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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 12, 2010

The President
The White House
1600 Pennsylvania Ave
Washington, D.C. 20500

Dear Mr. President:

On April 2, 2009, Nancy J. Leppink, Acting Director of the Department of Labor's Wage and Hour Division (WHD), announced that the Department of Labor has begun a new initiative to "crack down" on firms that fail to pay interns properly under the Fair Labor Standards Act (FLSA).¹ As I am sure you are aware, under section 3(x) of the FLSA, the Government of the United States is an "employer."² Like private employers, unless an internship meets requirements laid out under federal law³ similar to the six factors listed below, all Federal agencies are required to compensate interns or trainees in compliance with FLSA minimum wage and overtime provisions.⁴ If the Administration insists on pushing these requirements on private firms, it raises the question of whether the Administration intends to simultaneously ensure government-wide compliance with FLSA, both in Federal agencies and the White House, and the steps that will be taken to implement these rules in Federal agencies.

The Labor Department WHD developed the six factors below to determine whether a worker is a "trainee/intern" or an "employee" under the FLSA:

1. The training, even though it includes actual operation of the facilities of employer, is similar to what would be given in a vocational school or academic educational instruction;
2. The training is for the benefit of the trainees;

¹ Greenhouse, Steven, *The Unpaid Intern, Legal or Not*, The New York Times, April 2, 2009, available at <http://www.nytimes.com/2010/04/03/business/03intern.html?pagewanted=1>.

² 29 U.S.C. § 203(x).

³ 29 U.S.C. § 204(f), 5 U.S.C. § 5542, Pay Administration Under The Fair Labor Standards Act, 5 C.F.R. § 551, 5 U.S.C. 3111, & 31 U.S.C. 1342.

⁴ Employment and Training Administration, *Training and Employment Guidance Letter No. 12-09*, January 29, 2010, available at <http://wdr.doleta.gov/directives/attach/TEGL/TEGL12-09acc.pdf>.

3. The trainees do not displace regular employees, but work under their close observation;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees, and on occasion the employer's operations may actually be impeded;
5. The trainees are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.⁵

If **all** the above factors are met, then the worker is a "trainee," an employment relationship does not exist under the FLSA, and the FLSA's minimum wage and overtime provisions do not apply to the worker.⁶ However, if one of these factors is not met, then a worker is entitled to minimum wage and overtime.

To ensure the White House's compliance with FLSA consistent with the spirit of the Department of Labor's new initiative, I am writing to request the following documents:

1. A listing of the number of un-paid interns and volunteers at the White House for the current fiscal year along with a short description of their duties.
2. A description of the guidelines and procedures used by the White House to determine whether internships volunteer positions meet FLSA criteria for unpaid positions, including a determination as to whether the procedures and guidelines are being followed and meet all factors of the WHD six-factor test laid out above.
3. A calculation of the potential liability of the White House under the FLSA for failure to pay minimum wages to improperly classified unpaid interns since January 1, 2005.

I respectfully request that you provide the requested information **no later than Monday, April 29, 2010**.

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, it has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees.

⁵ Id.

⁶ Id.

The Honorable Barack Obama

April 12, 2010

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This broad jurisdiction includes the oversight of Executive Branch operations and administrative functions.

If you have any questions or comments please contact Marvin Kaplan at (202) 225-5074.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a stylized, sweeping flourish extending to the right.

Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman