

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[1] 76 Fed. Reg. 77056.
[2] 29 U.S.C. § 793(a).
[3] Sec. 2, E.O. 11758 (Jan. 15, 1974).
[4] 39 Fed. Reg. 20566 (June 11, 1974).
[5] 61 Fed. Reg. 19350.
[6] 70 Fed. Reg. 36265.

In addition, OFCCP published an Advance Notice of Proposed Rulemaking (ANPRM) on July 23, 2010, in which the office solicited public comment on specific ways to strengthen the Section 503 affirmative action provisions.[7] The ANPRM comment period ended September 21, 2010. OFCCP reviewed and gave due consideration to all the comments it received. The more than 125 comments represented the views of trade and professional associations; disability and veteran advocacy organizations; employers; federal, state, and local government agencies; representatives of schools and organizations that provide education and/or vocational training; and several private citizens.[8] The comments received in response to the ANPRM were generally consistent with the input OFCCP received in the town hall meetings, webinars, and listening sessions.

The Compelling Need to Update the Section 503 Regulations

This extensive public outreach and the data on the unemployment rate of individuals with disabilities reveal a convincing case for the need to revise regulations that have not been substantively updated since the 1970s. In the 1989 legislative history of the Americans with Disabilities Act (ADA), the Senate reported that individuals with disabilities "experience staggering levels of unemployment."[9] More specifically, the Senate reported that two-thirds of all disabled Americans of working age were not working at all, even though a large majority of those not working (66 percent) wanted to work.[10]

As stated in the NPRM, although Section 503 regulations have been in place for decades, the current unemployment rate for people with disabilities is 13 percent, 1 1/2 times the rate of those without disabilities. Even more discouraging, data published in late December 2011 by the Bureau of Labor Statistics show stark disparities facing working-age individuals with disabilities, with 79.2 percent outside the labor force altogether, compared to 30.5 percent of those without disabilities. In light of the long-term and intractable nature of the substantial employment disparity between individuals with and without disabilities, the current Section 503 framework for affirmative action in place since 1970 is insufficient to reduce the staggering levels of unemployment experienced by individuals with disabilities.

The Department's Effort to Address this Need through the NPRM

The Department articulated, and invited public comment on, several proposals in the NPRM for improving employment opportunities through contractor recruitment, hiring, data collection, and accountability. Pre-offer, voluntary self-identification by job applicants would improve data

[7] 75 Fed. Reg. 43116 (July 23, 2010).
[8] The REGULATIONS.GOV online docket is available at <http://s.dol.gov/MP> (visited Feb. 8, 2012) (including comments submitted in response to the ANPRM and those already submitted in response to the NPRM).
[9] S. Rep. No. 101-116, 9 (1989).
[10] *Id.* (citing a poll by the Lou Harris Company).

collection and contractor accountability.[11] Because of the importance of self-identification, in the NPRM the Department specifically sought public comment on potential self-identification language.[12] The use of standard language would ensure consistency in the invitations for job applicants to self-identify, and would minimize any related burden to contractors as contractors would not be required to develop suitable self-identification invitations individually. This, in turn would facilitate contractor compliance with this proposed requirement.

For self-disclosure to be effective, job applicants and employees must understand they are covered by the relevant definition of disabled. To this end, as you noted in your letter, the Department included in the NPRM proposed language for a standard invitation for applicants to self-identify as disabled. The proposed notice outlines the components of the ADA/Section 503 definition of "disability."[13] Further, the proposed notice includes concrete examples illustrating the definition of "major life activities" and the other aspects of the definition to help individuals understand the definition. The Department also solicited opinions as to alternatives, "including suggestions for specific alternate text."[14]

The proposal to require that contractors annually engage in specific actions to implement an existing requirement to review their personnel processes "periodically" is another of the data-oriented accountability provisions in the NPRM. This proposal would include requiring contractors to provide a statement explaining the circumstances for rejecting individuals with disabilities for vacancies and training programs. The proposed regulations implementing the Vietnam Era Veterans Readjustment and Assistance Act (VEVRAA) contain a parallel provision.[15] The proposed Section 503 rule, therefore, would only impose an increased burden related to the rejection of those individuals with disabilities who are not disabled veterans. Moreover, the existing Section 503 regulations already suggest the proposed "statement of reasons" as a method of compliance with the existing obligation of contractors to periodically review their personnel processes.[16] Some contractors already draft such written statements, and the proposed requirement would provide no additional burden for these contractors. For others, OFCCP believes that thirty minutes is a reasonable estimate of the burden. However, OFCCP invites public comment on its burden estimates.

Also closely mirroring provisions in the proposed VEVRAA regulations is the Department's inclusion in the proposed Section 503 regulations of an aspirational goal or benchmark against which progress could be measured, increased data collection and recordkeeping pertaining to

[11] The Equal Employment Opportunity Commission has noted that "collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act is not restricted by [the Americans with Disabilities Act and implementing regulations]." App. to 29 C.F.R. 1630.14(a).
[12] 76 Fed. Reg. 77056, 77063 (Dec. 9, 2011).
[13] 76 Fed. Reg. 77063.
[14] *Id.*
[15] *See* 76 Fed. Reg. 23358, 23386 (Apr. 26, 2011).
[16] 41 C.F.R. 60-741.44(b).

applicants and hires, and enhanced affirmative action through outreach, recruitment and training.[17] The NPRM, however, does not contain any "numerical hiring standard" or "quota."

The proposal that contractors use assistive technology to make their online job application process accessible to individuals with disabilities should not increase the costs to contractors, and could have the opposite effect. The existing Section 503 regulations make clear that it is "unlawful for [a] contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee..."[18] Further, the existing definition of "reasonable accommodation" includes "[m]odification or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires."[19] Since federal contractors currently have a duty to ensure that individuals with disabilities who require assistive technology are able to use their job application process, the proposal in the NPRM creates no new burden. Rather, the proposal makes explicit the requirement's applicability to electronic applications and provides contractors with proposed clarity as to how they can meet this existing obligation.

In the NPRM, the Department did assign an economic burden to the aspect of the proposal that would require federal contractors to develop internal procedures to communicate to employees the contractor's obligation to engage in affirmative action efforts.[20] The Department also proposed that contractors would include the affirmative action policy in their policy manual and would discuss the policy in orientation and management training programs.[21] In doing so, however, the Department contemplated that contractors would only be required to add a brief discussion of Section 503 requirements to orientation and training meetings that they already provide. Consequently, the burden that would be imposed by this requirement would be minimal. Specifically, the Department estimated that contractors would have a one-time burden related to preparing the training materials and a recurring burden for presenting the additional materials at orientation and training sessions.[22]

Extension of the Comment Period

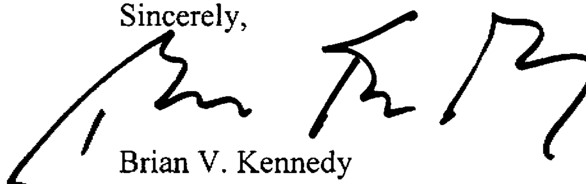
In your letter, you request that the public comment period for the proposed rule be extended to permit review of the "additional information" contained in this response. In this letter the Department has not provided any "additional information" regarding the proposed rule but has simply responded to the misunderstandings set forth in your letter with information already in the NPRM. The NPRM contains the most complete articulation of the Department's views regarding its proposed rule. It also contains the comprehensive statement of the information, justification, and analysis necessary to support that proposal. The Department is confident that the NPRM, the ANPRM, and the various outreach activities sponsored by the Department have

[17] 76 Fed. Reg. at 23386.
[18] 41 C.F.R. 60-741.21(f).
[19] 41 C.F.R. 60-741.2(v)(1)(i).
[20] 76 Fed. Reg. at 77066.
[21] *Id.*
[22] *Id.* at 77075.

provided interested parties more than adequate information upon which to comment on the proposed rule and a meaningful opportunity to do so in accordance with the requirements of the Administrative Procedure Act. Nonetheless, the Department has extend the public comment period through February 21, 2012.

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

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

The Honorable Robert Andrews
Senior Democratic Member, Subcommittee on Health, Employment, Labor and Pensions

[handwritten: illegible]

U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

MAY 15 2012

The Honorable Thomas M. McKee
Chairman
Agriculture and Small Business Committee
Kentucky House of Representatives
Cynthiana, Kentucky, 41031

Dear Chairman McKee:

Thank you for your letter to Secretary of Labor Hilda L. Solis regarding the Department of Labor's Notice of Proposed Rulemaking (NPRM) on child labor in agricultural employment published in the *Federal Register* on September 2, 2011. Your letter was referred to the Department's Wage and Hour Division for a response.

On April 26, 2012, the Department of Labor announced the withdrawal of the proposed rule dealing with children under the age of 16 who work in agricultural vocations. The Obama Administration is firmly committed to promoting family farmers and respecting the rural way of life, especially the role that parents and other family members play in passing those traditions down through the generations. The Obama Administration is also deeply committed to listening and responding to what Americans across the country have to say about proposed rules and regulations. The decision to withdraw this rule – including provisions to define the 'parental exemption' – was made in response to thousands of comments expressing concerns about the effect of the proposed rules on small family-owned farms. To be clear, this regulation will not be pursued for the duration of the Obama Administration.

Again, thank you for your letter. If we may be of further assistance to you or your staff, please contact Nikki McKinney, in the Department's Office of Congressional and Intergovernmental Affairs, at (202) 693-4600.

RECEIVED
2012 MAY 16 AM 10: 27
EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH D.C. 20210

Sincerely,

Nancy J. Leppink
Deputy Administrator

672495

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

February 24, 2012

The Honorable John Kline
Chairman, Committee on Education
and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable Phil Roe, M.D.
Chairman, Subcommittee on Health,
Employment, Labor and Pensions

2012 FEB 24 AM 11:55

Dear Chairman Kline and Chairman Roe:

I am writing in response to your letter dated January 27, 2012, to Assistant Secretary Phyllis C. Borzi in which you requested additional information about continuing regulatory activity undertaken by the Employee Benefits Security Administration (EBSA) with regard to the definition of a "fiduciary" under the Employee Retirement Income Security Act of 1974 (ERISA). As noted in your letter, on December 13, 2011, the Department responded to your November inquiry and provided requested information on this regulatory initiative.

As noted in the December response, the Department submitted the original proposed regulation (RIN: 1210-AB32) to amend the definition of the term fiduciary to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) on July 6, 2010. The NPRM and information related to the Department's OMB submission is available online at <http://s.dol.gov/KR> (visited Feb. 24, 2012). I am including with this response, a copy of the Department's proposed rule, along with its economic and regulatory analysis, as it was submitted to OIRA for regulatory review, DOL E&W EBSA FID 00001–50, along with a copy of the Department's proposal and supporting analysis upon completion of OIRA's review, DOL E&W EBSA FID 00051–101. The Department does not have a list of meetings and telephone conversations between DOL and OMB relating to RIN 1210-AB32. The original proposed rule, including analysis and data the Department relied upon, as published in the *Federal Register*, along with the transcripts of the two-day public hearings and written testimony, 39 requests to testify at the public hearings, 316 public comments, interviews and other information on the original proposed rule remain available online at <http://s.dol.gov/KP> (visited Feb. 24, 2012).

On September 19, 2011, the Department announced that it would repropose the fiduciary rule. *See* <http://s.dol.gov/MV> (visited Feb. 24, 2012). The Department expects that the expanded rulemaking process and economic analysis will strengthen the rule and enhance the already extensive record. As noted in my December letter, EBSA is reviewing a wide range of academic studies and information submitted by commenters as it moves forward. In addition to the list of studies EBSA used in the regulatory analysis for the original proposed regulation that I included in the Department's December response, DOL E&W EBSA FID 00102, I am enclosing the citations to the studies discussed in Assistant Secretary Borzi's July 26, 2011, testimony before the Health, Employment, Labor, and Pensions Subcommittee, which have been examined by

economists within EBSA, DOL E&W EBSA FID 00103–104. Some of these studies were published in peer reviewed journals. Further, as part of the NPRM, EBSA will make public any new relevant material not already in the administrative record or the hearing record, including citations to all studies EBSA would rely upon to support an expanded regulatory impact analysis for the reproposed rule.

As part of its work on a regulatory impact analysis in support of a reproposed rule, EBSA requested data from the industries that will be affected by the rule. On December 16, 2011, EBSA sent a letter to the industry representative that engaged Oliver Wyman to prepare a study that assessed the impact of the original proposed rule on Individual Retirement Account (IRA) consumers, requesting the data that underlie the statistics and analysis presented. DOL E&W EBSA FID 00109–111. In an effort to further examine the report as well as the state of the IRA market in general, EBSA requested in December 2011 certain other types of information to supplement the data and research EBSA has already compiled from financial services organizations regarding their members' IRA business. I have enclosed copies of the letters. DOL E&W EBSA FID 00105–108, 112–131. EBSA will include what it learns from the responses it receives as part of the reproposed NPRM. The public and Congress will have a full opportunity to review and comment on the Department's economic analysis and the information supporting the analysis of the reproposed rule when the Department publishes the NPRM.

In August 2011, the Department released its "Plan for Retrospective Analysis of Existing Rules" to further the Department's compliance with Executive Order 13563. *See* U.S. Dept. of Labor, Plan for Retrospective Analysis of Existing Rules (Aug. 2011), available online at <http://s.dol.gov/MX> (visited Feb. 24, 2012). The Department is not reproposing the regulation because of any particular aspect of the Executive Order, but rather to allow for a more robust rulemaking. *See* U.S. Dept. of Labor, Press Release: "US Labor Department's EBSA to re-propose rule on definition of a fiduciary: Additional time ensures strongest possible protections for retirement savers, business owners" (Sept. 19, 2011), available online at <http://s.dol.gov/MY> (visited Feb. 24, 2012).

EBSA's enforcement experience provides evidence of the need to update this rule. You have asked for the number of times in which the Department's enforcement efforts have been thwarted by the failure to meet the "regular basis" requirement of the current regulation. Under the 1975 rules still in effect, to be considered a fiduciary a plan must consult the adviser "on a regular basis." 29 C.F.R. 2510.3-21(c)(1)(ii)(B). The Department has no precise way to capture the total number of cases closed without an investigation in whole or in part, because these cases are generally not pursued after the investigators realize that they are unlikely to be able to establish this prong of the current five-part test. Moreover, it is impossible for EBSA to calculate the number of complaints not filed or enforcement efforts otherwise thwarted because the adviser might not meet this prong.

The difficulty in meeting this prong of the five-part test often leads the Department to forego any effort to pursue fiduciary violations. This is because plans often hire consultants for advice in one-time transactions. In many cases, if it is clear that the regular basis requirement will not be met, a full investigation is not initiated in order to conserve resources, and the case is closed. In other cases, questions as to whether the frequency of interaction between the plans and the service providers is enough to satisfy the "regular basis" requirement can result in the

Department's deciding not to pursue the matter or accepting a settlement that is less than would have been obtained had the requirement not existed. The total number of times advisers have met the other prongs of the test but not the "regular basis" prong is impossible to know with certainty.

