

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

March 13, 2024

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

The Honorable Douglas L. Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
201 12th St. S. Suite 401
Arlington, VA 22202

Dear Acting Secretary Su and Assistant Secretary Parker:

The House Committee on Small Business (the Committee) writes to request further information about the Department of Labor (the Department) and the Occupational Safety and Health Administration's (OSHA) decision making and practices relating to the Regulatory Flexibility Act (RFA). The Committee has sent a total of eleven letters requesting communications and other information about the economic impact analyses for certain rules. While the Department and OSHA have responded to some of the Committee's requests in narrative form, to date, both the Department and OSHA have failed to produce any requested communications.

As you are well aware, the RFA requires agencies to identify and take steps to mitigate any possible significant economic impact on small entities, including the consideration of less impactful alternatives to the rule.¹ Although the Department has claimed to recognize "the important role small businesses play in our economy," the Biden Administration's regulatory agenda has had a significant impact on a substantial number of small entities.² In fact, the Department has pushed 111 million paperwork hours and \$5.5 billion in costs onto American businesses since President Biden took office.³

On February 22, 2023, the Committee launched this investigation with letters to the Department and OSHA requesting communications and information regarding compliance with the RFA.⁴ Since then, the Committee has sent an additional nine letters to the Department and OSHA requesting communications and information for specific rules. The Department and

¹ See 5 U.S.C. §§ 602-612.

² Letter from Liz Watson, Assistant Sec'y, U.S. Dep't of Labor, to Roger Williams, Chairman, H. Comm. On Small Bus. (Mar. 10, 2023).

³ *Explore the Data, Regulation Rodeo*, AM. ACTION FORUM (last visited Feb. 13, 2024), <https://regrodeo.com/?year%5B0%5D=&year%5B1%5D=2024&year%5B2%5D=2023&year%5B3%5D=2022&year%5B4%5D=2021&agency%5B0%5D=Labor>.

⁴ See Letter from Roger Williams, Chairman, H. Comm. on Small Bus., to Martin J. Walsh, Secretary, U.S. Dep't of Labor (Feb. 22, 2023); Letter from Roger Williams, Chairman, H. Comm. on Small. Bus., to Douglas Parker, Director, Occupational Safety and Health Admin. (Feb. 22, 2023).

OSHA have failed to produce a single communication in response to any of these letters. In so doing, the Department and OSHA have failed to provide any valid reason for withholding these documents. The lack of transparency and willingness to be forthright with the Committee is unacceptable.

America's small businesses deserve to have their voices heard and considered. In furtherance of the Committee's investigation into the Department and OSHA's decisions in complying with the RFA, the Committee is requesting complete responses to the document requests below, which incorporate and narrow its outstanding documents requests, no later than March 27, 2024.

1. All communications, including but not limited to emails, between and among Department personnel relating to the RFA, impact analyses, compliance burdens, and the determination of whether there will be a "significant impact on a substantial number of businesses" for the following proposed rules and time periods:
 - a. *Lowering Miner's Exposure to Crystalline Silica and Improving Respiratory Protection* from July 1, 2022, to July 13, 2023.
 - b. *Worker Walkaround Representative Designation Process* from August 1, 2022, through August 30, 2023.
 - c. *Retirement Security Rule: Definition of an Investment Advice Fiduciary* from November 1, 2022, through November 3, 2023.
2. All communications, including but not limited to emails, between and among Department personnel relating to the RFA, impact analyses, compliance burdens, and the determination of whether there will be a "significant impact on a substantial number of businesses" for the following final rules:
 - a. *Updating the Davis-Bacon and Related Acts Regulations* from March 1, 2021, through August 23, 2023.
 - b. *Employee or Independent Contractor Classification Under the Fair Labor Standards Act* from October 1, 2021, through January 10, 2024.
3. All communications, including but not limited to emails, between and among OSHA personnel relating to the RFA, impact analyses, compliance burdens, and the determination of whether there will be a "significant impact on a substantial number of businesses" for the following final rule and time period:
 - a. *Improve Tracking of Workplace Injuries and Illnesses* from March 30, 2021, through January 1, 2024.

To schedule the delivery of your response or ask any related follow-up questions, please contact the Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate "problems of all types of small business" under House Rule X. Thank you in advance for your cooperation with this inquiry.

The Honorable Julie A. Su and the Honorable Douglas L. Parker
March 13, 2024
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In God We Trust,

A handwritten signature in black ink, appearing to read "Roger Williams". The signature is fluid and cursive, with a large initial "R" and "W".

Roger Williams
Chairman
Committee on Small Business

cc: The Honorable Nydia M. Velazquez, Ranking Member
Committee on Small Business