DAMAGING REPERCUSSIONS: DOL'S OVERTIME RULE, SMALL EMPLOYERS, AND THEIR EMPLOYEES

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DAMAGING REPERCUSSIONS: DOL'S OVERTIME RULE, SMALL EMPLOYERS, AND THEIR EMPLOYEES

THURSDAY, JUNE 23, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:14 a.m., in Room 2360, Rayburn House Office Building, Hon. Steve Chabot [Chairman of the Committee] presiding.

Present: Representatives Chabot, Luetkemeyer, Huelskamp, Radewagen, Hardy, Kelly, Davidson, and Velázquez.

Chairman CHABOT. The Committee will come to order. I want to thank everyone for being here today.

Last month the Department of Labor finalized the overtime rule which will affect millions of small employers all across this country. The Department of Labor has heralded this rule as a long overdue action that will provide tremendous benefits to workers. However, like so many of this Administration's policies, this one-size-fits-all will do, I believe, far more harm than good.

I have been meeting with small business owners, as Chairman of this Ccommittee, from all across the country. In fact, I just had a group of restaurant owners in my office right before this meeting, and I would like to share with you some of the things that they have told me.

They are only successful if they treat their employees well. Many give their employees the flexibility to leave work early and provide paid time off. They pay their employees as much as they can afford. When they can provide a bonus or a raise, they do. And when budgets are tight, many of the owners, the people who own these businesses, forgo paying themselves, so that each of their employees can take home a full paycheck.

Countless small employers, including small businesses, small nonprofits, and small local governments, do not have the profit margins or the budget flexibility to increase currently exempt workers' salaries to the new salary level.

The Department of Labor seems to think that employers will simply be able to raise prices or find extra money elsewhere. This just is not the case, particularly in rural parts of the country where the cost of living and wages are lower or for cash strapped technology startups that often pay lower based salaries, but provide equity in the companies as incentive to work there.

For many small employers, their only choice may be to shift workers from salaried positions to hourly status and require them to punch a time card. This means that many workers, particularly entry level managers, will have reduced flexibility, reduced paycheck certainty, and reduced benefits, as well as fewer opportunities for career advancement.

Numerous small employers weighed in on this proposal and told the Department of Labor that the unprecedented salary level increase would have very negative repercussions. They asked for a common sense rule that recognized that not all employers have the same resources or utilize the same compensation structures. Unfortunately their pleas fell on deaf ears.

I want to assure the small employers here today, and those tuning in from across this great country, that while the Department of Labor didn't listen to you, this Committee will. We are.

The December 1st compliance deadline is rapidly approaching. So today we want to hear how small employers are working to comply with these new requirements and what challenges that you are encountering.

We want to thank the witnesses, particularly those who have traveled from all across the country to be here today. And we are looking forward to hearing your testimony.

And I would now like to yield to the Ranking Member, Ms. Velázquez, for her opening statement.

Ms. VELÁZUEZ. Thank you, Mr. Chairman.

Overtime pay and the Fair Labor Standards Act are cornerstones of economic fairness in our society. For nearly 80 years overtime rules have ensured that millions of workers are justly compensated when they work longer than the traditional 40 hour workweek. Yet, more and more Americans are working longer hours than ever before.

Those employed full-time report working an average of 47 hours per week and nearly 40 percent report logging 50 hours or more. Preserving the right to overtime pay is particularly crucial at a time when lower and middle-income families' wages are stagnant. These changes in the broader economy landscape prompted the Department of Labor to examine whether the standards used to determine which employees are eligible for overtime no longer reflected economic realities. In fact, it has been estimated that just 11 percent of salaried workers qualified for overtime. This is a significant decrease compared to 40 years ago when two out of three workers received time and a half working overtime.

In May the Department of Labor published its final revision of the overtime rules. The new regulations will extend overtime pay to 4 million workers currently exempted and strengthen protections for 6 million white collar and 3 million blue collar salaried workers within the first year of its implementation. This is the government's most significant step to address income inequality in recent memory.

The new overtime requirements will bring a number of important benefits to working families and to our economy as a whole. Lower wage workers tend to quickly spend any additional earnings they make. This means that if workers start receiving additional pay, they will likely spend that money stimulating their local economies, in many cases supporting small businesses in their community.

Likewise, if businesses elect to hire more workers, rather than having employees work overtime, then there could be potential job creation, furthering economic opportunity. Despite these positive outcomes, we have heard concerns as to how these regulations will impact the small business community. Increasing the salary threshold and the number of workers eligible for overtime pay could augment compliance and labor costs, putting financial strain on small business owners. This fact is particularly true for small employers located in low wage regions and in industries that operate with low profit margins.

More concerning is that small businesses have commented that the high costs of this rule could lead to hourly cutbacks to employees or even salary adjustments. Such actions runs counter to the goals of this rule and could ultimately harm employees.

Now that the rules have been finalized, we in Congress can get a better understanding of their impact. All of us want to see workers treated fairly and it has become clear that the overtime rules were due for an update. However, it is critical that we understand the new rules' impact on small businesses. This hearing is intended to accomplish that.

I thank the witnesses for being here today. And look forward to your comments. I yield back, Mr. Chairman.

Chairman CHABOT. Thank you. The gentlelady yields back. And if Committee members have opening statements prepared, we ask that they submit them for the record.

And I would now like to take just a moment to review our rules here relative to timing. It is pretty simple. We operate by the 5 minute rule. Each of you gets 5 minutes to testify and each member gets to ask questions for 5 minutes. Sometimes we go into a second round, sometimes we don't, depending on time.

There is a lighting system to help you out. The green light starts out, it is on for 4 of the 5 minutes, the yellow light comes on for 1 minute to let you know you are kind of getting near the red light, which means you are supposed to conclude your testimony by then if at all possible. We will give you a little time in addition if you need it, but we would ask you not to abuse it and stay within it as closely as you can.

And now I would like to introduce our distinguished panel here today. We will begin with you, Mr. Robinson. Our first witness will be Adam Robinson, the cofounder and CEO of Hireology, a Chicago-based technology firm that was launched in 2010 to revolutionize the hiring process. In 2015 Mr. Robinson was added to the Chicago Tribune's Blue Network, a listing of Chicago's most influential entrepreneurs and innovators, and named a "Top 25 HR Industry Game Changer Under 40" by Workforce Magazine.

Under his leadership, Hireology has been recognized nationally by Entrepreneur magazine as a "Top Company Culture" and by Crain's Chicago Business as a "Best Places to Work" for both Millennials and Generation X. Mr. Robinson is testifying on behalf of the Job Creators Network today and we welcome you here.

Our next witness is the Honorable Jerrie Tipton. Ms. Tipton is the chairman of the Mineral County Board of Commissioners in

Nevada. Commissioner Tipton was elected to the Board in 2006 and also serves as Mineral County's representative on many associated boards, including the local Conservation District. She and her husband have a livestock operation and a business that supports exploration drilling in the region.

Commissioner Tipton is also an active member of the Nevada Association of Counties. Today she will be testifying on behalf of the National Association of Counties. And we welcome you here as well, as a former county commissioner myself we especially welcome you.

Our third witness is Mr. Albert—is it Macre?

Mr. MACRE. Macre

Chairman CHABOT.—Macre, who is testifying on behalf of the National Federation of Independent Business, NFIB. He is the owner of three small businesses, including a small payroll firm based in Steubenville, Ohio, called Payroll + Services, which has served 200 small to medium size businesses since 1994. Mr. Macre also—did I pronounce that right?

Mr. MACRE. Macre.

Chairman CHABOT. Macre—I have a mental block and it—Macre, sorry about that. Everybody is always mispronouncing my name so—Mr. Macre, also currently serves as an assistant professor of accountancy at the Franciscan University of Steubenville and lends his expertise to various boards and organizations such as the NFIB/Ohio Leadership Council and the Ohio Business Gateway Steering Committee.

He received a master of accountancy from Miami University in Ohio with an emphasis in financial accounting and taxation. A great university. The head of our Small Business Committee, a Miami graduate, my brother a Miami graduate, our son a Miami graduate so a great school.

Our fourth witness is Ms. Christine Walters. She is an attorney and the sole proprietor of FiveL Company in Westminster, Maryland, and will be testifying on behalf of the Society for Human Resource Management. Since 2002, Ms. Walters has provided full-time human resources and employment law consulting to small businesses and small nonprofits.

Prior to starting her firm, Ms. Walters worked nearly 10 years in human resource administration. She has also served as an adjunct faculty member of Johns Hopkins University and worked in a law firm, Saul Ewing L.L.P. Ms. Walters has received numerous nominations and awards for her work, including the small business of the year award by Baltimore Washington Corridor Chamber of Commerce in 2010. Congratulations for that and we welcome you here.

And I would now like to yield to the ranking member to introduce our fifth and final witness.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. It is my pleasure to welcome back Mr. Ross Eisenbrey, vice president of the Economic Policy Institute. Prior to joining EPI, he worked as a former commissioner of the U.S. Occupational Safety and Health Review Commission and as the policy director of the Occupational Safety and Health Administration. Welcome.

Chairman CHABOT. Mr. Robinson, you are recognized for 5 minutes.

STATEMENTS OF ADAM ROBINSON, CO-FOUNDER/CEO, HIREOLOGY, CHICAGO, IL, TESTIFYING ON BEHALF OF THE JOB CREATORS NETWORK; THE HONORABLE JERRIE TIPTON, COMMISSION CHAIR, MINERAL COUNTY, HAWTHORNE, NV, TESTIFYING ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES; ALBERT F. MACRE, GENERAL PARTNER, PAYROLL + SERVICES, STEUBENVILLE, OH, TESTIFYING ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS; CHRISTINE V. WALTERS, JD, MAS, SHRM-SCP, SPHR, SOLE PROPRIETOR, FIVEL COMPANY, WESTMINSTER, MD, TESTIFYING ON BEHALF OF THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT; AND ROSS EISENBREY, VICE PRESIDENT, ECONOMIC POLICY INSTITUTE, WASHINGTON, D.C.

STATEMENT OF ADAM ROBINSON

Mr. ROBINSON. Thank you, Chairman Chabot, Ranking Member Velázquez, and members of the committee for the opportunity to testify about the impact of the Department of Labor's new overtime rule. This rule requires employers to provide overtime pay to employees whose salary is less than $47,500, which is about double the existing threshold.

What I want to do in my time today is focus on how this rule will adversely affect technology startups and high growth small business owners like me and what that means for the people we employ. I am the CEO and co-founder of a human resources technology business called Hireology. We have streamlined and improved the hiring process to help companies eliminate bad hires and identify good ones.

We have also fielded hundreds of confused inquiries from our customers about how to comply with this rule. As a result, we have a unique perspective to speak about its impact. Like most Federal regulations, the overtime rule is a one-size-fits-all policy that doesn't distinguish among firm size, sector, location or comp structure. This means that companies that don't fit the Department of Labor's outdated model will disproportionately be hurt by the rule. Take the capital constrained technology startup sector that I work in for example. Employees at these companies trade long hours and lower pay for the opportunity to get amazing professional experience early in their careers and the potential for a significant financial windfall later on.

Are we exploiting these employees? Of course not. Those working at tech startups voluntarily recognize that their positions are high-risk, high-reward ventures and that they may have to go years with below market pay to get a big pay out in the end. Do we want to regulate these opportunities out of existence?

Looking back on when I started my company in 2010, I can tell you with 100 percent certainty that I would not have been able to hire my first employee had this rule been in place. My company now has 100 employees with median, median annual compensation that exceeds $70,000 a year, well above the U.S. average. How many “Hireology’s” won’t get started as a result of this rule, making that first employee unaffordable for the entrepreneur. Are fewer good paying jobs created and fewer businesses launched outcomes that this ruling is desiring? I don’t think so.

Sales professionals, the lifeblood of almost every company, also suffer from this rule because their commission-based compensation structure doesn’t align with the Department of Labor’s vision of the workplace. Consider what my company is facing, 40 of our 100 full-time salaried professionals are salespeople whose success, like with most sales positions, depends on persistence. That means working until the sale is made, whatever the hours. We pay new sales people a base salary of $40,000 a year. And those who hit their quota can earn $70,000 to $120,000 a year or more. This compensation structure is pretty typical in software startups and sales sectors because it allows employees to directly share in the profits they produce for the company.

However, the overtime rule forces us to choose between raising base salaries to the new exempt threshold or convert everyone on the sales team, about half my business, to an hourly rate, capping hours at 40 a week. Both alternatives are very unattractive. A 20 percent pay increase for new hires to put them above the threshold would hamstring our expansion plans, but capping hours at 40 a week would mean a loss of earning potential for all of our sales people, and add costly time tracking overhead to our bottom line. Both paths result in less opportunity and fewer middle class jobs.

To the extent that employers like me are forced to reclassify employees as hourly to avoid unexpected overtime costs, these high paying job opportunities will be reduced. Millions of Americans have entered the middle class by securing a salaried job when working their way up by working until the job gets done. That means sometimes during a busy season, a financial month-end, or when a coworker is out sick, working longer than 8 hours a day. In return these employees are rewarded with the flexibility, benefits, bonuses, status, and promotions that come with a salaried position. It is not exploitative. It is a key tenet of American work culture and startup culture.

Reduced middle class job opportunities as a result of this rule will be compounded in parts of country with lower standards of living. Companies in Chattanooga will have a much more difficult time complying with a $47,500 salary threshold than companies in Chicago. As a result, the rule will be another hurdle for smaller communities across the country that are still suffering from high unemployment and a lack of middle class job opportunities.

I urge you to pursue legislative solutions to undo the harm that will be inflicted by this overtime rule. At a time when the middle class in this country is already being squeezed, the tech sector, sales jobs, and middle management positions are a few areas that still provide relief. The overtime rule threatens to close those career pathways that have been paved by hard work.

Thank you for your time today, and I am happy to take any questions.

Chairman CHABOT. Thank you very much. Commissioner Tipton, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE JERRIE TIPTON

Ms. TIPTON. Thank you, Chairman Chabot. Is that right?

Chairman CHABOT. Chabot like rabbit, but yeah.

Ms. TIPTON. Chairman Chabot, Ranking Member Velázquez and members of the Committee, thank you for the opportunity to testify today on the impact of U.S. Department of Labor's overtime rule on entities including small governments.

My name is Jerrie Tipton, I serve as chair of the Mineral County Nevada Board of Commissioners, and today I am representing the National Association of Counties.

Mineral County has a population of 4,479. Our county employs 102 full-time salaried workers—no 102 full-time employees and has a median household income of the county of $38,664. Mr. Chairman and members of the Committee, as you continue to assess this new rule and the potential impact on small entities, including counties, I would like to highlight three observations.

First, America's 3,069 counties employ 3.6 million people and deliver public services to more than 300 million Americans. Because of our role as employers we are concerned that the new rule could have unintended consequences for counties, especially small and rural counties, hindering our ability to provide crucial services to the communities from transportation and health, to public safety and emergency services.

Almost 70 percent of counties are considered rural, with fewer than 50,000 residents. Together we employ over 410,000 full-time workers, and serve almost 40 million Americans. Most of us do not have the flexibility in our local budgets to pay the newly eligible employee overtime pay, especially as soon as December. Rural counties have been doing more with less, and without new revenue sources it is hard to see any alternative than to cut services that benefit the residents to pay for this rule.

Second, the new rule does not adequately address the wide variations in local labor markets across the country. Labor markets across the country vary dramatically in our counties. However, the DOL's overtime rule takes a one size fits all approach. Let me explain why this is a problem. In 34 of the 50 States, local government employees earned less than $46,000 a year, less than the new salary threshold. In 97 percent of the counties in the South Census Region, the average wages in local government are less than the new threshold. That is why DOL rule does not provide an accurate picture of the major differences in labor markets across the local communities.

Finally, the new rule will have broad consequences for taxpayers and county services. Many counties are still struggling to recover from the recession and may not have the resources to absorb sudden spikes in labor costs. According to the NACo's County Economies 2015 report, only 214 of those county economies have fully recovered to their pre-recession levels. In Mineral County the new rule would make 13 to 17 of our full-time, 102 full-time employees eligible for overtime pay.

The additional cost would be up to $45,000 a year for us. It might not seem like a lot but it poses quite a financial challenge since counties are limited in our ability to generate local revenue. In fact, more than 40 states limit the county's ability to collect sales tax and/or property tax and other fees. This leaves us with a difficult choice: Which critical local services do we cut to fund the rule?

Additionally, 62 percent of counties nationwide have considerable federal land within their boundaries. Federal lands are not subject to local property taxes, further reducing the local property tax base. Moreover, many counties have budget years that run from July 1st to June 30th, which means their budgets have already been approved for the coming fiscal year. In my county, we finalized our budget before the 1st of June and had it certified and approved by the State of Nevada. Since the DOL rule goes into effect in December, it doesn't take into account that our finances are already set through next July. It complicates our ability to comply with the rule in the short term. And furthermore, counties have limited human resource personnel and advisory staff.

While the DOL estimated the small entities may incur $100 to $600 in compliance costs, counties typically spend a higher amount of time and money on compliance because we have less staff capacity and in-house expertise. Many counties may need to hire outside consultants which is again costly.

Finally, comp time not a complete solution for counties. Where the DOL rule allows us to provide comp time this isn't realistic since we have such a small number of employees to start with. If one key employees uses comp time, I may not be able to carry out public services that protect the community. For example, we have one librarian who is now eligible for overtime pay. If she uses comp time, we would have to shut the library down and that would create a problem for some of the residents because the library is the key source for Internet access in a county with limited broadband service.

In conclusion, while we share the same goal of fair wages, we are concerned that the new rule will impose considerable burdens on the counties. We stand ready to work with Congress to help craft policies that are fair to workers and workable for county governments.

Thank for the opportunity to testify and I will be happy to take any questions.

Chairman CHABOT. Thank you very much. Mr. Macre, you are recognized for 5 minutes. And feel free to mispronounce my name if you so choose.

STATEMENT OF ALBERT F. MACRE

Mr. MACRE. Good morning, Chairman Chabot, Ranking Member Velázquez and members of committee. My name is Albert Macre. I am a CPA, and the owner of several small businesses located in eastern Ohio, one of which, Payroll + Services, is affected by the new Department of Labor overtime rules for salary exempt personnel. And I am pleased to be here on behalf of the National Federation of Independent Business to discuss these rules at today's hearing.

NFIB is the Nation's leading small business advocacy organization, representing 325,000 independent business owners located throughout the United States, 25,000 of which are located in my home state of Ohio and several who are here to support me in my testimony today.

As a small business owner with several salaried employees positioned between the current exempt overtime earnings threshold and that created by the DOL new rule, I now find myself standing with countless other small businesses forced to swallow more government medication prescribed before an accurate attempt at diagnosis has been completed.

NFIB believes that the rule will have a substantial negative impact on small businesses and their employees. Frankly, the 100 percent increase in the salary exempt threshold to $47,500 is too much too fast. To put the significance of this into perspective from the time the last is salary threshold was increased in 2004, the Consumer Price Index has only risen by 28 percent.

To make matters worse, the threshold will be automatically updated every 3 years. And while the rule does allow for the use of nondiscretionary bonuses and incentive payments to satisfy up to 10 percent of the standard salary level, the reality is that few administrative and lower level supervisory personnel receive such compensation.

NFIB estimates that the new rule will impact approximately 40 percent of small businesses, while the Department of Labor has said that the rule would affect over 4 million employees. Instead of increasing wages for certain employees as the DOL might project, the rule will force small business owners to take more control of employee hours and benefits to keep costs in check. These controls could ultimately result in employees taking home less money annually. And don't underestimate the impact on employee morale as affected employees are told that they must now punch a time clock for the first time in their careers.

In addition to these negative impacts, the implementation window is very short. This rule will become effective on December 1, 2016, just over 5 months from now. Given that many small businesses are still struggling with the implementation of the Affordable Care Act 5 years after enactment, this window of compliance barely seems cracked open.

From a personal perspective, this rule is likely to have negative consequences not only to my company but my employees as well. Payroll + opened in 1995 in response to my clients' desire to farm out payroll processing services to a local, low cost provider. We currently have three salaried employees earning above the current threshold and below the new amount. We operate on a 30 to 35 hour workweek for 8 months of the year but do incur substantial overtime during the four payroll tax months.

Our employees appreciate the certainty of their salary-based take home pay each period. They also appreciate the fact that they don't have to punch a time clock every day. And I estimate that the roughly 600 hours of overtime our employees work each year are offset by the less than 40 hour workweek the remainder of the year.

