

**Rick Scott**  
GOVERNOR



**Jesse Panuccio**  
EXECUTIVE DIRECTOR

June 5, 2013

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
United States House of Representatives  
2439 Rayburn House Office Building  
Washington, D.C. 20515

RE: *Request for Congressional Oversight of the Conduct of the United States Department of Labor Civil Rights Center*

Dear Chairman Kline:

This letter serves to bring to your attention problems with, and the potential politicization of, investigatory functions at the United States Department of Labor, and to request that the House of Representatives exercise its oversight authority to determine whether USDOL is acting outside the proper bounds of its legislative delegation of authority.

The Florida Department of Economic Opportunity's (DEO) reemployment assistance (RA) program has recently been the target of an investigation and Initial Determination by the U.S. Department of Labor's Civil Rights Center (USDOL CRC). The investigation was launched by USDOL after it received a 2011 complaint from the Miami Workers Center (MWC), a political advocacy group whose stated purpose is to "to create a progressive political and social environment in South Florida." The MWC complaint alleged that changes to Florida's RA program—requiring online applications and completion of an initial skills review—discriminated against persons with limited English proficiency and persons with disabilities.

Over the past month, DEO has carefully reviewed the Initial Determination and the underlying evidence relied upon by the USDOL. DEO's conclusion is that the Initial Determination is seriously flawed, resulting from a highly questionable investigatory process calculated to reach a predetermined result. Rather than serve as a neutral arbiter, USDOL appears to have collaborated with the political group that filed the complaint. Accordingly, DEO respectfully requests that Congress exercise its oversight authority over what appear to be several instances of investigative misconduct by USDOL. These instances violate the generally accepted principle that federal investigations must be fair, impartial, apolitical, and not predetermined. The questionable conduct outlined below raises serious concerns both about USDOL policies and procedures, as well as about the specific conclusions it reached in this particular investigation.

Florida Department of Economic Opportunity | Office of the General Counsel

The Caldwell Building | 107 E. Madison Street | Tallahassee, FL | 32399-4120 | Phone: 850.245.7150 | Fax: 850.921.3230

[Robert.Sechen@deo.myflorida.com](mailto:Robert.Sechen@deo.myflorida.com) | [www.FloridaJobs.org](http://www.FloridaJobs.org) | [www.twitter.com/FLDEO](http://www.twitter.com/FLDEO) | [www.facebook.com/FLDEO](http://www.facebook.com/FLDEO)

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Although not an exhaustive list, highlighted below are some of the most concerning aspects of USDOL's investigation. In addition to requesting congressional oversight, DEO has filed a request with USDOL's Office of Inspector General to review USDOL's policies and practices to determine whether there was any abuse or misconduct.

**1) In Initiating and Conducting Its Investigation, USDOL May Have Inappropriately Collaborated with a Political Group and its Attorneys**

The Initial Determination references several ex parte meetings, emails, and communications between USDOL and MWC. USDOL has refused to provide materials related to its communications with MWC or its attorneys.

Additionally, the investigator in this case—USDOL CRC's Acting Chief of External Enforcement—has published a PowerPoint presentation that quotes Assistant Attorney General Thomas Perez as "calling for a Government-wide meeting of Directors of Federal civil rights offices with representatives of advocacy groups."<sup>1</sup> This initiative indicates that USDOL—rather than neutrally enforcing the law and acting as an impartial arbiter of complaints—collaborates with political advocacy groups to initiate complaints and allegations of noncompliance with USDOL laws and regulations. Indeed, the Initial Determination relies on test calls that were orchestrated by MWC attorneys, not by the USDOL; yet USDOL accepted them at face value, without further inquiry. The acceptance of this clearly biased evidence with no independent verification or corroboration—combined with the many secret communications between USDOL and MWC—creates the strong appearance of inappropriate collaboration between USDOL and MWC.

