CENTER FOR ECONOMIC AND POLICY RESEARCH

February 2, 2018

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

Dear Ms. Smith:

We are writing 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).

As reported yesterday in numerous outlets, the Department of Labor performed an internal economic analysis of the effects of the aforementioned rule on tip allocation and found the new rule would cost workers billions of dollars in wages. Rather than presenting these findings publicly, the Department's statement in the Notice above stated 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."

Additional independent analysis supports the findings of the "shelved" Department analysis, finding that if finalized, tipped workers would lose $5.8 billion a year in tips, take-home pay for non-tipped workers would remain unchanged and that instead, employers of tipped workers would directly benefit.[1]

Withholding this analysis and claiming to be unable to perform such an analysis is in direct opposition to guidance for federal agency rulemaking including Executive Order 12866, Executive Order 13563,

1 Heidi Shierholz, David Cooper, Julia Wolfe and Ben Zipperer, *Women Would Lose $4.6 Billion in Earned Tips if the Administration's 'Tip Stealing' Rule is Finalized*, Economic Policy Institute, January 17, 2018, http://www.epi.org/publication/women-would-lose-4-6-billion-in-earned-tips-if-the-administrations-tip-stealing-rule-is-finalized-overall-tipped-workers-would-lose-5-8-billion/.

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]

Given these circumstances, we demand that the Department of Labor both release its economic analysis of RIN 1235-AA21 and withdraw the proposed rule. Only in doing so can the Department live up to its professed mission to "…foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights."

Respectfully submitted,

Eileen Appelbaum, Economist and Co-Director, Center for Economic and Policy Research
Mark Weisbrot, Economist and Co-Director, Center for Economic and Policy Research
Dean Baker, Senior Economist, Center for Economic and Policy Research
Alan Barber, Domestic Policy Director, Center for Economic and Policy Research

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).