Unfortunately, the law doesn't allow me to bank the short weeks to offset the long weeks. In addition, we pay 100 percent of our employees' health insurance and have done so since we opened our doors.

Without getting into the analytical weeds, in order to keep employee take home pay consistent, we are contemplating a system of salary advances to be recovered during the overtime months. In order to keep our cash flow level, we are contemplating for the first time in 20 years requiring employees to bear a share of the cost of their health insurance benefits.

DOL's new overtime rule will have a significant, and in my belief, negative impact on employers and employees alike. In order for small businesses to avoid costly overtime pay, managers move from their salaried positions to hourly jobs will need to keep time cards and be prohibited from working overtime, including answering email from home. This will not only be a burden financially, but in terms of productivity, as managers and supervisors will only be allowed to work when permitted. From an employee perspective, the flexibility that so many had will become a thing of the past.

NFIB anticipates the changes will hit hardest those low- to mid-level managers. These managers currently make less than the proposed threshold but value workweek flexibility and benefits such as health insurance and employer provided pension benefits. Also fewer salaried managerial positions would signal to employees that there is little opportunity for growth at the company. These consequences will severely hamper opportunities in growth and development, not just for the small business but their employees as well. Unfortunately, neither can afford it.

Thank you for allowing me to share my thoughts with you and at the appropriate time I will answer questions.

Chairman CHABOT. Thank you very much. Ms. Walters you are recognized for 5 minutes.

STATEMENT OF CHRISTINE V. WALTERS

Ms. WALTERS. Thank you. Good morning, Chairman Chabot, Ranking Member Velázquez, and Committee members.

I am Christine Walters, sole proprietor of FiveL Company where I serve as an independent human resources and employment law consultant to numerous nonprofit and small business clients. Prior to that I worked as an in-house HR practitioner for 12 years in the nonprofit sector, including government contracting.

I appear before you today on behalf of the Society for Human Resource Management or SHRM.

I appreciate the opportunity to share a little bit about what this new overtime rule means for my clients, as well as SHRM's reaction to the final regulation.

In short, Mr. Chairman, while SHRM supports an increase to the salary threshold, we agree that the final overtime rule may be too far too fast. Small businesses and nonprofits in particular may be disproportionately impacted by the rule's dramatic and more than 100 percent increase to the salary threshold, and this threshold may escalate since the final rule includes an automatic update every 3 years.

Let me explain briefly how the rule may impact some of my clients, their employees, and the services that they provide. Let me start with the employees and how they may be impacted.

Under the final rule, newly nonexempt employees will likely face reduced workplace flexibility or I will call it work flex. Today, many employers provide exempt employees with work flex opportunities, such as, for example, the ability to leave work early next week, such as for a parent-teacher conference, in consideration of having worked extra hours this week, and to do that without using paid leave and without reducing their pay. In fact, employers are generally prohibited today by law from docking an exempt employee's pay for a partial-day absence.

And that is at the heart of exempt compensation. The salary is based on an understanding that an employee's work schedule regularly exceeds 40 hours a week and that employee is paid the same wages every week regardless of hours worked, whether it is 46 or 36.

However, employees classified as nonexempt cannot be granted the same flexibility that I just described. If they work in the private sector more than 40 hours this week, they must be paid overtime, and that cannot be offset by taking hours off from work next week. Thus I find most employers require nonexempt employees to use paid leave for any partial or full day absence. And if an employee has no paid leave remaining, then the absence from work may be without pay where that is permitted by state or local law.

It is clear to me and others that nonexempt employees do have fewer options and less flexibility to manage work-life needs than exempt employees.

And while the rule affects all employers, the rule will drastically impact the operations of small business and nonprofits who cannot simply raise the fee or price for the services they offer to offset those increased labor costs. They must find a way to raise additional funds, obtain an increase from public or private sector funding sources, all of which are limited.

For example, one of my clients provides rehabilitation services to a disadvantaged population of whom 85 percent currently meet the poverty threshold. This organization will not and really cannot transfer those increased labor costs to their low-income consumers. They have to face some unattractive alternatives. One might be reassigning the overtime duties that are currently performed in excess of 40 hours in a week to those employees who will remain exempt, and that is likely to adversely impact those coworkers' working relationships as well as the employer and employee relationship.

And the impact won't be just in the form of expenses, but also in the form of compliance. The Office of Advocacy of the U.S. Small Business Administration noted that increasing the salary level would add significant paperwork burdens on small entities, particularly businesses in low-wage regions and industries that operate with a low profit margin.

For example, employers also have to consider federal, state, and local laws and regulations that apply to nonexempt employees, including and not limited to dictating pay frequency, paid leave mandates, minimum wage, fair and predictive scheduling requirements, limits on mandatory overtime, on-call pay, travel pay, waiting pay, pay before and after a holiday, to name a few.

So for small businesses and nonprofits who often have a one-person HR manager/payroll manager, navigating all these complex rules can add an additional compliance burden that is overwhelming.

So with that, in closing, SHRM and employers across the country have serious concerns with the implementation of the final overtime rule at this time. We strongly support House Resolution 4773, Protecting Workplace Advancement and Opportunity Act. It simply seeks more time for further study on the economic impact of the rule and what it will have on employers for varying sizes, industry sectors, and locales. SHRM and its members look forward to working with Congress to improve this rule in a way that works for employers and employees.

I thank you and also welcome your questions.

Chairman CHABOT. Thank you very much.

Mr. Eisenbrey, you are recognized for 5 minutes.

STATEMENT OF ROSS EISENBREY

Mr. EISENBREY. Thank you, Mr. Chairman, Ranking Member, members of the Committee. I am Ross Eisenbrey with the Economic Policy Institute, a small nonprofit with one HR manager who somehow manages to have us comply with the law.

And we have looked at this, and the amount of time it takes to figure out what this rule does and comply with it is minuscule since what it says simply is, if you make less, if you pay your employee less than $47,476 a year, pay overtime. That is what the law does.

It makes it much easier to comply for nonprofits. We have talked to nonprofit managers who say that they have maybe even 100 employees at various nonprofits scattered across the country that they supply HR services to and it will make the job so much easier for them. They don't have to look at duties tests. They don't have to figure out whether somebody is an administrative employee or qualifies as a professional. They just know, if is less than $47,476, that is the end of the story.

The rule that the Department has issued increases the number of salaried workers who are entitled to overtime pay and does several important things. It will encourage employers to give raises. And the rulemaking record is full of employers and employer associations who did surveys and their members say they will raise their employees above the threshold. So there will be pay increases across the country as a result of this rule.

It will reduce the excessive number of hours worked by millions of others, giving them a better work-life balance. It will ensure that salaried employees get paid time and a half when they work more than 40 hours in a week. And it will cause employers to create more than 100,000 jobs, according to the National Retail Federation, in its sector alone. And Goldman Sachs affirms that view. This is a job-creating rule.

They make it clear, the rules make it clear that it doesn't matter whether you are salaried or hourly, blue collar or white collar or pink collar, you will be entitled to overtime pay if you make less than $913 a week. This provides clarify that will prevent litigation. It tells people their rights in a way they haven't known them before.

It is popular. The Gallup Poll found that 67 percent of the public supports making more employees eligible for overtime pay and only 14 percent oppose it.

It carries out the statutory intent of the Fair Labor Standards Act, and this is the Department's duty after all. The law says that everyone is entitled to overtime pay, essentially, except bona fide executives, bona fide professionals and administrators. There is no exception from the rule for salaried workers, white collar workers, supervisors, paraprofessionals, or, incidentally, sales employees. The exemption applies only to a narrow class of genuine professionals, genuine executives, and other highly paid employees whose independence and bargaining power make protection against overwork unnecessary.

Being called a manager and being paid a salary of $35,000 or $40,000 a year doesn't make you that kind of an executive. Dawn Huey, a woman I met who lives in Swartz Creek, Michigan, was a dollar store manager for almost 3 years. When she was hired, she had 28 years of retail experience and felt she had finally climbed up the ladder into the middle class. She was told she would work 44 hours a week at about a $35,000-a-year salary.

But the 44-hour weeks quickly stretched into 60 and 70 hours with no overtime compensation. She wasn't allowed to hire enough staff to do all the work, so she did it herself; 13-hour shifts from open to close became common. At one point, she went 4 straight weeks without a day off and usually worked holidays with no overtime compensation. The first 4 to 5 hours of every day she was the sole store employee, she worked the cash register, did inventory, stocked shelves, moved heavy boxes. She literally ran the store on the run and ended the day mopping floors from front to back.

You hear from some employers and lobbyists about flexibility that salaried workers have. Here is what Dawn said: "The idea that I had been hired with a flexible salary was a cruel joke." There were times her executive—her so-called executive salary—divided by her weekly hours was less than the minimum wage, and that was legal because exempt executives are exempt from the minimum wage too.

Her story is repeated all across America at major corporations and their small business franchises from Burger King, to Dunkin' Donuts, to Walgreens. The new rule will not completely eliminate that kind of abuse of overtime, but it will make it more costly, and therefore less likely.

This rule has great benefits for people like postdoctoral researchers who are paid $43,000 a year on average and work 55 hours or 60 hours a week. They will get salary increases at universities all across the country because it will be much cheaper for a university to pay them a more reasonable salary for their Ph.D. in science and their science research abilities than it will be to pay them the overtime that would otherwise be required.

The truth of the matter is that the rule will hardly make a dent in most employers' payrolls and profits. And I encourage you to look at the Department's rulemaking where table 30 shows that the impact on every industry group is less than one-tenth of 1 percent of payroll. Only transportation and utilities will experience costs as great as 1 percent of profits.

That is a tiny price to pay for a rule that will provide a better work-life balance for millions of Americans, that will improve health and productivity, reduce employee turnover, and put more money into the pockets of millions of middle class Americans.

Chairman CHABOT. Thank you very much.

We will now turn to ourselves and ask questions. I recognize myself for 5 minutes.

I had a number of questions I was going to ask but your testimony, Mr. Eisenbrey, I am going to shift direction. I think that perhaps all the concerns that I have heard from America's small businesses for months and months and months now, and perhaps the panel here today, our concerns must have been unfounded. This is a good rule that is going to benefit workers all over the United States apparently.

I would be happy to open it to the other witnesses. Do you want to tell the panel why you think that perhaps the point of view that you just heard testified to by Mr. Eisenbrey is incorrect or is he right?

Mr. Robinson.

Mr. ROBINSON. Thank you, Mr. Chairman.

I can comment pretty directly there. I mean saying it is so easy, all you have to do is pay overtime to people that make less than $47,500 a year is like telling me 5 years ago: The ACA is so easy, just buy everybody health insurance, no problem.

Chairman CHABOT. Yeah. And the ACA, for anybody who may be watching out there, is the Affordable Care Act, or some people refer to it as the un-Affordable Care Act or ObamaCare, that is what you are referring to.

Mr. ROBINSON. Correct. And we do provide and have always provided health care for our employees, but it makes the compliance so much harder.

And buried in table 30—and I haven't read that report—but buried in table 30 is Hireology and thousands of other technology startups. And I am telling you firsthand this is going to take our cost up 20 percent, not a tenth of a percent, 20 percent.

And, yes, we can do that, but what that means is we shift very, very scarce resources from one part of the business, where we can maximize our growth and create more opportunity, to complying with this rule and to hitting a salary threshold.

And the net effect for those employees that we bump base is we have to reduce their upside, because you cannot take up fixed cost and not reduce variable upside. There is just not enough money to do that.

Chairman CHABOT. Let me go ahead and ask another question. Commissioner Tipton, I will turn to you, if I can.

In your testimony, you explained that Mineral County, your county, doesn't have the flexibility within its budget to comply with the overtime rule by December 1, and that you don't see any alternative to cutting services. What type of services would you have to cut? And how would this affect the residents of your county that you represent?

Ms. TIPTON. Okay. Our budgets are set. The State of Nevada says this is when your budget cycle is. They are done.

For us, we can't raise revenue. Mineral County is 2 cents over the state cap already paying off a school bond debt. We had less than 1.5 percent of our land base has taxable infrastructure on it out of 3.4 percent private land and the rest of it is federal in one form or another. There is nothing to raise taxes on.

What it is going to mean is, in order to make this work, if we have to fall in compliance, and we are going to have to, we are either going to reduce, to start with, what is considered nonessential services like the library, the park and rec. And my offset to that is in that community, if I don't have something for those kids to do, I am going to have it them in JPO.

Chairman CHABOT. And JPO is?

Ms. TIPTON. Juvenile protection.

Chairman CHABOT. Thank you.

Let me shift over to Mr. Macre now, if I can.

Sir, could you give us some examples of employee perks and benefits that are likely to have to be reduced because of this new overtime rule.

Mr. MACRE. From our perspective, again, not only are we a small company, but we are a small payroll company that performs payroll services for other small companies. A lot of those businesses do provide pension benefits, 401(k) contributions, health insurance. There is not a finite number of dollars here. In Mr. Eisenbrey's testimony he said, if they make over $47,500 just pay them overtime. Well, hell, that is real easy, but where does this money come from?

We figured that that increase in overtime cost to our small, little company would entirely consume the revenue that is generated by 12 clients. So where do we just magically get this 8 to 10 percent increase in size to automatically cover this? So we are likely to have to for the first time, like I said, take health insurance dollars from these employees.

And the way I projected it, our take-home pays are actually going to decrease as a result of paying our employees more. The math is a little bit funky, but accountant math and economics math are a little bit funky at times. But we have determined that actually payroll, net pay, could decrease as a result of gross wages going up.

Chairman CHABOT. Thank you very much. My time has expired.

The Ranking Member is recognized, Ms. Velázquez of New York, for 5 minutes.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Eisenbrey, from 1979 to 2013 inflation-adjusted wages have grown 15 percent for the bottom 90 percent of income earners, while wages for the top 1 percent have grown 137 percent. I think that it is very clear that something has to be done. How will this rule accomplish that?

Mr. EISENBREY. It is a great question and it answers Mr. Macre's query, which is the money will have to come, as he says, from somewhere. Where it will come is from the owners of the businesses. There is no question about that. And if you are the owner of a business, you can not like that or you could be like Mitchell Kaplan at Kaplan Stahler in Las Angeles who said: I make a good income, and the law will change and I will pay my people more.

Executive salaries have increased in the United States so much faster than salaries at the bottom, the share of national income that goes to business owners has increased so much that we now have a trillion dollars less that is being paid to the labor force in the United States than we otherwise would have if we had the kind of equality that the Ranking Member mentioned.

Ms. VELÁZQUEZ. California has the highest state overtime standards and over the last 5 years has led the country in employment growth. Is what California did a model for the Nation?

Mr. EISENBREY. That is exactly right.

Ms. VELÁZQUEZ. And how do these findings compare to the testimony we have heard today?

Mr. EISENBREY. The fact of the matter is that employment growth depends on businesses having customers, and businesses have customers when working people are paid enough that they can go out and shop and buy things. California has been the leader in the overtime threshold at $41,500 and, as you say, its employment growth is much faster than the Nation as a whole. It is not proof, but it is a real indication that this kind of policy, putting more money into the pockets of the workers, is good for the economy overall.

I would just like to say that back in 1975, for example, and in the 1960s, we had a much higher threshold. Small businesses did not suffer then, they managed. I am old enough, maybe older than the rest of the people on the panel, to remember working back then when the threshold in today's dollars would have been $64,000.

So this is a much easier rule to adjust to than businesses had to adjust to in the past. They did it well then, they can do it today.

Ms. VELÁZQUEZ. Thank you.

As we all know, the cost of living and therefore wages drastically differ based upon the location of the business. And this one was one the most common concerns in comments filed, that the proposed changes do not account for the diverse economies across the country.

Why did DOL choose to go with a national minimum salary threshold instead of keying it to government data on regional cost-of-living differences?

Mr. EISENBREY. What the Department did was actually it did what some people will call one-size-fits-all, but the one size was fit to the poorest region in the country. They set the salary at the 40th percentile for salaries in the South, in the poorest of the four census regions. As I say, it is a very modest level. This is not an executive salary in New York and an executive salary in Boston. It has been set at the level for an executive salary in Chattanooga or in Tipton, Nevada.

Ms. VELÁZQUEZ. Small-business owners, and we heard them here, are warning that they may have to move currently salaried employees to hourly rates. This can be construed as a demotion by these workers and can impact their morale and even their fringe benefits. Is there a way for small businesses to avoid such changes under the final rule?

Mr. EISENBREY. Yes. If you look in the comments that were submitted for the record, there are numerous comments where employers say they will not do that, they will either reduce, just hold people to 40 hours a week. They don't have to change them to hourly. That is not the majority of the survey findings that I see in the record in the comments that were submitted.

There is nothing in the rule that says that you have to change someone from salaried to hourly. This Committee had a witness who made this claim back in the fall. She herself was already tracking the time of workers and giving them bonuses based on the extra time that they worked.

So there is nothing in the rule that dictates how an employer responds to this. There are a variety of different responses possible. I have talked to employees, incidentally, who have already in some cases been switched to receiving overtime. I am not sure whether they were salaried or hourly after the change. But they said: This doesn't feel like a demotion to me, I am happy getting the overtime.

Ms. VELÁZQUEZ. Thank you. I yield back.

Chairman CHABOT. The gentlelady's time has expired.

The gentleman from Missouri, Mr. Luetkemeyer, who is the vice chairman of the Committee, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman, and I appreciate the opportunity.

I think we need a little clarification here. I was listening to Mr. Eisenbrey's testimony, and he made the comment that we have 117,000 new workers that are going to be hired. Those, according to the study that he quoted, an Oxford Economics study that was commissioned by National Retail Foundation, those are part-time workers, by the way.

And those part-time workers are required to be hired because you are going to have to have somebody else to do the additional work that the people who have been working will not now be doing because you are not going to pay them overtime. It is cheaper to hire someone part-time than it is to pay them overtime. So it is a part-time worker.

Also, you made a comment with regard to 42 million new people that are going to be eligible for overtime. The same study indicates that three-quarters of those people right now don't get overtime. So you are only talking about 825,000 people. And the same study also indicates that they probably would get about 1 hour per work of overtime, which would be about $20 per week that they would increase.

In the meantime, the Regulatory Flexibility Act analysis by DOL itself indicates that there would be $3,265 of total compliance costs, including wages, which means that for $20 an hour for the employees it is going to cost the employer $3,265 for the individual. Plus, the employee is probably going to lose benefits, flexibility from the standpoint of health benefits, retirement benefits.

And, Mr. Macre, you deal with a lot of small businesses. Is that the experience that you see with what is going on, that people are going to have to hire part-time workers to make up the difference, cut back on benefits to be able to make the bottom line?

Because at the end of the day, as Mr. Eisenbrey made the comment a while ago, I don't think he understands there is only a finite number of dollars in each one of the pockets of the owners. You can only pay for so much increase in cost. You can't continue to pay to increase this otherwise your competition is going to eat you and you are going to go out of business.

Mr. MACRE. Well, again, where we are, we are in eastern Ohio, we are in that Appalachian area, we really can't raise fees. So it was pointed out that the money could come from the owners' pocket, and I would be happy to send you my K-1 from Payroll + Services. There is no money that goes into my pocket from that business. So it is going to come from the employee's pocket.

The business was never designed to generate immense amounts of profits. It was designed to generate a service and actually to employ people. That is probably an anomaly in the business world, but that is the way it was set up.

So I don't it know what option we have other than to reduce costs, because, again, the increasing revenue option is probably off the table.

Mr. LUETKEMEYER. Commissioner Tipton, you are in a unique situation where you can't go out and price your product. You are delivering services with a finite number of tax dollars. How do you anticipate trying to do this? Are you going to wind up having more part-time workers, are you going to reduce the benefits, health insurance, retirement benefits for the employees? I mean, how are you going to make the same number of dollars stretch to comply with the rules?

Ms. TIPTON. Yes, sir. I am not the king of the world, and so this is something that we have been having conversations on at the board level. Our options are right now Mineral County pays 100 percent of the employee benefits and at least half of their retirement right now. We are either going to have to say, okay, boys if we have to do this, then those of you we are doing this for, you are going to have to pay part of your benefits. And if it is sauce for the goose, is it also sauce for the gander, see? So do we make everybody pay part of their benefits?

I look for us to reclassify some of those individuals and take them out of a salary exempt to an hourly exempt, and what business does not get done does not get done. We can't afford to hire part-time people, not even school-to-career people 19 hours a week to pick up the slack. We don't have the revenue, sir.

