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Submitted via www.regulations.gov

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

Re: Comments on 29 CFR Part 552 [RIN 1235-AA51], Application of the Fair Labor Standards Act to Domestic Service

Dear Mr. Navarrete:

The National Women's Law Center (NWLC) submits these comments in response to the proposed rule issued by the Department of Labor (the Department) to deny millions of home care workers the basic minimum wage and overtime premium pay protections established by the Fair Labor Standards Act (FLSA). We strongly oppose this proposal and urge the Department to maintain its existing regulations interpreting the FLSA's "companionship services" exemption, which the Department finalized in 2013 (the 2013 rule).¹

The Department's proposal to replace the 2013 rule with regulations originally promulgated in 1975 would apply a flawed, antiquated regulatory scheme to a modern workforce, stripping home care workers of essential protections they have relied on for over a decade and forcing more workers to leave the direct care workforce due to low pay. If finalized, this rule will decrease access to home and community-based services (HCBS)—contrary to the Department's purported objective²—because there will be fewer workers who can sustainably do the job, leaving disabled people and older adults across the country without the care they need to navigate their lives.

Since 1972, NWLC has fought for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. NWLC advocates for the improvement and enforcement of our nation's employment and civil rights laws, with a particular focus on the needs of LGBTQI+ people, women of color, and women with low incomes and their families. NWLC also advocates for improvements in our nation's care infrastructure, so families are better supported in caring for their children and their older and disabled family members, and so older adults and disabled people have the agency to determine what kind of care best meets their preferences and needs.

¹ Application of the Fair Labor Standards Act to Domestic Service, 78 FED. REG. 60454 (Oct. 1, 2013).

² See 90 Fed. Reg. 28978 (surmising that "[r]eturning to the 1975 regulations would . . . significantly reduce regulatory burden for the consumers and providers of home care services, which in turn could help to expand access to home care services").

The home care workforce, which includes home health aides and personal care aides, is disproportionately comprised of women of color who already face systemic and historic barriers to economic security; even today, home care workers are typically paid between \$10 and \$20 per hour,³ with a median hourly wage of just \$16.13.⁴ By excluding home care workers from the most basic labor protections in its proposed rule, the Department incorrectly concludes that the 1974 amendments to the FLSA—amendments designed to bring previously excluded domestic service workers within the ambit of the law’s protections and remedy historic discrimination in the workplace—should not protect a workforce that continues to be overwhelmingly comprised of women and women of color. The Department also ignores that, while FLSA protections alone are not enough to increase wages for home care workers, rolling back these protections will only exacerbate the economic precarity home care workers face and force more workers to leave their vital jobs. Indeed, the Department’s extremely sparse justification for this rulemaking almost entirely ignores its likely impact on workers, in violation of both its agency mission and its obligations under the Administrative Procedure Act (APA). We review each of these bases for our objection to the present rulemaking in the comments that follow.

I. The proposed rule is based on an incorrect analysis of congressional intent, wrongly asserting that excluding home care workers—a historically underpaid and under-protected class of workers—from the FLSA’s minimum wage and overtime protections is consistent with the purpose of the law.

In 2013, the Department promulgated a final rule extending the FLSA’s minimum wage and overtime protections to home care workers. The 2013 rule correctly interpreted Congress’s intent in the 1974 amendments to the law, which expanded FLSA coverage to domestic workers—predominantly women and disproportionately women of color—who had been wrongly excluded from basic protections for decades. By proposing to revert to the regulatory scheme adopted in 1975, the Department fundamentally misinterprets the intent of the 1974 amendments, in which Congress sought to both remedy discriminatory exclusions and recognize that domestic work, including care work, is an occupation that merits the FLSA’s protection.