Faulty valuations in connection with ESOPs also illustrate the scope of the problem. During the time period January 1, 2009, through January 31, 2012, EBSA conducted a total of 581 ESOP investigations covering over 560,000 participants and holding $49 billion in assets. Of these ESOP investigations, 369 (63.51%) uncovered violations, of which 267 (72.36%) had combined monetary results totaling over $1.7 billion.[1] By comparison, for the same time period, EBSA conducted 4,393 non-ESOP plan investigations (exclusive of routine employee contribution investigations) covering over 7.2 million participants and holding nearly $220 billion in assets. Of these investigations, 3,078 (70.07%) resulted in violations, only 1,559 of which (30.65%) had monetary results totaling approximately $735 million. Because EBSA's data system identifies cases in which violations were found, many of which involve multiple issues, some of these ESOP cases may have involved issues other than faulty evaluations.

Unfortunately, too often these cases settle for a fraction of the losses incurred, in part because of the difficulty in assigning liability to the appraiser for losses sustained as a result of a faulty valuation. The following are specific examples of valuation cases in which the Department did not have recourse against an appraiser for providing faulty valuations:

- A valuation firm failed to properly consider $1.5 billion in debt on a company's books in addition to numerous other errors of logic and analysis. As a result, the ESOP overpaid for shares of company stock purchased from the CEO and related parties. The case ultimately settled for $38.7 million, none of which was paid by the appraisal firm.

- A major valuation firm used earnings figures that were significantly greater than justified by the company's audited financial statements, applied a 30% control premium although the plan did not acquire control, and inconsistently applied different earnings measures from year to year. Had the firm used earnings figures from the company's audited financial statements, the appraiser would have concluded that the value of stock was less than half the appraised value. The case settled for over $71 million, none of which was paid by the appraisal firm.

- A valuation firm accepted unrealistic company earnings projections and failed to consider the company's ability to repay its obligations, among other errors. The case ultimately settled for $17.5 million, none of which was paid by the appraisal firm.

- Relying upon a valuation professional who had previously been convicted of felony embezzlement, a plan authorized the expenditure of $34.4 million in cash for the benefit of a company insider, draining virtually all of the equity value from an ESOP-owned company. The case settled for more than $20 million, as well as injunctive relief.

[1] Monetary results include measurable monetary benefit or protection to the plan and prohibited transactions corrected.

- Relying upon a valuation professional who had been convicted of felony embezzlement, trustees of several related ESOPs paid more than $60 million for stock worth only $18 million.

- A major valuation firm advised a large company to engage in a stock transaction—nominally involving $1 billion—involving an ESOP that the participants did not know existed. The transaction was a tax sham. In settlement, the company was required to refund all of the tax benefits to the U.S. Treasury, and the plan's trustee was required to refund all of its fees. More than $220 million was paid to the Treasury.

- In approving a sale in which an ESOP lost over $10 million in buying stock of a closely held company at well above fair market value, a bank, acting as trustee, relied on a valuation report that used company financials that the bank knew were unreliable, contained unsupportable income and cost projections, and used a flawed valuation methodology. In settlement of the case, the bank instituted procedures to ensure that non-publicly traded stock is accurately valued prior to purchase and to ensure that valuations have been adequately performed with sufficient documentation.

- Fiduciaries of bankrupt airlines caused a plan to buy newly issued stock of the airline's holding company for more than its fair market value. The bank ignored the airline's deteriorating financial condition, and ignored its own downgrading of the company's line of credit, increased leverage, and contractual provisions preventing the payment of dividends, and negative retained earnings. The Department settled with the auditor for $250,000 and a civil penalty of $50,000 for the fiduciary breaches. The banks and the airlines settled for $10 million.

- An appraiser hired to perform a valuation of a company for the purpose of creating an ESOP provided a valuation of a different company than the one involved with the ESOP. This appraiser had never performed a valuation related to ESOP purchases. The Department received a judgment of over $2 million from parties other than the appraiser.

- A plan fiduciary executed a scheme in which a bank loan was obtained to purchase property and the property was appraised at a lower value for plan purposes and at a higher value as collateral for the loan. By securing two appraisals, the plan fiduciary ensured that upon termination of the plan, the property was distributed to the fiduciary, who was also a plan participant, at the reduced value. The fiduciary, therefore, received other assets from the plan to which he would not otherwise be entitled. A new certified appraisal was obtained from an independent appraiser.

- Two individuals purchased land-locked real estate in California for $60,000. One of the two subsequently used the real estate as collateral for an $180,000 loan after getting the plan to rely on a false $400,000 real estate valuation. After the individual defaulted on the loan, the loan broker ultimately made good on the plan's losses.

- In various transactions involving the Genovese crime family, an appraiser valued property at inflated amounts to justify plan loans and purchases. In one of the

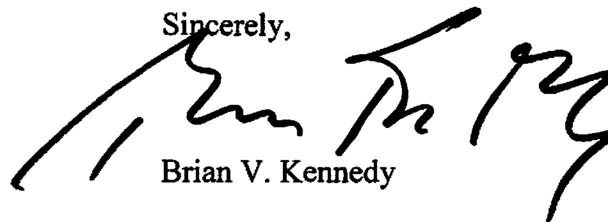
transactions, a member of the crime family first agreed to buy real estate for $7.46 million; the appraiser then valued the property at $15.8 million. The plan, in turn, loaned out $15.8 million based on the appraisal and the member of the crime family used the loan proceeds to buy the property for $7.46 million, pocketing the balance of the loan. An independent appraiser subsequently appraised the property for $5 million. Criminal forfeiture actions ultimately brought some restitution to the pension plan.

The Department believes that these faulty valuation cases further support the need to revise the types of advisory relationships that should give rise to fiduciary status on the part of those providing investment advice services.

As EBSA works to repropose the regulation, Department officials have said publicly that EBSA anticipates proposing new prohibited transaction class exemptions and revising existing ones to address the legitimate concerns about the impact of the regulation on the current fee practices of brokers and advisers. EBSA expects that these exemption projects will deal with such subjects as revenue sharing, principal transactions, and extensions of credit with plans in connection with securities transactions, and clarify existing relief and provide additional safeguards in connection with the receipt of commissions by broker-dealers. If the Department believes that an exemption would be in the interest of participants, protective of their rights, and administratively feasible, it publishes a notice of proposed exemption in the *Federal Register* and solicits comments from the public regarding any proposed exemption. After considering the comments received, if the Department decides to grant or amend an exemption, it publishes a notice in the *Federal Register*. Of course, this is the procedure EBSA would use with respect to any new proposed class exemptions and amendments to existing ones in connection with the reproposed regulation updating the definition of a fiduciary under ERISA.

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W EBSA FID 00001–131.

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

The Honorable Robert Andrews
Senior Democratic Member, Subcommittee on Health, Employment, Labor and Pensions

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

MAR 1 2 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kline:

Thank you for your letter cosigned by your colleague, Subcommittee Chairwoman Virginia Foxx, regarding Federal job training programs. I appreciate your interest in the President's recent job training proposal. As noted in your letter, President Obama has stated that reform of the workforce system is needed to "cut through the maze of confusing training programs" and to make it easier for individuals to access needed training, education, and employment services and information. I have attached details of the Administration's just released Universal Displaced Worker proposal. We would be pleased to provide a briefing to you or your staff on this proposal. We share your commitment to building a public workforce system for the 21st century by updating it to make it more efficient and responsive to the challenges of this economy and the labor market.

Employers are adding jobs to the economy, and unemployed or underemployed Americans are eager to jumpstart their careers. The U.S. Department of Labor (Department) has implemented a number of administrative reforms and initiatives to ensure that the workforce system is able to meet the needs of job seekers and businesses during this economic recovery. These reforms include: increasing innovation in workforce service delivery; improving reemployment strategies; strengthening connections between Unemployment Insurance and the workforce system; promoting industry-recognized credential attainment; and making labor market and credential information more accessible to job seekers and employers.

The Department is responding to the President's call for "one program, one website, and one place" for workers who get a pink slip to receive employment support by proposing to streamline, reform and modernize the way the job training system helps laid off workers get training to transition to new careers. In this increasingly global economy, it will be difficult to distinguish between trade, technology, outsourcing, consumer trends and other economic shifts that cause displacement. Therefore, the fiscal year (FY) 2013 budget proposes a universal core set of services to help all dislocated workers, including workers who lost jobs in trade-impacted industries or for other reasons, find new jobs.

The Department also has plans to launch a new Web site and a single phone number that can be used by job seekers and employers to link to all available employment and job training resources. The FY 2013 budget proposes to strengthen One-Stop Career Centers to increase public awareness, accessibility, and use of the public workforce system by creating a recognizable and uniform brand, expanding access to services in more physical locations, offering more convenient hours, and creating better online tools that offer convenient, personalized services to

workers and employers. The Department will consult states, local workforce areas, and other stakeholders to coordinate and leverage successful state awareness efforts that are already underway.

Additionally, the FY 2013 budget proposes two short-term investments in our nation's workforce:

- An $8 billion Community College to Career Fund, which would be co-administered by the Departments of Labor and Education. This initiative will provide funding for community colleges and states to partner with businesses to train workers in a range of high-growth industries, such as health care, transportation, and advanced manufacturing. These investments will expand the capacity of community colleges to train workers and to meet the workforce needs of local and regional employers.

- A $12.5 billion Pathways Back to Work Fund to support summer and year-round jobs for low-income youth and connect the long term unemployed and low-income adults to employment and work-based training opportunities.

The reauthorization of the Workforce Investment Act (WIA) presents a unique opportunity to promote innovation and develop knowledge of what works in the public workforce system, build on its strengths, and address its challenges. Through the reauthorization process, the public workforce system can be positioned to help more workers gain a foothold in the middle class by making sure that they have skills to succeed in the 21st century and assist American businesses to be more competitive and successful.

The Administration seeks a system whose elements fit together logically, with minimal duplication, and provides seamless access to services for jobseekers, workers, and employers in either physical or virtual One-Stop Career Centers. The Administration's goals for the reauthorization of WIA include:

- <u>Streamlining service delivery</u>: Additional flexibility for states and localities is needed to ensure that they can provide easy access and clear information to individuals and employers in need of service.

- <u>Truly one-stop shopping for high-quality services</u>: All Americans should have access to high-quality One-Stop Career Centers that connect them with the full range of services available in their communities.

- <u>Engaging with employers on a regional and/or sectoral basis</u>: Federal programs should be structured to promote continual engagement by the workforce system with employers of all sizes in high-growth sectors of the regional or local economy, as well as other stakeholders, to ensure that training programs lead to good jobs.

- <u>Improving accountability</u>: Performance measures must be made consistent among programs throughout the workforce system and designed to make it possible to identify the interventions that deliver the best outcomes for individuals. Workers and employers

FOIA 716956 00013

also should have easy access to information about performance outcomes for past participants and programs, so that they can make informed decisions about which programs are most likely to meet their needs.

- Promoting innovation and identifying and replicating best practices: WIA should promote the search for successful practices across programs, continuous innovation, and adoption of the most effective approaches. Federal funds also should support the exploration of new or promising service models and rigorous evaluation to identify successful strategies, including an option to apply for carefully-designed cross-program waivers. Where appropriate, realigning programs should be considered as well.

As you and Subcommittee Chairwoman Foxx indicate in your letter, we have differences on specific features of reauthorization. H.R. 3610 consolidates over two-thirds of current workforce programs and repeals several programs that target vulnerable populations – including veterans, workers with disabilities, migrant and seasonal farmworkers, Native Americans, and at-risk youth. While DOL supports efforts to streamline and improve the workforce system, we firmly believe any WIA reauthorization legislation must include strong accountability for outcomes and ensure that the needs of vulnerable populations are met.

Reforming the workforce system is a worthy goal and the Administration seeks to work with the Congress on a WIA reauthorization proposal that is consistent with the Administration's reform principles. We have provided extensive technical assistance to the bipartisan WIA reauthorization working group in the Senate, and would be happy to meet with you and your colleagues and continue this dialogue in person or provide any other needed assistance that would be helpful to the Committee.

I look forward to working with you, Subcommittee Chairwoman Foxx and other members of the House Committee on Education and the Workforce during the Committee's consideration of proposals that shape the future of the workforce investment system.

Sincerely,

HILDA L. SOLIS
Secretary of Labor

FOIA 716956 00014

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

MAR 1 2 2012

The Honorable Virginia Foxx
Chairwoman
Subcommittee on Higher Education and
Workforce Training
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Foxx:

Thank you for your letter cosigned by your colleague, Committee Chairman John Kline, regarding Federal job training programs. I appreciate your interest in the President's recent job training proposal. As noted in your letter, President Obama has stated that reform of the workforce system is needed to "cut through the maze of confusing training programs" and to make it easier for individuals to access needed training, education, and employment services and information. I have attached details of the Administration's just released Universal Displaced Worker proposal. We would be pleased to provide a briefing to you or your staff on this proposal. We share your commitment to building a public workforce system for the 21st century by updating it to make it more efficient and responsive to the challenges of this economy and the labor market.

Employers are adding jobs to the economy, and unemployed or underemployed Americans are eager to jumpstart their careers. The U.S. Department of Labor (Department) has implemented a number of administrative reforms and initiatives to ensure that the workforce system is able to meet the needs of job seekers and businesses during this economic recovery. These reforms include: increasing innovation in workforce service delivery; improving reemployment strategies; strengthening connections between Unemployment Insurance and the workforce system; promoting industry-recognized credential attainment; and making labor market and credential information more accessible to job seekers and employers.

The Department is responding to the President's call for "one program, one website, and one place" for workers who get a pink slip to receive employment support by proposing to streamline, reform and modernize the way the job training system helps laid off workers get training to transition to new careers. In this increasingly global economy, it will be difficult to distinguish between trade, technology, outsourcing, consumer trends and other economic shifts that cause displacement. Therefore, the fiscal year (FY) 2013 budget proposes a universal core set of services to help all dislocated workers, including workers who lost jobs in trade-impacted industries or for other reasons, find new jobs.

The Department also has plans to launch a new Web site and a single phone number that can be used by job seekers and employers to link to all available employment and job training resources. The FY 2013 budget proposes to strengthen One-Stop Career Centers to increase public awareness, accessibility, and use of the public workforce system by creating a recognizable and uniform brand, expanding access to services in more physical locations, offering more convenient hours, and creating better online tools that offer convenient, personalized services to

workers and employers. The Department will consult states, local workforce areas, and other stakeholders to coordinate and leverage successful state awareness efforts that are already underway.

Additionally, the FY 2013 budget proposes two short-term investments in our nation's workforce:

- An $8 billion Community College to Career Fund, which would be co-administered by the Departments of Labor and Education. This initiative will provide funding for community colleges and states to partner with businesses to train workers in a range of high-growth industries, such as health care, transportation, and advanced manufacturing. These investments will expand the capacity of community colleges to train workers and to meet the workforce needs of local and regional employers.

- A $12.5 billion Pathways Back to Work Fund to support summer and year-round jobs for low-income youth and connect the long term unemployed and low-income adults to employment and work-based training opportunities.