Mr. LUETKEMEYER. Mr. Robinson, what kind of a problem do you have with employee morale when you have to reclassify somebody down to an hourly worker? Even though they are making the same amount of money, now they lose benefits, lose retirement, even though they are doing the same job, but they are being viewed as an hourly worker.

How does that work with employee morale? And if you do wind up paying benefits, how is that going to affect the rest of the employees who don't get the benefits?

Mr. ROBINSON. Well, it is going to have an impact. And I invited my whole company to tune in and listen to this, and we are going to have a talk about it when we get back to Chicago and explain why we are having to take these actions.

We offer our employees unlimited time off. We don't track time off. People need to take time, they get the job done, they can take 2 weeks, they can take 3 weeks if they want, with permission to do that. They can take as much or as little as they want. They can work from home 100 percent. They can come in the office 100 percent of the time. They can do whatever they want. We don't track any of that.

Let me state for the record, our goal, we would love to see wages lifted as well. We share that goal. You do that by attacking opportunity and growing it, right, and employing people, that is how you do that.

And I would invite Mr. Eisenbrey to come in and tell my sales force that they are not a bona fide professional. These folks went to school, it is 100 percent college degree, most of them are carrying huge student loan payments. They have invested in themselves to get ahead.

And imagine me walking back in there and saying: Hey, guys, here is your new time clock. We are going to punch it. And I know you are really striving to make that extra money, but you can't over 40 hours a week. And you can't work from home anymore unless we put this time-tracking app on your phone. And by the way, don't respond to customer inquiries after 5 o'clock, they are just going to have to wait till tomorrow.

And so this cascades and impacts our ability to compete against big players. All we can do is work harder to earn that business. I am concerned at every level of how we have built this company that we are negatively impacted.

Mr. LUETKEMEYER. Thank you. I yield back. Thank you, Mr. Chairman.

Chairman CHABOT. The gentleman yields back.

The gentleman from Nevada, who is the chairman of the Subcommittee on Investigations, Oversight and Regulations, Mr. Hardy, is recognized for 5 minutes.

Mr. HARDY. Thank you, Mr. Chabot, for holding this hearing. I think it is highly important.

Mr. Eisenbrey talks about these groups with the realtor folks being on board with this situation. I have heard nothing but negative in my office from everybody that I have talked to, whether it is NFIB or the real estate folks. So I guess I am getting a little bit different data than maybe you are getting.

Mr. Eisenbrey, have you ever been an employer? Have you ever had your own business?

Mr. EISENBREY. I am an employer now.

Mr. HARDY. Have you had your own business?

Mr. EISENBREY. I am the vice president of a 40-person nonprofit.

Mr. HARDY. So you consider that——

Mr. EISENBREY. So I have to meet a payroll, yes, absolutely.

Mr. HARDY. Okay. Interesting.

With the comments that have been made here, you know, we have had a letter that has gone out, myself and Mr. Knight, we joined together, over 100 Congressmen signed on to it, bipartisan letter. This has been one of the most disturbing rules for the business sector that I ever listened to, even with the state legislature. We do things that more directly impact. But this across-the-board legislation, and in my district every county is going to get hit by this. Even the Las Vegas area is going to get hit very hard by this.

So, Ms. Tipton, I would like you go in, you talked about you have 100 employees, tell me what kind of impact that is going to do overall. And maybe even dabble into—all of you would like to maybe dabble into what is going to maybe happen to the hiring process. We have talked about the impact on those that are employed. What happens to the future of the hiring process?

So, Ms. Tipton, I will give you first.

Ms. TIPTON. Thank you.

For Mineral County, depending on how the board determines we are going to handle this, we may not hire anybody. That is the bottom line. We have a finite amount of resources.

If I had an ask of this commission, see if Congress can't step back and look at this from a more commonsense standpoint maybe. Look at a sliding scale. $28,000 dollars is ridiculous, and we all know that, even in Mineral County, that is one of the poorest of the poor.

But look at this from a different—what is your population base? And when you are talking regional, if you throw Intermountain West into the Pacific Rim, the rural Intermountain West falls off the board. It doesn't even get looked at. You throw 15 counties in Nevada in with the two urban counties in Nevada, it doesn't get addressed.

What is your public to private land? All of you back here, you have private land that you have taxes on, and every square inch of your land back here produces. Ours doesn't and it can't because of the nature of the beast.

What is it going to do to us, Congressman? We won't hire. We will not increase hiring. We can't. We can't afford to.

Mr. HARDY. Anybody else care to address that?

Ms. WALTERS. I would share one thought and that is the challenge in the recruiting process. I think in 1938, when the FLSA was enacted, America had a very different economy. We were strong in manufacturing. An employer would have the same job with lots of employees working in the same job, so that if those employees were cut to 40 hours, creating those part-time jobs would be—could be full-time employees, easier to recruit.

Today, for example, one company I know, they have 38 employees. They have 32 different job titles. So when it comes to reclassifying some of those employees who are exempt today to nonexempt, and then trying to recruit a part-time worker, to work those hours over 40 at straight time, it is going to be incredibly challenging, I think, to find someone who was qualified and interested in working.

And Ranking Member Velázquez, I think you said today the average may be 47 hours a week and working 7 hours overtime a week. And so the ability to merge those extra hours into a full-time job is just not feasible because they are all different jobs. So I think that is a challenge that is on the table as well.

Mr. HARDY. You know, the issues that we have also heard about is the education system, whether it be at the higher ed or the K through 12 situation with certain counties and areas and how that overtime ruling will impact our university system, and the individuals coming out of those higher ed programs. A lot of schools pride themselves in how they place their graduates and the opportunity they have for the students.

Do any of you hire from the university systems, and is that going to impact their opportunity to maybe enter into a job in the future?

Chairman CHABOT. And the gentleman's time is expired, but you can answer the question if you like. Ms. Walters.

Ms. WALTERS. Thank you. One academic client I have, they are estimating the biggest impact to them will be for their coaches and their academic counselors. The coaches operate very, very independently now. They coach evenings, weekends, flexible hours, do not track time. Currently, they are properly classified as exempt, based on the salary increase they may, need to be reclassified as nonexempt. So that is a big philosophical change, you know—the issue of what I hear—a common response from employees is a trust issue. What are you telling me? Why do I have to track my time today and I didn't yesterday? Is it because you no longer believe I am really working, I am really producing?

Also for the admissions counselors, folks who, again, have come out of school, many have a certification. They belong to a professional, a national association. They travel, they go to college fairs. You know, they are the representative of the university or the college. Converting them to nonexempt I think, again, is going to be this philosophical, employee/employer relations challenge of, I don't understand.

So it is, I think, starting the dialogue with why we are changing and then what the strategy is. And I think the beauty of part of this dialogue is, as I don't disagree with some of what Mr. Eisenbrey has shared, what I would reverse is I think, yes, the analysis becomes easier. If you make less than $913 a week, you need to be reclassified as nonexempt, but I don't think that is the end. I think that is the very beginning.

And what I am hearing employers say is, okay, now what do I do and how do I do it? For example, I have heard at least seven different options how employers may respond to the new regulations. Four of those seven would not result in the employee receiving any more compensation than they do today. Three would. And so employers are trying to figure out which option is going to work for them, what the fiscal impact will be to their company, and what the relationship impact will be to their employees.

So it is just a lot of dialogue, and I think we are asking for time to just, you know, have the economic study, figure out what the impact is, and then move forward in a way that is going to work really well for the employees and the employers.

Chairman CHABOT. The gentleman's time has expired.

The gentleman from Ohio, Mr. Davidson, who is a relatively new addition to this Committee—and for those who may not know replaced Speaker Boehner in the House—is recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Mr. Chairman.

Guests, thank you for coming here and thanks for your testimony.

The past 15 years I have spent growing small manufacturing companies. I had very little background with politics other than as a news junkie and decided to run for office, so pretty recently here from the small business world. Our businesses in Ohio have about

200 employees and will have some firsthand experience from it, but I have enjoyed some roundtable feedback.

And I will say, Mr. Eisenbrey, your perspective seems out of touch with the folks in the Eighth District of Ohio. We cannot create a bigger middle class simply by decreeing it from Washington any better than it has been decreed from any throne anywhere in the world. It is ignorant of history, economics, and math.

And as an example, California was well below the threshold at 41. Do you know the median annual income in California?

Mr. EISENBREY. Not offhand, no.

Mr. DAVIDSON. It is $67,458 in 2014. That was number three.

Mr. EISENBREY. That is not true. That could be a family income. That is not an individual income.

Mr. DAVIDSON. And in the State of Ohio it is $45,000, which is down at number 35. So the idea that there could be some national edict, that is going to set a standard, is entirely market distorting. And when your solution, which is in line with the Administration's solution, is we will just confiscate it from the owners, is also ignorant.

Commissioner Tipton, thanks for your testimony. Who are the owners of your county that this would be confiscated as from?

Ms. TIPTON. Sir, it is my taxpayers whose median annual income is $38,000, per household.

Mr. DAVIDSON. Thank you.

Ms. TIPTON. Twenty-five percent of my county lives at or below the poverty level. Twenty-four percent of my county is 65 or older. Those are the constituents that it would impact.

Mr. DAVIDSON. Very similar for some of our counties in the Eighth District of Ohio. We have some great universities in the Eighth District of Ohio, and our country is blessed with some great educational solutions, not just higher education but skilled trades.

And who are the owners there? The bill payers are students. Students are the ones that are going to pick up this tab, and, you know, last I checked, students are really dealing with a way to pay for that tuition. So your solution is to give these researchers, who are benefiting from better tuition and degrees, bigger wages, which are really financed by student loans. Students, young people, 18 to 25 years old, generally are going to pay these wages, okay. And they have been decreed with very little input. So there is not a universal class warfare confiscation scheme that is going to work.

I think that the other thing that, Mr. Robinson, you touched on, and from SHRM, we have been members for a long time, so thanks for your work in the field of HR. One of the things that really this rule also seems very ignorant of is the changing culture. So you alluded to it with manufacturing and kind of the stereotypical things. And Mr. Robinson, you also alluded to it with the way people work. They are sending emails. FIB, also very active, small businesses in the State of Ohio in the west just as in east.

So if you guys could comment on the impact of culture and just, you know—I don't know how many people came to the room without some version of a smart phone. How does this rule affect the ability to do work in today's economy?

Ms. WALTERS. Thank you for the question. One thing I would share is, back to kind of whether this is the beginning or the end, the next thing that will be, or we understand will be happening, the Department of Labor has already published in its regulatory agenda, that it will be publishing an RFI, a request for information, seeking feedback from employees and employers about how they are tracking the time that nonexempt employees use electronic devices.

So that is on the radar. We add to that population, our exempt employees today who will be converted to nonexempt so in the little, small litany of pay practices where we have to be cognizant of how we pay, when we pay, and for what we pay our nonexempt employees, we need to be cognizant of that as well. So there is just a whole lot in the mix, I think.

Mr. DAVIDSON. Thank you for that.

I just have one other thing. You talk about that and just to where this will lead us, well, just install an app for that. And that will be yet another encroachment into people's Fourth Amendment privacy rights. So we have all here sworn to support and defend the Constitution, and we continue to see people who have sworn that oath trample it. So thanks for any other feedback you guys can give.

Chairman CHABOT. Thank you very much. The gentleman's time has expired.

The gentleman from Mississippi, Mr. Kelly, is recognized for 5 minutes.

Mr. KELLY. Thank you, Chairman, for holding this hearing today.

And thank you, witnesses, for being here.

You know, it is so frustrating to me to hear people who have no idea what is going on. And Mr. Eisenbrey talks about he is a private employer, and he is a small business owner, but Mr. Robinson, Mr. Macre, and Mr. Eisenbrey's testimony states Economic Policy Institute is both a nonprofit and a small business entity.

For the record, I would like to share just a few facts with you about the Economic Policy Institute that I learned from its Website. From 2010 to 2014, EPI received 27 percent of its funding from unions and 57 percent from foundations. The chairman of EPI's board is none other than Mr. Trumka, the chairman of the AFL-CIO. So from my perspective, EPI has absolutely nothing in common with the other small businesses that we have here.

Mr. Robinson or Mr. Macre, does 80 percent of your funding come from unions or foundations, or does it come from you?

Mr. ROBINSON. Our revenue comes from our customers that we have to deliver a service to that adds value. So no, no, sir.

Mr. KELLY. And I wish that everything was cherry blossoms and rainbows. I wish everybody could have all the money that they want regardless of where they are from or what job they do. I wish we all made equal amounts. I wish I had a lot more money than I do. However, that is just not going to happen, and you can't take it from owners who don't have it.

Having owned a small business, a law firm, a private practice law firm, where I did write the checks, and the money came from me, not some outside foundation, from the clients that I represented, I think it is important to understand that it is not going to create 100,000 jobs. I don't care what the statistics say. And if it does create jobs, those jobs are going to be part-time.

I also worked as a city prosecutor in a county government for a long time. Most of the salaried employees made less than this amount in Mississippi, which is very, very rural. But that is a good living there. You understand this, that what happens is people just go home or you don't—you have a hiring freeze, you don't rehire because personnel is the largest cost of a local government.

And you understand that, Commissioner. Can you comment just a little bit about the difference between a part time and the benefits they receive versus a full-time employee that they receive from the county or city?

Ms. TIPTON. Yes, sir. Thank you for the question. In Mineral County, a part-time employee is 19 hours a week. They cannot work any more than that. State won't allow that or then you have to pay retirement on them. They get workman's comp, that is what they get. A full-time employee, we pay 100 percent of their benefits. Last year it was probably $500 a week per an employee.

And my next worry is, it has gone up, of course, because healthcare has. Mineral County, Nevada, some of my employees, the day may come, in the not too distant future, where they are paying taxes on their healthcare. And that is going to be interesting too.

Yeah, and that is it. From a part-timer they get workman's comp, that is what they get, and Social Security, period.

Mr. KELLY. And I also take exception to professionals. And again, I think there is just—you know, even within my district, it is 22 counties. I have one county that has 167,000 people in it. I have one county that has 8,000 people in it. So to compare those incomes in those counties is not—so I understand exactly what you are saying.

And when you throw in Atlanta, Georgia, with Calhoun City, Mississippi, or Vardaman, Mississippi, those are not equal and you can't compare statistics about what salaries are based on those. Would you agree with that?

Ms. TIPTON. Oh, definitely. The community I live closest to is a population of 200. The next community is 32. The largest town—no incorporated cities in Mineral County—the largest town is about 3,000. About 900 of my county residents live on the Walker River reservation. We—yeah, that is my residence.

Mr. KELLY. Thank you.

And the final point I will say is, I worked for the government as a district attorney, and so I hired people.

Most of my investigators that worked for me—which are long-time law enforcement officers who are stepping up in a job and it paid at or less than what the salaried amount is now, which is a great limit—I had ADAs, assistant district attorneys who were coming out of law school, and I could not pay them $49,000, $50,000 a year because it was not within my budget.

But the experience and the trial experience and the mentorships and the things those people got, but what would have happened if they would have said you have to pay them this or pay them over-time, I would just not have hired someone. I would have had less assistant district attorneys and less opportunities. Can any of you comment on that?

Chairman CHABOT. And the gentleman's time has expired, but you can comment.

Mr. ROBINSON. Well, sure, in brief, you take our—and not just us. Every startup who—technology startup creating the bulk of the high-paying jobs, in this country right now, if you take the wage base up 20 percent, you are eliminating one job every five hires. That is the math. It is simple. It is I can higher one fewer person in five. Now scale that across thousands of businesses like ours and you have the suppression on job growth which seems to me antithetical to the whole point of this exercise.

I mean, just let us—it is a labor market. People can go where they want. If we treat them poorly, they will leave. We compete for talent. It is not just the salary. It is equity and stock options and all the other tools we have to compete as an employer. This is a giant, blunt instrument that we now have one tool and it really doesn't help us differentiate and hire the people we need.

Chairman CHABOT. Anybody else need to comment?

Mr. EISENBREY. Mr. Chairman, could I just comment?

Chairman CHABOT. Go ahead.

Mr. EISENBREY. You know, the beauty of a one-size-fits-all rule that has been attacked here today is that every business is subject to the same rule, so that all of your competitors, will be subject to the same rule. And the notion that raising labor costs is somehow a bad thing leads us to having no minimum wage, which, you know, that would not be a good thing and the American people wouldn't support that.

That the notion that every time you raise labor costs you are somehow crimping business would—I think it is actually the biggest cause for the wage stagnation that we have had for the last 30 or 40 years, that that has been raised—it has sort of been deified and it leaves employees behind.

Mr. ROBINSON. If our ability to pay was the same as local corporations——

Mr. EISENBREY. Excuse me, I didn't interrupt anyone else, and I would like you not to interrupt me. Thank you.

I would just like to say that somehow we managed as a Nation from 1938 until the late 1970s with rules that set a higher threshold than we have now. Workers, as the ranking member said, we had a much higher——

Mr. KELLY. Mr. Chairman, I would like to claim back my time. He has gone over what the amount is.

Chairman CHABOT. It is the gentleman's time. I did want to give somebody else a chance to respond here, if that is okay with the gentleman. Mr. Robinson or——

Mr. ROBINSON. Well, my comment was just, bigger businesses have a much greater—and excuse me for the interruption—much greater impact to bear the cost than a small company like ours.

Oracle, you know, in many ways we compete against, multibillion dollar company, multibillion dollars in profit publicly traded. I compete for deals with those guys. I can't just take my cost up. I don't have it. One size does not fit all. I am this big; they are this big; there is a difference. That is the problem.

Chairman CHABOT. Okay, the gentleman's time has expired.

We want to thank all the witnesses for being here today and participating in this hearing.

From my perspective, as Chair, I would indicate, I believe that the overtime rule is going to do more harm than good and is likely to pose a considerable challenge for small businesses, especially those with thin margins, which is most small businesses, as well as, small nonprofits, and small governmental jurisdictions, as you, Commissioner Tipton, have indicated, with very tight budgets.

However, the most damaging repercussions are likely to be, I believe, the loss of employee morale as workers are shifted from salaried positions to hourly status. Benefits very well may be reduced, as the testimony was; flexible work options will be limited; and opportunities for career advancement may well be decreased.

My colleagues and I will continue, on both sides of the aisle, to work on legislative solutions that help America's small employers and their workers succeed and reverse the harmful effects caused by this new overtime rule.

I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

And without objection, so ordered. And if there is no further business to come before the Committee, we are adjourned. Thank you very much.

[Whereupon, at 11:37 a.m., the Committee was adjourned.]

APPENDIX

TESTIMONY
of
Adam Robinson
CEO and Co-Founder
Hireology

Member of the Job Creators Network

before the
Small Business Committee
U.S. House of Representatives

How The Department of Labor Overtime Rule Impacts
Technology Startups and High-Growth Small Businesses

June 23, 2016

Thank you Chairman Chabot and Ranking Member Velázquez and Members of the Committee for the opportunity to testify about the impact of the Department of Labor's new overtime rule. This rule requires employers to provide overtime pay to employees whose salary is less than $47,500, which is about double the existing threshold.

What I want to do in my time today is focus on how this rule will adversely affect technology startups and high-growth small business owners like me, and what that means for the people we employ.

I am the CEO and co-founder of a human resources technology business called Hireology. We have streamlined and improved the hiring process to help companies eliminate bad hires and identify good ones. We have also fielded hundreds of confused inquiries from our customers about how to comply with this rule. As a result we have a unique perspective to speak about its impact.

Like most federal regulations, the overtime rule is a one-size-fits-all policy that doesn't distinguish among firm size, sector, location, or compensation structure. This means that companies that don't fit the Department of Labor's outdated model will be disproportionately hurt by the rule.

Take the capital-constrained technology startup sector that I work in, for example. Employees at these companies trade long hours and lower pay for the opportunity to get amazing professional experience in their careers, and the potential for a significant financial windfall later on.

Are we exploiting our employees? Of course not. Those working at tech startups voluntarily recognize that their positions are high-risk, high-reward ventures, and that they may have to go years with below-market pay to get a big payout in the end. Do we want to regulate these opportunities out of existence?

Looking back on when I started my company in 2010, I can tell you with 100% certainty that I would have not been able to hire my first employee had this rule been in place. My company now has 100 employees with a median annual compensation that exceeds $70,000 a year—well above the US average. How many "Hireology's" won't get started as a result of this rule making that 1st employee unaffordable for an entrepreneur? Are fewer good-paying jobs created and fewer businesses launched the outcomes that are desired here?

Sales professionals—the lifeblood of almost every company—also suffer from this rule because their commission-based compensation structure doesn't align with the Department of Labor's vision of the workplace. Consider what my company is facing: Forty of our 100 full-time salaried professionals are salespeople, whose success—like with most sales positions—depends on persistence. That means working until the sale is made, whatever the hours.

