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THE ADMINISTRATION'S OVERTIME RULE AND ITS CONSEQUENCES FOR WORKERS, STUDENTS, NONPROFITS, AND SMALL BUSINESSES

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 9, 2016

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THE ADMINISTRATION'S OVERTIME RULE AND ITS CONSEQUENCES FOR WORKERS, STUDENTS, NONPROFITS, AND SMALL BUSINESSES

Thursday, June 9, 2016
U.S. House of Representatives
Committee on Education and the Workforce
Washington, D.C.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2175, Rayburn House Office Building, Hon. John Kline [Chairman of the Committee] presiding.

Present: Representatives Kline, Wilson of South Carolina, Foxx, Roe, Thompson, Walberg, Salmon, Guthrie, Rokita, Heck, Messer, Carter, Bishop, Grothman, Curbelo, Stefanik, Allen, Scott, Hinojosa, Davis, Courtney, Fudge, Polis, Wilson of Florida, Bonamici, Pocan, Takano, Jeffries, Clark, Adams, and DeSaulnier.

Staff Present: Bethany Aronhalt, Press Secretary; Andrew Banducci, Workforce Policy Counsel; Janelle Gardner, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Jessica Goodman, Legislative Assistant; Callie Harman, Legislative Assistant; Nancy Locke, Chief Clerk; John Martin, Professional Staff Member; Dominique McKay, Deputy Press Secretary; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Olivia Voslow, Staff Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Press Assistant; Pierce Blue, Minority Labor Detailee; Denise Forte, Minority Staff Director; Christine Godinez, Minority Staff Assistant; Brian Kennedy, Minority General Counsel; Kevin McDermott, Minority Senior Labor Policy Advisor; Kiara Pesante, Minority Communications Director; Arika Trim, Minority Press Secretary; Marni von Wilpert, Minority Labor Detailee; and Elizabeth Watson, Minority Director of Labor Policy.

Chairman KLINE. A quorum being present, the Committee on Education and the Workforce will come to order. I will recognize myself for a brief opening comment.

In July of 2011, Chairman Walberg held a subcommittee hearing to examine whether the *Fair Labor Standards Act* was meeting the needs of the twenty-first century workplace. And the answer, of

course, was a resounding no. We learned the rules implementing the law are too complex, bureaucratic, and outdated. Trial lawyers profit while workers are denied their fair share under a broken regulatory system. That is precisely why this Committee, more specifically Republicans on this Committee, have repeatedly called for responsible effort to streamline and modernize Federal overtime rules.

Workplaces are more dynamic and innovative than they have ever been, and the needs of today's workers are much different than for those who worked when the law was written more than 75 years ago. Workers and employers have a better shot to succeed when Federal policies reflect the changing realities of our economy.

The Department of Labor had an opportunity to build consensus around a set of responsible reforms that would have garnered broad bipartisan support. Yet the Department chose, once again, to take an extreme partisan approach that will hurt the very people they claim they want to help. This rule will disrupt the lives of countless individuals and do nothing to remove the regulatory landmines that are harmful to workers and employers. That is what small business owners, college and university administrators, State and local officials, and heads of nonprofit organizations have warned about. But these warnings were ignored.

The Department ignored the voices of those who must implement this rule in the workplaces, on their campuses, as they serve the needs of people in their communities. Instead, the Department listened to the same progressive voices who have been wrong for so long about how to address the challenges facing working families, the same voices who claimed a trillion-dollar stimulus bill would create jobs and deliver a strong economy. It didn't. The same voices who claimed the government takeover of health care would lower costs and protect the health care people liked. It hasn't. The same voices now claim this overtime rule will provide a pay raise for millions of Americans. It won't.

The regulatory onslaught under this administration is unprecedented. The President and his liberal allies have advanced new rules governing retirement advice, health and safety, energy, union organizing, Federal contracting, financial markets, health care, and wages. Still, there are those who can't understand why the economy is anemic or why job growth is sluggish or why wages are largely stagnant.

Now we have an overtime rule that will do more harm than good, particularly for lower-income workers and younger Americans. Chairman Walberg has led our efforts in this area for years, and I—where is Chairman Walberg? Ah, there he is, and I will now yield to him the remainder of my time to explain in more detail the costs and consequences of this rule.

[The statement of Chairman Kline follows:]

Prepared Statement of Hon. John Kline, Chairman
Committee on Education and the Workforce

In July 2011, Chairman Walberg held a subcommittee hearing to examine whether the Fair Labor Standards Act was meeting the needs of the twenty-first century workplace. The answer was a resounding 'no.' We learned the rules implementing the law are too complex, bureaucratic, and outdated. Trial lawyers profit while workers are denied their fair share under a broken regulatory system.

That is precisely why this committee—more specifically, Republicans on this committee— have repeatedly called for a responsible effort to streamline and modernize federal overtime rules. Workplaces are more dynamic and innovative than they have ever been, and the needs of today's workers are much different than for those who worked when the law was written more than 75 years ago. Workers and employers have a better shot to succeed when federal policies reflect the changing realities of our economy.

The Department of Labor had an opportunity to build consensus around a set of responsible reforms that would have garnered broad, bipartisan support. Yet the department chose once again to take an extreme, partisan approach that will hurt the very people they claim they want to help. This rule will disrupt the lives of countless individuals and do nothing to remove the regulatory landmines that are harmful to workers and employers.

That's what small business owners, college and university administrators, state and local officials, and heads of nonprofit organizations have warned about. But these warnings were ignored. That's right—the department ignored the voices of those who must implement this rule in their workplaces, on their campuses, and as they serve the needs of people in their communities.

Instead, the department listened to the same progressive voices who have been wrong for so long about how to address the challenges facing working families. The same voices who claimed a trillion dollar "stimulus" bill would create jobs and deliver a strong economy. It didn't. The same voices who claimed a government takeover of health care would lower costs and protect the health care people liked. It hasn't. Those same voices now claim this overtime rule will provide a pay raise for millions of Americans. It won't.

The regulatory onslaught under this administration is unprecedented. The president and his liberal allies have advanced new rules governing retirement advice, health and safety, energy, union organizing, federal contracting, financial markets, health care, and wages. Still there are those who can't understand why the economy is anemic, or why job growth is sluggish, or why wages are largely stagnant.

Now we have an overtime rule that will do more harm than good, particularly for lower-income workers and younger Americans. Chairman Walberg has led our efforts in this area for years, and I would like to yield to him to explain in more detail the costly consequences of this final rule.

Mr. WALBERG. I thank you, Mr. Chairman, for recognizing me on this. This is an important issue, and we have spent significant time on it with the hopes, that someone out there dealing with this would listen, and listen to reality. I mean, today, I received a copy of a letter sent out by professors and nonprofits, none of which who have anything to do, as far as I can tell, with establishing a budget and dealing with paying people, and making sure institutions continue. And in fact, what I see here, professors of theater and others, no wonder we have got the problem with misunderstanding what realities are and making sure that people have opportunities for expansion, opportunities for experience, opportunities for resume building, opportunities to do things that happen in America. Whew, now that I got all that out of my system, let me go on with a statement here.

Because of this rule, many Americans will soon realize that they have fewer job prospects, less flexibility in the workplace, and fewer opportunities to climb the economic ladder. Thousands of salaried workers will be demoted to hourly status. These workers will feel as though they have taken a step back in their careers when they are forced to clock their hours and they no longer have flexible schedules to balance work and family. With this shift, workers will have fewer opportunities for on-the-job training and career advancement.

Last year we heard from Eric Williams, who started his career working on the line at a fast food restaurant and then climbed the ranks to become an industry executive. He testified how the De-

partment's actions will limit the ability of hardworking men and women to achieve the same success, and that is reality. He also owns businesses now, but it started with the opportunity, the opportunity to expand his capabilities. Younger Americans in particular will be hurt.

At a time when rising college costs and student debt are a national concern, the administration is pushing a rule that will make matters even worse. Colleges and universities nationwide, including the University of Michigan in my home state, who testified in front of our subcommittee and said, "Absolutely. Tuition costs will raise as a result of it." Not what these professors have stated, who have no responsibility for that, but people who have the concerns have indicated across the board that tuition will have to increase. They have warned this rule forced them to raise tuition and reduce services.

This rule will make it harder for young people to pursue their education, and adding insult to injury, it will be even harder for them to begin their careers. Nonprofit organizations with tight budgets faced similar challenges. Every day in each of our districts, these organizations are making a difference in the countless lives, whether helping underprivileged youth, building good homes for low-income families, or serving the needs of individuals with disabilities. We should do everything we can to support and encourage these crucial services. But as one of our witnesses will testify today, this rule will do the exact opposite.

Finally, Mr. Chairman, as is often the case with the administration, this rule creates new hurdles for startups and small businesses. Many won't be able to afford this mandate even if they wanted to. Some will have no choice but to hold back on hiring, lay off workers, or cut back hours. To make matters worse, they will continue to confront a confusing regulatory maze that encourages costly litigation.

The bottom line is that this rule hurts the very individuals the administration claims it will help. That is why I introduced legislation earlier this year along with Senator Tim Scott to protect workers, students, nonprofits, and small businesses from the rule's harmful consequences. Today's hearing is the next step in our efforts. I look forward to our discussion and yield back to the Chairman.

[The statement of Chairman Walberg follows:]

Prepared Statement of Hon. Tim Walberg, a Representative in Congress from the state of Michigan

Thank you, Chairman Kline.

Because of this rule, many Americans will soon realize they have fewer jobs prospects, less flexibility in the workplace, and fewer opportunities to climb the economic ladder.

Thousands of salaried workers will be demoted to hourly status. These workers will feel as though they've taken a step back in their careers when they're forced to clock their hours, and they'll no longer have flexible schedules to balance work and family.

With this shift, workers will have fewer opportunities for on-the-job-training and career advancement. Last year, we heard from Eric Williams, who started his career working on the line at a fast-food restaurant and then climbed the ranks to become an industry executive. He testified how the department's action will limit the ability of hardworking men and women to achieve the same success.

Younger Americans in particular will be hurt. At a time when rising college costs and student debt are a national concern, the administration is pushing a rule that will make matters even worse. Colleges and universities nationwide—including the University of Michigan in my home state—have warned this rule will force them to raise tuition or reduce services. This rule will make it harder for young people to pursue their education, and adding insult to injury, it will be even harder for them to begin their careers.

Nonprofit organizations with tight budgets face similar challenges. Every day, in each of our districts, these organizations are making a difference in countless lives, whether helping underprivileged youth, building good homes for low-income families, or serving the needs of individuals with disabilities. We should do everything we can to support and encourage these crucial services, but as one of our witnesses will testify today, this rule will do the exact opposite.

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Chairman KLINE. The gentleman yields back. I am going to be recognizing the Ranking Member Scott for his opening comments, and by agreement he will yield part of his time to the Ranking Member on the subcommittee, Ms. Wilson. I recognize Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, last month the Department of Labor took a long overdue step towards addressing income inequality by restoring and strengthening overtime protections for millions of Americans. Before too long, we have let the bedrock worker protections wither, leaving millions of Americans working harder than ever with very low pay.

Some of those changes over the years include, in 1965, CEOs earned 20 times the pay of the typical worker. Now they earn over 300 times. In 1970s, the Federal minimum wage was equal to 50 percent of the average hourly worker's pay. Today, minimum wage is only about 35 percent of the average hourly worker's pay. In 1975, the overtime threshold below which most salaried workers are automatically eligible for overtime pay recovers 60 percent of them were covered. Today, it is only 7 percent.

Overtime protections in the *Fair Labor Standards Act of 1938* were intended to curve overwork and help create jobs by encouraging employers to hire more workers rather than overworking the few. But the overtime salary threshold has been allowed to erode so badly that today a worker earning less than the poverty threshold for a family of four still makes too much to be automatically eligible for overtime pay. Congress intended that the *Fair Labor Standards Act* would protect and expand the middle class. For too long, the overtime regulations were consistent. And for a long time, the overtime regulations were consistent with that goal. Between 1938 and 1975, the salary threshold was updated seven times, and it was set at a meaningful level, initially, and kept pace with changing economies. But over the past 40 years, the threshold has only been updated once, in 2004, and that increase was far below the historical average.

The Department of Labor's job is to implement laws passed by Congress. With this rule, the Department has done its job making the *Fair Labor Standards Act's* overtime protections meaningful again. The rule restores the 40 hour work week, raising the salary threshold to $913 a week, approximately a little over $47,000 a year. This update will make 4.2 million workers newly eligible for overtime and strengthen overtime protections for 8.9 million more workers. Today, too many workers are deemed "salaried" and then work 50, 60, or even 70 hours a week, working their last 10, 20, or 30 hours for no pay at all. Yeah, that's right. After they have worked the first 40 hours, the additional 10, 20, or 30 hours, as it has been said, they have the freedom to work those 10, 20, or 30 hours. Well, I agree.

Unfortunately, the interpretation is different because the 10, 20, or 30 hours extra are worked for free, and I am not sure that is the freedom that most workers want. Some of these workers wind up earning below the minimum wage when all of their work hours are taken into account, and that's wrong. When you work extra, you should be paid extra. Instead of forcing workers to put in extra hours with no pay, the rule will result in some employees getting back some precious time with their families, which we know is critical to parents' ability to help children thrive. It will also create jobs by putting incentives in place for employers to spread work hours to new employees, and it will result in part-time employees having the opportunity to work additional hours that many want and need.

Critically, the rule ensures that we will not see eligibility for overtime erode so badly again by requiring automatic updates for the salary threshold every three years. Polls show that 79 percent of Americans agree that it is time for our Nation's overtime rules to be updated, and Committee Democrats stand with our fellow Americans in welcoming that increase.

I look forward to hearing from the witnesses about this role so we can reduce income inequality and strengthen the middle class, and I commend the Department of Labor for its excellent work on this issue. And I now yield to the ranking member of the subcommittee, Ms. Wilson.

[The statement of Ranking Member Scott follows:]

Prepared Statement of Hon. Robert C. "Bobby" Scott, Ranking Member, Committee on Education and the Workforce

Thank you, Mr. Chairman.

Last month the Department of Labor took a long overdue step toward addressing the income inequality crisis facing our nation by restoring and strengthening overtime protections for millions of Americans.

For far too long, we have let the bedrock worker protections wither— leaving millions of Americans working harder than ever for very low pay.

In 1965, CEOs earned 20 times the pay of the typical worker. Today they earn over 300 times more.

In the 1970s, the federal minimum wage was equal to 50 percent of the average hourly worker's pay. Today the minimum wage is equal to only 35 percent of the average hourly worker's pay.

And in 1975, the overtime threshold below which most salaried workers are automatically eligible for overtime pay covered over 60 percent of salaried workers. Today it covers only 7 percent.

The overtime protections in the *Fair Labor Standards Act* of 1938 were intended to curb overwork and help create jobs by encouraging employers to hire more workers, rather than overworking a few. But the overtime salary threshold has been al-

lowed to erode so badly that today a worker earning less than the poverty threshold for a family of four still makes too much to automatically qualify for overtime pay.

Congress intended the FLSA to protect and expand the middle class. And for a long time, the overtime regulations were consistent with that goal. Between 1938 and 1975, the salary threshold was updated seven

times—it was set at a meaningful level initially and kept pace with a changing economy. But in the past 40 years, the threshold has only been updated once (in 2004) —and that increase was far below the historical average.

The Department of Labor's job is to implement the laws passed by Congress. With this rule, the Department has done its job – making the *Fair Labor Standards Act's* overtime protections meaningful again.

The rule restores the 40-hour workweek by raising the salary threshold to $913 per week, or roughly $47,476 per year. This update will make 4.2 million workers newly eligible for overtime and strengthen overtime protections for 8.9 million more workers.

Today too many workers are deemed 'salaried' and then work 50, 60, or even 70 plus hours a week—working the last 10, 20 or 30 hours for no pay at all. That's right after they've worked the first 40 hours, the additional 10, 20 or 30 hours, as it's been said, they have the 'freedom' to work those 10, 20 or 30 hours. Well I agree. Unfortunately the interpretation is different, because 10, 20 or 30 hours extra hour are worked for free. I'm not sure that's the freedom that workers want.

Some of these workers wind up earning below the minimum wage when all of their work hours are taken into account. That is wrong. When you work extra, you should get paid extra.

Instead of forcing workers to put in extra hours for no pay, the rule will result in some employees getting back precious time with their families, which we know is so critical to parents' ability to help children thrive. It will also create jobs by putting incentives in place for employers to spread work hours to new employees, and it will result in part-time employees having the opportunity to work additional hours that many want and need. Critically, the rule ensures that we will not see eligibility for overtime erode so badly again by requiring automatic updates to the salary threshold every three years.

Seventy-nine percent of Americans agree that it is time for our nation's overtime rules to be updated and Committee Democrats stand with our fellow Americans in welcoming this increase.

I look forward to hearing from our witnesses about how this rule can reduce income inequality and strengthen the middle class. And I commend the Department of Labor for its excellent work on this important issue.

I now yield to the Ranking Member of the Subcommittee, Mrs. Wilson.

Ms. WILSON. Thank you, Ranking Member Scott. The Department of Labor's final overtime rule will extend overtime protections to 4.2 million Americans, including 330,870 workers in my home state of Florida and 101,463 workers in my colleague's state of Florida. In addition to extending overtime eligibility to millions, this update strengthens overtime protections for 8.9 million workers who are already eligible for, but are unfairly denied, overtime pay.

Salaried workers are entitled to premium overtime unless they both earn above the salary threshold and meet a duties test. Unfortunately, too many employers fail to perform a duties test, focusing only on the salary threshold which since 2004 is near poverty wages.

This focus on salary level alone has left far too many employees misclassified as exempt, depriving them of the overtime pay they deserve. Since its inception, the salary level test was designed to prevent this missed classification by screening out workers who were obviously not exempt because they failed the job's duties test. But as the salary threshold becomes outdated, misclassification becomes more abundant as more workers are subject to the duties test. The previous salary level only screened out 15 percent of workers who failed the duties test. The new rule restores the advo-

cacy of the salary threshold, simplifies application, and prevents misclassification by making clear that 8.9 million Americans who were previously subject to, but failed, the duties test are still eligible for overtime pay simply by virtue of their salaries.

I urge my colleagues in the majority to rethink their stance on this sensible effort to prevent misclassification. I urge them, also, to cosponsor my bill, the *Payroll Fraud Prevention Act*, which would prevent another form of misclassification: the misclassification of employees as independent contractors, which deprives them of vital wage and hour protections. I urge the majority to reconsider its position on both of these policies designed to protect workers from the misclassification that can deny them their hard-earned pay. I yield back.

[The statement of Ranking Member Wilson follows:]

Prepared Statement of Hon. Frederica S. Wilson, a Representative in Congress from the state of Florida

Thank you, Mr. Chair.

The Department of Labor's final overtime rule will extend overtime protections to 4.2 million Americans, including 330,870 workers in my home state of Florida and 101,463 workers in my colleague's state of Michigan.

In addition to extending overtime eligibility to millions, this update strengthens overtime protections for 8.9 million workers who are already eligible for, but are unfairly denied, overtime pay.

Salaried workers are entitled to premium overtime unless they both earn above the salary threshold and meet a duties test. Unfortunately, too many employers fail to perform a duties test, focusing only on the salary threshold, which, since 2004, has hovered near poverty wages. This focus on salary level alone has left far too many employees misclassified as exempt, depriving them of the overtime pay they deserve.

Since its inception, the salary level test was designed to prevent this misclassification by screening out workers who were obviously non-exempt because they failed the job duties test. But as the salary threshold becomes outdated, misclassification becomes more abundant as more workers are subject to the duties test. The previous salary level only screened out 15 percent of workers who failed the duties test.

The new rule restores the efficacy of the salary threshold, simplifies application, and prevents misclassification by making clear the 8.9 million Americans who were previously subject to, but failed, the duties test are eligible for overtime pay simply by virtue of their salaries.

I urge my colleagues in the majority to rethink their stance on this sensible effort to prevent misclassification. I urge them to also cosponsor my bill, the Payroll Fraud Prevention Act, which would prevent another form of misclassification - the misclassification of employees as independent contractors, which deprives them of vital wage and hour protections. I urge the majority to reconsider its position on both of these policies designed to protect workers from the misclassification that can deny them of their hard-earned pay.

I yield back.

Chairman KLINE. The gentlelady yields back. Pursuant to Committee Rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record, and, without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record. We will now turn to the introductions of our distinguished witnesses.

Miss Tina Sharby is the chief human resources officer with Easter Seals New Hampshire, Inc., in Manchester, New Hampshire. Additionally, she is currently president of the Manchester

Area Human Resources Association Board of Directors and a board member of the New Hampshire Human Resources State Council.

Dr. Jared Bernstein is a senior fellow with the Center on Budget and Policy Priorities here in Washington, D.C. Dr. Bernstein previously served as chief economist and economic advisor to Vice President Biden, and was a member of President Obama's economic team. Between 1995 and 1996, Dr. Bernstein held the post of deputy chief economist at the U.S. Department of Labor.

General Michael Rounds is the associate vice provost of human resource management at the University of Kansas, in Lawrence, Kansas, where he oversees human resource services for more than 10,000 faculty, staff, and student employees on the K.U. Lawrence and Edwards campuses. Before joining the University of Kansas, General Rounds served as deputy superintendent in the Office of District Support for the Louisiana Department of Education. He retired from the Army in 2009 at the rank of brigadier general.

Mr. Alexander Passantino is a partner with Seyfarth Shaw LLP here in Washington, D.C., and leads the D.C. office's Wage and Hour Litigation Practice Group, focusing in part on FLSA compliance issues. Prior to joining Seyfarth Shaw, Mr. Passantino started as deputy and acting administrator of the U.S. Department of Labor's Wage and Hour Division from 2006 to 2009. I would like to ask our witnesses to please raise your right hand.

[Witnesses sworn.]

Chairman KLINE. Let the record reflect the witnesses answered in the affirmative. Before I recognize each of you to provide your testimony, just a brief reminder of our lighting system. We allow five minutes for each witness to provide testimony. When you begin, the light will turn green. When one minute is left, the light will turn yellow. At the five minute mark, the light will turn red, and I would ask you to try to wrap up your testimony quickly.

I am very loathe to gavel down a witness in their testimony, but we have got a lot of members here who want to be engaged in the discussion. And when we get to members, I will remind my colleagues that you will have five minutes. That is for the question and answer, folks. And I am not loathe to gavel down my colleagues.

We are ready to start, and I would recognize Miss Sharby for five minutes.

TESTIMONY OF TINA SHARBY, CHIEF HUMAN RESOURCES OFFICER, EASTER SEALS NEW HAMPSHIRE, MANCHESTER, NH, TESTIFYING ON BEHALF OF THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Ms. SHARBY. Good morning, Chairman Kline and Ranking Member Scott. I am Tina Sharby, the chief human resources officer for Easter Seals New Hampshire, and I am appearing before you today on behalf of the Society for Human Resource Management. I appreciate the opportunity to share a little bit about what this new overtime rule means for not-for-profits like mine, as well as SHRM's reaction to the final regulation.

In short, Mr. Chairman, while SHRM supports an update to the salary threshold, the final overtime rule is too much, too fast. The rule will have a far-reaching negative impact on Easter Seals New

Hampshire, on our dedicated employees, and most importantly on some of the most vulnerable members of our community. Despite overwhelming input from members of the regulated community through the rulemaking process, the administration unfortunately missed a real opportunity to put forth a rule that works for employers and employees. Not-for-profit organizations in particular will be disproportionately impacted by the rule's dramatic 100 percent increase to the salary threshold, and this threshold only escalates since the final rule indicates an automatic increase every three years. Let me briefly explain my organization.

Easter Seals New Hampshire is the parent organization to Easter Seals Rhode Island, Easter Seals Maine, and Vermont. In 2015 alone, we assisted over 16,000 individuals and provided over $6 million in free and subsidized services. As a not-for-profit with limited flexibility in the budget, I have serious concerns on how I will be able to cover potential overtime expenses.

Most of Easter Seals New Hampshire's funding comes through Medicare, Medicaid, and other State and Federal funding sources, and funding to these programs is not expected to receive any increases anytime soon. We are unable to raise prices on products or services to clients to cover these added overtime costs. Faced with a doubling of the salary threshold, we will have no other option but to drastically reduce the services in order to continue to operate.

A program at significant risk is the Military and Veterans Service Care Coordination Program, which provides services 24/7 for our veterans in emergency situations. Since the program's inception, we have responded to over 100 incidents, significantly reducing the risk of suicide. Because of the potential cost for overtime under the final rules, Easter Seals New Hampshire will be forced to limit our ability to provide this around-the-clock care and lessen these life-saving support services.

Mr. Chairman, we estimate that the final overtime rule will cost Easter Seals $427,000 in the first year alone, but the consequences of the rule are not just financial. They also impact our employees negatively.

Consider our care coordinators who are salaried professional employees. They respond to care needs whenever a service member or veteran needs help. These employees make an average of $43,000 a year. This is below the rule's new salary threshold, but clearly they conduct exempt tasks such as supervising services and overseeing the planning of client care. If these care coordinators are reclassified as nonexempt, not only will they no longer be able to provide these critically needed services around the clock, we will view their reclassification as a demotion. In fact, we have calculated that a total of 280 employees will need to be reclassified from salary to nonexempt status.

Additionally, during times of crisis, these coordinators often work well over 40 hours a week to provide emergency client care. When the schedule returns to normal, they will take time off to attend other life events. Now, with these employees being reclassified, they will be forced to closely track every minute in a work week, and less likely will they be going to a doctor's appointment and child's soccer games.

Mr. Chairman, the final rule was clearly a missed opportunity to update overtime regulations in a way that works for both employers and employees. Throughout the rulemaking process, SHRM has supported a measured increase in the salary threshold. However, doubling the salary threshold in the 40th percentile of weekly earnings presents significant challenges for employers like mine.

Tying the increase to the 40th percentile sharply contrasts with historical updates through the salary threshold that represented a more reasonable increase and acknowledged differences across sectors and in certain areas with lower cost of living. SHRM and its members are equally concerned about the automatic threshold to increase.

In closing, Easter Seals, other not-for-profits, SHRM, and employers across the country have serious concerns with the final overtime rule. That is why SHRM strongly supports the *Protecting Workplace Advancement and Opportunity Act*. The bill would nullify the final overtime rule in order to have the Department of Labor do a better economic impact analysis before issuing new changes to the overtime regulations. SHRM and its members look forward to working with the Congress to improve the overtime rule in a way that works for both employers and employees. Thank you and I welcome your comments.

[The statement of Ms. Sharby follows:]

STATEMENT OF TINA SHARBY, SHRM-CP, PHR

CHIEF HUMAN RESOURCES OFFICER,
EASTER SEALS NH, INC.

ON BEHALF OF THE
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

SUBMITTED TO
U.S. HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE

HEARING ON
"THE ADMINISTRATION'S OVERTIME RULE AND ITS CONSEQUENCES FOR WORKERS, STUDENTS, NONPROFITS, AND SMALL BUSINESSES"

JUNE 9, 2016

Introduction

Chairman Kline, Ranking Member Scott, my name is Tina Sharby, and I am the Chief Human Resources Officer for Easter Seals NH, Inc. (Easter Seals NH). I appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member for eleven 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 like mine, our employees and the communities we 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.

Easter Seals NH, Inc. is the parent organization to Easter Seals Rhode Island, Easter Seals Maine, and Easter Seals Vermont, and has over 100 locations throughout the four states with over 90 locations in New Hampshire alone. In 2015, we assisted 16,000 individuals and provided over $6,000,000 in free and subsidized services to our communities. Our centers provide camp and recreation activities, family-centered early supports and services, and military and veterans' services. My organization, Easter Seals NH, employs 1,822 staff members, including 511 exempt employees and 1,311 nonexempt employees.

Working at a nonprofit organization with limited flexibility in the budget, I have serious concerns about how I will cover potential overtime expenses under the Department of Labor's (DOL) final overtime rule, while still aiming to provide high-quality services for the populations served by Easter Seals NH.

Doubling the salary threshold, as proposed by DOL, will force many currently exempt employees to lose their exempt status and return to nonexempt status. In their eyes, the exempt classification is seen as a promotion, providing a sense of "workplace status" and greater workplace flexibility to meet work/life needs. Our supervisors will view reclassification as a demotion, causing a decline in employee morale.

In my testimony, I will explain DOL's final overtime regulations, discuss the specific impact on organizations like mine in the nonprofit sector, and express SHRM's concerns that 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."[1]

Additionally, many states, such as California, have their own laws pertaining to overtime pay. In some instances, a state's law is more inclusive or more generous to the employee than federal law. If, however, the state law is less inclusive, employers are required to follow federal law. In yet other states, the 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. Generally speaking, the classification of an employee as either exempt or nonexempt is determined by whether the employee is paid on a salary basis with a fixed rate of pay and by their duties and responsibilities.

Classification determinations must also be made by looking at each individual job position and actual activities. Classification decisions for all positions 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 mistakenly misclassify employees as exempt when they should be nonexempt, or vice versa.

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, 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 two criteria to qualify as a salaried worker exempt from federal overtime pay requirements: first, he or she must be paid on a salary basis (that is, the salary cannot fluctuate) of more than $455 per week ($23,660 annually); and second, 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 DOL to "modernize and streamline" the FLSA overtime regulations. On June 30, 2015, DOL announced proposed changes to the section 541 FLSA regulations governing overtime determination and coverage. Then, on May 18, 2016, 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.

[1] 29 U.S.C. 203(s)(1)(A)

- Increasing the total annual compensation level for most white-collar workers to be ineligible for overtime pay 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 will grow with each automatic adjustment. The doubling of the salary threshold presents unique challenges to nonprofits like Easter Seals NH where salaries tend to be lower.

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 telephone calls, they could be deemed as utilizing the channels of interstate commerce.

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

Impact on Services Provided. The rule will directly impact budgets and operations of nonprofits such as mine, as well as colleges and universities, small businesses and local governments. These employers will be unable to absorb such a massive increase in payroll and labor costs. Most of Easter Seals NH's services are indirectly or directly funded through Medicare, Medicaid and other state and federal funding sources. As a nonprofit, Easter Seals NH is unable to raise prices on products or services to clients to cover these added overtime costs. Instead, the organization will have to reduce services and care for clients, mostly individuals with disabilities — already a vulnerable and underserved population in our country.

A program at significant risk is the Military and Veterans Services Care Coordination services program. Services are provided around the clock to respond to emergency situations for our

veterans and their families. Since the program's inception seven years ago, Easter Seals NH responded to over 100 incidents by providing quality services and care, significantly reducing the risk of suicide. Under the final overtime rule, reclassified hourly staff will now have to punch in and out and account for every hour worked. Because of the potential cost for overtime, Easter Seals NH will be forced to limit the number of coverage hours for this already underfunded program, limiting our ability to provide around-the-clock care and lessening these lifesaving support services.

Another program that will be affected is the Special Education School which provides services to over 80 children. Many of the children with disabilities served by Easter Seals NH are cared for 24 hours a day, 7 days a week and often do not have strong family support who can attend important life events. Currently, employees spend time covering events like birthday parties and graduations to offer support and build the self-confidence of the children we serve. The new overtime rules will force us to reconsider staff attendance at such important events for the children, as we will likely need to limit staffing to stay within the budget for overtime. Easter Seals NH simply cannot afford to pay overtime and the children with disabilities that we serve are the ones who will suffer the most.

Also consider the role of our care coordinators who are salaried employees who respond to care needs at any time, day or night — whenever a service member, veteran or family member needs help. These care coordinators make an average of $43,000, below the final rule's salary threshold but they clearly conduct exempt tasks such as supervising services, overseeing the planning of client care, and directing service coordination. If these care coordinators are reclassified as nonexempt, they will no longer be able to provide these critically needed services around the clock to our community. Further, Easter Seals NH will be less likely to retain these care coordinators, who currently enjoy flexible schedules to meet work/life needs, where they can balance a late night with an afternoon off.

To make things worse, the underserved and often forgotten segment of society will receive fewer services and lower quality care. Unfortunately, it will be challenging for these critical services to be picked up by other agencies as other service-oriented organizations are faced with similar financial challenges under the final rule.

Impact on Employees. In response to the final rule and an increase in the salary threshold, Easter Seals NH will need to reclassify 280 employees from salaried to nonexempt status, resulting in the implementation of a "cap" on overtime work, limiting career opportunities and reducing flexible work schedules that both attract our staff and enable us to provide certain services.

The final rule will impact employees on a personal level. Faced with the reality of Easter Seals NH having to reclassify many employees from exempt to nonexempt, many staff members have expressed feelings of being "demoted" and not being viewed as a part of the professional segment of the organization. Employees have voiced concerns that they will be unable to assist with special events due to overtime restrictions, and fear that upward mobility will be impacted as "stretch" projects will not be assigned as regularly. For example, attending an Easter Seals fundraiser or pitching in to help a client can require working more than 40 hours in a week, and these tasks are often performed by employees trying to advance their careers and demonstrate leadership capabilities. If these employees are now classified as nonexempt employees, Easter Seals NH will be forced to closely monitor hours and may deny the requests of employees to work certain events if they will result in the nonexempt employees working overtime.

Furthermore, the final rule will lessen the workplace flexibility provided to our currently exempt care coordinators. During times of crisis, these coordinators often work over 40 hours a week to provide emergency client care. When the schedule returns to normal, these exempt employees are allowed to flex their time (also known as a flextime arrangement) where they can start and end the work day at different times to manage work/life needs. As professional, exempt employees they are in charge of their own schedule and caseload. Once the job is done, they are allowed to flex that time and leave early for a doctor's appointment or attend a child's soccer game. Because of the rule, these employees will now be reclassified to nonexempt and will be forced to closely track every minute in a workweek.

It is important to understand that pay in nonprofits, including at Easter Seals NH, trends lower than in the for-profit sector. Employees are drawn to the nonprofit sector to make a difference in someone's life and support the underlying mission. Employees often go above the call of duty to serve the community and provide the highest level of quality care for the neediest populations. To attract and retain talent, Easter Seals tries to maintain a competitive and attractive benefits structure. Reducing workplace flexibility or eliminating benefits, and thereby diminishing total compensation, would only add to the significant challenges of recruitment and retention already faced by this industry.

The final rule's automatic increases to the salary threshold will also have a negative impact on the performance system. Currently, Easter Seals NH conducts an annual performance and salary review with merit increases based on performance and the financial soundness of the organization. The rule will require exempt staff to receive mandatory pay increases in order to stay above the increasing threshold, resulting in less funding available for merit increases for nonexempt employees and less funding to serve our community's needs. Merit raises should be based on the success of my employees and organization, not by a salary threshold that increases at a level determined by DOL.

Cost to the Organization. The final overtime rule will cost Easter Seals NH approximately $265,000 to raise certain exempt employees' salaries above the new salary threshold. We have also budgeted $162,400 annually for estimated overtime and on-call costs. In other words, in the first year alone, this overtime rule will cost Easter Seals NH $427,000.

Importantly, the consequences of the rule are not just financial. Easter Seals will be forced to tightly monitor hours worked, resulting in less flexibility in how programs and services are structured. While some organizations in other states may mitigate the overtime rule by hiring more part-time employees to maintain services, this is not a workable solution in New Hampshire with a low unemployment rate of 2.6 percent. It is nearly impossible to find employees seeking employment; Easter Seals NH currently has over 150 vacancies.

In order to function as a nonprofit, Easter Seals NH relies heavily on the ability to raise funds in order to continue to provide free and subsidized services to our communities. Dedicated employees often attend these fundraising events to show support for the organization and the people we serve. Many of these employees will now be reclassified to nonexempt status which will lessen their ability to attend these events. As a result, Easter Seals NH will be less successful in raising funds with fewer staff available to manage the events. Just last week, Easter Seals NH organized a Run/Walk race with a record number of 2,500 participants, raising $200,000 for the organization. In order to make the event a success, over 100 employees prepared for the event in addition to attending to their regular duties. Under the new overtime rule, many of these employees will be unavailable to assist in ensuring our fundraisers are a success.

Furthermore, many nonprofits operate in multiple states. Easter Seals NH, for example, has locations in three other states, each with a different cost of living. The final rule ignores these economic differences. Due to these regional differences, I will need to decide if a certain position in one region of the country should be classified as exempt while the exact same job and title in another region remains nonexempt.

