

May 3, 2022

VIA ELECTRONIC MAIL

U.S. Department of Labor
Office of the Solicitor of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
foiarequests@dol.gov
ATTN: Chief FOIA Officer Seema Nanda

Re: FOIA Request: Records Related to the U.S. Department of Labor's Equity Action Plan
(DFI FOIA No. 100-17-22)

Dear Chief FOIA Officer:

The Defense of Freedom Institute for Policy Studies, Inc. (“DFI”) is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. For the benefit of the public, DFI’s mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

On April 14, 2022, the U.S. Department of Labor (“DOL”) announced its “Equity Action Plan” (“EAP”) in response to Executive Order 13985, detailing five areas of planned DOL actions to support underserved communities.¹ The EAP reviews action items already underway and a five-point plan to support certain underserved communities, including through policy changes to: (1) wage and hour law enforcement; (2) administration of the state-federal Unemployment Insurance (“UI”) system; (3) broadening access to DOL programs for workers with limited English proficiency; (4) expanding sector-based employment strategies; and (5) “diversifying” the federal workforce through government apprenticeships.²

Executive Order 13985 (“EO”), issued by President Joe Biden on January 20, 2021, decreed that federal agencies advance “an ambitious whole-of-government equity agenda,” while defining “equity” as the “consistent and systematic fair, just, and impartial treatment of all individuals” to include “underserved communities . . . denied such treatment”³ Having designated the

¹ See <https://www.dol.gov/sites/dolgov/files/general/equity/DOL-Equity-Action-Plan.pdf> (“EAP”).

² See EAP, p. 1.

³ Executive Order 13985 declared that particular communities in America had been denied fair, just, and impartial treatment, to include “black, Latino, and Indigenous and Native American



potential beneficiaries of his equity EO by race, religious background, sexual identity, disability, geography, and socioeconomic background, President Biden directed federal agencies to enact his equity-based agenda.

DOL correctly identifies its statutory mission as fostering, promoting, and developing the welfare of the wage earners, job seekers, and retirees of the United States, improving working conditions, advancing opportunities for profitable employment, and assuring work-related benefits and rights.⁴ However, DOL’s authorizing statutes⁵ do not provide a lawful basis for the EAP’s enforcement of its policies for the particular benefit of individuals bearing the demographic background of those identified by President Biden’s EO. The EAP’s promise to “center[] vulnerable and underserved communities in the rulemaking process”⁶ is of particular concern.

DOL’s realignment of its mission to embed race as a “centering” consideration in its policies appears to be contrary to the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin. Title VI prohibits discrimination in programs and activities that receive federal funding⁷ while Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin.⁸ Despite these prohibitions, the EAP appears to require discrimination in favor of particular workers now classed by DOL as underserved, which necessarily discriminates against workers who fail to meet DOL’s preferred racial, sexual, and socioeconomic identifiers. DOL’s unchecked ability to determine which individuals (or groups) it denotes as “underserved” (therefore, entitled to preferential treatment described in the EAP) is also a cause for tremendous concern.

The EAP indicates that DOL has already made “equity” a centerpiece of its grantmaking, by favoring certain “underserved” individuals or groups by building a unique “pipeline of diverse community-based organizations capable of delivering services” and supporting “grantees that demonstrate commitments to expanding their own diversity, equity, and inclusion work”⁹

persons, Asian American and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

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See <https://www.dol.gov/general/aboutdol#:~:text=Our%20Mission,work%2Drelated%20benefits%20and%20rights.>

⁵ 29 U.S.C. § 551 *et seq.*

⁶ See EAP, p. 4 (emphasis added).

⁷ Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in any program or activity that receives federal funds or other federal financial assistance. 42 U.S.C. § 2000d *et seq.*

⁸ 42 U.S.C. § 2000e *et seq.*

⁹ See EAP, p. 3.