**2) USDOL CRC's Acting Chief of External Enforcement Has Publicly Stated or Endorsed the Notion that Political Bias Taints the Investigatory Work of USDOL**

USDOL CRC's Acting Chief of External Enforcement has publicly made or endorsed politically and ideologically charged statements about her role at the Department of Labor. The Acting Chief's biography on one website<sup>2</sup> states in pertinent part:

In her paying job, she's an attorney working underground (read: within the system) to keep the evil overseers of the Bush administration from dismantling U.S. federal civil rights laws.

In other words, the USDOL CRC's Acting Chief of External Enforcement has publicly stated or endorsed the notion that she brings a political and ideological agenda to her civil-rights enforcement role in the federal government. Based on what DEO has uncovered to date, it appears that this political and ideological bias has manifested itself in the questionable investigatory practices and conclusions at issue here.

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<sup>1</sup> Full text is available at <http://www.naswa.org/assets/utilities/serve.cfm?gid=313963d3-8bed-4364-b89e-cb10b8fbfb85>.

<sup>2</sup> Full text is available at <http://prismcomics.org/profile.php?id=142>.

Indeed, had USDOL neutrally reviewed readily accessible data, it would have found that the languages in which DEO's online claims are successfully filed accurately represent Florida's population. This data indicates that DEO processed over 3.4 million phone calls in 2012 and that 668,664 individuals successfully entered the RA system and filed a claim during 2012, including:

- 602,352 claims filed using the English application;
- 61,046 claims filed using the Spanish application;
- 5,266 claims filed using the Creole application; and

Additionally, 8,783 claimants utilized free translation service for inquiries and/or help with claims. Failing to consider this information in the Initial Determination renders its conclusions regarding systemic discrimination mathematically and statistically questionable. Indeed, rather than considering the system-wide statistics, the Initial Determination repeatedly relies on unsworn anecdotes of single instances to draw broad conclusions about the entire Florida RA system.

For example, the Initial Determination states:

Evidence provided by Complainant's attorneys indicates that ... at least one claimant with a visual impairment was denied benefits to which he was otherwise entitled, because he and the family member who helped him file his claim online were unaware of the existence of the exemption. Other claimants with disabilities may have been similarly denied benefits, because of DEO's failure to notify them of the existence of the exemption. We therefore determine that the ISR requirement ... tends to screen out persons with disabilities from fully and equally enjoying the benefits of the Respondent's UC program.

This kind of rank speculation—leaping from a single allegation to conclusions about other hypothetical instances and then about the entire system—would not pass muster in a first-year college statistics class, much less in a supposedly impartial and careful federal investigation.

In sum, USDOL's willful disregard of statistically significant evidence, in favor of unsworn anecdotal evidence, suggests that political and ideological bias has manifested itself in USDOL's investigation.

### **3) USDOL's Use of Inappropriate and Threatening Tactics Against DEO Employees**

Specific investigatory and regulatory practices employed by USDOL during the course of this investigation were inappropriate and violated fundamental notions of due process.

First, during the course of USDOL's investigation, CRC's Acting Chief of External Enforcement, an attorney, interrogated several of DEO's program staff members out of the

presence of DEO counsel. As a general matter, such a practice by a federal agency violates the spirit of an open, impartial investigation. Indeed, such a practice calls into question USDOL's compliance with the basic rules that govern the professional practice of attorneys. *See* District of Columbia Bar, Rule of Professional Conduct 4.2; Rules Regulating the Florida Bar, Rule 4-4.2. But even worse is that in this case DEO specifically requested, during USDOL's initial meeting at DEO, that a DEO attorney be present for all USDOL interviews with DEO staff. USDOL simply ignored this request for basic fairness and due process.

Second, since the issuance of the Initial Determination, DEO has endeavored to work with its federal partners at USDOL to ascertain the validity of the Initial Determination and to implement any improvements to Florida's RA system that may be warranted. DEO has requested that USDOL respect the due process rights of a state agency by producing documents relevant to the investigation and by granting the extensions of time necessary to respond in a careful, diligent manner. Unfortunately, USDOL has refused to act in a cooperative manner. It has repeatedly withheld documents, refused to grant extensions, and refused to consider alternative procedures and remedies.