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 update to the salary threshold, a 100 percent increase to the salary threshold in the first year is too high 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 professional exempt status that they have worked hard for and the flexibility from rigid schedules that they care deeply about. 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. Since the release of the final overtime rule, many of our members have indicated that they will indeed take these steps. As mentioned previously, Easter Seals NH is already planning to institute restrictions on overtime, leading to diminished services for veterans and youth with disabilities.

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. 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, Easter Seals NH, other 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 my organization, our employees and the people we 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 update to the salary threshold over time, challenges arise if the increase is too high, is implemented too quickly, or fails to consider 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.

# # #

Chairman KLINE. Dr. Bernstein, you are recognized for five minutes.

TESTIMONY OF JARED BERNSTEIN, SENIOR FELLOW, CENTER ON BUDGET AND POLICY PRIORITIES, WASHINGTON, D.C.

Mr. BERNSTEIN. Chairman Kline, Ranking Member Scott, thank you for the opportunity to testify in this extremely welcome update to an essential labor standard. My first point is that in our age of high levels of income and wealth and equality, it is essential that labor standards first established 75 years ago in the *Fair Labor Standards Act* are updated. By adjusting the overtime salary threshold, this new rule does exactly that.

Second, the blue line in the figure you see there shows that this adjustment, while welcome and significant, is but a partial adjustment, one that reflects the Department of Labor's responsiveness to thousands of comments from stakeholders. Were we to fully adjust the threshold for the value it has lost since 1975, it would be set at well over a thousand dollars per week instead of about $900 per week, which is the 40th percentile of the lowest wage region, the South. The new threshold will also cover 35 percent of full-time salaried workers, a large increase from the 7 percent covered today, but a far cry from the 60 percent covered in 1975, as Ranking Member Scott pointed out. In other words, this new threshold is a reasonable but conservative choice. The U.S. economy is twice as productive as it was 40 years ago, and the workforce is much more highly educated. I know of no plausible economic reason why our labor market cannot maintain a standard that approaches what we had back then.

Third, opposition to the new rule is misguided. Given the DOL's thoughtful compromises in only partially updating this labor standard, and the new rule's negligible impact on the national wage bill, many of the attacks on it amount to nothing more than knee-jerk responses from business lobbyists doing what they are paid to do: fight the rule regardless of the substantive arguments that support it. And while concerns about compliance cost, and cost to nonprofits and higher educational institutions deserve a response, they too miss the mark.

On compliance cost, the DOL, at the behest of employers, did not change the duties test, which is the most complex part of the overtime determination. Since firms should already be in compliance with this part of the law, no new compliance costs are invoked in this area. In fact, at a recent congressional hearing, the witness representing the National Restaurant Association conceded this point, admitting that compliance with the new rule "would be an easy transition to make from a management and bookkeeping standpoint."

The higher threshold actually simplifies firms' compliance burden as more workers will be automatically covered, the need for the duties test on millions of salary workers is now obviated. The DOL also worked hard to accommodate the concerns of nonprofit and higher educational institutions. For certain Medicaid-funded providers of services for individuals with intellectual or developmental disabilities, for example, the new rule does not take effect for three years, providing time for outreach, technical assistance, and budget

adjustment. As another example, DOL ensured that future National Research Service Award Grants from the NIH will be above the new salary threshold.

It is also important to note that the FLSA contains some exemptions for teachers, including professors, adjunct instructors, certain coaches, and academic administrative personnel, as well as many graduate and undergraduate students. The DOL's new guidance even highlights that the Department generally "views graduate and undergraduate students who are engaged in research under a faculty member supervision as being in an educational relationship and not an employment relationship with the school, and thus, not entitled to overtime."

On the whole, the rule is predicted to increase the total payroll of nonprofits and higher education institutions by far less than one-tenth of 1 percent. I hope members keep that in mind when we listen to some of the heated rhetoric we are hearing. Most importantly, these organizations should remember that the pay and work-family balance of their workers is no less important than the pay and work-family balance of workers at for-profit institutions. The whole point of this labor standard is to guarantee employees fair workplace conditions, a point recently amplified by a group of nonprofits in favor of the proposed rule, who wrote, "Our own workers and the families they support also deserve fair compensation and greater economic security." As these nonprofits argued, teaching or working for the public good should not require working long, unpaid hours.

While my fellow witness may argue otherwise, I urge you on the Committee to remember that we could just as easily have found representatives from the education and nonprofit sectors who strongly support the new rule, recognizing its role in valuing and respecting their workforces. Those of us who purport to care about the public good have the responsibility to practice the values we preach. This rule gives an excellent opportunity to do just that. Thank you. And I yield back my time.

[The statement of Mr. Bernstein follows:]

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June 9, 2016

New Overtime Rule a Major Policy Win for Middle-Class Families

Testimony of Jared Bernstein, Senior Fellow, Before the House Committee on Education and the Workforce

Introduction: Perspectives on Overtime From the Past and the Future

Thank you for the opportunity to testify on this extremely welcome update to an essential labor standard.

I begin my testimony with two historical perspectives, one from the past and one from the future.

Over 75 years ago, policymakers recognized the importance of labor standards in making sure that the benefits of economic growth were more fairly shared and that workers with less bargaining clout were not exploited by those who controlled their economic fates. The result was the Fair Labor Standards Act (FLSA), which established the national minimum wage and the subject of today's hearing, time-and-a-half pay after 40 hours of weekly work for workers covered by the legislation.

Today, these standards are more important than ever. Income inequality is actually higher than it was in 1938. Back then, the top 1 percent held 16 percent of national income; today, they hold 21 percent, a transfer to the wealthiest families of over half-a-trillion dollars (3 percent of GDP), or an average of about $3,200 for each household in the bottom 99 percent.[1]

This trend in income inequality, which has in turn contributed to middle-class income and wage stagnation, is partially a function of the weak bargaining position of many working class households. These households are the precise targets of the FLSA, which recognized that, absent adequate protections, some workers' wages are set at privation levels not because of "market forces," but because of these workers' relative powerlessness. Before this legislation, more workers had no choice but to work long hours of overtime for no extra pay, as not doing so could potentially result in a job loss or pay cut. Their unprotected status thus cut deeply into their leisure time and challenged their ability to balance work and family.

[1] Data, which include capital gains, are from Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913-1998," *Quarterly Journal of Economics*, 118(1), 2003, http://eml.berkeley.edu/~saez/TabFig2014prel.xls.

The FLSA overtime rules took direct aim at this problem by "internalizing" the negative externality of overwork. That is, by raising the cost to employers of working their employees beyond 40 hours, the law played a key role in helping to create what we recognize today as the middle class.

The law was also intended to draw a bright line between workers with and without substantial bargaining power. Workers exempt from the overtime rule are expected, because of their role, education, work experience, and other options available to them, to be able to negotiate their working conditions. Workers without those same attributes, who lack the leverage to prevent employers from forcing them to work unpaid overtime, are supposed to be covered by the rule's protections.

I urge the committee to recognize these realities as underscoring the need for labor standards in place since the 1930s to be fully updated and operational in today's labor market. They are just as important, if not more so, than when they were first introduced; without an update, there will continue to be perverse incentives to overwork low-wage employees without compensating them for their time.

I predict that this overtime rule change, implemented by the Obama administration and its Labor Department and broadly supported by congressional Democrats and the general public – 60 percent of Americans backed the proposal in a recent poll[2]— will come to be viewed as an important and positive intervention on behalf of middle-class families.

The Importance of Raising the OT Salary Threshold

The above rationale for the labor protections of the FLSA is vitiated if the OT threshold is allowed to be eroded by inflation and nominal salary increases. This threshold is the amount of weekly or annual earnings beneath which a broad group of salaried workers are automatically eligible for OT coverage. The new rule raises the weekly threshold from $455 to $913, and, importantly, indexes it to future salary movements so it will not erode in the future as it has in the past.

The figure below makes an important point in this regard. While much ink has been spilled over the complexities of the new rule, what's actually happening here is extremely simple. The salary threshold was ignored for decades, other than a notch up in 2004. The new increase, while historically large, does not even bring the threshold back up to its historical peaks (see left y-axis); it only partially restores its inflation-adjusted historical value.

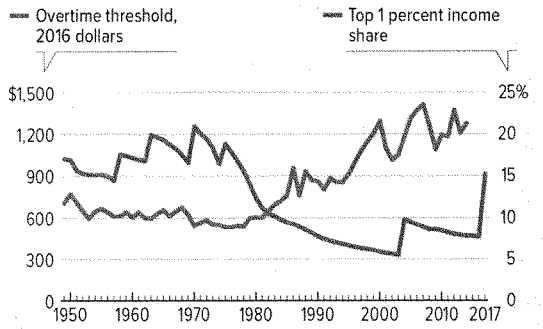
The other line in the figure shows the percent of national income going to the top 1 percent of households. For decades, this measure hovered around 10 percent, while the OT threshold was regularly maintained at a real level of at or above $1,000 in today's dollars. But beginning in the early 1980s, as inequality trends began to push up income concentration, labor standards like overtime and the minimum wage were allowed to erode.

[2] Fawn Johnson, "Poll: Voters Like Obama's New Overtime Rule," Morning Consult, May 27, 2016, https://morningconsult.com/2016/05/27/poll-voters-like-obamas-new-overtime-rule/.

To be clear, I am not claiming a direct, causal linkage between these two trends. My point is that both were driven by, among other things, an abandoning of labor standards and a rejection of the FLSA-era appreciation of the role of worker bargaining power in the distribution of growth.

FIGURE 1

Inequality Up, Overtime Threshold Down



Sources: Department of Labor, Bureau of Labor Statistics, Piketty and Saez

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Back in 1975, over 60 percent of full-time salaried workers earned salary levels that qualified them for overtime pay. Today, only 7 percent of salaried workers are under the $455 cap. Under the new rule, this share rises to 35 percent of full-time salaried workers.

As Ross Eisenbrey and I pointed out a few years ago in a white paper for the Department of Labor (DoL), the last time the threshold was consistent with the intent of the FLSA was also in 1975, when it was a bit more than twice the current threshold.[3] The 1975 level, adjusted for inflation, corresponds to about the 40th percentile of full-time, salaried earnings today.

However, during the rule's comment period, as the DoL did its due diligence and listened to thousands of stakeholders on all sides of the rule, it was suggested that the threshold should reflect regional wage and price differences. Instead of going with numerous different thresholds, the department decided on the 40th percentile of the lowest-wage region: the South. Though this level fails to get the threshold all the way back to its real 1975 value of $1,130 a week in today's dollars ($58,760 annually), it is a reasonable, conservative choice.

[3] Jared Bernstein and Ross Eisenbrey, "New inflation-adjusted salary test would bring needed clarity to FLSA overtime rules," in "A Paper Series Commemorating the 75th Anniversary of the Fair Labor Standards Act," https://www.dol.gov/asp/evaluation/completed-studies/Fair_Labor_Standards_Act/FINAL_REPORT_fair_labor_standards_act_75th_anniversary_paper_series.pdf.

As alluded to above, every three years, the threshold will be reset to the benchmark of the 40th percentile full-time salary in the region where it is lowest. This practice provides another example of the DoL responding to concerns raised during the public comment period, this time about the difficulty of implementing annual adjustments. The three-year cycle is based on publicly available data that will come out 150 days or more in advance of the changes, thus giving employers plenty of time to adjust to threshold increases.

The Impact of the Higher Threshold

The Economic Policy Institute estimates that there are 12.5 million salaried workers earning between the old and new threshold who will now be covered by overtime protections. The DoL further estimates that about one-third of that number (4.2 million) will directly benefit in that they were likely exempt prior to the new rule. As regards the rest of the salaried workforce in the affected range, recall that, because of tests establishing certain duties as non-exempt, some salaried workers above the threshold were or at least should have been covered prior to the change. These workers will now be covered. The balance of the affected group, about 9 million according to DoL, should have been getting OT already based on their duties but, as EPI believes, may well not have been.[4] For those workers, the new rule ensures their eligibility, doing away with any ambiguity based on their duties.

It is worth noting here that while some FLSA advocates argued that the new rule should update the "duties test," particularly in light of the fact that these tests were loosened (meaning it was made easier to arbitrarily exempt workers) in the changes under President Bush in 2004, DoL decided not to do so. This decision once again reflects the department's responsiveness to arguments employers made during the comment period.

According to EPI, this rule change will disproportionately help black and Hispanic workers, who make up a combined 21 percent of the salaried workforce but 28 percent of workers who will directly benefit from the new threshold.[5] Millennials — those between the ages of 16 and 34 — will also disproportionately benefit, as they comprise 36 percent of the affected group (they are 28 percent of the total workforce). More than a third of all workers with less than a college degree will be directly affected, and the rule will also help over 7 million children. Slightly more than half of all beneficiaries (51 percent) are women.

How Will Employers Absorb the Impact?

DoL estimates that about 1.6 million of the 4.2 million workers noted above regularly or occasionally work overtime and will now be paid time-and-a-half. Now that OT is more expensive for newly covered (or "correctly" covered — those who should have been getting OT but were not) workers, some may work fewer overtime hours. Contrary to the claims of critics, this change will make these workers better off. Remember, workers in this group weren't getting overtime pay before the rule change. Now that their weekly earnings are unchanged but they're working fewer

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[4] DoL estimates that 13.1 million salaried workers earn between the old and new thresholds.

[5] Ross Eisenbrey and Will Kimball, "The new overtime rule will directly benefit 12.5 million working people," Economic Policy Institute, May 17, 2016, http://www.epi.org/publication/who-benefits-from-new-overtime-threshold/.

weekly hours, they're clearly better off in terms of earning a higher average hourly wage rate (the same salary is being divided by fewer hours) and having more time to spend with their families.

Some adjustments may come through lower base pay rates, such that an employer's total wage bill, including OT, will be only slightly higher as they partially offset the impact of the increase through the lower base wage. Some employers will decide to bump some workers up to the new threshold so they will remain exempt, another clear gain for these workers. Others may distribute more hours to workers who are currently part-time, which would again be a clear benefit at a time when the number of part-time workers who would rather be full-timers remains elevated. A final desirable impact is more hiring of straight-time workers by employers who want to avoid higher OT costs. Researchers at Goldman Sachs predict that this aspect of the change could lead to 100,000 new full-time jobs in 2017.

DoL estimates that the new rule will cost employers $1.5 billion a year: $1.2 billion in new OT pay and $300 million in administrative expenses to implement the change. That amounts to about 0.03 percent of our $8 trillion total, national wage bill. Goldman Sachs' analysts also find that "the new rules should have little effect on wages in the aggregate," arguing that the rule change is likely to raise average hourly earnings less than 0.1 percent.

This tiny impact on the aggregate wage bill should not undermine our expectations that the rule will improve the well-being of millions of workers and push back to some degree on inequality. First, some of the higher pay for beneficiaries of the new rule will come from redistribution within the wage bill (from high- to middle- and lower-paid workers). Second, in cases where workers are no longer tapped to work unpaid overtime hours, they are clearly better off in terms of balancing work and family life. Though such a welfare-enhancing change does not show up in the national accounts, it is one of the very important benefits of the new rule.

Objections to the New Rule

As the blog ThinkProgress points out, "the usual cast of opponents to boosting wages for workers has come out swinging, saying the [OT] rule is an 'absolute disaster' and a 'job killer' or 'career killer.'"[6] Such rhetoric is highly inconsistent with a rule change that a) only partially updates a critical labor standard and b) is estimated to cost a rounding error (0.03 percent) of the national wage bill. Thus, policymakers should write off much of the criticism as knee-jerk responses from business lobbyists doing what they're paid to do: fight the rule regardless of the substantive arguments that support it.

There are, however, two objections that deserve a response: compliance costs and costs to non-profits.

Compliance: The most complex part of the overtime determination, as Ross Eisenbrey has explained, is the application of the "duties test."[7] The new rule does not change that and, as firms should already be in compliance with this part of the law, no new compliance costs are invoked in

[6] "Getting An Education On Overtime," ThinkProgress, June 1, 2016, http://thinkprogress.org/progress-report/getting-an-education-on-overtime/.

[7] Ross Eisenbrey, Testimony Before the U.S. Senate Committee on Small Business and Entrepreneurship, May 11, 2016, http://www.sbc.senate.gov/public/?a=Files.Serve&File_id=B3E6BB7A-DD0A-468A-B8E6-81131674E1A3.

this area (especially when businesses use payroll processing software, which is quite common). It is notable that at a recent congressional hearing, the witness representing the National Restaurant Association conceded this point, admitting that compliance with the new rule "...would be an easy transition to make from a management and bookkeeping standpoint."[8]

The higher threshold actually *simplifies* firms' compliance burden. As more workers will be automatically covered, the need for the duties test on millions of salaried workers is now obviated. Though the new rule does not require them to do so, some employers complain that they will have to move salaried workers to hourly schedules and that this will mean a new tracking burden. But as evidenced by the testimony of the witness for the National Retail Federation at the October hearing referenced above, many businesses *already* track their employees' hours.[9]

In addition, while employers argue that the new rule will reduce workers' "flexibility," presumably by moving salaried workers to hourly schedules, research by economist Lonnie Golden finds little difference in the existing amount of workplace flexibility between hourly and salaried workers with earnings below $50,000.[10]

Non-profits: Some non-profits, including social welfare and educational institutions, have argued that the rule will be especially burdensome on them. They contend that they are funded by budgets that may not adjust to meet the higher labor costs.

These concerns are understandable, but they miss a few key points.

First, the pay and work-family balance of workers at non-profits are no less important than the pay and work-family balance of workers at for-profit institutions. The whole point of this labor standard is to guarantee employees fair workplace conditions, a point recently amplified by a group of non-profits in favor of the proposed rule: "our own workers and the families they support also deserve fair compensation and greater economic security. . .It is time to revisit the idea that working for the public good should somehow mean requiring the lowest-paid among us to support these efforts by working long hours, many of which are unpaid."[11]

Second, the DoL has worked hard to accommodate specific non-profit concerns. For Medicaid-funded providers of services for individuals with intellectual or developmental disabilities in residential care facilities with 16 or more beds, for example, the new rule does not take effect for three years (i.e., it will not be enforced until December of 2019, providing time for outreach, technical assistance, and budget adjustments). In addition, higher education institutions worried

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[8] Statement on behalf of the National Restaurant Association & Bardenay Restaurants & Distilleries, October 8, 2015, http://smallbusiness.house.gov/uploadedfiles/10-8-15_settles_testimony.pdf.

[9] Testimony of Terry W. Shea, Co-Owner, Wrapsody, Inc., Before the House Small Business Committee, Subcommittee on Investigations, Oversight and Regulations, October 8, 2015, http://smallbusiness.house.gov/uploadedfiles/10-8-15_shea_testimony.pdf.

[10] Lonnie Golden, "Flexibility and Overtime Among Hourly and Salaried Workers," Economic Policy Institute, September 30, 2014, http://www.epi.org/publication/flexibility-overtime-hourly-salaried-workers/.

[11] Nonprofit organizations in support of the Department of Labor's new overtime regulations, http://www.epi.org/nonprofit-organizations-in-support-of-the-department-of-labors-new-overtime-regulations/?nocache.

about the effects on their post-docs, who are critical to the research mission of universities, will be comforted to know that future National Research Service Award grants from the NIH will be above the new salary threshold.

Finally, as the DoL guidance points out, based on the nature of their activities and whether they involve revenue-generating sales above $500,000, some non-profits and/or individual workers at non-profits may be exempt from the new rule.[12] It is important to stress once more, however, that even exempt non-profits, given their missions, should recognize the importance of fairly compensating their employees and strive to adhere to the principles outlined in the rule.

Conclusion

As time passes and the new overtime rule takes effect, I expect it to be recognized as a major policy win for middle-class families. It will boost some paychecks, help parents balance work and family, and produce new straight-time jobs. The fact that the threshold will be automatically adjusted will militate against the deteriorating trend observed in the figure above, a reminder to policymakers that labor standards must be vigilantly maintained, protected, and updated.

I've urged members of this committee to ignore knee-jerk antipathy to the new rule and instead to deal in substance, as the DoL did in reviews of tens of thousands of comments and listening carefully to stakeholders on all sides of this issue. We see the results of such compromise in the use of the lowest regional threshold, the three-year deferral for certain non-profits, and the leaving of the duties test unchanged.

Finally, as I know you realize, even with this important new rule in place, your work is far from done. While admirable policy work was done to shore up this labor standard, other standards continue to erode. Misclassification of regular employees as independent contractors is a growing area of concern as "arms-length" employer-employee relationships proliferate. Wage theft has been on the rise, with minority, immigrant, and women workers particularly vulnerable to non-payment of promised or guaranteed pay, including overtime and minimum wages. Senators Patty Murray and Sherrod Brown and Representative Rosa DeLauro have introduced The Wage Theft Prevention and Wage Recovery Act[13] and Representative Bobby Scott has introduced the Pay Stub Transparency Act;[14] both are important pieces of legislation designed to attack this serious problem. Ensuring that DoL's Wage and Hour division is amply staffed with the number of inspectors needed to enforce labor standards is another key part of the solution to this and related problems.

In the age of inequality and middle-class wage stagnation, when it comes to labor standards, policymakers must "go on offense." The new OT rule stands as a great example of this theme,

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[12] "Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act," Wage and Hour Division, Department of Labor, May 18, 2016, https://www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf.

[13] "Murray, Brown, DeLauro Introduce Bill to Stop Wage Theft, Boost Workers' Economic Security," Senate Committee on Health, Education, Labor, and Pensions, March 16, 2016, http://www.help.senate.gov/ranking/newsroom/press/murray-brown-delauro-introduce-bill-to-stop-wage-theft-boost-workers-economic-security.

[14] "Scott Introduces Bill to Protect Workers from Widespread Wage Theft," Education & the Workforce Committee Democrats, January 13, 2016, https://democrats-edworkforce.house.gov/media/press-releases/scott-introduces-bill-to-protect-workers-from-widespread-wage-theft.

wherein policymakers took a strong, positive action to help to reconnect the economic fates of working Americans to the growth that has too often failed to reach them. I look forward to working with you to continue moving forward with this opportunity-enhancing agenda.

Chairman KLINE. The gentleman yields back and I thank him for it. General Rounds, you are recognized.

TESTIMONY OF GENERAL MICHAEL ROUNDS, ASSOCIATE VICE PROVOST OF HUMAN RESOURCE MANAGEMENT, UNIVERSITY OF KANSAS, LAWRENCE, KS

Mr. ROUNDS. Good morning, Chairman Kline, Ranking Member Scott, and members of the Committee. Thank you for providing me the opportunity to testify on the administration's overtime rule that will impact our students, families, and hundreds of employees at the University of Kansas.

When fully implemented, the recent changes to the *Fair Labor Standards Act* will have a significant impact on the university. K.U. is a major public research university, and it is the flagship institution in the State of Kansas. Like many public universities across the country, the percentage of university resources that come from public funding sources has decreased significantly over the past decade. While university leaders agree that an increase to the minimum salary threshold is due, an increase of 100 percent at one time in 2016 is difficult to absorb without significantly impacting university services.

Many employees on college campuses, including K.U., are currently exempt from the overtime pay requirements. To comply with the pending increase in the exempt threshold from $23,660 to $47,476, colleges and universities may increase the salaries for a few individuals whose current pay is closest to the new threshold, but will need to reclassify the majority of impacted employees to hourly status. While in some cases these changes are appropriate and would keep with the spirit of the legislation, in many instances K.U. is being forced to reclassify employees who work in jobs that have always been exempt and are well suited to exempt status. It is K.U.'s position that this widespread reclassification is to the detriment of both our employees and students.

As a nonprofit and public entity, K.U. is reflective of the higher education industry in our inability to absorb the increased costs that come with higher salaries for exempt employees, expanded overtime payments, and other labor and administrative costs associated with transitioning traditionally exempt employees into nonexempt status. In the face of these costs and challenges, K.U. will ultimately be forced to adjust or reduce services, eliminate or consolidate positions, or at some point raise tuition, all to the detriment of our students. The changes will also increase the costs of, and thus inhibit, important research done by the university.

Unfortunately, due to recent cuts in public funding, the university does not have the central funding flexibility to apply against the financial impacts of the adjusted overtime rule as we enter a new State fiscal year on 1 July. With no central fiscal flexibility, K.U. is compelled to pass any financial responsibilities for addressing the legislation along to our school's department and research centers. Working on relatively fixed budgets, each unit has limited options available to address the mandated changes. In the short-term, the primary impact will be felt in the reduction of services or the elimination of positions. Ultimately, our most important stakeholder, students, will bear the burden of these adjustments.

As of June 6, 2016, the university has 354 currently exempt employees impacted by the revised overtime rule. The projected cost to raise these employees to the new annual salary threshold is around $3 million. The alternative, if chosen, is to switch these employees to a nonexempt status and pay them overtime. The projected overtime cost to sustain our current level of services is roughly equivalent to the cost to raise each employee to the new exempt threshold. Since neither of these options are currently financially feasible for any of K.U.'s units, it is inevitable that there will be a reduction in the services currently being provided by K.U. units, the students, as we transition employees from their current exempt to nonexempt status without the flexibility of working more than 40 hours per work regardless of mission demands.

The one relatively flexible financial lever that the university has to increase revenue is to raise tuition. Tuition increases need to be approved by the Kansas Board of Regents and are justifiably closely scrutinized. For the upcoming fiscal year beginning in July, the window to use a tuition increase to help mitigate the impact of the new overtime rule in 2016 and 2017 has closed. It is probable, however, that tuition will ultimately be pushed higher in future years in order to address the enduring impacts of the new overtime rule.

Due to both the near- and long-term fiscal impacts of the new overtime rule, K.U. believes that the *Protecting Workplace Advancement and Opportunity Act* is important legislation because it would require a more detailed economic analysis, including understanding and mitigating the impacts on higher education before these dramatic changes to Federal overtime pay requirements are fully implemented at K.U. We appreciate the administration's ambitious agenda to promote affordable, high-quality educational opportunities, expanding access to college, and providing the support necessary to drive students to on-time completion and long-term success. However, the new changes to the overtime rule represents a major expense for a public university and puts our campus in further financial strain as we continue to deal with decreased State funding. There is simply no way for universities like K.U. to absorb costs of this magnitude without an impact on our academic research and outreach missions that will be felt by the public and students we serve. Thank you.

[The statement of Mr. Rounds follows:]

Testimony for United States House of Representatives

Committee on Education and the Workforce

Michael Rounds, Associate Vice Provost for Human Resources Management

University of Kansas

June 9, 2016

Good morning, Chairman Kline, Ranking Member Scott and Members of the Committee.

Thank you for providing me the opportunity to testify on the Administration's Overtime Rule that will impact our students, families, and hundreds of employees at the University of Kansas.

When fully implemented, the recent changes to the Fair Labor Standards Act (FLSA) will have a significant impact on the University of Kansas (KU). The university is a major public research university and is the flagship institution in the state of Kansas. Like many public universities across the country, the percentage of university resources that come from public funding sources has decreased precipitately over the past decade. While university leaders agree that an increase to the minimum salary threshold is due, an increase of over 100% at one time in 2016 is impossible to absorb without significantly impacting university services and our standing as a university.

For KU, this increase can be considered an unfunded mandate. Due to two state directed budget cuts in 2016 and further cuts anticipated in the upcoming fiscal year, the university does not have any central funds to apply against the financial impacts of the adjusted overtime rule of the FLSA. With no central fiscal flexibility, KU is compelled to pass any financial responsibility for addressing the FLSA response along to our schools, departments and research centers. Working on relatively fixed budgets each unit has limited options available to address the mandated changes. In the short term the primary impact will be felt in the reduction of services and/or the elimination of positions. Ultimately our most important stakeholders, students, will bear the burden of these reductions.

As of June 6, 2016 the university has 354 currently exempt employees impacted by the revised FLSA overtime rule. The projected cost to raise these employees to the new annual salary threshold of $47,476 is $2,937,980. The alternative, if chosen, is to switch these employees to a non-exempt status and pay them overtime. Because of the complex and cyclical nature of supporting the academic mission in higher education, many of these employees occasionally work more than 40 hours per week to fulfill the requirements of their position. If each employee transitioned to a non-exempt status

and worked just five overtime hours per week, the cost to the university would be $2,303,554 or roughly equivalent to the cost of raising each to the new FLSA exempt threshold. During peak student support and recruitment cycles, five hours is a conservative overtime estimate to maintain current levels of student support. Since neither of these options are currently financially feasible for any of KU's units, it is inevitable that there will be a significant reduction in the services currently being provided by KU units to students as we transition employees from their current exempt to a non-exempt status without the flexibility of working more than 40 hours per week regardless of mission demands.

The one relatively flexible financial lever that the university has to increase revenue is to raise tuition. Tuition increases need to be approved by the Kansas Board of Regents and are justifiably closely scrutinized. For the upcoming fiscal year (beginning in July) the window to use a tuition increase to help mitigate the impact of the new FLSA overtime rule in 2016/2017 has closed. It is probable, however, that tuition will ultimately be pushed higher in future years in order to address the enduring impacts of the new overtime rule and in an effort to return KU student services to levels established prior to the implementation of the rule.

Due to both the near and long term fiscal impacts of the new FLSA overtime rule, KU believes that the *Protecting Workplace Advancement and Opportunity Act* is important legislation because it would require a more detailed economic analysis, including understanding and mitigating the impacts on higher education, before these dramatic changes to federal overtime pay requirements are fully implemented.

FLSA and Higher Education

Many employees on college campuses, including KU, are currently exempt from the FLSA's overtime pay requirements. To comply with the pending increase in the FLSA exempt threshold from $23,660 to $47,476 colleges and universities may increase the salaries for a few individuals whose current pay is closest to this new threshold, but will need to reclassify the majority of impacted employees to hourly status. While in some cases these changes are appropriate and would keep with the spirit of FLSA, in many instances KU (and our counterpart higher education institutions) are being forced to reclassify employees who work in jobs that have always been exempt and are well-suited to exempt status. It is KU's position that this widespread reclassification is to the detriment of both our employees and students. As a nonprofit and public entity, KU is reflective of the higher education industry in our inability to absorb the increased costs that come with higher salaries for exempt employees, expanded overtime payments and other labor and administrative costs associated with transitioning traditionally exempt employees into nonexempt status. In the face of these costs and challenges, KU will ultimately be forced to adjust/reduce services, eliminate/consolidate positions or, at some point, raise tuition - all to the detriment of our students. The changes will also increase the costs of and thus inhibit important research done by the university.

Projected Impact: University of Kansas

Below is a detailed listing of the 354 positions at KU that will immediately be impacted by the new FLSA overtime rule directed by University of Kansas job families:

Job Family	Number	Cost (stay exempt)	Cost (overtime estimate)
Educational Support	47	$232,746.90	$335,853.37
Facility Service	4	$24,997.00	$24,032.26
Healthcare Service	5	$72,925.33	$14,827.50
Information Technology	1	$3,182.00	$8,305.12
Library Services	8	$37,047.00	$64,267.69
Museum Services	5	$29,902.00	$33,166.31
Public Affairs	10	$42,056.00	$81,132.00
Publishing	2	$10,952.00	$15,750.00
Research Sector	127	$949,784.37	$854,817.04
Total Other Services	38	$646,435.96	$118,514.06
Grand Total	**354**	**$2,937,980.05**	**$2,303,554.25**

Listing the positions by organization provides a perspective of the campus wide impact of the initiative:

School/Unit	Number	Cost (stay exempt)	Cost (overtime estimate)
Chancellor's Office	4	$24,708.00	$30,974.25
Public Affairs Office	1	$6,022.00	$7,772.62
Edwards Campus	6	$17,273.00	$50,171.81
Architecture	1	$1,164.00	$8,683.50
Business	11	$89,487.00	$73,640.44
Education	5	$75,344.65	$14,006.69
Engineering	11	$66,511.00	$85,448.44
Journalism	3	$45,881.00	$16,500.00
Law	1	$13,351.00	$0.00
Liberal Arts/Sciences	87	$756,148.55	$548,259.84
Pharmacy	15	$140,917.77	$105,530.63
Social Welfare	7	$66,196.00	$33,316.13
Libraries	5	$23,261.00	$40,147.31
Research	99	$857,307.66	$597,705.37
Student Affairs	21	$167,298.09	$155,568.36
IT	1	$3,182.00	$8,305.12

Enrollment Management	21	$167,298.09	$155,568.36
Admin/Finance	1	$19,976.00	$0.00
Campus Operations	2	$16,717.00	$7,781.25
Academic Affairs	28	$191,804.00	$213,285.75
Faculty Development	2	$4,387.00	$16,980.94
Diversity and Equity	2	$20,032.00	$14,047.50
International Programs	20	$138,171.00	$147,444.38
Grand Total	**354**	**$2,937,980.05**	**$2,303,554.25**

KU Implementation Strategy:

In order to be prepared to implement the new Department of Labor FLSA overtime rules by December 1, 2016 the University of Kansas is prepared to take the following steps:

1. Our current postdoctoral workforce consists of 92 full time employees. This comprises approximately one third of our currently exempt employees who are below the new FLSA overtime threshold. On average, these 92 postdoc employees make $7,080 below the new $47,476 threshold. KU plans on raising all of our postdoctoral employees up to the new $47,476 threshold. This decision is tied to a joint statement released by the Director of the National Institutes of Health and the Secretary of Labor on May 18, 2016 generally endorsing fair pay for "postdocs." In order for KU to remain competitive to attract the best and brightest young researchers we feel compelled to be aligned with the direction being advised by these two key leaders. In addition, postdocs tend to work a varied schedule with periods where they spend many hours in the lab in order to complete critical research projects. It is not pragmatic or cost effective to transition postdocs to a non-exempt status and track their hours worked and pay overtime for any effort over 40 hours per week. We are asking our research centers to determine how to make adjustments in their budgets and, in many instances, revise their grants in order to accommodate this new cost burden. It is still unclear what the impact will be as our principal investigators (PIs) work through their fiscal adjustments. A primary concern is that our centers will not be able to afford as many postdocs and will need to cut back on the number of research openings/opportunities that are available. The standing of a major research university is directly tied to the number of post doc researchers mentored by the university. A decrease in the number of post docs may have a direct impact on the standing of KU in the national higher education research community. In addition, the mandated raising of even our junior postdocs to the new threshold will likely cause significant salary compression in this key KU job family.

2. KU will delegate the responsibility for determining the status of the remaining 262 currently exempt positions to our schools/units. KU has no central fiscal flexibility in order to assist our units address the financial impact of the new FLSA overtime rule. Each unit will have to determine what makes the most fiscal sense for them. In initial

meetings campus leaders have stated that the vast majority of these positions will become non-exempt due to their inability to afford to raise them to the new threshold. Three areas that KU projects will be significantly impacted are student advising, student recruiting and student enrollment services. Employees in these areas tend to work more than 40 hours per week, especially during peak student support periods. KU does not have the resources to raise these employees to the new FLSA overtime threshold in order to maintain their exempt status nor does the university have the resources to pay overtime once these employees are categorized as non-exempt. The result will be reduced services provided to our students. The one fiscal lever that KU has to mitigate this challenge is to raise tuition to cover the increase in personnel costs in these key areas. As previously stated this action is not immediately feasible but will certainly be considered in future years. If tuition must be raised, our students who already incur significant financial debt getting their education, will bear the fiscal impact of this change.

Matt Melvin, the KU Vice Provost for Enrollment Management, in a recent reflection on the impact of the new FLSA overtime rule on his organization stated: "what the new rule really does is impede our ability to customize and personalize the educational process beginning from the time a student initiates an inquiry to the time they depart/graduate. The level of personalization/customization has been a source of sustainable competitive advantage for us in a highly competitive environment as we have emphasized, and benefitted from focusing on the relational vs. transactional aspects of the work. This rule directly impedes our ability to build those relationships. In addition, I think it is direct contradiction to the national completion agenda as student access to, and availability of, academic and support personnel and services will be reduced. KU needs to highlight that decreasing services is more than reducing operating hours. It will have a profound impact on our ability to attract, retain and graduate students."

Additional Considerations:

1. There is an escalator clause in the new FLSA overtime rule. The first update will take place in 2020 and every three years thereafter. The automatic update mechanism in the new overtime rule will be difficult to address in the current fiscal environment where KU (and comparable higher education institutions) deal with declining public sector revenue.

2. The FLSA overtime rule provides a stipulation that academic administrative employees will be exempt if their salary equals or exceeds KU's entrance salary for teachers. KU, as a major public research university, is a very complex organization. The institution does not mandate an entrance salary so it varies considerably across campus based on the variable cost of hiring quality faculty into different disciplines. Based on an initial review, our starting teacher salary (defined by the annualized cost of hiring

lecturers) is above the new overtime threshold so this administrative exemption does not provide any relief for KU.