DOL reports that it will “expand the collection of demographic data . . . to strengthen analyses of equitable access to programs and services to address “gaps in necessary data and opportunities for addressing those gaps.”¹⁰ DOL appears to be seeking significant additional demographic data to further identify and assist certain (as determined by DOL) “underserved” individuals or groups. The EAP indicates that DOL is establishing “equity-focused” Agency Priority Goals (“Equity APG”) to provide a mechanism for setting desired outcomes and measuring success in meeting those equity outcomes among DOL’s twelve sub agencies. The Equity APGs require the sub agencies to enact policies to ensure preferred outcomes “prioritize[ing] the advancement of racial equity, diversity, and inclusion, to better support underserved communities”¹¹ In short, the Equity APGs create a mechanism to enforce outcomes that may impermissibly take into account race and other prohibited factors.

DOL asserts that its Wage and Hour Division (“WHD”) “cannot advance [its] mission without addressing the impact of *systemic inequities* on its policies and programs.”¹² Rather than adhering to its statutory mission to protect the wage-related rights of all workers, the EAP invokes unproven and undefined “systemic inequities” to embark on what appears to be largely demographically-based enforcement. Pursuant to the EAP, WHD will conduct a “new enforcement analysis” to determine the “enforcement capacity of state and local partners, and available remedies across the country.”¹³ DOL will then use the results of its comparative analyses of state “worker protection laws” to develop Memoranda of Understanding (“MOU”) “to unleash the power of partnerships with [preferred] state and local governments.”¹⁴

The EAP requires WHD to “maximize the full potential” of its “strategic partnerships” with community-based organizations (to include organizations “work[ing] closely with vulnerable communities, including vulnerable communities of color” which are “trusted by workers”).¹⁵ DOL identifies other community-based organizations to be strategic partners as including “worker centers, unions, industry associations, consulates, faith-based organizations, and worker advocacy groups.”¹⁶

DOL relies upon “equity gaps” in its Unemployment Insurance (“UI”) program to justify a “comprehensive effort” to improve timely UI access to, “*above all[,] workers historically underserved by the UI system.*”¹⁷ As part of its effort, DOL apparently seeks to decrease fraud enforcement efforts among certain demographic groups, noting that “[f]raud and identity verification detection methods may deter or disproportionately flag as ineligible . . . workers of

¹⁰ See EAP, p. 3.

¹¹ See EAP, p. 5.

¹² See EAP, p. 6 (emphasis added).

¹³ See EAP, p. 7.

¹⁴ See EAP, p. 7.

¹⁵ See EAP, p. 8.

¹⁶ See EAP, p. 8.

¹⁷ See EAP, p. 9 (emphasis added).



color or individuals who have changed names or genders.”¹⁸ For these same workers, it plans to “streamline benefits application and certification” efforts and to “reengineer[] benefits application, eligibility determinations, and ongoing certification processes.”¹⁹

Through the EAP, DOL is dispatching “Tiger Teams” to states to “identify technological, operational, and administrative short-term solutions in the areas of equitable access, timeliness, and fraud reduction.”²⁰ The Tiger Teams will monitor and record the equity efforts of states “across racial demographics, and other attributes of underserved communities” which will then inform up to \$260 million in equity grants to states “to promote equitable access to UI programs” while DOL tracks “equity grantee performance.”²¹ The EAP provides another \$15 million in grants to states to create “navigator programs” to support “partnerships between state UI agencies and community-based organizations” which will include “sharing [of] equity indicators” between states and community-based organizations.²² The EAP includes a grant-funded “UI Equity Research to Action Center” to prioritize “training diverse students, scholars, and researchers” to build partnerships “*to make the evidence that the research center generates actionable . . .*”²³ DOL’s Chief Evaluation Office (“CEO”) will initiate “Equity Data Partnerships” with States (beginning with five selected States in 2022) to jointly track and collect data on UI-related equity efforts.²⁴

In its workforce training efforts, the EAP provides that the “Department must *center* historically marginalized and underserved workers and job seekers” through increased demographic data collection and tailoring discretionary grant policies to fund “smaller diverse organizations” that may be “well positioned to address . . . labor market barriers of job seekers.”²⁵ To “address barriers to equity,” the EAP requires establishing and building “strong relationships with stakeholders representing the underserved communities” and leveraging “stakeholder feedback and data analytics to identify barriers in the equitable distribution of discretionary grant funding . . .”²⁶

DOL plans to “expand diversity” within (federally) registered apprenticeships and the public workforce, ensuring preferred diversity by the identification of data collection techniques to collect “salient demographic variables” to “inform the development of equity-related strategies, activities, and performance metrics . . .”²⁷ Again, DOL will “engage with stakeholders that represent underserved communities to identify equity barriers”(as determined by DOL) and will use that stakeholder feedback to “work with existing grantees to improve access to services . . .” DOL

¹⁸ See EAP, p. 9.

