

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 1, 2018

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

The Honorable Mick Mulvaney
Director
The Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Secretary Acosta and Director Mulvaney:

We write to express our concerns that the Department of Labor's (DOL) proposal in the Spring Regulatory Agenda to weaken hazardous work protections for minors in nonagricultural occupations could put the health and safety of young workers at risk. We also have questions about whether the proposal has been adequately informed by a review of the current data and scientific literature regarding workplace hazards for young workers.

The Fair Labor Standards Act generally prohibits 16- and 17-year-olds from working in occupations that the Secretary of Labor has declared to be particularly hazardous to workers at this age or detrimental to their health and well-being. The Secretary of Labor, in coordination with the National Institute for Occupational Safety and Health (NIOSH), has identified, after lengthy analysis of injury and fatality data, a list of 17 such hazardous jobs through a series of Hazardous Occupation Orders (HOs). For example, youth are prohibited from working in roofing operations or operating chainsaws or wood chippers. Seven of these HOs provide for limited exemptions for apprentices and student-learners to perform hazardous work for short time periods under specific requirements designed to prevent injury and death, including a requirement for direct and close supervision by a journeyman. This limited exemption balances safety with a young person's opportunity to learn on the job.

Weakening protections for young workers could reverse the progress of lowering fatalities among young workers and further jeopardize their health and safety. Workplace safety laws and the Department's HOs have made a difference in saving lives and limbs of young workers. The number of young workers aged 15 to 17 killed on the job has declined over the past 18 years.¹

¹ Perritt KR, Hendricks KJ, Goldcamp EM, *Young worker injury deaths: a historical summary of surveillance and investigative findings*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH), Publication No. 2017-168. DHHS (NIOSH) Publication No. 2017-168 (2017), available at <https://www.cdc.gov/niosh/docs/2017-168/pdfs/2017-168.pdf>

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Prior to developing a revised standard, expert bodies have called upon DOL to rely upon scientific research and data when updating or proposing revisions. The National Research Council and Institute of Medicine report *Protecting Youth at Work* stated, “[c]hanges to the hazardous orders should be based on periodic reviews by the National Institute for Occupational Safety and Health of current workplace hazards and the adequacy of existing hazardous orders to address them.”²

On July 14, the Office of Management and Budget (OMB) began reviewing a DOL Notice of Proposed Rule Making (NPRM) entitled “Expanding Employment, Training, and Apprenticeship Opportunities for 16- and 17-Year-Olds in Health Care Occupations under the Fair Labor Standards Act,” which would modify Hazardous Occupation Orders regarding health care establishments. We are unaware of any formal review by NIOSH on this or any other proposed modification. It would be premature to issue a proposed rule without first securing a formal NIOSH review of current data and scientific literature to inform any proposed changes to the current HOs or apprenticeship/student-learner exemptions.

For example, before the DOL proposed revising the HOs in 2010, it provided funds for NIOSH to perform a comprehensive review of data and scientific literature to assess the adequacy of then-current HOs. The DOL based its 2010 proposal on NIOSH’s 2002 report, which included recommendations regarding apprentice/student-learner exemptions in nonagricultural occupations.³ Similarly, in 2011, when the DOL was asked to revisit the prohibition on young workers using patient lift devices in nursing homes, the agency requested that NIOSH study the risks to 16- and 17-year-olds in this task and provide the Department with recommendations. Any new changes to the current HOs or apprenticeship/student-learner exceptions must be based on a similar robust review of the data and science regarding the potential for disproportionate risk to young workers and necessary supervisory conditions to mitigate such risks. Given these concerns, we request that you provide a response to the following questions by August 15, 2018:

- 1) Has DOL secured a formal NIOSH review of the scientific literature and data regarding the particular modifications to the Hazardous Occupation Orders currently pending at the OMB? Has such review been requested for other proposals in development?
- 2) If not, when will DOL secure a scientific review? Is DOL proposing to undertake such review before or after the NPRM has been issued?

² Institute of Medicine and National Research Council, *Protecting Youth at Work: Health, Safety, and Development of Working Children and Adolescents in the United States*, (1998) Washington, DC: The National Academies Press.

³ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *National Institute For Occupational Safety And Health (NIOSH) Recommendations To The U.S. Department Of Labor For Changes To Hazardous Orders*, (2002), available at <https://www.cdc.gov/niosh/docs/nioshrecsdolhaz/pdfs/dol-recomm.pdf>

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- 3) Has DOL provided funds to NIOSH to conduct the necessary scientific reviews that would be used to inform DOL and the public regarding any proposed changes? If funds have not been provided, please advise whether DOL has budgeted funds for this purpose for fiscal year 2018? If so, how much has been budgeted?

While we believe in expanding job opportunities for young workers, I am sure you would agree this should not be done at the expense of their health, safety or lives. To the extent that a formal NIOSH review has yet to be undertaken, we strongly urge the agency to suspend its current effort to weaken protections for young workers, and to take the necessary steps to establish a robust scientific basis for any proposed changes.

We appreciate your prompt response to these questions. If you have any questions, please have your staff contact Udochi Onwubiko of the Committee on Education and the Workforce Democratic Staff at Udochi.Onwubiko@mail.house.gov or 202-225-3725.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member
Committee on Education and the Workforce



MARK TAKANO
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce



ROSA L. DELAURO
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Committee on Appropriations



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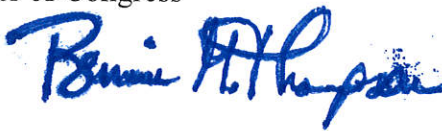
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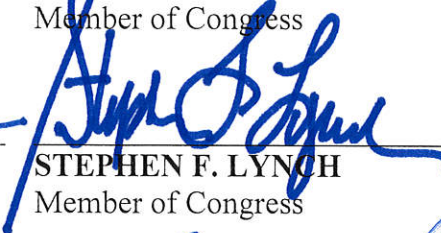
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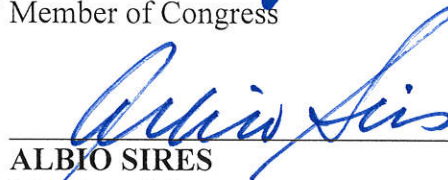
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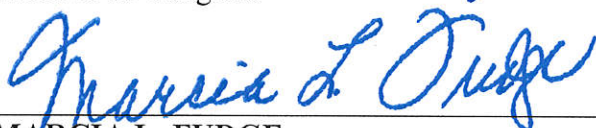
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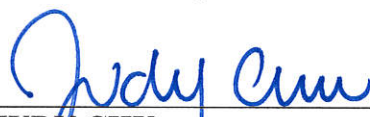
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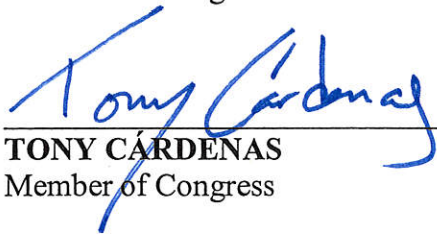
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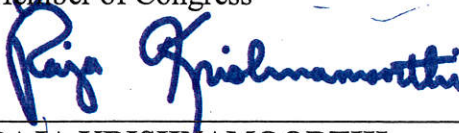
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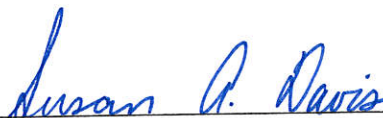
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cc: Alex M. Azar, Secretary, U.S. Department of Health and Human Services
John Howard, Director, National Institute for Occupational Safety and Health