

RICHARD HUDSON  
8TH DISTRICT, NORTH CAROLINA

COMMITTEE ON HOMELAND SECURITY  
CHAIRMAN, TRANSPORTATION SECURITY SUBCOMMITTEE

COMMITTEE ON AGRICULTURE

COMMITTEE ON EDUCATION  
AND THE WORKFORCE

STEERING COMMITTEE

ASSISTANT WHIP

Congress of the United States  
House of Representatives

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The Honorable Jenny R. Yang  
Chair  
U. S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Dear Chair Yang:

On September 17, 2014, the House Education and Workforce Committee's Subcommittee on Workforce Protections held its second hearing this year on matters related to the U.S. Equal Employment Opportunity Commission (EEOC) and considered three reform bills, the *EEOC Transparency and Accountability Act* (H.R. 4959), the *Litigation Oversight Act of 2014* (H.R. 5422), and the *Certainty in Enforcement Act of 2014* (H.R. 5423). These bills represent our ongoing concerns with the manner the Commission initiates and pursues litigation.

Recent hearings conducted by the Subcommittee for Workforce Protections highlighted that "Employers have fallen under EEOC's intense scrutiny without any allegation of employer discrimination. Charges are being filed in federal court with little or no evidence of wrong doing (*Chairman Tim Walberg*)." As an illustration of this practice, it has been brought to our attention that the EEOC has filed suit against Texas Roadhouse, Inc. The EEOC has accused Texas Roadhouse of illegal nationwide discrimination against applicants 40 years and older for "front of the house" (host, server, server assistant and bartender) positions. Distressingly, it appears the EEOC initiated this case without receiving any charges of age discrimination from Texas Roadhouse job applicants, employees, or former employees. Furthermore, when an EEOC attorney was asked about this by the judge in federal court in August, the attorney replied, "So we don't need – we don't – and don't have to tell them and we don't need to tell them. And it's irrelevant." It is not "irrelevant" whether any age discrimination charges have been filed against Texas Roadhouse and Texas Roadhouse has filed suit in federal court in an effort to compel the Commission to comply with document requests under the Freedom of Information Act (FOIA).

While we are not commenting on the merits of the litigation, we do have an interest in seeing that individuals and businesses are treated fairly under an open and transparent process. As such, we ask for your prompt and specific written responses to the four policy questions below:

1) On his first full day in office, President Obama directed that FOIA "should be administered with a clear presumption: In the face of doubt, openness prevails," and agencies should respond to requests "promptly and in a spirit of cooperation." What obligations does EEOC have to comply with FOIA and the deadlines set forth in that federal law, as endorsed broadly by President Obama, regardless of discovery rulings in the pending EEOC action against Texas Roadhouse alleging nationwide discrimination against age 40 and older workers for "front of the house" positions?

2) Were there any complaints of age discrimination filed by applicants age 40 and over with the EEOC prior to initiating the investigation into Texas Roadhouse?

3) Has the EEOC made any assertions to the media or in public that Texas Roadhouse engaged in age discrimination without clearly stating the assertion was an allegation and not a statement of fact? If so, please provide the content of the assertions the person(s) to whom they were directed, and the dates of the assertions.

4) Do you advise restaurants to inquire about applicants' ages before making hiring decisions? Conversely, have you advised restaurants they may not legally inquire about applicants' ages?

We look forward to your prompt response.

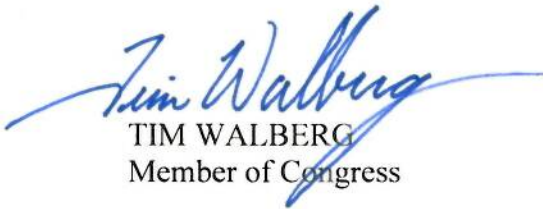
Sincerely,



RICHARD HUDSON  
Member of Congress



TODD ROKITA  
Member of Congress



TIM WALBERG  
Member of Congress

cc: Hon. Constance S. Barker  
Hon. Chai A. Feldblum  
Hon. Victoria Lipnic  
Hon. David Lopez