The reauthorization of the Workforce Investment Act (WIA) presents a unique opportunity to promote innovation and develop knowledge of what works in the public workforce system, build on its strengths, and address its challenges. Through the reauthorization process, the public workforce system can be positioned to help more workers gain a foothold in the middle class by making sure that they have skills to succeed in the 21st century and assist American businesses to be more competitive and successful.

The Administration seeks a system whose elements fit together logically, with minimal duplication, and provides seamless access to services for jobseekers, workers, and employers in either physical or virtual One-Stop Career Centers. The Administration's goals for the reauthorization of WIA include:

- Streamlining service delivery: Additional flexibility for states and localities is needed to ensure that they can provide easy access and clear information to individuals and employers in need of service.

- Truly one-stop shopping for high-quality services: All Americans should have access to high-quality One-Stop Career Centers that connect them with the full range of services available in their communities.

- Engaging with employers on a regional and/or sectoral basis: Federal programs should be structured to promote continual engagement by the workforce system with employers of all sizes in high-growth sectors of the regional or local economy, as well as other stakeholders, to ensure that training programs lead to good jobs.

- Improving accountability: Performance measures must be made consistent among programs throughout the workforce system and designed to make it possible to identify the interventions that deliver the best outcomes for individuals. Workers and employers

FOIA 716956 00016

also should have easy access to information about performance outcomes for past participants and programs, so that they can make informed decisions about which programs are most likely to meet their needs.

- Promoting innovation and identifying and replicating best practices: WIA should promote the search for successful practices across programs, continuous innovation, and adoption of the most effective approaches. Federal funds also should support the exploration of new or promising service models and rigorous evaluation to identify successful strategies, including an option to apply for carefully-designed cross-program waivers. Where appropriate, realigning programs should be considered as well.

As you and Committee Chairman Kline indicate in your letter, we have differences on specific features of reauthorization. H.R. 3610 consolidates over two-thirds of current workforce programs and repeals several programs that target vulnerable populations – including veterans, workers with disabilities, migrant and seasonal farmworkers, Native Americans, and at-risk youth. While DOL supports efforts to streamline and improve the workforce system, we firmly believe any WIA reauthorization legislation must include strong accountability for outcomes and ensure that the needs of vulnerable populations are met.

Reforming the workforce system is a worthy goal and the Administration seeks to work with the Congress on a WIA reauthorization proposal that is consistent with the Administration's reform principles. We have provided extensive technical assistance to the bipartisan WIA reauthorization working group in the Senate, and would be happy to meet with you and your colleagues and continue this dialogue in person or provide any other needed assistance that would be helpful to the Committee.

I look forward to working with you, Committee Chairman Kline and other members of the House Committee on Education and the Workforce during the Committee's consideration of proposals that shape the future of the workforce investment system.

Sincerely,

HILDA L. SOLIS
Secretary of Labor

673925

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

February 23, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

RECEIVED
2012 FEB 23 PM 6:05
EXEC. SECRETARIAT
OSEC-DOL

Dear Chairman Kline:

I am writing in response to your February 9, 2012, follow-up letter to Secretary Hilda L. Solis regarding the departure of Mr. Jack Kuzar from the Internal Review Team that is reviewing MSHA's enforcement actions prior to the April 5, 2010, mine disaster at the Upper Big Branch Mine-South (UBB) in Montcoal, West Virginia.

Let me again reassure you that the team's work has continued unabated. While a mine safety professional of Mr. Kuzar's experience and stature is undeniably difficult to replace, as I wrote in my December 23, 2011, letter to you, William R. Francart was able to step into the position of Technical Leader after Mr. Kuzar's departure. Mr. Francart had already been serving on the team and has more than 30 years of experience at MSHA. In my December 23 letter, I provided you with Mr. Francart's qualifications and with the documents pertaining to Mr. Kuzar's departure from the team and Mr. Francart's elevation to technical leader.[1]

Moreover, per MSHA policy,[2] George Fesak, the Director of Program Evaluation and Information Resources at MSHA has provided overall direction to the team since it was formed. In addition to his qualifications that I outlined in my December 23 letter, Mr. Fesak developed the procedures for conducting internal reviews and led the first internal review following the 1989 disaster at the William Station Mine. Since then, he has led nine other internal reviews, including UBB.

I understand that your staff have spoken with Mr. Kuzar. As I am sure he confirmed with your staff, he told MSHA officials that he was ready to retire for his own personal reasons and not for any reason related to concerns about the UBB internal review process. Moreover, Mr. Kuzar apparently did not raise any issue regarding his retirement in an interview he gave for a recent

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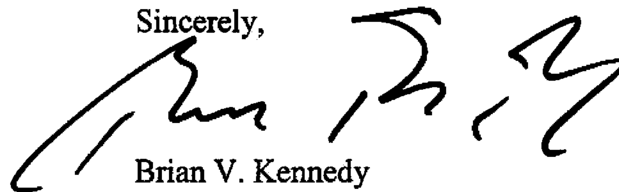
[1] I am enclosing my earlier letter and these documents with this letter. DOL E&W MSHA KUZAR 0001–04.
[2] No changes have been made to the policy dated 1992. I am enclosing a copy of the relevant policy with this letter. DOL E&W MSHA KUZAR 0005–23.

news blog posting.[3] To confirm his account and allay concerns articulated by your staff regarding rumors of an email Mr. Kuzar sent with "the real reasons" he retired, MSHA searched Mr. Kuzar's emails dating back to January 1, 2010, for any communications related to his retirement. I am enclosing the relevant emails.[4] Further, none of MSHA's senior leadership recalls having received any email from Mr. Kuzar related to any claims of improper MSHA actions as a reason for his retirement.

As for your concern about the timeliness of the completion of the internal review team report, let me reiterate that internal review reports typically are published two to three months after the release of an accident investigation report. The team still does not anticipate a departure from that timetable. The Department agrees that "[n]othing should jeopardize the integrity and completion of this internal report."

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W MSHA KUZAR 0001–29 in PDF.

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

[3] Ken Ward, Jr. "What's going on with MSHA's UBB internal review?," Coal Tatoo Blog, *Charleston Gazette*, available online at <http://blogs.wvgazette.com/coaltattoo/2012/02/14/whats-going-on-with-mshas-ubb-internal-review> (visited Feb. 23, 2012).
[4] DOL E&W MSHA KUZAR 00024–29.

672492

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

February 28, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections

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2012 FEB 29 AM 9:27
EXEC. SECRETARIAT OSEC-DEPT. OF LABOR WASH D.C.

Dear Chairman Kline and Chairman Walberg:

I am writing in response to your February 10, 2012, follow up letter to Secretary Hilda L. Solis regarding the Department of Labor, Wage and Hour Division's (WHD) Notice of Proposed Rulemaking, entitled *Application of the Fair Labor Standards Act to Domestic Service* (the proposed rule), which was published in the *Federal Register* on December 27, 2011.

I am pleased to provide you with an update on what has occurred with respect to the proposed rule since my January 13, 2012, response to your original request. Prior to receiving the Secretary's clearance to transmit the proposed rule for review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, the proposed rule was reviewed internally by the Office of the Solicitor (SOL), the Office of the Assistant Secretary for Policy (ASP), the Office of Congressional and Intergovernmental Affairs (OCIA), and the Employment Benefits Standards Administration. OMB received the draft proposed rule for review on November 3, 2011, and concluded its review on December 15, 2011. I am including with this response a copy of the Department's proposed rule, along with its economic and regulatory analysis, as it was submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for regulatory review,[1] along with a copy of the Department's proposal and supporting analysis upon completion of OIRA's review.[2]

President Barack Obama publically announced the proposed rule on December 15, 2011, at which point the Department posted the proposed rule online so that the public could begin reviewing it ahead of the *Federal Register* publication date. The proposed rule was formally published in the *Federal Register* on December 27, 2011.

Since the release of the proposed rule, Department officials have attended four meetings at which the proposed rule was the topic, all of which are a part of the public rulemaking record. On January 5, 2012, staff from WHD, SOL, and OCIA met with minority staff of the House Committee on Education and the Workforce.[3] On January 24, 2012, Wage and Hour Deputy Administrator Nancy J. Leppink met with Chairman Walberg at his request on the proposed

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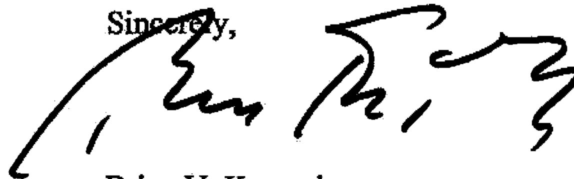
[1] DOL E&W WHD CSHIP 00480–638.
[2] DOL E&W WHD CSHIP 00639–823.
[3] Document ID WHD-2011-0003-3468, Rulemaking Docket ID WHD-2011-0003, REGULATIONS.GOV, available online at <http://s.dol.gov/NF> (visited Feb. 28, 2012).

rule.[4] On January 25, staff from WHD, SOL, and OCIA met with bipartisan staff from the Senate Committee on Health, Education, Labor, and Pensions, the Senate Committee on Finance, and the Senate Special Committee on Aging.[5] On February 1, 2012, the Small Business Administration Office of Advocacy (SBA) held a roundtable on the proposed rule with its stakeholders, attended by staff from WHD, SOL, and ASP.[6] The Department generated a short "Q&A" in response to questions stemming from the SBA roundtable. I am enclosing the Q&A and the email by which it was disseminated.[7] On February 9, 2012, Assistant Secretary of Labor for Disability Employment Policy Kathleen Martinez and members of her staff met with disability rights advocates on the proposed rule.[8]

In your letter, you requested an extension of the public comment period for this proposed rule. All of the information and documents relevant to full consideration of the rule have been public for some time, including all economic or regulatory burden analyses developed for this rulemaking, and the public has been afforded an adequate opportunity to comment on the proposed rule in accordance with the requirements of the Administrative Procedure Act. Nonetheless, on February 24, 2012, the Department published notice in the *Federal Register* that it was extending the comment period to close on March 12, 2012.[9]

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W WHD CSHIP 00480–825 in PDF.

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

The Honorable Lynn Woolsey
Senior Democratic Member, Subcommittee on Workforce Protections

[4] *Id.*
[5] *Id.*
[6] Document ID WHD-2011-0003-3235, Rulemaking Docket ID WHD-2011-0003, REGULATIONS.GOV, available online at <http://s.dol.gov/NG> (visited Feb. 28, 2012).
[7] DOL E&W WHD CSHIP 00824–825.
[8] Document ID WHD-2011-0003-3234, Rulemaking Docket ID WHD-2011-0003, REGULATIONS.GOV, available online at <http://s.dol.gov/NH> (visited Feb. 28, 2012).
[9] Dep't of Labor, WHD, Application of the Fair Labor Standards Act to Domestic Service, Notice and extension of comment period, 77 F.R. 11021 (Feb. 24, 2012).

674841

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

RECEIVED
2012 MAR -7 PM 5:27
EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH D.C. 20210

March 7, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections

The Honorable Kristi Noem
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Chairman Kline, Chairman Walberg, and Representative Noem:

I am writing in response to your February 17, 2012, letter to Secretary Hilda L. Solis regarding the Department of Labor, Wage and Hour Division's (WHD) Notice of Proposed Rulemaking entitled *Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations--Civil Money Penalties* (the proposed rule). The proposed rule was published in the *Federal Register* on September 2, 2011.[1] Since the publication of the proposed rule, the Department announced on February 1, 2012, that it will repropose the portion of its regulation on child labor in agriculture addressing the "parental exemption" in agricultural employment.[2] The Department currently anticipates that it will publish the reproposal of the parental exemption portion of the proposed rule in early summer 2012.

Background

In 1970, the Department first promulgated hazardous occupation orders addressing the employment of children in agriculture.[3] Those regulations have never been updated.[4] The Department is authorized to promulgate these regulations to protect child workers pursuant to 29 U.S.C. §§ 203(l), 212, and 213(c).

The Department began the process of revisiting the regulation of the employment of children more than a decade ago. In 1998, the Department commissioned the National Institute for

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[1] 76 Fed. Reg. 54836.
[2] Dep't of Labor, News Release: US Labor Department to re-propose 'parental exemption' of child labor in agriculture rule: Additional review will ensure protection of both children and rural values (Feb. 1, 2012), available online at <http://s.dol.gov/OD> (visited Mar. 7, 2012).
[3] 35 Fed. Reg. 221 (Jan. 7, 1970).
[4] These rules currently are codified at 29 C.F.R. 570.71.

Occupational Safety and Health (NIOSH) to conduct a comprehensive review of scientific literature and available data to assess current workplace hazards and the adequacy of the current youth employment hazardous occupation orders (HOs) in addressing those hazards. NIOSH issued its report, *National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders*, in 2002.[5] Since meeting with NIOSH researchers in 2003 after the NIOSH report was released,[6] the Department has not had further communication with NIOSH about the subject of this proposed rule other than receiving an official written comment from NIOSH on the proposed rule in response to the NPRM. NIOSH's comments can be viewed on the web site for this rulemaking proceeding.[7]

After publication of the NIOSH Report, the Department initiated a number of rulemakings to address the NIOSH recommendations to update the rules governing child labor in nonagricultural employment. In May 2010, the Department issued final regulations that updated the child labor protections in employment other than in agriculture.[8] Having accomplished the goal of better protecting children working in nonagricultural fields, the Department turned to achieving the same outcome in updating the 1970 regulations covering the employment of children in agriculture.

Revisiting the Regulation of the Employment of Children in Agriculture

The Department met with a number of stakeholders during the development of the proposed rule. The Department convened a listening session on July 21, 2010, for worker advocates. Participants in this meeting included, the Association of Farmworker Opportunity Programs; California Rural Legal Assistance; Farmworker Justice; the Government Accountability Project, the Food Integrity Campaign; the National Consumers' League, Child Labor Coalition; the National Farm Worker Ministry; the Oregon Law Center Farmworker Program; South Carolina Legal Services; the Worker Rights Law Center of New York; and the United States Department of Agriculture (USDA). On July 30, 2010, USDA participated in a listening session with the Department to which the Department invited a wide-range of stakeholders in the agricultural

[5] NIOSH, *National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* (May 3, 2002), available online at <http://s.dol.gov/OB> (visited Mar. 7, 2012). As an adjunct to its review of these issues, the Department also contracted with a private consulting firm, SiloSmashers, Inc., to construct a model that, using quantitative analysis, would help determine the costs and benefits associated with implementing, or not implementing, each of the report's recommendations. Because of data limitations and methodological flaws, the Department does not consider the individual analyses prepared by SiloSmashers to be influential for rulemaking purposes. Nonetheless, SiloSmashers' report, *Determination of the Costs and Benefits of Implementing NIOSH Recommendations Relating To Child Labor Hazardous Orders*, is available online at <http://s.dol.gov/OC> (visited Mar. 7, 2012).
[6] The meeting with NIOSH researchers was one of three meetings the Department held in 2003 after NIOSH issued its report. The other two meetings were with employee advocates and employers.
[7] Document ID WHD-2011-0001-4503, Rulemaking Docket ID WHD-2011-0001, REGULATIONS.GOV, available online at <http://s.dol.gov/OE> (visited Mar. 7, 2012).
[8] 75 Fed. Reg. 28404 (May 20, 2010).

industry. Finally, on September 7, 2011, USDA hosted a listening session with interested agricultural stakeholders where the Department presented on its proposed rule.

