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Daniel Navarrete  
Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division,  
U.S. Department of Labor  
Room S-3502  
200 Constitution Avenue NW  
Washington, D.C. 20210

## **RE: Application of the Fair Labor Standards Act to Domestic Service (RIN 1235-AA51)**

Thank you for the opportunity to submit comments on the proposed rule, Application of the Fair Labor Standards Act to Domestic Service. CLASP is a national, nonpartisan, nonprofit advancing antipoverty solutions that remove barriers blocking people from economic security and opportunity. We work at both the federal and state levels to develop and implement policies that reduce poverty, improve the lives of people with low incomes, and create pathways to economic security for everyone. This includes the 2.9 million home care workers across the country who would be negatively impacted by the proposed rule.<sup>1</sup> CLASP opposes the deregulation of the domestic service workforce and instead supports preserving the 2013 regulation that protects minimum wage and overtime protections.

### **Contextualizing the Care Economy**

The 2013 regulation that guaranteed minimum wage and overtime pay for home care workers was a hard-fought battle to include such workers in the bare minimum protections afforded by the Fair Labor Standards Act (FLSA) of 1938. The initial exclusion of home care workers from the FLSA was no accident. Rather, Black labor was consciously devalued by a post-slavery society, and carving out traditional forms of Black employment was a way to ensure continued devaluation. During slavery, Black workers took on the most difficult and time-consuming forms of labor like cooking, cleaning, farm work, raising children, and manual labor, which in turn allowed white slave-owners and their families to live and thrive. After slavery, Black workers— and especially Black women – could only find similar types of work, performing typical care duties like cooking, cleaning, and caretaking – things we now consider as part of the “care economy.”<sup>2</sup> And so Black labor was still devalued with Black workers segregated into industries with low wages, minimal benefits, and due to the FLSA carveouts, virtually no labor

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<sup>1</sup> PHI, “Direct Care Workers in the United States: Key Facts 2024,” 2024, <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>.

<sup>2</sup> Nina Banks, “Black Women’s Labor Market History Reveals Deep-Seated Race and Gender Discrimination,” Economic Policy Institute, 2019, <https://www.epi.org/blog/black-womens-labor-market-historyreveals-deep-seated-race-and-gender-discrimination/>.

protections.<sup>3</sup>

The 2013 inclusion of domestic workers into FLSA protections was a necessary step but did not undo a century of occupational segregation. Home care workers still suffer by design. Nearly one-quarter of home care workers live below the federal poverty line, with nearly three in five workers receiving public assistance.<sup>4</sup> Nationally, the average domestic worker makes only \$20,926 per year.<sup>5</sup>

Just as during slavery, home care workers face persistently poor job quality, even as the services they provide allow the rest of the economy to function and thrive. Despite an increasing demand for care work as one of the fastest-growing sectors of our economy, wages have stagnated for the past decade.<sup>6</sup>

### **The Proposed Rule Will Exacerbate the Current Care Crisis**

The care economy is in crisis – one that affects both those who provide care and those who receive it. Because the care economy itself was built upon untenable working conditions, the proposed rule threatens to push an already precarious system well past its breaking point.

Demand for home care is higher than ever and rapidly growing. There are currently over 9.8 million older adults and people with disabilities in need of home care, with the age of adults 85 and older tripling by 2060.<sup>7</sup> As most adults prefer to age at home, demand for home care will increase. Even prior to the aging of baby boomers, the home care workforce doubled between 2010 and 2020; increased demand is expected to create 738,100 new jobs by 2032.<sup>8</sup>

While demand for high-quality, dignified care is clear, the proposed rule threatens to manufacture its own supply crisis. Home care jobs, as described above, already face an issue of job quality. Poverty wages, emotional and physical demand, and a lack of benefits already cause high turnover within the care industry.<sup>9</sup> A race to the bottom in the private care industry further exacerbates these issues for home care workers: as private long-term care facilities capitalize on a lack of federal regulation to cut costs and increase profits, private industry's gutted wages lower the floor for home care workers as well.<sup>10</sup> As the home care industry faces competition from other low-wage industries that offer slightly better pay, hours, and less emotional labor, this rule risks further increasing the incentives for homecare

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<sup>3</sup> Linda Burnham and Nik Theodore, "Home Economics: The Invisible and Unregulated World of Domestic Work," National Domestic Workers Alliance, 2012, <https://www.domesticworkers.org/reports-and-publications/home-economics-the-invisible-and-unregulated-world-of-domestic-work/>.

<sup>4</sup> Nancy Stedman, "Home Health Care Workforce Not Keeping Up with Community Needs," Penn Leonard Davis Institute of Health Economics, June 2023, <https://ldi.upenn.edu/our-work/research-updates/home-health-care-workforce-not-keeping-up-with-community-needs/>.

<sup>5</sup> Sebastian Martinez Hickey and Nina Mast, "Domestic workers' pay and working conditions in the South reflect racist, gendered notions of care," Economic Policy Institute, March 2025, <https://www.epi.org/publication/domestic-workers-pay-and-working-conditions-in-the-south-reflect-racist-gendered-notions-of-care-rooted-in-racism-and-economic-exploitation-spotlight/>.