¹⁹ See EAP, p. 9-10.

²⁰ See EAP, p. 10.

²¹ See EAP, p. 10.

²² See EAP, p. 10.

²³ See EAP, p. 11 (emphasis added).

²⁴ See EAP, p. 12.

²⁵ See EAP, p. 15 (emphasis added).

²⁶ See EAP, p. 15.

²⁷ See EAP, p. 16.



promises to foster equity in discretionary grantmaking through an “equity assessment” that will include “conducting analysis on grantees, participants served, and associated outcomes” for its equity goals.²⁸ The EAP promises to “Mitigate Deep Barriers Faced by Specific Populations” by investing in employment and training services for “women, people of color, immigrants, youth, persons with disabilities, and justice-impacted individuals,”²⁹ among others, and will administer State Apprenticeship Expansion, Equity, and Innovation (“SAEEI”) grants that “bolster states’ efforts to expand programming and recruitment strategies to attract a diverse workforce.”³⁰

DOL’s “Action Plan for Government Apprenticeships” promises to “[p]rovide new pathways for diverse candidates to find employment in the Federal Government” through a new framework designed to promote candidates who “align with the President’s diversity and reemployment goals.”³¹

DOL’s EAP appears designed to further divide Americans by race, ethnicity, religion, and sexual identity, among other socioeconomic identifiers. By design, the EAP injects these qualifiers into DOL’s programmatic activities for a myriad of significant DOL policies and, in so doing, reserves for itself the raw power to use “equity” to award grants and other funding to States and local governments (among other entities) that most closely adhere to the social-justice criteria favored by DOL’s current political leadership. To meet its equity goals, DOL will partner with favored stakeholders to establish, guide, and ensure DOL’s new equity mandates.

Notably, DOL’s EAP fails to address methods for improving the welfare of *all* wage earners, job seekers, and retirees but rather directly favors certain groups (as designated by President Biden’s EO) based on various demographic identifiers. The EAP steers taxpayer dollars to favored equity-agenda adherents. At heart, the EAP appears to provide a socially-conscious veneer for impermissible funding of a spoils system for favored groups as part of its “equity” agenda.

Title VI of the Civil Rights Act of 1964³² prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. Despite Title VI’s clear prohibitions against race-based discrimination, DOL’s Equity Action Plan appears to mandate discrimination in favor of certain racial, ethnic, and sexual identity groups (among other identifiers) as determined by DOL’s application of President Biden’s EO (thereby disfavoring individuals who are not identified as DOL’s favored equity-agenda beneficiaries).

DFI is concerned that DOL’s 2022 EAP directly contradicts Title VI’s prohibitions against race-based discrimination (including the coercion of State and local agencies to engage in discriminatory policies as part of DOL’s equity plan in order to receive DOL funding). DFI thus

²⁸ See EAP, p. 17.

²⁹ See EAP, p. 17-18.

³⁰ See EAP, p. 18.

³¹ See EAP, p. 19.

³² 42 U.S.C. § 2000d *et seq.*



seeks records and information related to DOL’s significant policy actions and proposals included in its “Equity Action Plan” since January 20, 2021.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of DOL, 29 C.F.R. § 70.1 (General Provisions: Production or Disclosure of Information or Materials), DFI makes the following request for records within your possession and/or control:

Requested Records

DFI requests that DOL produce the following records within twenty (20) business days:

1. All non-deliberative communications of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, which reference any of the following:
 - a. Equity Action Plan
 - b. Equity Plan
 - c. Executive Order 13985
 - d. Agency Priority Goals
 - e. Equity APG
 - f. UI APG
 - g. Equity gaps
 - h. Systemic inequities
 - i. Equitable outcomes
 - j. Barriers to equity
 - k. Equity-focused outreach
 - l. Salient demographic variables
 - m. Missing demographic data
 - n. Expanded collection of demographic data
 - o. Community-based organizations
 - p. Underserved communities
 - q. Marginalized workers
 - r. Stakeholder engagement
 - s. Stakeholder outreach
 - t. Stakeholder groups
 - u. Data collection