We pay new salespeople a base salary of $40,000, and those who hit their quota can earn $70,000 to $120,000 a year. This compensation structure is typical in the technology and sales sectors because it allows employees to directly share in the profits they produce for the company.

However, the overtime rule forces us to choose between raising base salaries to the new exempt threshold or converting everyone on the sales team to an hourly rate, capping hours at 40 per week.

Both alternatives are unattractive. A 20 percent pay increase for new hires to put them above the threshold would hamstring our expansion plans. But, capping hours at 40 per week would mean a loss of earning potential for our salespeople, and add costly time tracking overhead to our bottom line. Both paths result in less opportunity and fewer middle-class jobs.

To the extent that employers like me are forced to reclassify employees as hourly to avoid unexpected overtime costs, these high-paying job opportunities will be reduced. Millions of Americans have entered the middle-class by securing a salaried job then working their way up by working until the job gets done.

That means sometimes—during a busy season, a financial month-end, or when a coworker is out sick—working longer than eight hours in a day. In return, these employees are rewarded with the flexibility, benefits, bonuses, status, and promotions that come with a salaried position. It's not exploitative. It's a key tenant of American work culture.

Reduced middle-class job opportunities as a result of this rule will be compounded in parts of the country with lower standards of living. Companies in Chattanooga will have a much more difficult time complying with a $47,500 salary threshold than companies in Chicago. As a result, the rule will be another hurdle for smaller communities across the country that are still suffering from high unemployment and a lack of middle-class job opportunities.

I urge you to pursue legislative solutions to undo the harm that will be inflicted by this overtime rule. At a time when the middle-class in this country is already being squeezed, the tech sector, sales jobs, and middle-management positions are a few areas that still provide relief. The over-time rule threatens to close those career pathways that have been paved by hard work.

Thank you for your time today. I'm happy to take any questions.

Written Statement for the Record

The Honorable Jerrie Tipton
Commission Chair, Mineral County, Nevada

On Behalf of the National Association of Counties

for the hearing

"Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees"

before the

Committee on Small Business
United States House of Representatives

June 23, 2016
Washington, D.C.

Chairman Chabot, Ranking Member Velázquez and members of the Committee, thank you for the opportunity to testify today on the Impact of the U.S. Department of Labor's (DOL) final overtime rule on small entities—including small county governments like mine. As an integral part of our federal-state-local intergovernmental system, county governments have a vested interest in labor market policies.

My name is Jerrie Tipton. I am the Chairman of the Mineral County, Nevada, Board of Commissioners and also serve in leadership positions with the Nevada Association of Counties and the National Association of Counties (NACo).

About the National Association of Counties (NACo)

Founded in 1935, NACo is the only national organization that represents county government in the United States and brings together county officials to advocate with a collective voice on national policy, exchange ideas and build new leadership skills, pursue transformational county solutions, enrich the public's understanding of county government and exercise exemplary leadership in public service.

About Mineral County

Counties are highly diverse, not only in my home state of Nevada but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic, public health and environmental responsibilities. Mineral County is located in western Nevada, approximately 300 miles north west of Las Vegas.

We have a population of 4,478 and a land area of just over 2.4 million acres—of which the majority is owned by the federal government. Of those 2.4 million acres, 1.6 million are managed by the U.S. Department of the Interior's Bureau of Land Management (BLM) and nearly 400,000 more acres are managed by the U.S. Forest Service (USFS).

To put that into perspective, the BLM and Forest Service together manage an area of our county more than two times the size of Rhode Island. All told, federal lands in Mineral County, including military reserves and land held in trust for Native American tribes, are as large as Rhode Island and Delaware combined.

Mineral County is the very definition of a small governmental entity and we are very concerned about the potential impact of the new overtime rule on our ability to fulfill our fundamental responsibilities—many of which are mandated by the state and federal government. We employ 102 full time employees to serve our 4,478 residents across this vast, rugged—and beautiful—landscape.

In addition to the county, there are 60 more establishments that serve as employers in our area—many of which will also be impacted by the final rule. The majority of these are small businesses and are essential to the continued vitality of our communities.

Mr. Chairman and members of the committee, as you continue to assess DOL's new overtime rule and the potential impact on employers—and especially small entities including local governments—we respectfully submit three observations for your consideration:

1. The nation's 3,069 counties, most with fewer than 500 employees, provide vital services to more than 300 million residents.

2. The new overtime rule does not adequately address the wide variations in local labor markets across the country.

3. The new rule will have broad consequences for taxpayers and county services.

First, the nation's 3,069 counties, most with fewer than 500 employees, provide vital services to more than 300 million residents.

County governments are an essential component of the federal-state-local intergovernmental system, and therefore we have a vested interest in wage and hour policies that are both fair and efficient for public employers and employees.

America's 3,069 counties administer public programs and deliver public services, often on behalf of states and the federal government. Counties employ over 3.6 million people to carry out this important work. Because of our role as employers, we are concerned that the new rule could have the unintended effect of placing additional strain on already limited county budgets throughout the country, hindering our ability to provide crucial services to our local communities.

The majority of counties, almost 70 percent, can be considered rural and have fewer than 50,000 residents and are therefore categorized as small governmental jurisdictions under the Regulatory Flexibility Act (RFA). The RFA defines small governmental jurisdictions as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 (RFA, 5 U.S.C. §§ 601-12).

Small rural counties are also major employers. These counties across the country employ over 410,000 full-time employees, who collectively serve almost 40 million Americans. Like Mineral County, these small counties often deliver services over expansive areas—some even larger than smaller states. Small counties in particular have raised concerns that the new overtime rule could adversely affect their county finances as well as their county employees' work hours and benefits.

As mentioned earlier, 70 percent of our nation's counties have fewer than 50,000 residents. Despite major variations in size and population, counties across the country must provide basic public services at the local level. These include maintaining the justice and public safety system, including police and fire protection, criminal justice, courts and jails; transportation and infrastructure, including road and bridge building and maintenance, airports and transit; health, including local public health departments, hospitals, clinics, nursing homes and mental health programs; and in this election year, counties are responsible for administering federal, state and local elections. We also serve as conveners for our communities, bringing local stakeholders together to engage with state and federal agencies on matters of local concern. Our ability to perform all these critical—and often mandated—local functions could be affected as we try to comply with the new rule.

Of Mineral County's 102 full-time employees, 13 to 17 of our county employees will eligible for overtime pay under the new rule. We simply do not have the flexibility within our local budget to pay the newly eligible employees overtime pay in compliance with the rule—especially as soon as December. Two factors limit our capacity to comply. First, we must maintain spending required under existing federal and state mandates. Second, we are constrained by limits on our ability to generate revenue imposed by the state of Nevada and by the fact that so much of our land is tax-exempt federal land. Like many other counties, the upcoming December 2016 implementation date puts our county in an even more difficult bind as we work to try to find where this extra revenue will come from. We have been "doing more with less" for so long that, absent new revenue sources, it is hard to see any alternative to cutting services.

Second, the new rule does not adequately address the wide variations in local labor markets across the country.

While it is encouraging that the rule attempted to take into account regional variations, using Census regions to determine the salary threshold is too broad and does not provide an accurate picture of the major differences in labor markets across local communities. The rule pegs the proposed salary level to the salary level of the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census region (now the South). The South Census Region includes Alabama, Arkansas, Delaware, the District of Columbia, Georgia, Florida, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia.

As is often the case with federal regulations, the new salary threshold will likely have an even greater impact on small and rural county governments. A nationwide uniform federal regulation does not, in this case, adequately take into account key measurable differences between small and rural communities and larger population centers. The new salary threshold is significantly above our Mineral County median household income of $38,664.

Consider local government average wages by state. Based on data from the Bureau of Labor Statistics, in 2015, the average annual wages paid by local governments nationally ranged from $62,482 in Hawaii to $32,911 in South Dakota. In 34 of the 50 states, local government employees earned less than $46,000—which is less than the new DOL salary threshold.

The situation is even more uneven at the local level. In 85 percent of counties, local governments do not meet the new salary threshold of $47,476. For example, in Decatur County, Kansas the current average wage in local government in $18,465. In 97 percent of counties in the South Census region, the region used by the new rule for pegging of the threshold, average wages in local government are less than the newly proposed threshold.

Mr. Chairman, in your state of Ohio, local governments pay on average $44,526 and in 94 percent of the counties in your state, local governments pay less than the newly proposed threshold. And Ranking Member Velázquez, in New York, almost three quarters of the counties (42 of 58) pay less than the newly proposed threshold. So as you can see, the new overtime rule will have a significant impact on the nation's counties—especially those with populations of 50,000 and below.

Because we are often unable to offer wages as high as in the private sector, local governments will often compete in the labor market by offering our employees great benefits. For example, counties provide extensive health coverage to their employees, dependents and retirees. An estimated 2.5 million county employees—out of 3.5 million full-time and part-time county workers—and nearly 2.4 million of their dependents were enrolled in health plans offered by county governments in 2014. Full-time employees are eligible for county health benefits in almost all counties and 80 percent of counties offer health coverage for all employee dependents.[1]

Finally, the new rule will have broad consequences for taxpayers and county services.

Many counties are still struggling to recover from the recession and may not have the resources to absorb sudden spikes in pay increases

First and most obvious, doubling the current salary threshold amount all at once will have harmful consequences on county budgets—and ultimately on county employees—particularly as we struggle to recover from the recession. According to NACo's *County Economies 2015* report, only 214 county economies have fully recovered by 2015 (based on four indicators—jobs, unemployment rates, economic output (GDP) and median home prices) to their pre-recession levels.[2]

Some counties have calculated the impact of the overtime pay change on their payroll costs and are expecting dramatic increases to payroll in the first year of implementation and beyond. For example, according to Berks County, Penn., 97 of the 419 county employees who are currently ineligible for overtime pay because of their salary levels would be newly eligible under the final rule. Berks County has estimated that the resulting additional financial burden could cost the county as much as $1.5 million in the first year alone.

In Mineral County, of our 102 employees, approximately 13-17 would now be newly eligible for overtime pay under the new law—

[1] Istrate, Emilia. County Health Benefits 2014, Washington, D.C.: National Association of Counties. Available at http://www.naco.org/sites/default/files/documents/County%20Health%20Benefits%20FINAL_06.30.2014.pdf

[2] Istrate, Emilia, Brian Knudsen. County Economies 2015: Opportunities and Challenges, Washington, D.C.: National Association of Counties. Available at http://www.naco.org/sites/default/files/documents/2016%20CET-report_01.08.pdf

and potentially cost an additional $25,000 to $45,000. This might not seem like a lot, but for our county, this poses quite a financial challenge.

Many counties do not have the financial flexibility or resources to absorb sudden spikes in pay increases without reducing current service levels, decreasing employee benefits and/or reducing our county employee work hours or staff.

In the final rule, DOL does not seem to have adequately analyzed the economic impact on small governmental jurisdictions as required by the RFA. In the section of the final rule titled "Projected Impacts to Affected Small Entities," DOL provides an analysis of the projected economic impact on small entities, including small local governments (pgs. 32, 536-32,541). In Table 42 (pg. 32,540) it estimates the total costs—directs costs and payroll increases—per establishment. For state and local government establishments, DOL estimates the total cost would be $9,264.[3] However, as I noted above, my county is projecting a total cost of $25,000 to $45,000, which is significantly higher than DOL's estimate.

Most counties' ability to raise new revenue is limited by states

Increasing taxes to pay for overtime increases is not often an option for counties, beyond the political difficulty of instituting additional taxes. In fact, 43 states impose some type of limitation on counties' ability to increase property taxes, including 38 states with statutory limitations on property tax rates, property tax assessments or both. There are not many other revenue solutions at counties' discretion. For example, only 12 states authorize counties to collect their own local gas taxes, which are limited to a maximum rate in most cases and often involve additional approvals for implementation.

Given these fiscal limitations, many counties may have to reduce the service levels for critical programs (public transportation and infrastructure, justice and public safety, public health, search and emergency rescue and 911 operations) and cut any non-mandated services such as critical support for economic development—to comply with the new rule.

Counties with federal land in their jurisdictions are even more limited in their ability to raise additional revenue to pay for the new overtime rule

Our ability to raise additional revenue to pay for the salary increases is not just impacted by the states—there is another complicating factor for many counties. Sixty-two percent of counties nationwide have federal land within their boundaries and in each case, those county governments provide important local services to federal public lands visitors and federal employees every day. However, once the federal government acquires land, it is removed from county tax rolls and no longer subject to local property taxes. The

[3] DOL Overtime Pay Rule; 81 Fed. Reg. 32540 (May 23, 2016) (to be codified at 29 C.F.R. Part 541)

loss of revenue greatly impacts local schools, roads, hospitals, fire and public safety services. In Mineral County, just 3.4 percent of our county is privately held and over half of the private land has no taxable infrastructure associated with it.

Although the federal government has traditionally provided some relief for this lost revenue through the Payments in Lieu of Taxes (PILT) program, PILT often reimburses at a rate well below the land's taxable value per acre. For example, Mineral County receives $0.36 cents per acre from the PILT program, far less than the $3.84 per acre we receive in local property taxes for similar land. In addition, in recent years the fate of the PILT program has been uncertain. The lack of long-term, predictable and full funding for the program has a significant impact on the budgets of public lands counties acres the nation.

<u>The budget process and timing for counties further complicates our ability to comply with the new rule</u>

Many counties have a budget deadlines of July 1, if not sooner. Because the final rule was announced on May 18, counties—including mine—hae very little time to conduct analysis and calculate the additional costs of the increased salary threshold and where these resources would come from. Our budget cycle is from July 1 to June 30 and for this year, we had to submit our budget, without accounting for the overtime rule, to the state by April 15.

In addition, some counties operate on a bi-annual budget, meaning some counties already have their finances accounted for in the coming fiscal year excluding the additional costs for the new rule. Furthermore, many counties, like Mineral County, must have their budgets approved or certified by the state. Once these budgets are approved, it is very difficult to change if the needs of the county shift.

<u>It can be more challenging for small and rural counties to ensure that we are in compliance with federal regulations, because we have limited human resources personnel, legal counsel and financial advisory staff</u>

DOL estimated that on average, an affected small "establishment" is expected to incur $100 to $600 in direct management costs, a one-hour burden for regulatory familiarization (reading and implementing the rule), a one-hour burden per each affected worker in adjustment costs, and a five-minutes burden per week scheduling and monitoring each affected worker.

However, we are concerned that these estimates may not reflect the actual experiences of small entities—as we typically spend a disproportionately higher amount of time and money on compliance because we have less capacity and staff expertise to work through the required changes under the new rule. Unfortunately, we may be forced to adjust by hiring outside consultants to help us comply with these new regulations, which can cost thousands of dollars. In Mineral County, we do not have the extra funding to hire an outside consultant.

The comp time option for compliance is not a complete solution

The final rule offered alternatives to state and local governments to help us comply with the new rule. One alternative that DOL offered was to allow public sector employers, including local governments, to satisfy their overtime obligation by providing comp time rather than cash overtime premiums. State and local government employers may continue to use comp time to satisfy their overtime obligations to employees who have not accrued the maximum number of comp time hours. However, in Mineral County, we have so few full-time employees, comp time is not a real option. In most of our county departments, for example, we have one employee fulfilling certain job duties and responsibilities. If that employee has to use comp time, we may not be able to carry out the public services that are need in order to have a functioning county government.

Additionally, comp time is not budget neutral and offering it to newly overtime eligible employees will have costs associated with it. In fact, for accounting purposes, overtime paid as comp time must be regarded the same as cash. While we appreciate DOL attempting to offer options for state and local governments, ultimately, the comp time option does not seem to provide enough flexibility to be very helpful for small counties confronting significant compliance challenges.

Conclusion

Chairman Chabot, Ranking Member Velázquez and members of the Committee, as we have explained, DOL's new overtime rule will impose considerable burdens on counties, especially small counties. We thank you once again for holding this important hearing and respectfully ask that you continue to consider the interests of America's 3,069 counties in this matter—not only as employers, but as your intergovernmental partners, **providing vital services to more than 300 million residents. Unfortunately, the new overtime rule does not adequately address the wide variations in local labor markets in counties across the country. And ultimately, please remember that the new rule will have broad consequences for taxpayers—and county services.**

NACo and our member counties stand ready to work with you to craft balanced policies that are fair to workers and workable for county governments and their residents.

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

NFIB
The Voice of Small Business®

Testimony of Albert Macre,
House Committee on Small Business
June 23, 2016
Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees

Good morning, Chairman Chabot, Ranking Member Velazquez, and members of the Committee. My name is Albert F. Macre. I am a Certified Public Accountant and the owner of several small businesses located in eastern Ohio, one of which—Payroll + Services—is affected by the new Department of Labor (DOL) overtime rule for salary exempt personnel. I am pleased to be here on behalf of the National Federation of Independent Business (NFIB) to discuss these rules at today's hearing.

NFIB is the nation's leading small business advocacy organization. Founded in 1943 as a nonprofit, nonpartisan organization, our mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 325,000 independent business workers located throughout the United States, 25,000 of which are located in my home state of Ohio.

As a small business owner with several salaried employees positioned between the current exempt overtime earnings threshold and that created by the Department of Labor's new rule, I now find myself standing with countless other small business owners forced to swallow more government "medication" prescribed before an accurate attempt at diagnosis has been completed.

NFIB believes that the rule will have a substantial negative impact on small businesses and their employees. Frankly, the 100% increase in the salary exempt threshold to $47,476 is too much, too fast. To put the significance of this increase in perspective, from the time that the last salary threshold was increased in 2004, the Consumer Price Index has risen by only 28%. To make matters worse, the threshold will be automatically updated every three years. And while the rule allows use nondiscretionary bonuses and incentive payments to satisfy up to 10 percent of the standard salary level, the reality is that few administrative and lower level supervisory personnel are the recipients of such compensation.

NFIB estimates that the new rule will impact approximately 40% of small businesses while the DOL has said the rule could affect over 4 million employees. Instead of increasing wages for certain employees, as the DOL might project, the rule will force small business owners to take more control of employee hours and benefits to keep costs in check. These controls could ultimately result in employees taking home less money annually. And don't underestimate the impact on employee morale as affected employees are told they must now punch a time clock for the first time in their careers.

In addition to these negative impacts, the implementation window is very short. This rule will become effective on December 1, 2016, just over five months from now. Given that many small businesses are still struggling with the implementation of the Affordable Care Act five years after the enactment, this window of compliance seems barely cracked open.

From a personal perspective, this rule is likely to have negative consequences—not only to my company, but to my employees as well.

Payroll+ opened in 1995 in response to my clients' desire to farm out payroll processing services to a local, low cost provider. We currently have three salaried employees earning above the current threshold and below the proposed amount. We operate on a 30 to 35 hour workweek for 8 months of the year, but do incur substantial overtime during the four payroll tax months. Our employees appreciate the certainty of their salary-based take-home pay each period. They also appreciate the fact that they don't have to punch a time clock every day. I estimate that the roughly 600 hours of overtime our employees work each year are offset by the less than forty hour weeks they work during the slow months. Unfortunately law doesn't allow me to "bank" the short weeks to offset the long weeks. In addition, we have paid 100% of our employees' health insurance since the day we opened our doors.

Without getting into the analytical weeds, in order to keep employee take-home pays consistent, we are contemplating a system of salary advances to be recovered during those overtime months. In order to keep our company cash flow level, we are contemplating—for the first time in over twenty years—requiring employees to bear a share of the cost of their health insurance benefits.

DOL's new overtime rule will have a significant, and in my belief, negative impact on employers and employees alike. In order for small businesses to avoid costly overtime pay, managers moved from their salaried positions to hourly jobs will need to keep time cards and be prohibited from working overtime, including answering email from home. This will be a burden not only financially, but in terms of productivity, as managers and supervisors will only be allowed to work when permitted. From an employee perspective, the flexibility that so many had will become a thing of the past.

NFIB anticipates the changes will hit hardest those low-to-mid-level managers. These managers may currently make less than the proposed threshold, but value work week flexibility and benefits such health insurance and employer-provided pension benefits. Also, fewer salaried, managerial positions would signal to employees that there is little opportunity for growth at the company. These consequences will severely hamper opportunities for growth and development, not just of small businesses, but their employees as well. Unfortunately, neither can afford it.

Thank you again for allowing me to share my thoughts today. I will do my best to answer any questions you might have.

