

United States Senate

WASHINGTON, DC 20510

February 6, 2018

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Acosta:

We write to express our deep concern regarding reports that the Department of Labor (DOL) concealed evidence from the public showing that DOL's proposed tip rule would result in employees losing billions of dollars in tips. DOL is forcing through a regulation that would take money out of the pockets of low-wage workers and, even worse, it covered up the potentially catastrophic impacts from workers and advocates. This is a stark example of how far the Trump Administration is willing to go to appease business interests at the expense of working families.

In December, DOL proposed a rule that would rescind portions of its tip regulations that protect tipped workers. These low-wage workers—two-thirds of whom are women—struggle to support themselves and their families, experiencing poverty rates twice as high as rates for all working people.¹ Workers rely on their tips as a major source of income, they work extremely hard to earn them, and they deserve to keep them. The existing tip regulations make clear that tips are the property of employees, ensuring that employers are not able to confiscate employees' tips and use them as they please. These regulations are essential to ensuring that workers across the country who receive tips at their jobs earn a fair wage by being able to keep their tips.

DOL provided the public with no quantitative economic analysis in its proposed rule, contrary to multiple Executive Orders on rulemaking procedures, stating that DOL "currently lacks data to quantify possible reallocation of tips[.]"² However, according to news reports, DOL did conduct this quantitative analysis and found the rule would result in workers losing billions of dollars if it is finalized. Instead of allowing the public to provide feedback on this impact on workers, DOL reportedly chose to bury the analysis and instead issue the proposed rule that stated that uncertainties were too great to perform an analysis. After the proposed rule was released, Senator Murray, as Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, specifically asked DOL if any such data existed or analysis had been conducted. DOL has yet to respond.

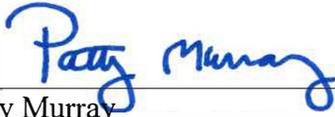
Many of us already are on record expressing our deep concerns that DOL, which has as its mission "[t]o foster, promote, and develop the welfare of wage earners ... of the United

¹ National Women's Law Center, "Women and the Tipped Minimum Wage, State by State" (July 20, 2017), <https://nwlc.org/resources/tipped-workers>; National Women's Law Center & Restaurant Opportunity Centers United, "Raise the Wage: Women Fare Better In States with Equal Treatment for Tipped Workers" (October 2016), <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2016/10/Tipped-Wage-10.17.pdf>.

² U.S. DOL, "Tip Regulation Under the Fair Labor Standards Act (FLSA)," 82 FR 57396 (December 5, 2017).

States,” would propose a rule that it was aware would cost workers billions of dollars each year.³ However, the idea that officials at DOL—potentially including yourself—would take steps to mislead the public and deprive them of information about the impacts of the rule leads us to the unavoidable conclusion that you must act to withdraw this rule.

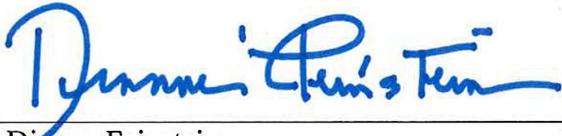
Sincerely,



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



Charles E. Schumer
United States Senator



Dianne Feinstein
United States Senator



Ron Wyden
United States Senator



Richard J. Durbin
United States Senator



Jack Reed
United States Senator



Bernard Sanders
United States Senator



Benjamin L. Cardin
United States Senator

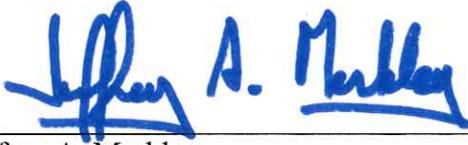


Sherrod Brown
United States Senator



Jeanne Shaheen
United States Senator

³ United States Department of Labor, “Our Mission,” <https://www.dol.gov/opa/aboutdol/mission.htm> (last accessed February 1, 2018).



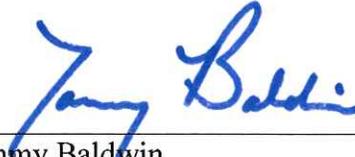
Jeffrey A. Merkley
United States Senator



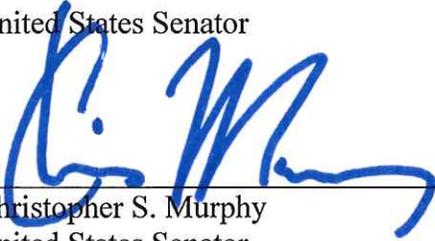
Kirsten Gillibrand
United States Senator



Richard Blumenthal
United States Senator



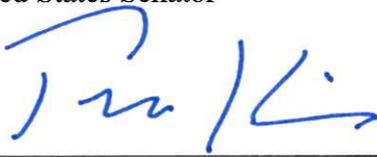
Tammy Baldwin
United States Senator



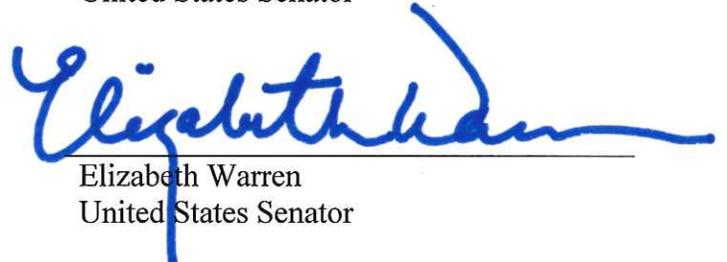
Christopher S. Murphy
United States Senator



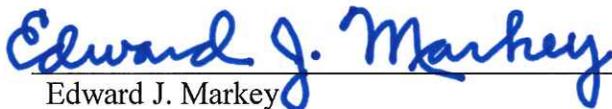
Mazie K. Hirono
United States Senator



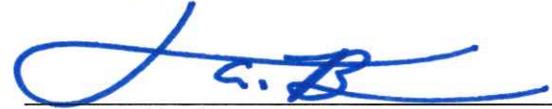
Tim Kaine
United States Senator



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator



Cory A. Booker
United States Senator



Chris Van Hollen
United States Senator



Tammy Duckworth
United States Senator



Margaret Wood Hassan
United States Senator



Tina Smith
United States Senator