- v. New enforcement analysis
 - w. UI certification processes
 - x. Fraud and identity verification detection
 - y. Tiger Team Initiative
 - z. Navigator grants
 - aa. Navigator programs
 - bb. UI Equity Research to Action Center
 - cc. Research center
 - dd. Equity Data Partnerships
 - ee. Gender identity
 - ff. American Association for Access, Equity, and Diversity
2. All records of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, which provided the evidentiary basis (and sources of such evidentiary basis) upon which DOL relied in its determination that “equity gaps” existed in the administration of the federal-state Unemployment Insurance system creating “unequal access to benefits for marginalized communities.”
 3. All records of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, related to its 2021 “inventory of the equity-oriented data collected by agencies to better understand where there are gaps in necessary data and opportunities for addressing those gaps.”
 4. All records of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of



- Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, related to its finding that “[f]raud and identity verification detection methods may deter or disproportionately flag as ineligible underserved workers, especially workers of color or individuals who have changed names or genders” in the federal-state UI system.
5. All records of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, related to its planned revisions to the UI “fraud detection tools to ensure that screening methods do not have disparate impacts on underserved communities.”
 6. All records of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, related to its “Equity Data Partnerships” with five states (administered by the Chief Evaluation Office), to include the identity of the States and identification of the criteria used by DOL to award equity grants to the five participating states.
 7. All records of DOL officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, from January 20, 2021, through the date the search is conducted, indicating the identity of



“the community-based organizations” from which DOL has solicited “stakeholder input” for its Equity Action Plan, information regarding any meetings (whether virtual or in-person) between DOL officials and the identified stakeholders, agenda for such meetings, and identities and positions of DOL officials who attended any such meetings.

Custodians

The search for records described in Items 1-7 should be limited to “DOL officials” within the Office of the Secretary, Office of the Deputy Secretary, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer, Office of Public Engagement, Office of the Assistant Secretary for Policy, Employment & Training Administration, Chief Evaluation Office, Office of Public Affairs, Wage and Hour Division, Office of Congressional & Intergovernmental Affairs, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs, who are classified as any of the following or referenced with the following job title:

- a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
- b. “PA” (Presidential Appointments Not Requiring Senate Confirmation)
- c. “NC-SES” (Non-Career Senior Executive Service)
- d. “SES” (Career Senior Executive Service)
- e. “SC” (Schedule C Confidential or Policymaking Positions)

Definitions

Absent contrary statutory directives, words and phrases contained herein should be accorded their usual, plain, and ordinary meaning. Please note the following statutory definition:

“**Records**” are defined at 44 U.S.C. § 3301(a)(1-2) as including “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them” and further “includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form, such as emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.



Identification and Production of the Requested Records

FOIA imposes a burden on DOL, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor³³ if DOL (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”³⁴ Upon request, DOL must “promptly” make the requested records available to the requester.³⁵ Notably, covered agency records include materials provided to DOL by both private and governmental organizations.³⁶ Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with DOL’s published rules regarding the time, place, any fees, and procedures to be followed,³⁷ DOL must conduct a search calculated to find responsive records in DOL’s control at the time of the request.³⁸ In addition, the records produced by DOL are required to be provided in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”³⁹

Upon receipt of this request, DOL has twenty business days to “determine . . . whether to comply with [the] request” and “shall immediately notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by DOL.⁴⁰

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- DOL should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- DOL should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of DOL’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, DOL should not rely solely on a

³³ FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

³⁴ *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

³⁵ 5 U.S.C. § 552(a)(3)(A).

³⁶ *Id.* at 144.

³⁷ 5 U.S.C. § 552(a)(3)(A)(i).

³⁸ *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

³⁹ 5 U.S.C. § 552(a)(3)(B).

⁴⁰ 5 U.S.C. § 552(a)(6)(A)(i).



search of a likely custodian's files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian's possible deletion or modification of responsive records.