A. *In the 1974 amendments, Congress expressly intended to bring Black and brown women laboring as domestic workers within the ambit of the FLSA.*

Prior to the 1974 amendments, the FLSA and its implementing regulations perpetuated the illegitimate, racist, and sexist exclusion of domestic workers, who were overwhelmingly comprised of Black, brown and immigrant women, from basic labor protections.⁵ This exclusion stemmed directly from the legacy of slavery in the United States: From the exploitation of enslaved African women to perform unpaid care and housework to the denial of basic labor protections for the women performing these tasks a century later, the (largely white and male) policymakers in power consistently refused to recognize domestic labor as “real” work.⁶

³ Laura Tatum and Natalia Cooper, *State Best Practices to Improve Pay for Direct Care Workers & Help Solve the HCBS Workforce Crisis*, GEORGETOWN CTR ON POVERTY AND INEQUALITY (Sept. 5, 2024), <https://www.georgetownpoverty.org/issues/state-best-practices-to-improve-pay-for-direct-care-workers-help-solve-the-hcbs-workforce-crisis/>.

⁴ PHI, *Direct Care Workers in the United States: Key Facts 2024* (Sept. 2, 2024), <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>.

⁵ Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 195 (2011), <https://lawcommons.luc.edu/facpubs/151/>.

⁶ *Id.*

With the 1974 amendments, Congress sought to rectify the discriminatory exclusions embedded in the FLSA by extending minimum wage and overtime protections to people employed in domestic service, recognizing that many women and particularly women of color were working in these jobs to support themselves and their families.⁷ The 1974 amendments only exempted workers “employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.”⁸ This narrow exception was not meant to capture most workers who provided care as their regular job—those “whose vocation is domestic service”—but rather those who occasionally babysat a child or looked in on an older adult.⁹

However, the Department’s 1975 regulations implementing the 1974 amendments interpreted the exemption so broadly that it twisted the spirit of the new rule Congress established. By defining providers of “companionship services” as anyone who provided care to those unable to support themselves,¹⁰ the 1975 regulations again disregarded the value of home-based care and denied the core protections of the FLSA to the women of color who largely provide it.

Home care workers are disproportionately women of color (67% are people of color, 84% are women),¹¹ and the predominance of women of color and immigrant women working in home care and domestic service broadly has been an occupational trend since the FLSA was first enacted. This reality was central to Congress passing the 1974 amendments. Determined to “help to raise the status and dignity of [domestic] work,” Congress amended the FLSA’s original legislative findings to correct for the original racist and sexist exclusion of domestic workers.¹² Congress aimed at remedying the sexist assumptions that women were just working for “pin money,” and recognized the reality that women domestic workers were working to provide for themselves and their families.¹³ Moreover, Congress noted that continuing to exclude domestic workers would essentially be “turning our backs” on the women and women of color in the profession, and recognized the systemic barriers that Black women disproportionately faced in the job market.¹⁴ Excluding home care workers from the FLSA would undo the purpose of the 1974 amendments, which aimed to remedy the race and gender discrimination against domestic workers that the FLSA’s original occupational exclusions perpetrated.

In limiting the scope of the companionship services exemption to individuals providing primarily fellowship and protection, and barring third-party agencies from claiming it, the Department’s 2013 rule finally aligned the workers covered by FLSA’s minimum wage and overtime protections with the population Congress intended to protect. The rule extended coverage to nearly two million workers, disproportionately women of color.¹⁵ In addition, the 2013 rule correctly recognized that most home care services—and categorically, the services provided by

⁷ See H.R. Rep. No. 93-913, at 36; S. Rep. No. 93-690, at 20 (1974); see also Pub. L. No. 93-259, § 7(b), 88 Stat. 62 (codified as amended at 29 U.S.C. §§ 206(f), 207(l) (2014)).

⁸ Pub. L. No. 93-259, § 7(b)(3), 88 Stat. 62 (codified as amended at 29 U.S.C. § 213(a)(15) (2014)).

⁹ See H.R. Rep. No. 93-913, at 36 (1974); S. Rep. No. 93-690, at 20 (1974).

¹⁰ 40 Fed. Reg. 7,404, 7,405 (codified as amended at 29 C.F.R. § 552.2-552.6).

¹¹ PHI, *Direct Care Workers in the United States*.