As they would whenever the Department develops regulations that might implicate another Federal agency's program area, Department staff engaged in conversations with their counterparts at the USDA about the proposed rule. The Department did not keep records of these meetings or telephone calls or of lists of participants.

Responding to a USDA suggestion, the Department convened a public hearing on October 14, 2011, on the proposed rule. The Department chose Tampa, Florida, as the location because it was conducive to participation from a wide variety of stakeholders, including farmers, farmworkers, farmer organizations, worker advocacy organizations, and educational systems likely to provide vocational agriculture programs. The Department chose the time for the hearing, mid-October, to give attendees time to submit written comments after the hearing based on the testimony presented. Because of the great diversity of our nation's agricultural sector, it is planting or harvesting season at any given time of the year somewhere in our country. Nonetheless, the Department also favored a mid-October hearing because that time of year falls between harvest and replanting of crops throughout much of the country, making it the least inconvenient time for many stakeholders to participate. The Department did not hear from anyone who would have liked to participate but alleges that they were unable to because of the location or timing. The notice announcing the hearing and the hearing transcript are part of the rulemaking docket.[9]

The Department originally submitted the proposed rule (RIN: 1235-AA06) to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) on August 24, 2010. On September 28, 2010, the Department withdrew the proposed rule from OIRA to amend the NPRM to address two areas that were not initially included in the proposal -- distracted driving and children employed in large grain elevators. On November 10, 2010, the Department re-submitted the proposed rule to OIRA, which concluded its review on August 18, 2011. Prior to receiving the Secretary of Labor's clearance to submit the proposed rule to OIRA in both instances, the proposed rule was reviewed internally by the Office of the Solicitor, the Office of the Assistant Secretary for Policy, the Office of the Chief Economist, the Employment Training Administration, the Occupational Safety and Health Administration, the Bureau of International Labor Affairs, and the Office of Congressional and Intergovernmental Affairs. I am including with this response a copy of the Department's rulemaking proposals, including its economic and regulatory analyses, as they were submitted to OIRA for regulatory review, along with a copy of the Department's proposal and supporting analysis upon completion of OIRA's review.[10] The

[9] Notice of Public Hearing, Document ID WHD-2011-0001-0085, Rulemaking Docket ID WHD-2011-0001, REGULATIONS.GOV, available online at <http://s.dol.gov/OF> (visited Mar. 7, 2012) (also published at 76 Fed. Reg. 61289 (Oct. 4, 2011)); Public Hearing Transcript, Document ID WHD-2011-0001-0695, Rulemaking Docket ID WHD-2011-0001, REGULATIONS.GOV, available online at <http://s.dol.gov/OG> (visited Mar. 7, 2012).

[10] The original August 2010 submission is reproduced at DOL E&W WHD CHILD 0001–161. The November 2011 resubmission is reproduced at DOL E&W WHD CHILD 0162–340. The version upon the completion of OIRA review is reproduced at DOL E&W WHD CHILD 0341–551.

Department does not have a list of meetings and telephone conversations between the Department and OMB relating to RIN 1235-AA06.

The Proposed Rulemaking to Update the 1970 Regulations

The proposed rule was published in the *Federal Register* on September 2, 2011, with comments originally due by November 1, 2011.[11] Because of numerous requests for additional time to comment, including from members of Congress, the Department extended the comment period by an additional 30 days to December 1, 2011.[12] During this 90-day comment period, the Department received over 10,000 comments, including one that was signed by 8,000 individuals.[13]

The Department's proposed rule would update the 1970 regulations based on WHD's enforcement experience and NIOSH recommendations. Among other things, the proposal would: strengthen current child labor prohibitions regarding agricultural work with animals in timber operations, manure pits, storage bins and pesticide handling; prohibit hired farm workers under the age of 16 from employment in the cultivation, harvesting and curing of tobacco; prohibit youth in both agricultural and nonagricultural employment from using electronic devices, including communication devices, while operating power-driven equipment; prohibit hired farm workers under the age of 16, unless an exempt student-learner, from operating almost all power-driven equipment; and prevent children under 18 years of age from being employed in the storing, marketing and transporting of farm-product raw materials.

The "Parental Exemption" in the Proposed Rule

Section 13(c)(2) of the Fair Labor Standards Act (FLSA), as amended, prohibits youth under the age of 16 from performing work in agriculture in an occupation that the Secretary of Labor has declared to be "particularly hazardous."[14] That same section of the statute contains a "parental exemption" that exempts from the hazardous occupation order a child who is employed in agriculture by his or her parent, or a person standing in the place of a parent. The parental exemption was added to the FLSA in 1966.[15] As originally proposed, the proposed rule would have codified WHD's then-current enforcement position with respect to the parental exemption.

After a preliminary review of the comments received in response to the proposed rule, the Department announced on February 1, 2012, that it will repropose the portion of its proposal on child labor in agriculture interpreting the "parental exemption."[16] In the interim, WHD will enforce the standard articulated in the *Field Operations Handbook* (FOH), which permits the "owned by" prong of the parental exemption in agriculture to apply when a parent or person

[11] 76 Fed. Reg. at 54836.
[12] Notice and Extension of Comment Period, 76 Fed. Reg. 67104 (Oct. 31, 2011).
[13] Public Submissions, Rulemaking Docket ID WHD-2011-0001, REGULATIONS.GOV, available online at <http://s.dol.gov/OQ> (visited Mar. 7, 2012).
[14] 29 U.S.C. § 213(c)(2); *see also* 29 U.S.C. § 213(c)(1)(A) (creating a similar parental exemption for the agricultural minimum age requirements).
[15] Section 203, *Fair Labor Standards Amendments of 1966*, Pub. L. 89-601, 80 Stat. 833–34 (Sept. 23, 1966).

standing in place of a parent has "part ownership as a partner in a partnership or as an officer of a corporation which owns the farm if the ownership interests in the partnership or corporation is substantial."[17] Through the reproposal process, the Department will seek additional input as to how the department can most effectively comply with statutory requirements to protect children, while still respecting important opportunities for children to participate in the operation of their families' farms. The Department will continue to review the other comments received regarding the remaining portions of the proposed rule as it contemplates a final rule.

Further Background Information Related to the Parental Exemption

WHD records indicate that the current interpretation of "owned by," now appearing in Section 33d03 of the FOH, first appeared in Revision No. 239 of the FOH, which was published in 1970. Records further indicate that this was the first time that any interpretation of "owned by" appeared in the FOH.

Since the beginning of fiscal year 2001, WHD has cited a child labor agricultural hazardous occupation violation in 65 investigations. WHD's data management system does not record child labor violations in a manner that would allow the agency to definitively identify every instance in which the agricultural parental exemption was allowed or denied when a young worker was found working in a hazardous occupation on a farm not wholly owned or operated by the child's parent. The agency, however, has examined all available electronic records for investigations in which a child labor hazardous occupation order violation was cited, beginning with fiscal year 2001.

WHD has identified four instances between 2001 and 2004 in which it cited a violation of an agricultural hazardous occupation order when the young worker was the child of a parent that was part owner of the farm or partner in the farming operation.

- In 2001, WHD cited Grabemeyer Farms, owned by William, David, and Donald Grabemeyer, for employing the 15-year-old youth with the same last name as the owners.
- In 2002, WHD cited Aycock Brothers, Inc. for allowing the 14-year-old child of one of the owners to drive a tractor in an agricultural hazardous occupation.
- In 2004, WHD cited Welby Gardens Co. for employing the 14-year-old son of one of six related business owners in a hazardous occupation.
- In 2004, WHD cited Turbeville Brothers Partners, Inc., for allowing the 15-year-old son of one of the three brothers that comprise the partnership to operate a tractor that exceeded 20 PTO horsepower.

If you or members of your staff have any questions about this response, please contact Patrick

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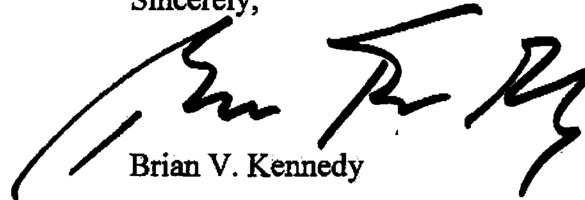
[16] Dep't of Labor, News Release: US Labor Department to re-propose 'parental exemption' of child labor in agriculture rule: Additional review will ensure protection of both children and rural values (Feb. 1, 2012), available online at <http://s.dol.gov/OD> (visited Mar. 7, 2012).

[17] Section 33d03, *Field Operations Handbook* (Rev. 599, Dec. 28, 1993), available online at <http://s.dol.gov/OM> (visited Mar. 7, 2012).

Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W WHD CHILD 0001–551 in PDF.

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

The Honorable Lynn Woolsey
Senior Democratic Member, Subcommittee on Workforce Protections

678591

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

1 2 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kline:

Thank you for your letter to Secretary of Labor Hilda L. Solis related to guidance to state agencies responsible for administering the Unemployment Insurance (UI) program regarding release of confidential UI information on employment and income to private entities for use in the determination of individuals' eligibility for credit. Your letter was forwarded to my office for response. The Employment and Training Administration's Office of Unemployment Insurance oversees the federal-state UI program which is currently developing guidance to states on this issue.

We understand that the Committee is interested in seeing the guidance issued as quickly as feasible. The U.S. Department of Labor's (Department's) first responsibility during the course of the last three years and in the aftermath of the Great Recession has been to ensure that states are supported in their administration of the various UI programs that include the regular state UI program, the Unemployment Compensation Program for Federal Employees, the Unemployment Compensation for Ex-Military Members, Disaster Unemployment Assistance, Extended Benefits (EB), and the Emergency Unemployment Compensation (EUC). As you know, this has been a very demanding time for the UI program. There have been numerous extensions and complex expansions and changes to the EUC and EB programs passed by Congress that have significantly impacted the resources of the Department and the states. More recently, Congress passed and the President signed into law a significant number of UI reforms in the Middle Class Tax Relief and Job Creation Act of 2012. The short Congressionally mandated timelines, such as issuing guidance within 30 days, have impacted available resources and the capacity of staff to ensure states receive the appropriate guidance and support in implementing these new provisions. The staff performing this work are the same staff who are working on the guidance that is the subject of your letter.

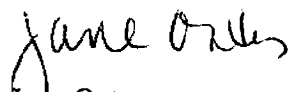
Of utmost concern to the Department is maintaining the confidentiality of the UI data in accordance with current regulations, ensuring that any data disclosed is used solely for the agreed purpose, and that the data is not redisclosed to any other entities or for any other purpose. In considering guidance regarding this issue, it is critical for the Department to examine the ability of both the states and the private entities interested in receiving the information to maintain the confidentiality of the data. In an environment where electronic data is routinely co-mingled with other data sources, developing policies that achieve protection of the data are not simple. Therefore, the Department is thoroughly considering the policies and legal issues to be contained in the guidance.

FOIA 716956 00028

I can assure you that we are working on the guidance and that, even in the midst of mission critical work to implement so many new UI reforms mandated by Congress, we have made it a priority. Because of the importance and the complexity of the issues to be addressed in the guidance, it is receiving comprehensive review from both a legal and policy perspective which simply takes longer. Unfortunately, we are unable to predict with specificity, exactly when the guidance will be released.

If you have additional questions, please contact Mr. Adri Jayaratne, Senior Legislative Officer, Office of Congressional and Intergovernmental Affairs, at (202) 693-4600.

Sincerely,



Jane Oates
Assistant Secretary

FOIA 716956 00029

682653

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

May 29, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kline:

I am writing in response to your April 27, 2012, letter to Assistant Secretary Joe Main regarding the Mine Safety and Health Administration's (MSHA) efforts to stop advance notice of mine inspections. Advance notice of mine inspections is a serious problem that poses grave risks to our nation's miners.[1]

Since April 1, 2010, MSHA has issued 41 citations to coal and metal/nonmetal mines for violations of the Mine Act's prohibition against giving advance notice of a mine inspection. With this letter, I am enclosing a list of all citations and orders issued for advance notice violations from April 1, 2010 through May 15, 2012.[2] This list includes the status of the citation, whether the citation has been contested and the status of contested citations before the Federal Mine Safety and Health Review Commission. In many instances, MSHA District personnel have conducted special investigations in response to advance notice findings. These special investigations have led the Department to seek injunctive relief in three civil actions involving five mines, each successfully. I am enclosing the district court's order in each of these three cases.[3] Other cases have been referred to the Department of Justice (DOJ) for criminal prosecution.[4]

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[1] *See, for example*, MSHA, News Release: Advance notification of federal mine inspectors still a serious problem (Mar. 28, 2012), available online at <http://s.dol.gov/RP> (visited May 29, 2012).
[2] DOL E&W MSHA ADV NOTICE 001–02.
[3] DOL E&W MSHA ADV NOTICE 003–19. For one case, I am also enclosing the memorandum in support of the motion for a preliminary injunction filed by the Office of the Solicitor to provide background not provided in the corresponding order.
[4] The Department's Office of the Solicitor does not handle the prosecution of criminal actions. The Committee should contact DOJ directly for the status of any criminal cases or investigations.

Over the last few years, MSHA has proactively sought to prevent advance notice of mine inspections. For example, during impact inspections, MSHA personnel often monitor mine phones during inspections so that notice of an inspector's arrival cannot be communicated underground. MSHA has also been diligent in informing MSHA personnel, mine operators, and the public about the Mine Act's prohibition against advance notice. For example, on August 26, 2010, MSHA published a Program Information Bulletin (PIB) to remind mine operators, miners' representatives, and MSHA personnel that under the Mine Act it is illegal to give advance notice of MSHA inspections.[5] The PIB also highlights the potential consequences of providing advance notice of an inspection.