- DOL should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding DOL's business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. DOL should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as DOL's official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by DOL calculated to deflect its compliance with FOIA's requirements.
- DOL should timely provide entire records responsive to this request, broadly construing what information may constitute a "record" and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- DOL should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If DOL determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that DOL disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by DOL, DOL should provide a clear and precise enumeration of those records in index form presented with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA"⁴¹ and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.

⁴¹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIF format on a USB drive. If it helps speed production and eases DOL's administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 29 C.F.R. § 70.41, DFI requests a waiver of all fees associated with this FOIA request for agency records.

Disclosure of the requested records is in the public interest.

Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI.

The disclosed materials are likely to contribute significant information to the public's understanding of DOL's Equity Action Plan, which encompasses wide-ranging DOL policies including but not limited to the federal-state Unemployment Insurance system, DOL grant-making policies for States and local communities, wage and hour rights enforcement, collection and sharing of demographic data, workforce training, and government apprenticeship programs, that are highly relevant to the interests of workers, families, and taxpayers. Disclosure of the requested materials will illuminate DOL's Equity Plan policies and planning (*e.g.*, rulemaking and enforcement decisions). Further, the requested information does not otherwise appear to be in the public domain (in duplicative or substantially identical form).

Provision of the requested records will not commercially benefit DFI (a nonprofit, nonpartisan organization interested in the transparency of DOL operations and governance), but will benefit the general public and other groups and entities with non-commercial interests in DOL's operations and governance.

DFI will review and analyze the requested records and make the records and analyses available to the general public and other interested groups through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on DOL policies widely distributed by one of the nation's largest news providers in February 2022 and more recently, a March 2022 analysis of DOJ policies distributed by a leading news magazine. DFI personnel also frequently offer commentary and analyses on radio and television news programs and in various public forums regarding the activities of multiple federal agencies).



Federal law makes clear that when the disclosure is in the public interest and the information contained within the disclosed records is not primarily in the commercial interests of the requester (here, DFI), statutory fee waiver is appropriate.

DFI is a representative of the news media.

In addition to the fee waiver request based upon the public interest, DFI also requests a fee waiver on the basis that DFI is a **representative of the news media**, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 29 C.F.R. § 70.41(2)(iii).

FOIA (as amended) provides that a representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that to an audience.”⁴² DFI provides exactly this service to the general public and other audiences with an interest in those materials and analyses. Upon receipt of the requested materials from DOL, DFI will review and analyze those materials and will extract and otherwise distill particularly useful information from those materials for the benefit of the general public and other interested audiences.

DFI will provide its analyses to the general public and other interested audiences through publication on DFI’s website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on U.S. Department of Education policies widely distributed by one of the nation’s largest news providers in February 2022 and more recently, a March 2022 analysis of U.S. Department of Justice policies distributed by a leading news magazine. DFI personnel have also offered commentary and analyses on radio news programs and in various public forums regarding the activities of multiple federal agencies).

As a qualified non-commercial public education and news media requester with demonstrated ability to review and analyze publicly-available information and to provide insight regarding that information, DFI is thus entitled to a fee waiver under FOIA as a representative of the news media.

Conclusion

The subject of this request regards identifiable operations and activities of DOL and, more specifically, its impactful Equity Action Plan, which involves wide-ranging DOL policies including but not limited to the federal-state Unemployment Insurance system, DOL grant-making policies for States and local communities, wage and hour rights enforcement, collection and sharing of demographic data, workforce training, and government apprenticeship programs, that are highly relevant to the interests of workers, families, and taxpayers. Provision of the requested

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



records will meaningfully inform the general public about significant developments in DOL's wide-ranging equity policies and rulemaking, which affect millions of American workers, their families, and taxpayers. These are significant issues with tremendous impact on the general public and worthy of transparency in service of the public's right to know.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

DFI appreciates DOL's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding DOL's Equity Action Plan, which policies and related rulemaking are of tremendous interest to workers, families, and taxpayers.

Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at paul.moore@dfipolicy.org.

Sincerely yours,

/s/ Paul R. Moore

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.