¹² H.R. Rep. No. 93-913, at 34 (1974), reprinted in 1974 U.S.C.C.A.N. 2811, 2843.

¹³ *Id.*

¹⁴ See 119 Cong. Rec. S24,799 (1974) (statement of Senator Williams) (“the plain fact is that private household domestic workers are overwhelmingly female and members of minority groups, [and] in failing to cover domestics under our basic wage and hour law we would be turning our backs on these people.”); see also 119 Cong. Rec. 18,341 (1973) (statement of Rep. Griffiths) (“Women, especially black women, simply have not had a fair shake in the job market. It is time they were given their due.”).

¹⁵ US Dep’t of Labor, *Minimum wage, overtime protections extended to direct care workers by US Labor Department* (Sept. 17, 2013), <https://www.dol.gov/newsroom/releases/whd/whd20130917>.

home care workers employed by third-party agencies—are professional in nature and cannot reasonably be considered “companionship” within the meaning of the exemption.

- B. *The 1974 amendments sought to recognize care work as a profession meriting legal protections—a recognition that has only become more relevant in the intervening decades, as the home care industry has grown and changed.*

The Department’s initial regulations implementing the companionship exemption were unfair and overbroad when they were adopted in 1975—as applied to the workforce of 2025, they are nonsensical. Today, home care workers provide essential care to over 7 million disabled people and older adults,¹⁶ supporting them with their daily activities and/or personal care needs—all while remaining integrated in their communities and in the homes they prefer. The proposed rule ignores how this home care workforce, and the direct care workforce as a whole, has undergone significant professionalization since the 1970s, as home care workers are required to meet formal standards and requirements to practice and perform labor in addition to providing companionship.

Long-term or direct care work consists of a range of duties to help disabled people and older adults navigate their medical and personal care needs. This can include tasks like administering medications, helping people bathe, dress, eat, or rise from bed, and supporting people facing mobility limitations.¹⁷ In addition, home care workers support disabled people and older adults with the emotional care and friendship that comes with an ongoing relationship. However, in the current rulemaking, the Department only recognizes home care workers’ emotional care of their clients to minimize the skill that home care workers exercise in supporting their clients’ health needs and ultimately devalue care work as not “real” work. To support excluding home care workers from basic labor protections, the proposed rule diminishes home care work as if it were *only* comprised of companionship.

The Department’s 1975 regulations excluding “companions” were met with controversy and tension, as many full-time long-term care workers were left out of FLSA protections during a period where the need for their services was only increasing.¹⁸ At the time, part of the incorrect but prevailing argument against recognizing home care workers as more than “casual companions” was that, in the 1970s, home care was largely informal, based on agreements between families and providers, and with few standards.¹⁹ It was also more commonly thought that disabled people or older adults needing more than “casual” care would receive long-term

¹⁶ Molly O’Malley Watts, MaryBeth Musumeci, and Meghana Ammula, *Medicaid Home & Community-Based Services: People Served and Spending During COVID-19*, KFF (Mar. 4, 2022), <https://www.kff.org/medicaid/issue-brief/medicaid-home-community-based-services-people-served-and-spending-during-covid-19/>; see also Center for Children and Families, *How Medicaid Supports Seniors and People with Disabilities and Their Caregivers* (last visited Aug. 25, 2025), <https://ccf.georgetown.edu/2025/03/11/how-medicare-supports-seniors-and-people-with-disabilities-and-their-caregivers/>.

¹⁷ Bureau of Labor Statistics, US Dep’t of Labor, *Occupational Outlook Handbook: Home Health and Personal Care Aides* (last visited August 26, 2025), <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm#tab-2>.

¹⁸ See, e.g., Dianne Avery & Martha T. McCluskey, *When Caring is Work: Home, Health, and the Invisible Workforce Introduction*, 61 BUFF. L. REV. 253, 257-58 (2013) (summarizing lectures critical of the rules as “undermin[ing] the viability of home care work as a decent job at a time when the number of informal caregivers is dwindling and the need for access to care for the elderly is growing”); Julia Lippitt, Note, *Protecting the Protectors: A Call for Fair Working Conditions for Home Health Care Workers*, 19 ELDER L.J. 219, 227-29 (2011).