In addition, MSHA provides instruction on the law, regulations and policy related to advance notice in its training programs for entry-level mine inspectors, inspector refresher training, and special investigators. This training covers the relevant portion of MSHA's Program Policy Manual.[6] In addition to including instruction in these routine trainings, during March and April of this year MSHA conducted an eight-day Special Investigations Recertification Training for special investigators. Advance notice was covered as one of the subjects of this comprehensive training. MSHA also issues written materials to its inspectors regarding advance notice. For example, last month MSHA issued a Procedure Instruction Letter (PIL) to inspectors to provide guidance as to how inspectors should handle safety tracking systems to avoid those systems providing operators with advance information about the area of a mine an inspector plans to inspect.[7]

MSHA does not believe that inspector-provided improper advance notice of inspections is a widespread problem. MSHA's review of its records revealed an instance in 2010 in which an inspector improperly gave an operator advance notice of an upcoming inspection.[8] MSHA terminated the inspector in July 2010 on a number of grounds, including providing advance notice. Earlier this year, an arbitrator affirmed this personnel action. I am enclosing the arbitrator's decision in which the arbitrator recounted the relevant background and MSHA's subsequent action, redacted to protect personal privacy information.[9]

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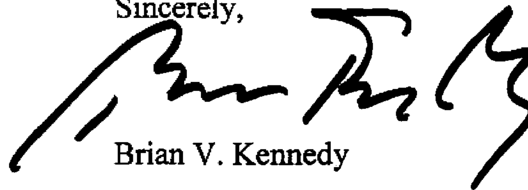
[5] MSHA, PIB: Prohibition of Advance Notice of § 103(a) Inspections (No. P.10-15), available online at <http://s.dol.gov/RM> (visited May 29, 2012); *see also* MSHA, News Release: MSHA stresses illegality of advance notification (Aug. 26, 2012), available online at <http://s.dol.gov/SB> (visited May 29, 2012).
[6] MSHA, 103(a) Advance Notice, *Program Policy Manual* (rel. I-13) (Feb. 2003), available online at <http://s.dol.gov/RQ> (visited May 29, 2012).
[7] MSHA, PIL: Inspector Compliance with the Tracking Requirements of an Emergency Response Plan (No. I12-V-09) (Apr. 19, 2012), available online at <http://s.dol.gov/RN> (visited May 29, 2012).
[8] It is possible that other instances were reported or investigated by the Department's Office of Inspector General (OIG) of which MSHA is unaware. Per the customary practice, the Committee should contact the OIG directly to discuss any of the OIG's work.
[9] DOL E&W MSHA ADV NOTICE 020–35.

If you or your staff has any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W MSHA ADV NOTICE 001–35 in PDF.

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

683251

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

May 21, 2012

The Honorable Charles Boustany, Jr., MD
Chairman, Subcommittee on Oversight
Committee on Way & Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Boustany:

I am writing in response to your May 2, 2012, letter to Secretary Hilda L. Solis, regarding the Energy Efficient Commercial Buildings Deduction ("179D deduction").

The General Services Administration ("GSA") is responsible for most of the buildings occupied by the Department and its agencies. The Department has had no involvement with the allocation of 179D deductions for the design of energy efficient features for any of these buildings.

With respect to Department facilities not under the auspices of GSA, building designers have requested an allocation of a 179D deduction three times since January 1, 2008. The Department granted each request. All three allocations were made to designers of Job Corps facilities. The facilities are located in Milwaukee, Wisconsin; Moses Lake, Washington; and Washington, D.C. I am enclosing each of the three allocations. The Department never requested that any amount of the Section 179D deduction be returned to the Department, nor was any such amount received by the Department.

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,

Brian V. Kennedy

RECEIVED
2012 MAY 21 PM 1:52
EXEC. SECRETARIAT
OSEC-DOL
DEPT OF LABOR
WASH D.C. 20210

Enclosure: Documents Bates stamped DOL W&M 179D 001–05.

cc: The Honorable John Lewis
Ranking Member, Subcommittee on Oversight

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

June 12, 2012

RECEIVED
2012 JUN 12 PM 12: 17
EXEC. SECRETARIAT
OSEC-DOL

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Chairman Kline:

I am writing in response to your letter to Assistant Secretary Joe Main, dated May 14, 2012, regarding Mine Safety and Health Administration (MSHA) injury and illness rates. MSHA is committed to the health and safety of its employees as they work to protect the health and safety of the Nation's miners. MSHA shares your concern about the rates of injuries and illnesses among its employees. Please know that the agency is working to implement improvements to its employee health and safety program.

Background on Injury and Illness at MSHA

From the beginning of FY2007 through the first quarter of FY2012, almost 40 percent of the injuries and illnesses experienced by MSHA employees were noise-induced hearing loss, primarily among MSHA's enforcement personnel. Another 33 percent of the injuries/illnesses reported were strains and sprains. Seventy-eight percent of all reported injuries and illnesses occurred at mine sites, primarily underground coal mines. The average age of employees reporting injuries and illnesses during this period was 59. I am enclosing a list of injuries and illnesses reported by MSHA employees during the period of FY 2007 through the first quarter of FY 2012.[1]

Comparing the rates of injuries and illnesses reported by MSHA employees with the rates of injuries and illnesses reported by mine operators is of limited value. Section 505 of the Federal Mine Safety and Health Act directs MSHA, to the extent feasible, to hire inspectors who already have at least five years of practical mining experience. Many MSHA inspectors are hired with significantly more than five years of experience, often entering the MSHA inspectorate as a second career. While the experience that more mature professionals bring to MSHA is invaluable to protecting miners, these employees have often worked at physically demanding jobs and many were exposed to working conditions that have had a cumulative impact on their health. Hearing loss is a prime example.

[1] DOL E&W MSHA I&I 001–46. The slight difference between this list and the related figures posted on OSHA's website is attributable to claims denied by the Department's Office of Workers' Compensation Programs as part of the claim adjudication process.

Often, miners do not experience a noticeable hearing loss during their employment and only begin to suffer symptoms years later after they have left the industry. Mine operators do not report incidences of hearing loss experienced by former employees to MSHA as employee illnesses.[2] In contrast, MSHA's injury/illness data includes injury and illness claims made by its employees who have retired from MSHA. Thus, while hearing loss constitutes almost 40 percent of MSHA's reported injuries and illnesses since FY2007, hearing loss constitutes less than one tenth of one percent of the injuries and illnesses reported by the Nation's mine operators for their employees. This is despite the fact that according to the National Institute for Occupational Safety and Health (NIOSH), at age 50, 90 percent of coal miners and 49 percent of metal and nonmetal miners have a hearing impairment.[3] Rather than evidencing exposure to hearing-related hazards several orders of magnitude greater for inspectors than for the miners, the disparity in reported rates highlights the difference in the composition of the respective workforces, their history of exposure to workplace hazards, the cumulative impact of such exposure, and what is counted–and not counted–in injury and illness reports.

MSHA Initiatives to Lower its Injury and Illness Rate

In 2010, President Obama initiated the Protecting Our Workers and Ensuring Reemployment (POWER) Initiative to aggressively improve workplace safety for federal employees.[4] As part of the initiative, the Department recently identified areas in which MSHA could improve the health and safety of its employees. In response, MSHA created a plan to bring about improvements. I am including a copy of the Department's report highlighting areas where MSHA could improve and MSHA's plan responding to the review.[5]

In accordance with timetables established by MSHA's Office of Employee Safety and Health (OESH), all of MSHA's program areas are required to complete action plans by July. These plans will contain actions and initiatives to improve safety and health and establish appropriate responsibility and accountability for their implementation. These initiatives will address those injuries that are among the most common for MSHA's inspectors, including hearing loss and strain or sprain injuries, particularly those caused by slips, trips and falls.

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[2] *See* Douglass F. Scott, R. Larry Grayson, & Edward A. Metz, *Disease and Illness in U.S. Mining, 1983-2001*, 46 J. OCCUP. ENVIRON. MED. 1272 (Dec. 2004), available online at <http://www.cdc.gov/niosh/mining/pubs/pubreference/outputid1567.htm> (visited June 12, 2012).

[3] *See* R.J. Matetic, *Hearing Loss in the Mining Industry: Overview of the NIOSH Hearing Loss Prevention Program at the Pittsburgh Research Laboratory*, 31ST INT'L CONF. OF SAFETY IN MINES RESEARCH INSTITUTES: SAFETY IN MINES TESTING AND RESEARCH STATION (SIMTARS) 133 (Oct. 2005), available online at <http://www.cdc.gov/niosh/mining/pubs/pubreference/outputid2642.htm> (visited June 12, 2012).

[4] More information on the POWER Initiative at the Department is available online at <http://www.dol.gov/owcp/dfec/power/> (visited June 12, 2012). The July 19, 2010, memorandum from the president to the heads of executive departments and agencies is reproduced at 75 Fed. Reg. 43029 (July 22, 2010), available inline at <http://www.gpo.gov/fdsys/pkg/FR-2010-07-22/pdf/2010-18176.pdf> (visited June 12, 2012).

[5] The report is reproduced at DOL E&W MSHA I&I 047–48. MSHA's response is reproduced at DOL E&W MSHA I&I 049–51.

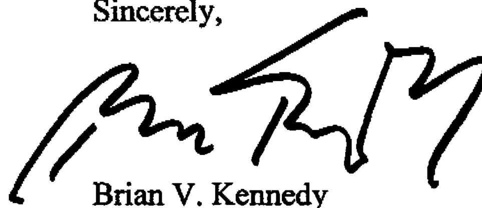
Further, in 2007 MSHA contracted with Yale University School of Medicine, Occupational & Environmental Medicine Program (Yale) to evaluate MSHA's hearing conservation program and hearing loss among MSHA's mine inspectors. Yale presented its findings and recommendations to MSHA in 2011, and MSHA is in the early stages of implementing those recommendations. Yale's report and the summary of its report presented to MSHA staff are enclosed.[6]

Employee Communications

MSHA addresses field employee health and safety issues at health and safety meetings at the District and Field Office levels. Health and safety meetings are scheduled monthly or quarterly, depending on the office. These meetings cover topics including hazards to which MSHA employees can be exposed and any injuries and illnesses that have occurred. The communications to employees are generally oral, although OESH provides written materials on agency-wide subjects for dissemination. Enclosed are the written communications to employees regarding safety and health that have been sent out this year.[7]

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W MSHA I&I 001–151 in PDF.

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

[6] The report is reproduced at DOL E&W MSHA I&I 052–108. The summary is reproduced at DOL E&W MSHA I&I 109–122.
[7] DOL E&W MSHA I&I 123–151. Some MSHA offices publish internal safety and health newsletters separate from OESH which are also included in this production.

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

June 19, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

RECEIVED
2012 JUN 20 PM 3:49
EXEC. SECRETARIAT
SEC-DOL
DEPT. OF LABOR
WASH D.C. 20210

Dear Chairman Kline:

I am writing in response to your letter to Secretary Hilda L. Solis, dated June 1, 2012, regarding the Department of Labor's efforts to ensure the integrity of the Department's release of Principal Federal Economic Indicators and other data compiled by Department agencies. As you know, the Department announced changes to the procedures by which the news media are able to review these data before the official release time on an embargoed basis in a secure "lock-up" facility.

Senior Advisor for Communications and Public Affairs Carl Fillichio recently testified before the House Committee on Oversight and Government Reform concerning these changes and the impetus for them.[1] As Mr. Fillichio noted in his written testimony, violations of the embargo of varying degrees of severity have occurred over the years.[2]

As Mr. Fillichio also discussed at the hearing, the Department and representatives of several news organizations that participate in the print media lock-up engaged in good-faith discussions to arrive at security solutions that meet the data security imperative while addressing the matters raised by the lock-up participants. Even more progress has been made since Mr. Fillichio testified. The Department postponed its June 15 deadline for those participants in the print media lock-up credentialed under the new system to remove their equipment from the lock-up room.[3] The Department is working to implement a new timeline that will phase in the changes quickly, while minimizing inconvenience to lock-up participants. Though changes will be made in several

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[1] Mr. Fillichio's written testimony for the June 6, 2012, hearing is available online at <http://www.dol.gov/_sec/media/congress/20120606_Fillichio.htm> (visited June 19, 2012).

[2] *See also* Joint statement by Keith Hall, Commissioner of the Bureau of Labor Statistics, and David W. James, Assistant Secretary of Labor for Public Affairs, regarding recent early release of embargoed data (Dec. 10, 2008), available online at <http://www.bls.gov/bls/statement122008.htm> (visited June 19, 2012).

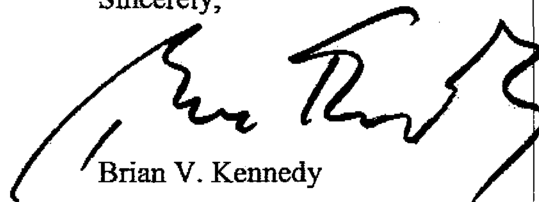
[3] The credentialing criteria remain as announced in April. *See* Office of Public Affairs, U.S. Dep't of Labor, *US Department of Labor invites news organizations to request credentials to participate in press lock-ups providing pre-release access to economic data* (Apr. 10, 2012), available online at <http://www.dol.gov/opa/media/press/opa/OPA20120672.htm> (visited June 19, 2012).

steps between now and full implementation, the Department expects to be operating entirely under the improved system for the release of the report on September 5, 2012, of Productivity and Costs, Second Quarter 2012, Revised.

Per your request, last week my staff forwarded to your staff a redacted copy of the report written by a team of experts from Sandia National Laboratories, part of the Department of Energy. Because of Sandia's relationship with the Department of Energy, a sister Federal agency, the Department did not procure Sandia's services under its own contract, "sole-source" or otherwise. With this response, I am enclosing the Memorandum of Understanding (MOU) between the Department and the Department of Energy for Sandia's important work, as well as related funding documentation.[4] As noted in the MOU, Sandia's "expertise and ability in understanding vulnerabilities from classified and unclassified perspectives offers DOL services not available from most commercial or educational entities."[5]

If you or members of your staff have any questions about this response, please contact Patrick Findlay in the Department's Office of Congressional and Intergovernmental Affairs. He may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

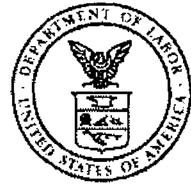
Enclosure: One disc containing documents Bates stamped DOL E&W LU 001–23 in PDF.

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

[4] DOL E&W LU 001–23. These documents have been redacted to protect privacy information.
[5] DOL E&W LU 001.

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210



September 25, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline:

I am writing in response to your follow-up letter to Assistant Secretary Joseph A. Main, dated July 30, 2012, regarding the injury and illness rates of the Department of Labor (the Department) Mine Safety and Health Administration (MSHA) personnel. The Department remains committed to the health and safety of the men and women that have dedicated their careers to protecting the health and safety of the Nation's miners. I am pleased to provide you with an update to the Department's June 12, 2012 response to your May 14, 2012 letter regarding MSHA's continuing efforts to improve the health and safety of its employees.[1]

As I stated in our June 12, 2012 letter, as part of the Department's efforts to achieve its Fiscal Year (FY) 2012 goals under the Protecting Our Workers and Ensuring Reemployment (POWER) program, MSHA created a corrective action plan (the "April 11 action plan") that detailed corrective action measures to be implemented throughout MSHA.[2] The April 11 action plan recognizes that improving the injury and illness rates of MSHA employees requires a commitment by MSHA's leadership to implement long-term and lasting solutions. The April 11 action plan directs each of MSHA major programs to develop program area specific corrective action plans for achieving MSHA's FY 2012 POWER initiative goals. Every month, MSHA's Senior Executives meet to discuss their progress towards these goals.

MSHA's POWER Goals for Fiscal Year 2012

While more work needs to be done, based on the final results for the Third Quarter, MSHA has made significant progress in achieving its POWER goals for FY 2012. For example:

[1] Ltr. Chm. Kline to Sec. Solis (July 30, 2012) (July 30 Ltr). Your letter also requests information regarding MSHA's performance under the Safety, Health and Return to Employment (SHARE) initiative, which preceded the POWER Initiative. Documents relating to the SHARE Initiative are reproduced at DOL E&W MSHA I&I 152-154. Additional information regarding the SHARE Initiative is available on the Department's web site, see, e.g., http://www.dol.gov/owcp/dfec/share/perform.htm (visited Sept. 25, 2012).
[2] Assistant Secretary Main Memo to Assistant Secretary T. Michael Kerr (April 11, 2012) (April 11 Memo) reproduced at DOL E&W MSHA I&I 049-051.