3. In lieu of paying overtime, universities are allowed to provide non-exempt employees who work over 40 hours each week compensatory time. While the Department of Labor allows organizations to carry up to 240 hours of comp time for an employee, KU has a policy capping comp time at 90 hours per employee. KU leaders are reconsidering the current 90 hour cap because of the additional stress placed on our organizations with the new FLSA overtime rule. Expanding the cap up to 240 hours adds additional financial liability and risk on our units. If KU removes the 90 hour cap it would not be feasible for any university unit to cover a lump sum payment of 240 hours if compelled to do so.

4. Fringe benefits average approximately 35% of each employee's base salary. For each employee that KU raises to the new FLSA overtime threshold there will be a comparable rise in fringe benefit costs further increasing the financial burden of the new overtime rule on KU.

Conclusion:

At KU, we appreciate the Administration's ambitious agenda to promote affordable, high-quality educational opportunities, expanding access to college, and providing the support necessary to drive students to on-time completion and long-term success. However, the new changes to the FLSA overtime rule represents a major expense for public universities and puts our campus in a further financial strain, as we continue to deal with decreased state funding. There is simply no way for universities like KU to absorb costs of this magnitude without an impact on our academic, research, and outreach missions that will be felt by the public we serve.

Chairman KLINE. Thank you. Mr. Passantino, you are recognized.

TESTIMONY OF ALEXANDER PASSANTINO, PARTNER, SEYFARTH SHAW LLP, WASHINGTON, D.C.

Mr. PASSANTINO. Thank you. Chairman Kline, Ranking Member Scott, members of the Committee, thank you for the opportunity to speak with you today regarding the Department of Labor's revisions to the white collar overtime regs. As a partner in the Washington, D.C. office of Seyfarth Shaw my practice focus is on helping employers comply with FLSA. I spend my days providing advice and counsel to employers on things like independent contractor status, overtime exemptions, and other pay practices. Since the Department announced its revised regulations three weeks ago, I have been discussing this issue pretty much nonstop with employers, with trade associations, with colleagues, and I am pretty sure that my family's been subjected to it as well.

Today, I want to focus and spend the time flagging some of the compliance challenges that employers will face in the coming months as they decide how to proceed with the revised regulations.

Certainly, a few employers, particularly in some industries and in some higher-wage regions of the country, may find that all they need to do is decide and flip some switch. For the vast majority of employers, however, the revisions require a thorough analysis of the costs and benefits associated with each of the several options for currently exempt employees earning an annual salary between $23,000 and $47,000.

On the one side, you have the increased costs of the increased salaries, not just for the affected employees, but for supervisors or for more experienced employees to avoid salary compression. On the other hand, we have the impacts of converting employees to nonexempt status and is explained in more detail in my written testimony.

Those impacts include: harming the ability of employers to provide and employees to take advantage of flexible scheduling options, including part-time employment; treating employees in the same job classification for the same employer differently based on regional cost of living differences; limiting career advancement opportunities; decreasing morale for those employees who are demoted to nonexempt status, particularly where peers in other locations remain exempt; reducing employee access to a variety of additional benefits, including incentive pay; deterring employers from providing newly reclassified employees with mobile devices and remote electronic access, further limiting employee flexibility; increasing FLSA litigation based on off-the-clock and regular rate of pay claims; and introducing a host of legal and operational issues, such as increased costs for administration.

It is important to remember that converting an employee to nonexempt status means that the employer must treat the employee as nonexempt for all purposes. This means accurately tracking time; ensuring compliance with the minimum wage and overtime provisions; and, properly computing the regular rate of pay for overtime. With respect to tracking time, converting employees to nonexempt status means throwing them into a regulatory scheme

developed for the workplace of a different century. It would take them from the 2004 white collar exemption regulations and place them under regulations where the case is cited or from the 1940s and the 1950s.

Although in fairness, there is at least one case from 1960s cited in those regulations. It uses as examples people who are working crossword puzzles and playing checkers while they are waiting around on the job; telephone operators who have switchboards in their homes. In the modern workplace, the old understandings of waiting time, travel time, work time, and even workplace are pushed beyond the point of breaking. When you are talking about email, working on a laptop from a coffee shop, taking a call in the school pickup line, and all the time in between whether it is travel or waiting, the current rules do not work.

How does an employer determine what time is paid and what time is not? Where do the principles of continuous workday begin and end? The answers are not clear. The regulations, guidance, and cases provide arguments on virtually every side of the issue. And every day employers are sued over the seemingly minor bits of time that have not been included in employees' hours of work. Yet it is the employer's obligation to keep adequate records of the employees' time, not just an eight written at the end of the day, every day, but the actual hours worked. And failure to do so results in severe consequences to employers in litigation.

Under the existing rules, payments, like bonus payments, incentive payments, have to be included in the nonexempt employees' regular rate of pay. Sometimes that has to go back over the course of a year. Faced with that difficult calculation, employers often forego those types of incentive payments to nonexempt employees. The issues that I am raising now do not include issues related to morale, the get-it-done mentality, part-time employment, and even how employers are going to pay.

So, once the employers decide they are going to convert someone to nonexempt status, they need to determine how they are going to pay, the rate they are going to pay, whether it is going to be a salary plus overtime, whether it is going to be straight hourly. Once those decisions are made, employers have to communicate. They have to craft communications to explain this to employees and they need to do it in such a way that has the employee understanding that they are still a valued member of the team and that they are not diminished in any way because they are losing their exempt status. And employers also need to craft these communications because the plaintiffs' lawyers have already announced that they are on the lookout for new cases based on the reclassification.

On top of that, this process will repeat itself every three years as the Department increases the salary automatically every three years. In exchange for this, the Department's revisions do little to promote the President's directive to modernize the regulations. Rather, they are going to place large numbers of employees under a regulatory scheme that was last updated in the 1960s and is fraught with uncertainty.

The Department itself is going to issue a Request for Information on some of these issues related to how the regulatory framework applies to the modern workplace. Unfortunately, employers do not

have the luxury of waiting for the Department to modernize the regulatory scheme. They need to be in compliance by December 1 and the clock is ticking.

Thank you for the opportunity to appear before the Committee and I look forward to your questions.

[The statement of Mr. Passantino follows:]

Testimony of Alexander J. Passantino, Esq.

Before the
United States House of Representatives
Committee on Education and the Workforce

Hearing on
"The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses"

June 9, 2016

Chairman Kline, Ranking Member Scott, and Members of the Committee:

Thank you for the opportunity to speak with you today regarding the U.S. Department of Labor's (the "Department") revisions to the "white collar" overtime exemption regulations at 29 CFR Part 541.

Currently, I am a partner in the Washington, DC office of Seyfarth Shaw LLP, where my practice focuses on helping employers comply with the Fair Labor Standards Act (FLSA), the Service Contract Act, the Davis-Bacon and Related Acts, and state laws related to the payment of minimum or prevailing wages and overtime. The majority of my practice is providing advice and counsel to employers on independent contractor status, overtime exemptions, and other pay practices. I represent employers during wage-hour investigations by the Department and state enforcement agencies.

I have been working on wage and hour issues since entering private practice in the Fall of 1997. In 2005, I left private practice and joined the leadership team of the U.S. Department of Labor's Wage & Hour Division (WHD). In 2006, I was appointed Deputy Administrator of WHD and, in 2007, I became the Acting Administrator. President George W. Bush nominated me to serve as the Administrator in March 2008. I left WHD in 2009 and returned to private practice.

In my testimony today, I will be discussing some of the compliance difficulties likely to face employers—whether they be large, multi-state employers, small businesses, educational employers, or non-profits—under the Department's newly-issued regulations regarding the most-frequently-used exemptions from the FLSA's minimum wage and overtime requirements. In particular, my testimony will focus on the challenges that these employers have been and will continue to face as a result of the Department's decision to double the minimum salary required for exemption and to increase automatically that salary level every three years.

Despite my involvement with a number of associations, including the Partnership to Protect Workplace Opportunity, and my representation of many employers attempting to come into compliance with the new standards, my testimony today is solely my own.

In the short period of time since the revisions were published, it has become clear that it will be incredibly difficult for many employers to implement. Although a few employers may find that all they need to do is "flip a switch," for the vast majority the revisions require a thorough and thoughtful analysis of the costs and benefits associated with each of the potential options for formerly exempt employees currently earning an annual salary between $23,660 and $47,476.

Ultimately, employers are weighing the increased costs of increasing salaries (both for the impacted employees as well as "upstream" employees) against the impacts of converting employees to non-exempt status. As discussed in more detail below, those impacts include:

- harming the ability of employers to provide, and employees to take advantage of, flexible scheduling options;
- treating employees in the same job classification (for the same employer) differently based on regional cost-of-living differences;
- limiting career advancement opportunities for employees;
- decreasing morale for those employees who are demoted to non-exempt status, particularly where peers in other locations remain exempt;
- reducing employee access to a variety of additional benefits, including incentive pay;
- deterring employers from providing newly-reclassified employees with mobile devices and remote electronic access, further limiting employee flexibility;
- increasing FLSA litigation based on off-the-clock and regular rate of pay claims; and
- introducing other legal and operational issues, such as increased administrative costs.

Complicating the analysis is the fact that the Department's revisions would require employers to revisit these issues every three years, deciding whether continued classification of an employee as exempt is worth the new threshold salary increase.

Many of the issues facing employers are due to the significant and abrupt change to the minimum salary required by the revisions. The new salary level is higher than the exempt salary levels set under any state law (*e.g.*, California and New York). Notwithstanding the Department's minimal reduction of the level from the proposal, the level remains too high to achieve the historical purpose of the salary level, will force employers to make classification decisions that ignore regional economic differences, and will cause significant disruption in the workplace. The wage costs, administrative expenses, and intangible consequences of the Department's revisions will be significant.

Unfortunately, the Department's revisions do little to promote the President's directive to "modernize" the regulations. Rather, they will place large numbers of employees under a regulatory scheme that was last updated in the 1960s and is fraught with uncertainty. Indeed, the Department itself is so uncertain of how this regulatory framework applies to the modern

workplace that it plans to issue a Request for Information on some of the critical issues. Of course, employers do not have the luxury of waiting for the Department to modernize the regulatory scheme; they must address these issues before the December 1, 2016, effective date.

As a result, the Department's revisions will return us to a 1940s mentality of clock-punching for all but the most highly paid employees. This result is bad for employees and employers alike.

Factors Considered by Employers in Increasing Salary

One of the issues facing employers is the fact that the new salary level often cuts directly through a classification — some employees have salaries in excess of the new level; others fall below. This can be due to a wide variety of reasons, including seniority and experience. Often, it is a result of regional cost-of-living variations. There are substantial pay differences based on geographical region and pay differences between larger and smaller cities that are simply not related to differences in job duties. Because the cost of living varies greatly throughout the country, employers often have different salaries for the same job position depending on where the employee works, similar to how the federal government operates. The job duties are precisely the same. The only thing that differs is location.

For example, an employee in New York City will have a higher cost of living than an employee working in Knoxville, Tennessee. Accordingly, the employer may provide the employee in New York with a higher salary than the employee with the same job title and job responsibilities in Knoxville. With the Department's increase to the minimum salary level, that employer may now need to decide whether the economics of the Knoxville location justify an increase to the new salary level or whether the Knoxville position will need to be reclassified as non-exempt.

Of course, the "economics" of the Knoxville location may also require the employer to increase the salary of the employee in New York to address the cost of living difference. And employers may find that increasing the salary for one employee or group of employees may result in still further costs. Where employees below the proposed salary minimum have their salaries raised to meet the new minimum, employees above the new minimum will likewise need to have their salaries raised to account for the relative value of the work being performed.

Higher levels of education, skill, experience, responsibility, and seniority should (and currently do) correspond to increased compensation. Employers thus attempt to avoid actual or perceived disparity between job titles and comparative compensation. Employees with higher positions, more job responsibility, and better qualifications than others expect to be paid accordingly. If an employer fails to do so, the salary compression will negatively impact employee morale in the workplace.

For example, assume that a group of currently-exempt employees earn $700 per week and their supervisors earn $1,000 per week. The decision to raise the employees' salary to $913 per week to continue their exempt classification does not simply impact those employees. Their supervisors—although not legally required to be paid more to be treated as exempt—nevertheless will need to be paid more to maintain morale and avoid salary compression.

These increased costs have a direct and complicated impact on the determination on whether to reclassify a position to non-exempt as a result of the increased minimum salary level. There are real administrative expenses associated with these decisions. The decision on classification cannot be made in a vacuum; it must consider the impact on other positions from a salary compression standpoint.

Against these very real costs associated with increasing salary levels—for affected employees, for regional cost-of-living differences, and to address salary compression—employers must weigh the consequences of reclassifying affected employees to non-exempt status.

Factors Considered by Employers in Converting to Non-Exempt Status

Converting an employee to non-exempt status means that the employer must treat the employee as non-exempt for all purposes. This means accurately tracking time, ensuring compliance with the minimum wage and overtime provisions, and properly computing the regular rate of pay for overtime.

With respect to tracking time, converting employees to non-exempt status means throwing them into a regulatory scheme developed for the workplace of a different century. Taking them from the 2004 white-collar exemption regulations and placing them under regulations that use as examples messengers working the crossword puzzle, firemen playing checkers, and telephone operators with switchboards in their homes. Most of the cases cited in these regulations are from the 1940s and 1950s.

To say that the workplace has changed significantly since that time is an understatement. The population of workers most likely subject to the Department's revisions—*e.g.*, knowledge workers, entry-level managers—are precisely the types of workers that demonstrate just how significant that change has been.

Although the hours of work regulations provide fairly relevant guidance in determining what parts of a "normal" workday are compensable, they are woefully inadequate in addressing the modern workplace. For example, an employee who gets in her car, travels to the office, answers e-mail all day on a computer, plays solitaire during the downtime, takes an hour for lunch, and returns home is likely on the clock from when she arrives at the office until she leaves the office, less the hour taken for lunch. In an "ordinary" workplace, the downtime and the waiting time between e-mail and response are compensable time; the travel time and the meal period is not.

On the other hand, take an employee who spends an hour responding to e-mail at home, drives to the office, leaves to run an errand and get lunch, which he eats in the car on the way to a coffee shop near his kids' school where he works for a couple of hours before picking them up. He then brings them home, preps dinner, and takes them to their softball practices. All the while, he is responding to e-mail on his mobile device and even takes a call or two. He returns home, feeds the kids dinner, puts them to bed, then responds to e-mail for 20 minutes before watching the latest episode of Game of Thrones on the very same device. At the conclusion of the show, he responds to an e-mail he had been waiting for, then goes to bed.

The old understandings of waiting time, travel time, work time, and even workplace are pushed beyond the point of breaking in this example. How does an employer determine what time is paid and what time is not? Where do the principles of "continuous workday" begin and end? The answers are not clear. The regulations, guidance, and cases provide arguments on virtually every side of the issues. And, every day, employers are sued over the seemingly minor bits of time that have not been included in an employee's hours of work.

Faced with the uncertainty of anything other than being sued, many employers long ago decided that non-exempt employees would not have remote access or work-related mobile devices. Many employers will make the same decision with respect to newly-reclassified workers. Though there may certainly be some employees who feel relief at being untethered, many others will be disappointed by the lack of flexibility in their workday that loss of remote access affords.

It is the employer's obligation to keep adequate records of employees' time, and the complicated application of the old concepts to the new workforce may force employers to make decisions that they would not otherwise make. It is also the fact that employers are responsible for tracking time that makes the Department's insistence that there is no requirement to "punch a clock" so disappointing. While hyper-technically accurate, any employer that wishes to avoid time-consuming and expensive litigation will require its employees to thoroughly track time, not simply to write down "8" at the end of each workday. Small amounts of time, repeated daily, by hundreds of employees add up quickly and result in massive exposure for employers.

In addition to the hours worked issues, there are significant issues related to regular rate of pay. In creating conditions in which employees must be reclassified to non-exempt status, the Department's salary level will negatively impact many employees' ability to earn incentive compensation. When employees are converted to non-exempt status, they often find that they have lost their ability to earn incentive pay. Under the existing rules for calculating overtime rates for hourly workers, many incentive payments must be included in a non-exempt employee's "regular rate" (*i.e.*, the base rate for overtime) of pay. Faced with the difficult calculation (and recalculation) of these overtime rates—sometimes looking back over every pay period in a year—employers often simply forgo these types of incentive payments to non-exempt employees rather than attempt to perform the required calculations.

In determining whether to convert an employee to non-exempt status, employers must consider the impact on morale. Employees often view reclassifications to non-exempt status as "demotions." Particularly where other employees within the same organization will continue to be exempt (due to regional economic variations or full-time status), it is easy to see why. The non-exempt employee will now need to account for his or her time in a way he or she has not had to previously. In addition, because of the increased attention that must be paid to the hours worked by the non-exempt employee, he or she is likely to be at a competitive disadvantage to the exempt employee in the same role. Many training opportunities will now become compensable time under the FLSA and where those opportunities would put the non-exempt employee into an overtime situation, his or her access to those opportunities may be limited; the same is not so for his or her exempt colleague.

Similarly, the non-exempt employee may be limited in his or her ability to "get it done" now that he or she must record and account for all hours worked. These types of intangibles—being known as someone who "just gets the job done"—are often considered in whether an employee receives a promotion, bonus, or training opportunity. As a result of the Department's dramatically increased minimum salary level, career advancement may become more a function of where an employee sits than what he or she does.

Finally, employers need to consider how to pay employees who are converted to non-exempt: do they convert to hourly? Do they pay salary plus overtime? Do they convert to a fluctuating workweek arrangement (in those states that permit it)? Does the Department's legally inaccurate statement in a 2011 preamble impact the ability to pay incentive pay to employees under fluctuating workweek? Does the employer base the new hourly pay or salary on a 40-hour workweek, resulting in additional compensation (above the existing salary) for every overtime hour? Or is it better to base it on the hours worked by the employee such that the normal hours worked will be the equivalent of the existing salary? How will employees react to the decision? And how does the employer even determine how many hours are typically worked by employees who have not been recording time and who have not been beholden to the hours of work rules established by the Department in the 1960s?

All of these factors are weighed against the cost of increased salaries as employers address the classification decisions forced by the increased minimum salary. These are not easy decisions, and they take a significant amount of time and effort to address. Yet, in many cases, the decisions ultimately will end up being ones of form over function. Employees will work the same, they will earn the same (if not immediately, at least over time as raises are minimized to account for the additional overtime costs), but they will lose flexibility and be required to track their work in a way that they have not done previously.

Additional Specific Issues Raised by the Salary Increase

As expected, the Department's increase to the minimum salary level is negatively impacting the ability of employers to provide part-time exempt positions. Under the current regulations, an employee who performs tasks that clearly meet one or more of the exemption duties tests can be classified as exempt so long as his or her salary exceeds $23,660 per year. Thus, a part-time employee working a 50% schedule can qualify as exempt so long as he or she works in a position that has a full time salary of approximately $48,000 per year. This is true not because the full-time equivalent salary is $48,000, but because the part-time salary of $24,000 is still in excess of the regulatory minimum.

Under the Department's minimum salary level, that employee would no longer qualify for exemption. Instead, the Department's revisions require an employee working a 50% schedule to be working in a position earning more than $95,000 on a full-time basis. This will have a disproportionate impact on women in the workplace, and, in particular, likely will impact mothers who may be seeking to re-enter the workplace as professionals, but not on a full-time basis.

The Department's increase to the minimum salary level will create two classes of employees performing the same work: full-time exempt employees and part-time non-exempt employees. Employers would be unable (for practical purposes) to take a consistent approach to a job because it simply is not feasible to reclassify entire positions as non-exempt due to the issues related to part-time employees. As a result, however, individuals working side-by-side would be subject to different rules and obligations simply because one is a full-time employee and one is a part-time employee. Although fairness, and the nature of their work, should dictate that such colleagues be treated the same, the Department's new salary level all but requires the part-time employee to be treated differently. Teamwork, productivity, and morale will undoubtedly suffer.

We also have been hearing questions for which the Department has not provided adequate guidance. Some of these, such as the precise contours of how the 10% bonus provision will work (*e.g.*, what types of bonuses, how the applicable quarterly period is determined), are a direct result of the Department's rule. Others are more indirect; they are questions that are asked because employers are seeking new and creative ways to address the massively increased salary. These include questions on the application of the teacher and outside sales exemptions to positions that traditionally have not been classified as such (or, for which those exemptions may have been "fallback" positions), the types of positions that qualify for the academic administrative provision, and which "teachers" qualify as the basis for the provision that permits academic administrators to meet the exemption when paid on a "salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed."

As is the case with the hours of work rules discussed earlier, the Department's revisions bring these provisions into the spotlight. The current regulatory scheme has not required employers to resort to these provisions. As a result, there is little-to-no guidance on how these provisions should be applied to the employees impacted by the salary increase. This uncertainty is likely to result in additional litigation in the future.

Impact on Small Businesses, Educational Employers, and Not-for-Profits

Regulatory familiarization, adjustment, and managerial costs will be significant for all employers. Perversely, however, these costs may be more significant for those organizations that can least afford it, such as small businesses, educational employers, and not-for-profits. These organizations have the least discretion in their budgets and, in many ways, they will need to be the most creative in developing solutions. As noted, compliance with the Department's revisions may not be as simple as reviewing the salary level and making a decision. Due to the many, varied issues identified, the time and effort associated with complying with the proposed rule will be immense as employers determine which positions will remain exempt, which will be reclassified as non-exempt, and how the employer will implement the conversion to non-exempt status, including adjustments to time and attendance systems and associated administrative issues.

The Department, however, has not done an adequate job of addressing all of the costs associated with the revisions, particularly the costs related to the impact on small businesses, many of whom do not have large human resources and legal departments to walk them through the tangled web of making these decisions. I understand that H.R. 4773, the Protecting Workplace

Advancement and Opportunity Act, would require that the Department address the significant costs associated with its rulemaking, particularly as it relates to small businesses and other entities most impacted by the increase.

The Department's Automatic Increase is Legally Questionable

H.R. 4773 would also prevent the Department from automatically implementing salary increases without notice-and-comment rulemaking. This would confirm that the Department lacks the ability to implement the automatic changes, which already appears to be the case.

In the NPRM, the Department stated that it sought "to 'modernize' the EAP exemptions by establishing a mechanism for automatically updating the standard salary test."[1] The Department suggests that automatic updates would "promote government efficiency by removing the need to continually revisit the issue through resource-intensive notice and comment rulemaking."[2]

The Department, however, cannot avoid its obligations to engage in notice-and-comment rulemaking simply because notice-and-comment rulemaking takes time and resources; a federal agency cannot exceed the limits of its authority or otherwise "exercise its authority 'in a manner that is inconsistent with the administrative structure that Congress enacted into law'" no matter how difficult an issue it seeks to address.[3]

At no point since Congress authorized the Department to issue regulations on the FLSA's section 13(a)(1) exemption has Congress granted the Department the authority to index its salary test. Congress could have provided such authority if it desired the Department to have it; Congress has permitted indexing expressly in other statutes, including the Social Security Act (which preceded the passage of the FLSA and was amended to add indexing in 1975) and the Patient Protection and Affordable Care Act (which was passed subsequent to the most recent revision to the Part 541 regulations). Yet Congress, despite full knowledge of the fact that the Department has increased the salary level required for exemption on an irregular schedule, has never amended the FLSA to permit the Department to index the salary level.[4] Congress's actions in the face of regulatory history demonstrate a clear intent that the salary level be revisited as conditions warrant, allowing the Department, and the regulated community, the opportunity to provide input into the appropriate level.

The Department's own actions in reaching out to the regulated community before publication of the NPRM, as well as soliciting input on the salary level in the NPRM itself, demonstrate the importance of notice-and-comment on the salary level. In 2004, the comment process resulted in increases to both the proposed salary level and the proposed highly compensated employee salary level. The Department is not omniscient on these issues, and automatic increases to the salary level are inconsistent with both the Department's statutory authority and with the Department's long-held understanding of the salary level's purpose. An annual revision to the salary level is inconsistent with the salary level's gatekeeper function. How can it be the case

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[1] *See* 80 Fed. Reg. at 38,537.
[2] *Id.*
[3] *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 125 (2000) (internal citations omitted).
[4] Similarly, when Congress has amended the FLSA to increase the minimum wage, it has not indexed that amount.

that an employee is "clearly exempt" on December 31 and "clearly non-exempt" on January 1 of the following year because of the indexing calculation? A gate need not be moved on an annual basis to ensure that it functions properly; only when it approaches the end of its usefulness does it need to be "fixed."

The Department recognized its lack of authority to index the salary level in its 2004 rulemaking. And it acknowledges as much in the current NPRM, noting that it determined "nothing in the legislative or regulatory history . . . would support indexing or automatic increases."[5] The Department was correct in 2004, and nothing has occurred since that time to justify a different conclusion.

When the Department has increased the salary level in the past, it has done so by stating what the new salary level would be and by leaving adjustments to that level to the Administrative Procedure Act's required notice-and-comment rulemaking process. The current regulatory process also requires the Department to follow the Regulatory Flexibility Act and to undertake a detailed economic and cost analysis. In the revisions, however, the Department plans to announce a new salary level every three years in the Federal Register without notice-and-comment, without a Regulatory Flexibility Act analysis, and without any of the other regulatory requirements established by various Executive Orders. Each of those regulatory requirements is intended to force the agency to consider the consequences of its proposed actions and to ensure that the regulatory actions are carefully crafted and well-supported before being implemented. The rule thus operates as a "super-proposal," deciding once and for all what (in the Department's belief) is best without consideration of its impact now or in the future. In fact, it would not be possible for the Department to accurately estimate the impact of the automatic increases in future years as the workforce and the economy are always changing.

Conclusion

Since at least 1940, the Department has recognized that the purpose of the salary level is to "provid[e] a ready method of screening out the obviously nonexempt employees."[6] That is, the salary level should be set at a level at which the employees below it clearly would not meet any duties test; above the level, employees would still need to meet a duties test in order to qualify for exemption. In setting the proposed level as high as it has, however, the Department has turned this analysis on its head. The Department seems to be setting the salary level at a point at which all employees above the line would be exempt, turning the salary level from its historical role as a screening device into the de facto sole test and a mechanism for greatly limiting the ability of employers to avail themselves of these exemptions. Indeed, built into the Department's (erroneous) assumption that litigation will decrease as a result of this rulemaking is the belief that employees above the line will be more clearly exempt. That has never been the Department's goal in setting the salary level.

Such a dramatic departure from the historical purpose of the salary level will have far-reaching consequences. The Department's new minimum salary level will force employers to reclassify

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[5] *See* 80 Fed. Reg. at 38,537.

[6] *Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales, and Computer Employees; Final Rule*, 69 Fed. Reg. 22,122, 22,165 (April 23, 2004).

positions that clearly meet the duties test where the nature of the industry (*e.g.*, non- profit) or the regional economy cannot justify a salary increase.

The Department has recognized that "the exemptions were premised on the belief that the exempted workers typically earned salaries well above the minimum wage and were presumed to enjoy other privileges to compensate them for their long hours of work, such as above average fringe benefits, greater job security, and better opportunities for advancement, setting them apart from the nonexempt workers entitled to overtime pay."[7] Yet, because the Department's revisions more than double the salary level, it would have the perverse effect of forcing many employers to take away the benefits, job security, and opportunities for advancement for those employees who will lose exempt status.

[7] *Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales, and Computer Employees; Proposed Rule*, 80 Fed. Reg. 38,516, 38,517 (July 6, 2015).

Chairman KLINE. Thank you. I thank all the witnesses. Let me start questioning with you, Mr. Passantino, because you are kind of on a roll here. You know from your time at Wage and Hour that it is time-consuming to create regulations in accordance with the *Administrative Procedure Act* and governing law. But the reason Congress established this process is because it is so important to offer the public, including affected stakeholders, the opportunity to provide commentary informing the rulemaking process. Your testimony correctly notes that the Department's regulations sets a process automatically increasing the salary threshold every three years without fulfilling all of the procedural requirements designed to produce good rules. Can you take a couple of minutes here and explain how dangerous that is and possibly illegal that is to establish this process?

Mr. PASSANTINO. Sure. You know, by eliminating the notice and comment rulemaking process for all future salary increase, the Department has apparently decided that it doesn't need the input of the regulated community. So, historically, it has been notice and comment, the Department proposes a salary level. The regulated community weighs in, says we think it is too high, we think it is too low. And they take those comments under consideration and then the final rule comes out with a new salary level. In 2004, the salary level proposed was lower than the salary level in the final rule. In 2016, the salary level proposed was higher than what happened in the final rule. So, it can fluctuate in both directions depending on what the comments say.

What the Department has done is said, we do not need to hear from the regulated community. We do not need to understand what the economic conditions are and how this is going to impact anyone who is directly affected by this rule. We are just going to update this every three years based on a standard that we have identified now in 2016, and we are going to do this for eternity.

I do not believe that complies with the *Administrative Procedure Act*. I think it is sort of a super proposal for eternity. It is just we are going to propose this standard for all time. Congress has never authorized automatic increases and I think it is highly problematic that the Department is doing that.

Chairman KLINE. Thank you, sir. I yield back. We will recognize Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Ms. Sharby, did you indicate the $265,000 will be the cost to raise all the salaries up to the exempt level?

Ms. SHARBY. Yes, that is correct.

Mr. SCOTT. So that anybody making from about $23,000 could get a raise to over $23,000, everybody between 23 and 47 could get to 47 and it would cost you $265,000?

Ms. SHARBY. Correct.

Mr. SCOTT. And you would be right back to where you are today in terms of dealing with the overtime rule. What is your total budget?

Ms. SHARBY. We are very close to a hundred million.

Mr. SCOTT. One percent of a hundred million is 1 million and you are talking about $265,000?

Ms. SHARBY. That is just in the cost to raise the employees to the new salary threshold. That does not take into consideration—

Mr. SCOTT. Which would put you right back where you are today.

Ms. SHARBY. Does not take into consideration the overtime costs that will definitely dramatically increase.

Mr. SCOTT. No, there would be no overtime because they would be exempt. Those employees would be in the same situation that they are today in terms of overtime.

Ms. SHARBY. Excuse me. When I gave that number, that is not to bring all of our employees up to the new exemption. Those are the employees that we feel that we have to bring to the new exemption given their level of responsibility. Very many of our employees would not be going up to the new salary threshold.

Mr. SCOTT. What kind of hours are these employees working today?

Ms. SHARBY. It depends on the position.

Mr. SCOTT. After they work 40 hours and they are not considered exempt over $23,000, what is their hourly rate of pay after the 40 hours today?

Ms. SHARBY. I could not answer that.

Mr. SCOTT. Zero. Is that right, Dr. Bernstein?

Mr. BERNSTEIN. Yeah, that is right. I mean, these workers are not being paid overtime, so any hour worked after 40 hours under current conditions before the new rule goes into effect is paid zero.

Mr. SCOTT. Not time and a half. Not straight time.

Mr. BERNSTEIN. No, these workers are paid for 40 hours. Any overtime they are working is not covered. These are workers who are deemed exempt by dent of their salaries or their duties and, therefore, they are not paid for overtime. So, any hour of overtime work is paid zero.

Mr. SCOTT. And so if you have a full-time employee who has already worked 40 hours and a part-time hourly worker who has worked 20 hours and you got to get 10 more hours of work done, if you lay it on the 40-hour full-time worker, how much does it cost you?

Mr. BERNSTEIN. Well, it costs you—

Mr. SCOTT. If they are exempt for this.

Mr. BERNSTEIN. It costs you, under the new rule, it will cost you time and a half and I think the—

Mr. SCOTT. And under the present law, what would it cost?

Mr. BERNSTEIN. It would cost you zero under the present law.

Mr. SCOTT. And if you did it to the part-time worker, you would actually have to pay for the 10 hours.

Mr. BERNSTEIN. Well, that is right, but I think one of the points, if I may, Ranking Member Scott, one of the points you are getting at here is something that I think is very important for my colleagues on the witness stand to consider because I don't think they have by dint of their testimony, which is that there are various other ways that the increased threshold can be absorbed other than taking people up to the top salary cap.

My colleague from the University of Kansas suggested that everyone will have to be taken up to the salary cap, but, of course, as you just pointed out, you can take workers who are working part-time, increase their hours as long as they remain below 40,

there is no change to payroll. There is no change to payroll based on the overtime change. In other words, they are under 40, so they are not getting time and a half. They would be working more hours and they would have to be paid more straight time.

There are various other absorption mechanisms. You can create more jobs at straight time. That is another way to avoid the overtime threshold and I actually think that is a very positive development. Various analyses, including, by the way, the National Retail Federation, which testified here, suggested that the new role would create over a hundred thousand jobs through this mechanism. Employers avoid paying the overtime by creating straight-time employment.

Mr. SCOTT. And Mr. Rounds, did you say in your testimony that you could raise everybody from under 47 that's making more than 23 up to 47 to get them back to exempt for about $3 million?

Mr. ROUNDS. Ranking Member Scott, we have 354 members as of today who are under the new threshold.

Mr. SCOTT. And you can get to the 47—

Mr. ROUNDS. And that cost us about $3 million.

Mr. SCOTT. About 3 million. What's your total budget?

Mr. ROUNDS. I don't have the university—

Mr. SCOTT. Over a billion?

Mr. ROUNDS. It's over a billion dollars.

Mr. SCOTT. One percent of a billion is about 10 million?

Mr. ROUNDS. Yes.

Mr. SCOTT. What does your basketball coach make?

Mr. ROUNDS. The basketball coach, which is Mr. Bill South, is not a State employer and, therefore, I don't have his salary.

Chairman KLINE. And the gentleman's time has expired. Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman, and thank each of you for being here today. Ms. Sharby, I really appreciate your service. Easter Seals makes a difference around our country for so many people, so thank you for what you do. I'm also very grateful that I have four sons that have participated in the Boy Scouts of America and with the extraordinary encouragement of my wife, all four of them are Eagle Scouts.

During a recent discussion with the Indian Wars Council Scout Executives, I was informed by the negative impact that the regulation will have on the Boy Scouts in South Carolina, which makes such an important difference of the lives of the young people of our State. Can you expand on the impact this regulation will have on the quality and quantity of services that nonprofit organizations will be able to provide families?

Ms. SHARBY. Yes, I can. Currently, Easter Seals relies on level funding at best. Usually we are forcing cuts in our budget and we are going to have to consider how we are going to be able to continue these services. As I mentioned earlier, we provide free and subsidized services. So that is going to be an area where we are going to have to pay particular attention due to the lack of funding.

In addition, it takes a long time to develop a relationship between the staff member and the person who is receiving services. It is not as simple as saying, okay, we will hire a new staff member to come in and pick up the responsibilities. In the state of New

Hampshire with the 2.6 percent unemployment rate, bring them on. I have 150 staff vacancies. If you have people that you can send to me that are qualified to work for Easter Seals, I would be happy to interview them, but that is just simply not the case.

So, our employees come to work for us because they believe in the mission. They do not necessarily come for the salary. They want to be paid a fair salary. I totally support that, but they come for the mission to make a difference in the lives of the individuals that they serve. And now, we are creating a situation where they are not going to have the flexibility to do the things that they feel are necessary in order to provide this quality.

Mr. WILSON. And indeed, you and your staff are making a difference.

General Rounds, over the past several months, I've had the opportunity to speak with many colleges and universities throughout the state of South Carolina regarding the impact of the Department of Labor's overtime rule. At South Carolina's flagship university, the University of South Carolina, this rule will affect nearly a thousand employees, cost the university over a million dollars a year to comply, which I believe could lead to destroying jobs. In a time when universities are facing a decrease in State funding and students are facing rising tuition costs, can you speak on the ultimate impact this burdensome and expensive overtime regulation will have on faculty students and programs?

Mr. ROUNDS. Thank you, Congressman Wilson. As you mentioned, it does have an impact on our ability to provide the same type of response for many of the employees who are impacted. As you know, universities are not 9:00 to 5:00 organizations. Their cultures are responsive to our primary stakeholders who are students and many of the employees who are affected by this are employees who are directly engaged with students on a regular basis and if we try and force them into a 9:00 to 5:00 box, it will make it very difficult for them to provide the same services and maintain the same culture we currently have at K.U.

Mr. WILSON. And I have seen it personally. I have a dear neighbor who is a tennis coach and she sees this as catastrophic to her ability to work with the students at the college that she teaches.

