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October 7, 2011

The Honorable Hilda L. Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Secretary Solis:

On April 26, 2010, the U.S. Department of Labor (DOL) published its Spring 2010 Semiannual Regulatory Agenda in the *Federal Register*. This agenda noted DOL's intention to issue a Notice of Proposed Rulemaking (NPRM) entitled *Application of the Fair Labor Standards Act to Domestic Service* (the "anticipated rulemaking").<sup>1</sup> It is our understanding that the anticipated rulemaking would change the regulatory definition of "companionship services" for the domestic service overtime exemption under the Fair Labor Standards Act of 1938.

Given the significant consequences the anticipated rulemaking could have on those who provide home-based companionship services to seniors and those who avail themselves of such services, stakeholders and members of this committee have continuously asked DOL for more information.<sup>2</sup> Yet, despite these requests, DOL has not provided further information regarding the anticipated rulemaking and its potential consequences for recipients of home-based care and domestic service employees.<sup>3</sup> In addition, during its Spring 2011 regulatory agenda webchat<sup>4</sup> and subsequent listening sessions on the anticipated rulemaking,<sup>5</sup> DOL failed to provide substantive responses to questions raised by interested parties.

To better understand the anticipated rulemaking, we ask you to direct all DOL agencies responsible for researching and crafting the anticipated rulemaking to provide the following

<sup>1</sup> Regulatory Information Number (RIN) 1235-AA05.

<sup>2</sup> *Policies and Priorities at the U.S. Department of Labor*: Hearing before the House Committee on Education and the Workforce, 112<sup>th</sup> Congress (February 16, 2011) (Questions for the Record).

<sup>3</sup> Letter from the Honorable Brian V. Kennedy, Assistant Secretary of Congressional and Intergovernmental Affairs, U.S. Department of Labor, to the Honorable John Kline, Chairman, House Committee on Education and the Workforce (May 5, 2011) (on file at the House Committee on Education and the Workforce).

<sup>4</sup> Department of Labor Regulations—Live Question and Answer with the Wage and Hour Division. July 13, 2011. <http://www.dol.gov/regulations/chat-whd-201107.htm>.

<sup>5</sup> Wage and Hour Division conference call listening sessions on the *Application of the Fair Labor Standards Act to Domestic Service* Notice of Proposed Rulemaking. July 25 and 27, 2011.

information and responses in a single letter, attaching documents, to the House Committee on Education and the Workforce **no later than October 21, 2011**:

- 1) A detailed timetable outlining DOL's internal review process for the anticipated rulemaking, including, but not limited to, the offices and agencies that have reviewed or will review it, documents created for each review to date, and the names and job titles of officials who have reviewed and/or approved the anticipated rulemaking;
- 2) All documents and communications containing draft language or supporting materials relating to the anticipated rulemaking;
- 3) A list of all meetings and telephone conversations with outside groups relating to DOL's decision to include the anticipated rulemaking as part of the Spring 2010 Semiannual Regulatory Agenda and/or subsequent Semiannual Regulatory Agendas, including the date, location, attendees, and topics of such meetings; and all documents and communications relating to such meetings and conversations;
- 4) A list of all meetings and telephone conversations with outside groups relating to the conception of the anticipated rulemaking and its drafting process, including the date, location, attendees, and topics of such meetings; and all documents and communications relating to such meetings and conversations;
- 5) All documents exchanged and communications between DOL and the Office of Management and Budget (OMB) concerning the anticipated rulemaking, specifically including, but not limited to, all documents relating to the anticipated rulemaking transmitted by DOL to OMB, other than the semiannual regulatory agendas;
- 6) A list of the dates, attendees, and topics for all meetings and telephone conversations between DOL and OMB relating to the anticipated rulemaking, and all documents and communications relating to such meetings and conversations; and
- 7) All economic impact studies, regulatory flexibility analyses, and/or burden analyses developed by DOL, including studies conducted by any contractor, in anticipation of the anticipated rulemaking, or in any way relating to the anticipated rulemaking.

Thank you for your attention to this matter. If you have any questions or comments please contact Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE  
Chairman  
Committee on Education and the Workforce



TIM WALBERG  
Chairman  
Subcommittee on Workforce Protections

Enclosure

CC: The Honorable George Miller, Senior Democratic Member