February 2, 2018

Via Electronic Mail

WHD FOIA Coordinator
Wage and Hour Division
U. S. Department of Labor
Room S3016
200 Constitution Avenue, N.W.
Washington, D.C. 20210
foiarequests@dol.gov

Re: Freedom of Information Act Request

Dear FOIA Coordinator:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I request the inspection and copy of certain public records under the Freedom of Information Act, 5 U.S.C. § 552, and pertinent Department of Labor (“Department”) regulations, 29 C.F.R. Part 70, related to the Department’s Notice of Proposed Rulemaking on Tip Regulations Under the Fair Labor Standards Act (RIN 1235–AA21) (“NPRM”)¹ and the underlying proposed rulemaking that is the subject of the NPRM (“Proposed Rulemaking”). This request for information is for the period beginning on January 20, 2017, to the present.

Please be advised that “document” means notes, reports, memoranda, letters, correspondence, recordings or any writing of any kind whatsoever, e-mail messages and correspondence, drawings, graphs, charts, photographs, tape recordings, video footage, diaries, appointment books, calendars, telephone records, telephone messages, computer records, and any other data from which information can be obtained including originals, non-identical copies, and drafts.

We request the following categories of records:

1. Any and all documents, including any final documents, such as policies, memoranda, or reports, related to the Department’s Proposed Rulemaking, which is the subject of the NPRM, or related to the Department’s decision to issue the NPRM.

2. Any and all documents related to the Department’s quantitative analyses—whether completed, attempted, preliminary, or final—of the costs and benefits of the Proposed Rulemaking, including, but not limited to, documents pertaining to:
   a. the Department’s internal quantitative analysis of the impact of the Proposed Rulemaking on the earnings of workers;
   b. the methodology, calculations, and assumptions underlying any quantitative analysis;
   c. any revisions to the methodology, calculations, and assumptions underlying any quantitative analysis;
   d. the process for review of any quantitative analysis;
   e. any consideration of how NPRM quantitative analyses were conducted in previous proposed rulemaking processes; and
   f. any communication with White House officials concerning any quantitative analysis.

3. Any and all documents related to the Department’s decision to not disclose in the NPRM any quantitative analysis estimating the impact of the Proposed Rulemaking on the earnings of workers.

4. Any and all documents related to the Department’s claim that it was unable to perform a quantitative analysis estimating the impact of the Proposed Rulemaking on the earnings of workers.
   a. Specifically, any and all documents related to the Department’s statements that “[t]here are labor market forces that will affect decisions concerning employer use or reallocation of tips” and that “[t]he Department is unable to quantify how customers will respond to proposed regulatory changes, which in turn would affect total tipped income and employer behavior.”

* * *

We seek your response no later than 20 business days after receipt of this request. If possible, please provide the requested information in an electronic format that is searchable and analyzable. Please also provide any individual computer records or scanned documents in a searchable format, such as Microsoft Word or searchable Adobe Acrobat pdf., and any data and statistical information in a format that is searchable and analyzable, such as a txt. or .csv file or an excel spreadsheet.

We seek each record in its entirety. Accordingly, please provide the entire document containing the responsive information; please do not redact portions of any record as “non-responsive” or “out of scope.”
If it is your position that responsive records exist, but those records or portions of those records are exempt from disclosure, please identify the records or portions of those records that are being withheld and state the basis for the denial for each record or portion being withheld. Please provide the non-exempt portions of the records.

**Request for Waiver or Limitation of Fees**

We respectfully request a waiver of all fees associated with this request because, as a 501(c)(3) non-profit organizations, LDF does not seek the records for a commercial purpose, and disclosure of the records is in the public interest as it will contribute significantly to the public’s understanding of and ability to comment on the Department’s Proposed Rulemaking. If the Department declines our request for a waiver, we agree to pay the $25 FOIA processing fee and request an invoice detailing additional reasonable standard charges prior to fulfilling this request.

Please do not hesitate to contact Jennifer Holmes at jholmes@naacpldf.org or 202-216-2728 with any questions regarding this request.

Sincerely,

Todd A. Cox  
Director of Policy  
NAACP Legal Defense and Educational Fund, Inc.