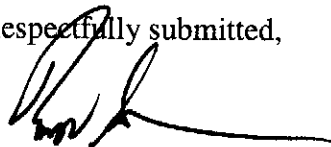
Third, and instead of acting cooperatively, USDOL has attempted to coerce DEO into signing a "conciliation agreement" admitting to each and every finding in USDOL's flawed investigation. For example, during a conference call on May 29, 2013, the Director of USDOL CRC advised DEO attorneys to consider the public-relations implications of USDOL issuing a final determination in this matter and threatened to publicize such an action based on USDOL's "new policy" to make public all final determinations. Such tactics are improper, retaliatory, intimidating, and are far below acceptable standards of conduct.

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Based on what DEO has uncovered thus far, USDOL's investigatory policies and practices raise serious concerns about politicization of a federal process that should be neutral, arms-length, and display due accord for the due process rights of all parties involved. In this case, this flawed process has resulted in a federal agency recklessly maligning the reputations of hundreds of hard-working state employees, who come to work each day to fulfill a mission of helping unemployed Floridians get back to work.

Based on the foregoing, DEO respectfully requests that the House of Representatives exercise its oversight authority regarding the investigatory policies and practices of USDOL.

Respectfully submitted,



Robert N. Sechen  
General Counsel  
Florida Department of Economic Opportunity

**Rick Scott**  
GOVERNOR



**Jesse Panuccio**  
EXECUTIVE DIRECTOR

June 5, 2013

Daniel R. Petrole, Acting Inspector General  
Office of Inspector General  
200 Constitution Avenue, NW  
Room S-5502  
Washington, DC 20210  
Telephone: (202) 693-5100

RE: *Request for Investigation of the United States Department of Labor's Civil Rights Center*

Dear Mr. Petrole:

The Florida Department of Economic Opportunity's reemployment assistance program has recently been the target of an investigation and Initial Determination by the U.S. Department of Labor's Civil Rights Center (USDOL, CRC). The investigation was launched after USDOL received a 2011 complaint filed by a political advocacy group, the Miami Workers Center (MWC). The MWC complaint alleged that changes to Florida's RA program—requiring online applications and completion of an initial skills review—discriminated against persons with limited English proficiency and persons with disabilities.

Over the past month, DEO has carefully reviewed the Initial Determination and the underlying "evidence" relied upon by USDOL. DEO's conclusion is that the Initial Determination is seriously flawed, resulting from a questionable investigatory process that appears calculated to have reached a predetermined and highly politicized result. Rather than serving as a neutral arbiter of allegations, USDOL appears to have collaborated with the political group that filed the complaint in order to reach a predetermined outcome. Accordingly, DEO respectfully requests that your office begin an inquiry into what appears to be several instances of investigative misconduct by USDOL. These instances violate the generally accepted principle that federal investigations must be fair, impartial, apolitical, and not predetermined. The questionable conduct outlined below raises serious concerns both about USDOL policies and procedures, as well as the specific conclusions it reached in this particular investigation.

### **QUESTIONABLE CONDUCT**

During the course of the investigation and in reviewing the documents provided by USDOL, DEO observed and uncovered conduct by USDOL that may amount to abuse of the investigatory process. DEO believes that many of the investigative activities may violate law or internal USDOL policies. Pursuant to 5 U.S.C. § 4(a)(3) and (4), DEO hereby requests that the Office of Inspector General (OIG) investigate the following:

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The Caldwell Building | 107 E. Madison Street | Tallahassee, FL | 32399-4120 | Phone: 850.245.7150 | Fax: 850.921.3230

[Robert.Sechen@deo.myflorida.com](mailto:Robert.Sechen@deo.myflorida.com) | [www.FloridaJobs.org](http://www.FloridaJobs.org) | [www.twitter.com/FLDEO](http://www.twitter.com/FLDEO) | [www.facebook.com/FLDEO](http://www.facebook.com/FLDEO)

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**1. Whether USDOL's impartiality was compromised by an inappropriate, non-arms length, politicized relationship with MWC and its attorneys.**

The Initial Determination references several ex parte meetings, emails, and communications between USDOL and MWC. USDOL has refused to provide any materials related to its communications with MWC or its attorneys to DEO for inspection.

