



March 1, 2018

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The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Room S-2018
Washington DC 20210

Dear Secretary Acosta:

On behalf of The Leadership Conference on Civil and Human Rights Employment Task Force, we write to share our deep concerns about the Department of Labor's (DOL) fidelity to the rule of law in light of a news report suggesting that DOL prepared but did not publicly release its critical economic analysis for the Department's Notice of Proposed Rulemaking (NPRM) on Tip Regulations under the Fair Labor Standards Act (RIN 1235-AA21).

The Leadership Conference is a diverse coalition of more than 200 organizations committed to advancing civil and human rights for all those who live in the United States. As members of the Employment Task Force, we had the opportunity to meet with you in August 2017 for discussion of a range of policy and enforcement issues. Since then, we have continued to engage with the Department. And earlier this month, The Leadership Conference and many of its members submitted [comments](#) responding to the NPRM, sharing our strong opposition to the Department's attempts to rescind portions of tip regulations it issued in 2011.

We were surprised, given the substantial capacity of the Department and its past track record of providing economic analyses of regulatory proposals, that the Department asserted in the NPRM that it was "unable to quantify how customers will respond to the proposed regulatory changes" and "currently lacks data to quantify possible reallocation of tips." Subsequently, we learned in a news report from *Bloomberg Law* on February 1 that the Department had in fact done an economic analysis that would have shown that tipped workers would lose billions of dollars in wages if the proposed rule were to be finalized and implemented but failed to disclose it.¹

¹ 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>



According to the news report, DOL career staff compiled the economic analysis, but senior department political appointees were dissatisfied with it because it showed that the NPRM would result in working people losing billions of dollars in tips. It goes on to say that “[a]lthough later calculations showed progressively reduced tip losses, Labor Secretary Alexander Acosta and his team are said to have still been uncomfortable with including the data in the proposal.”² Ultimately, as noted, the proposal did not include any economic transfer data.

We are deeply troubled by the possibility that senior political appointees at DOL may have deliberately excluded unfavorable economic analysis conducted by career civil service employees. As The Leadership Conference noted during your confirmation process, “it is critical that the American public and Department of Labor (DOL) employees can trust that the civil service will not be politicized under Mr. Acosta’s watch, and that the laws the Department is mandated to implement and enforce will be carried out effectively.” We further noted that we would closely monitor Department actions and hold its leadership accountable to ensure that these principles are fully adhered to. As Secretary of the Department of Labor, it is your responsibility to properly supervise political appointees and to prevent them from improperly politicizing rulemaking.

We believe DOL’s burying of key economic data raises serious questions of both process and substance. We are pleased that DOL’s Office of the Inspector General (OIG) is now investigating the Department’s handling of the NPRM on Tip Regulations and we hope that the OIG receives all the resources it requires to fully investigate what has transpired at DOL.

In the meantime, we believe that the integrity of the process for this proposed rule change has been compromised to such an extent that the NPRM should be rescinded. The withheld economic data has deprived DOL of receiving key input from the public it serves. We would appreciate a prompt reply on your plans for releasing the relevant economic data and the status of the NPRM on Tip Regulations.

Sincerely,

Kristine Lucius
Executive Vice President for Policy
The Leadership Conference on Civil and Human Rights

Yona Rozen
Associate General Counsel
AFL-CIO

² Id.



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Government Affairs Director
Human Rights Campaign

Dariely Rodriguez
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