

Congress of the United States

Washington, D.C. 20515

December 21, 2021

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Walsh:

On October 18, Reps. Rick Allen (R-GA), Jody Hice (R-GA), and Fred Keller (R-PA) joined us in writing you to express concerns about the Department of Labor's (DOL or Department) failure to reopen for in-person business.¹ More than a month past our letter's stated deadline for a response, your Department on December 6 finally sent its reply.² Unfortunately, the Department's letter did not adequately address our concerns and failed to provide most of the documents we requested. To better understand DOL's plans to reopen for in-person business and the serious implications of the Department being closed for so long, we are requesting this information again.

In our letter, we sought an explanation of why DOL's previous plans and deadlines to return most DOL personnel were not met and of what DOL's future plans are. DOL's reply was wholly unresponsive. While the Department's letter noted "plans to increase [DOL personnel's] on-site presence beginning in January 2022," it provided no specificity about how these plans would be implemented beyond a scheduled reentry of no later than March 7, 2022.³ Further, DOL's response did not provide any of the requested data regarding the daily presence of employees at the Frances Perkins Building or the Bureau of Labor Statistics in Washington, D.C. We therefore have no basis to verify DOL's claim that personnel presence has increased since January 2021.

We also continue to be very concerned that DOL is paying employees working from alternative work sites at locality-pay rates that do not align with their physical work locations. In response to our previous request for information on this important matter, the Department's December 6 letter suggests that DOL has paid some of these employees improperly since March 2020, is doing so now, and will continue to do so until March 7, 2022, due to a failure to acknowledge the true location of DOL employees' worksites. In addition, the December 6 letter

¹ Letter from Virginia Foxx, Ranking Member, H. Comm. on Educ. & Lab. et al., to Martin J. Walsh, Sec'y. of Lab. (Oct. 18, 2021), https://republicans-edlabor.house.gov/uploadedfiles/10-18-2021_letter_to_sec_walsh.pdf.

² Letter from Michelle Rose, Dep. Asst. Sec'y. of Lab., to Virginia Foxx, Ranking Member, H. Comm. on Educ. & Lab. (Dec. 6, 2021).

³ *Id.*

implies DOL will address this issue regarding locality pay only for workers with formal and permanent “remote work arrangements,” not for any expanded number of teleworkers that DOL intends to allow going forward.⁴ This situation is very concerning to us on both counts, as it should be to all taxpayers. We therefore request a more complete explanation of DOL’s current and planned future policies about ensuring its employees—career and non-career alike—are paid at the locality rate of where they reside and from which they work, instead of the locality rate of their duty station of record.

In addition, our October 18 letter raised concerns about your own failure to be present in Washington, D.C. to conduct business on behalf of America’s workers and employers. We noted that you only spent 30 days in Washington, D.C. during your first five months as Secretary.⁵ The Department’s December 6 letter did not address our concerns, and your daily calendars for August and September demonstrate that your in-person attendance at the Frances Perkins Building in Washington, D.C. became even less frequent during those months.⁶ Specifically, your calendar shows that you spent fewer than two full days in Washington, D.C. for the entire month of August. Including the eight days you were apparently working in Washington, D.C. in September, you were here just 40 days over the course of your first six months as Secretary of Labor.

Our concerns about your lack of attendance in Washington, D.C. are compounded by recent articles highlighting your unusual approach to leading DOL. A November 17, 2021, POLITICO article pointed out that your atypical living arrangement, which is substantially based in Boston, Massachusetts, has “raised eyebrows” within the Biden administration.⁷ Further, a December 1, 2021, POLITICO article outlined your political ambitions and those of your chief of staff, Daniel Koh, stating that “allies are telling Democrats in [Massachusetts] that the labor secretary is considering returning home to mount a bid [for governor].”⁸ American workers should always be the primary focus of the Secretary of Labor. We are concerned that your calendars suggest your focus is elsewhere.

In our October 18 letter, we wrote, “As the department with direct jurisdiction over the workforce, DOL in particular has a duty to lead by example and re-open for in-person business. DOL also has that obligation to every worker around the country who has either returned to their

⁴ Current Office of Personnel Management (OPM) guidance distinguishes between “telework” and “remote work.” Under OPM’s guidance, “teleworkers” may claim locality pay at higher rates applicable to their “official” workstations, as long as they report to those locations at least twice per pay period. U.S. Office of Personnel Management, *2021 Guide to Telework and Remote Work in the Federal Government* at 31, 58 (Nov. 2021). OPM advises that “remote workers,” by contrast, should be paid at locality rates applicable to their alternative work locations, because they do not report as frequently to what otherwise would be their official workstations. *Id.* At a minimum, adherence to this costly policy should be reconsidered at DOL and elsewhere if telework is to be expanded substantially post-pandemic.

⁵ Letter from Virginia Foxx, *supra* note 1.

⁶ DOL-WIDE FOIA LIBRARY, SECRETARY OF LABOR MARTY WALSH’S MONTHLY SCHEDULE, <https://www.dol.gov/general/foia/readroom>.

⁷ Alex Thompson et al., *Where’s Marty Walsh Sleeping?*, POLITICO, Nov. 17, 2021, <https://www.politico.com/newsletters/west-wing-playbook/2021/11/17/wheres-marty-walsh-sleeping-495141>.

⁸ Alex Thompson et al., *Marty Walsh Is Weighing A Run For Massachusetts Governor*, POLITICO, Dec. 1, 2021, <https://www.politico.com/news/2021/12/01/marty-walsh-massachusetts-governor-523620>.

worksite or never left in the first place.”⁹ Our concerns about DOL’s ability in its current posture to conduct business on behalf of workers and employers and your failure to reopen the Department for in-person business have only increased. We request that you fully respond to our October 18 letter by providing the unproduced documents we requested in that letter:

1. All documents and communications since January 20, 2021, regarding plans to return DOL federal workers and contractors to in-person work status;
2. Daily Frances Perkins Building and Postal Square Building¹⁰ entry and exit data (raw numbers only) from January 21, 2021, through September 30, 2021;
3. A list of all individuals who hold presidentially appointed positions, are in the Senior Executive Service, or hold Schedule C appointments and have the Washington, D.C., region as their duty station but are not regularly residing in the Washington, D.C., region;
4. An explanation of whether DOL has ensured all employees are being paid in accordance with the locality in which they reside and from which they work instead of where their duty station of record is;¹¹ and
5. Chief of Staff Daniel Arrigg Koh’s schedules.

We look forward to your response with the information we requested by January 6, 2022. If you have any questions regarding this request, please contact Joe Wheeler with the Committee on Education and Labor at (202) 225-4527 and Daniel Flores with the Committee on Oversight and Reform at (202) 225-5074.

Thank you for your attention to this important matter.

Sincerely,



Virginia Foxx
Ranking Member
Committee on Education and Labor



James Comer
Ranking Member
Committee on Oversight and Reform

⁹ Letter from Virginia Foxx, *supra* note 1.

¹⁰ The October 18 letter referred to the Bureau of Labor Statistics, which is housed in the Postal Square Building.

¹¹ The October 18 letter referred to the duty station of record as the “official duty station.”