United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

February 2, 2018

The Honorable Scott S. Dahl
Inspector General
Department of Labor
200 Constitution Avenue, NW
Room S-5502
Washington, DC 20210

Dear Inspector General Dahl:

I write to request an investigation into the actions by officials at the Department of Labor (DOL) regarding exclusion of an internal economic analysis in the December 2017 proposed modification of the tip rule. The tip regulation makes clear that tips are the property of employees, not employers. This rule ensures tipped-workers across the country keep the tips they work so hard to earn. The Notice of Proposed Rulemaking (NPRM) that appeared in the Federal Register on December 5, 2017 would allow managers and businesses to keep workers' tips for themselves. Tipped workers rely on tips to pay their bills and support their families. There is no excuse for policies that make it easier for employers to steal these workers' wages—and no excuse for the apparent efforts by DOL to hide evidence that this would occur, with potentially billions in losses for workers, should their rule change be implemented.

The NPRM explicitly states that "the Department currently lacks data to quantify possible reallocations of tips . . . ." However, an article published on Thursday, February 1st suggests that not only did DOL prepare such an analysis, but in fact may have requested staff modify the methodology used in order to produce a lower cost estimate of the proposed rule.[1] Reportedly, the analysis DOL removed from the tip rule demonstrated that rescinding portions of DOL's current tip regulations would transfer billions of dollars in tips from the workers who earned them to businesses. The potential inclusion of misleading statements in the NPRM raises serious questions about the integrity of the rulemaking process and whether DOL has deliberately tried to manipulate the process for the benefit of corporations and businesses. If these reports are correct, it appears DOL may have deliberately misled the public in its NPRM.

Further, these allegations regarding the decision to remove this quantitative economic analysis raise questions about what other information DOL may have compiled in the course of drafting this and other rules, yet elected not to include in the published NPRM.

We ask that you immediately begin an investigation into the process surrounding the proposed tip rule, including but not limited to determining:

[1] https://www.bna.com/labor-dept-ditches-n73014474899/

1. Are the statements in the NPRM false and/or misleading;
2. Did DOL in fact create one or more economic analyses regarding the cost of allowing employers to confiscate workers tips;
3. Were those analyses prepared using data and methodology comparable to past DOL economic analyses;
4. Who, if anyone, at DOL or at the Office of Management and Budget (OMB) made the decision to proceed without including the economic analysis;
5. Who, if anyone, at DOL or OMB made the decision to state in the NPRM that the Department lacked the data to quantify the reallocation of tips; and
6. Was the Secretary of Labor aware of or involved in decisions to conduct multiple analyses and/or the decision to state in the NPRM that the Department lacked the data to quantify the reallocation of tips?

If you have any questions about this request please contact Carly Rush or Joe Shantz with my Health, Education, Labor, and Pensions Committee staff at 202-224-0767.

Sincerely,

Patty Murray

Patty Murray
Ranking Member, Health, Education, Labor and Pensions Committee
United States Senate

cc: Lamar Alexander, United States Senator,
Chairman, Senate Health, Education, Labor and Pensions Committee