



COALITION ON HUMAN NEEDS

1120 Connecticut Avenue, NW · Suite 312 · Washington, DC 20036 · 202.223.2532 · Fax 202.223.2538 · www.chn.org

February 1, 2018

Melissa Smith
Director of the Division of Regulations, Legislation
and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Ave., NW
Washington, D.C. 20210

Dear Ms. Smith:

The Coalition on Human Needs (CHN) writes to demand that the Department of Labor withdraw the Notice of Proposed Rulemaking, RIN 1235-AA21, Tip Regulations under the Fair Labor Standards Act (FLSA).

This morning, Bloomberg Law reported that the Department of Labor prepared and then “shelved” economic analysis demonstrating that workers would lose billions of dollars in wages were the above-referenced NPRM to be finalized and implemented.¹ This is contrary to explicit statements in the NPRM in which the Department claimed that that it is “unable to quantify how customers will respond to the proposed regulatory changes” and “currently lacks data to quantify possible reallocations of tips.”

Such actions fly in the face of a number of authorities that govern federal agency rulemaking, including Executive Order 12866, Executive Order 13563, and guidance from the White House Office of Management and Budget, which require that agencies are to quantify costs and benefits of their proposed regulations wherever possible.² Even more egregious, these actions run counter to the transparency needed to ensure that the regulatory process is fair, reasonable and consistent with the law.

¹ Ben Penn, *Labor Department Ditches Data on Worker Tips Retained by Business*, BLOOMBERG BNA, Feb. 1, 2018, <https://bna.news.bna.com/daily-labor-report/labor-dept-ditches-data-on-worker-tips-retained-by-businesses>.

² See Exec. Order 13,563, at § 1, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 21, 2011) (“[E]ach agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”); see also Exec. Order 12,866, at §§ 1(a), 1(b)(6), 6(a)(3)(C), *Regulatory Planning and Review*, 58 Fed. Reg. 51,735 (Oct. 4, 1993); White House Office of Mgmt. and Budget, Circular A-4, at 18-27 (Sept. 17, 2003).

The Department of Labor's mission is, at its core, "[t]o foster, promote, and develop the welfare of the wage earners . . . of the United States[.]" Yet its actions in concealing this analysis in such a deceptive manner, shows that the Department has betrayed its mission with this NPRM.

The rulemaking process requires that stakeholders have the opportunity to review the Department's good-faith economic analysis, including the assumptions underlying it, with adequate time to fully respond to such analysis. For the sake of the integrity of this process, and for the sake of all stakeholders, especially the low-wage workers who will be impacted most significantly, we call on the Department to immediately withdraw this NPRM.

Respectfully submitted,

Deborah Weinstein
Executive Director