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To: Chief Evaluation Office
Subject: Comments of the Association of American Railroads

Attached please find the comments of the Association of American Railroads to the Department of Labor Regarding Family and Medical Leave Act Wave 4 Surveys, 81 Fed. Reg. 75161 (October 28, 2016), OMB Control Number 1205-0NEW.

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**BEFORE THE
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY**

Docket No. OMB 1205-0NEW

FAMILY AND MEDICAL LEAVE ACT WAVE 4 SURVEYS

**COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads (AAR) appreciates the opportunity to comment on the Department of Labor's ("DOL") proposed Wave 4 survey ("Survey") of employers and employees related to the Family and Medical Leave Act ("FMLA"), 81 Fed. Reg. 75161 (October 28, 2016). AAR is a non-profit trade association whose membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States, as well as passenger railroads that operate intercity passenger trains and provide commuter rail service.

Airlines4America ("A4A") submitted comments to DOL recommending changes to the Survey to take into account certain unique aspects of the airline industry. Since some of those circumstances apply equally to the railroad industry, AAR hereby supports the following recommendations included in the A4A comments:¹

- Employers should have the option to answer the Survey on a company-wide basis, rather than just referring to a single work location. As noted in the A4A comments, the Wave 3 survey required employers to respond for only a single location, but there is good reason to allow employers to respond on a company-wide basis. Railroad workers, like employees in the airline industry, frequently cross state lines, and railroads typically administer and track FMLA usage on a nationwide basis. Accordingly, where it is infeasible for employers (such as

¹ In its regulations, DOL recognizes that there are unique circumstances that apply to both the airline and railroad industry that warrant special FMLA rules. See, e.g., 29 CFR 825.205(a)(2) ("Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, ... the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement.").

railroads and airlines) to answer the Survey about a specific work location, employers should be permitted to respond on a company-wide basis.

- The Survey should allow employers to report general disciplinary action taken in connection with FMLA abuse and not be restricted to report only a single incident. In Question 43, the employer is asked to describe the disciplinary action "taken for the most recent case of FMLA misuse." A4A noted that airlines are large companies with thousands of workers, and that a response limited to an isolated or single incidence of employee abuse might provide a misleading picture. Large railroads similarly employ thousands of workers, and AAR shares A4A's concern that information about a single incident is not meaningful or useful. Therefore AAR joins A4A in recommending that the Survey be amended to include the option to report general disciplinary policies on FMLA abuse/fraud.
- Costs reported on the Survey related to FMLA usage should include all costs, including overtime and other costs triggered by FMLA usage. Question 49 requests information regarding costs that employers incur when employees take FMLA, including administrative costs and continuing benefits. A4A recommended that the list of possible costs be expanded to include mandatory overtime and other supplemental wages triggered by intermittent FMLA use, since most FMLA usage in the airline industry is on an intermittent basis. As A4A noted, when employees take incremental FMLA leave on short notice, air carriers often have to pay overtime and/or other extra pay to the replacement workers who are required to cover the trip or shift for the employee out on FMLA. The railroad industry is in the same position as airlines in this regard, and thus endorses this recommendation.

AAR appreciates this opportunity to comment on the Survey and urges DOL to accept these recommendations.

Respectfully submitted,

A handwritten signature in dark ink, reading "Janet L. Bartelmay". The signature is fluid and cursive, with the first name "Janet" and last name "Bartelmay" clearly legible.

Janet L. Bartelmay
General Solicitor & Corporate Secretary
Association of American Railroads