SHRM
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

STATEMENT OF
CHRISTINE V. WALTERS, JD, MAS, SHRM-SCP, SPHR

SOLE-PROPRIETOR
FIVEL COMPANY

SOCIETY FOR HUMAN RESOURCE MANAGEMENT

SUBMITTED TO
U.S. HOUSE SMALL BUSINESS COMMITTEE

HEARING ON
"DAMAGING REPERCUSSIONS: DOL'S OVERTIME RULE, SMALL EMPLOYERS, AND THEIR EMPLOYEES"

JUNE 23, 2016

Introduction

Chairman Chabot, Ranking Member Velazquez, my name is Christine Walters, and I am the sole-proprietor of the FiveL Company. I have nearly 30 years of combined experience in human resources administration, management, employment law practice and teaching. Previously, I worked as an in-house HR practitioner in the nonprofit sector for 12 years and subsequently served as an adjunct faculty member at the Johns Hopkins University, teaching a variety of courses in graduate, undergraduate and certification-level programs from 1999 to 2006 in human resource management topics.

I appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member for 17 years. On behalf of our 285,000 members in more than 165 countries, I thank you for this opportunity to appear before the Committee to discuss how changes to the Fair Labor Standards Act (FLSA) overtime regulations impact nonprofits, small businesses, their employees and the communities they serve.

SHRM is the world's largest HR professional society, representing 285,000 members in more than 165 countries. For nearly seven decades, the Society has been the leading provider of resources serving the needs of HR professionals and advancing the practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

For the last 13 years I have served as an independent HR and employment law consultant. Many of my clients are small businesses, including small government contractors and small nonprofits with limited flexibility in the budget. Many employers are concerned about how they will provide potential overtime expenses under the Department of Labor's (DOL's) final overtime rule.

While SHRM supports an increase to the salary threshold, an increase of more than 100 percent in the first year is too far and too fast. The rule will force many currently exempt employees to lose their exempt status and be converted to nonexempt status. In their eyes, this is perceived as a demotion, a loss of workplace or professional stature and reduced workplace flexibility to meet work/life needs.

In my testimony, I will explain DOL's final overtime regulations, discuss the specific impact on organizations like small businesses and the nonprofit sector, and express SHRM's concerns that the DOL missed a real opportunity to create a final overtime rule that works for both employees and employers.

The Fair Labor Standards Act

The FLSA has been a cornerstone of employment and labor law since 1938. The FLSA establishes minimum wage, overtime pay, record-keeping and youth employment standards affecting full-time and part-time workers in the private sector and in federal, state and local governments. The FLSA was enacted to ensure an adequate standard of living for all Americans by guaranteeing the payment of a minimum wage and overtime for hours worked in excess of 40 in a workweek.

Virtually all organizations are subject to the FLSA. A covered enterprise under the FLSA is any organization that "has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and has $500,000 in annual gross volume of sales; or engaged in the operation of a hospital, a preschool, an elementary or secondary school, or an institution of higher education."

Additionally, at least 16 states currently have their own "white collar" or "EAP (executive, administrative, professional)" regulations, and some states have overtime laws that are more inclusive or more generous to the employee than federal law. These overlapping requirements mean that both the state and federal laws interact to determine coverage under the wage and hour laws. The myriad federal and state laws create additional complexity as employers carefully navigate employment policies in the workplace.

The FLSA also provides exemptions from both the overtime pay and minimum wage provisions of the Act. Employers and HR professionals use discretion and independent judgment to determine whether employees should be classified as exempt or nonexempt and, thus, whether they qualify for the overtime pay provisions or the minimum wage provisions of the FLSA.

In determining exempt/nonexempt status under the FLSA, employers must look at each individual employee and his or her actual activities. Classification decisions for all employees are challenging as they are based on both objective criteria (salary basis level, salary basis test) and subjective criteria (duties test). As a result, an employer acting in good faith can easily misclassify employees as exempt when they should be nonexempt.

FLSA Overtime Regulations

Regulations governing the FLSA have been revised by the Executive Branch numerous times. Since the FLSA's passage in 1938, the salary threshold has been updated seven times, most recently in 2004. In 2004, the DOL attempted to simplify the overtime regulations for employers and employees by consolidating the long and short duties tests into a single "standard" test and raised the salary threshold. Specifically, under the current regulations, an individual must satisfy three criteria to qualify as a salaried worker exempt from federal overtime pay requirements: first, he or she must be paid a guaranteed minimum salary of $455 per week ($23,660 annually); second the employee must be paid on a salary basis (that is, the guaranteed minimum salary cannot be reduced with a few, limited exceptions); and third, his or her "primary duty" must be consistent with those common to executive, professional or administrative positions as detailed in section 541 of the FLSA overtime regulations or one of the other statutorily defined exemptions. Employees who meet these criteria are considered exempt from the overtime requirements of the FLSA.

On March 13, 2014, President Barack Obama directed the DOL to "modernize and streamline" the FLSA overtime regulations. On June 30, 2015, the DOL announced proposed changes to the section 541 FLSA regulations governing overtime determination and coverage. Then, on May 18, 2016, the DOL released its final regulations making changes to the overtime exemptions. Key provisions of DOL's final overtime rule include:

- Increasing the salary threshold by more than 100 percent to $913 per week, or $47,476 per year. While this level is slightly lower than the threshold in the proposed rule, it still encompasses many employees who are currently classified as exempt.

- Increasing the total annual compensation level for the "highly compensated employee" ("HCE") to be exempt from the overtime pay requirements to the 90th percentile of full-time salaried workers nationally, or $134,004 a year.

- Including automatic salary threshold increases every three years to maintain the salary threshold level at the 40th percentile in the lowest-wage census regions. Based on current projections, the salary threshold is expected to rise to more than $51,000 per year, with its first update on January 1, 2020.

- Requiring an effective date of December 1, 2016.

During the rulemaking process, SHRM was a strong voice for the workplace, supporting an update to the salary threshold using the same guidelines DOL has used in past salary threshold updates. As indicated above, DOL set the salary threshold, under which employees are eligible for overtime, at the 40th percentile of the lowest-wage census district — twice as high as it has been measured in the past. In addition, the final rule includes an automatic increase to the threshold at the 40th percentile, increasing the salary threshold every three years, starting in January 2020. In that year, DOL estimates the new 40th percentile will be $51,168 — a number that is likely to grow with each automatic adjustment. The doubling of the salary threshold presents unique challenges to nonprofits where salaries tend to be lower, and to small business, including government contractors.

Overtime Regulations' Impact on Nonprofit Sector

Most nonprofit enterprises and their employees are covered under the FLSA because coverage under the law may be triggered either by individual coverage or enterprise coverage. According to a 2004 DOL opinion letter, there is no exclusion in the FLSA for private nonprofit organizations. Employees of nonprofit organizations are individually covered under the FLSA if, in the performance of their duties, they are engaged in interstate commerce or in the production of goods or materials for interstate commerce. In determining whether employees are engaged in interstate commerce for purposes of the FLSA, "the purpose of the Act was to extend federal control in this field throughout the farthest reaches of the channels of interstate commerce." (*Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 567 (1943)). In other words, if nonprofit employees are involved in fundraising, taking credit card numbers, receiving out-of-state checks or making out-of-state telephone calls, they could be deemed as utilizing the channels of interstate commerce.

As a result of the overtime rule, many nonprofit organizations and small businesses across the country will see an impact on employees, services provided, and the organization at large. The details of these concerns are below.

Impact on Employees. In response to the final rule and an increase in the salary threshold, many nonprofits will be forced to reclassify employees from exempt to nonexempt status, resulting in the possible implementation of a "cap" on overtime work, increasing labor costs if an employee does work overtime, limiting career opportunities and reducing the opportunity for some flexible workplace arrangements.

First, consider the expected reduction in workplace flexibility presented by the final rule. Today many employers provide exempt employees with workplace flexibility, such as the ability to leave work early during the week for a parent teacher conference or telecommuting. Exempt employee compensation is based on the understanding that an employee's work schedule regularly exceeds 40 hours per week for a full-time employee. Therefore, when the exempt employee is converted to nonexempt status, the flexibility that is enjoyed by many professional employees will be removed.

For example, employees classified as nonexempt are paid for every hour worked and are often required to use paid leave for any partial or full day absence. If the employee has no paid leave remaining, then the absence from work may be without pay (dependent upon state or local law). While it has been suggested that this rule will not diminish workplace flexibility, it is clear newly nonexempt employees will have fewer options to manage work/life needs than they did as an exempt employee.

Furthermore, while some employees will welcome the opportunity for additional overtime pay, many others will perceive the change as a demotion from the salaried, professional status desired by so many in the workplace. It has been suggested that employers can avoid this "demoted" feeling by reclassifying employees to salaried, nonexempt status. Under this classification, while a salary is paid each work week, the employer is still obligated to pay overtime for all hours worked over 40 in a work-week. Thus, this salary basis of payment still requires an administratively challenging retrospective review every pay period to calculate overtime pay owed, if any, for any hours worked over 40 in a prior work-week. Furthermore, a salaried nonexempt employee must still "punch the clock" to ensure all time is being accurately monitored. Based on my experience, 100 percent of the few clients who have tried this practice, quickly reverted to traditional, hourly pay because of this administrative burden.

Impact on Services Provided. As difficult as the impact may be on the private sector, the rule will drastically impact the budget and operations of nonprofits, as well as colleges and universities, health care providers, small businesses and local governments. These employers may be unable to absorb such costs without adverse impact to employee relations or fiscal operations. As a result, many nonprofits will be forced to tightly monitor hours worked, resulting in less flexibility in how programs and services are structured. As a consultant to a variety of small businesses and nonprofits, please consider the following examples:

One of my clients provides rehabilitation services to a disadvantaged population, of which 85 percent of their clients meet the current poverty threshold. Unlike other employers, this organization cannot transfer increased costs to their lower-income consumers. They face unattractive alternatives - cut expenses which could include labor costs, by abolishing one or more positions or push the duties that are currently performed in excess of 40 hours per week onto a colleague who will remain exempt.

Another nonprofit service provider client, whose reimbursement rates are set by at least two administrative agencies, indicated that as expenses increase, the organization has no ability to raise funding. By recent estimates, 104 out of 520 or approximately 20 percent of their workforce will be impacted by the new overtime rule meaning the organization must decide how to pay the extra overtime expenses or cut critical services.

Similarly, an academic institution has estimated that 75 of 500 or approximately 15 percent of their exempt employees will be impacted by the new rule. They are currently analyzing job duties and responsibilities for coaches and admissions counselors to assess, compare and contrast their options to see if these positions will satisfy other statutory exemptions.

In summary, small businesses, particularly those who are government contractors as well as nonprofits, have limited ability to raise additional funds or rely upon increases from public funding sources to compensate for an influx of overtime expenditures. Public funding is essential and it creates unique constraints. Complying with this rule will not be as simple as adjusting the price of goods sold to cover increased staffing costs for nonprofits. Furthermore, the automatic escalator every three years will create significant costs for nonprofits and small businesses in the years to come.

Mr. Chairman, as you are aware, Congress, the media, and public interest groups have all scrutinized the amount of an organization's budget that is dedicated to overhead costs, including salaries. Generally, many nonprofit organizations try to limit administrative costs in the budget and direct the majority of funding to services and activities aligned with the organization's mission.

Impact on Organizations. The compliance costs to business will be significant. In fact, the Office of Advocacy of the U.S. Small Business Administration noted the increasing salary level would add "significant" paperwork burdens on small entities, "particularly businesses in low wage regions and in industries that operate with low profit margins." The administrative burden will be disproportionately experienced by small businesses and nonprofits that often have one person performing the role of office manager, payroll administrator and HR generalist to ensure compliance.

To suggest that organizations will incur compliance challenges as a result of this rule is an understatement. For many small employers compliance will be intensive and ongoing, in not just the calculations but in tracking down employees. Sometimes employees will forget to fill in a beginning or ending time or to time out from an unpaid meal period. In addition, formerly exempt employees who were not required to monitor their time before the rule, will now need to be fully trained on the employer's tracking requirements.

Increasing the number of employees whose individual working hours must be recorded, reviewed, calculated for straight time and overtime, and submitted for payroll processing is no small task. However, the task for many employers does not stop after navigating the new overtime law. Complex state and local laws must also be navigated by employers who are reclassifying employees, leading to additional administrative time for compliance. Employers must consider:

- Pay Frequency — Some state and local jurisdictions require that nonexempt employees be paid at least twice each month or more frequently. Since more employees will now be classified as nonexempt this will increase payroll costs for employers who pay their exempt employees monthly or less frequently than required by state law for nonexempt employees;

- Pay Day — Some state laws require that nonexempt employees be paid the day before a holiday when the holiday falls on a work day. Employers will now need to ensure that this rule is applied to even more employees who will be reclassified as a result of the rule and adjust their payroll schedules accordingly;

- Pay Deduction — Exempt employees converted to nonexempt will need to understand that they may now be subject to deductions from their pay for lost/damaged company property, the use of sick and vacation leave for less than a day, as well as for tuition reimbursement followed by a separation from employment for a certain period of time;

- Overtime Limits — Some states restrict the amount of overtime that may be required to be worked by nonexempt employees and they have daily overtime requirements as well. Employers will need to plan their staffing needs accordingly since employees who are currently exempt and are converted to nonexempt may no longer be required to work as needed;

- Predictive Scheduling — An increasing number of states and localities are considering or enacting legislation that requires work schedules for nonexempt employees be posted a certain period of time, such as two weeks in advance, and if the work schedule is reduced or modified the employer must pay the employee for all or a portion of the cancelled or modified shift. Employers will need to anticipate these added costs when market, economic, weather and other factors impact staffing and scheduling;

- On Call Pay — Exempt employees converted to nonexempt will now need to be paid for certain on-call hours where such hours constitute "time worked" even if the employee if not actually called to work. This is common in the health care industry such as health care clinics that serve at-risk populations;

- Travel pay — This is time that exempt employees may not currently count as time worked but that may need to be counted as time worked as a nonexempt employee. This can greatly impact educational institutions whose admissions counselors travel to college fairs;

- Waiting Time — Similar to but different from on-call pay, employers will need to ensure that qualifying waiting time is included in projections for time worked for employees who are exempt today and converted to nonexempt, e.g., where the employee is engaged to wait rather than waiting to be engaged; and

- Electronic Devices — The DOL's regulatory agenda indicates it will publish a Request for Information (RFI) seeking feedback from employers and employees about how time is recorded and paid for hours worked using electronic devices during non-traditional work hours such as evenings and weekends.

As outlined above, the reclassification of many employees will result in numerous considerations that must be carefully navigated by the employer, adding tremendous compliance time for smaller employers and nonprofits with an HR department of one.

SHRM's Reaction to the Final Overtime Regulations

After receiving over 270,000 comments to its proposed overtime rule, the Administration failed to make any substantive changes to the main elements in the final rule. Although DOL responded to some of our comments, SHRM is disappointed in the dramatic increase in the salary under which employees are eligible for overtime and the automatic increases in the salary level. Unfortunately, DOL missed a real opportunity in finalizing the overtime rule.

While SHRM supports an increase to the salary threshold, an increase of more than 100 percent to the salary threshold in the first year is too far and too fast. The drastic increase will present challenges for employers whose salaries tend to be lower, such as small employers, nonprofits, employers in certain industries and employers in lower cost-of-living areas. Of equal concern, SHRM opposes automatic increases to the salary threshold, which have been considered and rejected in the past. Automatic increases ignore economic variations of industry and location and the overall state of the economy.

The salary threshold — although slightly less than originally proposed — will mean many employees will lose the perceived professional exempt status for which they feel they have worked hard and the flexibility from rigid schedules about which they care deeply. While changes in regulations were meant to benefit employees, a change of this magnitude will do the opposite in many instances. There likely will be fewer opportunities for overtime pay as employers are forced to restructure their compensation and staffing.

Throughout the rulemaking process, SHRM cautioned that the proposed changes to expand overtime eligibility will not necessarily result in a windfall of overtime income for newly classified nonexempt employees. Employers across all sectors monitor labor costs closely and will likely cap or eliminate access to overtime work or will adjust salaries to make sure that an employee's total wages remain the same even if that employee's overtime hours increase.

SHRM also believes the changes to the overtime regulations will limit workplace flexibility in some instances and impact certain flexible options such as telecommuting and flextime. Workplace flexibility allows employees to meet work/life needs and benefits the employer through greater employee retention and engagement. Doubling the salary threshold will mean many employees will lose their exempt status and the workplace flexibility it affords. Employers will be forced to closely monitor hours to avoid potential lawsuits and carefully track employee time. Simply put, it is challenging to offer nonexempt employees flexible workplace arrangements because every hour over 40 must be tracked and accounted for. Even though the Administration has repeatedly stated that workplace flexibility will not be reduced, the consequences of the rule are clear — newly nonexempt employees will see diminished flexibility in the workplace.

The Partnership to Protect Workplace Opportunity (PPWO), a diverse group of associations, businesses, and other stakeholders representing employers with millions of employees across the country, has expressed similar concerns with changes to the overtime regulations. The PPWO, co-chaired by SHRM, is made up of 85 associations including private, public, and nonprofit sectors and represents nearly every industry. The Partnership continues to advocate for a regulation that is considerate of all stakeholder and economic realities facing employers and employees, and has urged Congress to support H.R. 4773, the Protecting Workplace Advancement and Opportunity Act.

Given these collective concerns with the current DOL overtime rule, SHRM appreciates the leadership of Representatives Walberg and Kline in introducing H.R. 4773, to nullify the current overtime proposal. This reasonable legislation does not prevent DOL from moving forward with changes to the overtime regulations. It simply requires DOL to perform an economic analysis of how changes to overtime regulations will impact nonprofits, small businesses, and employers in other industry sectors before issuing a new rule. DOL's own final rule recognizes that all these considerations may not have been assessed, stating: "benefits of the rulemaking were not quantified due to data limitations." The bill would also prohibit automatic increases to the salary threshold while ensuring that any proposed changes to the duties test receive proper scrutiny through the formal notice and comment process. SHRM strongly supports this legislation and recommends its swift passage.

Conclusion

In conclusion, Mr. Chairman, small businesses, nonprofits, and employers across the country, are concerned with the final overtime rule. As I noted earlier, more than doubling the salary threshold will significantly impact employers in a variety of industries, and of various sizes, their employees and the populations they serve.

It is important to note that when the overtime regulations were last updated in 2004, a majority of SHRM members reported reclassifying exempt employees to nonexempt status, resulting in lower employee morale, a sense of loss of "workplace status," and increased distrust between employers and employees. SHRM and its members are concerned that these changes to the overtime rule will have the same result.

While SHRM supports an increase to the salary threshold over time, challenges arise if the increase is too high, is implemented too quickly, or fails to consider economic, fiscal, geographic and industry differences. SHRM and its members look forward to working with Congress to improve the overtime rule in a way that works for both employers and employees.

Thank you. I welcome your questions.

# # #

Economic
Policy
Institute

Testimony on the Department of Labor's regulation expanding overtime rights for salaried employees

Ross Eisenbrey, Vice President, Economic Policy Institute
Testimony before the U.S. House Committee on Small Business

10:00 a.m., Thursday, June 23, 2016
Rayburn House Office Building, Room 2360

Thank you for inviting me to testify today.

I am Ross Eisenbrey, the vice president of the Economic Policy Institute, a nonprofit, nonpartisan think tank created in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI believes every working person deserves a good job with fair pay, affordable health care, retirement security, and work–life balance. We applaud the Department of Labor and President Obama for at long last updating the Fair Labor Standards Act's rules requiring overtime pay for salaried employees. Millions of people will get raises, reduced hours for the same pay, or new jobs because of the Department's action.

Work–life balance is a fundamental goal of the Fair Labor Standards Act (FLSA). Its requirement for employers to pay employees a premium for time worked beyond 40 hours in a week makes the FLSA the single most important family-friendly law ever passed in the United States. Excessive work is detrimental to family life, health, well-being, and productivity. If not for the law's overtime rules, tens of millions more workers would be working 50, 60, or 70 hours a week for no additional pay, just as millions of Americans did before the FLSA was enacted in 1938.

An uninformed person might think the 40-hour workweek is part of the natural order, but of course it isn't. It exists in the United States because President Roosevelt persuaded Congress to pass the FLSA, which—by imposing the duty to pay time-and-a-half for overtime—makes it expensive for a business to work employees more than 40 hours a week. (Similarly, the weekend was not a given for most Americans before passage of the FLSA; six-day workweeks were common.) If the FLSA's regulations are not updated from time to time, as the law intends, the 40-hour workweek could become a thing of the past.