Additionally, the investigator in this case—USDOL CRC's Acting Chief of External Enforcement—has published a PowerPoint presentation that quotes Assistant Attorney General Thomas Perez as "calling for a Government-wide meeting of Directors of Federal civil rights offices with representatives of advocacy groups." (See CRC Initiatives Page 9 attached hereto as Exhibit A.) This initiative indicates that USDOL—rather than neutrally enforcing the law and acting as an impartial arbiter of complaints—may be collaborating with political advocacy groups to manufacture complaints and allegations of noncompliance with USDOL laws and regulations. For example, the group that filed the complaint at issue in this case—MWC—states on its website that its purpose is overtly political, i.e., "to create a progressive political and social environment in South Florida."

Moreover, the Initial Determination relies on several unsworn call logs to establish the existence of discrimination. The test calls were conducted at the direction of MWC attorneys and the callers were specifically instructed not to identify their language:

If they ask, do not tell them the name of the language you are speaking. Just keep repeating the same sentence in your language: "I need to ask a question about the program." See CRC Initial Determination at page 15.

The acceptance of this clearly biased evidence with no independent verification creates the strong appearance of inappropriate collaboration between CRC and MWC. The acceptance and reliance on unsworn statements violates USDOL's stated policy. For example, in a recent letter advising DEO of a new complaint, USDOL states:

Without your statement, made under oath or affirmation, concerning the alleged discriminatory actions about which the complaint was filed, it is difficult to proceed with the investigation.

Attached hereto as Exhibit B.

**2. Whether USDOL may have inappropriately collaborated with MWC by (i) participating in inappropriate meetings with MWC or its attorneys prior to the filing of the complaint, (ii) coordinating with MWC in drafting the complaint, (iii) participating in inappropriate meetings with MWC or its attorneys during the investigation and prior to the issuance of the Initial Determination, and/or (iv)**

**permitting MWC attorneys to have inappropriate input regarding the drafting or finalization of the Initial Determination.**

As discussed in more detail above, the numerous references to ex parte meetings with the political advocacy group at issue, combined with USDOL's apparent policy of collaborating with such groups, create the appearance of an inappropriate relationship between MWC and USDOL. DEO thus has reason to believe that USDOL may have inappropriately collaborated with MWC prior to the filing of the complaint, drafting the complaint, and during the course of the "investigation" of the complaint.

**3. Whether USDOL CRC'S Acting Chief of External Enforcement's political biases tainted her view of the facts and evidence, thus calling into question the independence and objectivity of the investigation.**

USDOL CRC'S Acting Chief of External Enforcement appears and is quoted on several websites in which she makes politically and ideologically charged statements. While federal employees are free to hold political beliefs and make political statements, it is inappropriate for such employees to permit those beliefs to taint processes that should be non-partisan, impartial, and respectful of due process rights. Yet the Acting Chief's biography on one website (attached hereto as Exhibit C) states in pertinent part:

In her paying job, she's an attorney working underground (read: within the system) to keep the evil overseers of the Bush administration from dismantling U.S. federal civil rights laws.

In other words, the USDOL CRC's Acting Chief of External Enforcement has publicly stated that she brings a political and ideological bias to her civil-rights enforcement role at USDOL. Based on what DEO has uncovered to date, it appears that this political and ideological bias has manifested itself in the questionable investigatory practices at issue here. Indeed, the Acting Chief's bias appears to have influenced her conduct during the MWC investigation and her view of the "evidence." Had the Acting Chief neutrally reviewed readily accessible data, she would have found that the languages in which DEO's online claims are successfully filed accurately represent Florida's population.<sup>1</sup> This data indicates that 668,664 individuals successfully entered the system and filed a reemployment assistance claim during 2012.