Mr. Passantino, there was recently an article in the Los Angeles Times where the millennial generation is most likely the generation that would like to change careers, give up promotion opportunities, move their family to another place for flexibility. What kind of impact will this have on businesses that do provide flexible alternatives for persons who use laptops and smartphones?

Mr. PASSANTINO. I think the most significant piece for those employees who are reclassified as nonexempt, so who are below the threshold and the employer decides not to bring them up to the new threshold. It is going to be difficult for the employers to continue to provide them with those opportunities. Whether a particular time is compensable, paid under the act, depends on a lot of facts and circumstances, but there are principles that have been in place for a very long time that simply do not apply when you have someone starts in the office, goes to a coffee shop, heads off to a softball game, works at home. They do not apply in the same way as they do in the more traditional workplace.

Chairman KLINE. Thank you very much. Speaking of basketball, Mr. Courtney, you are recognized.

Mr. COURTNEY. Thank you, Mr. Chairman, and thank you to the witnesses for being here today. Again, I think I want to follow up on a point Mr. Scott was making in terms of trying to, you know, step back and look at this from sort of a total global standpoint in terms of the impact of this rule.

Dr. Bernstein, on page five of your testimony, you mentioned what the actual impact on the Nation's Wage Bill is going to be and, again, I don't know if you have it at your fingertips, but I'll let you, again, underscore that point.

Mr. BERNSTEIN. Thank you because I think it is really critically important to scale some of the numbers we are hearing by, just as Representative Scott was suggesting, by the budgets of the organizations. And when you do so, you find that nationally, the costs of the new rule will amount to less than one-tenth of 1 percent of the national payroll. Now, national payroll is in the trillions.

So, we are talking about a relatively small group of workers who are newly covered and among that group of workers that are newly covered, those who are more likely to work overtime.

Now, in the higher educational sector, that payroll share also amounts to well under one-tenth of 1 percent and in the nonprofit sector, again, less than one-tenth of 1 percent. And in fact, if you look at the affected workers who usually work overtime in both the higher ed sector and the nonprofit sector, it's less than 1 percent of their workforce.

Now, I still think this is an important rule and not all the benefits are monetized. Some of the benefits come from being able to balance work and family. Tremendously important, but it does not show up in the national accounts as extra dollars. But when you go in the monetary side, you see the fractions involved here. I would say very much belie the level of some of the rhetoric we are hearing.

Mr. COURTNEY. Thank you. And again, also, I think that the narrative that somehow the Department of Labor stonewalled, you know, any input that came in during the rulemaking process, again, I also served with Mr. Walberg in the Workforce Protection Subcommittee when fair labor standards was discussed. And, indeed, I would agree with the Chairman's comments that, you know, it was in need of an update and a modernization. Again, I kind of came to a different ending point in terms of what needs to be updated and that your graph certainly showed that, how this rule had just deteriorated to the point that it was less than 10 percent of the American workforce that was getting any benefit from it.

And again, during the rulemaking process, nonprofits were listened to. Again, as you pointed out, the Medicaid waiver programs for people with intellectual disabilities, again, they operate under a one revenue system of operation and it is very rigid because these Medicaid waivers are under caps. And again, the Department gave a three year non-enforcement accommodation to those programs. In terms of universities and research, as your testimony points out, the National Institute of Health, in terms of future research grants is going to, again, align these grants to comply with the rules, is that correct?

Mr. BERNSTEIN. Yes, by aligning the grants to comply with the rules what you're saying is that the grants will equal the upper bound of the salary threshold and thus not invoke higher overtime costs. And I think it is really germane and I have a great deal of respect for my colleagues on the panel who are providing important services, as was recently mentioned. I think it is germane that both of them, and I very much underscore their point, have pointed out their problem is less with this overtime role and more with their funding streams.

And I think in the case of Kansas, that is particularly striking because in Kansas, we know there has been this experiment with tax cuts and these cuts taking effect in 2013 have blown a $400 million hole in the State budget. State spending on higher education for a student in Kansas is down 22 percent since 2008 and my colleague, Mr. Rounds, made those points very clearly.

But what you can't do in my mind in terms of the labor standards is cut taxes on wealthy people so that you cannot pay middle class a fair wage for a fair day's work.

Mr. COURTNEY. And having talked to Secretary Perez, I think, you know, this question of the Medicaid waiver programs, I mean, frankly, the Department of Health and Human Services has to be brought into this discussion in terms of how they set these waivers. Again, it will align with these new fair labor standards.

So, again, I think you are right. This is going to create a healthy sort of discussion, both at the State level and the Federal level, about trying to get, whether it is research grants, UConn or K.U., or whether it affects nonprofit programs that provide critical services for vulnerable populations that they get the adequate resources to create a living wage. I yield back, Mr. Chairman.

Chairman KLINE. The gentleman yields back. Dr. Roe.

Mr. ROE. Thank you, Mr. Chairman. General Rounds, thank you for your service to our great country and all the panelists for being here. I was asked to speak about two weeks ago at the Tennessee Valley Carter Meeting on entrepreneurship and job creation. And I wondered why when you hear the administration say that we have 14–1/2 million new jobs, unemployment rate has gone down from 9 percent to 5 percent, all are true. Why is it when you poll the American people that 70 percent and the majority of Democrats are saying the country is headed in the wrong direction? It does not make sense. I mean, those two things together do not make sense.

I began to look at in detail and what has happened is between 1990 or 1992 and '96 during that recession, 420,000 new businesses were formed in this country. Between 2002 and 2006, 400,000 new businesses were formed. Between 2010 and 2014, 166,000 businesses were form. And what happened was 20 counties in this country made up half the new businesses formed in America and 60 percent of the counties actually had a net loss. That is why we, as the American people, feel like we are going in the wrong direction.

And in my opinion, the way the other side, Dr. Bernstein, you are an advisor to the President, believe that raising the minimum wage and doing this salary is actually helping the economy. It is not.

If complying with government regulations were a country, it would be the fourth largest country in the world, just compliance costs, and this is going to add another compliance cost of what we are doing. I am a Boy Scout, an Eagle Scout. I worked Scout Camp every summer. There is no way on this Earth that not-for-profit—as a matter of fact, I have to write them a check when I get home—there is no way in the world that they can comply with this. If you are a Scout leader and you go by on a Friday morning to set up a jamboree for the weekend for Boy Scouts, by Sunday morning you got to leave them because you have done your 40 hours and you have not worked all week.

I worked there 24 hours a day, seven days a week when I was a camp counselor. As you were saying, when do we start camp? You talk about 10ths of a percent at the University of Tennessee. It is going to add $9 million—$9 million—to the University of Tennessee which is a 2 percent increase in tuition for every student in the system. I talked to one of the land grant colleges two weeks ago when I was at the Valley Quarter Meeting and it is going to add $2 million costs to that one college.

Tuition costs have skyrocketed. That is the last we need to do and at the University of Kansas. That cost has got to be passed on.

And Dr. Bernstein, I will point out in our great State of Tennessee, we had cut taxes. We have the lowest per capita debt in the nation. We provide free community college for people, so it can be done by lowering bureaucratic hurdles and this is just one of them.

General Rounds, this to me is a very personal. I was on the foundation board of my college and providing a quality education for someone like me who is a first generation student, it is another barrier that is out there. And I do not know how not-for-profits, like Ms. Sharby, you are talking about, are ever going to comply with this. So, General Rounds, if you would like to comment on the costs and then, Ms. Sharby, if you would.

Mr. ROUNDS. Thanks, Congressman Roe, as I pointed out in my testimony, if you look at the fact that we are relatively flat or decreasing in our budget, it makes the absorption of any additional costs very difficult without taking dramatic steps. And in this case, the ability to absorb these costs because they are not available means that if for the majority of the individuals impacted, is they will become nonexempt as opposed to exempt and they will not be able to provide the same services that they currently do because they have very good flexibility in how they execute their job responsibilities. They will lose that flexibility.

Mr. ROE. My good friend, the Ranking Member, brought up the basketball coach at the University of Kansas. Well, that is fine, but what about these State schools where I went where a coach may make $35,000 or $40,000 a year and they are out recruiting athletes? How in the world are you ever—they are driving eight hours to a game. How in the world are you going to comply with that? I have no earthly idea. Not everybody is at the University of Kansas, at a major university. Trust me, when you are a coach at Austin P. State University where I went, you are making small, little teeny bucks, not the mega bucks that a great coach like that is making.

So, my time is about expired. I do want to, Mr. Chairman, I want to submit this new map of economic growth and recovery as a matter of the record.

Chairman KLINE. Without objection.

Mr. ROE. I yield back.

Chairman KLINE. The gentleman's time expired. Ms. Fudge, you are recognized.

Ms. FUDGE. Thank you very much, Mr. Chairman, and thank you all for your testimony today. Mr. Bernstein, in your testimony, you note that the FLSA overtime exemptions were designed and intended to cover a particular class of worker. These exemptions have now been construed to cover assistant managers or supervisors that don't necessarily meet the duties test. How has the manipulation of this exemption, which, in fact, it has been manipulated, negatively and unfairly affected low-level management workers, causing them to lose out on overtime that they should receive?

Mr. BERNSTEIN. By misclassifying them as exempt, thus prohibiting them from getting time-and-a-half when they work beyond 40 hours a week. If you actually look at the intention of the FLSA and the duties of the types of workers you are mentioning, these are workers who very much should be covered by overtime protections, but are not. Therefore, and it is much like the conversation I was having with representative Scott a minute ago, when they work an hour, two, five, 10 hours of overtime, every one of those hours costs $0 to their employer. There is a—

Ms. FUDGE. Excuse me, sir. The time is not accurate. Please proceed, sir.

Mr. BERNSTEIN. Okay. Every one of those hours is unpaid. One of the most important aspects of the new rule is that it does away with this confusion around the duties test by updating the salary threshold and setting it at $913 per week, these workers will now be automatically covered.

Ms. FUDGE. So, in effect, for many, many years, they have actually benefitted by the misclassification and have gained significant dollars that they really should have been paying people for a very long time.

Mr. BERNSTEIN. That's correct, and in fact, we were talking a little bit, a second ago, about the underlying economy and some of the dynamics there in. And one of the problems we have had is this increase in economic inequality, whether it is wage or wealth or income inequality, it is doubled in terms of share of income to the top 1 percent over the past 35 years. One of the things you see is that the profit share of national income recently reached historic highs. It is coming down a bit as the job market has tightened, and that is one of the dynamics that we are describing here. Workers are not being fairly compensated, and that has helped to boost profit margins. That is not a bad thing. Profit margins are good, but profit margins should afford you to be able to pay a middle-class wage to workers who are working over 40 hours a week.

Ms. FUDGE. And employers have unfairly benefitted from it.

Mr. BERNSTEIN. Correct.

Ms. FUDGE. Mr. Bernstein, we have repeatedly heard the argument that raising wages in any way would stifle job creation and economic growth, and today is no different. We hear the same

thing. Our failure to act has seen the demise of the 40-hour work week, and that is what we have seen today, really, the demise of the 40-hour work week. Could you elaborate on how this salary increase will actually help economic growth and not hurt it?

Mr. BERNSTEIN. Well, a number of ways. One of the things I mentioned earlier, I think, is quite important. There are many labor economists who believe that one impact of the new rule will be the creation of new straight-time jobs, that is, employers who don't want to pay overtime to newly covered workers can avoid that by hiring other workers and paying them straight time. Also, it can increase the hours of their part-time workers, yet still keep them below 40.

Now, Goldman Sachs argues that would create about 100,000 jobs. National Retail Federation argues more. To the extent that workers working more than 40 hours newly covered are now making time-and-a-half, these are workers who earn middle-class incomes, middle-class salaries. The top threshold in an annual sense is about $47,000 per year. That is actually below the—that is about around the median household income. These workers tend to spend their paycheck, so that feeds back into the economy. We have a 70 percent consumption economy. That's pro-growth. And, in fact, you talk about a sloggy macro economy, one reason for that has to do with this inequality problem, and the fact that when the benefits of growth flow to the top of the scale, consumption tends to be less robust.

Ms. FUDGE. I have no further questions, but if there is something you want to address in my last two minutes that you have heard—

Mr. BERNSTEIN. Well, thank you.

Ms. FUDGE.—please feel free.

Mr. BERNSTEIN. You know, I think there is a real lack of care, and I am glad Mr. Passantino is here because I sense he really understands these rules. I think there is a lack of care and consideration by many folks who oppose these rules in terms of what is actually in there.

One, we just a heard a member complaining about coaches and the need to pay overtime to coaches. Well, athletic coaches, assistant coaches who fall under the exemption when their primary duty is teaching are exempt. And so, there are a variety of exemptions: teachers, academic administration personnel, graduate and undergraduate students. I urge my colleagues on the witness stand and their institutions to look much more carefully at that aspect of the rule.

I will state, and since we are talking about coaches, I will note, that at least it is my understanding that the basketball coach at K.U.—and I'm a huge Jayhawks fan, just to get that on the record—is paid something in the range of $5- to $6 million a year. Now, if Mr. Rounds' numbers are correct, that means that you could fully compensate for the overtime cost that he designated and still pay their basketball coach about $3 million a year, which sounds pretty good deal to me.

Chairman KLINE. So, we agree that the coach is exempt. The gentlelady's time has expired. Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. I guess I have gained more understanding of why our economic growth at an anemic 2

percent or less is what it is with economic advice that is coming, like what we are hearing today. It is frustrating to think that we have an administration that thinks you can name it and claim it, and that businesses, universities, and others can simply pick the dollars out of the air to pay, and that doesn't happen. And when we get into social welfare agencies, and we get into charitable causes, and entities that provide real basic help to people, this is not reality. And that is what is frustrating and maybe that is why we are that level of growth.

It is interesting, also, that with the Puerto Rican bill that is being considered right now, the administration is willing to forego overtime regs and a minimum wage for 25 and under, indicating that will help grow the economy in Puerto Rico. Just want to bring that up, hypocrisy that we hear.

Mr. Passantino, Department of Labor's final overtime rule is going to result in the demotion of salaried exempt employees in every corner of the country. By DOL's own estimates, very few of the Department's estimated 4.2 million impacted employees will actually see any potential benefit from this rule because they do not currently work more than 40 hours per week.

However, these employees will be negatively impacted when they lose workplace flexibility, opportunities to attend training and networking events, and certain performance-based bonuses as a result of being reclassified. Do you anticipate, Mr. Passantino, significant morale issues amongst employees as a result of these changes?

Mr. PASSANTINO. I think, in talking to clients since the rule's been out, that is a very likely probability. As is in my testimony and as I said earlier, one of the issues is with respect to mobile devices and remote access. As annoying as they may be from time to time to be tethered to your job all the time, it also allows you to be away from your job for parts of the day and to be away from your workplace and to get things done when you are not sitting at your desk.

Mr. WALBERG. Workplace of the 21st century, right?

Mr. PASSANTINO. That is right.

Mr. WALBERG. Flexibility, opportunity.

Mr. PASSANTINO. Right.

Mr. WALBERG. Choice.

Mr. PASSANTINO. We have also talked to employers about the bonus issue and the fact that—

Mr. WALBERG. Yeah, talk about that. Talk about the bonus issue and the impact of this rule.

Mr. PASSANTINO. So, for nonexempt employees, when there are nondiscretionary bonuses, and nondiscretionary bonuses are basically all of your incentive types of payments, those get included in the regular rate of pay for overtime purposes. So, if you have someone who is making $10 an hour, their overtime rate would be $15 an hour, but if they got a bonus on top of that, you would have to go back and recalculate their rate in order to determine what their new overtime rate is.

Mr. WALBERG. Hurting many of the people that appreciate the compensation that comes from bonus and opportunity and expanded opportunities.

Mr. PASSANTINO. Well, frankly, when we talk to employers, when we explain everything that is necessary to recalculate that rate of pay, they just decide to forego the bonus.

Mr. WALBERG. No bonuses.

Mr. PASSANTINO. Right.

Mr. WALBERG. Yeah. Mr. Passantino, contrary to the Department's assertion, changes to expand overtime eligibility will not necessarily result in a windfall of overtime income for newly classified, nonexempt employees. Will you describe some of the adjustments employers will consider making in order to keep labor costs under control?

Mr. PASSANTINO. I mean, one is that they can limit the amount of hours that someone works. Another is you can reduce the base rate of pay so that if you expect someone to work 45 hours per week, their previous salary becomes—you divide it by 45 or your divide it by 45 plus something else. And then their hourly rate will get them to what they made anyway. So, they make the same, except now they are keeping track of their hours and they are getting paid for overtime up to that 45 and then they would be paid time-and-a-half over that. You can pay them on a salary that reflects their current pay and then they would get a little bit extra for the amounts they work over 40. So, there are a variety of different ways that it can be accommodated.

I think the other part of the equation, it may change the way that employers hire in new individuals to those positions. They maybe come in at lower rates to account for that overtime premium.

Mr. WALBERG. Generally, going back to the 20th century when we are in the 21st and moving rapidly in this 21st century to something expanding in the workplace. Thank you, I yield back.

Chairman KLINE. The gentleman yields back. Mr. Polis, you're recognized.

Mr. POLIS. Thank you, Mr. Chairman. You know, for stepping back for too long, workers across our country have simply been putting in more and more hours without receiving the compensation they deserve. You know, we have talked about many examples, but a manager at a fast food restaurant in my district might earn a salary of $26,000 a year, but work 50, 60, 70 hours. At that salary, a family of four is well below the poverty line. But under the new overtime rules, they will finally be compensated for their work and receive the pay they deserve.

In fact, my district or my state has 248,000 workers that will benefit from the overtime rule. I would also like to note that this update would directly benefit 275,000 workers in my colleague's, Mr. Walberg's state, who we just heard from. And I think that is something that is long overdue and that workers deserve.

There has been some discussion of higher ed workers and I wanted to go to Mr. Bernstein on that. I represent a district with two institutions of higher education: Colorado State University and University of Colorado, Boulder. There has been a lot of discussion about the rules affecting higher education. And to be clear, I wanted you to talk about what actual impact might this have on higher education and what percent of the higher education workforce would even be affected by these rules.

Mr. BERNSTEIN. Thank you. According to numbers from the Labor Department, 3.4 percent of workers at colleges and universities would be affected by the rule change in the sense that their salaries are between the current and the new threshold. However, it then becomes most workers in that bound, between the old and the new threshold, most workers don't work overtime. So, the next thing you have to do is ask how many of the workers in the affected range work overtime, and that gets you to .5 percent in the higher ed sector and, by the way, .8 percent in the non-profit sector. So, less than 1 percent of workers affected in that regard and as a share of their payroll, as I have been stressing throughout the discussion, under one-tenth of 1 percent in both cases, whether we're talking national, higher ed, or non-prof.

Mr. POLIS. And in addition, with the particular carve out around instructors that under the guidance from the Department of Labor generally covers assistant athletic instructors and others, so some of those, even some of .5 percent out of the 3.4 percent that make in that range that might work more than 40 hours a week, are some of them not even in the teacher exemption categories, some of those workers?

Mr. BERNSTEIN. Right, so this is again, it is critical to go back and understand the nature of the exemptions. Bona fide teachers, coaches, graduate and undergraduate students, academic administrative personnel are often exempt, meaning that the new rule will not affect their pay. In postdoctoral cases, which is an important area for my friend here from higher ed, again, I want to underscore that the Department of Labor's working closely with the NIH and the National Science Foundation to ensure that grants are now at the level of the upper bound of the salary threshold.

Mr. POLIS. And if there are workers that are affected, then I think you are down to whatever, .1 percent or .4 percent, let us say it is janitorial manager or something like that. You know what? The universities need to maintain a competitive pay scale in the private section anyway. I mean, if the private sector is paying overtime and somehow the university were exempt from it, would they even be able to engage or hire somebody for these positions?

Mr. BERNSTEIN. Well, if the job market is soft enough, they might, but in a tighter job market, they would not. But I think the key point here is that it is really hard to understand why someone who chooses to work in the public sector should be treated differently than someone who works in the for-profit sector when it comes to fair pay for overtime work. I think, as my colleague Ms. Sharby said, that these workers want to be paid a fair salary. And I think that is a great point. There is no reason, especially when we are talking about an impact that is less than one- tenth of 1 percent on payroll, that workers in one sector should be treated so unfairly relative to workers in a different sector.

Mr. POLIS. Well, even this again, economically, if we want the nonprofit or public sector to attract talented workers, they have to have overall compensation packages. They are competitive. Obviously, overtime is part of that; vacations are part of that; pay is part of that; benefits are part of that. But overall, you need to be competitive or you are going to wind up with the least talented people in these positions simply because the more talented ones are

taken up by the private sector. So, we have to be competitive across all sectors. I think consistency of rules is very important to do that and I yield back.

Chairman KLINE. The gentleman yields back. Mr. Guthrie.

Mr. GUTHRIE. Thank you very much. And I want to continue talking to Mr. Rounds on this idea of colleges, and I understand you worked at the University of Kentucky; K.U. are large, large enterprises. Well, Kentucky has a lot of small colleges, a lot of small colleges that were brought into being 100, 150 years ago from mission-oriented—and I have a written statement addressed to the Committee from Dr. William Luckey. He's the president of Lindsay Wilson College in Columbia, in Derek County, Kentucky. And his statement raises very serious concerns with the overtime rule and I will ask it to be entered into the record.

Chairman KLINE. Without objection.

Mr. GUTHRIE. Lindsay Wilson College is a small, private, nonprofit college serving one of the poor areas in Kentucky and actually one of the poorer areas in our country. Sixty-two percent of the college undergraduates are Pell eligible. Fifty percent of the Pell eligible have an expected family contribution of zero. Lindsay Wilson students receive more in state-based grants than any other private college in Kentucky and I would like to read from Dr. Luckey's statement summarizing Lindsay Wilson' College's concerns with the overtime rule.

It says, "The DOL website states, the ruling will transfer income from employers to employees. I can tell you that in our case and in the case of hundreds of private colleges that submit a comment to OMB with this rule was under review, just the opposite is going to happen. Employees will lose their jobs and many other salaried professionals will be relegated to a lower profile, nonexempt status because for nonprofits, like Lindsay Wilson, there is no extra employer money to transfer. But our students that are among the Nation's most needy will suffer most. When the changes from Federal overtime rule take place at the current amount and in the current timeframe of implementation, it would be devastating to Lindsay Wilson College and I dare say it will hurt, not help, small colleges all across America."

So, Mr. Rounds, that is the end of the quote from that. Mr. Rounds, many small, private colleges face strict budget constraints. Ninety-five percent of Lindsay Wilson's revenues come from student enrollment. When costs go up, tuition must rise or services must be cut. In this regard, is Lindsay Wilson's predicament similar to K.U.'s as it faces the overtime rule?

Mr. ROUNDS. Thank you for the question. It is similar to K.U.'s. And what I would like to point out is with the 354 individuals who are currently considered exempt, 92 of those are postdocs. And I had put into my testimony that we plan on bringing them up to the new threshold because to not do so would make us noncompetitive. Obviously, it has a huge impact on us because there is a fixed budget. Granted, NIH is going to raise grant levels. We are working under current grant levels and so, under fixed budget, you—

Mr. GUTHRIE. But Lindsay Wilson is not a grant-based—you know, it does not do a lot of its—it is 95 percent student tuition,

not NIH research. But, so, I know it is a separate—maybe it is a little different from the University of Colorado, but please continue.

Mr. ROUNDS. Yes, sir, but the remainder of the individuals are not in that position where they are tied to grants and we can do the adjustment in order to bring their salary levels up. So, in those cases, we are going to have to make them nonexempt employees and as we make them nonexempt employees, it has been pointed out on several occasions is that they will lose their workplace flexibility. I think the portrayal that we are not concerned about the making them competitive with the rest of the workforce—our employees competitive with the rest of the workforce is not accurate, at least at K.U.

Over the last two years, we went through an extensive market study and within that market study, the intent was to ensure that we are paying our employees comparable to the industry and comparable to the region and as we finish that, we brought 33 percent of our workforce wages up in order to make sure that we were balanced. Naturally, difficult to do in a tight fiscal environment, but the right thing to do. As part of that process, I would point out that even employees that we raise their salary as we did a review, if they went from an exempt to a nonexempt status, that was more important to them losing their exempt status then the fact that they had their salary raised. And so, as Mr. Passantino has pointed out, we have found as we look at this particular issue that there are morale issues associated with it. The scope of those morale issues were not even sure of at this point.

One last thing, and I appreciate the opportunity, is we have talked a lot about our basketball coach and his salary. Mr. Self is not paid with State funds and, therefore, I think a lot of the comparisons of what reducing his salary would do for us is not necessarily germane. So—

Mr. GUTHRIE. University of Kentucky chose this year to take athletic funds and build an academic building with it as well, so.

[The information follows:]

Statement Before the House Committee on Education and the Workforce
Full Committee Hearing on The Administration's Overtime Rule and its Consequences for Workers, Students, Nonprofits, and Small Businesses
June 9, 2016

Dr. William Luckey
President
Lindsey Wilson College
210 Lindsey Wilson Street
Columbia, KY 42728

Thank you for the opportunity to submit a statement today on behalf of Lindsey Wilson College in Columbia, KY, and the National Association of Independent Colleges and Universities (NAICU) on the Administration's new overtime rule and how it will affect Lindsey Wilson and many other small, private, nonprofit colleges and universities across the country.

My name is Dr. William Luckey. I am the President of Lindsey Wilson College, and have served as President for almost 18 years. Lindsey Wilson College, founded in 1903, is a liberal arts college affiliated with the Kentucky Conference of The United Methodist Church. We are located in Columbia, Adair County, KY, which is part of Appalachia.

Until a few years ago, Columbia was located in the Fifth Congressional District; historically one of the poorest Congressional Districts in America. According to the US Census Bureau, the median household income in our county is $34,490 per year. The per capita income is $17,772 and 26.3% of the people live below the poverty line. Lindsey Wilson College is the largest private and most sought after employer in the community.

Lindsey Wilson College offers baccalaureate, master and doctoral degrees and is considered a Level V institution by our accreditor, the Southern Association of College and Schools Commission on Colleges.

Lindsey Wilson College is an open enrollment institution. We are an institution dedicated to our mission of providing a living-learning education in an environment of active caring with a Christian concern for all students as they learn and grow. In the fall of 2015, LWC had a full-time equivalent enrollment of 2,578 students—2,138 undergraduate students and 440 graduate students.

Sixty-two percent of our undergraduate students are Pell-Eligible, which means their family can contribute less than $5,198 per year toward their college education. Fifty percent of those Pell-Eligible students have an Expected Family Contribution (EFC) of zero. That means the Federal

Government has determined those students' families cannot afford to pay one penny of their child's college education.

Our students receive more in state need-based grants than any other private college in Kentucky. Almost 60% are first-generation students--the first in their families to attend college.

IMPACT OF THE RULING:

The Department of Labor's (DOL's) new overtime rule will have a devastating impact on our campus, our employees, our community and, most importantly, the precious students we serve.

Lindsey Wilson College currently has 155 salaried employees, excluding those subject to the teaching exemption. Of those 155 employees, 124 of them would be affected by the proposed regulations.

The cost to increase these 124 employees to the required $47,476 threshold would be an additional $2,404,761. That's $2,193,777 in salary; $152,524 in FICA; $2,048 in long-term disability insurance; and $56,412 in matching retirement.

To be frank, we do not have the $2.4 million it would take to meet the new overtime rules. We don't have the money in a rainy day account, we don't have it in a special fund account, we don't have it in our endowment, and we don't have it in the bank.

The average budgeted surplus for Lindsey Wilson College over the past four years was $37,000 on an approximately $61,000,000 budget. That is razor thin! For two of these four years, we did not have enough funds to provide our employees with any kind of raise. We are a tuition dependent institution. Ninety-five percent of our revenue is generated by student enrollment. When costs go up, tuition goes up or cuts are made to services. We spend more than 99.9% of every dollar of revenue in service to our students. We take our non-profit status seriously!

It's equally important to recognize that tuition is set by our Board of Trustees each Spring for the following academic year. Our first tuition payments arrive the following August. Even if we were forced to reset tuition in our next tuition cycle to help offset these costs, that would not bring in one more dollar until August 2017.

This fall, we are budgeted for a 50.9% Tuition Discount Rate. This is tuition revenue that we basically do not charge students who cannot afford it, but give back in the form of a scholarship or grant. We will spend in excess of $24,000,000 on institutional aid because the students we serve cannot afford the full cost of a college education.

What are our choices now that the new DOL overtime rule is required?

To be sure, we cannot pass the cost on to our students. They are already stretched to their financial limits. Even if we could, we cannot change the cost of attendance for the fall semester because that was approved by our Board of Trustees months ago. In addition, we have already made more than 1,100 financial aid offers to prospective and returning students based on our published cost.

Also, with the current climate in higher education to keep costs down and lower student loan debt, it would make no sense at all. So, it will be impossible to ask our students to absorb the cost of implementing the new federal overtime guidelines.

Our only option will be to terminate employees and reclassify our remaining professional salaried employees who are critical to our students' success.

Reclassifying exempt professionals to non-exempt statuses will:

- be a huge morale issue because these are workers who support students such as admission counselors, resident directors, and first year advisors who are dedicated to our mission and our students - they do not want their important work tied to a clock.
- result in inconsistent pay to the employees because their workloads vary during the academic year,
- negatively impact students because many of these committed professionals will be unavailable to serve them,
- increase administrative costs for tracking and monitoring the additional hours of overtime, and
- create a large uncertainty over our already tight FY2017 budget because we do not have enough time to track the amount of overtime over a full year for the 78% of our salaried staff that will become non-exempt

We are not against an adjustment in the current threshold. In fact, we support one. The issue is that the 99% increase from $23,660 to $47,476 – with six months to implement – is simply too much, too fast. In comments submitted to DOL in September, 2015, a survey of Chief Human Resources Officers from a wide variety of public and private colleges and universities indicated that an increase in the range of $30,000 to $35,000 would be acceptable and fair.

We are a good employer. When we offer a recent college graduate a job as an admissions counselor for $24,000 a year in rural Kentucky, such a job is likely to be the best job in that family especially when considering the benefits package on top of the salary. It is a career-launching professional opportunity for that student. I can tell you that recent graduates will not be the ones we hire, and give opportunities to, with the new wage at nearly $50,000. A more experienced admissions counselor will win out.

In conclusion; The DOL website states the ruling will transfer income from employers to employees.

I can tell you that in our case -- and in the case of the hundreds of private colleges that submitted comments to OMB when this rule was under review -- just the opposite is going to happen. Employees will lose their jobs, and many other salaried professionals will be relegated to a lower profile non-exempt status, because for nonprofits like Lindsey Wilson, there is no extra employer money to transfer. But, our students, who are among the Nation's most needy, will suffer most.

When the changes to the federal overtime rule take place at the current amount and in the current time frame of implementation, it will be devastating to Lindsey Wilson College and I dare say it will hurt, not help, small colleges all across America! Many small colleges, like ours, will be in crisis mode.

We respectfully ask that Congress do whatever it can to slow this process down, and consider the impact on employers like Lindsey Wilson College and our students. If Congress is unable to stop the rule prior to implementation, then I respectfully request that you provide some small amount of relief by allowing private nonprofit colleges the same comp time arrangements with our nonexempt employees which are available to public college employees who are considered employees of the state. We are happy public colleges can use this relief, but we believe private colleges need the same flexibility for the same reason.

It is not an exaggeration when I say the future of Lindsey Wilson College and the Columbia-Adair County community are depending on your help.

Chairman KLINE. The gentleman's time has expired. Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Chairman Kline and Ranking Member Scott. Today's hearing on the updated overtime rule by the Department of Labor is long overdue. According to the Economic Policy Institute, an estimated four million workers would benefit from the proposed overtime rule. And it would help more than 1.5 million working people in my own home State of Texas.

Critics of this much-needed final rule also argue that colleges and universities cannot afford the increased costs. These educational institutions, like all other entities, will have a number of ways to come into compliance with the rule, including raising employee pay, limiting employees to 40 hours per week, paying overtime on top of an employee's salary as needed, or any combination of the above. Additionally, many employees at these colleges are exempted from coverage under the FLSA.

It seems to me that we must be realistic about the number of people affected here. I think back to 20 years ago when I was elected to come to Congress, I was looking back on the computer, and saw that 1996, when I was elected, the minimum wage was $4.75 an hour. Under Bill Clinton, his second term, ending his second term, we were able to pass an increase of the minimum wage and it went in several steps. It reached $7.25 in 2009. That is nine years ago—no, seven years ago. But it was interesting to me that the same arguments that I hear my friends on the other side of the aisle that businesses will close and things will go to hell just didn't pan out. That is not what happened.

What happened is in the second term of Bill Clinton, we had a surplus of $600 billion. We balanced our budget. It was a period of prosperity because we raised the interest—I am sorry, the minimum wage, plus many other things that occurred under Clinton's second term. So, what we are being told now, same excuses for not changing the minimum wage in about 12 years to me is hollow. It is not true. It seems to me that we have got to be realistic and that we have got to do something.

I request unanimous consent, Mr. Chairman, to submit a letter from over 250 professors at colleges and universities across the United States and they strongly support the Department of Labor's new rule governing overtime.

Chairman KLINE. Without objection.

Mr. HINOJOSA. Thank you, Mr. Chairman. Mr. Rounds, I have a couple of minutes and I want to ask you, according to your cost estimates, assuming they are correct, your costs of this proposed rule will represent seven-tenths of 1 percent of payroll costs in 2015. It would represent three-tenths of a percent of total operating expenses and about 50 percent of what USA Today reports is the annual pay of Kansas University's head basketball coach. Why do you think these small percentages will require such a drastic reductions in student services?

Mr. ROUNDS. Thank you. I appreciate the question. I am answering the question as what I am looking at is the individuals' who are primarily affected. And as you look across the individuals who are impacted, a large percentage are individuals who work directly with our students and as you look at the different numbers, what

I am aware of is the fact that we are on a very fixed and tight budget. And it would be difficult or impossible in order to—those individuals that are directly associated with providing services to our students in order to be able to adjust their salaries to make them—

Mr. HINOJOSA. Thank you, Mr. Rounds, my time is almost up and I want to say that I respectfully disagree with you. Goldman Sachs says this morning, "New Obama rule on overtime likely to add 100,000 jobs to the economy." I think that is more likely to happen—

Chairman KLINE. And the gentleman's time has expired. Dr. Foxx.

Dr. FOXX. Thank you, Mr. Chairman. I want to thank our panel, all of them, for being here today. I do want to say that I think some of the information being presented here comes from folks that live in an alternate universe where they have never worked in the private sector, recommendations coming in from folks who never worked in the private sector and have no idea what it cost in addition to direct costs to comply with such government rules and regulations.

And I want to say that—and Dr. Bernstein said everybody should be paid fairly, and I agree with that. But there are many people in this country, Dr. Bernstein, who work in nonprofits that do not do it for the money. As Ms. Sharby has said, they do it out of a sense of mission, and they make that choice when they go there. Just like we do not pay our teachers enough in this country, in my opinion, but they know when they go to those jobs what the pay is going to be. And they do it out of a sense of mission.

And I think that is perfectly fine. We need to continue our civil society, organizations outside the control of government that have that sense of mission. It's part of what makes us such a great country.

Mr. Passantino, I think that General Rounds was getting to this point, but I would like to ask you if you would talk a little bit about the areas where the Department of Labor may have underestimated the costs of compliance with this because we know historically, these government agencies, again, live in an alternate universe and have no idea what it costs to implement the rules and regulations. Would you say a little more about the costs of compliance for these rules?

Mr. PASSANTINO. Sure and I think a lot of the costs of compliance is not simply complying with this rule. It is what this rule forces employers to do in the context of other regulations. So, it is not simply do we look at the increased salary and what that increased salary level does to a particular employee and whether that's an added cost and whether, as a result of that employee getting a raise, that employee's supervisor then has to get a raise and that's an additional cost.

You also have to look at the overtime payments that are going to be made to the employees that are reclassified as nonexempt. You need to look at the cost of implementing timekeeping systems. You need to look at the costs of additional, frankly, legal advice and H.R. work to determine what is compensable; what is paid time for employees who are not used to keeping track of time, who

are not used to punching a clock, who have the freedom to use their computers at home and mobile devices. And now, for the first time, these employers are going to have to make decisions on whether that is paid time and where the particular time begins and ends.