Right from the beginning, the law has applied to salaried employees as well as hourly workers. Congress recognized at the outset that there's no inherent difference between an hourly worker and a salaried worker. How they are paid is entirely up to the boss. And **salaried employees need time with their families and time for themselves just as much as hourly workers do.** Congress ensured that hourly workers and salaried workers alike were entitled to overtime pay, whether they were blue collar or white collar, whether they worked in a factory or an office. In fact, some of the most exploited workers at the time were women working 12-hour days, six days a week, as typists in giant office pools for $6 or $7 a week.

It's equally critical to remember that the **employees who work in small businesses and nonprofits are no different from those who work in medium-sized and large businesses; they too need time with their families and for themselves.** There is no good reason for small businesses to exploit their employees, work them excessive hours, or deny them time with their families. The same goes for nonprofits. EPI is both a nonprofit and small business entity. We will not only find it easy to adjust to the new rule, we will actually find compliance simpler thanks to the new bright-line test for employees paid less than $913 a week ($47,476 per year).

For all of these reasons, the Department of Labor's final rule to raise the threshold salary (the level below which all workers are automatically eligible for overtime) to $47,476 is overdue. When it takes effect on December 1, giving new protections against overwork to 12.5 million employees, it will be the most important improvement in the labor standards of America's working families in many years.

Work–life balance, family responsibilities, and personal health

Having a healthy work–life balance, which means having enough time outside of work for family and friends, for oneself, and for civic participation, is one of the two key goals of the FLSA's overtime requirements. But large percentages of managers and other white-collar employees say that increasingly, the law is failing to protect them, that they don't have enough time for their families. Alarmingly, parents' hours are increasing more than those of non-parents:

- An Ernst & Young survey found that too little pay and excessive overtime are among the three most common reasons employees quit.
- Approximately half (46 percent) of managers work more than 40 hours per week, and four in 10 say their hours have increased over the past five years.
- Younger generations have seen their hours increase the most in the last five years, at a time when many are moving into management and starting families (47 percent of millennial managers reported an increase in hours, versus 38 percent for Gen X managers and 28 percent for boomer managers).
- Of managers, a larger share of full-time working parents (41 percent) have seen their hours increase in the last five years than non-parents (37 percent).[1]

The implications of this overwork are ominous in terms of work–life conflict. Who will take care of the kids? Who will go to their ballgames, school plays, or counseling meetings? The conflict is especially intense because children increasingly have two parents working at least 35 hours per week. Ernst & Young finds that "over half (57%) of full-time employees in the US indicate that their spouse/partner works 35 hours or more a week, but for millennials and Gen X, the likelihood that their partner works full-time is much higher than for Boomers. Also, parents (70%) are much more likely than non-parents (57%) to have a partner that works at least full-time."[2]

Specifically:

- "Millennials (78%) are almost twice as likely to have a spouse/partner working at least full-time than Boomers (47%).
- Millennials (64%) and Gen X (68%) were also much more likely to have a spouse/partner working 35 hours or more a week than Boomers (44%).

- Over a quarter of Boomers (27%) said their spouse/partner does not work outside the home or works part-time flexible hours (10%).
- Millennials (13%) and Gen X (14%) were much less likely to have a spouse/partner who did not work outside the home or who worked part-time but flexible hours (5% and 4% for millennials and Gen X, respectively).
- 'Finding time for me' is the most prevalent challenge faced by millennial parents who are managers in the US (76%) followed by 'getting enough sleep' and 'managing personal and professional life' (67%).'[3]

It's not just work–family conflict, stress, or lack of sleep that's at stake; it's also the physical health of the workers. Overwork kills. People who work 55 hours or more per week have a 33 percent greater risk of stroke and a 13 percent greater risk of coronary heart disease than those working standard hours.[4] When employers don't have to pay for overtime, they schedule much more of it, leading to the many stories among the rulemaking comments of managers working 60-hour weeks and longer until their health was destroyed, leaving them disabled.

As currently enforced, the FLSA is failing salaried workers

Properly enforced, the Fair Labor Standards Act would prevent a great deal of this overwork and stress on families, but the law has been allowed to become almost a dead letter with respect to salaried employees. The single biggest reason for this failure is the low level of the salary threshold that determines whether workers are automatically eligible for overtime pay. As shown in the graph, in 1979 more than 12 million salaried workers earned less than the salary threshold and were therefore automatically guaranteed the right to overtime pay, regardless of their duties. Today, with a 50 percent bigger workforce, only 3.5 million salaried employees are automatically protected.[5]

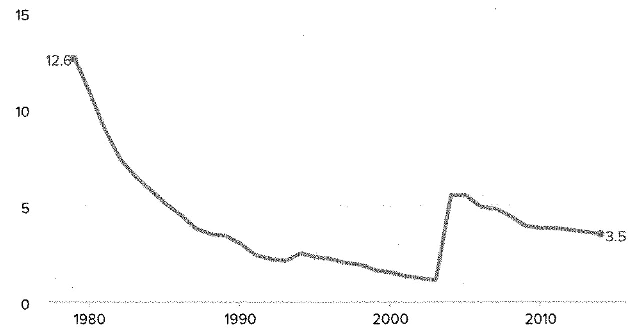
In an expert comment submitted to the rulemaking record, 57 legal scholars emphasized that the basic rule under the Act is that all employees are entitled to time-and-a-half overtime pay, while the exemptions are meant to be very limited and narrow. For the most part, only relatively highly paid employees may be denied overtime pay:

> 'Congress' intent was to allow exemptions from the Fair Labor Standards Act's overtime and minimum wage protections for a relatively small group of high-paid employees who were effectively already being compensated for the extra hours that they worked by their high level of compensation. Congress understood that these workers had sufficient individual bargaining power in the labor market and workplace to protect themselves, and so did not need the government to intervene to protect them from employers who might impose low wages and excessive overwork. One very strong indication of a worker's individual bargaining power is the salary that he or she can negotiate with an employer. More individual bargaining

Figure A

The Number of Salaried Workers Guaranteed Overtime Pay Has Plummeted Since 1979

Number of salaried workers* covered by overtime salary threshold, 1979–2014 (in millions)



* The sample included salaried (nonhourly), full-time workers who are 18 years or older. It excluded teachers (pre-K through college) and religious workers who are automatically exempt from overtime protections.

Note: The nominal threshold was set at $250 per week from 1975 until 2004 when it was increased to $455 per week.

Source: EPI analysis of Current Population Survey Outgoing Rotation Group microdata

Economic Policy Institute

> power generally produces a higher salary. Bona fide executive, administrative, and professional employees are able to negotiate high salaries because of their skills, knowledge, close association with powerful corporate leaders and, in many cases, limited availability in the labor market. For this reason, we agree with the Wage & Hour Division that an employee's salary level should be the most important factor in determining whether he or she is an exempt bona fide executive, administrative, or professional employee."[6]

The other purpose of the overtime rules was to reduce unemployment by reducing the average number of hours worked in certain jobs, thereby freeing up positions for additional workers. To maximize employment, it's obviously better to have three employees working 40 hours per week than just two working 60 hours each while the third is unemployed. U.S. underemployment is still almost 10 percent seven years after the end of the Great Recession—that's 15 million Americans who want a job or more hours but have not been able to find them. Black unemployment is a recession-like 8.2 percent.

The arguments against the new overtime salary threshold don't hold water

Many businesses are unhappy that the Labor Department is restoring overtime coverage almost (but not quite) to where it stood in the Ford administration. Businesses have become accustomed to working low-level salaried employees long hours for no extra compensation, but the pendulum has swung too far, and it's time to restore some balance. The arguments against the rule are uniformly without merit.

Let's examine the four most prevalent of these arguments.

1. "Regulatory compliance costs will be excessive."

> A. DOL probably overestimated these costs. Every firm that has an obligation to comply with the FLSA has already made a determination about the duties of its current employees and whether they can be exempted under the law's provisions for executive, administrative, and professional employees. The new rule makes this process much simpler for employees earning below the threshold. Here's the key test: "Does the employee make less than $913 per week?" If yes, pay overtime.
>
> DOL said becoming familiar with the new rules would take an hour on average, but in reality, it takes a few seconds, and anyone with ADP payroll processing software can make the necessary change in payroll in a few minutes. The National Restaurant Association's witness at last October's hearing on the rule in this committee admitted that "this would be an easy transition to make from a management and bookkeeping standpoint."
>
> B. Going forward, it is beyond argument that millions of the decisions employers make about applying the exemption to employees earning above the current threshold but below the new threshold level ($23,660 to $47,476) will be made simpler: The complex duties tests that apply above the threshold will be irrelevant for those employees, and starting December 1, the only question will be, "Does the employee earn a salary less than $913 per week?"
>
> Converting employees to hourly status is entirely a decision of the employer. Overtime can be easily tracked for salaried employees. Many employers, including small businesses, track the time of salaried employees. At this committee's hearing on the proposed overtime rule last October, Terry Shea, representing the National Retail Federation, revealed that she routinely and closely tracks the time of her salaried employees:
>
> > "Our store managers and assistant managers averaged a 40 hour work week last year. Management closes the stores two days a week, and on those days they come in at 10am and leave between 6:15pm and 6:30pm. They also work one Saturday a month, for which they are given a day off

during the week. During 'crunch time' weeks, a manager will work more than 40 hours

However, when any salaried associate works in excess of 46 hours in a week, they are compensated with a day off of their choosing. This day off may be used the following week or 'banked' and taken later in the year."

2. "The regulation will harm relationships between owners and affected employees."

A. The National Federation of Independent Business (NFIB), for example, claims that employee morale will be hurt because employers will not just reclassify some managers as hourly but will also demote them, take away the manager title, take away their paid time off and their health benefits, and stop letting them leave early to pick up their kids from school. All of that is pure nonsense. Nothing in the rule makes an employer change a manager's title or take away anyone's benefits, and it would be poor management to do so if it were going to harm morale.

B. NFIB assumes that businesses will insist that employees continue to work long hours and will refuse to pay anything additional for overtime. NFIB says employers will instead cut wages by as much as $5 per hour in order to keep their total wage bill unchanged. That has not been the history of the FLSA. We know that hourly workers are less likely to work long hours than salaried employees, and there is little evidence that employees' wages were ever cut this way in the past.

3. "The rule will take flexibility and opportunities from employees who are converted to hourly status."

A. Research by Lonnie Golden at Penn State shows that employees paid a salary less than $50,000 a year generally have no more flexibility than hourly workers.[7]

B. The opportunity argument is indefensible. If my business promotes employees paid a salary of $25,000 to $47,000 into management but the rule leads me to reclassify them all as hourly, they're still the same employees I would look to for promotion. The pool of employees from which to choose for promotion into management doesn't change. Where else would I look for people to promote?

4. "The salary level is set too high for rural areas."

A. This argument was made about the proposed rule, and the Department of Labor responded to it by lowering the threshold salary from $50,440 to $47,476, the 40th percentile salary in the poorest region of the country.

B. The salary level is meant to do one thing: prevent employers from denying a 40-hour workweek and overtime pay to people who aren't really executives and professionals. It doesn't set salaries; it reflects what *bona fide* executives, administrators, and professionals are paid.

C. The $913 weekly level in the rule is not high; it is so low that it isn't sufficient to provide a two-parent, two-child family with an income level necessary to live adequately yet modestly.[8] This is not truly an executive-level salary if an employee cannot support a family in a modest way on that salary.

D. The salary levels for exemption have been set nationally since 1938, without exception.

E. In inflation-adjusted terms, the equivalent salary level in 1975 was $57,462, according to the U.S. Chamber of Commerce's testimony. That level took account of regional and urban/rural differences because it was an inflation adjustment of earlier levels that took them into account. Regional pay differences are much smaller today than in 1975, so the salary level in the rule actually overcorrects for regional differences. Moreover, the fact that it is well below the 1975 level despite decades of productivity growth and accelerating income growth for executives means the salary level is too low rather than too high.

F. Managers paid less than the level necessary for a two-parent, two-child family to make ends meet anywhere in the country, whether they live in rural or urban areas, should not be treated as exempt executives; they should be paid for their overtime.

The Secretary of Labor has done what the law requires in resetting the salary test to a level that better reflects the compensation of *bona fide* executives, administrators, and professionals. In doing so, he is making the most important improvement in the labor standards of America's working families—particularly middle-class families—in many years. The rule should be applauded and supported.

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American Bankers Association
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June 22, 2016

The Honorable Steve Chabot
Chairman
House Small Business Committee
Washington, D.C. 20515

The Honorable Nydia Velazquez
Ranking Member
House Small Business Committee
Washington, D.C. 20515

Dear Chairman Chabot and Ranking Member Velazquez:

The American Bankers Association (ABA) writes to thank you for holding a hearing on the "Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees." ABA's members, many of whom are community banks, believe that employees and employers alike are best served with a system that promotes maximum flexibility in structuring employee hours, career advancement opportunities for employees, and clarity for employers when classifying employees.

On June 30, 2015, DOL proposed increasing the overtime threshold to $50,440 per year, a 113 percent increase that would occur all at once in 2016, and in all areas of the country regardless of significant regional economic differences. The Department also proposed automatically increasing the salary threshold on an annual basis. While DOL did not offer a specific proposal to modify the standard duties tests, the Department suggested it is considering adding an unworkable requirement to quantify how much time employees spend performing their primary duties.

Because, contrary to past practice, DOL did not calculate its proposed salary threshold (or attendant annual increases) to address the dramatic differences in the cost of living through the country, our members that provide banking services in such areas will be significantly impacted by this "one-size-fits-all" rule. In our comment letter to DOL on the proposal, ABA cited a number of instances in southern states where, for example, the annual per capita income ranges from approximately $13,945 annually to $33,170. While bank employees generally earn good salaries based on their local cost of living, these statistics demonstrate the drastic impact of the proposed salary thresholds on banks serving these communities. ABA and a number of our members participated in Roundtables held by the Small Business Administration Office of Advocacy with DOL staff to provide input on the impact of the proposal and the need to consider less harmful alternatives. We further met with OMB to again detail our concerns with the proposal and the need to lower the proposed salary threshold.

The Secretary of Labor responded to questions posed by Members of Congress about these concerns by stating that the Department met with these stakeholders and heard their concerns prior to issuing the proposed rule; however, neither the proposed nor final regulation reflect that input with respect to the salary threshold level and automatic annual updates.

The salary threshold in the final rule was lowered from \$50,440 to \$47,476 and the automatic updates will now occur every three years rather than annually. Although these changes are an improvement, this is still an increase of more than 100 percent in the salary threshold and represents a token reduction that will not alleviate the harm this rule will do to community banks and their employees. In addition, the automatic update will go into effect without the benefit of the rulemaking process or consideration of exigent economic circumstances. Thus, we believe it is clear that the Secretary is not willing to reconsider the rule in a meaningful way without Congressional action.

Absent the Department of Labor taking additional action, we urge all the members of the Committee on Small Business to support H.R. 4773, the Protecting Workplace Advancement and Opportunity Act. H.R. 4773 would nullify the proposed rule and require the Labor Department to conduct a detailed economic analysis before making dramatic changes to federal overtime pay requirements. In essence the bill would require the Department to move forward in a responsible manner.

Thank you for convening the hearing and for the opportunity to submit this letter for the record.

Sincerely,

James C. Ballentine

cc: Members of the House Committee on Small Business

College and University Professional Association for Human Resources

June 23, 2016

Chairman Steve Chabot
House Small Business Committee
U.S. House of Representatives
Washington, DC 20510

Ranking Member Nydia Velázquez
House Small Business Committee
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Chabot and Ranking Member Velázquez:

On behalf of the College and University Professional Association for Human Resources (CUPA-HR), I thank you for holding today's hearing on the Department of Labor's recently finalized regulation amending the exemptions for executive, administrative, professional, outside sales, and computer employees (the "EAP exemptions" or "white collar exemptions"). CUPA-HR serves as the voice of human resources in higher education, representing more than 19,000 human resources professionals and other campus leaders at over 1,900 colleges and universities across the country, including 91 percent of all United States doctoral institutions, 77 percent of all master's institutions, 57 percent of all bachelor's institutions and 600 two-year and specialized institutions.

On June 30, 2015, DOL proposed increasing the overtime threshold to $50,440 per year, a 113% increase that would occur all at once in 2016, and in all areas of the country regardless of significant regional economic differences. The Department also proposed automatic annual increases to the minimum salary threshold and requested comments on whether it should make changes to the duties test—keeping open the possibility the agency would limit the amount of time exempt employees could perform nonexempt work without issuing a separate NPRM containing specific proposed regulatory language.

While we agree that an increase to the minimum salary threshold is due and that DOL must update the salary levels and regulations from time to time to ensure the exemptions are not abused, DOL's proposal was met with widespread concern from colleges and universities across the country that submitted comments and economic analysis, wrote letters to Congress and met with the administration officials to advocate for positive changes that would lessen the negative impact of the many unintended consequences associated with the proposed rule.

DOL reduced the salary threshold in the final regulation from $50,440 to $47,476 and increased the time between automatic updates from 1 year to 3 years. While the final rule is an improvement over the proposal, it still amounts to a 100% increase over the current threshold that will go into effect all at once in 2016. This will be difficult for colleges and universities to absorb. In addition, automatically updating the threshold without regard to the economic circumstances facing the country is unwise.

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Based on data the association has collected from members in the last month and over the last year, the increase will result in significant costs to institutions and will inevitably trigger tuition hikes and reductions in force and services. Recently collected data on a $47,000 threshold puts the combined cost estimates of the 35 institutions at nearly $115 million. The rule could negatively impact virtually every facet of academic life, from research to student services and athletics at community colleges, larger public universities, small liberal arts colleges, faith-based institutions and large research institutions.

Last summer, CUPA-HR conducted a survey of 819 members as part of the comments submitted by 18 higher education organizations in response to DOL's proposal. In this survey, 88 percent of respondents indicated any threshold over $40,352 would be too high. More recently, CUPA-HR's *2016 Professionals in Higher Education Salary Survey Report* shows that a threshold of $47,000, which is slightly below the final rule's $47,476, would impose significant costs on the higher education system. According to the report, institutions would face an average cost of $209,169 if they had to adjust just *one* employee for each of the 24 professional positions reporting a median salary below that level. Institutions will typically have many professionals in these slots below the threshold, particularly institutions in lower-cost areas of the country, which will be those hardest hit by the rule.

This is simply an unworkable solution. Accordingly, we urge all the members of the Committee on Education and the Workforce to cosponsor S. 2707, the *Protecting Workplace Advancement and Opportunity Act* which would require the Labor Department to conduct a detailed economic analysis before making dramatic changes to federal overtime pay requirements. This bill was introduced in response to grassroots concern among colleges and universities and other employers that the dramatic changes proposed by the Labor Department will reduce opportunity and flexibility for millions of executive, professional, and administrative employees.

Thank you for convening today's hearing and for the opportunity to submit this letter for the record.

Respectfully Submitted,

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CUNA
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June 23, 2016

The Honorable Steve Chabot
Chairman
Committee on Small Business
House of Representatives
Washington, DC 20515

The Honorable Nydia Velasquez
Ranking Member
Committee on Small Business
House of Representatives
Washington, DC 20515

Dear Chairman Chabot and Ranking Member Velasquez:

On behalf of the Credit Union National Association (CUNA), I am writing to thank you for holding today's hearing, "Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees." CUNA represents America's state and federal credit unions and their more than 100 million members.

CUNA has continually expressed concerns with the Department of Labor's (DOL) changes to the Fair Labor Standards Act, (FLSA) which increased the threshold for overtime pay eligibility by approximately double the previous rate, from $23,600 annually to $47,476 annually. This final rule will not only create regulatory burdens for credit unions when a disproportional percentage of employees are swept into the new threshold, but it will also create unintended negative consequences for those it aims to help, as well as credit union members. Credit unions in rural and underserved areas, as well as small credit unions particularly will face compliance and regulatory burdens as a result of the rule.

This Rule Adds to Regulatory Burden of Smaller Credit Unions

The DOL's rule magnifies the challenges credit unions are already facing due to an unprecedented amount of regulatory burden over the past several years. In the United States, there are approximately 2,700 credit unions with five or fewer employees, nearly 3,000 with less than $20 million in assets, and approximately 4,000 with less than $50 million in assets. A recent study conducted by Cornerstone Advisors showed regulatory costs now account for 30% of total operating expenses at smaller credit unions, and the financial impact of regulation on credit unions has increased by 40% since 2010. Consequently, smaller credit unions have seen concerning attrition rates over the past several years. The attrition rates for credit unions with less than $100 million in assets (75% of all credit unions), have consistently risen above the levels experienced during the Great Recession and its aftermath. In both 2014 and 2015, the attrition rate at credit unions with less than $25 million in assets (half of all credit unions are of this size) has exceeded 6%. Regulations such as the overtime final rule will only add to this heavy regulatory burden small credit unions are facing.