¹⁹ A. E. Benjamin, *An Historical Perspective on Home Care Policy*, 71 MILBANK QUARTERLY (Mar. 2003), <https://www.milbank.org/wp-content/uploads/mq/volume-71/issue-01/71-1-An-Historical-Perspective-on-Home-Care-Policy.pdf>.

care in an institution or facility.²⁰ Direct care workers in those settings were already protected by a previous amendment to the FLSA in 1966.

However, the disability justice movement ushered in a cultural shift toward integration, where disabled people are actively part of their communities instead of being separated through institutionalization. In 1999, the Supreme Court recognized the right for disabled people to live in their communities in the *Olmstead* decision.²¹ As a result and over the decades, many disabled people and their families were able to shift away from institutionalization, preferring instead to receive and provide care within their homes and communities. This shift, in turn, necessitated that the duties traditionally thought to chiefly belong to nursing assistants in institutional settings be performed by long-term care workers in home-based settings.²²

Home care workers must meet professional requirements in their states, which indicates that these workers are not only providing companionship, but also essential medical and personal care. Federal legislation actually formalized requirements for many home health aides in Medicare-certified home health agencies, requiring these workers to complete programs with at least 75 hours of training, and 16 states and D.C. exceed these federal requirements for home-health aides.²³ Additionally, 31 states and D.C. have consistent training requirements for personal care aides employed by Medicaid-funded home care agencies.²⁴

Moreover, since the 1970s, there has been a proliferation of third-party employers (i.e., agencies) retaining home care workers. This industry is now large, profitable, and growing—and is far removed from the informal, “casual” care arrangements among friends and family members that Congress contemplated in enacting the companionship exemption more than 50 years ago.²⁵ Even since 2013, when the current rules governing the companionship exemption were finalized, the home care industry has exploded: In 2020, it generated an estimated \$102.7 billion in revenue—up 50.5% from \$68.3 billion in 2013.²⁶ The home care workforce has similarly grown, adding more than one million home care workers to the field between 2013 and 2025.²⁷ These are workers “whose vocation is domestic service,” and who overwhelmingly are “regular bread-winners” and “responsible for their families’ support”—the very workers Congress

²⁰ Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,454, 60,458 (Oct. 1, 2013) (codified at 29 C.F.R. Part 552); Eileen Boris & Jennifer Klein, *Organizing Home Care: Low-Waged Workers in the Welfare State*, Politics & Soc’y vol. 34, No. 1, 81, 84 (March 2006).

²¹ See *Olmstead v. L.C.*, 527 U.S. 581 (1999); see also Steven P. Segal, *Community care and deinstitutionalization: a review*, 24 SOC. WORK. 521 (1979), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7669462/>.

²² See Peggie R. Smith, *Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century*, 92 IOWA L. REV. 1835, 1846 (2007).

²³ PHI, *Home Health Aide Training Requirements by State* (last visited Aug. 25, 2025), <https://www.phinational.org/advocacy/home-health-aide-training-requirements-state-2016/>.

²⁴ PHI, *Personal Care Aide Training Requirements* (last visited Aug. 25, 2025), <https://www.phinational.org/advocacy/personal-care-aide-training-requirements/>.

²⁵ By the Department’s own estimation in the current rulemaking, the vast majority of home care workers are employed by these third-party agencies. See 90 Fed. Reg. 28981 (“the Department assumes that there are 3.7 million home care workers employed by third-party agencies, and an additional 1.5 million home care workers employed directly by a consumer (or their family or household)”).

²⁶ Adam Grundy, *Aging Population Linked to Increased Need for Select Health Care and Social Assistance Services*, U.S. Census Bureau (Aug. 9, 2022), <https://www.census.gov/library/stories/2022/08/revenues-for-home-care-elderly-services-increase.html>.

