



USDOL's Proposed Tip-Pooling Modification Sent To OMB

Insights

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By: The Editor

The U.S. Department of Labor has taken the next step toward rescinding the prior administration's 2011 regulatory position that an employer may not retain any of an employee's tips even if management:

- ◆ Takes no tip-credit under the federal Fair Labor Standards Act's Section 3(m), and
- ◆ Instead pays the employee not less than the full FLSA minimum wage in direct wages (plus any FLSA overtime compensation due).

The federal Office of Management and Budget reports that USDOL has now submitted a proposed rule in this respect for OMB's review. Neither OMB nor USDOL has elaborated upon what this proposal actually says.

There has been no announcement of how long OMB's evaluation will take, but the agency is normally expected to complete an assessment within no more than 90 days. If OMB approves the submission for publication, then history suggests that USDOL probably will release the proposal for a public-comment period of 60 days.

Keep in mind that, for now, USDOL has not yet revised the regulation or withdrawn any part of it.