Dr. FOXX. Right, and I want to follow up a little bit on the adequacy of keeping records. The Labor Department's guidance accompanying the final rule says, "There's no requirement that employees punch in and punch out." You talked about the challenges of sitting in the school pickup line, for example, and sending out emails or answering a telephone call before work, after work, miscellaneous things that all of us do. But to that point, the guidance specifies for an employee who works a fixed schedule, an employer need not track the employee's exact hours worked each day. But considering the ever-increasing threat of litigation on the wage and hour front, is it ever advisable for employers to forego tracking hours for overtime-eligible employees?

Mr. PASSANTINO. I mean, it is a huge mistake to say we are not going to track those hours. Sure, if somebody is always going to work 9:00 to 5:00 every day, the rule says you can keep track of time that way and they can mark a box that says, yes, that is what I worked today. Given the nature of the employees that are going to fall in this reclassification, given the nature of the workplace and the reliance on electronic devices, given the fact that there are lawsuits filed each and every day over six minutes here and six minutes there, it is a mistake not to keep track of those hours religiously for employers to make sure that they are capturing, you know, whether somebody works eight hours or whether they work eight hours and six minutes.

Dr. FOXX. Thank you very much. And in my last 13 seconds, I want to say to Ms. Sharby's comments, she points in here, "Easter Seals cannot afford to pay overtime and the children with disabilities that we serve are the ones that will suffer the most." And I think it is really important that we understand the most vulnerable in our country are going to be punished by these rules. Thank you, Mr. Chairman.

Chairman KLINE. The gentlelady yields back. Ms. Bonamici.

Ms. BONAMICI. Thanks so much Mr. Chairman. I see the Department of Labor's overtime rule as a long overdue update and I think, Dr. Bernstein, you made clear in your testimony with your chart that it is long overdue. According to your testimony, back in 1975, more than 60 percent full-time salaried employees earned salary levels that qualified them for overtime pay. Today, it is only 7 percent, and with this increase it will only go up to 35 percent.

According to the Economic Policy Institute, in my home State of Oregon, about 124,000 people will benefit. Talking about this rule, Nicolai from Oregon said, "I have worked an average of 55 hours each week for the past year, but since I have been salaried during that time, I have not been eligible for overtime pay. This new regulation would mean a raise of about $10,000 a year for me, which would allow me to invest in education and build my life and my family." You know, across my state of Oregon, there are many businesses that are recognizing that they can offer workplace fairness and balance for their employees and still continue to prosper.

In fact, I just attended a few days ago an event called When Work Works that was sponsored by Family Forward Oregon and the Center for Parental Leave Leadership. And at that event, they recognized many of our forward-thinking employers that have really been leading the way and providing their employees with a fair pay, flexible and positive workplace policies, and they reported that these policies have helped them tremendously, not only with their bottom line, but with recruitment and retention.

Now, some have said that complying with this overtime rule is going to reduce flexibility for employees. I am going to ask you about that, Dr. Bernstein, but I do not find that argument persuasive. The Economic Policy Institute report noted that both the hourly workers now and salary workers making less than the new threshold say they have little control of their schedules now anyway. In fact, you know, working people, they can't have their kids or their parents schedule their illness around their employer's convenience. It does not work that way and these are people who cannot afford to forfeit their hard-earned pay.

So, under the *Fair Labor Standards Act*, employers can allow workers to alter their start and end times. They can give advance notice of schedules to take time off. And the overtime rule does not change that. And, in fact, to provide flexibility, we should be working on in this Committee the *Schedules That Work Act*, for example, and the *Family and Medical Insurance Leave Act*. These would truly provide workers with the flexible and predictable schedules, as well as joining the rest of the world in offering paid time off.

So, Dr. Bernstein, I mentioned the flexibility argument that we have heard here today. Can employers still offer as much flexibility and predictability under the new rule as they could under the old rule and can you describe what this flexibility would look like from the perspective of both the employer and the employees?

Mr. BERNSTEIN. Yes, I can and I appreciate the question because I think that, once again, there has been a great deal of misleading comments made today suggesting that some of the nuances in the rule are not well understood. One of my colleagues mentioned that the rule forced employers to move workers, I quote, "from salary to nonexempt status." That's simply not the case. Workers can absolutely remain salaried workers under the rule. I'm sure Mr. Passantino will back me up on that.

It does mean, of course, that those workers will have to be paid overtime per hour if they are within the threshold, but there is nothing that says a worker has to be moved from his or her salary status.

There has also been a tremendous amount of assertion here about morale and flexibility. I think we would be well advised to stick to the research on that and maybe tone down some of the assertions. I am not sure how it helps morale to pay people zero per hour for overtime, especially when we are talking about considerable numbers of hours as we have heard from some of the members today.

But if we look at the research by Dr. Lonnie Golden, an economist that looked at this question, he found that contrary to a common assumption, salary workers, the affected pay levels appear to have no more ability to take time off for personal or family matters

and that hourly workers at that same annual earnings level, salaried workers at the affected pay levels, so at the levels affected by the new rule, either report greater work family conflict and work stress or report greater incidence of the conditions associated with conflict and stress as do hourly workers. Unfortunately, when it comes to flexibility and morale, there is not a lot of difference between somebody who is hourly or salaried if you are barely getting by.

If you are a middle-class family earning the current threshold, $24- or $25,000 a year, as has been said, you are near poverty. If you are at the new threshold, you are below the median earning. So, whether you are salaried or hourly, morale and stress is a huge issue for you that is resolved when you no longer get paid zero per hour for working overtime.

Ms. BONAMICI. Thank you, Dr. Bernstein. My time is expired. I yield back. Thank you, Mr. Chairman.

Chairman KLINE. The gentlelady yields back. Mr. Carter, you are recognized.

Mr. CARTER. Thank you, Mr. Chairman, and thank all of you for being here today. I am going to start with General Rounds. General, first of all, thank you for your service to our country. I had the privilege of serving as chair of Higher Education, Senator to Georgia when I was in the State legislature. So, higher education is very important to me. And I want to know the impact that this if going to have on higher education. In fact, I think it is only appropriate that this Committee know the impact. After all, we are Education and the Workforce.

And after all, we have dealt and continue to deal with increased student debt. We have continued to deal with all of the things to do with student loans and those are things that are very important to us. I want to know because the American Council on Education released a statement on May 17 talking about the effects that this could have on higher education, and I quote, "It could have a combination of tuition increases, service reductions, and possibly layoffs." Do you find that to be true, General Rounds?

Mr. ROUNDS. I do find all of those assertions to be possible. And one of the things that I would like to read that I have available is a statement from our vice provost, who is responsible for providing student services. And I think this is very compelling, what he says is, "What the new rule really does is impede our ability to customize and personalize the educational process beginning from the time a student initiates an inquiry to the time they depart or graduate. The level of personalization or customization has been a source of sustainable, competitive advantage for us in a highly competitive environment as we have emphasized and benefitted from focusing on the relational versus the transaction aspects of the work. This rule directly impedes our ability to build these relationships."

"In addition, I think it is a direct contradiction to the national completion agenda as a student's access to and availability of academic support personnel and services will be reduced. K.U. needs to highlight decreasing services is more than reducing operating hours. It will have a profound impact and an ability to attract, retain, and graduate students."

Mr. CARTER. Right.

Mr. ROUNDS. And that is tied to the individuals who work with students on a recurring basis. Many of them were impacted by this legislation.

Mr. CARTER. Absolutely, and we understand that and that is one of the things we are most concerned with.

Ms. Sharby, I want to ask you, you are an H.R. specialist. You are an expert at this, years of experience and much expertise. How is this going to impact you as an H.R. person? Now, I want to know, you have only until December 1 to comply with this. I mean, obviously, it is going to have a big impact.

Ms. SHARBY. Well, the biggest impact that we have right now is trying to develop a communication to our employees that we are going to have to change from exempt to nonexempt status and how to do that in a way that they don't feel diminished.

They have already spoken to me saying, "What does this mean to me? How am I going to do what I want to do in order to meet the needs of the clients that we serve." So, that is one of our big struggles.

The other thing that we have to do is we are going to look at alternative ways to pay our employees. Offering overtime simply is not an option.

Mr. CARTER. Okay, very quickly, I have a minute and a half left. There is one thing that we are missing on this panel today is small business. I am a small businessman. November 21, 1988, I opened my first retail pharmacy. Dream come true for me. Went to three banks, not to compare interest rates, but instead, the first two turned me down. The third one finally went along with it and loaned me the money. And I want to ask you, Dr. Bernstein, how many businesses have you run in your career?

Mr. BERNSTEIN. Actually, I am running one now. I have a—

Mr. CARTER. Are you?

Mr. BERNSTEIN. Yeah, yeah.

Mr. CARTER. Is it a small business? Is this going to impact you?

Mr. BERNSTEIN. I have a self-employed business and I believe—

Mr. CARTER. Self-employed business?

Mr. BERNSTEIN. Correct. I have a self-employed business—

Mr. CARTER. So, do you have any employees?

Mr. BERNSTEIN.—along—let me finish, please. Along with—

Mr. CARTER. I will reclaim my time. Are you the only employee?

Mr. BERNSTEIN. I'm trying to answer your question, sir. Yes, I have my—

Mr. CARTER. You are the only employee?

Mr. BERNSTEIN. I work for a private employer in the nonprofit sector. I also have a self-employed business where I am the only employee and believe me, I hear a lot of the kinds of—

Mr. CARTER. So, you are not going to have to comply with the overtime rule. You do not have employees.

Mr. BERNSTEIN. I would be exempt from the overtime rule.

Mr. CARTER. You would be exempt. As I was—

Mr. BERNSTEIN. I have been—

Mr. CARTER. Sir—

Mr. BERNSTEIN.—part of small businesses where I did work was an exempt employee.

Mr. CARTER.—as I was exempt from the overtime rule when I opened my business and when I was working, not 40 hours a week, not 60 hours a week. I was working 80 hours a week. I did that for at least five or six years. The first year, I made nothing. The second, the third, the fourth year, I made half of what I had been making before. Now, where were those overtime rules then? There were no overtime rules then. Mr. Bernstein—Dr. Bernstein—

Mr. BERNSTEIN. I suspect you were exempt.

Mr. CARTER.—have you ever signed the front of a paycheck? You sign the back of a paycheck. You don't sign the front of a paycheck.

Mr. BERNSTEIN. No, that is not true.

Mr. CARTER. There is a big difference.

Mr. BERNSTEIN. That is not true. I have—

Mr. CARTER. That is true, sir.

Mr. BERNSTEIN.—various business endeavors where I—

Mr. CARTER. And I doubt that anyone who has had an impact on these rules—

Mr. BERNSTEIN.—have had to sign the front of the paychecks.

Mr. CARTER.—signs the front of the paycheck. They sign the back of—

Chairman KLINE. The gentleman's time has expired. Mr. Pocan.

Mr. POCAN. Thank you, Mr. Chairman. Well, I guess I am a little surprised that we are having this hearing with the name it has rather than something like Overtime Rule Long Overdue. Instead, we are having one to question exactly what it is about. And I do have to agree with Mr. Carter on one thing. You know, there are about 187,000 people in my district who will get a raise out of this. I think your state, you are going to get about 493,000, but when you said it would be good to have a small person up here, I say that all the time. So often we get attorneys and this time we do not have all attorneys, but often, we do not get people actually impacted.

And I think that is one of the questions I lead off with right away with Mr. Bernstein. If I understood you correctly, of the rule, are you saying in answer to Mr. Polis' question that it is about one-half of a percent of people affected are in the university arena and under 1 percent in nonprofit and the rest are small businesses?

Mr. BERNSTEIN. Well, what I said was—

Mr. POCAN. Well, not small business, but other traditional business models.

Mr. BERNSTEIN. I was not saying anything about the size of business. I was saying that the affected workers within those industries amount to less than 1 percent.

Mr. POCAN. So, do you know if the nonprofit and the university sector of employees versus other private sectors, do you know what percent of that is affected by this?

Mr. BERNSTEIN. So, in the total economy, including all sectors, less than 1 percent of the workforce is affected in that, they are between the new and old threshold and they tend to work—they are current exempt and they tend to work overtime. That is less than 1 percent.

Mr. POCAN. Sure, the question, though, is how many of that are in businesses—

Mr. BERNSTEIN. In small businesses?

Mr. POCAN.—other than the U.W.—other than universities and nonprofits?

Mr. BERNSTEIN. Oh, the vast majority.

Mr. POCAN. See, that was the question because I think that is the problem is by not having small businesses here, it is almost like a Trojan horse, right? We are bringing in some more sympathetic industries, you know, nonprofit universities with a part of the rule, but we are not talking about the people that think it is okay to offer someone with a family of four a sub-poverty wage to work overtime. And that is exactly what that current level is set at. It is a sub-poverty wage for a family of four. So, four million people immediately and millions of others will benefit by this rule and yet the folks we brought in, quite honestly, there are other issues around.

I heard you, Ms. Sharby, and I heard you loud and clear. You said Medicare and Medicaid funding, there is no increase expected in the near future. Would you like to have an increase in those funds that come to your organization? It is a simple yes or no.

Ms. SHARBY. Yes, I think it would be helpful.

Mr. POCAN. Thank you. And I think the other thing we heard was from Mr. Rounds, you were talking specifically about it was going to cost $3 million to do it, but I understood right from some other previous comments since 2008, there has been, is that correct, a 22 percent cut to K.U. from your State budget?

Mr. ROUNDS. That is correct. I do not remember the exact percentage, but that is about right.

Mr. POCAN. So, you know, Mr. Chairman, I guess what I am getting at is when we look at the macro level of, you know, at first, I think it was 354 people then you just told us 92 were going to get the increase anyway because they are postdocs, they will be getting it through NIH, et cetera. So, we are talking about 262 people left, but you got a 22 percent cut to your budget from your State. I have a state that is doing the same thing. They just cut $250 million from the university.

Let's look at the big picture here. And the big picture is we should have a hearing, quite honestly, on all these state institutions that have not lived up to their obligation to their students in publicly funded universities. I have seen articles on this. That is a much bigger dynamic than the 262 people that are going to be affected there.

And, Ms. Sharby, just a quick question on the one-quarter of 1 percent of your budget that you are going to need to comply with this. Does that affect people in all four states or just New Hampshire?

Ms. SHARBY. All four states.

Mr. POCAN. So, at four states we have the opportunity to give people a wage increase who work for your organization for a really small amount of money. So, I think the whole contention around who we have here before us does not really address the fact that there are a lot of small businesses out there and not even small, it is big businesses, who— fast food, et cetera, who are paying people again at sub-poverty wages that would have to work and not get paid for overtime for a family of four. That is a real issue and having this increase, Mr. Bernstein, if I remember right, for dec-

ades, wasn't it adjusted for inflation, wasn't the rate about a thousand a week that was previously offered?

Mr. BERNSTEIN. Yeah, if you go back to 1975 and you put it into today's dollar, the threshold was $1,100 per week, about $57-, $58,000 per year.

And if I may make one quick other comment, I think it would be a mistake to assume that the general perspective of nonprofits and higher ed is represented on this panel today. There are two statements out today, one from a representative of higher ed, one representative of nonprofits, very much in support of this rule. So, our draw today was very much tilted to our tired and nonprofits that are against the rule, but do not be misled because there are many of those institutions that are very supportive.

Mr. POCAN. And thank you for saying that because there is a list of, I think, a few hundred folks, organizations that are supporting the rule as well. I yield back my time.

Chairman KLINE. The gentleman yields back. Mr. Allen.

Mr. ALLEN. Yes, thank you, Mr. Chairman, and, of course, I come from the small business world as well and what my understanding was as far as salaried employees was that was something that you did to reward them for their achievement. In other words, you guaranteed them basically 40 hours a week of work and they could count on that salary. And then, of course, we also had incentive pay if they performed beyond their expectations. They received compensation as well and many times, in our business the compensation exceed the actual salary. And, of course, there was no—they didn't punch a clock. I mean, you know, their time was their time. And so now I am assuming that what we are going to do is we are going to have this compliance issue as far as these people are concerned.

My biggest concern is the growth of this economy and, you know, the economy, it's not growing. As part of Economy Study Incorporated, this rule has discovered that many employees will potentially decrease and employers will potentially decrease employees eligible for overtime protections, base salary and decrease overtime hours work to compensate. In a time of slow economic growth, when the government should be promoting policy that creates jobs and grows the economy, why is DOL encouraging further regulation that will decrease economic output and overall GDP growth?

Mr. Passantino, you want to answer that question?

Mr. PASSANTINO. The question as to why DOL is doing this?

Mr. ALLEN. I mean, at a time when our economy is basically stagnant. We are growing less than 2 percent sometimes we have quarters with 1 percent, some quarters less than 1 percent. I mean, how do we get this economy to a 4 to 5 percent growth? I mean, I don't see how this rule is going to help.

Mr. PASSANTINO. I am not an economist and on a macroeconomic level, I do not have any real insight into that. What I can say is that employers who I have had discussions with recently, really are struggling with how they are going to implement this and the decisions that they are going to have to make, whether they are going to be able to afford to raise someone's pay; whether they are going to have to reduce salary on the front end so that they can accom-

plish the goal of getting to the same total compensation at the end of someone's work week.

I would also like to say that the concept that a salaried exempt employee earns $0 after 40 hours in a week is a fallacy. And the simple fact of the matter is that employee earns the salary when they work hour one. So, by that logic, they also get paid $0 for hour two and hour three and hour four, all the way up to however many hours they work in that work week. That is the point of the salary. It covers work from when you start to when you end in any particular work week.

Mr. ALLEN. Mr. Rounds, as far as your university, I mean, again, you know, you are trying to educate people to go get a good job. How is this going to affect your ability to do that? I mean, are you going to have to cut back on the number of students, or are you—what are you going to do to deal with this?

Mr. ROUNDS. Sir, as I mentioned, we will likely change the status of many of the employees that are impacted by the law.

Mr. ALLEN. Many of those hourly, to an hourly rate?

Mr. ROUNDS. Move them to a nonexempt status, so they would—for anything over 40 hours that we have to pay them overtime. As Dr. Bernstein has pointed out, there are multiple options that we have, but the bottom line is anything over 40 hours we have to pay them. And if that is true, many of these employees right now have very flexible approaches to doing their jobs. And those flexible approaches are tied to meeting the needs of students and our concern is that they will lose that flexibility and, therefore, they will not meet the needs of the students in the same way, which obviously reduce the services and impacts the quality of the education that we can provide.

Mr. ALLEN. Well, I am just about out of time. Ms. Sharby, I want to tell you how much I appreciate what the Easter Seals does. I am a former president of the Augusta Easter Seals Board and great work. We are actually making folks who basically cannot do a job. We are teaching them how to do jobs and putting them to work. And I think that is what America is all about and I appreciate your service. I yield back.

Chairman KLINE. The gentleman yields back. Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. The Department of Labor's update to the overtime rule is long overdue and, according to the Economic Policy Institute, would benefit 1,076,000 working people in my home state of California. I would like to point out that this update will directly benefit my colleague, Mr. Allen's state, by 493,000. Nearly half a million people of Mr. Allen's state would benefit from this rule.

The overtime rule is one of the most significant actions the administration has taken to support working families and fight income inequality. While we can get bogged down in details, it is important not to lose sight of the millions of workers and their families the rule will help, workers such as Soledad, a member of Mom's Rising and a mother of four from California. Soledad wrote in support of the rule saying, "I work as a salaried employee and always work more than my regular 40 hours a week. My usual weekly hours can amount to 50 or 60 hours a week and I do not get paid for the extra time. Sometimes I work 12 hour days without

compensation due to being salaried. This has got to stop for people that work more than 40 hours a week. Overtime takes away the quality of life with our families. We are too tired to do anything with our families and are still not being compensated."

According to the Economic Policy Institute, 12.5 million salaried workers such as Soledad will directly benefit from the rule. It helped 6.2 million women, 4.2 million parents, and 5.5 million workers between the ages of 35 and 54.

Well, changing gears, as we have heard this morning, the FLSA does not contain a specific exemption for nonprofit organizations, but that does not mean that there is no nuance in how the rule will apply to nonprofits. Dr. Bernstein, can you provide some examples of nonprofit institutions? Are all nonprofits small entities that are engaged in charitable work?

Mr. BERNSTEIN. Some nonprofits, and this is something I speak to in my testimony, including social welfare and some educational institutions are exempt based on characteristics of the institutions themselves and the workers within them. Although typically, somebody in there is probably going to be nonexempt. The DOL has worked hard, however, to both provide guidance and accommodate some of these concerns, as is mentioned for the Medicaid funded providers is a service for intellectual development disabilities, the new rule does not take effect for three years and, in addition, higher education institutions worry about the effect of their postdocs are comforted by this national research award point I have been making where NIH will raise the grant level to the new higher cap.

Mr. TAKANO. Okay, as a follow-up, can you talk about enterprise coverage and the types of nonprofits that are exempt under the provision?

Mr. BERNSTEIN. Sure. Based on the nature of their activities and whether they involve revenue-generating sales of above half a million dollars. Some nonprofits or individual workers at those nonprofits may be exempt from the new rule. This has a lot to do with the extent to which you are operating something that looks a lot like a business within a nonprofit. So, to the extent that you are generating revenues by making sales that go over a half a million dollars, you would be covered, but if you are doing volunteer activities, you are not engaged in the type of work that looks like a business that would be covered, then your institution, your establishment may be exempt.

Mr. TAKANO. So, plenty of nonprofits are exempt and it is just that, that $500,000 level. Thank you. It is important that we look at the numbers here. According to the Department of Labor analysis, only 1 percent of employees at nonprofits who will be affected by the rule regularly work overtime. Is that correct, Dr. Bernstein?

Mr. BERNSTEIN. That is right.

Mr. TAKANO. Well, it is an adjustment, but it is not a burden nonprofits cannot handle. In fact, I would like to ask unanimous consent to insert in the record a letter from nearly 140 nonprofits that write in support of the final rule and who are committed to complying with the new regulations.

Chairman KLINE. Without objection.

Mr. TAKANO. Thank you. Dr. Bernstein, would you like to add a little more to just the idea of the number of nonprofits that can comply?

Mr. BERNSTEIN. Well, I think that the points that we have heard from both Ms. Sharby and Mr. Rounds are very important in the following sense. Their problem is not with the rule, it is with the fact that their funding has often been cut. So, if you are talking about an education system that is taking a 20 percent cut in its support, they are going to have all kinds of problems of which this rule is the least of them. What we are trying to do here is establish fair pay for fair work and that is a separate problem from the fact that, in many ways, Congress and State legislatures, especially in Kansas where they have aggressively cut taxes, are underfunding their university system.

Chairman KLINE. And the gentleman's time has expired. Mr. Thompson.

Mr. THOMPSON. Mr. Chairman, thank you so much for this hearing. You know, to me, I have heard the word "poverty" mentioned a lot and I would be hard pressed—I do not think there is anyone on either side of the aisle is not concerned about that issue, is not concerned about providing opportunities for—a greater opportunity for success, for realizing the American dream, which really is greater opportunity. But the pathway to greater opportunity and out of poverty is not an arbitrary executive branch dictate. I am sorry. It just does not work. Those cookie cutters rarely work. They usually wind up with unintended consequences and make matters worse for people and that is what we are trying to defend and push back on here.

To me, rather it is really looking at a pathway out of those situations, a pathway for Soledad, a mother of four that I just heard about, and I have met lots of those folks just like that. You know, around my congressional district, they need a pathway. They need something like, quite frankly, I shamelessly plug it, a career in technical education training. And with the Chairman's support, I think everybody on this Committee is going to have an opportunity to talk more about that in the days to come here, hopefully, before we leave, you know, before that third week in July.

And so, you know, my first question is for Ms. Sharby. Tina, I have just this past weekend, I had the privilege of speaking at the closing ceremony at the Pennsylvania Special Olympics Games, 2016 Games, which I love organizations like yours, like Special Olympics. I am a long-time Scouter, so I look at the hours, the evening hours, the weekends I have been involved doing my part as a volunteer. I know how important it is to fund the mission, you know. And I look at the good that it has done, which is amazing with those resources, and I looked at the quality of individuals.

Last week, I was at a Goodwill facility up in Erie County and I look at the job training that goes on there. So, my question for you is, first of all, thank you for your tremendous work you do as a part of the nonprofit community. And organizations like yours, I have mentioned some of those, Easter Seals, Special Olympics, Goodwill, the Boy Scouts of America, the Girl Scouts, they help boost the quality of life for so many people and families every year.

And as legislators, we should be working tirelessly to support your mission, not making it harder for you to succeed.

Given the widespread presence of Easter Seals across the United States, and as a former rehab professional, I work very closely with the Easter Seals, when I had a real job is the way I like to describe it. How will the final overtime rule affect the ability of individuals to access crucial services, specifically in rural and underserved areas?

Ms. SHARBY. Thank you for the question. It is a really good question. I can give you the example of our care coordinators and our military and veteran services programs. The individuals that we serve work very closely with the care coordinators and they develop a relationship where trust does not come very easily amongst that population that we serve. So, we are looking at potentially having to develop an on-call system where only one of eight of our coordinators would be on call for the week because we cannot afford to pay the overtime. It is a non-funded program that we run.

The concern that we have about that is now the person that needs the emergency help maybe in the middle of the night, losing their home or thinking about suicide, they are going to that on-call person who might not be their care coordinator, they are not going to want to talk to them. They want to talk to their care coordinator. That is where we think that the services are really going to impact the individuals that we serve.

Mr. THOMPSON. How important is that at a time of crisis, because that is what you have described? And you cross that over to agencies, nonprofits are facing manning suicide hotlines and services, children in youth, how important is it to have the right person available at time of crisis when people actually reach out?

Ms. SHARBY. It is literally the difference between life and death.

Mr. THOMPSON. I do not think an arbitrary executive—it would be a shame to see the loss of lives as the result of some executive branch action.

Mr. Passantino, the Department of Labor's final overtime rule includes an extremely narrow, non-enforcement provision for entities which provide Medicaid services for disabled individuals and facilities of 15 or fewer beds. Given your expertise, can you speculate on how many employers or employees this provision would actually help? And additionally, would these employers be protected from legal action during this non-enforcement period?

Mr. PASSANTINO. I am not sure to your first part of the question about how many will be impacted, but I suspect it is very small. The more consequential pieces, a non-enforcement policy does not mean the regulation is not in effect. It means that the Department of Labor is not going to take any enforcement action against someone based on those regulations. The private rights of action continue to exist and that non-enforcement policy does nothing to the private right of action.

Mr. THOMPSON. So, the bull's eye would be put on the backs of those agencies for frivolous litigation. Thank you.

Chairman KLINE. And the gentleman's time has expired. Ms. Clark.

Ms. CLARK. Thank you, Mr. Chairman, and thank you to all the panelists for joining us today. I have to say, I want to go back to

the comments of my colleague, Mr. Pocan, and say I feel like we are missing in this discussion some of the macro issues.

Of course, it is critically important that our veterans, that the clients you serve, Ms. Sharby, are able to talk to their case manager when they are in crisis and that the students—and that we are lucky enough just yesterday to join K.U. in a discussion of the critical importance of funding scientific research at our incredible universities across the country, including Kansas. But it is not the overtime regulations that are going to cause a loss of life, as my colleague just stated. It is so many other economic pressures. And if we want to create a robust economy one of the best ways to do it is to help address income disparity, to help address stagnant wages, the overwhelming cost for many families of child care and of housing and transportation.

These are the big macro factors that are coming to play, and really causing a hard time for many nonprofits to deliver their critical services, of which Easter Seals, certainly in New Hampshire and around the country, delivers critical services as do our institutions of higher education, and those issues are the ones that we need to offer this critical relief.

In Massachusetts, with the overtime, new regulations are going to mean for working people in my State are 262,000 people are going to get a raise. That is a real benefit. That is a real help to all of you at the table. In Mr. Thompson's state of Pennsylvania, 459,000 people will be able to have a raise due to these regulations.

So, I think that we have to remember to look at the overall economic picture and what are those levers that we need to move to bring that relief. Because I don't believe that it is the overtime rules that are going to cause your ultimate staffing and your ultimate woes at K.U.

Dr. Bernstein, I wanted to start large and then go to detail. But I do believe that this is a critical piece of addressing income inequality as you mentioned in your testimony. What are some other factors and policies that we should be looking at to address that?

Mr. BERNSTEIN. The minimum wage has been stuck at $7.25, this was mentioned earlier, at a Federal level since 2009. Raising that would certainly help lift the fortunes of low-income workers. There is some bipartisan support for another idea that would help low-income workers, which is expanding their earned income tax credit to reach childless adults who now get very little from that.

In terms of tightening up the job market, we really could use a deep dive into infrastructure investment. The erosion of unions has really hurt the bargaining power of lots of middle class workers. But I very much take your point about the connection to the overtime rule as well. You remember the chart from my testimony shows that when inequality was a lot lower than it was today the threshold was a lot higher, and vice versa.

Ms. CLARK. And specifically, I also think that one of the pieces that we are going to help address is the pay equity gap for women. What do you see the role of these new rules in helping with that as well?

Mr. BERNSTEIN. Well, a slight majority of those affected by the new rule are women. By the way, a much more significant majority affected by a higher minimum wage are women, because women

are disproportionally low wage workers as well. So I do think that this is a help in terms of gender pay equity.

I would also note, not on the gender side, but Mr. Rounds might appreciate this, according to DOL numbers, 80 percent of the workers, of the affected workers, helped by this increase have at least some college education. So it is actually a real boon to the people that K.U. and other institutes are training and sending out into the workforce, where they will be compensated for their overtime by dint of the new rule.

Ms. CLARK. And I have certainly heard—I appreciate you mentioning the minimum wage. It is something I certainly support, but we also have to look beyond that and look at our higher and mid-income earners.

Mr. BERNSTEIN. Absolutely.

Ms. CLARK. And I think this gets to that point.

Thank you very much and I yield back.

Chairman KLINE. The gentlelady yields back. Mr. Grothman, you are recognized.

Mr. GROTHMAN. Okay, I am sorry. I am updating my notes here. I am just finishing up on the questions of Congressman Takano. I got to talk to him later about how many men are going to be helped by this new rule. Maybe I missed it.

Okay, questions. I am trying to think how this rule would impact—I look at past jobs I have had. I have heard from the golfing industry, but there could be a variety of jobs that you have it is a lot busier one time of year than another time of year. Maybe it gets busy at the end of the year. Maybe it gets busy during tax season, whatever.

And, you know, when you go into the job there is sometimes you are going working 50 hours a week and other times you might just be hanging around the office and not getting a lot done. Well, that is because of the expert on the bill.

Dr. Bernstein, how do you think this affects how those sort of jobs work if I hire somebody knowing that some days are going to be super busy, other days not so busy? I think it is kind of going to mess up those businesses and hurt those employees. What do you think about that there?

Mr. BERNSTEIN. Well, I disagree. I mean, I think you have to look at the record. Certainly, the last time we increased the threshold, the slight increase in 2004, you can see that on my chart, we didn't see those kinds of impacts. I do think that when it comes to people with variable schedules, as you suggested before, remember the rule does not get invoked until they cross 40 hours. So there are ways to work around that for employers.

Mr. GROTHMAN. Right, well, not to cut you off, I think there are jobs in which you are expected sometimes to work 55 hours a week and other times you can take off and work 28 hours a week. And that is the nature of the real world. You know, there are times that are busy, times not so busy. You know getting involved, you are a salaried employee. There are sometimes you are going to work and get it done and sometimes they don't. It seems it is going to make it very difficult for those sort of workers.

Mr. BERNSTEIN. Again, I mean, I think you make great points and I agree with your points—

Mr. GROTHMAN. I think so, too.

Mr. BERNSTEIN.—and I agree with the way you characterize this, but if you go back to the 1960s, 1970s, remember the threshold was $1,100 in today's dollars and the unemployment rate was lower than it was today. Productivity growth was faster. So there is no evidence of the kinds of disruptions that you are suggesting.

Mr. GROTHMAN. Okay, I will give you another thing that concerns me when I think of people in these jobs. What it is going to do is it is going to put pressure on to get out the door at 4:30 or 5:00, or whatever. There are times when you are working on a project where you might say, jeez, in another half-hour, hour I might get this right. I just want to make sure I get it done right.

Instead, you are going to get pressure from your employer to get out the door. Are you afraid it is going to result in a worse work product because this is what is going to happen?

Mr. BERNSTEIN. Well, again, if we are talking about—the kind of workers you are talking about sound a lot to me like people like myself and maybe yourself as well. You know, we are exempt, so that is not really relevant.

Mr. GROTHMAN. No, no, no. All sorts of people under $52-, whatever it is, $51,000 want to get their job done right.

Mr. BERNSTEIN. Forty-seven.

Mr. GROTHMAN. Want to get their job done right. Okay, if I am making 46 grand a year and I am hired to do something and I feel things are not getting done right and I want to hang around another hour to make sure that report is right—

Mr. BERNSTEIN. So I guess I don't see anything inconsistent with what you are saying. And again, I think you are raising great points. And the idea that worker has to be paid time and a half for that extra hour because there is something called the 40-hour work week that was enshrined in the *Fair Labor Standards Act of 1938*, and is more relevant today than it was then in my view, given the issues around bargaining power and the extent to which middle-wage workers have been hurt.

Mr. GROTHMAN. Look, if I have a job I want to make sure I get those things done right, Okay?

Mr. BERNSTEIN. Mm-hmm.

Mr. GROTHMAN. In part because of the customers, in part because of my boss. Okay, what you are doing here, or the people who put together this rule, are you creating an environment in which the boss feels you better get out the door at 4:30 p.m.

So, put your employee in a position in which either I submit the report on a so-so, not sure it is right basis or get my boss mad by hanging around until 5:30 p.m. to go over it again to get it right? I mean, there are certain jobs that are salaried by nature, in which you work until you get it done. Are you not afraid you are putting those employees in a bad situation?

If I am an employee like that, I want to hang around that business as long as I can, I want to grow with the business. I don't want to be in a position in which I have to choose between turning in a lousy report at 4:30 or getting my boss mad at me because I had to hang around until 5:00.

Mr. BERNSTEIN. Well, with respect, I think we have to distinguish between the kind of compelling story you are telling me and

the actual numbers about who is going to be affected here. We are talking about 3/100 of a percent of the national payroll.

Now, you may just believe that we should not have a 40-hour work rule for covered workers under the FLSA and that is just a fundamental disagreement between us, but in fact the economy has performed perfectly well with thresholds far above today's levels.

Mr. GROTHMAN. I will give you another question. It occurs to me that what is going to happen here is you are going to make the workplace less friendly. Okay. Right now, I think sometimes people may hang around past 4:30, maybe it is a more easy going workplace. Maybe at the end of the day employees are talking with each other about who knows and they know they can hang around until 5:30 p.m. and 6:00 p.m. and get the job done, if they have to work to 5:15 they can talk about, I don't know where you are from here, the Redskins or whatever.

Instead it is going to be, we have to get out the door by 4:30 pm. Do you not think it is going to make for a less friendly, more intense work environment?

Chairman KLINE. All right, the gentlemen's time has expired. Ms. Davis.

Ms. DAVIS. Thank you, Mr. Chairman, and sticking with some of the flexibility issues there, because I think that we have the notion that somehow because we are in the 21st century and that we do use electronics and we do provide different ways of flexibility that this would all stop. And, you know, Dr. Bernstein, you were starting to comment on that.

Mr. BERNSTEIN. Yeah.

Ms. DAVIS. Can you tell us why is that not going to be the case?

Mr. BERNSTEIN. Well, I mean, I guess I would say first of all, following up on the discussion we were just having, it does not really create a flexible or high morale or welcoming workplace when somebody is misclassified as an exempt worker because they are called an assistant manager and they work 5, 10, 20 hours for zero extra pay when they should be getting time and a half overtime. In fact, as I discussed earlier in my testimony, instead of assertions about these flexibility issues, research done by Professor Lonnie Golden has found that if you actually look from survey research at the kinds of flexibility, the sort of work-family balance flexibility that hourly and salaried workers have at around the cap, around $50,000, it is about the same. So there is no evidence that moving someone from nonexempt to exempt coverage would reduce their flexibility. What it would increase is their pay when they work overtime and that is critically important.

Ms. DAVIS. Yeah, I think one of the points made also with the NIH is that many of our young scientists are going to be affected in a more positive way with this new rule rather than negatively.

Mr. BERNSTEIN. Well, that is a good point. I have talked to at least one postdoc who said he likes the rule a lot, in no small part because the NSF, as I have mentioned, is raising the grant level to meet the higher cap.