²⁷ PHI, *Workforce Data Center* (last visited August 28, 2025), <https://www.phinational.org/policy-research/workforce-datacenter/#tab=National+Data>.

explicitly intended to include within the FLSA's protections in 1974.²⁸ And for these workers, minimum wage and overtime pay has become the status quo.

II. If implemented, the proposed rule will make it harder, not easier, for families to access home- and community-based services.

The Department has “specifically invite[d] comment on whether these changes are likely to increase the supply of qualified home health workers.”²⁹ They are not. By stripping home care workers of basic labor protections, the proposed rule would exacerbate existing shortages in home care, ultimately decreasing people’s access to HCBS.

As the population ages and life expectancy for people with disabilities and chronic illnesses increases, there is a growing demand for direct care workers to support older and disabled people in their daily living and meet their medical needs.³⁰ Home care workers enable older adults and disabled people to access long-term support while choosing to live in their homes or community settings instead of moving into a facility like a nursing home.³¹ Many people strongly prefer receiving home-based care because it allows them to get care within their communities and in their familiar homes.³²

However, the need for the home care workforce is not reflected in the compensation home care workers receive or the quality of life they experience as a result. Undervalued and underpaid, home care workers typically are paid just \$16.13 per hour, with median annual earnings of \$21,889.³³ As a result of these low wages, 40% of home care workers live in low-income households and 47% rely on public assistance to take care of themselves and their families.³⁴ And notably, many home care workers are caring for their loved ones in addition to their work as caregivers. Nearly 30% of home care workers live with a child under 18 years old and 30% are unpaid family caregivers for an adult.³⁵

Low wages and minimal benefits are at the heart of the current shortage of home care workers. The economic precarity that so many face makes it difficult for home care workers to remain in the same job,³⁶ generating high turnover³⁷ and preventing people from joining the direct care workforce at all.³⁸ With low quality jobs on offer, employers struggle to recruit and retain sufficient workers to meet the demand for home care services—and the resulting labor shortage

²⁸ The Senate Committee on Labor and Public Welfare and House of Representatives Committee on Education and Labor Reports made clear that “[i]t is the intent of the committee to include within the coverage of the Act all employees whose vocation is domestic service People who will be employed in the excluded categories are not regular bread-winners or responsible for their families’ support.” H.R. REP. NO. 93-913, at 36 (1974), *reprinted in* 1974 U.S.C.C.A.N. 2811, 2837; S. REP. NO. 93-690, at 20 (1974).

²⁹ 90 Fed. Reg. 28980.

³⁰ See PHI, *Caring for the Future: The Power and Potential of America’s Direct Care Workforce*, 1,6 (2021), <https://www.phinational.org/caringforthefuture/>.

³¹ Veronica Faison, Supporting Home- and Community-Based Care Advances Gender Justice, NAT’L WOMEN’S L. CTR (Nov. 1, 2024), https://nwlc.org/wp-content/uploads/2024/11/final_NWLC_2024CaregivingReport.pdf.

³² *Id.*

³³ PHI, *Direct Care Workers in the United States*.

³⁴ *Id.*

³⁵ *Id.*

³⁶ PHI, *Direct Care Workers in the United States*.

³⁷ PHI, *Understanding the Direct Care Workforce* (last visited Aug. 25, 2025), <https://www.phinational.org/policy-research/key-facts-faq/>.

³⁸ Barbara Lyons and Molly O’Malley Watts, *Addressing the Shortage of Direct Care Workers: Insights from Seven States*, The Commonwealth Fund (Mar. 19, 2024), <https://www.commonwealthfund.org/publications/issue-briefs/2024/mar/addressing-shortage-direct-care-workers-insights-seven-states>.

makes it difficult for many disabled people, older adults and family caregivers to find the care they need.³⁹

The Department erroneously suggests that its proposed rule will “expand access to home care services” because it will “encourage more providers to enter or expand operations in the home care market” by relieving them of their obligation to pay workers a minimum wage and overtime pay. However, third-party employers are not the people providing home care services; home care workers themselves are providing care, and they will not enter or remain in jobs that will make it impossible for them to make ends meet.

