

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

March 11, 2014

The Honorable John Kline
Chairman
Committee on Education and the Workforce

The Honorable George Miller
Senior Democratic Member
Committee on Education and the Workforce

The Honorable Tim Walberg
Chairman
Subcommittee Workforce Protections
U.S. House of Representatives
Washington, DC 20515-6100

The Honorable Joe Courtney
Ranking Member
Subcommittee Workforce Protections

Dear Chairman Kline, Chairman Walberg, Congressman Miller, and Congressman Courtney:

Thank you for sharing your concerns regarding access to high quality health care for Uniformed Service members, retirees and their families through the Department of Defense (DoD) TRICARE program. I share your concerns and want to ensure continued access for our military and their families while continuing to safeguard civil rights protections for millions of Americans. The purpose of this letter is to memorialize the terms of a proposal that I made last week to address an issue involving TRICARE subcontractors

As you are aware, the Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Assistance Act, which impose certain equal opportunity obligations on those entities that do business with the federal government. OFCCP achieves its mandate by, among other things, conducting compliance evaluations and investigating complaints of civil rights violations.

Congress addressed the definition of contract for the purpose of determining who is a subcontractor under the TRICARE program in Section 715 of the 2012 National Defense Authorization Act (NDAA). Recent events have brought to my attention the difference in understanding of congressional intent regarding Section 715 between the Department of Labor and members of your committee. You have made clear that, in your judgment, Congress intended to eliminate entirely OFCCP's jurisdiction over TRICARE subcontractors. The Department, based on a good faith reading of the provision and its legislative history, read Section 715 as a more narrow limitation that preserved one aspect of OFCCP's jurisdiction. Our discussions helped me understand the basis for your concern about OFCCP's interpretation of the NDAA amendment and the confusion that may exist in the TRICARE subcontractor community.

I believe that, as we have discussed, in lieu of legislative action, we can come to a workable administrative solution that addresses your concerns and provides greater clarity for the TRICARE subcontractor community while maintaining important civil rights protections prohibiting Federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, national origin, disability, and protected veteran status.

The Department can achieve those goals by having OFCCP exercise prosecutorial discretion over the next five years to limit its enforcement activities with regard to TRICARE subcontractors while it engages in extensive outreach and technical assistance to inform TRICARE participants of their responsibilities and works with other Federal agencies to clarify the coverage of health care providers under Federal statutes applicable to contractors and subcontractors. The elements of this initiative include the following steps:

- OFCCP will issue a directive establishing a five-year moratorium on enforcement of the affirmative obligations required of all TRICARE subcontractors.
- OFCCP will administratively close open and scheduled compliance evaluations for TRICARE subcontractors.
- During the five-year moratorium OFCCP will:
 - Provide information, materials, and technical assistance training to TRICARE subcontractors on how to develop cost effective affirmative action plans, record keeping, and applicant tracking systems;
 - Conduct regional and national webinars that cover OFCCP's legal authorities, jurisdiction, and Federal contractor and subcontractor obligations;
 - Convene listening sessions to learn about the unique issues facing TRICARE subcontractors in order to provide relevant and targeted technical assistance under all OFCCP legal authorities; and
 - Work with DoD, the Office of Personnel Management, and the White House Office of Federal Procurement Policy to clarify that those health-care providers that participate as subcontractors in TRICARE and the Federal Employees Health Benefits Program (FEHBP) may, in certain circumstances, be subcontractors for purposes of the laws that OFCCP enforces.
- The moratorium will not extend to 1) holders of prime contracts with the Federal government where the contractor is also a TRICARE subcontractor; or 2) TRICARE subcontractors that hold a separate, independent, non-health care-related Federal subcontract.
- The moratorium does not cover TRICARE subcontractors' obligation to refrain from discrimination. As appropriate, complaints of discrimination will continue to be investigated.

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I hope the steps outlined above address the concerns of the Committee. Again, I appreciate the opportunity to engage in candid discussions with you to seek a mutual solution to the issues you raised.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style. The signature is positioned above the printed name 'THOMAS E. PEREZ'.

THOMAS E. PEREZ