Ms. DAVIS. Right. One of the articles—The New York Times had an article, just the other day. You all may be familiar with it without talking about the Prada Economy or the Prada Industry, and the fact that we do have a lot of low-wage but high-potential jobs

that young 20-somethings, for example, might be willing to take. They are obviously engaging with people in a way that pushes them.

They want to show their aggression. They want to show that they are ambitious and they are going to stay on the job just as long as they can in the hopes of looking good, quite frankly. That is what people do, and that is perfectly acceptable. But we also have to know that those kinds of jobs may possibly affect demographics differently by those who can afford to do that more than those who cannot. Maybe young people can do it more, especially if they have a lot of support at home, versus people who have a family at home and trying to work in that fashion does not suit them. Do you think that, in fact, as we are looking at these issues that some of these new overtime rules could possibly change the socioeconomic diversity of the workforce in this so-called Prada Industry?

Mr. BERNSTEIN. Well, I certainly think it is possible. I think it is important. I don't know that we have quite gotten to this in the hearing so far, to note the rule will disproportionally help some of the types of workers you are talking about; black and Hispanic workers are disproportionally affected. They are 21 percent of the salaried workers, but 28 percent of those who would directly benefit from the new threshold, and millennials between the ages of 16 and 34 will also disproportionally benefit. They are 36 percent of the affected group and 28 percent of the workforce. More than a third of all workers with less than a college degree will be directly affected and that will also help over seven million children. And as I mentioned there is a slight majority of workers who are helped who are women.

Ms. DAVIS. Right. What is the benefit of that? Of diversifying?

Mr. BERNSTEIN. Well, I think there is a tremendous benefit to that diversity. If I may wax philosophical for a slight second here, I am struck by the fact that we are now in a country that has twice elected an African-American President and now has nominated to a major party for the first time a woman. I think this type of diversity is extremely healthy and I also think the extent to which minority workers have been hurt through the erosion of labor standards, whether it is minimum wages or the overtime threshold, cannot be over-exaggerated either. And this rule is an important correction to that.

Ms. DAVIS. Thank you. I appreciate that and I know others have talked a little bit about the work-life balance and whether there is something to be said for having people be more productive when that work-life balance does come into consideration. Would you all agree that there is something to be said for that?

Mr. BERNSTEIN. I would.

Ms. DAVIS. I see some nods, but, okay, all right, thank you. We do need to, I think, realize that in some ways this really is forcing people to manage the productivity in businesses and I think that is very positive for all of us.

Chairman KLINE. The gentlelady's time has expired.

Ms. DAVIS. Thank you, Mr. Chairman.

Chairman KLINE. Mr. Rokita.

Mr. ROKITA. I thank the Chairman. Mr. Passantino, what do you think the best way is to manage productivity in a business?

Mr. PASSANTINO. To let people work.

Mr. ROKITA. Manage to a profit motive perhaps?

Mr. PASSANTINO. Sure. I mean they want to be profitable. That is the point of the business.

Mr. ROKITA. Efficiency, manage to effectiveness, those kinds of things.

Mr. PASSANTINO. Sure.

Mr. ROKITA. Those principles apply to urban areas as well as rural areas, I grasp, correct?

Mr. PASSANTINO. True.

Mr. ROKITA. I represent a lot of rural areas, a lot of suburban areas, a lot of small towns I am very proud of and they are great places. What is the effect of this rule on places like that?

Mr. PASSANTINO. I think it disproportionally affects those rural, nonurban areas. We have already seen clients who have—it is the same position, people are performing the same work. So, there is no question the duties qualify for the exemption. Right? So the duties tests have not changed. They are exempt now; they will be exempt under the revised salary test.

But some of their workers work in urban areas and earn an excess of $47,000, and some work less—I am sorry, earn less because they live in rural areas. So what you have is the same exact position and people earn above and below the new threshold, which fundamentally indicates that not everybody earning under $47,000 is not performing exempt work. There are plenty of people under 47,000 who are performing exempt work, which is sort of the point of the salary test.

The salary test is supposed to screen out all of the clearly nonexempt people and then you go to the duties test to see whether they meet the rest of it.

So, what you have is a situation where you are including people who clearly meet the duties test and now employers have to decide what is, frankly, not a great decision. They have to raise everybody up to that $47,000, which means that they are going to have to raise the people over $47,000 as well. They can convert the entire workforce to nonexempt in that position, which is not the best solution for them, or they can have a split position and they can have some people being nonexempt and some being exempt and that is a recipe for disaster.

Mr. ROKITA. Yeah, because in your experience inside that workforce, folks that you represent, what would that do?

Mr. PASSANTINO. Well, you are going to run into situations where the exempt person can stay until 5:30 or 6:00 p.m. and get the job done. The nonexempt person is going to be limited in their overtime hours.

Mr. ROKITA. To Mr. Grothman's earlier point, that cannot be good for morale. I mean, that cannot be good for running a business or working at one like that.

Ms. Sharby you are nodding your head. I will indicate that for the record. Do you want to add something?

Ms. SHARBY. Well, I struggle because I am honestly not sure how Easter Sales is going to be able to absorb these changes. We run

with maybe a 1 percent budget margin. The difference between in the black and being in the red, so—

Mr. ROKITA. And just to be clear in my opening comments you are a nonprofit.

Ms. SHARBY. Nonprofit.

Mr. ROKITA. So the "profit motive" is the ability to stay in business, right?

Ms. SHARBY. Correct.

Mr. ROKITA. If you are not making positive revenue—if you are nonprofit you cannot be there. Correct?

Ms. SHARBY. Correct. And currently in the State of New Hampshire we have a 2.6 percent unemployment rate. So it is not a matter of saying that I will bring in more employees and not pay the overtime. I just do not have employees to bring in, into the State. So the moral issue with our staff is significant. We have people who feel that, just yesterday, said, what does that mean to me? I am used to going and helping out at certain events. I like to go to some of the kids' birthday parties or graduations.

Mr. ROKITA. Nope. Nope, cannot do that.

Ms. SHARBY. I cannot pay you to do that now. And that is really very tough to be—and it impacts the quality of the services we are able to provide.

Mr. ROKITA. And so my question about the rule nature of my district, I think, correct me if I am wrong, either the two of you that spoke already, applies regionally?

Ms. SHARBY. Right.

Mr. ROKITA. I mean, there are differences in regions of this country that rule or not that would—what you are testifying to would have the same effect. Is that correct, Ms. Sharby?

Ms. SHARBY. That is correct. So if an average salary in New Hampshire is $35,000 and we used to have business in New York that same salary would equate out to a little over $50,000 in New York. But yet, New Hampshire is forced to comply with the higher salary.

Mr. ROKITA. Unbelievable. Mr. Passantino, last word.

Mr. PASSANTINO. I think that is exactly right. You are going to see differences in how people are treated based on where they are or employers are going to have to make some very difficult decisions.

Mr. ROKITA. Central planning at its worst. I yield, Mr. Chairman.

Chairman KLINE. The gentleman yields back, Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chairman, and thank you for your testimony. The Department of Labor's update to the overtime rule is long overdue. And according to the Economic Policy Institute, it would benefit 425,000 working people in my home State of North Carolina. I want to begin by asking Mr. Passantino, you served in the Labor Department under President Bush. How much time were employers given to comply with the 2004 change to the rule?

Mr. PASSANTINO. I believe the effective day on the 2004 rule was 120 days. But that rule was really catching up, fixing some issues that had existed in the salary test. There were two tests at that time. One of them was basically nonfunctioning. No one used it. So it really was a catch-up whereas this is clearly jumping over a

large number of people who perform exempt duties. And so it is going to be far more difficult under the current rule for employers to come into compliance.

Ms. ADAMS. But the current rule, though, does provide an additional two months to come up with compliance, which was beyond what the Bush Administration provided for, is that not correct?

Mr. PASSANTINO. The current rule provides approximately six months, I believe, for employers to get into compliance.

Ms. ADAMS. Okay, so that is more. Mr. Bernstein, we talk about a better outcome for employees. You have made some comments about that. Can we, with the better outcomes for employees, can we expect that this will lead to better outcomes for employers?

Mr. BERNSTEIN. Well, certainly in the past, as I have mentioned, in fact, I would take issue with one of the things my co-witness Mr. Passantino just said. The new rule simply partially replaces the extent to which inflation has eroded its value since the mid-1970s. If you look at the value in today's dollars of the overtime threshold, the level, it would have been about $1,100, $57-, $58,000 per year. Now we are talking about $913 per week or about $47,000 per year. So it is a partial adjustment. And, in fact, to speak to your question, when the rule was in effect unemployment was low, GDP growth was faster than it is today. Productivity growth was faster than it was today. I don't know that worker morale was negatively impacted at all.

In fact, one of the things that numerous analysts predicted from looking at the rule based on past history— not based on assertion, not based on what you think might happen, but based on research driven by what has happened in the past when we have changed thresholds— the expectation is that there will be some number of new jobs created at straight-time pay. Maybe 100,000 according to Goldman Sachs, maybe 150 or so according to the National Retail Federation. I think this is positive for the economy and positive for the workplace.

Ms. DAVIS. Thank you, Mr. Rounds, and thank you for your service, sir. You mentioned that workers cared more about their exempt status than getting paid for the time they work. Well, I find all the discussion around higher education fascinating because I served 30 years, 40 years in academia. But, you know, the people that I talk to really find it demeaning and demoralizing to be asked to put in extra hours at work for no pay. What would your response be to that?

Mr. ROUNDS. First, I would like to say thanks for your service in academia. Obviously it is essential to the country and we appreciate your willingness to work in the academic sector. I would say that as I look at the employees at the University of Kansas and I look at the ones that we are talking about who are primarily responsible for providing services to students, the ones that would be impacted by this legislation is that their passion is for positive outcomes for students. They will lose some of their workplace flexibility and their lack of ability to meet the needs of students will be of great concern to them. I have talked in my testimony that is most important, the culture of higher education and being able to serve our primary customer, our students. That will be eroded.

Ms. ADAMS. Thank you, Mr. Chairman. I believe I am out of time. I yield.

Chairman KLINE. The gentlelady yields. Mr. Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chair. Mr. Passantino, would you agree that the 40-hour work week has become a classic part of the American Dream?

Mr. PASSANTINO. I do not know that I would describe it as that.

Mr. JEFFRIES. So it was enacted into law in the late 1930s as part of the New Deal, which was part of the effort to make sure that we have a more even playing field in terms of working class, middle class Americans. Correct?

Mr. PASSANTINO. It was enacted in the late 1930s, I think, to make it more expensive for people to work more than 40 hours.

Mr. JEFFRIES. You think the objective of President Franklin Delano Roosevelt was to make it more expensive for people to work more than 40 hours a week? That was his objective, part of the New Deal?

Mr. PASSANTINO. Well, the second part of that is that makes more people work for the same amount. So you can pay at a straight time.

Mr. JEFFRIES. Now, you were part of the Bush administration, correct?

Mr. PASSANTINO. That is correct.

Mr. JEFFRIES. And do you think that President Obama and his administration, his policies— whether that the Affordable Care Act, whether that is the Dodd-Frank legislation that was passed into law, whether that is the overtime rule –have been job killing?

Mr. PASSANTINO. Have they been job killing?

Mr. JEFFRIES. Right.

Mr. PASSANTINO. I think that they have.

Mr. JEFFRIES. They have?

Mr. PASSANTINO. Yes.

Mr. JEFFRIES. So, you spent time in the Bush administration, which brought us two unfortunate wars and tax cuts to benefit the wealthy and the well-off. But also, presumably, you made your best efforts to be part of an administration that was going to improve the employment situation in this country. Correct?

Mr. PASSANTINO. Correct.

Mr. JEFFRIES. But the eight years under President Bush we lost 650,000 jobs, correct?

Mr. PASSANTINO. I do not know the figures.

Mr. JEFFRIES. Okay. Under President Obama's seven and a half years we have actually gained 14 plus million jobs in the private sector, correct?

Mr. PASSANTINO. I do not know the numbers on that either.

Mr. JEFFRIES. But you are here as an expert to talk to us about employment and the impact of this rule and you do not know these basic numbers, including the ones that relate to your time being spent in the Bush administration. Is that your testimony?

Mr. PASSANTINO. My testimony and my expertise is on advising clients how to deal with these issues and so on, on a very micro level. I have a very good understanding of how that works. On a macro level I don't have that data.

Mr. JEFFRIES. So on a micro level, you think that the 40-hour work week, which is working five days a week, presumably Monday through Friday, 9:00 to 5:00, is not part of the basic American Dream in terms of being able to work hard, earn a good living, but also be there as a father, as a mother, as a son or daughter to a parent or grandparent that may be ailing to have a good work—life balance? You have a problem with that?

Mr. PASSANTINO. I believe that I am living the American Dream and I am not subject to a 40-hour work week, so, yeah, I think it's possible that the 40-hour work week is not an inherent part of that.

Mr. JEFFRIES. Okay. Mr. Rounds, thank you for service in terms of working in the academic realm. Higher education is incredibly important. A few things you talked about that in the limited time I have I would like to touch on, you said that the University of Kansas is a not-for-profit public university. Is that correct?

Mr. ROUNDS. That is correct.

Mr. JEFFRIES. And so presumably, what you ultimately strive to do is provide some form of public benefit to your students, but also in the context of being part of the State government out in Kansas. Is that correct?

Mr. ROUNDS. Correct.

Mr. JEFFRIES. And you said 262 employees of Kansas University would be impacted by the overtime rule, is that right?

Mr. ROUNDS. Actually 354, 92 of those are postdoctoral employees who we have made the determination to raise their salaries to the new threshold.

Mr. JEFFRIES. Okay, so that means that they are actually going to put more money in their pocket at the end of the day. That will either go into the economy or go to the benefit of their families. Is that right?

Mr. ROUNDS. That is correct. But at the same time, as we looked at the fixed grants that their principal investigators are responsible for managing is the concern. This has also been expressed by the Postdoctoral Association as we are not going to be able to maintain the same number that we have had in the past, which you can argue will have an impact on research.

Mr. JEFFRIES. Okay. I mean, I would simply say I think K.U. is a great university, great basketball program. I mean, it does interest me that, I believe, Bill Self earns about $230,000 directly from the university and as I understand it $3 million in total salary, and that the chancellor of the university earns approximately $510,000 per year. So I think maybe there needs to be a reassessment of priorities before the complaint is directed at the effort of the Obama administration just to make life better for working families.

Chairman KLINE. And the gentleman's time has expired. All time for questions has expired. I want to thank the witnesses and turn to Mr. Scott for any closing remarks he might have.

Mr. SCOTT. Thank you, Mr. Chairman. As the gentleman from New York just indicated, in 1938,— 1938— Congress established 40 hours as a normal work week. And if you make more than that, you are supposed to get time and a half. After 40 hours, if you work more, you are supposed to get more. The law covered about 60 percent of salaried employees back then, but because we have

not updated the laws we should have, now only 7 percent of salaried workers are covered. This new regulation will increase it to 33 percent.

We've heard a lot from colleges. We have not heard enough about all the exemptions in colleges: teachers, grad students, many coaches, many academic administrators, all hourly employees not affected by this law. In fact, Department of Labor estimates that only 3.4 percent of college workers will be affected. In 0.5— one-half of 1 percent would be both affected and usually work overtime. One-half of 1 percent of college workers. To honor the 40-hour work week you are only talking about one-half of 1 percent— of workers that will get a little extra when they work over 40 hours.

We also heard from Easter Seals honoring the 40-hour work week, rather than working people without pay after 40 hours would cost less than 1 percent of the budget. Suggesting that people are going to die because you cannot work people more than 40 hours is obviously absurd. And also you could be more honest; if you expect them to work 60 hours a week, you can restate their salary, expect them to make the overtime and they would get the eventual salary that they are expecting to get. But it would be more honest to say what it is for the 40 hours and more than that after that.

Now, some of this Committee think that we should honor the 40-hour work week, and if people work more than 40 hours they should get paid for additional hours. The rule means, as I said, one-third of salaried employees will benefit from the 40-hour work week: up from 7 percent, but way under the 60 percent who were covered in the 1970s. And incidentally, businesses, colleges, and nonprofits complied with those regulations without complaint.

So, Mr. Chairman, I hope that we will honor the 40-hour work week. We actually ought to get above the 33 percent I would have hoped they would have done more, but they've done what they've done.

Chairman KLINE. And the gentleman yields back. I thank him for his comments. It has been a good discussion today. I am always fascinated how we hear statistics here. We've had a number of my colleagues on this side of the aisle have been citing how many more people are going to be getting raises and work from a far left-leaning think tank. But that is just the world we live in here.

I very much appreciate the expertise of the witnesses. You are all very, very fine witnesses. We, and most of my colleagues on this side, are entirely for people getting fair pay for their work, but we have great concerns, as we heard from some of my colleagues today, that this rule is going to have a negative impact.

And I appreciate Mr. Passantino talking about the differences in response to Mr. Rokita's question. Ms. Sharby as well addressed it. We have a very different pay scale in Manhattan than you do, for example, in the center of Minnesota, as so $47,000 means one thing in one part of the country and something else in another. This rule does not recognize demographic differences. Anyway, thank you all very much for the witnesses being—yes? Mr. Scott.

Mr. SCOTT. I was just going to ask to submit to the record a fact sheet from the Economic Policy Institute that shows the effect on jobs, hours, and salaries.

Chairman KLINE. The aforementioned left-leaning think tank and, without objection, it will be entered. I thank the witnesses. We are adjourned.

[Additional submission by Mr. Hinojosa follow:]

To Whom it May Concern:

We, the undersigned, are all professors at colleges and universities across the United States. We strongly support the Department of Labor's new rules governing overtime under the Fair Labor Standards Act. Though many institutions of higher education have publicly opposed these new regulations and projected significant extra costs, we suspect there are many others who are quietly supporting them. That is because the updated overtime rule will ensure that millions of American workers receive a fair day's pay for a hard day's work, restoring access to protections lost as the value of the overtime salary threshold eroded over decades and employers sought to exploit loopholes allowing them to deny overtime pay to their employees.

In terms of the impact on institutions of higher education, it's important to begin with the fact that the majority of workers in this sector are exempt from the rules because they don't apply to anyone whose duties include a significant amount of teaching. So professors, instructors, coaches, counselors, and most student assistants, including those who are RA's in residence halls are all exempt. Whereas higher education hourly workers in offices, cleaning and food service are already covered and the regulations don't alter that fact. Relative to the small proportion of workers who are covered, we believe the benefits throughout the American workforce far exceed the small portion of new costs to higher education. After all, when workers receive deserved overtime pay the dollars flow into local economies across the nation, as well as making it possible for more workers and their children to attend college.

While people are right to be concerned about the ever-increasing costs of higher education, we must be clear about the key drivers of this trend. First and foremost, there is sharply decreasing governmental support for universities, with state support per student steadily cut for decades to cover other costs or shortfalls, or declining federal support for research in the non-defense and non-medical areas. Second, the amount and percentage of personnel costs going to administration, which many find excessive both in terms of the numbers of administrators and their salary levels, has increased significantly over the past few decades. Finally, there is the ever-rising cost of facilities -- updated information technology and libraries, "smart" classrooms, remodeled dorms and the very latest workout facilities -- all of which are expected by many of today's students when they choose a university.

We don't believe that these financial pressures should be resolved on the backs of lower wage workers, expecting one to do the job of two for no extra compensation. Public institutions can mitigate the costs of overtime for these workers by offering compensatory time off instead. Private institutions can use flextime (comparable time off within the pay period) when there is a real need for work to go beyond eight hours in a day. Under the new rules, these workers will likely see a reduction of their expected overtime, more comp and flextime options, and actually being paid for overtime when it is really needed. This should have minimal effect on overall University budgets, particularly because of comp and flex time, but a significant effect on the lives of the workers.

The effect of the new rule on 'post-docs' has also exposed a shocking reality: many students earn a doctorate in a scientific field and yet regularly work sixty plus hours a week for less than the new $47,476 threshold – far below median pay in the United States. What message does this send to prospective graduate students about pursuing more education? What does it say about the value our nation places on scientific research, including life-saving medical breakthroughs? Raising the pay of these highly trained researchers pay above the threshold is something we believe the granting bodies, primarily the National Institutes of Health (NIH) and the National Science Foundation (NSF) must support. Indeed, as part of the implementation of the new overtime rules, DOL is working closely with the both institutions to ensure a smooth implementation of the new rules vis a vis post-doctoral employees. For example, NIH will raise its stipends for post-docs to bring them above the new salary threshold.

The fact is that colleges and universities have many exemptions as well as many ways to meet the new standards. And these same colleges are full of smart people who regularly opine on solutions to a host of problems in the rest of the world. Broad support for sustainability among students has led many campuses to adopt pledges of sustainable behavior – and those extend to the economic and social as well as the environmental. The new emphasis on ethics in business schools should be a signal that the public expects higher education to practice what it preaches.

We, the undersigned, remind those in higher education who speak against overtime reform that we are not just teaching facts and theories. Our behavior sets an example to students of the proper way for employers to treat their workers. Colleges and universities are supposed to represent the best ideals and virtues of our communities. Rather than fighting the new overtime regulations in the small number of cases where they apply in higher education, we should be leading by example and enthusiastically working toward compliance. We are confident that many campuses will do exactly that.

Respectfully signed, with affiliations for informational purposes only,

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University of Colorado, Denver

[Additional submissions by Mr. Kline follow:]

SHRM
Statement for the Record
U.S. House Education and Workforce
HEARING ON "THE ADMINISTRATION'S OVERTIME RULE AND ITS CONSEQUENCES FOR WORKERS, STUDENTS, NONPROFITS, AND SMALL BUSINESSES"
JUNE 9, 2016

1. **During the hearing, it was stated that New Hampshire Easter Seals is estimating over $400,000 in additional expenditures in the first year because of the overtime rule. Does SHRM believe that nonprofits can easily address the additional costs by redirecting funding from other programming in their overall budget?**

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. Furthermore, labor costs are often a finite source of funding in a nonprofit budget. If overtime compensation is increased, organizations will be forced to find the savings in other parts of the compensation and benefits budget, such as cutting employer-provided contributions for healthcare benefits or offering fewer paid days off to the newly nonexempt staff. The increase in overtime compensation will not occur in a vacuum and will have a wider impact on the employer and employee.

2. **The Department of Labor estimates that over 4 million of employees will be eligible for overtime pay because of the rule. Please describe the likelihood that over 4 million employees will receive a pay raise starting on December 1st.**

According to the DOL, while 4.2 millions of employees will become eligible for overtime under the new overtime rule, it is important to remember that employers, especially in the private sector, will closely monitor their labor costs and by DOL's own account, more than three-quarters of those employees currently do not exceed more than 40 hours and are not expected to in the future. While a small segment may actually receive an increase in overtime compensation, a large majority of impacted employees will be reclassified as nonexempt, without much to gain.

3. **Many witnesses claimed today that employers expect that nonexempt employees will receive less workplace flexibility because of the final overtime rule. Can you please explain how the rule will impact workplace flexibility?**

SHRM 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.

4. **Nothing in this rule says that employers must reclassify an employee into an hourly position. Do you think employers will likely reclassify employees under the salary threshold to nonexempt, salaried positions?**

SHRM believes that 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. A salaried nonexempt employee must still "punch the clock" to ensure all time is being accurately monitored. This employee classification doesn't appear to be a popular option among HR professionals because of the administrative burden.

American Association of Colleges of Pharmacy AACP
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The Honorable John Kline
Chairman
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The Honorable Virginia Foxx
Chairwoman
Subcommittee on Higher Education and Workforce Training
Committee on Education and Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections
Committee on Education and Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

June 22, 2016

Dear Chairman Kline, Chairwoman Foxx, and Chairman Walberg:

The American Association of Colleges of Pharmacy (AACP) welcomes your attention to the Department of Labor's recent overtime exemption rule. During the four hearings you held, witnesses have shared a number of concerns with the rule. The legislation that Congresswoman Foxx and Congressman Walberg have each introduced are appropriate actions to these concerns.

AACP represents 135 colleges and schools of pharmacy that collectively employ more than 6,500 full and part-time faculty, train nearly 4,500 graduate students (Ph.D. and Master's), and support nearly 4,300 pharmacists in residency programs. During the hearing held on June 9, 2016, you heard the testimony of Michael Rounds, Associate Vice Provost for Human Resources Management at the University of Kansas. The concerns raised by Mr. Rounds in his testimony reflect the concerns of the members of AACP. Colleges and schools of pharmacy:

- Support increasing the wages of post-doctoral researchers and pharmacy residents, yet doubling the salary threshold during a fiscal year is a significant challenge that affords institutions little flexibility to absorb such increases, which may be in the order of hundreds of thousands to millions of dollars depending on the size of the college's or school's research enterprise and residency training program.

- Recognize that the work of a post-doctoral researcher and pharmacy resident requires a great deal of flexibility in terms of time. No matter how easy a time recording process may be, it would likely cost an institution as much to record time and pay overtime than it would be to raise the salary of the post-doctoral researcher or pharmacy resident. Increased wage costs may reduce the number of researchers a center or laboratory can employ, which may lead to staff reductions and ultimately reduced benefit to your constituents in terms of potential cures and breakthroughs.
- Acknowledge that the regularly recurring wage updates in the rule will require significant budget shifting, when other sources of revenue, such as state appropriations, are limited or non-existent. We support your efforts to require that the economic impact of the rule be re-estimated and that future updates not be automatic, but required to be open for public comment.

In emphasis, we are very concerned with the ability of colleges and schools of pharmacy, and in particular their research faculty and staff, to absorb the monetary increases required by the rule change. The Administration, through the NIH, NSF or other grant funding agency, has not authorized any changes to grant applications, including renewals, to accommodate this mandated funding change. The likely result may be a reduction of research workforce during this fiscal year as well as future years. Increased salary requirements will require a reduction in the number of research post-docs and staff at a time when we are concerned about maintaining our nation's research workforce pipeline and bringing the results and benefits of research to your constituents.

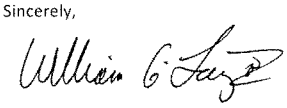
We also bring to the attention of the Committee the fact that the exemptions included in this, and past rules, are inconsistent in their application across workgroup classes, for example, the learned professional definition and the exemption provided to law and medical professionals, including medical residents. We recommend that the rule include pharmacists, pharmacy residents and research fellows, as these health and research professionals all meet the criteria of a learned professional.

Therefore, AACP and its members ask you to continue your challenge of the rule and your requests that the Administration reconsider the rule in light of the negative impact it will have on higher education in general, and specifically, on the education and training of future pharmacists and researchers.

We respectfully request that this letter be inserted into the record of the June 9, 2016, hearing held by the Committee on Education and Workforce titled *The Administration's Overtime Rule and its Consequences on Workers, Students, Nonprofits and Small Business.*

Please do not hesitate to contact AACP Senior Policy Advisor Will Lang (wlang@aacp.org) if we can be of assistance in your future actions.

Sincerely,



William G. Lang IV, MPH
Senior Policy Advisor
American Association of Colleges of Pharmacy

Cc: Dr. Francis Collins, National Institutes of Health
Senator Lamar Alexander, Chairman, Senate Committee on Health, Education, Labor, and Pensions
Senator Tim Scott

FOR IMMEDIATE RELEASE

DOL's Expanded Overtime Rule Will Hurt Startups and Small Businesses, Says CTA

CTA applauds House Education and Workforce Committee for addressing consequences

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Arlington, VA - June 8, 2016 -The following statement is attributed to Gary Shapiro, president and CEO, Consumer Technology Association (CTA)™, regarding tomorrow's House Education and Workforce Committee hearing on the Department of Labor's (DOL) revised overtime rule:

"Nearly doubling the minimum salary to become eligible for overtime will stifle American startups and entrepreneurship - areas which are key to our country's job growth and competitiveness abroad. Creating an either-or situation where early stage startups must raise salaries or pay overtime will handicap their abilities to move quickly and launch the next successful app or tech device.

"We applaud the Committee on Education and Workforce for addressing the consequences this unprecedented rule change will have on small businesses. And we urge the Administration - or the next one - to reconsider this damaging decision."

What Startups Are Saying

- "What startups can't offer in salary, they offer in leadership opportunities by creating an environment that rewards personal responsibility, drive, dedication and resilience," said **Jake Sigal, CEO, Tome Software** , a Detroit-based startup launched in 2014. "We should encourage companies to immerse young workers in environments of high productivity and resilient work, not punish them. The first years of a company are very hard and most startups fail. This proposal would accelerate the failure rate, by limiting startups' access to talent and capacity to grow."
- "This proposal will reduce the number of employees a startup can afford to hire, slowing down its growth and putting the company at risk of never turning the corner," said **Ximena Hartsock, co-founder and president, Phone2Action**, a digital, grassroots platform based in Washington, D.C. "Ironically, while the intent of this proposal is to

boost jobs, in reality what it will do is reduce the capacity of small companies to create new jobs."

- "Many startup companies include an equity component in their offers, as they're unable to pay higher salaries," said **Justin Baros, head of talent, ChatID**, based in New York City. "In addition, many early stage employees proactively request to take a lower salary in exchange for a more significant ownership stake in their company."

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About Consumer Technology Association:
Consumer Technology Association (CTA)™, formerly the Consumer Electronics Association (CEA)®, is the trade association representing the $287 billion U.S. consumer technology industry. More than 2,200 companies - 80 percent are small businesses and startups; others are among the world's best known brands - enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES® - the world's gathering place for all who thrive on the business of consumer technology. Profits from CES are reinvested into CTA's industry services.

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June 8, 2016

The Honorable John Kline
Chairman
Committee on Education and the Workforce
House of Representatives
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

On behalf of the Credit Union National Association (CUNA), I am writing to thank you for holding today's hearing, "The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses." 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, may face even greater 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.

Credit Union Employees Could Be Negatively Impacted by Unintended Consequences of the Rule

CUNA also has concerns about some of the less readily apparent unintended consequences that could result from the DOL overtime rule. If a credit union cannot afford to increase salaries, which is plausible during this time of unprecedented regulatory burden, some employees even at the management level could have to change their employment status from exempt to non-exempt. Employees, particularly at the management level, could see this change in status as a demotion, which could lower employee morale. Additionally, if for example, one level of employees received a $10,000 increase in salary to remain exempt, while the level of employee right above them received no increase in compensation because they are already at the exempt level, this could create an un-level playing field where jobs with different levels of responsibility and difficulty are being equally compensated.

Employees may also value flexibility and other "perks" above a small increase in compensation. If for example, employees change to a non-exempt status, they may lose flexibility for scheduling for time off and other purposes. Employees may have to make specific arrangements for leave, or potentially take unpaid leave, as opposed to a more flexible current situation for time off as described by some credit unions. Employers may also be forced to create stringent rules for overtime pay and have regimented systems of clocking in and out.

If resources must be realigned, other employee benefits could be forced to be eliminated. Also, if credit unions are forced to increase salaries or pay significantly more for overtime hours, they could be forced to reconsider some of their current benefits. Moreover, some beneficial opportunities are

only available during off work hours, which may require overtime under the new rules. For example, networking events, conferences, and other opportunities for employees to meet industry colleagues might fall outside of normal work hours. If employers have to pay employees overtime for these work events, they may have to limit inclusion in these activities. Additionally, employers who have unexpected expenses as a result of making additional overtime payments may become unable to hire new employees, or be forced to convert full-time positions to part-time.

Credit Union Members May Also Be Negatively Impacted

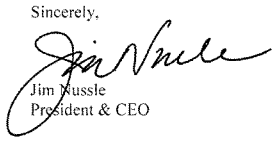
Changes to the number of employee work hours, or the size of credit union staff would ultimately affect credit union members as well. It is not always easy for credit union members to visit a branch during regular business hours when they are at their own jobs. Limiting credit union staff or hours may make it more difficult to keep branches open during convenient times for working families. 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 for their employees 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

College and University Professional Association for Human Resources

June 9, 2016

Chairman John Kline
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20510

Ranking Member Bobby Scott
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Kline and Ranking Member Scott:

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

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absorb. In addition, automatically updating the threshold with out regard to the economic circumstances facing the country is unwise.

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,

Joshua A. Ulman
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Statement

of the

Independent Electrical Contractors

Before the

Committee on Education and the Workforce

United States House of Representatives

Hearing on

"The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses"

Washington, DC

June 9, 2016

Independent Electrical Contractors

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Chairman Kline, Ranking Member Scott and Members of the Committee,

On behalf of the Independent Electrical Contractors (IEC), thank you for holding a hearing titled "The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses" 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 S. 2707, 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
EDUCATION AND THE WORKFORCE COMMITTEE
HEARING ON "THE ADMINISTRATION'S OVERTIME RULE AND ITS CONSEQUENCES FOR WORKERS, STUDENTS, NONPROFITS, AND SMALL BUSINESSES"

June 9, 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 full time employee earnings 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.

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 these automatic updates on small businesses, among other issues 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 is that the automatic salary increases will be extremely hard to implement and track. While the original proposal only had 60-day notice window, which was extended to 150-days in the final rule, many businesses have expressed concerns 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 have 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 "white collar" workers in the insurance industry will be affected, 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. The 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 percent of the standard salary level. This does provide some relief, particularly in the case of insurance agencies which rely heavily on commission for 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 percent 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 Wisconsin or Indiana 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 that the automatic adjustment for inflation 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

National Association of Federal Credit Unions | nafcu.org

June 8, 2016

The Honorable John Kline
Committee on Education
& the Workforce
United States House of Representatives
Washington, DC 20515

The Honorable Robert C. Scott
Committee on Education
& the Workforce
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing on the DOL Overtime Rule

Dear Chairman Kline and Ranking Member Scott:

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. NAFCU is concerned 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 the effect of nearly doubling the minimum overtime exempt salary would be to disproportionately burden credit unions in underserved and non-urban communities. Additionally, NAFCU has concerns that the DOL's rule fails to adequately consider the needs of small businesses and non-profit organizations, including credit unions around the country, which operate with extremely low financial margins in a highly competitive service-driven marketplace. Most small-to-midsize community driven 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.

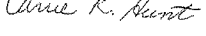
Currently, there are less than six months remaining until this new rule goes in to full effect on December 1, 2016. This is not enough time for a small business or non-profit to be able to determine if they should reclassify certain employees and which employees will not be subject to the means test. 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 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 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 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.

These changes to the FLSA made by the DOL go much too far, too quickly, and without enough considerations for non-profits. 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 Opportunity Act*, which is currently pending before the Committee.

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 Education & the Workforce

National Association of Home Builders

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Government Affairs

James W. Tobin III
Executive Vice President & Chief Lobbyist
Government Affairs and Communications Group

June 7, 2016

The Honorable John Kline
U.S. House of Representatives
2439 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to express our appreciation to you for holding this important hearing on the Department of Labor's (DOL) rule which will significantly alter the current overtime requirements under the Fair Labor Standards Act. NAHB is concerned that the new overtime requirements will have a significant negative impact on home builders and specialty trade contractors.

By radically doubling the current overtime salary limit of $23,660 to $47,476 and including an automatic increase every three years, this blatant regulatory overreach will hurt many of the workers the rule was meant to help. Although DOL contends that this rule will ensure that the FLSA's overtime protections are appropriately applied, the agency has taken an overly broad approach that will result in real hardship for small businesses. Small business owners across the land, including the vast majority of home building firms, will be forced to scale back on pay and benefits, as well as cut workers' hours in order to remain in business.

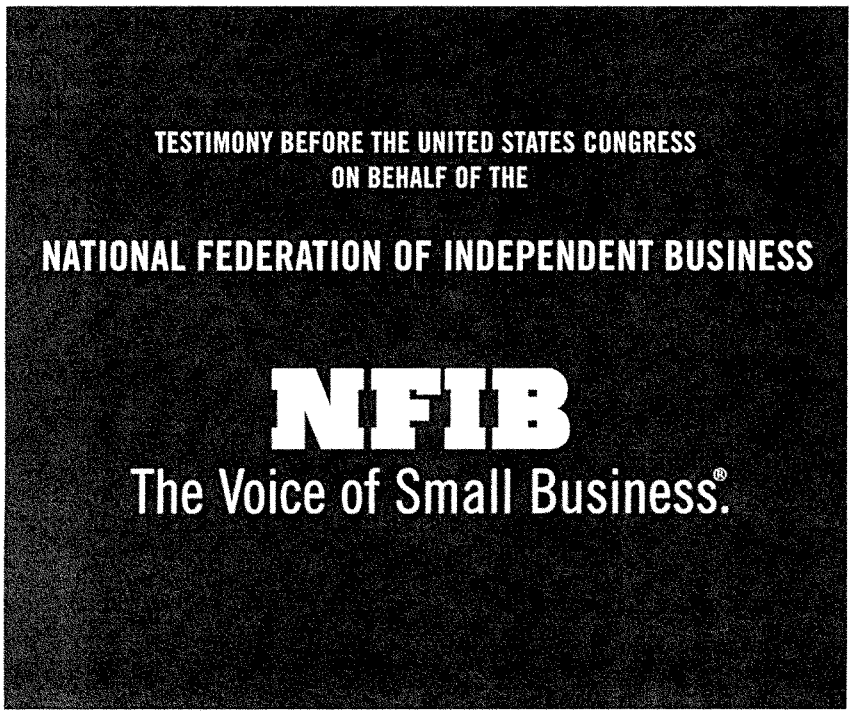
Congress can play a constructive role by moving quickly to pass the *Protecting Workplace Advancement and Opportunity Act* (S. 2707/H.R. 4773), legislation that would force the agency to withdraw this rule until it has considered the effects it would have on small businesses, consumers, workers and the economy. NAHB stands ready to work with you as this bill moves forward in the legislative process. We urge Congress to swiftly pass the *Protecting Workplace Advancement and Opportunity Act* without delay.

