Congress of the United States
Washington, DC 20515

February 9, 2016

The Honorable Thomas E. Perez
Secretary of Labor
United States Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

Dear Secretary Perez,

We are writing today to express our serious concern over the Department of Labor's (DOL) proposed rule to revise the existing "overtime rule." As written, this one-size-fits-all rule would adversely impact all affected employers, especially small businesses. Instead of helping our nation's workers, this rule will ultimately hurt them.

In 2014, President Obama directed the DOL to examine the "white collar exemption" that is currently in place for executives, administrative, and professional employees in the Fair Labor Standards Act (FLSA) regulations and propose revisions to the existing regulations. The FLSA, which was signed into law in 1938 by President Roosevelt during the Depression, establishes the minimum wage and overtime standards for most American workers. It included the white collar exemption from the minimum wage and overtime requirements because workers in these categories were often compensated with add-on benefits above and beyond normal wages. The white collar exemption ensured that the federal government did not force employers to inflate the salaries of certain employees who were already given fair compensation through non-wage payments. While the DOL's proposed rule is aimed at expanding overtime protections to help more workers, the proposed rule, as drafted, will instead hurt American workers and the businesses that employ them.

Currently, employers are required to pay overtime for all employees who make $23,660 or less per year. The new rule, proposed by DOL's Wage and Hour Division, would raise the salary threshold and require employers to pay overtime for all employees who make $50,440 or less per year. With the implementation of the rule, nearly 5 million employees would suddenly become eligible for overtime pay. This 113 percent increase in the salary threshold would place a large burden on business owners and their workers, and is a major departure from previous DOL policy.

Additionally, increasing the salary threshold by such a significant amount also disregards the geographic diversity of our country. As you know, the purchasing power of a dollar is drastically different in various parts of our country. Not only is the DOL ignoring regional realities, but they are also overlooking the differences that exist between rural and urban areas.

The belief that this rule change will increase millions of workers' paychecks is simply shortsighted. Unfortunately, a change of this magnitude is likely to have unintended

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consequences regarding how an employer compensates its employees which would negatively affect workers. Many small businesses, which often operate on thin margins, yet still pay competitive salaries, provide great benefits, and positive workplace environments, simply cannot afford to increase their workers' salaries to the new salary threshold that has been proposed. Thus, to remain economically viable and keep the prices of their goods and services competitive, many businesses would be forced to take actions such as reducing workers hours or shifting salaried workers to hourly status, which many workers would consider a demotion and may also mean a reduction in benefits. As drafted, this rule is poised to have the most negative impact on those entering the workforce along with mid-level managers.

In addition, we are concerned the new rule does not clearly explain the DOL's plan regarding the future of the duties test—which is one of the main components used in determining whether a given employee is exempt from the provisions of the FLSA. As it stands, the proposed DOL rule is overly ambiguous about its plans for changing the duties test and indicates the DOL is considering the implementation of clearly flawed policies.

For instance, the DOL asks a series of questions in the proposed rule about the duties test. The Department asks whether a percentage-of-time rule should be applied to the exemptions' primary duties test. The DOL also specifically asks whether it would be appropriate to adopt California's 50% rule. A series of questions is not a viable substitute for a concrete regulatory proposal—the businesses affected by this rule need specific language they can consider and comment upon before any changes to the duties test are finalized.

Employers have already invested a significant amount of time and money understanding and applying the current duties test. Any changes would force businesses to expend even more time and money to adapt to the new rules. In addition, the vague language regarding the potential for changes to the duties test in the final rule is likely to cause confusion and increase the number of disputes over altered or new classifications. The impact, again, would hurt businesses and employees more than it would help them.

It is for these reasons we strongly believe this rule change would adversely impact all businesses, especially those categorized as small businesses. We urgently ask you to reconsider moving forward with this rule as drafted.

Sincerely,

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