<sup>6</sup> Amanda Krieder and Rachel Werner, "The Home Care Workforce Has Not Kept Pace with Growth in Home and Community-Based Services," *Health Affairs*, May 2023, <https://pubmed.ncbi.nlm.nih.gov/37075251/>.

<sup>7</sup> PHI, "Direct Care Workers."

<sup>8</sup> PHI, "Direct Care Workers"

<sup>9</sup> Courtney Roman, Clare Luz, et al., *Direct Care Workforce Policy and Action Guide*, Milbank Memorial Fund, May 2022, <https://www.milbank.org/publications/direct-care-workforce-policy-and-action-guide/>.

<sup>10</sup> "Competition and Regulation in the Care Industry," OECD Roundtables on Competition Policy Papers, No. 315, 2024, [https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/10/competition-and-regulation-in-the-care-industry\\_bd79002b/cef35d7c-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/10/competition-and-regulation-in-the-care-industry_bd79002b/cef35d7c-en.pdf).

workers to leave the industry, making the shortage on care even worse.<sup>11</sup>

Put into perspective with the nation's current economic instability, *all* working families suffer when home care workers suffer.<sup>12</sup> Only 37 percent of workers could cover an emergency \$400 dollar expense.<sup>13</sup> This financial insecurity is proven to lead to working families choosing to forego care when they need it: recent CLASP data showed that 8.3 million leaves were needed but not taken in the 37 states without paid family and medical leave laws.<sup>14</sup> Delaying care, whether for acute illness or chronic and long-term illness or disability, is shown to have compounding negative effects.<sup>15</sup> This means that even more working families will be in need of home care but simply unable to afford it, while the for-profit care industry continues to gut the quality of care working families can receive.

## Valuing Care Work Improves Life for Everyone

One solution to the care crisis is clear: valuing quality caregiving improves the lives of caregivers as well as those who receive care. For this reason, we urge you to preserve the current home care rule at minimum. For working families to truly be taken care of, the Department should *increase* both wages and enforcement of labor standards for home care workers.

The Department's cited Government Accountability Report suggested that home care workers' wages did not increase following implementation of the 2013 rule; experts argue that this lack of rising wages is due to a lack of enforcement on the part of the Department.<sup>16</sup> As previously stated, a lack of labor standards has created a race to the bottom for the industry. On top of this, the nature of home care work isolates care workers and makes it difficult for workers to learn about their rights, share information, and find resources to remedy labor disputes.<sup>17</sup> By prioritizing proper enforcement of the 2013 rule and strategically targeting bad-faith employers and agencies, the Department could see wages and job quality for home care workers rise. Rising wages would reduce turnover and lessen the home care shortage, allowing more working families to access the care they need.

But the 2013 rule is still a floor, not a ceiling. For working families to thrive when they need time to care for themselves or their loved ones, *care workers themselves need to thrive*. Focusing on creating high-quality care jobs through higher wages, strongly enforced labor standards, and partnering with community-based organizations to create standards boards where workers have a voice are all within the power of the Department. CLASP urges the Department of Labor to withdraw the proposed rule, resume and strengthen enforcement of the 2013 rule, and ensure care for all.

For further information, please contact Nat Baldino, Senior Policy Analyst, at [nbaldino@clasp.org](mailto:nbaldino@clasp.org).

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<sup>11</sup> Mary Kate Nelson, "Senior Care Workers Flee to McDonalds for Higher Pay," Home Health Care News, April 2016, <https://homehealthcarenews.com/2016/04/senior-care-workers-flee-to-mcdonalds-for-higher-pay/>.

<sup>12</sup> Ismael Cid-Martinez, Valerie Wilson, and Stevie Marin, "The last two recessions have hit low-income families of color hard," Economic Policy Institute, August 2025, <https://www.epi.org/publication/the-last-two-recessions-have-hit-low-income-families-of-color-hard-trumps-economic-agenda-will-expose-millions-to-even-more-pain-when-the-next-recession-strikes/>.

<sup>13</sup> "Survey of Household Economics and Decision-making," Federal Reserve, 2025, <https://www.federalreserve.gov/consumerscommunities/sheddataviz/unexpectedexpenses-table.html>.

<sup>14</sup> Emily Andrews, Sapna Mehta, and Jessica Milli, "Working People Need Access to Paid Leave," The Center for Law and Social Policy, September 2024, [https://www.clasp.org/wp-content/uploads/2024/09/2024.9.25\\_Need-for-Paid-Leave.pdf](https://www.clasp.org/wp-content/uploads/2024/09/2024.9.25_Need-for-Paid-Leave.pdf).

<sup>15</sup> Molly Weston Williamson, "Lack of Paid Leave Hurts Americans' Health," Center for American Progress, May 2024, <https://www.americanprogress.org/article/lack-of-paid-leave-hurts-americans-health/>.

<sup>16</sup> "Observations on the Effects of the Home Care Rule 18," United States Government Accountability Office, October 2020, <https://www.gao.gov/assets/gao-21-72.pdf>.

<sup>17</sup> Immigration Research Initiative, "Organizing and Policy Lessons from the National Domestic Workers Alliance," September 2022, <https://immresearch.org/publications/organizingdomesticworkers/>.