



February 5, 2018

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

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, Notice of Proposed Rulemaking; Tip Regulations Under the Fair Labor Standards Act (FLSA)

Dear Director Smith:

The National Women's Law Center (the Center) wrote on Friday, February 2, 2018 to demand that the Department of Labor (the Department) withdraw its Notice of Proposed Rulemaking, RIN 1235-AA21, Tip Regulations Under the Fair Labor Standards Act (FLSA) in light of the revelations that senior officials in the Department 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.<sup>1</sup> We maintain that this is the most prudent and appropriate course of action for the Department to take.

We just learned that the Department's Office of Inspector General (OIG) has initiated an audit into this rulemaking process. It is clear that a thorough investigation into this rulemaking is warranted—and equally clear that stakeholders must be given adequate opportunity to fashion their comments, taking into account all the relevant facts and data with regard to both the proposed rule and the process by which it was crafted. To uphold the integrity of this process, we again call on the Department to withdraw this NPRM—and should it decline to do so, we demand that the comment period remain open until at least 15 days following the release of the OIG's final audit report.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Emily Martin', is written in a cursive style.

Emily Martin  
Vice President for Education and Workplace Justice

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

*Julie Vogtman*

Julie Vogtman  
Director of Job Quality and Senior Counsel