Prior to the DOL's release of the overtime rule, the Small Business Administration (SBA) Office of Advocacy also recognized that small businesses would face challenges because of this rule. The SBA stated that the DOL has not effectively weighed less burdensome alternatives to the proposed rule. In a letter to the DOL, the SBA Office of Advocacy wrote, "DOL's proposal more than doubles this salary threshold. Based on small business feedback, Advocacy believes that these changes will add significant compliance costs and paperwork burdens on small entities, particularly businesses in low wage regions and in industries that operate with low profit margins. Small businesses at our roundtables have told Advocacy that the high costs of this rule may also lead to unintended negative consequences for their employees that are counter to the goals of this rule."

When small financial institutions face new rules like the overtime rule, costs grow due to an increased need for resources, additional time spent on compliance, and potential costs for outside consultants, such as employment lawyers. Alternatively, the large Too Big to Fail banks have more resources to quickly come into compliance with such rules. Accordingly, compliance costs are greater for the very financial institutions who exist to serve the exact same group this rule is intended to help: the middle class. Furthermore, credit unions in rural and underserved areas, who are more likely to be impacted by this rule, may also have to reduce products and services when they face regulatory burdens, and they could be the only financial institution serving that community.

Small Credit Union Employees and Credit Union Members May Also Face Unintended Detrimental Consequences as a Result of Rule

CUNA also has concerns about some of the less readily apparent unintended consequences that could result from the DOL overtime rule. For example, employers who have unexpected expenses as a result of realigning resources may become unable to hire new employees, be forced to convert full-time positions to part-time, or be forced to change exempt positions to non exempt. Employees could also lose flexibility and other "perks," despite a small increase in compensation, if resources are limited. Ultimately, the unintended negative consequences associated with the DOL's rule, which cause credit unions to have fewer resources, may diminish any benefit the rule provides to employees now falling under the new threshold.

Changes to the size of credit union staff, or hours of operation, would affect credit union members as well. Limiting credit union staff or hours may make it more difficult to keep branches open during convenient times for working families. For example, if credit unions have to close on weekends or have shorter hours, this could affect the ability of members to receive service. Credit unions that have to limit work hours and training opportunities may also offer fewer products and services. Limited resources could impede efforts to expand credit union products or service offerings, and inhibit innovation. Credit unions may be forced to spend more of their members' resources without necessarily adding any additional value to members.

Credit unions exist to serve their members, and the products and services they offer are often the best and most affordable options for middle class families. We do not believe the DOL properly weighed the burdens of this rule, against the services credit unions provide to their communities. Our analysis of the DOL's overtime rule is that the unintended consequences and additional regulatory burdens placed on credit unions, outweigh the good intentions of the rule.

On behalf of America's credit unions, thank you again for holding this hearing. We look forward to continuing to work with the Committee, and appreciate your efforts to find meaningful regulatory relief for credit unions and their members.

Sincerely,

Jim Nussle
President & CEO

INDEPENDENT COMMUNITY BANKERS of AMERICA®

June 23, 2016

Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees

On behalf of the more than 6,000 community banks represented by ICBA, we thank Chairman Chabot and Ranking Member Velazquez for convening today's hearing entitled: "Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees." ICBA and community bankers nationwide are seriously concerned about the real world impact of the Department of Labor (DOL) final rule titled: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees."

The rule will significantly restrict current exemptions under the Fair Labor Standards Act so that fewer administrators, executives and sales commissioned staff are exempted from overtime pay. In particular, ICBA opposes a high nationwide salary test for the exemptions. The DOL rule more than doubles the salary test from $23,660 to $47,476, without any adjustment to reflect wide regional variation in cost of living, and permanently indexes the threshold for inflation.

Further, reclassification of employees who are currently exempt from overtime pay will limit their flexibility, bonus or incentive pay availability. More fundamentally, reclassification will change the character of their jobs, their professional incentives, and even their career path. Moreover, broadening the number of small business employees subject to overtime pay will increase not only personnel costs but also administrative costs, since it will force these businesses to track the overtime hours of more employees. The final rule will directly reduce wages and employee benefits and curb hiring.

The above concerns are why ICBA stands in support of the Protecting Workplace Advancement and Opportunity Act (H.R. 4773), introduced by Representative Tim Walberg (R-Mich.), which would effectively nullify the DOL rule and prohibit the agency from issuing a substantially similar rule without first conducting a thorough analysis of its impact on all employment sectors. That analysis must include hard dollar costs as well as non-financial costs including workplace flexibility, benefit structure, career advancement opportunities, business formation, and business termination.

ICBA urges the House to take up and pass H.R. 4773 on an expedited basis before the new rule becomes effective to avert significant harm to thousands of small businesses, including community banks, and their employees.

Again, ICBA would like to commend Chairman Chabot and Ranking Member Velazquez for convening this critical hearing.

One Mission. Community Banks.℠

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Statement

of the

Independent Electrical Contractors

Before the

Small Business Committee

United States House of Representatives

Hearing on

"Damaging Repercussions: DOL's Overtime Rule,
Small Employers, and their Employees"

Washington, DC

June 23, 2016

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Chairman Chabot, Ranking Member Velázquez and Members of the Committee,

On behalf of the Independent Electrical Contractors (IEC), thank you for holding a hearing titled "Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees" that examines the Department of Labor's (DOL) rule changing the criteria for the executive, administrative, professional, outside sales, and computer employee exemptions from the overtime requirements under the Fair Labor Standards Act (FLSA). DOL's rule, which increases the minimum salary to qualify as an exempt employee from the current $455 per week (or $23,660 per year) to $913 per week ($47,476 annually) effective December 1, 2016, is an unprecedented increase of over 100%. IEC opposes this massive increase due to the negative impact it will have on IEC member companies, most of which are small businesses, and their employees and urges you to support H.R. 4773, the Protecting Workplace Advancement and Opportunity Act, which would, among other things, prevent this increase from going into effect.

Established in 1957, IEC is a trade association representing 3,000 members with 50 chapters nationwide. Headquartered in Alexandria, Va., IEC is the nation's premier trade association representing America's independent electrical and systems contractors. IEC National aggressively works with the industry to establish a competitive environment for the merit shop – a philosophy that promotes the concept of free enterprise, open competition and economic opportunity for all.

DOL's increased salary threshold is higher than minimums set under any state laws—more than $10,000 higher than that of California and more than $15,000 higher than that of New York, two of the states with the highest costs of living and the highest salary thresholds. DOL's dramatic increase will fall disproportionately on workers in cities and states with lower costs of living. For example, white collar workers in West Virginia, Nebraska, Oklahoma and Kentucky may be classified as hourly even though they do the same work as employees classified as exempt in New York and California because of regional differences in pay, which are reflective of regional differences in cost of living.

Many employees classified or reclassified as hourly, nonexempt workers, because of this proposal will lose benefits associated with exempt status. Employers must closely track nonexempt employee's hours to ensure compliance with overtime pay and other requirements. As a result, nonexempt employees often have less workplace autonomy and fewer opportunities for flexible work arrangements, career training and advancement than their exempt counterparts. In addition, the FLSA's rigid rules with respect to overtime pay also make it complicated for employers to provide hourly employees with certain incentive pay and bonuses. Thus, the proposal may cause a seismic shift, greatly reducing opportunities to work remotely, work part time, work around doctors' appointments, handle every day errands, or even carry a smartphone to check emails after work hours—in other words, workplace flexibility would be drastically limited.

Additionally, while changing the automatic increase from every year to every three years is an improvement, this provision is still unauthorized by the statutes and will still mean that future increases will go into effect without the benefits of a rulemaking, and without taking exigent economic conditions into account.

As for the impact the DOL's rule would have specifically on merit shop electrical contractors, the Committee need only look to the impact it would have on electricians looking to move up within a company. Within most merit shop electrical contractors, young people are hired and enter a four year apprenticeship program where they work during the day and go to school in the evenings. At the end of their training period they are electricians and are still paid on an hourly rate. However, the best and most motivated among them attempt to make the jump from the field to the office and start a career track that leads them toward a management position, normally starting in the office as an estimator.

The job of an estimator is to quantify the labor and materials required to complete a project from drawings provided by owners who are soliciting bids from several contractors. Their work hours can vary widely because the number of owners seeking bids for electrical work does not follow any regular trend. Some weeks there is nothing to estimate while other weeks there are more bid solicitations than can be completed in a typical 40-hour work week.

One of the benefits of making the jump from electrician, where the employee is paid hourly, to that of an estimator, where the employee is paid a salary, is the certainty that comes from knowing how much money will be in their paycheck from week to week. Even though an entry level estimator does not make a lot of money, they never have to worry about a week when they are only paid for 20 hours of work because there wasn't much work to bid.

Another benefit to moving up within the industry as a salaried estimator is becoming eligible for bonuses. The salaried employees in many of our member companies that work to help make their company profitable will often times share in the profits at the end of the year with being rewarded with a bonus. Bonuses are typically rewarded each year commensurate with both the success of the company and the level of commitment of the individual employee, including consideration for extra hours worked. By raising the threshold to an amount that is in the range where many salaried employees are currently paid, contractors will be forced to reclassify many from salary back to hourly. For example, a salaried employee paid $42,000 per year may occasionally work more than 40 hours in one week. However, at the end of the year this employee might receive a sizeable bonus.

In addition, merit shop electrical contractors will have to adjust schedules and demands on certain employees within the company. For example, when the time arises and extra help is needed, most businesses will request the salaried employees who are paid above the threshold amount to work longer hours, and those who are paid on an hourly bases will be sent home. This removes the ability of the lower paid employee to earn extra money. Not only will overtime pay not be available to them, but the bonuses at year end will go to the salaried employees, which will also lead to a widening of the income gap.

DOL's overtime rule is a costly change that our merit shop electrical contractor members simply cannot absorb and will negatively affect their employees and the economy as a whole. Consequently, IEC urges you to support H.R. 4773, the Protecting Workplace Advancement and Opportunity Act. This important piece of legislation would nullify the DOL's rule, require the DOL to conduct a comprehensive economic analysis on the impact of mandatory overtime expansion to small businesses, nonprofit organizations and public employers, prohibit automatic increases in the salary threshold and require that any future changes to the duties test must be subject to notice and comment.

STATEMENT BEFORE
THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
HEARING ENTITLED "DAMAGING REPERCUSSIONS:
DOL'S OVERTIME RULE, SMALL EMPLOYERS, AND THEIR EMPLOYEES."

June 23, 2016

Introduction

The Independent Insurance Agents and Brokers of America (Big "I" or IIABA) submits testimony today to express our concerns over the recently released Department of Labor (DOL) rule related to worker classifications under the Fair Labor Standards Act (FLSA) that could potentially impact one million white collar workers in the insurance industry. The Big "I" is the nation's oldest and largest trade association of independent insurance agencies, representing a nationwide network of more than a quarter of a million agents, brokers and employees. These small, medium and large businesses sell all lines of insurance—property/casualty, life, health, employee benefit plans and retirement products.

The DOL rule largely requires that employees who make less than $47,476 be paid overtime, but some workers who make more than $47,476 and meet certain requirements would not generally be entitled to overtime. This requirement goes into effect on December 1, 2016. Currently, the threshold salary for this overtime exemption is $23,660. The Big "I" does not oppose the intent of the DOL in updating the current salary threshold, which has not been adjusted for inflation since 2004. However, the association is concerned about the impact this excessive 100% increase will have on independent insurance agencies and their employees.

The DOL rule also institutes an automatic inflationary adjustment to the salary threshold, tagged at the 40th percentile of worker wages in the lowest cost of living Census region. The Big "I" is concerned that the inflation adjustment will be overly burdensome for small businesses. As such, the Big "I" supports H.R. 4773, the "Protecting Workplace Advancement and Opportunity Act," by Reps. Tim Walberg (R-Michigan) and John Kline (R-Minnesota). The legislation would stop the current rule from going into effect and forbid

DOL from re-proposing the rule unless certain conditions are met, such as robust sector-specific and small business-specific impact analysis. The Big "I" is also supportive of H.J. Res 95, by Rep. Virginia Foxx (R-North Carolina) which would provide for disapproval of the rule pursuant to the Congressional Review Act.

Negative Impact on Small Businesses

Many Big "I" member agencies are small businesses that have expressed concerns regarding the rule's impact on their businesses and their employees. Big "I" member agencies have noted that they will be forced to respond to such a large salary increase in one or more of the following ways: (1) shifting all of their employees to hourly; (2) holding off on hiring new employees; (3) laying off some current employees and outsourcing or automating certain administrative work; (4) disallowing telecommuting; or (5) reducing base salaries. Many agencies expressed concern that this would decrease employee morale and flexibility, and potentially increase turnover.

Another concern is that the rule would cause a significant increase in compliance costs and paperwork burdens for small insurance agencies. Since the rule was released last month, the Big "I" has received questions nearly every day from member agencies across the country, seeking to understand the complexities of the regulation. A study performed in 2014 for the National Association of Manufacturers found that businesses with fewer than 50 employees spent 30% more per employee per year than their larger counterparts and most Big "I" members have less than 50 employees.

The Big "I" is concerned that the DOL did not complete appropriate analysis specific to the economic impact of the rule on small businesses prior to finalizing the rule. This concern has also been expressed by the Small Business Administration, which concluded that the DOL estimates of management costs may not reflect the actual experiences of small entities.

One of the greatest concerns among Big "I" small business members was that the automatic salary increases will be extremely hard to implement and track. While the original proposal only had a 60-days' notice window, which was extended to 150-days in the final rule, many businesses expressed concerned about missing these update notices and being subject to enforcement actions. Not all salary increases occur on a calendar year and budgeting can be a multi-year process. Automatic updates will require annual reviews of compensation, potential bonuses and classification of employees. This is a time and resource consuming process.

Finally, Big "I" member agencies also commented that complying by the end of the year will be difficult. Small businesses must understand this rule, evaluate and reclassify their workforce, and plan their budget and raise funding to pay for the compliance costs of this regulation.

Negative Impact on Insurance Agencies

The DOL estimates that one million potentially affected "white collar" workers in the insurance industry, so the final rule will have a profound and especially sizable impact on the insurance agencies. As such, Big "I" members, both small and large, have expressed many insurance industry specific concerns.

First, the highly regulated nature of the insurance business creates unique challenges for insurance agencies and makes it impossible for insurance agents to increase revenue to cover the new compliance costs that this rule imposes. Specifically, the prices of insurance products are closely regulated by state officials, and insurance agents are unable to charge their customers more or otherwise recover any new payroll costs from insurance buyers. The ability of agents and brokers to charge fees to their clients is also severely limited or prohibited by law in most jurisdictions.

Second, insurance agents would be limited in their ability to respond to clients in times of emergencies. Insurance sales by IIABA members represent a significant portion of the property/casualty market, meaning they play a pivotal and unique role in helping consumers following an accident, which does not always occur conveniently during working hours. Big "I" members also help policyholders following a catastrophic event. Following severe weather events and other catastrophic events, insurance claims surge and more time is required to assist policyholders.

If insurance agencies are required to convert their employees from salaried to hourly, closely tracking hours and absorbing unpredictable and irregular overtime costs, it will make it harder to assist their clients when their services are needed the most, following an accident or disaster. Currently, this type of overtime would generally be compensated with comp time, which is no longer possible under the final rule.

Third, some lines of the insurance business are seasonal and some IIABA members expressed concern that the new rule will negatively impact their businesses based on this seasonality. For example, one Big "I" member agency noted that they work to put insurance policies in place for a January 1 effective date, so currently staff works longer hours during the fall and winter and less hours during the spring and summer to make up for the overtime in the other parts of the year. Our member noted concerns that this arrangement will have to change and they would have to switch employees to hourly and cut back even further on hours during the off season to make up for the time and a half overtime costs in the fall and winter.

Of note, the rule does, for the first time, provide the option of allowing nondiscretionary bonuses and commissions to satisfy up to 10% of the standard salary level. This does provide some relief, particularly in the case of insurance agencies which rely on nondiscretionary bonuses and commissions as part of employee compensation. As this is implemented we hope that we will be able to provide feedback to the DOL on its effectiveness, with the potential for the 10% threshold to be increased in the future.

Disparate Impact on Employees and Employers in Lower Cost of Living Areas

Big "I" member agencies in lower cost of living states and with offices in multiple states expressed concerns that this rule would have a disproportionate impact on their businesses and employees. For example, white collar workers in Missouri or Iowa may be classified as hourly even though they do the same work as employees classified as exempt in New York or California, because of regional differences in pay, which are reflective of regional differences in the cost of living.

While, the DOL did change the statistical measure that will be used to set the minimum salary threshold from a national measure to a measure based on the lowest cost-of-living Census region, the threshold is still unreasonably high and a 100% increase from the current threshold. It is especially notable that the increase is higher than the current minimum requirement in every state, including California ($41,600) and New York ($35,100), two of the highest cost of living states in the country. This standard effectively sets a ceiling for states and not a floor, as is intended by the law, and will result in unfairly classifying employees who do the same work as hourly or salaried based on regional differences in pay.

Conclusion

As explained in our testimony, the Big "I" does not oppose updating the current $23,660 salary threshold, which has not been adjusted for inflation since 2004. The Big "I" is concerned that the excessive 100% increase—to $47,476—will negatively impact insurance agencies and their ability to service their clients, and have a disparate impact across the county. The Big "I" is also concerned about the automatic inflation adjustment will be overly burdensome for small businesses. The Big "I" appreciates the opportunity to express its views and thanks the Committee for holding this important hearing.

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Carrie R. Hunt
Executive Vice President of Government Affairs
and General Counsel

June 22, 2016

The Honorable Steve Chabot
Chairman
Small Business Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nydia Velázquez
Ranking Member
Small Business Committee
U.S. House of Representatives
Washington, D.C. 20515

Re: DOL's Overtime Rule

Dear Chairman Chabot and Ranking Member Velázquez:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing to you regarding your hearing tomorrow to share our concerns on the Department of Labor's (DOL) changes to the Fair Labor Standards Act (FLSA), which makes certain full-time salaried workers eligible for overtime protections. While NAFCU and our members support efforts to modernize the current regulations to ensure that all American workers are granted access to fair pay for their hard work, we are concerned that this rule will have severe unintended consequences that harm growth opportunities for many white collar workers, especially at smaller employers such as credit unions. NAFCU believes that the rule does not adequately consider geographic salary differences or provide exceptions for non-salary based employee advancement opportunities such as travel time for conferences and training events.

We are concerned that nearly doubling the minimum overtime exempt salary would disproportionately burden credit unions in underserved and non-urban communities. Additionally, NAFCU has concerns that the DOL's proposal fails to adequately consider the needs of small businesses and non-profit organizations, including credit unions, which operate with extremely low financial margins in a highly competitive service-driven marketplace. Most small-to-midsize credit unions do not have the ability to absorb such a large increase without directly impacting the services they provide to the community, thus hurting the very people they are trying to help.

With less than six months remaining before this rule goes into effect on December 1, 2016, there is not enough time for a small business or non-profit to adequately be able to determine if they should reclassify certain employees and which employees will not be subject to the means test. Additionally, it presents a very small window of time for an operator to make the proper changes to their annual and long-term strategic plans to ensure their business remains functional.

Credit unions are unique financial institutions that are member-owned, democratically operated, not-for-profit, and are generally managed by a volunteer Board of Directors. Every employee of a credit union is eligible to become a member-owner of the institution. A credit union's members are its shareholders and each member has a vote, regardless of the amount on deposit. This level of dedication to their employees and members has allowed credit unions to provide extensive career training and growth opportunities, as well as an unprecedented amount of employee and member driven community involvement. DOL's new rule makes it incredibly difficult for credit unions to bear the travel, lodging, registration, and other costs of sending employees to trainings and conferences alongside paying for overtime hours. Additionally, many credit union employees happily volunteer their time and their services to the betterment of community programs. This change to the FLSA could negatively impact a credit union's ability to ask their employees to volunteer for community events and could adversely affect a credit union's ability to serve its community.

The changes to the FLSA made by the DOL are problematic for small businesses. They go too far and are happening too fast and without enough considerations for small businesses and non-profits such as credit unions. It is with this in mind that we urge the House to act on legislation such as H.R. 4773, the *Protecting Workplace Advancement and Qpportunity Act*, which would provide needed relief from the negative impact this of rule.