- MSHA's FY 12 target for POWER Goal 2 (Reduce Lost Time Case Rates (LTCR)) is 1.44, and the projected result for FY 12 is 1.24. This is an improvement over the Fiscal Year (FY 11) LTCR of 1.50.

- MSHA's FY 12 target for Goal 4 (Increase Timely filing of Compensation Claims is 95 percent, and its cumulative rate is already 100%. Thus, MSHA is on track to surpass its FY 12 goal and meet its final FY 11 performance.

- MSHA's FY 12 target for Goal 5 (Increase Timely Filing of Wage-Loss Claims) is 88%, and its cumulative rate is already 93.4%. Again, MSHA is on track to surpass its FY 12 target as well as its FY 11 final performance of 86.4%.

- MSHA's FY 12 target for Goal 7 (Increase Return to Work Rates (RTW)) is 85.1%, and the agency's cumulative RTW rate is, as of the Third Quarter, at 95.2%, thus surpassing the target.

Your letter notes that "[o]n March [8], 2012, a memorandum from DOL's Designated Agency Safety and Health Official warned that MSHA was again failing to meet its goals for reducing its total case rate, lost time case rate, and lost production days rate."[3] As the memo states, only interim data (through January 31, 2012) was available at that time with respect to MSHA's POWER goals and performance. As discussed above, final statistics through the Third Quarter show that MSHA will surpass its target for lost time case rate. While MSHA is not projected to meet its target for Goal 1 (Reduce Total Case Rates (TCR)), its projected TCR holds steady at the FY 2011 final performance level and is significantly below the FY 2012 actual noted in the March 8, 2012 memo. Unfortunately, MSHA is not on track to meet its target for Goal 6 (Reduce Lost Production Day Rates) and continues to examine the reasons for this lag.

The Yale Study

As described in our June 12, 2012 response, MSHA commissioned the Yale hearing loss study to examine continued hearing loss among MSHA employees despite the existing Hearing Conservation Program (HCP) and to identify areas of possible improvement. The Yale report recognized MSHA's "excellent compliance with their [sic] written Hearing Conservation Program which meets OSHA requirements," and recommended that MSHA continue the program.[4] The Yale report also set forth some general recommendations but did not include specific guidance regarding their execution or address the feasibility of implementing those measures.

As I described in the June 2012 letter, MSHA never declined to adopt the study's recommendations, and as a result, there are no documents or communications on that subject. MSHA is currently following up on the study by conducting a detailed evaluation of MSHA's hearing loss prevention program to determine its effectiveness in the areas of:

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[3] July 30 Ltr at 2.
[4] The report is reproduced at DOL E&W MSHA I&I 052–108.

FOIA 716956 00040

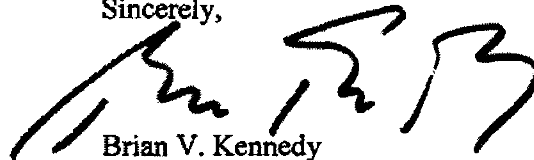
1) Training and education of MSHA employees and their supervisors;
2) Supervisor involvement in enforcing the requirements of the program;
3) Noise measurement;
4) The effectiveness of engineering and administrative controls to reduce exposure to noise hazards;
5) Use and effectiveness of personal hearing protection devices;
6) Effective administration of the program;
7) Effectiveness of current monitoring audiometry and recordkeeping and
8) Referrals.[5]

MSHA has designated HCP coordinators within each major program area[6] to assist in compiling responses to the survey. The results of this evaluation will serve as a basis for a comprehensive reexamination and updating of MSHA's hearing loss prevention program. Finally, at the August meeting for senior staff regarding the April 11 action plan, staff from MSHA's Office of Employee Safety and Health conducted a presentation on the Yale study's recommendations to eliminate hearing loss.[7]

Finally, your letter requests information regarding the standards for health screening used in MSHA's hiring process. Standards for medical qualification determinations for hiring in the federal government are set for in 5 C.F.R. Part 339. In addition, MSHA maintains a medical examination program as part of its hiring process.[8]

If you or members of your staff have any questions about this response, please contact me at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W MSHA I&I 0152-0197 in pdf.

cc: The Honorable George Miller
Ranking Member, Committee on Education and the Workforce

[5] A copy of the survey questionnaire for this evaluation is reproduced at DOL E&W MSHA I&I 155-159.
[6] Coal Mine Safety and Health; Metal and Non-Metal Safety and Health; Directorate of Technical Support; and, Directorate of Education Policy and Development.
[7] A copy of the presentation is reproduced at DOL E&W MSHA I&I 0160-0181.
[8] Documents describing the program, including standards for health screening, are reproduced at DOL E&W MSHA I&I 0182-0197.

FOIA 716956 00041

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

September 18, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
Employment, U.S. House of Representatives
Washington, D.C. 20515

The Honorable Phil Roe, M.D.
Chairman
Subcommittee on Health,
Labor and Pensions

Dear Chairman Kline and Chairman Roe:

I am writing in response to your July 31, 2012, letter to Secretary Hilda L. Solis regarding the Department of Labor's (the Department) Notice of Proposed Rulemaking (NPRM) on the Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors regarding Individuals with Disabilities (Section 503 NPRM)[1] and the Government Accountability Office's (GAO) May 2012 report concerning the federal government's employment of individuals with disabilities.[2]

On March 31, 2011, GAO notified Secretary Solis that it was initiating a study of federal employment of individuals with disabilities. GAO indicated that the agency planned to work with the Department's Office of Disability Employment Policy and Office of Workers' Compensation Programs to complete the study.[3] Staff from the Department met with GAO and provided information during the course of the study.[4] The GAO Report,[5] released in May 2012, relied on "draft data" from the Office of Personnel Management (OPM). We note that on July 12, 2012, two months after the GAO Report was released, OPM released revised statistics in its *Report on the Employment of Individuals with Disabilities in the Federal Executive Branch* (OPM Report).[6]

Your letter raised questions about the extent to which the Department considered the self-identification issues discussed in the GAO Report in the Section 503 NPRM. Since the NPRM was published in December 2011, five months before the May 2012 GAO Report was issued, the

[1] 76 Fed. Reg. 77056.
[2] U.S. Gov't Accountability Office, GA0-12-568, *Further Action Needed to Oversee Efforts to Meet Federal Government Hiring Goals*, (May 20, 2012), available at http://www.gao.gov/assets/600/591134.pdf (hereinafter GAO Report).
[3] E&W OFCCP 503 & GAO 0001 (GAO did not consult with OFCCP during the study).
[4] Outlines of the matters discussed between GAO and Department staff, as well as sign-in sheets identifying the staff who participated in key meetings concerning the study, such as the entrance meeting and the exit conference, are reproduced at E&W OFCCP 503 & GAO 0002-0009. Copies of GAO's questions and the Department's responses are reproduced at E&W OFCCP 503 & GAO 0010-0011. *See also*, E&W OFCCP 503 & GAO 0012-0015 listing a number of the activities undertaken by the Department in support of E.O. 13548
[5] GAO Report, *supra* note 2.
[6] The report is available on the OPM website at http://www.opm.gov/diversityandinclusion/reports/disability/index.aspx (last accessed August 22, 2012) (hereinafter OPM Report).

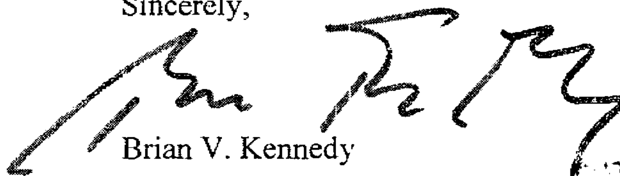
Department was not able to consider the final GAO Report while developing the NPRM. However, the Section 503 NPRM addresses the issues associated with self-identification.

Your letter also raised questions about the process used to inform the development of the Final Rule. We employed an open, transparent and inclusive process in order to maximize opportunities for all interested parties to participate rather than the negotiated rulemaking process, which is typically used by federal agencies to reach consensus with a limited number of stakeholders. This process provided the Department with many different perspectives and experiences to inform the development of the Final Rule. On July 23, 2010, the Department published an Advance Notice of Proposed Rulemaking which solicited public comment on specific ways to strengthen the Section 503 affirmative action provisions.[7] We received more than 125 comments from trade and professional associations, disability and veteran advocacy organizations, employers, federal, state, and local government agencies and private citizens.[8] In addition, Department officials conducted several public forums designed to reach out to as many stakeholders across the nation as possible.[9]

The Department also extended the 60-day NPRM public comment period and received more than 400 comments from an equally broad spectrum of interested groups and individuals, including disability and veteran organizations, contractors, law firms, state and local government agencies, and individuals with and without disabilities.[10] These efforts provided us with a wealth of information for improving the regulations to help achieve the purpose evidenced in Section 503 of increasing the employment opportunities among federal contractors for people with disabilities.

If you or members of your staff have any questions about this response, please contact me at (202) 693-4600.

Sincerely,



Brian V. Kennedy

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2012 SEP 28 PM 3:54
EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
D.C. 20210

cc: The Honorable George Miller
Ranking Member, Committee on Education and the Workforce

The Honorable Robert Andrews
Ranking Member, Subcommittee on Health, Employment, Labor and Pensions

[7] 75 Fed. Reg. 43116 (July 23, 2010).
[8] 76 Fed. Reg. at 77057.
[9] 76 Fed. Reg. at 77056.
[10] *See* News Release, "US Labor Department extends comment period on proposed rule to improve employment opportunities for workers with disabilities." http://www.dol.gov/ofccp/regs/compliance/sec503/Section_503_NPRM_Extension.pdf (February 7, 2011).

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

September 25, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections

The Honorable Phil Roe
Chairman
Subcommittee on Health, Employment, Labor, and Pensions
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kline, Chairman Walberg and Chairman Roe:

I am writing in response to your August 2, 2012 and September 24, 2012 letters to Secretary Hilda L. Solis regarding the Training and Employment Guidance Letter (TEGL) issued on July 30, 2012, by the Department of Labor (the Department) Employment and Training Administration (ETA), entitled *Guidance on the Applicability of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C., 2101-2109, to layoffs that may occur among Federal Contractors, including in the Defense Industry, as a Result of Sequestration.*[1]

The TEGL states that it provides guidance "on the applicability of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101-2109, to layoffs that may occur among Federal contractors, including in the defense industry, as a result of the sequestration mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011 (BCA), 2 U.S.C. 901a (7) (A) and (8)."[2] The TEGL concludes that:

> in the context of prospective across-the-board budget cuts under the BBEDCA, as amended by the BCA, WARN Act notice to employees of Federal contractors, including in the defense industry, is not required 60 days in advance of January 2, 2013, and would be inappropriate, given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January.[3]

[1] TEGL at 5, available online at http://wdr.doleta.gov/directives/attach/TEGL/TEGL_3a_12_acc.pdf.
[2] *Id.* at 1.
[3] *Id.* at 5.

Since the promulgation of the WARN Act's implementing regulations by the Department in 1989, 54 Fed. Reg. 16064 (Apr. 20, 1989), the Department has provided additional guidance and assistance regarding the Act and those regulations pursuant to 20 C.F.R. 639.1(d) ("The Department will provide assistance in understanding these regulations. . ."). The Department responds on a regular basis to questions and concerns regarding the WARN Act from individuals and organizations, including congressional staff and representatives, attorneys, employers, employees, organizations representing employers or employees, State Dislocated Worker Unit Coordinators, federal, state, and local government representatives, reporters, and students conducting research.

Providing timely advice to State Workforce Agencies, Administrators and Liaisons regarding the requirements of the WARN Act is particularly appropriate given the fact that the issuance of WARN Act notices has an immediate and direct impact on their activities and funding. The Department's WARN Act regulations recognize that the issuance of a "WARN notice begins the process of assisting workers who will be dislocated." 20 C.F.R. 639.1(f).

The Department stated in the July 30, 2012 TEGL that it issued the guidance because "[q]uestions have recently been raised as to whether the WARN Act requires Federal contractors—including, in particular, contractors of the Department of Defense (DOD)—whose contracts may be terminated or reduced in the event of sequestration on January 2, 2013, to provide WARN Act notices 60 days before that date to their workers employed under government contracts funded from sequestrable accounts."[4] The TEGL concludes that, "given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January," such notice is not required and would be inconsistent with the purpose of the WARN Act.[5] It also provides extensive analysis to explain that conclusion.

You have also asked about "the level of deference the Department expects federal courts to accord the guidance." As we have noted, the WARN Act directs the Secretary of Labor to "prescribe regulations as may be necessary to carry out this chapter." 29 U.S.C. 2107(a). Based on this congressional delegation of authority, the Department expects that, consistent with past precedent, Federal courts will give appropriate deference to the Department's guidance interpreting the WARN Act and its regulations.

Finally, we note that nothing in the Sequestration Transparency Act (STA) report, which was submitted to the Congress on September 14, changes our conclusion in the TEGL that government contractors do not have sufficient information to determine whether or to what extent their contracts may be affected by sequestration. As the TEGL explains, "contractors' obligation to provide notices under the WARN Act would not be triggered until the specific closings or mass layoffs are reasonably foreseeable."[6] The STA report provides estimated cuts at the budget account level. That information does not indicate whether any individual contract

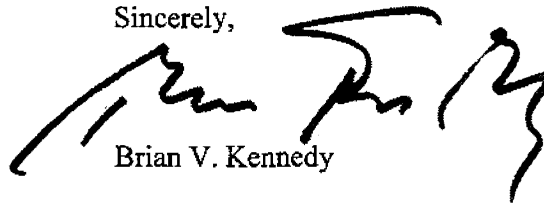
[4] *Id.* at 1.
[5] *Id.* at 5.
[6] *Id.* at 4.

will be affected by sequestration nor how or when the contract might be affected, and, among other things, it does not allow a determination that specific closings or mass layoffs are reasonably foreseeable. Thus, for the reasons stated in the TEGL, there remains no basis on which a government contractor could form the business judgment necessary to support issuance of WARN Act notices.

For these reasons, we adhere to our conclusion that "in the context of prospective across-the-board budget cuts under the BBEDCA, as amended by the BCA, WARN Act notice to employees of Federal contractors, including in the defense industry, is not required 60 days in advance of January 2, 2013, and would be inappropriate, given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January."[7]

If you or members of your staff have any questions about this response, please contact me at (202) 693-4600.

Sincerely,



Brian V. Kennedy

cc: The Honorable George Miller
Ranking Member, Committee on Education and the Workforce

The Honorable Lynn Woolsey
Ranking Member, Subcommittee on Workforce Protections

The Honorable Robert Andrews
Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions

[7] *Id.* at 5.

