



February 5, 2018

Melissa Smith

Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue N.W., Room S-3502
Washington, DC 20210

Re: RIN 1235-AA21, Comments in Response to Proposed Rulemaking: Tip Regulations Under the Fair Labor Standards Act (FLSA)

Dear Ms. Smith:

On behalf of the more than 170,000 members and supporters of the American Association of University Women (AAUW), I write to express opposition to the Department of Labor's Notice of Proposed Rulemaking (NPRM), RIN 1235-AA21, on Tip Regulations under the Fair Labor Standards Act (FLSA). Specifically, in light of the fact that the agency withheld an economic analysis demonstrating that workers would suffer if the proposed rule were finalized and implemented, we urge the Department to withdraw the NPRM immediately.

AAUW is committed to promoting the economic well-being of all persons, including ensuring pay equity and fairness in compensation and benefits in the workplace. In 2016, on average, women working full-time, year-round took home just 80 cents for every dollar earned by men.¹ One factor contributing to the gender pay gap is the concentration of women in low wage jobs — women make up two-thirds of minimum wage workers nationwide, as well as two-thirds of workers in tipped occupations.²

Finalizing and implementing the NPRM has the potential to further expand the gender pay gap and harm our most vulnerable workers and their families. The NPRM would allow employers to collect and retain the tips of employees who earn the federal minimum wage. Under the guise of pooling tips for front- and back-of-the house workers — an arrangement that is already permissible — employers would be able to keep tips for themselves and increase profits.³ Evidence suggests that many employers are already illegally stealing their worker's tips.⁴ This proposed rule would only exacerbate the problem. An analysis by the Economic Policy Institute estimates that tipped workers would lose \$5.8 billion in tips each year if this rule goes into effect; women would bear the majority of the burden, losing out on \$4.6 billion.⁵ Moreover, tipped workers are especially vulnerable to harassment, particularly sexual harassment. This rule would add to the problem by increasing pressure on workers to accept harassment to earn higher tips.

These arguments alone are sufficient to oppose the rule, but reports indicate that there was deliberate concealment of a quantitative analysis that ran counter to the Department's desired results, which makes it necessary for the NPRM to be withdrawn immediately. This act defies standard practice and basic transparency. Moreover, the results of the suppressed analysis further bolster the argument that workers would be harmed by the rule.

AAUW appreciates this opportunity to submit comments on a matter so critical to our membership and working families across the country. We strongly oppose the NPRM and call for its immediate withdrawal given the mishandling of crucial information paramount to its full and proper consideration. Should the Department decline to withdraw the NPRM, we strongly suggest that it extend the Notice and Comment Period until at least 15 days after the Office of Inspector General issues a final report of its audit into this rulemaking process. If you have any questions or I can provide further information, please feel free to contact me at 202-785-7724.

Sincerely,



Anne Hedgepeth
Interim Vice President of Public Policy and Government Relations

¹ American Association of University Women (2017). *The Simple Truth about the Gender Pay Gap*. Washington, DC: AAUW. www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/.

² National Women's Law Center (2017). Higher State Minimum Wages Promote Equal Pay for Women. Washington, DC: NWLC. www.nwlc.org/resources/higher-state-minimum-wages-promote-equal-pay-for-women.

³ National Employment Law Project and Restaurant Opportunities Centers United (2017). DOL's Proposed Rule on Tipped Workers: Legalizing Wage Theft in Tipped Industries. Washington, DC: NELP & ROC United. www.nelp.org/publication/dols-proposed-rule-on-tipped-workers-legalizing-wage-theft-in-tipped-industries/.

⁴ Annette Bernhardt et al. (2009). National Employment Law Project. Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities. Washington, DC: NELP. www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf.

⁵ Heidi Shierholz, et al. (2018). Women would lose \$4.6 billion in earned tips if the administration's "tip stealing" rule is finalized. Washington, DC: Economic Policy Institute. www.epi.org/publication/women-would-lose-4-6-billion-in-earned-tips-if-the-administrations-tip-stealing-rule-isfinalized-overall-tipped-workers-would-lose-5-8-billion/.