Again, **we strongly support fair wages** and appreciate the opportunity to comment on this matter. If I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact me or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

Carrie R. Hunt
Executive Vice President and General Counsel

cc: Members of the Committee on Small Business

NAMIC®

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Statement

Of the

National Association of Mutual Insurance Companies

To the

United States House of Representatives

Committee on Small Business

Hearing on

"Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees"

2360 Rayburn House Office Building

June 23, 2016

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide testimony on the impact of public policy of the Administration's Overtime Rule and its consequences for workers, students, nonprofits, and small businesses.

NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,300 member companies including regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members serve more than 135 million auto, home and business policyholders, with more than $208 billion in premiums accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market.

On May 18, 2016, the U.S. Department of Labor's Wage and Hour Division ("DOL") issued a final rule modifying overtime eligibility under the Fair Labor Standards Act ("FLSA"), implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's "EAP" or "white collar" exemption.

The stated goals of the Rule are updating the section 13(a) (1) exemption's salary requirements, by:

- Setting the standard salary level equal to the 40th percentile of earnings for full-time salaried workers; which increases that level from the current level where an executive, administrative, or professional employee must be paid at least $455 per week or $23,660 per year for a full-year worker, to $47,476 annually for a full-year worker;

- Increasing the highly compensated employee annual compensation level equal from the current $100,000 to $ $134,004 annually; and,

- Adopting a mechanism to automatically update the salary and compensation thresholds on an annual basis using either a fixed percentile of wages or the Consumer Price Index for All Urban Consumers.

The Rule Will Result In Negative Consequences for Both Employers and Employees of Mutual Insurance Companies

The changes proposed in the Rule will have a significant impact on NAMIC members. According to a September 2014 report by the Economic Policy Institute, a non-partisan think-tank based in Washington, D.C. affiliated with the labor movement, 6.3 percent of insurance sales agents are currently automatically covered by overtime protections, but more than 50 percent would be automatically covered by overtime protections if the thresholds were raised to the levels set by the Rule. For insurance claims and policy processing clerks, that level would rise from 12 percent to approximately 70 percent. For customer service representatives, the level would rise from eight percent to over 60 percent. Overall, the study concluded that 3.4 percent of full-time, salaried supervisory/managerial/professional workers are currently automatically covered, but that figure would increase to nearly a third, 32.9 percent, if the threshold were raised.

The Rule is ill-suited to both the underlying business and the practical interests of the employees in mutual property/casualty insurance. The employees of the mutual property/casualty insurance companies that are NAMIC members are highly trained financial services professionals that provide the highest level of service and integrity to policyholders. These are highly valued employees that generally have training and experience that is not easily replicable. We have no evidence from human resource coordinators or state insurance regulators that the problems that the Rule seeks to address exist or have existed for any employees of any NAMIC members.

The Rule also assumes that the employer will simply pay more employees more money, when the options for the business are more varied and complex. Mutual insurance companies exist for the protection of policyholders, and robotically increasing employee costs may not be in the best interests of protecting policyholders. The proposed automatic adjustments may be too much for mutual companies to adopt and still fulfill the mandate to protect policyholders.

The Department does not appear to appreciate fully how businesses work. As a consequence to employees, many organizations may also be forced to choose among other options:

- The mutual company may be forced to lay off employees to fund the increase in wages for retained employees. This will necessitate curtailing aspects of their operations, resulting in less policyholder protection while increasing the workloads of the remaining exempt workforce.

- In order to maintain payroll budgets, the mutual company may need to lower the hourly wages of non-exempt employees, so that their total annual compensation, including overtime payments, remains at the budgeted level. This will have a negative impact on employee morale, and could result in employees seeking other employment. This in turn would increase recruiting and training expenses.

- The mutual company will need to adopt more restrictions on the overtime hours worked by non-exempt employees, relying on temporary or part-time staff for additional personnel resources at straight-time rates, or forcing exempt employees to absorb some of their non-exempt colleagues' duties.

Many employees who are reclassified as non-exempt at a lower hourly wage will experience no increase in total annual compensation to make up for the perceived demotion, and morale problems will develop if they find themselves working the same long hours but earning less on an hourly basis than lower-level non-exempt employees whose job requirements had never included extended hours.

In the proposals leading up to the Rule, the Department suggests that the employee still 'wins' even if these unwanted changes occur, because the employees may have more time off or time with their families. It is staggering for the U.S. Department of Labor to suggest employees would welcome the prospect of reduced status and lower pay. NAMIC member employees are dedicated, hardworking and take pride in their jobs, and will likely feel that their value is reduced because they are reclassified as non-exempt or end up with less pay.

At mutual companies that must restrict overtime hours for all non-exempt employees, the formerly exempt employees converted to non-exempt status will also lose career-growth opportunities. Currently, exempt junior and mid-level employees at mutual companies who would convert to non-exempt status under the proposed salary level change are most vulnerable to these negative impacts. In order to control overtime costs and comply with compensable working time regulations, many mutual employers exclude non-exempt employees from off-hours access to work emails and network systems.

Similarly, non-exempt employees are commonly excluded from the conferences and annual meetings that are often the most important work events of membership organizations, because the travel time and long hours associated with attendance at such conferences would result in prohibitively expensive overtime costs. Participation in key work-related discussions and attendance at their organization's conferences, even if conducted in the evenings or over the weekends, are often highly valued building blocks to professional growth and career advancement for junior and mid-level exempt employees. If they are reclassified as non-exempt solely due to their salary level, these employees will lose meaningful opportunities to gain greater job responsibility and to cultivate relationships among those in their chosen field.

At many mutual companies, non-exempt employees may not be permitted to telecommute or to work flextime schedules that are made available to exempt employees, as these flexible work arrangements pose challenges in tracking and capturing all compensable work hours and controlling overtime costs for non-exempt employees. By contrast, the FLSA and state wage and hour laws do not require that employers record the precise hours worked each day by exempt employees, so employers have more latitude to offer flexible schedules and telework arrangements to exempt employees.

These more flexible work arrangements not only tend to improve employees' work satisfaction, but they also help employees achieve a better work-life balance. If converted to non-exempt status, currently exempt employees may lose the flexible work arrangements on which they and their families have come to rely. By setting a salary level that will categorically reclassify so many currently exempt employees as non-exempt, the proposed changes are more likely to adversely impact the work life and personal lives of many affected employees than to result in higher incomes.

The Change to the Salary Level Test Will Have a Disproportionate Adverse Effect on Employers Located in Lower-Wage Regions, and Harms the Career Growth of Mid-level Employees

The Rule increases the minimum weekly salary level for EAP exemptions to the 40th percentile of earnings for full-time salaried workers nationwide, based on Bureau of Labor Statistic ("BLS") data. In addition, the NPRM proposes automatically adjusting the minimum salary level on an annual basis, using either a fixed percentile of wages or the Consumer Price Index. The minimum salary level is projected to jump to $51,000 in 2020.

The Rule maintains that the "bright-line test" of the salary level is a simple and administratively easy way to distinguish between exempt and non-exempt employees, but that very simplicity leads to hardship for a subset of employers in rural areas and small towns outside of major metropolitan areas.

For instance, the average salary in many rural areas and small towns outside of major metropolitan areas and in certain lower-wage regions of the country is substantially lower than the national average. A single uniform minimum salary level for the nation disregards the very real regional differences in the level of income needed to achieve a middle-class standard of living.

The federal government has regional data on average salaries. The federal government's own General Schedule ("GS") pay tables for federal employees include locality adjustments that recognize certain metropolitan areas have higher costs of living, requiring an increase in pay. Since the federal government recognizes for its own workforce that jobs with the same level of responsibility and qualifications appropriately command dramatically different salary levels depending on region, the minimum salary level for the EAP exemptions should – and can – also be tied to such regional differences.

The Rule will result in a high cost to American business and the very employees that the rule purports to help. These nationwide rules impose significant and ongoing administrative costs and liabilities to employers who are presumed without evidence to have cheated their employees from rightful wages. Businesses with fiduciary duties to shareholders and policyholders may simply pay more overtime, as the Department hopes, or they will responsibly restructure their operations under the rules to demote employees, limit employee flexibility and actually reduce employee overtime.

THE VOICE OF RETAIL

June 23, 2016

The Honorable Steve J. Chabot
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Nydia Velazquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Chabot and Ranking Member Velazquez:

On behalf of the members of the National Retail Federation (NRF), thank you for holding this very timely hearing on the Department of Labor's (DOL) changes to federal overtime rules. The Department's misguided and extreme time card rule will have far-reaching consequences for retail employees and employers across the country, and we appreciate your attention to this critical issue.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing $2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

While the President instructed DOL to modernize the nation's overtime regulations, the Department's changes are excessive and will result in the demotion of countless professional and executive employees across the country. The final rule drastically increases the minimum salary level required for exemption to $47,476 in 2016 and includes an unprecedented automatic increase to the threshold every three years thereafter. This more than 100 percent increase in the salary threshold is simply too much, too fast and will disproportionately impact lower wage industries and lower cost regions of the country. Notably, according to DOL's calculations in the final rule, the South composes 41 percent of all affected workers.

Retailers agree with nonprofit organizations, higher education institutions, municipal and county governments, and other employers that overtime eligibility will not suddenly lead to overtime pay. Instead, by direction of the Labor Department, we will be forced align our workforce to limit overtime pay in ways that undermine career opportunities and better futures for both retail employees and retail companies. DOL is desperately trying to convince the public that its new overtime changes will not inflict much more harm than good, but its own analyses in the rule say otherwise.

A deeper dive into DOL's own estimates shows just how scant the benefits are and how significant the consequences are. According to DOL, at the new standard salary level, average weekly earnings for all affected workers are expected to increase by $5.48 per week. However, four out of five of the 4.2 million impacted workers DOL and the administration consistently claim will receive a raise as a result of this rule, either never work more than 40 hours per week or only occasionally work overtime. These workers will not experience an increase in pay but will receive a time card and lose valuable training opportunities, workplace flexibility, and benefits. For the 730,000 workers who regularly work overtime and will become overtime eligible, DOL estimates their regular hourly rate of pay will decrease by 5.3 percent on average and their hours will decrease by 0.8 percent.

To distract further from reality, proponents of this rule have touted the changes as a welcomed job creator. These claims are also riddled with partial truths. Supporters of the rule who celebrate studies predicting a potential increase in *part-time* jobs fail to acknowledge to the public that any increase in part-time jobs comes at the expense of full-time employees' hours and earnings. The creation of part-time jobs due to hiring freezes or layoffs of full-time employees is hardly something to celebrate.

However, despite the limited benefits and substantial negative impacts that accompany this rule, it is clear DOL was not willing to reconsider its changes in any meaningful way absent congressional action. Accordingly, NRF urges members of the Committee to support H.R. 4773, the Protecting Workplace Advancement and Opportunity Act. This commonsense legislation would provide an important pause in the rulemaking process and require DOL to complete comprehensive analyses of the impacts on small businesses and lower cost regions of the country. These are studies that DOL should have undertaken before issuing its final rule and on which the public deserves an opportunity to comment. In addition, H.R. 4773 would prohibit any future overtime rule from mandating automatic increases to the threshold.

Thank you once again for convening today's hearing and for the opportunity to submit a statement for the record. NRF appreciates the Committee's diligence in exercising oversight over this rulemaking and efforts to raise awareness among small businesses.

Sincerely,

David French
Senior Vice President
Government Relations

cc: Members of the House Small Business Committee

PARTNERSHIP TO PROTECT
WORKPLACE OPPORTUNITY

Partnership to Protect Workplace Opportunity Co-Chair Lisa Horn had the following statement on the House Small Business Committee's hearing, "Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees:"

We commend Chairman Chabot and the members of the House Small Business Committee for holding today's hearing to highlight the overwhelming negative consequences of the Department of Labor's recently issued overtime regulation. The Committee's interest is most welcome, as this regulation has quickly become the overriding concern of small businesses, nonprofits, public sector employers, and educational institutions across the country.

These employers are facing challenging and painful decisions as they try to meet the extraordinary demands of the new regulation. The new salary threshold for determining overtime pay eligibility is more than double the previous level ($47,476 from $23,660), and employers are struggling to absorb such a drastic increase.

As a result of this misguided regulation, many currently exempt, salaried professional employees will have to be reclassified as hourly wage earners--a change that is frequently considered a demotion. Employers will have no choice but to limit employees' hours to less than 40 per week and reduce access to training opportunities and workplace flexibility. In many cases, employers will be forced to cut critical programming, staffing, and services. In the nonprofit sector, this could mean providing fewer life-saving and other desperately needed services for vulnerable populations.

We are pleased that today's hearing will shed light on the serious hardships the new overtime regulation imposes on employers, their employees, and the people and communities that they serve.

WorldatWork
The Total Rewards Association

June 23, 2016

Chairman Steve Chabot
Small Business Committee
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Ranking Member Nydia Velázquez
Small Business Committee
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Re: Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees

Dear Chairman Chabot and Ranking Member Velázquez,

On behalf of WorldatWork, I write today to outline and express our membership's concerns with the Department of Labor's Final Rules Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.

WorldatWork is a nonprofit human resources association for professionals and organizations focused on compensation, benefits, work-life effectiveness and total rewards – strategies to attract, motivate, retain and engage a productive workforce. Our association and affiliates provide comprehensive education, certification, research, advocacy and community, enhancing the careers of professionals, and ultimately achieving better results for the organizations they serve. WorldatWork has more than 70,000 members and subscribers worldwide. Founded in 1955, WorldatWork is affiliated with 70 local human resources associations and has offices in Scottsdale, Ariz. and Washington, D.C.

A key element to an organization's long-term success and its employees is compensation, which influences and affects the communities of where it operates and the U.S. and global economy. There are many approaches to achieving a positive impact on employment relationships, all of which consider a broad array of ideas, values and goals. To achieve these societal benefits, organizations need several degrees of decision-making flexibility to adapt compensation to a mutually beneficial result organized within a public policy parameter.

The U.S. Department of Labor's regulation to amend the exemptions for executive, administrative and professional employees would dramatically impact the ability of WorldatWork's members to maintain the decision-making flexibility needed to adapt compensation to a mutually beneficial result agreed upon between an employer and employee. The increase to the salary level, more than doubling the current level, is going to wreak havoc on small businesses and will be detrimental to many employees' flexible work schedules. WorldatWork agrees that the current salary thresholds should be updated – but more than doubling it in such a short amount of time is going to cause more problems than it will solve.

The triennial update that is equal to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region will have a significant impact on small businesses as they begin to classify more employees as hourly nonexempt and they fall out of the salaried worker population. WorldatWork's subject matter expert performed modeling based on the new salary level and triennial

WorldatWork
The Total Rewards Association

update that indicates that after 15 years only 14.9 percent of the exempt population would remain above the 40th percentile threshold[1].

This escalation does not address the issues related to salary compression and the potential effects of forced salary increases over merit increases that will ensue if the current final rule is enforced. This is extremely troubling and counterintuitive to how professional workers approach their careers and commitments in the ever-changing technology-driven world.

Reclassifying employees to nonexempt status likely will lead to other negative consequences. One area of concern is job flexibility. Under exempt status, employees must generally be paid the same salary regardless of the hours worked, and thus, are afforded a level of work flexibility to take a few hours off for an appointment or tend to a family matter without being docked in pay. Nonexempt employees will be forced to take this time as unpaid, which will limit their ability to address personal obligations.

Another area of concern is whether wages for employees ultimately will increase with this change. Labor costs are among the largest costs for most businesses, especially small businesses, and are closely monitored to avoid budget overruns. It is unlikely that employers will increase their overall labor costs by simply paying formerly exempt employees additional overtime. Small businesses likely will offset that cost through some corresponding reduction in other areas of employee compensation. Thus, the administration's goal to increase wages paid to workers may not be realized.

Accordingly, we urge all the members of the Small Business Committee to cosponsor H.R. 4773, the *Protecting Workplace Advancement and Opportunity Act,* which would require the Labor Department to conduct a detailed economic analysis before making dramatic changes to federal overtime pay requirements. WorldatWork supported the legislation on March 23, 2016.[2]

WorldatWork applauds your leadership for holding this important hearing and looks forward to working with you and members of the Small Business Committee as the administration moves to execute the regulation. WorldatWork's total rewards compensation experts are the professionals who will be charged with implementing the changes to the overtime exemption and managing organizations' compensation budgets going forward.

Sincerely,

Cara W. Welch

Cara Woodson Welch, Esq.
Vice President, External Affairs & Practice Leadership

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[1] https://www.worldatwork.org/Content/publicpolicy/image/Infographic%20-%2040th%20Pct%20Exempt%20Salary%20Erosion.pdf

[2] https://www.worldatwork.org/adimLink?id=80101

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July 8, 2016
The Honorable Steve Chabot
Chairman
Committee on Small Business
US House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515-0315

Via: Viktoria.Seale@mail.house.gov

Re: Comments for the Record for the Hearing on "Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees"

Dear Chairman Chabot:

I write to support the positions and arguments provided the National Association of Counties (NACo) at the June 23, 2016 hearing referenced above. I am the District One Supervisor in Gila County, Arizona. I associate myself with all of the comments in NACo's testimony concerning negative impacts of the Department of Labor's Overtime Rule on rural counties, like my own, and our citizens and employees. Our citizens will pay for the additional mandatory pay, initially not with increased taxes, but with reduced services. Our employees will be burdened with doing more work with less resources, and in some cases, replacing paying jobs with volunteers who want to keep the libraries and parks open. Our rural Southwestern County cannot manage the federal government's "one-size-fits-all" approach taken in this rulemaking.

Gila County, Arizona, located in the center of Arizona just northeast of Phoenix, is a rural county with a population of 54,219, of which 8.4% are unemployed and 21% are living at or below 200% of the federal poverty level. Within the County's boundaries of 4,795.74 square miles, there is the Tonto National Forest with seven Federally-designated wilderness areas totaling 920 square miles and one Wild and Scenic River (the Verde), and three Federal Indian Reservations (Tonto Apache, San Carlos Apache and White Mountain Apache), all of which total about 96% of the County's total land base.

Gila County's landscape runs the gamut from Saguaro desert vistas to Ponderosa Pine covered mountains. The elevation ranges from 2,123 feet at Roosevelt Dam to 7,920 feet in its north at both Promontory Point and Myrtle Point, on the edge of the Mogollon Rim. Over one half of Gila County is Federal public land, managed by the U.S. Forest Service. The San Carlos, Tonto, and White Mountain Apache Nations encompass an additional 38 percent of the land within the county.

The Gila County government operates under the economic constraint that 96% of the land in Gila County is outside of our tax base as federal and tribal land. These lands are under federal and tribal management and exempt from local taxation. Of the remaining 4% of the land base, 2.5% is property used for mine tailings and taxed at a significant reduction. We operate on a tax base of only 1.5% of the land.

Of the 1.5%, the 1% lies in the desert and rangelands of the southern part of the county and the ½% lies in the northern forested section. The heavily forested northern ½% represents up to 70% of the county's total assessed valuation and is 100% at risk from catastrophic wildfire.
We employ 630 full-time employees. We estimate that 8 of those full-time employees would be eligible for overtime pay under the new rule. The potential cost to the County to this additional pay (for no additional service) is over $22,000 annually. This additional cost cannot be easily absorbed in our budget process.

Arizona imposes statutory limitations on property tax rates and property tax levies. Property taxes are Gila County's primary source of general fund revenue. As noted above, the property tax base in the County is very small, only 1.5%. So there is not a ready source of revenue to support higher level salaries.

While the Federal PILT payments are relied upon to help support the many services Gila County provides on federal lands, the actual payment made by the federal government in lieu of paying local property taxes is wanting. Our anticipated PILT revenue for FY17 is $3,484,080 dollars or $1.96 per acre.
According to tax rate calculations based on the Gila County Assessor's estimate of similar land in private hands (rural, non-subdivided), the County would receive in property taxes $315.44 more per acre than the current PILT payment.

We have years of practice of doing more with less. However, meeting the requirements of this rulemaking is made more difficult by living lean – we have no more excess to carve out.

I addition to the direct impact on our government, Gila County is home to many small businesses that employ many of our residents. Our small communities rely on these small businesses for both employment and services. Federal action that threatens their business threatens all of my constituents.

I applaud your looking at the impact of this rulemaking on my County. I urge you to explore alternatives to meet with goals of fair wages without hurting the citizens of my County.

Sincerely,

/s/

Tommie C. Martin
District One Supervisor
Gila County, Arizona