



AUG - 5 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller:

This letter is in further response to the July 23, 2008, letter from you and Chairman Kennedy requesting information concerning the Department of Labor's draft Notice of Proposed Rulemaking (NPRM) titled "Requirements for DOL Agencies' Assessment of Occupational Health Risks," that is currently under review at the Office of Management and Budget (OMB).

As noted in my previous letter of July 29, the Department strongly objects to your assertion that there is some sort of attempt underway to secretly implement a rule. A central element of the rulemaking process is the solicitation of comments from the public, and the Department has drafted a proposed rule precisely so that it can gather public input on the proposal during the comment period. Once an NPRM is published for public comment in the *Federal Register*, we will be pleased to publicly discuss the proposal.

The Department has significant concerns about your request of July 23 because the information you seek constitutes part of the deliberative process in the development of a regulatory action that has not been concluded. As previously noted, the Department's draft NPRM is currently under review at OMB, and the Administration has not yet made a final decision whether or in what form the draft will be published. Disclosure of pre-decisional, deliberative materials threatens to discourage the candor necessary for advice to be provided freely and without inhibition within the Executive Branch. That candor is indispensable to the proper policymaking functions of not only the Department, but all Executive Branch entities. Documents of the type you seek also would not reflect the Department's full and complete thinking on the issues and could lead to erroneous impressions or conclusions. In addition, such disclosure threatens to erode the principle of separation of powers by, in effect, providing another branch of government access to the deliberative process of the Executive Branch. This concern is particularly acute when final policy decisions have yet to be made.

The Department hopes to achieve a mutually agreeable resolution to your request for information that respects the need to protect the Executive Branch's deliberative process while making information you requested available to you as soon as is practicable. If, and when, an NPRM is published, the Department will make every reasonable effort to accommodate your desire for information consistent with longstanding processes regarding deliberative, pre-decisional information. The Department would also be pleased to provide you and your staff with a briefing at that time.

We look forward to continuing to work with you on this matter. If you have any questions, please feel free to contact my office at (202) 693-6151.

Sincerely,

A handwritten signature in black ink that reads "Leon R. Sequeira". The signature is written in a cursive, flowing style.

Leon R. Sequeira
Assistant Secretary for Policy

Identical letter to: The Honorable Edward M. Kennedy

cc: The Honorable Howard P. "Buck" McKeon
The Honorable Michael B. Enzi