



Congress of the United States  
House of Representatives  
Washington, DC 20515

October 30, 2018

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

RE: Request for Extension of Comment Period for Notice of Proposed Rulemaking, RIN 1235-AA22, Expanding Employment, Training, and Apprenticeship Opportunities for 16- and 17-Year-Olds in Health Care Occupations Under the Fair Labor Standards Act

Dear Secretary Acosta:

As Members of the U.S. House of Representatives, we write to respectfully request that the Department of Labor (Department) extend the public comment period for the above-referenced Notice of Proposed Rulemaking (NPRM) by a minimum of 30 days in order to allow public review of additional supporting documents placed in the rulemaking docket by the Department after the proposed rule's publication in the Federal Register on September 27, 2018.

The NPRM amends the Department's Hazardous Occupations Order 7, "Occupations involved in the operation of power-driven hoisting apparatus," to no longer prohibit 16- and 17-year-olds from operating or assisting in the operation of power-driven patient lifts. This NPRM would allow untrained young workers to use this equipment *independently*—in contrast to the Department's 2011 nonenforcement policy that allows trained 16- and 17-year-olds to assist workers 18 years of age or older in the operation of this equipment. This 2011 nonenforcement policy is based on a 2011 National Institute for Occupational Safety and Health (NIOSH) biomechanical analysis and review of available data and scientific literature that concluded "many 16- and 17-year-old employees cannot safely operate power-driven hoists to lift and transfer patients by themselves, although *they may be able to safely work as part of a team* to assist another caregiver to transfer or move a patient/resident."<sup>1</sup> The NIOSH report also recommends "that two caregivers (one of whom should be an experienced caregiver at least 18 years of age) operate a mechanical lift to transfer a non-weight bearing resident."<sup>2</sup>

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<sup>1</sup> Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), *NIOSH Assessment of Risks for 16- and 17-Year Old Workers Using Power-Driven Patient Lift Devices*, (2011) available at [https://www.dol.gov/whd/CL/NIOSH\\_PatientLifts.pdf](https://www.dol.gov/whd/CL/NIOSH_PatientLifts.pdf).

<sup>2</sup> *Ibid.*

Pursuant to the Fair Labor Standards Act, the Department is required to determine whether this work is particularly hazardous to workers at this age or detrimental to their health and well-being. In making this determination, the Department rejects the 2011 NIOSH findings and recommendations; instead, the Department relies, in part, on a seemingly unfinalized version of a fact sheet from the Massachusetts Department of Public Health's "Teens at Work Project" to assert an adverse impact on *training* opportunities, rather than *safety*.<sup>3</sup> The fact sheet refers to a 2012 survey of vocational schools that found nearly 60 percent of respondents said that employers had commented about increased burdens due to restrictions on teens' use of power-driven patient lifts. However, according to this fact sheet, about half of the survey respondents *were not aware* of the 2011 nonenforcement policy that still allows 16- and 17-year-olds to assist in the use of patient lifts *in conjunction with someone 18 or older*, raising questions about the respondents' knowledge of the nonenforcement policy. It is also unclear from the fact sheet how many respondents are included in the survey or what survey methods were used. The fact sheet was not made publicly available until October 3, 2018, and the underlying survey is still not available in the Department's rulemaking docket.

The Committee on Education and the Workforce recently obtained a copy of the 2012 survey, which was conducted on Survey Monkey. The small number of respondents (n=22) to the above-mentioned survey question regarding increased employer burden further calls into question the soundness of the Department's reliance on the 2012 survey. In fact, the Department's reliance on this nonscientific survey may violate the Department's data quality guidelines, as informed by guidelines from the Office of Management and Budget.<sup>4</sup> It is critical the public be given an adequate opportunity to examine this survey and any other studies or data upon which the Department relies.

Section 2(b) of Executive Order 13563, Improving Regulation and Regulatory Review, states:

To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on [regulations.gov](http://regulations.gov), including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

To comply with the requirement to permit public comments on all pertinent parts of the rulemaking docket, the Department should make the 2012 Massachusetts Department of Public Health survey publicly available as part of the rulemaking docket. To allow for comment on pertinent scientific or technical findings, the Department should also extend the comment period

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<sup>3</sup> Expanding Employment, Training, and Apprenticeship Opportunities for 16- and 17-Year-Olds in Health Care Occupations Under the Fair Labor Standards Act, 83 FR 48737, 48742 (proposed September 27, 2018).

<sup>4</sup> Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Notice; Republication; Office of Management and Budget, Federal Register Vol. 67, No. 36, pp. 452-460, February 22, 2002.

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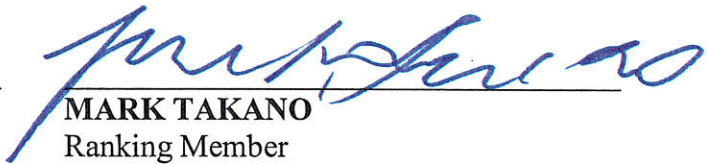
for not less than 30 days after this document is made available in order to allow stakeholders to review the added documents and provide meaningful input on the proposed rule.

Please provide us with your decision regarding our request **no later than November 7, 2018**. If you have any additional comments or questions, please contact Udochi Onwubiko at [Udochi.Onwubiko@mail.house.gov](mailto:Udochi.Onwubiko@mail.house.gov) or (202)225-3725.

Sincerely,



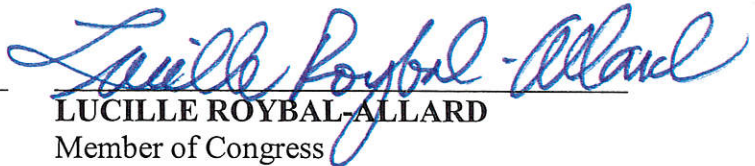
**ROBERT C. "BOBBY" SCOTT**  
Ranking Member  
Committee on Education and the Workforce



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



**ROSA L. DELAURO**  
Ranking Member  
Subcommittee on Labor, Health and Human  
Services, Education, and Related Agencies  
Committee on Appropriations



**LUCILLE ROYBAL-ALLARD**  
Member of Congress