The proposed rule ignores strong evidence that higher wages and better employment standards improve recruitment and retention of home care workers. This evidence has mounted in recent years, as the need to address the shortage of home care workers became particularly pronounced during the pandemic period. With access to substantial new federal funding through the American Rescue Plan Act (ARPA), the most common strategy that states used to remedy worker shortages was to use ARPA dollars to increase Medicaid payment rates and raise wages for home care workers.⁴⁰ While these increases often still resulted in wages that were less than \$20 an hour, even modest wage boosts had a positive impact on home care workers. Washington State, for example, used its influx of federal dollars to provide hazard pay to direct care workers, which enhanced recruitment and retention. Over half of care workers said they would not have continued in their jobs if not for higher wages, and 41% of care workers who recently started reported that they would not have entered their jobs if not for the higher wages.⁴¹

To be sure, the FLSA’s minimum wage and overtime protections alone are not enough to ensure higher wages or good job quality for home care workers. But the Department misses the mark in implying that, because the decade in which these labor protections have been in place has not produced huge advances in wages or availability of services, home care workers might as well not have protections at all. While the Department largely dismisses the impact of these protections to date,⁴² its own enforcement records indicate that the guarantee of minimum wage and overtime pay have yielded concrete benefits for workers: Since the 2013 rule has been in effect, home care agencies have paid \$157.8 million in back wages—compared to \$25.6 million in the ten years prior.⁴³

Ultimately, strategies to attract more home care workers to the field and meet the long-term care needs of our aging population will revolve around increasing wages and doing so sustainably.⁴⁴ More action is needed to ensure that all home care providers can cover the full costs of home care labor—for example, through Medicaid rate analyses and adjustments—but rolling back

³⁹ Alice Burns, Maiss Mohamed, Priya Chidambaram, Abby Wolk, and Molly O'Malley Watts, *Payment Rates for Medicaid Home Care: States' Responses to Workforce Challenges*, KFF (Feb. 18, 2025), <https://www.kff.org/medicaid/press-release/in-response-to-home-care-workforce-shortages-most-states-report-increasing-medicoids-payment-rates-and-expanding-worker-opportunities/>.

⁴⁰ *Id.*

⁴¹ Service Employees International Union 775 and the Center for American Progress, *Higher home care wages reduce economic hardship and improve recruitment and retention in one of the country's fastest-growing jobs* (2021), <https://seiu775.org/wp-content/uploads/2021/06/SEIU-Hazard-Pay-Report.pdf>.

⁴² See 90 Fed. Reg. 28982 (Asserting that “[l]osing the right to receive the federal minimum wage would not affect most workers,” and only briefly noting that “losing the right to receive overtime pay...could negatively impact the morale of affected home care workers and lead to increased employee turnover and difficulty attracting skilled workers to the industry.”).

⁴³ US Dep’t of Labor, *Wage and Hour Compliance Action Data* (2025), https://enforcedata.dol.gov/views/data_summary.php (analysis by PHI (July 2025)).

⁴⁴ Laura Tatum and Natalia Cooper, *State Best Practices to Improve Pay for Direct Care Workers*.

FLSA coverage is not the answer.⁴⁵ The minimum wage and overtime pay protections alone cannot sustain and retain workers, but they are a necessary foundation to improving job quality. Eliminating this foundation will make it impossible to build toward necessary improvements that could ultimately increase the job quality of home care workers. In its current rulemaking, the Department ignores important data and provides little to no evidence to support its claims that rolling back home care workers' labor protections would increase access to HCBS.

III. The Department has failed to provide sufficient analysis to support the proposed rule, which is especially troubling given the Department's recent non-enforcement order.