- 602,352 claimants filed using the English application;
- 61,046 claimants filed using the Spanish application;
- 5,266 claimants filed using the Creole application; and

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<sup>1</sup> The most recent census data indicates that 79.8% of Floridians 18 years and over speak only English and 20.2% speak a language other than English. Of the individuals that speak a language other than English, 65.8% speak English "very well." Therefore, 93.1% of adult Floridians speak English exclusively or "very well."

- 8,783 claimants utilized free translation service for inquiries and/or help with claims.

Additionally, DEO processed over 3.4 million phone calls during the same time period. Failing to consider this information in the Initial Determination renders its conclusions regarding systemic discrimination mathematically and statistically questionable. Indeed, rather than considering the system-wide statistics, the Initial Determination repeatedly relies on unsworn anecdotes of single instances to draw broad conclusions about the entire Florida RA system.

For example, the Initial Determination states:

Evidence provided by Complainant's attorneys indicates that ... at least one claimant with a visual impairment was denied benefits to which he was otherwise entitled, because he and the family member who helped him file his claim online were unaware of the existence of the exemption. Other claimants with disabilities may have been similarly denied benefits, because of DEO's failure to notify them of the existence of the exemption. We therefore determine that the ISR requirement ... tends to screen out persons with disabilities from fully and equally enjoying the benefits of the Respondent's UC program.

This kind of rank speculation—leaping from a single alleged instance to conclusions about other hypothetical instances and then about the entire system—would not pass muster in a first-year college statistics class, much less in a supposedly impartial and careful federal investigation.

In sum, the Acting Chief's willful disregard of statistically significant evidence, in favor of unsworn anecdotal evidence, strongly suggests that political and ideological bias has manifested itself in CRC's investigation.

**4. Whether it was appropriate for USDOL CRC's Acting Chief of External Enforcement, a licensed attorney, to meet with DEO employees without having a representative of DEO's Office of General Counsel present as requested.**

During the course of USDOL's investigation, CRC's Acting Chief of External Enforcement, an attorney, interrogated several of DEO's program staff out of the presence of DEO counsel. As a general matter, such a practice by a federal agency violates the spirit of an open, impartial investigation. Indeed, such a practice calls into question USDOL's compliance with the basic rules that govern the professional practice of attorneys. *See* District of Columbia Bar, Rule of Professional Conduct 4.2; Rules Regulating the Florida Bar, Rule 4-4.2. But even worse is that in this case DEO specifically requested, during USDOL's initial meeting at DEO, that a DEO attorney be present for all USDOL interviews with DEO staff. USDOL simply ignored this request for basic fairness and due process.



**5. Whether USDOL inappropriately commented on the Initial Determination and threatened further negative media action against DEO.**

In a *Miami Herald* article posted on April 25, 2013 (attached hereto as Ex. D), a USDOL spokesperson was quoted as stating:

The U.S. Department of Labor is now working with the state of Florida to ensure that all persons who have limited English proficiency or have disabilities, and who are eligible for unemployment compensation, have fair and meaningful access to those benefits[.]

A neutral arbiter's commenting on an ongoing matter in which the parties are in negotiation and the facts are in question is inappropriate.

Furthermore, during a conference call on May 29, 2013, USDOL CRC director Naomi Barry-Perez advised DEO attorneys to consider the public-relations implications of USDOL issuing a final determination in this matter and threatened to publicize such an action based on USDOL's "new policy" to make public all final determinations. Such tactics are improper, retaliatory, intimidating, and are far below acceptable standards of conduct.

**REQUEST FOR INVESTIGATION**

Based on the above information, DEO requests that the Inspector General immediately commence an investigation into the policies, practices, and procedures of USDOL CRC in the MWC matter. DEO further requests that the USDOL parties who may have engaged in abusive and inappropriate action be prohibited from taking any further action in the MWC matter until such time as the USDOL Office of Inspector General can complete a thorough and impartial investigation.

Sincerely,



Robert N. Sechen  
General Counsel  
Florida Department of Economic Opportunity