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

January 17, 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce

The Honorable Glenn "GT" Thompson
Member of Congress

The Honorable Todd Rokita
Member of Congress

The Honorable Larry Bucshon
Member of Congress

The Honorable Dennis A. Ross
Member of Congress

The Honorable Mike Kelly
Member of Congress
U.S. House of Representatives
Washington, DC 20515

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DEPT. OF LABOR
WASH. D.C. 20210

Dear Chairman Kline and Members of the Committee:

I am writing in response to your August 7, 2012 letter to Secretary of Labor Hilda L. Solis regarding the efforts of the Department of Labor (Department) Office of Recovery for Auto Communities and Workers ("ORACW" or "Office") to assist workers and communities impacted by the restructuring of the automobile and auto parts industries.

Over the last decade, the United States has experienced a decline in employment in the automotive industry and among parts suppliers. This decline intensified dramatically from March 2007 to December 2009, with the loss of more than 375,000 auto-manufacturing and related jobs. President Obama issued Executive Order (E.O.) 13509 on June 23, 2009, "to establish a coordinated Federal response to factors affecting automotive communities and workers and to ensure that Federal programs and policies address these concerns." E.O. 13509 established the White House Council on Automotive Communities and Workers (Council), chaired jointly by the Secretary of Labor and the Chair of the National Economic Council. Pursuant to E.O. 13509, the Department established ORACW. The President issued E.O. 13578 on July 11, 2011, in order to continue these efforts. E.O. 13578 transferred the responsibilities of the Council to the Secretary of Labor, and gave her the authority to delegate those responsibilities to ORACW.

There is not an individual budget or budget justification for ORACW. The Office is one of several organizations within the Program Direction and Support activity, which is within a larger Departmental Management Account. There is a budget justification for the Program Direction and Support (PDS) activity under the Departmental Management Account.[1] Even with its small level of expenditures (less than $1.4 million)[2], ORACW has been able to assist the communities most significantly affected by the restructuring of the automotive industry through increased coordination of Federal efforts and engagement among affected stakeholders at all levels within affected auto communities and the larger economy.

Since 2009, the American automotive industry has been recovering. However, there is still work to be done to fully stabilize the automotive and related industries and ensure their continued growth. As a "one-stop" contact for auto communities and stakeholders, ORACW has helped to coordinate Federal, state and local efforts in fulfillment of its mission under E.O. 13578.[3]

The Office has provided assistance to communities working with state, local and Federal programs and policies and leverages existing resources to assist these communities and served as a clearinghouse through which struggling communities can share ideas, strategies and approaches with other communities facing similar challenges.

ORACW utilizes resources available to assist affected auto communities, including the Department's extensive network of contacts across the Federal and state governments, as well as the private sector, including non-profits. The Office regularly engages with trade associations and industry groups, educational institutions, local governments, displaced workers and other community members.[4] ORACW connects struggling auto communities with organizations and governmental entities that can provide resources and assistance, and it follows up with the community to ensure the best possible outcome.

With respect to the Center for Automotive Research (CAR), ORACW contracted with CAR to catalog plant closures and examples of closed auto facilities that had been redeveloped over the past thirty years. The study analyzes the lessons learned by communities that worked to bring closed auto plant properties back to productive use. The result is a comprehensive tool to inform economic

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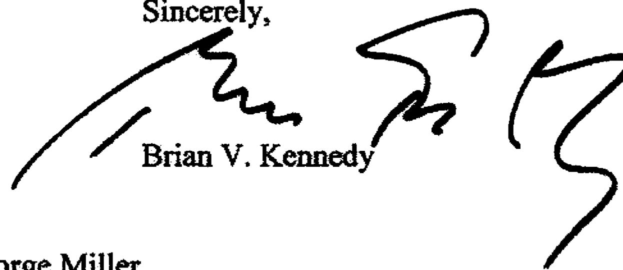
[1] *See, e.g.* 2013 Congressional Budget Justification, Vol. 3, Departmental Management, pg. 27 available at DOL E&W Auto 000001-3.
[2] Information regarding ORACW's expenditures is provided along with this response (DOL E&W Auto 000004).
[3] In its submissions to the GAO, ORACW has demonstrated that it plays a unique and important role in the ongoing revival of the automotive and related industries through outreach to affected auto communities and by coordinating governmental, private and non-profit responses to the challenges that those communities continue to face. Copies of ORACW's submission to the GAO, along with documentation detailing its activities and preliminary spending plan are included with this response (DOL E&W Auto 000005-39).
[4] Id. at Appendix A-1 (DOL E&W Auto 000026-38).

and policy development and enhance program coordination with government officials at the local, state and federal level.[5]

ORACW has undertaken specific measures to carefully and consistently catalog its activities and assess its ongoing efforts. Recognizing the merit of GAO's[6] suggestions with respect to metrics, the Office is taking steps to better account for the engagements, contacts, interactions, and coordination efforts it undertakes. This data will assist ORACW in employing the most effective means of achieving its mission.

If you or members of your staff have any questions about this response, please Kate Ahlgren in the Department's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

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

Enclosure: One disc containing documents Bates stamped DOL E&W Auto 000001-000069 in PDF.

[5] Procurement material for the CAR Report is included in this response (DOL E&W Auto 000040-62).
[6] *See, e.g.*, GAO 2012 Annual Report, GAO-12-342SP (Feb. 2012). ORACW's submissions to the GAO explained the important role it has played in the revival of the automotive and related industries through outreach to affected auto communities and by coordinating governmental, private and non-profit responses to the challenges that those communities face. ORACW's response to the GAO is included with this response (DOL E&W Auto 000063-69).

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

January 9, 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable David "Phil" Roe
Chairman
Subcommittee on Health,
Employment, Labor, and Pensions

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EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH. D.C. 20210

Dear Chairman Kline and Chairman Roe:

I am writing in response to your September 6, 2012, letter to Secretary Hilda L. Solis regarding the Department of Labor's (the Department or DOL) Office of Federal Contract Compliance Program's (OFCCP) collection of compensation data from federal contractors and a National Academies review regarding approaches to measuring and collecting compensation data from employers. OFCCP administers and enforces three legal authorities pertaining to equal employment opportunity: 1) Executive Order 11246, as amended; 2) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and 3) the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended, 28 U.S.C. 4212.

In furtherance of its responsibility to ensure equal employment opportunities for employees of federal contractors, OFCCP works collaboratively with other agencies, including the Equal Employment Opportunity Commission (EEOC), to promote full compliance with federal laws against pay discrimination. With respect to the specific matters discussed in your letter, in order to evaluate different methods for measuring and collecting compensation data, the EEOC conducted an outside study to address questions related to collecting pay data from employers, while the OFCCP gathered public comment from stakeholders through a traditional public notice and comment process related to collecting pay data from federal contractors. These information-gathering approaches are distinct and separate, but complementary.[1]

Specifically, the Equal Employment Opportunity Commission (EEOC) commissioned the National Academies National Research Council, through its Committee on National Statistics (CNSTAT), to convene a panel to review methods for measuring and collecting pay information from U.S. employers.[2] In conducting its review, the panel held two workshops to gather

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[1] Both of these approaches were recommended by the National Equal Pay Task Force. *See* National Equal Pay Enforcement Task Force, Recommendations (July 2010) available at http://www.whitehouse.gov/sites/default/files/rss_viewer/equal_pay_task_force.pdf.

[2] According to the National Academies website, the final published version has not been released yet, but a pre-publication version of its report is publicly available online. *See* National Research Council of the National Academies, Committee on National Statistics, *Collecting Compensation*

information from data users and experts in survey methodology, wage and compensation concepts, and other methods for measuring and collecting pay information.[3] Representatives from DOL were invited to and participated in both workshops, held on May 24, 2011, and July 21, 2011, including the following topics:

- *Background on the Need for Information on Earnings by Gender, Race and National Origin.*[4]
- *Currently Available and Potential Sources of Data on Wages by Gender, Race and National Origin* (DOL E&W OFCCP COMP 001-022).
- "Lessons Learned with Regard to Collecting Earnings Data in BLS Compensation Programs" in a session on *Earnings Measurement Issues.*
- *Understanding Current Data Confidentially Policies and Future Potential for Sharing Data on Wages by Gender, Race and National Origin* (DOL E&W OFCCP COMP 023-035).[5]

On August 10, 2011, OFCCP published an Advance Notice of Proposed Rulemaking (ANPRM) seeking public comment on the possibility of systematically collecting compensation data with respect to gender, race and national origin from federal contractors and subcontractors in order to strengthen OFCCP's ability to identify and remedy compensation discrimination. The ANPRM posed 15 questions for public response on the nature and scope of information OFCCP should seek, how the data should be collected and used, what the tool should look like, which contractors should be required to submit compensation data, and whether the tool might create potential burdens for small businesses.[6]

OFCCP received over 7,800 comments in response to the ANPRM.[7] In addition, OFCCP is in the process of reviewing and improving existing investigation protocols, including a pending proposed update to the standard letter used to schedule Federal contractors and subcontractors for compliance evaluations and to collect relevant data from them at the beginning of a

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Data from Employers (2012) (prepublication uncorrected proof), available at http://www.nap.edu/catalog.php?record_id=13496.

[3] The National Academies, Project Information, "Measuring and Collecting Pay Information from U.S. Employers by Gender, Race, and National Origin". http://www8.nationalacademies.org/cp/projectview.aspx?key=49344.

[4] Workshop Agenda, Workshop I, Measuring and Collecting Pay Information from U.S. Employers by Gender, Race, and National Origin, Committee on National Statistics, Division on Behavioral and Social Sciences and Education, National Research Council, May 24, 2011 - May 25, 2011 available at http://www8.nationalacademies.org/cp/meetingview.aspx?MeetingID=5134&MeetingNo=1.

[5] *Id.* at Workshop Agenda, Workshop II, July 21-22, 2011 available at http://www8.nationalacademies.org/cp/meetingview.aspx?MeetingID=5355&MeetingNo=2.

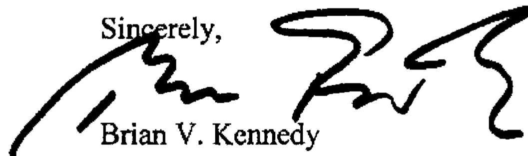
[6] 76 Fed. Reg. 49398 (Aug. 11, 2011).

[7] The ANPRM was open for public comment until October 11, 2011. Comments are available at http://www.regulations.gov (Docket ID OFCCP-2011-0005) (Please note the number of listed comments includes comments uploaded in batches. The total number of separately identified and numbered comments is approximately 2,400.).

scheduled review. OFCCP also has proposed to rescind its 2006 sub-regulatory compensation guidance.[8] As expressed in the Notice of Proposed Rescission, OFCCP is concerned that its existing guidance interpreting OFCCP regulations and Title VII principles limits its ability "to effectively investigate, analyze, and identify compensation discrimination" and does not support effective voluntary compliance.[9] The Notice is not a proposal to collect compensation data from employers.

If you or members of your staff have any questions, please contact Kate Ahlgren in DOL's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W OFCCP COMP 001-035 in pdf.

cc: The Honorable George Miller
Ranking Democratic Member
Committee on Education and the Workforce

The Honorable Robert Andrews
Ranking Democratic Member
Subcommittee on Health, Employment, Labor, and Pensions

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[8] "Interpretive Standards for Systemic Compensation Discrimination", 71 Fed. Reg. 35124 (June 16, 2006), and "Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246," 71 Fed. Reg. 35114 (June 16, 2006).
[9] Notice of Proposed Rescission, 76 Fed. Reg. 62 (Jan. 3, 2011). Comments are available at http://www.regulations.gov (docket ID OFCCP-2011-0001).

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

September 25, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections

The Honorable Phil Roe
Chairman
Subcommittee on Health, Employment, Labor, and Pensions
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kline, Chairman Walberg and Chairman Roe:

I am writing in response to your August 2, 2012 and September 24, 2012 letters to Secretary Hilda L. Solis regarding the Training and Employment Guidance Letter (TEGL) issued on July 30, 2012, by the Department of Labor (the Department) Employment and Training Administration (ETA), entitled *Guidance on the Applicability of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C., 2101-2109, to layoffs that may occur among Federal Contractors, including in the Defense Industry, as a Result of Sequestration.*[1]

The TEGL states that it provides guidance "on the applicability of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101-2109, to layoffs that may occur among Federal contractors, including in the defense industry, as a result of the sequestration mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011 (BCA), 2 U.S.C. 901a (7) (A) and (8)."[2] The TEGL concludes that:

> in the context of prospective across-the-board budget cuts under the BBEDCA, as amended by the BCA, WARN Act notice to employees of Federal contractors, including in the defense industry, is not required 60 days in advance of January 2, 2013, and would be inappropriate, given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January.[3]

[1] TEGL at 5, available online at http://wdr.doleta.gov/directives/attach/TEGL/TEGL_3a_12_acc.pdf.
[2] *Id.* at 1.
[3] *Id.* at 5.

Since the promulgation of the WARN Act's implementing regulations by the Department in 1989, 54 Fed. Reg. 16064 (Apr. 20, 1989), the Department has provided additional guidance and assistance regarding the Act and those regulations pursuant to 20 C.F.R. 639.1(d) ("The Department will provide assistance in understanding these regulations. . ."). The Department responds on a regular basis to questions and concerns regarding the WARN Act from individuals and organizations, including congressional staff and representatives, attorneys, employers, employees, organizations representing employers or employees, State Dislocated Worker Unit Coordinators, federal, state, and local government representatives, reporters, and students conducting research.

Providing timely advice to State Workforce Agencies, Administrators and Liaisons regarding the requirements of the WARN Act is particularly appropriate given the fact that the issuance of WARN Act notices has an immediate and direct impact on their activities and funding. The Department's WARN Act regulations recognize that the issuance of a "WARN notice begins the process of assisting workers who will be dislocated." 20 C.F.R. 639.1(f).

The Department stated in the July 30, 2012 TEGL that it issued the guidance because "[q]uestions have recently been raised as to whether the WARN Act requires Federal contractors—including, in particular, contractors of the Department of Defense (DOD)—whose contracts may be terminated or reduced in the event of sequestration on January 2, 2013, to provide WARN Act notices 60 days before that date to their workers employed under government contracts funded from sequestrable accounts."[4] The TEGL concludes that, "given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January," such notice is not required and would be inconsistent with the purpose of the WARN Act.[5] It also provides extensive analysis to explain that conclusion.

You have also asked about "the level of deference the Department expects federal courts to accord the guidance." As we have noted, the WARN Act directs the Secretary of Labor to "prescribe regulations as may be necessary to carry out this chapter." 29 U.S.C. 2107(a). Based on this congressional delegation of authority, the Department expects that, consistent with past precedent, Federal courts will give appropriate deference to the Department's guidance interpreting the WARN Act and its regulations.

