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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

October 8, 2019

The Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Rutledge:

I am writing to follow-up on the letter House Education and Labor Committee Chairman Bobby Scott (D-VA) and I sent to you on September 22 concerning the reorganization of the Employee Benefits Security Administration (EBSA). That letter posed specific questions concerning the need and rationale for the reorganization, requested documentation related to the reorganization, and asked for a delay in its implementation given the many outstanding questions around it. The Department of Labor's (the Department's) September 30 response was woefully inadequate and unresponsive, and it failed to provide any of the requested documents. Instead, the Department only offered information that was already publicly available¹ without addressing the substantive questions raised in our letter. The lack of an adequate response furthers my concern that the Department has been hasty in planning the reorganization and deepens my concern around the impact it could have on the workers, retirees, and families who turn to EBSA for help with the benefits they rely on.

As such, I am deeply disappointed in the Department's decision to move forward without delaying the reorganization, especially in light of the Department's lack of transparency surrounding this process. I again request that EBSA provide a substantive response to the below questions that were previously posed, as well as new questions and document requests by no later than October 25, 2019.

1. What problem is this reorganization designed to solve? How does it achieve those goals?
2. What specifically prompted this reorganization, and when did formal or informal planning for the reorganization begin?
3. Has there been any formal or informal statement of need for this reorganization? If so, please provide such statement(s).

¹ Madison Alder, Ben Penn, and Warren Rojas, "Labor Boosts Political Staff's Power in Benefits Arm Shuffle," Bloomberg Government (Aug. 29, 2019).

- a. Given the significance of the structural changes in this reorganization, have all changes been made in the compressed time to accomplish this reorganization? If not, please explain the changes and steps that must be taken to complete the reorganization.
4. Does EBSA have a detailed implementation plan for this reorganization? If so, please provide me with a copy.
5. Please explain in detail how this proposed reorganization will help EBSA achieve its mission to provide health benefits and retirement security for all workers more efficiently and/or effectively.
6. According to the news report, you noted that this reorganization would provide "expanded opportunity for career advancement."² Please explain in detail what the expanded opportunities are and which employees might be eligible for such opportunities.
7. What are the budgetary impacts of this structural change? If this was considered, please provide me with a copy of the analysis and written description of such impacts.
8. Did you conduct any quantitative or qualitative analyses as you planned this reorganization? If so, please provide me with a copy.
9. The news report says that the union workforce will not be affected.³
 - a. Given the shift in reporting for certain offices, how is that possible?
 - b. What does it mean that the unionized workforce will not be affected?
10. Does EBSA or the Department have policies and procedures regarding reorganizations? If so, please provide me with a copy.
11. Are there additional reorganization plans within EBSA? If so, please provide those plans.

Additionally, I request EBSA answer the following new questions and document requests in its response.

12. It was reported that this reorganization would "give the Regional Offices a greater voice in the National Office and help ensure that enforcement activities are consistent nationwide," a claim that was reiterated in the response to the previous letter.⁴ Please provide examples of where the Regional Offices have not had a voice in National Office policy, as well as examples of where enforcement activities were inconsistent across Regional Offices. How does EBSA monitor and oversee enforcement activities, including specifically the extent to which Regional Offices actions comply with EBSA policies and procedures?

² *Id.*

³ *Id.*

⁴ *Id.*

13. What was the role of the Office of Enforcement prior to October 1, 2019? To what extent was that office not coordinating enforcement activities among the Regional Offices? Please provide specific examples. Can you explain how the reorganization will remedy inconsistent enforcement activities when the Office of Enforcement falls under one Deputy Assistant Secretary while the Regional Offices fall under the new Deputy Assistant Secretary? What is your plan to ensure sufficient coordination and communication between these two silos?
14. The article reported that staff was surprised by the announcement.⁵ Prior to your email dated August 29, 2019, with whom did you consult both internally—within EBSA and the Department, and the various labor organizations representing EBSA employees—and externally (e.g., White House, the Office Personnel Management, other agencies, outside consultants) about this reorganization?⁶ Please provide a list of the individuals with whom you consulted, including dates and specific topics of discussion.
15. If the reporting was accurate, EBSA career staff were omitted from this decision-making process. Why were EBSA career staff not consulted about the reorganization? If the article was inaccurate, please provide me with a list of career staff who were consulted and the dates of such consultation.
16. Why did EBSA's FY 2020 budget not describe this reorganization? How does it reflect the reorganization? If it does not, why?
17. Did you consult with any Members or staff from the House or Senate Appropriations Committees prior to the announcement of the reorganization? If so, please provide me with a list of the Members and/or staffers as well as the dates of such discussions. If not, why? How does the reorganization comply with section 514 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019 and Public Law 116-59 which “prohibits an obligation or expenditure through a reprogramming of funds that . . . (5) reorganizes or renames offices; (6) reorganizes programs or activities . . . unless the Committees on Appropriations of the House of Representatives and the Senate are consulted 15 days in advance of such reprogramming.”
18. The FY 2020 budget notes that EBSA enforcement efforts resulted in \$1,202,115,000 of monetary recoveries directly paid to plans, participants and their beneficiaries.⁷ How will this reorganization improve on these and other enforcement efforts?

⁵ *Id.*

⁶ *Id.*

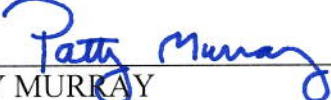
⁷ Department of Labor, FY 2020 Congressional Budget Justification Employee Benefits Security Administration, EBSA – 21, available at <https://www.dol.gov/sites/dolgov/files/general/budget/2020/CBJ-2020-V2-01.pdf>.

19. How will you ensure there is adequate coordination and communication between the policy/regulatory silo and the regional offices? How will you assure that the agency speaks to the regulated community with one voice to avoid confusion and inefficiency?
20. Does EBSA have internal policies implementing the Notification and Federal Anti-Discrimination and Retaliation (No FEAR) Act of 2002 and other federal anti-retaliation laws? If so, please provide me with a copy of such policies.

I am deeply disappointed that you declined to delay the effective date of this reorganization until Congress better understood the rationale and processes around this decision. In my role as Ranking Member of both the Senate Health, Education, Labor, and Pensions Committee and the Labor, Health and Human Services, Education and Related Agencies subcommittee of the Senate Appropriations Committee, I remain committed to understanding the reasoning and analyses behind this reorganization, and the likely impacts on workers, retirees, and families. If you have any questions concerning this request, please contact Kendra Isaacson, Senior Pensions Counsel for the Senate HELP Committee, at (202) 224-6572, or Mark Laisch of the Senate Appropriations Committee, at (202) 224-6595.

Thank you in advance for your prompt attention to this matter.

Sincerely,



PATTY MURRAY
Ranking Member, Senate Committee on
Health, Education, Labor, & Pensions and
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Appropriations

CC: The Honorable Eugene Scalia, Secretary, Department of Labor