During the rulemaking process that culminated in the 2013 rule, the Department issued a 55-page NPRM that extensively analyzed the legislative history of the 1974 amendments to the FLSA, the evolution of the home care industry in the intervening decades, and the likely impacts for a range of stakeholders of extending minimum wage and overtime protections to home care workers. In stark contrast, the Department now seeks to use a barebones 9-page document to rescind labor protections on which millions of home care workers have relied for over a decade. Length aside, the Department proffers very little evidence or analysis of the impact its proposal would have on workers or recipients of care. This rulemaking thus does not comport with the APA's demand that an agency changing its existing policy provide a reasoned explanation for the change and consider how seriously those affected relied on the agency's previous position.⁴⁶ Its failure to include a quantitative analysis of the costs and benefits of the proposed rule also runs counter to standard practice and multiple rulemaking authorities,⁴⁷ and falls far short of the agency's duties to both consider and publicize the likely effect of the proposed rule on working people.⁴⁸

The Department's sparse analysis also makes the notice and comment process all the more important, as stakeholders and experts may put forth the more rigorous analysis that the Department failed to provide. Indeed, the Department has specifically requested "public comment and empirical data to better quantify the proposed rule's effects (perhaps by updating quantitative impacts used in the analysis accompanying the 2013 final rule) and ensure that any final rule appropriately balances the interests of consumers, workers, and providers."⁴⁹ Yet in practice, the Department has clearly signaled its intent to ignore any such public comment and empirical data by issuing FAB 2025-4, Home Care Enforcement Guidance, which suspends enforcement of the 2013 rule, discontinues any open investigations, and bars investigation or

⁴⁵ PHI, FLSA Facts: Growing Home Care Industry Can Afford Basic Labor Protections for Workers (April 17, 2015), <https://www.phinational.org/wp-content/uploads/legacy/flsafaacts2-04202015.pdf>.

⁴⁶ *FDA v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898, 916 (2025) (naming the "change-in-position" doctrine): "[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change," "display awareness that [they are] changing position," and consider "serious reliance interests." See also *Encino Motorcars, LLC v. Navarro*, 579 U. S. 211, 221–222 (2016) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

⁴⁷ 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).

⁴⁸ See, e.g., *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015) (explaining that "the APA requires an agency to provide more substantial justification when 'its new policy rests upon factual findings that contradict those which underlay its prior policy'" (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009))).

⁴⁹ 90 Fed. Reg. 28982.

enforcement actions against home care agencies.⁵⁰ This guidance—issued on July 25, more than a month before the public comment period in the present rulemaking closes—strongly indicates that the Department has already reached its final decision, essentially declaring the rule change to be in effect and stripping home care workers of their protections under the FLSA without taking into account important stakeholder input collected during the comment period.

In so doing, the Department has violated its obligation under the APA to “consider and respond to significant comments received during the period for public comment” as part of the rulemaking process.⁵¹ And in failing to conduct a meaningful analysis of the likely impact of the proposed rule—while drawing precisely the wrong conclusion from existing evidence regarding the relationship between job quality for home care workers and the availability of home care services—the Department has also ignored its duty to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”⁵² The Department’s actions in this rulemaking are thus arbitrary and capricious under the Administrative Procedure Act.

* * *

Ultimately, basic labor protections alone cannot increase access to essential care, but rolling back labor protections will only make home- and community-based services less accessible for everyone, driving workers into poverty or out of the workforce and leaving disabled people and older adults without the dignified care they need and deserve. We urge the Department to withdraw this ill-advised rulemaking (as well as FAB 2025-4) and maintain the 2013 rule—and the protection it affords millions of home care workers—in its entirety.

Thank you for your consideration. Please do not hesitate to contact Veronica Faison (vfaison@nwlc.org) if you have any questions or would like further information regarding the issues raised in these comments.

Sincerely,



Julie Vogtman
Director of Job Quality & Senior Counsel



Veronica Faison
Counsel, Income Security and Child Care

⁵⁰ US Dep’t of Labor, Wage and Hour Division, Field Assistance Bulletin No. 2025-4: Home Care Enforcement Guidance (July 25, 2025). See also PHI, *PHI Statement on Department of Labor’s Halt of Home Care Worker Protections* (Aug. 5, 2025), <https://www.phinational.org/phi-statement-on-department-of-labors-halt-of-home-care-worker-protections/>.

⁵¹ *Perez*, *supra* note 48, at 96.

⁵² *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).