Finally, we note that nothing in the Sequestration Transparency Act (STA) report, which was submitted to the Congress on September 14, changes our conclusion in the TEGL that government contractors do not have sufficient information to determine whether or to what extent their contracts may be affected by sequestration. As the TEGL explains, "contractors' obligation to provide notices under the WARN Act would not be triggered until the specific closings or mass layoffs are reasonably foreseeable."[6] The STA report provides estimated cuts at the budget account level. That information does not indicate whether any individual contract

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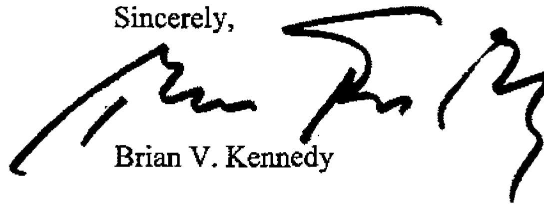
[4] *Id.* at 1.
[5] *Id.* at 5.
[6] *Id.* at 4.

will be affected by sequestration nor how or when the contract might be affected, and, among other things, it does not allow a determination that specific closings or mass layoffs are reasonably foreseeable. Thus, for the reasons stated in the TEGL, there remains no basis on which a government contractor could form the business judgment necessary to support issuance of WARN Act notices.

For these reasons, we adhere to our conclusion that "in the context of prospective across-the-board budget cuts under the BBEDCA, as amended by the BCA, WARN Act notice to employees of Federal contractors, including in the defense industry, is not required 60 days in advance of January 2, 2013, and would be inappropriate, given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January."[7]

If you or members of your staff have any questions about this response, please contact me at (202) 693-4600.

Sincerely,



Brian V. Kennedy

cc: The Honorable George Miller
Ranking Member, Committee on Education and the Workforce

The Honorable Lynn Woolsey
Ranking Member, Subcommittee on Workforce Protections

The Honorable Robert Andrews
Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions

[7] *Id.* at 5.

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U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

November 21, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline:

I am writing in response to your follow up letter to Assistant Secretary Joseph A. Main, dated August 17, 2012, regarding the Department of Labor (the Department) Mine Safety and Health Administration's (MSHA) efforts to stop advance notice of mine inspections. The Department remains committed to addressing this important issue and I am pleased to provide you with an update to the Department's May 29, 2012 response to your April 27, 2012 letter on this subject.

The Department has reviewed the statements made by Mr. Gary May during the entry of his guilty plea on the charge of conspiracy for his conduct at the Upper Big Branch Mine (UBB). In that testimony Mr. May described his role in providing unlawful advance notice of MSHA inspections at UBB. He did not, however, provide any specific allegations or information indicating unlawful conduct by MSHA officials. Notably, Mr. May clearly stated, in response to direct questioning by the Court, that he did not think that the MSHA inspectors were part of any conspiracy to provide advance notice of mine inspections[1].

As I described in the Department's May 29, 2012 response, on August 26, 2010, soon after the explosion at UBB, MSHA issued Program Information Bulletin No. P10-15 (PIB) to remind operators, miners' representatives and MSHA enforcement personnel that under Section 103(a) of the Mine Act it is illegal to give advance notice of inspections, and to reinforce the consequences for anyone who violates this provision. [2] Despite MSHA's outreach efforts, advance notice by mining operators still occurs at some mines when MSHA inspectors arrive on the mine property. MSHA vigorously enforces Section 103(a) of the Mine Act, and has issued over 50 citations to operators for advance notice since the tragedy at UBB.

In addition to its enforcement efforts, MSHA has proactively sought to prevent advance notice of mine inspections by educating MSHA personnel, mine operators, and the public about the Mine Act's requirements and its prohibitions against advance notice. MSHA provides instruction on the law, regulations and policy related to advance notice in its training programs for entry-level mine inspectors, inspector refresher training, and special investigators.[3] This training also covers the relevant portions of MSHA's Program Policy Manual.[4] In addition to these routine trainings, during March and April of this year MSHA conducted an eight-day Special Investigations Recertification Training for special investigators. Advance notice was covered as one of the subjects of this comprehensive training.

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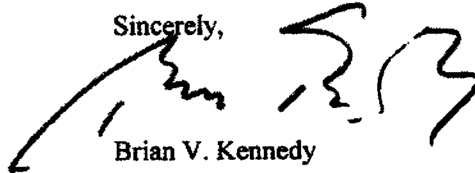
[1] *U.S. v. Gary May*, Criminal Action No. 5:12-CR-00050 (S.D. WV., March 29, 2012), Plea Hearing, transcript p. 17.
[2] MSHA, PIB: Prohibition of Advance Notice of § 103(a) Inspections (No. P.10-15). available online at http://s.dol.gov/RM: *see also* MSHA. News Release: MSHA stresses illegality of advance notification (Aug. 26, 2012), available online at http://s.dol.gov/SB.
[3] Copies of training materials used by MSHA in training regarding advance notice are reproduced at DOL E&W MSHA ADV NOTICE 0036-0104 in PDF.
[4] MSHA, 103(a) Advance Notice, *Program Policy Manual* (rel. I-13) (Feb. 2003), available online at http://s.dol.gov/RQ.

MSHA's Program Policy Manual, which outlines MSHA's internal policies, also provides similar information on the prohibition against advance notice.[5] MSHA also issues written materials to its inspectors regarding advance notice.

If you or your staff has any questions about this response, please contact me at (202) 693-4600.

Sincerely,



Brian V. Kennedy

Enclosure: One disc containing documents Bates stamped DOL E&W MSHA ADV NOTICE 0036-0104 in PDF.

cc: The Honorable George Miller
Ranking Member, Committee on Education and the Workforce

[5] MSHA, 103(a) Advance Notice, *Program Policy Manual* (rel. I-13) (Feb. 2003), available online at http://s.dol.gov/RQ.

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

December 13, 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable David "Phil" Roe
Chairman
Subcommittee on Health, Employment
Labor, and Pensions

Dear Chairman Kline and Chairman Roe:

I am writing in response to your October 26, 2012 letter to Secretary Solis regarding the Office of Labor-Management Standards (OLMS) Compliance Audit Program (CAP). Your letter relates to recommendations made by the Office of Inspector General (OIG) in its September 13, 2012 report entitled, "OLMS Could Do More to Improve the Effectiveness of the Compliance Audit Program." In the report, the OIG recommends that the OLMS Director:

1. Develop performance measures that evaluate the effectiveness of the CAP in safeguarding union assets by verifying Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) compliance;

2. Implement a risk-based process that will define the most significant LMRDA violations and use strategies to direct OLMS CAP resources to unions with the most significant LMRDA violations; and

3. Develop a process that documents unions' correct financial controls over recordkeeping.

OLMS prepared a thorough written response, dated November 14, 2012, to the recommendations from the Inspector General. A copy of this response is enclosed. If you or your staff have any questions, please contact Kate Ahlgren in DOL's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,

Brian V. Kennedy

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U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

FEB 19 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable Virginia Foxx
Chairwoman
Subcommittee on Higher Education and Workforce Training

RECEIVED
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EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH D.C. 20210

Dear Chairman Kline and Chairwoman Foxx:

Thank you for your letter to Acting Secretary of Labor Seth D. Harris regarding the U.S. Department of Labor's (Department) oversight and administration of the Job Corps program. Job Corps is part of the Employment and Training Administration (ETA) and the Acting Secretary referred your letter to me for response. We take your concerns very seriously and appreciate the opportunity to respond.

The Employment and Training Administration administers Job Corps through 147 contracts for the program's 125 centers and educational and vocational programs. Private contractors operate 97 centers and the U.S. Department of Agriculture (USDA) runs the remaining 28 centers. This letter discusses the financial problems experienced by Job Corps in Program Year (PY) 2011 and PY 2012, their causes, what we should have done better, corrective actions we have taken, and the steps we will take to ensure that the Job Corps program can continue to provide high-quality programming to some of our nation's most disadvantaged youth. We would welcome the opportunity to provide you and your colleagues with a more in-depth briefing at your earliest convenience. We are continuing to analyze the matters discussed in this letter. The description we have set forth below reflects our current understanding.

Several factors contributed to the financial problems with Job Corps in PY 2011, including growth in expenditures (such as student-related expenditures and those associated with the opening of three new Job Corps centers in PY 2010 and PY 2011) and serious weaknesses in ETA's and Job Corps' financial management processes that led to a failure to identify and adjust for rising costs in a timely manner. In PY 2012, Job Corps again experienced financial problems because the cost-savings measures taken by ETA and Job Corps management were not aggressive enough to allow the program to stay within budget.

For example, Job Corps opened three new centers in PY 2010 and PY 2011 on a delayed schedule. Funding that had been provided to Job Corps to cover the costs of operating these centers in prior years was no longer dedicated to these sites as a result of the delays, and we did not appropriately plan for the increased costs resulting from the opening of these centers.

While these and other costs escalated during the course of PY 2011, the extent of the financial problems went unrecognized. This is largely because Job Corps lacked appropriate program monitoring tools and control protocols, including those to sufficiently analyze contractual spending trends. In turn, this led to inadequate spending projections for the Operations account.

As you know, Congress provided ETA with authority in PY 2011 to transfer up to $26.2 million in funds from the Job Corps Construction, Rehabilitation and Acquisition (CRA) account to the Operations account. In April 2012, I concluded that Job Corps would need to transfer this full amount. At the end of May 2012, I notified the Secretary of the need to transfer the funds. It also became apparent that this transfer would not be sufficient to meet PY 2011 operating needs.

Thus, ETA obtained approval from the Office of Management and Budget (OMB) in June 2012 to transfer up to an additional $5.37 million from the Training and Employment Services (TES) and State Unemployment Insurance and Employment Service Operations (SUIESO) accounts to the Job Corps Operations account. The Department notified the Appropriations Committees of its intent to transfer these funds. In the end, only $2.2 million of this initial request was transferred to Job Corps' Operations account.

In addition to the fund transfers for PY 2011, ETA implemented a variety of programmatic changes to control costs. These changes focused on non-mission critical administrative expenses to ensure that student academic, career technical training, and post-graduation placement activities were not affected. These included negotiating across-the-board cost-savings targets with each Job Corps center to deobligate PY 2011 funds and suspending enrollment for new students in the month of June, except for homeless youth. ETA also conducted additional oversight on travel by requiring center operators to report all bus and airfare travel directly to the national office prior to arranging travel with ticketing agencies, thus allowing for real-time accounting of June's travel costs. We also required Job Corps center operators to submit their financial reports every three days during the month of June.

Concurrently, ETA implemented several initiatives to strengthen and coordinate existing controls and created new controls where appropriate to track contractor expenditures, and certify adequate funding throughout the rest of PY 2011. On May 22, 2012, the Department established a Job Corps working group within DOL to provide weekly oversight of the remediation efforts during the end of PY 2011. In addition, in June 2012, Secretary Solis requested that the Inspector General (IG) perform a comprehensive review of the Job Corps financial control system.

We understood at the outset of PY 2012 that we needed to take measures to ensure that program obligations remained within Job Corps' appropriated levels. Even before the program year started, we began to develop a comprehensive plan for cost-cutting measures, which was updated throughout the Program Year. In addition, the improvements made to Job Corps' financial management allowed us to make projections earlier in the program year about the overall budget situation.

Given our strong interest in not reducing student services and minimizing disruption to the Job Corps Program, we proceeded cautiously in evaluating and implementing cost saving measures

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in PY 2012. In retrospect, it is clear that we did not act as quickly or decisively as circumstances required. As the Assistant Secretary, I take full responsibility for our failure to manage these issues more aggressively.

Although they ultimately were insufficient, we did take several significant steps throughout PY 2012 to gain better control of Job Corps' expenses. For example, in August a newly-created Office of Financial Administration (OFA) within ETA, headed by a Senior Executive Service-level Comptroller, began operating. OFA oversees the now-centralized budget and financial operations of Job Corps. After OFA began operating, we developed initial targets for both savings and what we believed would be a sufficient reserve for the Job Corps program. We also eliminated a contract for accounting services within the Job Corps Operations account, reduced USDA costs, and negotiated with contractors to identify additional cost-savings measures.

In September 2012, the Secretary approved several additional measures for PY 2012: a reduction in new student biweekly stipend and transition pay to graduates, suspension of enrollments in late November and December, centralizing student transportation costs, and reducing the national academic support contract and career technical support contract. In October 2012, we issued guidance informing the Job Corps community that we would be suspending enrollment from November 26 through December 31, 2012. We also announced that, effective November 1, 2012, Job Corps would reduce the stipends and transition pay for new enrollees.

Despite these cost-cutting measures, our analysis of data in November showed that Job Corps would need to implement additional savings because costs were again exceeding budgeted amounts. Therefore, in December, we took additional steps, including eliminating the student stipend for days when a Job Corps student is not present for duty, which took effect immediately, and reducing the student clothing stipend, effective January 1, 2013. We reduced Job Corps' national media buy by $4 million for PY 2012. In mid-December, we increased the student to teacher ratio from 15:1 to 18:1 in order to save costs, while properly accounting for the special academic needs of at-risk youth.

In January 2013, we also issued guidance to reduce health care-related costs, including by modifying the current health staffing requirements, adjusting the hours for center physicians, dentists and Training Employee Assistance Program specialists based on center usage, and requiring applicants to provide a current record of immunizations in order to eliminate duplicative care. We also continued our work to cut administrative costs. Among other things, we have issued a solicitation that we anticipate will help Job Corps right-size its career technical training and academic programs and we are exploring the best way to centralize utility and other procurements.

Notwithstanding these efforts to reduce costs for PY 2012, as of the beginning of January 2013 we continued to project insufficient cost savings to remain within budgeted levels for the program year. On January 18, 2013, Job Corps instructed all centers to temporarily suspend outreach and admission activities, effective January 28, except for runaway, homeless and foster care candidates. The length of the suspension will be determined by the time it takes to achieve the necessary savings, but we do not expect it to last past June 30, 2013.

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The decision to temporarily freeze Job Corps enrollment nationwide was extremely difficult. It came after we implemented many alternative cost-savings measures, albeit insufficient ones. We also considered other alternatives before deciding to implement the temporary enrollment freeze. Some of the options we considered include an abbreviated program year, slot reductions at a specified number of centers, cutting student stipends and transition pay to current students, and adopting a student leave policy in lieu of scheduled holiday and other school breaks. Ultimately, we rejected these and other options because of their more harmful effect on the Job Corps program and the students that it serves as well as the insufficient savings we would have obtained. Our conclusion was that the most certain and least detrimental savings Job Corps could achieve for the remainder of PY 2012 was from the temporary suspension. This will result in reduced center operating expenses, lower Outreach/Admissions contract costs, as well as savings in student stipend and transportation costs.

Notwithstanding the temporary enrollment suspension, on January 28, 2013, Job Corps continued to serve 44,268 students as of that date. With the suspension of new enrollments, Job Corps will be able to keep its commitment to students who are already in the program.

In closing, the Department deeply regrets the current situation facing the Job Corps program. I personally take responsibility for not acting more quickly to ensure that the program was operating within its appropriated levels. The decision to temporarily suspend enrollment at all centers is the most balanced, efficient way to achieve the savings now in order to avoid a shortfall in PY 2012. However, we clearly recognize that a comprehensive review and assessment of the Job Corps program, contracting, budget, and management is needed to ensure that we do not face this situation again. We will continue to provide you with updates and can discuss this further at the briefing scheduled for your staff on February 20.

Sincerely,

Jane Oates
Assistant Secretary