



March 13, 2018

## Support H.R. 5180, the “Tip Income Protection Act of 2018”

Dear Representative,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to protecting the civil and human rights of all persons in the United States, I write to express our support for the Tip Income Protection Act of 2018. Working people in America deserve to keep the tips that they work hard to earn. I urge you to cosponsor the Tip Income Protection Act of 2018 and to urge leadership of both parties to quickly take up this legislation on the floor of the U.S. House of Representatives.

The Leadership Conference on Civil and Human Rights commends Representatives Rosa DeLauro (D-CT) and Katherine Clark (D-MA) for introducing the Tip Income Protection Act of 2018, which would clarify that tips are the property of employees and are not to be confiscated by employers. We are pleased that Secretary of Labor Alex Acosta and House Appropriations Subcommittee Chair Tom Cole (R-OK) have expressed support for this important effort to protect the economic security of millions of working people in America. Given the bipartisan support behind a provision to affirm that establishments should not be permitted to keep any portion of a tip, every member of Congress should support quick passage of this bill.

In December 2017, the Department of Labor released a proposed rule which would rescind portions of tip regulations issued in 2011 pursuant to the Fair Labor Standards Act (FLSA). This proposed rule would reverse the Department’s longstanding position that tips are the property of the employee who earned them, a move that would threaten the security of millions of working people and their families. The impacts of this proposed rule are particularly concerning for women of color, who represent a disproportionate share of the tipped workforce. If the Department were to implement this rule, employers would be able to keep their workers’ tips if they paid tipped employees the paltry federal minimum wage of \$7.25 per hour. The Economic Policy Institute estimates that tipped workers would lose \$5.8 billion in tips every year as tips are shifted from workers to employers; of the \$5.8 billion, nearly 80 percent would come from women earning the tipped minimum wage.<sup>i</sup> This shift would have significant negative impacts and would erode economic security for tipped workers in this country. In February, The Leadership Conference on Civil and Human Rights submitted [comments](#) urging the Department to withdraw this proposed rule.

During the Department of Labor’s FY19 Budget Hearing on March 6, 2018, Secretary Acosta noted that he would support Congress passing legislation to clarify that employers can’t take workers’ tips and affirmed that “[n]o one wants or believes that establishments should keep tips...”<sup>iii</sup> During the hearing, Secretary Acosta alluded to a decision in the U.S.

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Court of Appeals for the 10<sup>th</sup> Circuit that struck down the 2011 agency regulation which designated tips as the property of employees regardless of whether employers pay the federal minimum wage or take a tip credit against their minimum wage obligations. Secretary Acosta argued that *Marlow v. The New Food Guy, Inc.*<sup>iii</sup> prohibits the Department from asserting that all tips are the property of employees without Congressional action. Noting that this issue is now pending in the U.S. Supreme Court, Secretary Acosta recommended that Congress amend the Fair Labor Standards Act (FLSA) so that the Department would have the authority to prohibit employers from keeping a portion of workers' tips. While The Leadership Conference believes that the Department has the authority to assert that that tips are the property of the employees who earn them without legislation, we support immediate Congressional action, which will assuage the Department's concerns and immediately prevent employers from taking billions in dollars of tips away from tipped workers.

The Tip Income Protection Act of 2018 would help to protect tipped working people from employer tip theft by amending the FLSA to explicitly state that "all tips received by any employee, including an employee that is not a tipped employee shall be the property of, and retained by, the employee, including in the case of an employer that pays a tipped employee a cash wage that equals or exceeds the minimum wage under section 6(a)."<sup>iv</sup> The protections that this legislation establishes would ensure that employers could not pocket tips earned by their employees and would guarantee that tipped workers could keep the tips they earn.

The Department of Labor's mission is "to foster, promote, and develop the welfare of the wage earners...of the United States."<sup>v</sup> I encourage you to hold Secretary Acosta accountable for his statement and to conduct thorough oversight of the agency tasked with protecting working people in America. I also urge you to co-sponsor the Tip Income Protection Act of 2018, and to ensure that this crucial legislation is promptly brought up for consideration. If you have any questions, please contact Emily Chatterjee, Senior Counsel, at (202) 466-3648.

Sincerely,



Vanita Gupta  
President & CEO

<sup>i</sup> Shierholz, Heidi., David Cooper, Julia Wolfe and Ben Zipperer. "Employers would pocket \$5.8 billion of workers' tips under Trump administration's proposed 'tip stealing' rule." December 14, 2017. <https://www.epi.org/publication/employers-would-pocket-workers-tips-under-trump-administrations-proposed-tip-stealing-rule/>.

<sup>ii</sup> Wheeler, Lydia. "House Dems offer bill to protect workers' tips." March, 18, 2018. <http://thehill.com/regulation/labor/377227-house-dems-offer-bill-to-protect-workers-tips>

<sup>iii</sup> *Marlow v. The New Food Guy, Inc.*, 861 F.3d 1157 (10<sup>th</sup> Cir., June 30, 2017).

<sup>iv</sup> "H.R. 5180: Tip Income Protection Act of 2018." <https://www.govtrack.us/congress/bills/115/hr5180>.

<sup>v</sup> "Our Mission." *United States Department of Labor*. <https://www.dol.gov/opa/aboutdol/mission.htm>.