Thank you again for your support and leadership on this issue of critical importance to the housing industry.

Sincerely,

James W. Tobin III

cc: Members of the House Education and Workforce Committee



Statement for the Record for the

House Committee on Education and the Workforce

The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses

June 9, 2016

National Federation of Independent Business (NFIB)
1201 F Street, NW Suite 200
Washington, DC 20004

Chairman Kline, Ranking Member Scott, and members of the Committee on Education and the Workforce, thank you for the opportunity to provide a statement for the record on the hearing, "The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses" on behalf of the National Federation of Independent Business (NFIB). NFIB is the nation's leading small-business advocacy organization, representing about 325,000 small-business owners across the country.

NFIB believes that the overtime rule will have a substantial negative effect on small businesses and their employees. Our research indicates the new rule will impact about 40 percent of small businesses.

Currently, a salaried employee earning less than $23,660 annually receives overtime pay for time worked over 40 hours in a week, regardless of the worker's duties. In the Department of Labor's final rule, which goes into effect on December 1, 2016, any salaried worker who earns less than $47,476 eligible for overtime, more than doubling the previous threshold.

With such a short implementation window, businesses must act quickly to determine what employees will be impacted either by reclassifying exempt managers into hourly positions or raising salaries. The final rule also automatically adjusts the threshold based on inflation every three years, potentially making it difficult for small businesses to budget adequately for payroll on an ongoing basis.

DOL has stated the final rule will affect 4.2 million employees. To comply with the new threshold, small business owners will likely decide to reclassify salaried employees to hourly positions – resulting in a loss in flexibility, bonuses, and promotion opportunities. In order for small businesses to avoid the costly overtime pay, managers moved from their salaried positions to hourly jobs will need to keep time cards. At the same time, employees will not necessarily earn more money because small business owners will limit employees to 40 hours per week.

Simply put, the new overtime rule increases the salary threshold by too much, too quickly. As a result, DOL's stated goal of increased wages for middle class workers is not likely. Rather, employees will be worse off, and small businesses will face compliance challenges and be put in the position to make difficult decisions that will impact the well being of their employees.

NFIB greatly appreciates the Committee examining the harmful impacts of the new overtime rule on small businesses. NFIB supports H.R. 4773, *the Protecting Workplace Advancement and Opportunity Act*, which would require DOL to complete a more thorough small business economic analysis of the rule, limit any future rule from automatic adjustments of the salary threshold, and require DOL to issue a specific proposal for public comment if it wishes to make changes to the executive, administrative, and professional exemptions. We look forward to working with the Committee on a solution that results in a more reasonable increase in the salary threshold.

National Federation of Independent Business
1201 F Street NW * Suite 200 * Washington, DC 20004 * 202-554-9000 * Fax 202-554-0496 * www.NFIB.com

June 6, 2016

The Honorable John Kline
Chairman
Committee on Education and the Workforce
2439 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Robert Scott
Ranking Member
Committee on Education and the Workforce
1201 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Kline and Ranking Member Scott:

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) would like to take this opportunity to express our strong concerns regarding the Department of Labor's final overtime rule released on May 18 that increases the overtime pay threshold to $46,476 from $23,660. We thank you for holding your June 9 hearing, "The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses," to examine this pernicious rule. We also encourage the Education and the Workforce Committee to swiftly approve H.R. 4773, the Protecting Workplace Advancement Act and Opportunity Act, to overturn the rule and require that a comprehensive economic and impact analysis be conducted prior to a subsequent rule being finalized.

For more than 20 years, NMHC and NAA have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of nearly 170 state and local affiliates, NAA encompasses over 69,000 members representing more than 8.1 million apartment homes throughout the United States and Canada.

NMHC/NAA are particularly concerned that doubling the overtime threshold to $47,476, effective on December 1, 2016, with no phase-in period, would harm the ability of multifamily employers to implement, and their employees to take advantage of, flexible scheduling options. The final rule would also limit career-advancement opportunities for employees. Furthermore, we believe the final rule could lead to increased administrative costs as we operationalize the rule, as well as to the possibility of significant litigation expenditures based on pay claims pursuant to the Fair Labor Standards Act. In sum, the final rule could have a tremendous negative impact on the morale of employees who are effectively demoted to non-exempt status and their ability to manage their own work/life balance.

While NMHC/NAA do not necessarily oppose an increase to the overtime salary threshold, the rule should not take effect until its impact is fully assessed and other less drastic alternatives are considered. We believe that H.R. 4773 meets this objective and that the Committee should approve it immediately.

Sincerely,

Douglas M. Bibby
President
National Multifamily Housing Council

Douglas S. Culkin, CAE
President & CEO
National Apartment Association

Copy to: Members of the House Committee on Education and the Workforce

June 17, 2016

The Honorable John Kline
Chairman
Committee on Education and
the Workforce
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
Committee on Education and
the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

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 timecard 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 DOL was instructed by the President to modernize the 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 41.1 percent of all affected workers.

Retailers large and small 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.

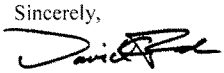
A deeper dive into DOL's own estimates shows just how scant the benefits are and how significant the consequences are. According to DOL, at the new standard salary level, the average weekly earnings for all affected workers is expected to increase by $5.48 per week. However, four out of five of the 4.2 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 the 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 it 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 for convening this hearing on DOL's overtime changes and for the opportunity to submit this statement for the record.

Sincerely,



David French
Senior Vice President
Government Relations

cc: Members of the House Committee on Education and the Workforce

PARTNERSHIP TO PROTECT

WORKPLACE OPPORTUNITY

June 9, 2016

Chairman John Kline
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Ranking Member Bobby Scott
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

On behalf of the Partnership to Protect Workplace Opportunity (the Partnership), we 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"). The Partnership consists of a diverse group of associations and companies, representing employers with millions of employees across the country in almost every industry (see http://protectingopportunity.org/about-ppwo/). The Partnership's members 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% 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 was considering adding an unworkable requirement to quantify how much time employees spend performing their primary duties.

While an increase to the salary threshold is due, DOL's proposed rule was met with widespread opposition from tens of thousands small and large businesses, nonprofits, local governments, academic institutions, and the Small Business Administration Office of Advocacy – all of which have asked the Labor Department to examine more closely the impact of the drastic and immediate increase and consider less harmful alternatives. Comments and letters were sent from organizations around the country asking the Department, the Administration and Members of Congress to rethink this rule (samples are included in the attached document).

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 input prior to issuing the proposed rule; however, the proposed and final regulation clearly do not reflect that input with respect to the salary threshold or automatic updates.

The salary threshold in the final regulation was lowered from $50,440 to $47,476, and the automatic escalator mechanism was changed from annually to every three years. This is still a more than 100% increase in the salary threshold and represents a token reduction that will not alleviate the harm this rule will do to nonprofits, colleges, and small businesses and their employees. Moreover, the fact that this reported reduction was leaked after OMB held more than 40 listening sessions with concerned stakeholders requesting that the rule be comprehensively reevaluated makes clear that the Secretary and the administration did not take seriously the public's concerns with its proposal and only Congressional action can stop the damage this regulation will cause. 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.

Accordingly, we urge all the members of the Committee on Education and the Workforce 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, and would prohibit any automatic increases. In essence, the bill requires the Department to move forward in a responsible rather than reckless manner. The legislation is supported by **340** national, regional, state, and local organizations representing nonprofits, institutions of higher education, schools, cities, counties and small and large businesses across the country, as outlined in the attached April 18th letter. In addition, the following 7 organizations listed below have subsequently supported H.R. 4773.

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

Sincerely,

The Partnership to Protect Workplace Opportunity and the following organizations:

American Land Title Association
American Trucking Associations
American Truck Dealers
Manufactured Housing Institute
National Association for the Self-Employed
National Association of Broadcasters
National Automobile Dealers Association

PARTNERSHIP TO PROTECT

WORKPLACE OPPORTUNITY

April 18, 2016

Dear Representative:

On behalf of the Partnership to Protect Workplace Opportunity (the Partnership) and the undersigned 340 local and national organizations representing small and large businesses, nonprofits, institutions of higher education, schools, cities and counties, we write to ask that you cosponsor H.R. 4773, the *Protecting Workplace Advancement and Opportunity Act*. This important and reasonable legislation would require the U.S. Department of Labor to perform a detailed impact analysis prior to implementing changes to the exemptions for executive, administrative, and professional employees (the "white collar exemptions") under the Fair Labor Standard Act's overtime pay requirements.

The Partnership consists of a diverse group of associations, representing employers with millions of employees across the country in almost every industry (see http://protectingopportunity.org). The Partnership's members 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.

Currently, under the Fair Labor Standards Act (FLSA) regulations, a person must satisfy three criteria to qualify as exempt from federal overtime pay requirements: first, they must be paid on a salaried basis; second, that salary must be more than $455/week ($23,660 annually); and third, their "primary duties" must be consistent with managerial, professional or administrative positions as defined by the Department of Labor (DOL).

On June 30, 2015, DOL proposed increasing the salary 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 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.

While an increase to the salary threshold is due, DOL's proposed rule has been met with widespread opposition from small and large businesses, nonprofits, local governments, academic institutions, and President Obama's own Small Business Administration Office of Advocacy – all of which have asked the Labor Department to examine more closely the impact of the drastic and immediate increase and consider less harmful alternatives. The Secretary of Labor has 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 rule; however, the proposed salary threshold clearly does not reflect that input. Based on these statements and others made by Department officials, it is clear the Secretary is not willing to reconsider the rule in a meaningful way without Congressional action.

H.R. 4773, the *Protecting Workplace Advancement and Opportunity Act,* would block the current proposed regulation from taking effect and require the Department of Labor to perform a deeper analysis on the impact of the proposed changes on small businesses, nonprofits, regional economies, local governments, Medicare and Medicaid dependent health care providers, and academic institutions, as well as employee flexibility and career advancement before proceeding with a new rule.

The *Protecting Workplace Advancement and Opportunity Act* is consistent with comments submitted by the Small Business Administration's Office of Advocacy, which noted that DOL's economic analysis severely underestimated the impact the proposed rule would have on small businesses, nonprofits, and small governmental jurisdictions. The comments also criticized the Department's analysis for not considering the impact the proposal would have on various regions of the country with different costs of living.

The bill does not prevent an increase in the salary threshold; it merely requires the Department of Labor to more closely examine the impact of possible changes before proceeding with a final rule. Accordingly, we urge you to cosponsor H.R. 4773, the *Protecting Workplace Advancement and Opportunity Act.*

Sincerely,

The Partnership to Protect Workplace Opportunity and the following organizations:

National Organizations
ACPA-College Student Educators International
Aeronautical Repair Station Association
Agricultural Retailers Association
American Apparel & Footwear Association
American Association of Advertising Agencies (4A's)
American Association of Collegiate Registrars and Admissions Officers
American Bakers Association
American Bankers Association
American Car Rental Association
American Concrete Pressure Pipe Association
American Council of Engineering Companies
American Frozen Food Institute
American Hotel & Lodging Association
American Institute of CPAs
American Insurance Association
American Moving & Storage Association
American Rental Association
American Society of Association Executives
American Society of Travel Agents
American Staffing Association
American Subcontractors Association, Inc.
American Supply Association
American Veterinary Distributors Association (AVDA)
AmericanHort
Argentum (formerly the Assisted Living Federation of America)
Asian American Hotel Owners Association

Associated Builders and Contractors
Associated Equipment Distributors
Association for Student Conduct Administration
Associated General Contractors
Association of American Veterinary Medical Colleges
Association of College and University Housing Officers-International
Association of School Business Officials International (ASBO)
Auto Care Association
Blue Roof Franchisee Association
Building Service Contractors Association International (BSCAI)
CAWA – Representing the Automotive Parts Industry
Coalition of Franchisee Associations
College and University Professional Association for Human Resources
Consumer Technology Association
Convenience Distribution Association
Door Security and Safety Professionals
Electronic Transactions Association
Equipment Dealers Association (formerly the North American Equipment Dealers Association)
Financial Services Institute
Food Marketing Institute
Franchise Business Services
Gases and Welding Distributors Association
Global Cold Chain Alliance
Heating, Air-conditioning & Refrigeration Distributors International (HARDI)
HR Policy Association
INDA, Association of the Nonwoven Fabrics Industry
Independent Electrical Contractors
Independent Insurance Agents & Brokers of America
Independent Office Products and Furniture Dealers Association
Information Technology Alliance for Public Sector
International Association of Amusement Parks & Attractions
International Association of Refrigerated Warehouses
International Bottled Water Association
International Dairy Foods Association
International Foodservice Distributors Association
International Franchise Association
International Public Management Association for Human Resources
International Warehouse Logistics Association
IPC Association Connecting Electronics Industries
ISSA, the Worldwide Cleaning Industry Association
Metals Service Center Institute
Motor & Equipment Manufacturers Association
NAHAD – The Association for Hose & Accessories Distribution
NASPA – Student Affairs Administrators in Higher Education
National Apartment Association
National Association of Chemical Distributors
National Association of College and University Business Officers
National Association of College Stores
National Association of Convenience Stores
National Association of Development Organizations

National Association of Electrical Distributors
National Association of Home Builders
National Association of Landscape Professionals
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Professional Insurance Agents
National Association of Sporting Goods Wholesalers
National Association of Wholesaler-Distributors
National Beer Wholesalers Association
National Christmas Tree Association
National Club Association
National Council of Chain Restaurants
National Council of Farmer Cooperatives
National Fastener Distributors Association
National Federation of Independent Business
National Franchisee Association
National Grocers Association
National Insulation Association
National Lumber and Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council
National Newspaper Association
National Office Products Alliance
National Pest Management Association
National Public Employer Labor Relations Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National RV Dealers Association
National School Transportation Association
National Small Business Association
National Tooling and Machining Association
NATSO, Representing America's Travel Plazas and Truckstops
Newspaper Association of America
NIRSA: Leaders in Collegiate Recreation
North American Die Casting Association
NPES The Association for Suppliers of Printing, Publishing and Converting Technologies
Office Furniture Dealers Alliance
Outdoor Power Equipment and Engine Service Association
Pet Industry Distributors Association
Precision Machined Products Association
Precision Metalforming Association
Promotional Products Association International
Retail Industry Leaders Association
Secondary Materials and Recycled Textiles Association (SMART)
Selected Independent Funeral Homes
Service Station Dealers of America and Allied Trades
Small Business & Entrepreneurship Council
SNAC International

Society for Human Resource Management
Society of American Florists
Society of Independent Gasoline Marketers of America
SPI: The Plastics Industry Trade Association
Textile Care Allied Trades Association
Textile Rental Services Association
The Latino Coalition
Tire Industry Association
Truck Renting and Leasing Association
U.S. Chamber of Commerce
Water & Sewer Distributors of America
Wine & Spirits Wholesalers of America
WorldatWork

Regional, State, and Local Organizations
Alabama Chapter (CUPA-HR)
Alabama Restaurant & Hospitality Alliance
Alabama SHRM State Council
Alaska Hotel & Lodging Association
Alaska SHRM State Council
Alliance of Automotive Service Providers of Pennsylvania
American Society of Employers
Arizona Lodging & Tourism Association
Arizona SHRM State Council
Arkansas Hospitality Association
Arkansas SHRM State Council
Associated Builders & Contractors, Rocky Mountain Chapter
Associated Builders and Contractors - Virginia Chapter
Associated Builders and Contractors Heart of America Chapter
Associated Oregon Industries
Automotive Aftermarket Association of the Carolinas and Tennessee, Inc
Automotive Aftermarket Association Southeast
Automotive Parts & Services Association-Texas
Building Industry Association of Washington
California Hotel & Lodging Association
California Retailers Association
California State Council of SHRM
California, Nevada, Arizona Automotive Wholesalers Association
Capital Associated Industries (NC)
Carolinas Food Industry Council
Chesapeake Automotive Business Association
Colorado Hotel & Lodging Association
Colorado Retail Council
Colorado SHRM State Council
Connecticut Lodging Association
Connecticut Retail Merchants Association
Connecticut SHRM State Council
Delaware SHRM State Council, Inc.
Employers Coalition of North Carolina
Far West Equipment Dealers Association

Florida Building Material Association
Florida Chapter (CUPA-HR)
Florida Restaurant & Lodging Association
Florida Retail Federation
Garden State Council SHRM, Inc.
Georgia Hotel & Lodging Association
Georgia Retail Association
Georgia SHRM State Council
Hawaii Lodging & Tourism Association
Hotel Association of New York City, Inc.
Hotel Association of Washington DC
HR Florida SHRM State Council, Inc.
HR State Council of New Hampshire
Idaho Retailers Association, Inc.
Idaho SHRM State Council
Illinois Chapter (CUPA-HR)
Illinois Hotel & Lodging Association
Illinois Retail Merchants Association
Illinois SHRM State Council
Indiana Restaurant & Lodging Association
Indiana Retail Council, Inc.
Indiana SHRM State Council
Iowa Retail Federation
Iowa SHRM State Council
Kansas Chapter (CUPA-HR)
Kansas State Council of SHRM, Inc.
Kentucky Chapter (CUPA-HR)
Kentucky Retail Federation, Inc.
Kentucky SHRM State Council
Kentucky-Indiana Automotive Wholesalers Association
Louisiana Hotel & Lodging Association
Louisiana Retailers Association
Louisiana SHRM State Council
Maine Innkeepers Association
Maine SHRM State Council
Manufacturer & Business Association
Maryland Association of CPAs
Maryland Chapter (CUPA-HR)
Maryland Hotel & Lodging Association
Maryland Retailers Association
Maryland SHRM State Council
Massachusetts Lodging Association
Massachusetts State Council of SHRM
Michigan Chapter (CUPA-HR)
Michigan Lodging and Tourism Association
Michigan Retailers Association
Michigan SHRM State Council
Midwest Automotive Parts & Service Association
Minnesota Chapter (CUPA-HR)
Minnesota Grocers Association

Minnesota Lodging Association
Minnesota Retailers Association
Minnesota SHRM State Council
Mississippi State Council of SHRM
Missouri Retailers Association
Missouri State Council of SHRM, Inc.
Missouri Tire Industry Association
Montana Chamber of Commerce
Montana Equipment Dealers Association
Montana Lodging & Hospitality Association
Montana Restaurant Association
Montana Retail Association
Montana SHRM State Council
Montana Tire Dealers Association
Nebraska Chamber of Commerce & Industry
Nebraska Hotel & Motel Association
Nebraska Retail Federation
Nebraska SHRM State Council
Nevada Chapter of (CUPA-HR)
Nevada Hotel & Lodging Association
Nevada SHRM State Council
New England Tire & Service Association
New Hampshire Lodging & Restaurant Association
New Hampshire Retail Association
New Jersey Chapter (CUPA-HR)
New Jersey Gasoline, C-Store, Automotive Association
New Jersey Hotel & Lodging Association
New Jersey Retail Merchants Association
New Mexico Retail Association
New Mexico SHRM State Council
New York Metro Chapter (CUPA-HR)
New York State Association of Service Stations and Repair Shops, Inc.
New York State Hospitality & Tourism Association
New York State SHRM, Inc.
North Carolina Chapter (CUPA-HR)
North Carolina Restaurant & Lodging Association
North Carolina Retail Merchants Association
North Carolina SHRM State Council
North Dakota SHRM State Council
Northeastern Retail Lumber Association
Ohio Chapter (CUPA-HR)
Ohio Council of Retail Merchants
Ohio Equipment Distributors Association
Ohio Hotel & Lodging Association
Ohio SHRM State Council
Oklahoma Hotel & Lodging Association
Oklahoma Retail Merchants Association
Oklahoma SHRM State Council
Oregon Restaurant & Lodging Association
Oregon Retail Council

Oregon SHRM State Council
Pelican Chapter, Associated Builders and Contractors, Inc.
Pennsylvania Association of Automotive Trades
Pennsylvania Food Merchants Association
Pennsylvania Institute of Certified Public Accountants
Pennsylvania Restaurant & Lodging Association
Pennsylvania Retailers Association
Pennsylvania SHRM State Council
Public Employer Labor Relations Association of California
Public Employer Labor Relations Association of Maryland
Public Employer Labor Relations Association of Ohio
Retail Association of Maine
Retail Association of Nevada
Retail Council of New York State
Retailers Association of Massachusetts
Rhode Island Hospitality Association
Rhode Island Retail Federation
Rhode Island SHRM State Chapter
SHRM Hawaii State Council
SHRM Pacific Council
Rocky Mountain Chapter (CUPA-HR)
South Carolina Chapter (CUPA-HR)
South Carolina Restaurant & Lodging Association
South Carolina Retail Association c/o NCRMA
South Carolina SHRM State Council
South Dakota CPA Society
South Dakota Retailers Association
South Dakota SHRM State Council
Southwest Car Wash Association
Southwestern Pennsylvania Chapter (CUPA-HR)
Tennessee Hospitality & Tourism Association
Tennessee SHRM State Council
Texas Hotel & Lodging Association
Texas Independent Automotive Association
Texas Retailers Association
Texas SHRM State Council
Texas Tire Dealers Association
United Equipment Dealers Association
Utah Chapter (CUPA-HR)
Utah Food Industry Association
Utah Hotel & Lodging Association
Utah Human Resource State Council
Utah Retail Merchants Association
Vermont Chamber of Commerce
Vermont Retail & Grocers Association
Vermont SHRM State Council
Virginia Hospitality & Travel Association
Virginia Retail Merchants Association
Virginia SHRM State Council
Washington Lodging Association

Washington Maryland Delaware Service Station and Automotive Repair Association
Washington Retail Association
Washington State Chapter (CUPA-HR)
Washington State Human Resources Council
West Virginia Chapter (CUPA-HR)
West Virginia Hospitality & Travel Association
West Virginia Retailers Association
West Virginia SHRM State Council
Western Equipment Dealers Association
Western Suppliers Association
Wholesalers Association of the North East, Inc.
Wisconsin Hotel & Lodging Association
Wisconsin Manufacturers and Commerce
Wisconsin SHRM State Council
Wyoming Lodging & Restaurant Association
Wyoming SHRM State Council

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Sampling of Non-profit comments from the Federal Register:

National:

- **Operation Smile** "The leadership team at Operation Smile is opposed to the proposed changes to the salary threshold tests, specifically the drastic increase to a salary level of $50,400... Since its founding in 1982, Operation Smile has provided more than 220,000 free surgical procedures for children and young adults born with cleft lip, cleft palate and other facial deformities...Yet still, this proposed update will ***increase our payroll cost by nearly $1 million annually affecting over 50 percent of our workforce***. Considering that a cleft lip surgery performed somewhere in the world costs an average of $240, ***this would mean 4,166 fewer surgeries provided by Operation Smile globally each year***... Our focus needs to be on managing programs not overtime."
  https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5060

- **Habitat for Humanity** "Habitat for Humanity (Habitat) and other charitable organizations will be disproportionately impacted by the proposed rule and unable to comply without reducing access to products and services... it is estimated ***that 65 percent of Habitat affiliates employing paid staff will be impacted by the proposal... The nearly $27,000 increase in the minimum salary to qualify for the overtime exemption, for example, represents one-third to one-quarter of the cost of building a typical Habitat home.*** For a smaller, rural affiliate... it may be impossible to absorb the increased cost... Such an affiliate may have no choice but to cease operations, even if it is the only affordable housing provider in the community it serves."
  https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5647

- **The Salvation Army National Headquarters** "We respectfully urge the Wage and Hour Division to reconsider the substantial increase in the minimum salary threshold for "exempt" employees that is contemplated by the Proposed Regulations... the proposed increase in the minimum salary for "exempt'" employees would substantially increase the cost of delivering our services, most of which are provided free of charge. Based on information that has been collected to date, it appears that 50% or more of our employees nationwide who are currently classified as "exempt" would become "non-exempt"... The significance of the effect of this change to our organization cannot be over-stated... We anticipate that staff cuts would therefore become necessary and that we would be required to reduce the religious and charitable programming that we provide nationally."
  https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2789

- **National Council for Behavioral Health** "The National Council is a non-profit association representing 2,350 community-based mental health and addiction treatment providers... we strongly regret that we are unable to support the proposed rule in its current form. As written, the rule would have a potentially devastating effect on health care organizations

serving low-income individuals with serious and persistent mental illnesses and addictions, resulting in the need for service cutbacks and program closures... The untenable financial pressure resulting from the proposed changes would force provider organizations into disastrous service reductions and program closures." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2514

- **National Head Start Association (NHSA)** "NHSA is the national voice of the more than a million children in Head Start and Early Head Start programs in the United States... Our concerns on the regulatory change are driven entirely by the potential negative impacts on Head Start and Early Head Start agencies... In addition to the potential direct negative impacts on staff, we remain concerned that the proposed NPRM will negatively impact the quality of services we provide to children and families as well... Without additional funding, these programs may be forced to reduce the working hours of essential staff, causing a reduction in the hours and days of operation of some programs. This development would undermine and diminish the ability for programs to meet the needs of the children and families they are trying to serve as well as pose a significant adverse impact on working parents, their employers, and the nation's broader economy." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5194

- **Catholic Charities USA** "We feel compelled to share what we believe could be substantially negative, and in many cases disproportionate impacts on our agencies as nonprofits. Our overriding concern is that these negative operational impacts will ultimately result in a decline in services, or quality of services, to the most vulnerable members of society who our agencies serve... Specifically, agencies shared that they may need to reduce weekend and evening service hours, close certain program sites, cut back on community outreach activities, or limit staff from "going the extra mile"... The greatest impact would be felt by emergency services programs...These include drop-in centers, domestic violence shelters, crisis pregnancy services, and refugee resettlement programs... the regulations as proposed could place significant burdens on our agencies and ultimately negatively impact their ability to serve in their communities, resulting in a net negative, rather than positive, impact for the most vulnerable in our communities." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5320

- **Special Olympics** "As the rulemaking stands, it could substantially impair Special Olympics leading role in providing much-needed services to those with intellectual and developmental disabilities. Higher thresholds of overtime compensation for our staff, if realized, would have a negative impact on our ability to advance our mission, serve people with intellectual disabilities, raise money, and perform adequately under current government partnerships in providing health and educational opportunities for millions of people." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5149

- **America's Blood Centers** "America's Blood Centers (ABC) represents North America's largest network of non-profit community blood centers... As non-profit and community-

based institutions, our concern stems from the significant impact to community blood centers across the country that such broad, sweeping change would have on our ability to continue to serve our communities... The ***cost impact associated with the proposed overtime threshold [$1.5 million]*** will be associated with negative consequences for maintaining the infrastructure needed for a robust blood supply..."
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4601

Colorado:

- **Colorado Youth Corps Association** "Paying overtime rates for staff members who operate residential programs would decimate program budgets and likely force many corps programs to either close or eliminate all camping/residential programs, ultimately hurting the low income corps members the regulations were meant to help. In addition, corps staff members typically work long hours in the field season and much shorter hours in the off season. Paying overtime in the field season would have a dramatic effect on these non-profits' ability to operate on their slim budgets."
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5298

- **Colorado Behavioral Healthcare Council** "Our member organizations serve low-income and uninsured populations whose cost of care is covered primarily by Medicaid or state and local general funds. Medicaid reimbursement rates and grant funding levels are set by states, counties, or other third party entities. Thus, provider organizations like ours have limited ability to raise new revenue in response to increased costs of doing business. DOL's proposal to double the overtime pay exemption threshold would place a massive new burden on organizations already struggling to stay in business. Moreover, linking the threshold to inflation would force employers into perennially chasing a rising salary target without any ability to raise state-determined payment rates or otherwise ensure revenue increases to offset these changes."
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2454

- **Young House Family Services** "The proposed rule to increase the salary threshold to $50,440 per year for exempt employees would have a devastating financial impact on our agency and ability to continue to provide needed services to children and families in our area. This change would affect at least 45% of our current employees, including direct care professionals. Many of our caseworkers spend several hours each week just driving to clients' rural homes to provide services, which adds to their work time. If this rule passes, for financial reasons we expect we would have to prohibit caseworkers from working more than 40 hours per week, which would unfortunately ultimately impact the direct services they provide to families... In our "business" we are not able to raise our fees, since those are established by the contractors chosen by the State of Iowa. This system is also currently undergoing major changes and we will now have to contract with 4 different managed care entities; we could be facing lower reimbursement rates in the future, which would also have

profoundly damaging effects on our agency revenue.
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5000

Delaware:

- **Kent Sussex Community Services** Since we depend on public funds to provide these services our contract re-imbursement rates and subsequent salary/wages are at the bottom of the scale. An increase in our costs without an increase in capacity for revenue would severely impair our ability to maintain work scope and quality standards expected in our state contracts and licensure. We have a disproportionate number of persons in supervisory, management or professional clinical roles who are paid well below 50,000 per year. We would like nothing better than to increase the salary/wage range for everyone but this would require a major overhaul of State and Federal budgets related to Behavioral Health public services.

- **Mosaic (also in Colorado, Iowa, and Nebraska)** "Mosaic has received minimal provider rate increases in most of the states where we operate. Drastically increasing the overtime threshold will place an additional unfunded mandate on our organization. If states do not increase reimbursement rates, Mosaic and other providers would be put in a difficult position, which is compounded by stagnant and declining revenues and increased demand for services. Inevitably, increasing unfunded mandates without appropriate funding will lead to reduced hours for DSPs, increased turnover, and a potential disruption of services for people with intellectual disabilities."
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5068

Florida:

- **Sunrise Community, Inc (also in Maryland)** "Sunrise currently provides many disability services at a net loss. Without a federal mandate for Parity of Home and Community Based waiver services as well as ICF/IDD services, the federal mandate to increase the wage threshold for exempt employees is too high for viable operations and the regional economies in which we operate. Regrettably, an unintended consequence of this Proposed Rule would be two-fold and include the destruction of much needed infrastructure for inclusive, community-based services as well as failure to transition people from institutional settings as mandated by the Olmstead Act of 1999. Adequate funding levels and parity of services across states are absolutely essential to meet the Proposed Rule. Without adequate funding, the Proposed Rule will force large scale closure of disability service providers on a national basis." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2278

Idaho:

- **Development Workshop, Inc.** "Currently, the state sets the service fee rate for rehabilitation services for people with disabilities and those who are underprivileged. The fee for service would not cover the increased costs associated with the proposed ruling and would hinder the ability of community rehabilitation providers to provide services. Its implementation would result in a reduction in necessary services aimed at helping individuals with disabilities, or who are disadvantaged, to gain and maintain their employment and greater independence." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5483

Iowa:

- **Riverview Center (also in Illinois)** "Riverview Center is a non-profit organization serving survivors of sexual and domestic violence in Iowa and Illinois. Our nearly 40 staff would greatly be impacted negatively by this change...These new guidelines negatively impact Riverview Center clients as well. Survivors of domestic and sexual violence would have less access to advocates/therapists as their hours of work would be limited to reduce salary payments." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-1889

Kentucky:

- **ANCOR commissioned research from Avalere Health:**
  - **Snapshot:** http://cqrcengage.com/ancor/file/c3KOL6GjGYH/By%20the%20Numbers%20One%20Pager.pdf
  - **Full report:** http://cqrcengage.com/ancor/file/usmhoUJ4DDK/ANCOR%20Cost%20Impact%20Scoring%20Memo_final.pdf
  - **Kentucky data:** http://cqrcengage.com/ancor/file/3zTOhIgQ5md/Kentucky%20IDD%20Services%20Snapshot.pdf

- **The Bair Foundation (also in South Carolina)** "In assessing the proposed FLSA overtime change, The Bair Foundation believes the impact on children in foster care will be unconscionable. The Bair Foundation is a therapeutic foster care organization that provides foster homes for children who are abused and neglected... With salaries and benefits being 40% of our budget, and a good percentage of our staff being affected by the change, our Company cannot withstand this huge and drastic change... Services would be severely impacted and the continuous support of children in foster homes would be interrupted, which is a devastating occurrence in the life of a child. With over 400,000 children placed in the foster care system and 100,000 children available for adoption each year, if non-profits cannot take care of these children, who will?" https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-1675

Louisiana:

- **Gulf Coast Social Services** "Gulf Coast Social Services serves low-income and uninsured populations whose cost of care is covered primarily by Medicaid or state and local general funds. Medicaid reimbursement rates and grant funding levels are set by states, counties, or other third party entities—often at levels so low, we are forced to cobble together funding from multiple sources simply to keep our doors open and continue serving community members in need... In addition to the impact on our behavioral health services, our services for persons with developmental disabilities would be severely impacted. Medicaid reimbursement rates for these services can only support management salaries in the $30,000 to $40,000 range. These managers are available to the consumers and Direct Care Companions while on call. By redefining the exemptions, management of the daily operations will be compromised and additional financial burdens will be added to an already marginal budget." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4592

Maryland:

- **Community Behavioral Health Association of MD** "(CBH) is the professional association for Maryland's network of community providers serving the majority of 160,000 children and adults who use our state's public mental health system... We do not support the proposed rule in its current form... CBH members provide front-line treatment, rehabilitation, housing and related services to low-income and uninsured populations whose cost of care is covered primarily by Medicaid or state general funds. Medicaid reimbursement rates and grant funding levels are set by states, counties, or other third party entities... Provider organizations such as ours have limited ability to raise new revenue in response to increased costs of doing business. DOL's proposal to double the overtime pay exemption threshold would place a massive new burden on organizations already struggling to stay in business. Moreover, linking the threshold to inflation would force employers into perennially chasing a rising salary target... many will be forced to close programs and lay off staff, resulting in fewer clients served and reduced access to critical mental health and addiction services for individuals in need... The untenable financial pressure resulting from the proposed changes would force us into disastrous service reductions and program closures." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2448

Massachusetts:

- **Nonprofit Human Services Organization** "The majority of the funding that we receive is through contracts with the Commonwealth of Massachusetts. These contracts are supposed to be reviewed bi-annually... While some of our contracts have been reviewed, others have not been addressed in over five years and are substantially under funded by antiquated rates... Our current lower level professional staff and managers are paid between $35,000

and $47,000 per year. An increase to the $50,440 would cause us to incur expenses in excess of $50,000 per year." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-1187

Michigan:

- **Michigan Federation for Children and Families** "Wage expenses for the vast majority of nonprofit organizations would increase dramatically, with our members estimating an average increase of between 10 and 20 percent, as they adapt to the new thresholds that guide exempt and nonexempt classifications. In most cases, nonprofit child welfare organizations contract with government and other entities to provide critical services; those contracts are multi-year commitments and do not have the flexibility to cover increased costs. The financial viability of thousands of nonprofit organizations—both small and large—would be threatened if not destroyed. Overnight, facing 20 percent increases in personnel costs, many of our organizations would be forced to close their doors, hurting many of the very people that increased wages are supposed to help. The ripple effect of human service organizations going out of business or having their services seriously limited would extend to thousands of vulnerable children and families who had come to them for assistance." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2515

Nebraska:

- **CenterPointe** "This change would have devastating financial impacts on our organization, costing over $200,000 per year over what we currently pay, based on very conservative numbers. As a non-profit, we do not have significant cash reserves, nor can we afford to provide care outside of the 8-5 work day at this cost. Limiting work hours to control costs will compromise the care provided to an already fragile and underserved population." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5190

New Hampshire:

- **Monadnock Worksource** "...established in 1971 by a group of parents of teens and young adults with developmental disabilities. We employ an average of 23 full time staff...given the rural nature and small size of our local towns, we are an employer of significant size... I urge you to limit raising the salary threshold to no more than the 15th percentile...so that our agency, and similar agencies, can sustain the workforce we need to provide these services essential to the well-being and increasing independence of the people we serve with disabilities and to their families. The proposed rule, if enacted as it stands, will erode our ability to provide the degree of supervision, training, and oversight necessary to

maintain a high quality of care within the constraints of our budget." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5591

- **Genesis Behavioral Health** "Genesis employs 165 people, most of whom are full-time employees. Most of our exempt employees— managers and professionals—are currently paid less than $50,000, and under the Administration's proposal would become eligible for overtime. As a nonprofit organization with limited flexibility in the budget, I have serious concerns about how I will cover potential overtime expenses while still aiming to provide high quality services for our clients." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4248

New Jersey:

- **Foster Family-based Treatment Association** "I write on behalf of the Foster Family-based Treatment Association, the only national association of providers of therapeutic/treatment foster care (TFC)... Given that agencies are limited to public funds, the proposed minimum salary for exempt employees will result in numerous agencies closing down due to inability to meet the new salary requirements. As a result, the major advances in child welfare reform achieved by this Administration...will be severely impacted and likely reversed forcing more youth into congregate care settings where staff hours/limits can be controlled, yet whose costs are significantly higher than community based care and whose outcomes are less favorable." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-1908

South Carolina:

- **Habit for Humanity Grenville County, SC** "We are the largest Habitat affiliate in the State of South Carolina with 33 full-time employees. We help families with an area median income between 30 and 60 percent obtain affordable, sustainable homes through homeownership...the proposed changes will greatly impact the finances of our organization...in order for us to keep these 13 employees in exempt status, we would have to increase salaries an additional $139,500 per year...increase our overall salaries budget by approximately 11%." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4541

Washington:

- **Service Alternatives Inc.** "...we are a large employer in Washington State, with over 500 employees...our budget is dictated by the reimbursement rate set in our contracts by the state of Washington. When face with an increase in costs, we do not have the option of

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"raising prices" or otherwise passing on the costs...impact on employees...positions may be cut...some benefits may be cut...impact on clients and communities...increased risk to health and safety...can pose a direct threat to our ability to consistently ensure health and safety."
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5504

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Sampling of Small Business comments from the Federal Register

Delaware:

- **Washington, Maryland, Delaware Service Station and Automotive Repair Association** "We have heard the following from our membership on what business decisions this proposed rule may cause them to make: raising the prices of goods and services to pass on the cost to consumers; layoffs; changing employees from salary to hourly, which could impact benefits or mean reduced pay for weeks where less hours are worked; reducing base pay to account for overtime pay; turning full time employees into part time employees; reclassifying job duties; inability to expand the size of the business (slowing or stopping job creation); and providing less flexibility in hours worked." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-3900

Florida:

- **Southeastern Alliance of Child Care Associations** "Based on informal surveys of some of its centers' members, SACCA estimates that up to 80% of child care directors in the Southeast are paid less than USDOL's proposed projected minimum salary level of $50,440 per year, and that more than half of child care directors in the Southeast are paid less than $35,000 per year." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4275

- **Florida Farm Bureau Federation** "The proposed rule will reduce entry-level management positions in agriculture particularly. Advancing from a picking crew member to crew leader or from a packing house shipper to supervisor is an achievement many workers aspire to. These low-level managers frequently lack advanced degrees and experience which would command high salaries. Still, increasing the employee's wages from hourly to salary can be significant in agriculture but fall well short of $970 per week. This is especially true when hourly wages are exempt from overtime pay due to the agriculture worker exemption. Instead of developing these early managers with training classes and greater responsibility, employers expressed that they would be more likely to limit their duties and hours and place more responsibility on their upper management or themselves." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2811

Idaho:

- **Boise Metro Chamber of Commerce** "Studies have shown that while a few workers will experience pay raises, millions will either see their hours reduced, or will see their salary reduced in anticipation of potential over-time." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-3930

Iowa:

- **Iowa Bankers Association** "On average, 8 percent of Iowa bank employees would be affected by the changes. Based on a survey we conducted of our member banks, the cost to bring current exempt employees to the proposed salary level could cost each bank, on average, $156,000 annually." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4746

Louisiana:

- **Small Business Advisory Council of Louisiana** "The cost estimates made by the DOL/WHO are wholly inadequate and inaccurate. Our members have given us much higher estimates for the cost of understanding the Impact of the changes in their specific workplaces, determining new administrative measures to limit overtime penalties while still accomplishing the mission of the business, setting up revised recordkeeping and payroll systems, and paying employees any overtime penalties they are due. https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5746

- **Baton Rouge Area Chamber** "Here in the Greater Baton Rouge Area, small businesses make up over 99% of local establishments and provide over 80% of all jobs in the region. A new and potentially dramatic increase in labor costs to these businesses is a real threat to the livelihood of Capital Region workers, and to the well-being of our communities. The proposed rules, if implemented, will have direct and severe impacts on business throughout the region - an area recognized by the Investing in Manufacturing Communities Partnership as one of the nation's most important manufacturing corridors - while having few if any positive effects on payrolls." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5293

- **First Heritage Credit** " Sixty-two of our 74 Branch Managers make under $51,000.00 base salary. Eighty-one percent (62 of 74) of our Branch Managers would be reclassified to nonexempt under changes to the salary test. If there is a change in the duties test, 100% of our Branch Managers could possibly be reclassified, as the nature of our business necessarily requires them to do some "clerical" work." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5621

Nebraska:

- **Nebraska Furniture Mart** "is a home furnishings retail store that sells furniture, appliances, electronics and flooring...about 400 staff members will be affected by this change...the minimum salary in place for exempt staff at Nebraska Furniture Mart per our compensation plan is $30,295.72...is market based, meaning we research what other companies in our markets pay for similar jobs. We classify each job into a pay grade with minimum compensation for each job at or above the market pay rate. Each year, we review the market pay for every job in our company, and make adjustments to pay in the case the

market dictates higher wages... already offering staff competitive salaries. This significant of an increase in the minimum threshold for salaried staff will have a tremendous impact, especially for Midwest companies... There are many actions that must take place prior to making large scale changes involving staff moving from salaried to hourly pay, some of which include:

- Changing staff status in both our HRIS and Payroll systems
- Changing compensation in both our HRIS and Payroll systems
- Making changes to benefits as hourly and salaried staff are eligible for different benefits
- Training salaried staff who move to hourly on using various time clocks throughout the building, time clocks on their computers and managing their time
- Training salaried staff who move to hourly how to use and input PTO requests as this process varies for hourly and salaried staff
- Training managers who currently supervise only salaried staff on proper timekeeping for hourly staff

https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2827

New Hampshire:

- **Kennebunk Savings** "Kennebunk Savings is a mid-sized community financial institution...which operates throughout...seacoast New Hampshire...employ over 300 people...support our community, and when we thrive they thrive. This year we'll give back 10% of our earnings—over $790,000—to nonprofit organizations...detrimental impacts will be: cut backs in employees or hours...fewer new job opportunities...our employee base is more than 85% female and many of our employees face demands as caregivers for children or aging parents...our ability as an employer to offer flexible schedules means a great deal to their overall well-being and engagement with the company. The proposed rules will have a detrimental effect on allowing flexible schedules for our employees" https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5312

- **Seacoast Mental Health Center, Inc.** "For too many years we have tried to absorb costs on the backs of employees to mitigate the erosion of services for consumers in need. We can no longer do that. Should these rules go into effect, particularly when paired with our current funding environment, we will have fewer staff providing fewer services to fewer clients. The untenable financial pressure resulting from the proposed changes would force us into disastrous service reductions and program closures." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2569

New Jersey:

- **Atlantic Stewardship Bank** "is a full service commercial bank with 12 branches and employ 151 associates and feel strongly this new rule will negatively impact the bank's employees

and future consideration for their advancement...at our bank we are already addressing changes to associates and their career path in order to accommodate this proposal. Several Associates will not be promoted which will negatively affect their salary and responsibilities...the proposal will cause a significant decrease in morale among exempt employees who become nonexempt"
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-3901

South Carolina:

- **Famous Toastery, in WSJ Article** "a restaurant chain with six locations in North Carolina and South Carolina, some jobs are changing to ensure the company doesn't face runaway labor costs. The chain is moving managers from salaried to hourly pay and asking employees to perform new duties...the company is installing fingerprint scanners to be used for punching in and out of shifts, so that workers cannot clock in for a co-worker who is late. Company leaders will also receive alerts if any employee is nearing 40 hours and still has more shifts left that week, allowing management to intervene before overtime kicks in."
http://www.wsj.com/articles/overtime-rules-send-bosses-scrambling-1437472801

Washington:

- **Building Industry Association of Washington** "...is the champion of affordable housing in Washington State and represents nearly 8,000 member companies engaged in all aspects of new home construction and remodeling...reconsider the proposed rule as changes to the current overtime standard will reduce job advancement opportunities...leads to construction delays, increased costs and fewer affordable housing options for consumers...this new rule will negatively impact over 3,500 employees in the residential construction trade." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2897

Wyoming:

- **21st Century Equipment LLC. (also in Colorado and Nebraska)** "My Company, 21st Century Equipment, LLC is a John Deere Agricultural Equipment dealer. As a small business owner, we currently employ approximately 400 full-time employees, of which 68 would potentially be affected by this proposed change...Should we convert everyone affected by the rule change to non-exempt, overtime would cost us up to $700,000 per year...Employees in my company earn income far in excess of the proposed salary levels, however, that level is reached through base salary (which does not meet the minimum salary proposal) plus commission and incentives that are in place to insure optimal job performance."
https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4752

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Sampling of Public Sector Comments from the Federal Register:

Colorado:

- **RE-1 Valley School District** "The Impact on a school district's budget will be hard hitting...Our non-teaching staff are dedicated to our role in supporting students; that very often means we're working long hours...You might think, as one of the staff who would be affected by the new minimum salary standard, that I would welcome the possibility of an increase, but I'm more concerned that a requirement such as this will force layoffs or lower hourly salaries if forced to move staff to non-exempt status." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-3618

Florida:

- **William Fritz, Indian River Schools, Florida** "I serve as the Assistant Superintendent for Human Resources for a mid-size Public School District in Florida. The proposed changes to the salary basis test would extend overtime to approximately 35 of our employees. Given that we are one of 14,000 school districts in the United States, this change will create an undue burden on our Nation's schools. The State of Florida will not provide fiscal resources to remunerate the School Board, so this amounts to an unfunded mandate. The only way a school system can adjust for this change is to reduce services to students, given that our industry operates with low-overhead. Please maintain the salary basis test at its current level." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-1885

- **Marion County Board of Commissioners, Florida** "Marion County is concerned that DOL's proposed rule would more than double the overtime pay minimum salary level for an employee to qualify as "exempt" from overtime pay. This is a substantial increase over a one-year period. In Marion County, 129 of the current 238 exempt employees would be eligible for overtime pay. Marion County has estimated that the additional financial burden would cost the County as much as ***$1,773,587 in Gross Overtime Salaries in the first year alone, in addition to other expenses, such as increased payroll taxes and benefit costs.***" https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5087

- **Florida Department of Economic Opportunity (DEO)** "DEO compared the results of its analysis with the estimates provided by the White House and USDOL for the affected workers and the costs associated with the Overtime Mandate. DEO's analysis shows the White House and USDOL overestimate by 195,000 the number of Florida workers who will qualify for overtime, while seriously underestimating—by billions of dollars—the high cost to Florida businesses. DEO estimates that the Overtime Mandate ***will cost Florida businesses approximately $1.7 billion***. DEO's Florida estimated cost, by itself, is 82.7% of USDOL's entire National Estimate of $2.08 billion." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5473

- **Small County Coalition in Florida** "Many of our small counties and school districts are fiscally constrained and operate on limited revenues. Many of our small local governments feel that these impacts could result in a reduction of services or increasing taxes." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4486

Iowa:

- **Iowa State Association of Counties** "For example, in Clay County, Iowa, providing additional overtime to one employee would cost approximately $7,250 in the first year. Black Hawk County, Iowa has 87 employees that are currently exempt from overtime and 14 of those employees could become eligible for overtime under the proposed rules. Increased costs could easily outpace the ability of a county to bring in additional dollars through its taxing authority." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5448

Michigan:

- **Detroit Housing Commission** "...the vast majority of [public housing authorities] operate on thin, fixed budgets without sufficient reserves to meet what will constitute more than a doubling of the current salary requirements for exempt employees. PHAs, as a whole, are not revenue-generating entities. Unlike local units of government, PHAs do not have the power to impose taxes to raise funds. Unlike a private employer, PHAs cannot make more "widgets" or increase the cost of its "widgets" to generate revenue. PHAs must accomplish their mission within the limited funds available to them... Since PHA funding is finite, there will have to be some trade-offs. Either customer service would be negatively affected because overtime is limited or there would be fewer employees to do the work because PHAs will be required to leave positions unfilled for lack of funding. PHAs will yet again be requiring their employees to do more with less. There is, however, a point at which the needs of the customer cannot be met with limited staff resources so the PHAs' low and moderate income residents will suffer." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4324

New Hampshire:

- **City of Claremont** "The City of Claremont, NH is opposed to these suggested changes. We are limited on funds and the employees receive very generous benefit packages and because they are unionized, we would be in a position that we would have to lay off workers." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-0924

South Carolina:

- **Georgetown County Board on Disabilities and Special Needs** "While our agency has always tried to thoughtfully abide by DOL rules and compensate its employees, we still will have a $60,000 per year impact to our budget in order to implement a salary threshold of this magnitude. Many workers who fall under these exemptions in our field started out as DSPs, and advanced into supervisory or administrative positions that require independent judgement and flexibility. We encourage their exempt employees to take part in various career and education enhancement and training programs in order to advance in their career paths. Placing restrictions on overtime for these employees would take away options for workers to pursue career-advancing extra activities, including participation in committee work and professional organizations that are foster career growth and professional development of workers." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4750

Washington:

- **Jamestown S'Klallam Tribe** "The use of a single national salary threshold would adversely affect already limited revenues, especially for tribes in rural areas...the average salary offered by many tribal governments and enterprises is substantially lower than the national average...even though the proposed rule will directly and disproportionately affect Tribal governments, there has been no consultation on this rule-making." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5627

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Sampling of Higher Education Impacts from the Register and Media Stories:

Florida:

- **Comments of the State University System of Florida** "At this point, a review of the raw data costs alone for all twelve (12) state of Florida universities' employees currently meeting the exempt tests would be in excess of $62,000,000.00 of annual recurring salary costs if salaries were to be increased to the new proposed minimum salary threshold of $50,440 in 2016." http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2242

Iowa:

- **Comments of the University of Iowa** "The over 2,700 individuals we employ and whose status would immediately change from exempt salaried to non-exempt hourly" and "the alternative of paying overtime would generally be cost prohibitive; the annual cost of one hour of overtime per week for each of our 2,700 impacted employees would increase University payroll costs by over $4 million." http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2316

- **Comments of the Iowa Community College Trustees** "The NPRM mandate impacts Iowa Community Colleges by $12,648,786 in the first quarter of 2016 alone in salary and benefit expense." http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2398

Kentucky:

- **March 30, 2016 Inside Higher Ed OpEd** "As president of Thomas More College, a small faith-based college in Kentucky, I worry that the changes would take a grave toll on institutions like mine that are enrollment and tuition driven... [W]e project our budget would increase by $1.4 million each year... that is more than a 12 percent annual increase... An increase of that magnitude could potentially have catastrophic effects on us and other small institutions nationwide." https://www.insidehighered.com/views/2016/03/29/proposed-new-overtime-pay-regulations-could-negatively-impact-colleges-and-their

- **Kentucky Community and Technical College System** "...we have estimated we could potentially be subject to ***additional wages of at least $2.5 million for a fiscal year, and it could impact approximately 863 of our administrative and staff employees...*** more than doubling the threshold will significantly impact employers and employees and requires a more thorough analysis for the economic consequences... The wages and cost of living in small towns in Kentucky is astronomically different than San Francisco and New York City

and this should be considered... There is also a perception of demotion for employees who have a change in status."

***Maryland*:**

- **University of Maryland Extension** "These changes proposed by the Wage and Hour Division, DOL, would substantially impact the fiscal operations of Extension and our College of Agriculture and Natural Resources (AGNR). These rule changes would cost AGNR approximately $117,446 in base funding and effect 22 persons within our institution. Because of this projected increase in base funding our College may not be able to retain our current number of FTEs or employed exempt positions, thus potentially impacting the personal livelihoods of our employees." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5668

- **February 11, 2016 Letter by Public Sector Employers to Congress:** "The University System of Maryland's preliminary estimate is an increase in costs between $16 million and $40 million in just the first year."

Michigan:

- **March 29, 2016 Hearing before House Workforce Protections Subcommittee:** "For the University of Michigan, the largest higher education employer in the state, the changes would affect more than 3,100 people in roles critical to our missions, including research fellows and lab staff, student housing officers, admissions recruiters, academic advisors, financial aid administrators, social workers, clinical dietitians, 2 clinical research coordinators and fundraisers. The projected cost at U-M to implement the change is as high as $34 million; early statewide estimates from The Michigan Association of State Universities peg the cost at more than $60 million for 11 of the 15 total member institutions reporting." http://edworkforce.house.gov/uploadedfiles/thomas.pdf

Nebraska:

- **Nebraska State College System** "While I support the concept of providing appropriate salary levels and classifications for our employees, the proposed salary threshold increase would alter the status of a great number of our employees who are currently exempt. As three small colleges in rural Nebraska, the State Colleges have a significant economic impact in the regions that we serve, primarily in salaries and the purchase of goods from vendors in our service areas. The proposed rules as written would drastically change how we conduct business and provide service to our students and our communities. Having such a drastic one time increase puts the State Colleges at risk of

having to reduce the number of employees to offset the increased financial costs of overtime pay." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2111

South Carolina:

- **South Carolina Independent Colleges and Universities** "The SCICU membership includes 5 Historically Black Colleges and Universities (HBCU), 2 Women's colleges, and a 2-year college. Many of our members are church-related and faith-based...employ 7,000 throughout the State...would be significantly affected by the changes in the NPRM. Our members agree...the proposed minimum salary threshold, however, is simply too high." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5569

- **ECOP, South Carolina State University** "The mission of Cooperative Extension is to extend the research knowledge of the university to people where they live and work, encouraging changed behavior, and increasing quality of life, business effectiveness, and community vitality...Extension programs have estimated financial effects of this ruling anywhere from $400,000 annually at a smaller university to $3.5 million in a larger one." https://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-3880

June 9, 2016

Chairman John Kline
Education and the Workforce Committee
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Ranking Member Robert Scott
Education and the Workforce Committee
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Re: The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits and Small Businesses

Dear Chairman Kline and Ranking Member Scott,

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. WorldatWork and its 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.

Compensation's positive influence on an employer in terms of long-term results and productivity gains has far-reaching benefits to organizations and individual employees. Compensation also influences and affects the communities in which they operate, live and work, and the overall U.S. and global economies. There are many approaches to achieving this positive effect from the employment relationship, 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 employers and will be detrimental to many employees. WorldatWork agrees that the current salary thresholds needs to 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 employees as they begin to classify more and 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

update that indicates that after 15 years only 14.9% 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 impact 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 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. Employers 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 Education and the Workforce 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. This legislation is supported by 340 national, regional, state and local organizations representing nonprofits, institutions of higher education, schools, cities, counties, and small and large businesses across the country. (Please see attached letter of support).

WorldatWork applauds your leadership for holding this important hearing and looks forward to working with you and members of the House Education and the Workforce Committee as the administration moves to execute the regulation. More than 80% of Fortune 500 companies employ a WorldatWork member. These 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

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

[Additional submission by Mr. Scott follow:]

Economic
Policy
Institute

Facts on the updated overtime rule

Fact Sheet • May 17, 2016

The Department of Labor raised the salary threshold below which all workers are eligible for overtime pay from $23,660 to $47,476. This change will create hundreds of thousands of jobs, extend overtime protections to millions of workers, reduce excessive hours of unpaid work by underpaid employees, and increase salaries for employees earning near the new threshold.

The updated overtime rule will:

Create jobs

- Many employers will hire additional workers instead of paying time-and-a-half to current employees. The new overtime threshold will create:
  - 120,000 jobs in the retail sector alone, according to the National Retail Federation[1]
  - 120,000 jobs, according to Goldman Sachs[2]
  - At least 120,000 jobs, according to the Economic Policy Institute

Extend overtime protections to millions of workers

- Increasing the threshold for overtime pay to $47,476 will give low- and middle-income families a big boost.
  - It will benefit 12.5 million workers by extending overtime eligibility to 4.9 million workers and making it easier for another 7.6 million workers who are already eligible for overtime to prove their eligibility.[3]
  - The workers it will benefit the most include women, African Americans, Latinos, workers under age 35, and workers with lower levels of education.[4]

Reduce excessive hours of unpaid work

- Under the old rule, employees making as little as $23,660 a year who were classified by their employer as professionals, administrators, or executives—for example, an assistant manager at a fast-food restaurant—could be forced to work 60–70 hours a week for no more pay than if they worked 40 hours. The extra 20–30 hours were completely free to the employer, so they scheduled the additional hours without restraint.
- Under the new rule, only employees earning at least $913 per week (in 2015 dollars), or $47,476 a year, can be denied overtime pay.
- Employers used to getting 20–30 free hours of work may respond to the new rule by becoming more efficient and assigning only hours that are truly needed. They may also choose to:
  - Pay time-and-a-half to the "assistant manager" for all of those hours
  - Pay straight time (i.e., normal hourly pay) to a current hourly employee or to a new hire
  - Raise the salary of the "assistant manager" so it is above the new threshold (as is discussed below)

Increase salaries for employees earning near the new threshold

- Employers can still avoid paying for overtime if the employee earns at least the $47,476 salary threshold.
- Under the new rule, it could cost less to pay a salary at or above the threshold (say, $48,000) and assign 20 hours of "free" overtime than to pay below the threshold (say, $45,000) and pay for 20 extra hours per week at time-and-a-half pay.
- In other words, employers could respond to the new rule by raising the salaries of employees earning near the new threshold. Goldman Sachs, the National Retail Federation, and the National Association of Homebuilders[5] all agree with the Department of Labor that employers will take this route of giving preemptive salary increases.

References

1. This estimate predated the final rule and assumed a new overtime threshold of $970 per week. Oxford Economics, on behalf of the National Retail Federation, "Updated Impacts of Raising the Overtime Exemption Threshold," July 17, 2015.

2. This estimate predated the final rule and assumed a new overtime threshold of $970 per week. Goldman Sachs, "The New Federal Overtime Rules: A Greater Effect on Payrolls Than Pay," July 7, 2015.

3. Ross Eisenbrey and Will Kimball, *The New Overtime Rule Will Directly Benefit 12.5 Million Working People: Who They Are and Where They Live*, Economic Policy Institute, May 17, 2016.

4. Heidi Shierholz, *Increasing the Overtime Salary Threshold is Family-Friendly Policy*, Economic Policy Institute, August 20, 2014.

5. Oxford Economics, on behalf of National Retail Federation, "Updated Impacts of Raising the Overtime Exemption Threshold," July 17, 2015; Goldman Sachs, "The New Federal Overtime Rules: A Greater Effect on Payrolls Than Pay," July 7, 2015; Ross Eisenbrey, "The National Association of Home Builders: Evidence Supports DOL's Proposed Rule on Overtime," *Working Economics* (Economic Policy Institute blog), November 6, 2015.

[Additional submission by Mr. Takano follow:]

Economic
Policy
Institute

Nonprofit organizations in support of the Department of Labor's new overtime regulations

June 8, 2016

We, the undersigned nonprofit organizations, write in support of the Department of Labor's new overtime regulations. The updated overtime rule is a great victory for working people across the United States.

In its recently announced final regulation, the Department of Labor raised the salary threshold below which most workers are eligible for overtime pay from $23,660 to $47,476. This change will create hundreds of thousands of jobs, extend overtime protections to millions of workers, reduce excessive hours of unpaid work by underpaid employees, and increase salaries for employees earning near the new threshold. In particular, this rule represents an important step toward fairer pay for women and people of color, who are overrepresented in lower-paying jobs and are often required to work additional hours without compensation.

We recognize that many nonprofit organizations will have to think through and solve interesting problems and will face challenges as we make the changes needed to comply with the new regulations. These important changes will not necessarily be easy. Nonetheless, we embrace this opportunity to restore the overtime pay that lower-paid workers toiling more than 40 hours a week are entitled to.

For many nonprofits, including those of us that provide human services or advocate for workers' rights, poverty reduction, or economic and social justice, this is a critical opportunity to improve the working conditions and the economic lives of the people we serve. At the same time, our own workers and the families they support also deserve fair compensation and greater economic security.

As nonprofit organizations more broadly, we are dedicated to improving the public good. It is time to revisit the idea that working for the public good should somehow mean requiring the lowest-paid among us to support these efforts by working long hours, many of which are unpaid.

All of the undersigned nonprofit organizations are committed to complying with the new overtime regulations. We commend the Department of Labor for this significant reform, which will create better jobs and working conditions for millions of working people throughout the country. We support this historic social justice reform.

Signed,

9to5, National Association of Working Women

9to5 California

9to5 Colorado

9to5 Georgia

9to5 Wisconsin

A Better Balance

ActBlue

Advocates for Youth

African American Ministers In Action

Agenda Project Action Fund

Alaska People's Action

American Association of University Women

American Family Voices

American Federation of State, County and Municipal Employees (AFSCME)

American Federation of Teachers

Americans for Democratic Action (ADA)

Anti-Poverty Network of New Jersey

Ariva

Asian Counseling and Referral Service

Atlanta Women for Equality

The Battle of Homestead Foundation

Benedictine Sisters of Baltimore

Bend the Arc Jewish Action

Black Children's Institute of Tennessee

Brevard NOW

Bus Federation

Campaign for America's Future

CASA

Catalyst Miami

Center for American Progress

Center for Community Change

Center for Economic and Policy Research

Center for Law and Social Policy (CLASP)

Center for Popular Democracy

Center for Women Policy Studies

Center for WorkLife Law

Center on Policy Initiatives

The Century Foundation

Children's Law Center (District of Columbia)

Clergy and Laity United for Economic Justice (CLUE)

Clerics of St. Viator (Viatorians)

ClimateTruth.org

Coalition on Human Needs

Community, Faith and Labor Coalition

Community Forum for Economic Justice

Connecticut Citizen Action Group (CCAG)

Courage Campaign

Delaware Alliance for Community Advancement

Democratic Socialists of America

Democratic Women's Club of Florida

Democracy for America

Economic Opportunity Institute

Economic Policy Institute

Elizabeth Coalition to House the Homeless

Emerge Colorado

End Hunger CT!

Fair Budget Coalition

Fair World Project

Family Values @ Work

First Shift Justice Project

FRESC: Good Jobs, Strong Communities

Generation Progress

God's Will In Action

Gospel Justice Committee

Greater New York Labor-Religion Coalition

Greater Orlando NOW

HEAL

Human Services Council of New York

Illinois Economic Policy Institute

Indiana Community Action Association

Indiana Institute for Working Families

Innovation Ohio Education Fund

Institute for Science and Human Values, Inc

Interfaith Worker Justice

Iowa Coalition Against Domestic Violence

Jobs With Justice

Keystone Research Center

Latino Commission on AIDS

Leadership Conference on Human and Civil Rights

Legal Aid Service of Broward County

Legal Aid Society of the District of Columbia

Los Angeles Alliance for a New Economy (LAANE)

Medical Mission Sisters

MomsRising

MoveOn.org

NAACP

National Association of Social Workers

National Black Justice Coalition

National Center for Lesbian Rights

National Center for Transgender Equality

National Council of La Raza (NCLR)

National Employment Law Project (NELP)

National Employment Lawyers Association

National Low Income Housing Coalition

National Partnership for Women & Families

National Resource Center on Domestic Violence

National Women's Law Center

NETWORK LOBBY

New Jersey Policy Perspective

New Jersey Work Environment Council

Noorvik Boys & Girls Club Alaska

North Carolina Justice Center

One Wisconsin Now

Organize Now

PathStone Corporation

PathWays PA

People's Action

Pennsylvania Council of Churches

Princeton Community Housing

ProgressOhio

Progressive Change Campaign Committee

Public Health Advocates

Public Justice Center

Sargent Shriver National Center on Poverty Law

Sisters of the Presentation

Social Security Works

Southeast Ministry DC

Teens, Training, & Taxes

Toledo Area Jobs with Justice & Interfaith Worker Justice Coalition

The Union of Concerned Scientists

UltraViolet

United Auto Workers (UAW)

United States Student Association

United Steelworkers

URGE: Unite for Reproductive & Gender Equity

Voices for Progress

Washington Community Action Network

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Washington State Labor Council, AFL-CIO

Westland Ecumenical Community Food Pantry

West Virginia Center on Budget and Policy

Wisconsin Faith Voices for Justice Workers' Dignity Project

Women AdvaNCe

Women Employed

Women's Law Project

Working America

Working Partnerships USA

YWCA USA

[Questions submitted for the record and their responses follow:]

MAJORITY MEMBERS:

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October 13, 2016

Michael Rounds
Associate Vice Provost for Human Resource Management
University of Kansas
Carruth-O'Leary Hall, Room 109
1246 West Campus Road
Lawrence, KS 66045

Dear Mr. Rounds:

Thank you for testifying at the June 9, 2016, Committee on Education and the Workforce hearing entitled "The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses." I appreciate your participation.

Enclosed are follow up questions submitted by a Committee member after the hearing. Please provide written responses to the questions no later than October 27, 2016, for inclusion in the official hearing record. Your responses should be sent to Jessica Goodman of the Committee staff. She can be contacted at (202) 225-7101 should you have any questions.

Thank you again for your contribution to the work of the Committee.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

Questions for the Record
"The Administration's Overtime Rule and its Consequences for Workers, Students, Nonprofits, and Small Businesses"
Committee on Education and the Workforce
June 9, 2016

Questions from Representative Elise Stefanik (NY-21):

1. General Rounds, thank you for being with us. As you are surely aware, American universities are the envy of the world and have advanced the global community in more ways than can be listed in today's hearing. This is a result of the ground breaking research that is happening in labs and fields at this very moment. Could you please elaborate on the negative impacts the administration's rule will have on research and the next great discovery?

2. In your testimony you discuss the very real possibility of raising tuition to cover the costs of this rule. When I speak to North Country families about higher education one of their top priorities is maintaining access to higher education through affordable tuition. At a time when tuition has been rapidly rising and students are graduating with historic levels of debt we should not be exacerbating the problem by saddling institutions of higher education with more unfunded mandates. If the University of Kansas were to make the very difficult decision to raise tuition as opposed to the equally difficult decision of cutting critical programs how much would this tuition increase cost students?

3. Mr. Rounds, many institutions of higher education, such as the SUNY system, offer tremendous benefits that may account for nearly half of an employee's compensation. This is something that businesses are not always able to match. Could you explain some the benefits KU offers and how these benefits are viewed under the administration's rule?

Questions from Representative Elise Stefanik (NY-21):

1. General Rounds, thank you for being with us. As you are surely aware, American universities are the envy of the world and have advanced the global community in more ways than can be listed in today's hearing. This is the result of ground breaking research that is happening in labs and fields at this very moment. Could you please elaborate on the negative impacts the administration's rule will have on research and the next great discovery?

It is impossible to predict the impact of the FLSA rule on specific research programs or a specific "next great discovery". We can summarize what we know and then surmise the overall impact on research. NIH has indicated that it will raise the stipend of postdocs on individual and institutional postdoctoral training grants. But a minority of the postdocs are supported by NIH. Most are supported by research project grants (RPGs) including R01 and P01 mechanisms. NIH will not provide additional funds, at least in the near term. Other federal agencies such as NSF are likewise constrained in their ability to supplement research grants, although some NSF postdoc salaries are already above the new threshold.

The vast majority of research universities have indicated (COGR Survey Executive Summary, attached) that they will raise minimum postdoc salaries to the new threshold by institutional policy but do not have the funds to cover the increase. This means that it will be up to individual investigators to re-budget existing grant funds to cover the increased cost. For many this will be very difficult to accomplish without impacting their research program. While national numbers are not available, anecdotally, we know that some postdocs have already been told that their positions will be eliminated for a lack of funds. A typical example is that if an investigator has three postdocs, one will be eliminated in order to raise the other two to the new threshold. In other cases, we have been told that faculty will eliminate one or more graduate student positions in order to fund the increased salary of postdocs, who by virtue of their experience are more valuable to the research project.

Postdocs form the backbone of much of the nation's research endeavors. Given that funds to support the new postdoctoral salary threshold are so limited, in the end the new rule will result in a decrease in the postdoctoral workforce (and in some cases fewer graduate students) to carry out the work. Overall, this will mean that less research gets done. A second order impact is the projected loss through recruitment or retention of the highest quality faculty researchers who expect superior post doc and graduate student support for their research programs.

Human Resource Management

It is impossible to fully predict the impact of fewer postdocs on "the next great discovery." Perhaps, however, one of the postdocs whose position is being eliminated would have made that discovery.

2. In your testimony you discuss the very real possibility of raising tuition to cover the costs of this rule. When I speak to North Country families about higher education one of their top priorities is maintaining access to higher education through affordable tuition. At a time when tuition has been rapidly rising and students are graduating with historic levels of debt we should not be exacerbating the problem of saddling institutions of higher education with more unfunded mandates. If the University of Kansas were to make the very difficult decision to raise tuition as opposed to the equally difficult decision of cutting critical programs how much would this tuition increase cost students?

The cost of the new overtime rule if the University of Kansas raised all employees to the new exempt threshold of $47,476 would be approximately $4 million (including fringe and benefit costs). It is our calculation that each 1% tuition increase generates an additional $1.8 million in revenue. While there is not an exact correlation between increased revenue and the salaries of all impacted employees (i.e. some of the employees are grant funded), the new overtime rule does create a funding dilemma for KU.

At this time it appears unlikely that KU will be in a position to raise the salaries of several categories of employees to meet the new exempt threshold. Three areas that KU projects will be significantly impacted are student advising, student recruiting, student enrollment services and academic advisors. Employees in these areas tend to work more than 40 hours per week, especially during peak student support periods. KU does not have the resources to raise these employees to the new FLSA overtime threshold in order to maintain their exempt status nor does the university have the resources to pay overtime once these employees are categorized as non-exempt. The immediate impact will be on our culture of student support. Support for students does not easily fit into an 8 to 5 work day. The new overtime rule significantly impedes KU's ability to provide personalized and customized student support that enhances retention and improves academic progress. As I indicated in my testimony a shift from relational to transactional support for our students significantly undermines the competitive advantage that our leaders have worked so hard to craft.

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http://humanresources.ku.edu

Human Resource Management

3. Mr. Rounds, many institutions of higher education, such as the SUNY system, offer tremendous benefits that may account for nearly half of an employee's compensation. This is something that businesses are not always able to match. Could you explain some of the benefits KU offers and how these benefits are viewed under the administration's rule?

Public universities in different states have various factors bearing on the benefits that they provide to their employees. The University of Kansas (KU) is an agency of the state of Kansas and therefore the health benefits offered to faculty and staff are those created by the state of Kansas for all state employees, not just university employees. KU retirement benefits were created by the Kansas Board of Regents for faculty and eligible university employees. What we find is that some benefits offered enable us to be competitive in recruiting and retaining quality administrators and research and teaching faculty, but some benefits hinder our competitiveness. For example, the retirement plan provided by the Kansas Board of Regents is competitive and helps with recruitment and retention. The health plan provided by the state of Kansas, however, is becoming more expensive and is not as attractive for current employees and job applicants. In total, however, KU benefits are perceived to be very good and are frequently cited by applicants and new hires as a key reason for their interest in working at the university.

On average KU benefits are projected to cost about 35% of each employee's salary (i.e. KU pays $35 in benefits for every $100 we pay in salary). KU originally projected that it would cost around $3 million to raise all of our currently exempt employees up to the new overtime rule threshold in order to maintain their exempt status. Based on this calculus, it would cost KU an additional $1 million to cover the benefits (fringe) cost associated with these salary adjustments for a total cost of $4 million. To be clear, KU has decided that the cost of raising each exempt employee up to the new threshold is too expensive so the actual costs are less than the projections. The cost, per the answer to question #2 above, is felt in the reduction of student services which effects both our culture of student support and our competitiveness.

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[Whereupon, at 12:44 p.m., the Committee was adjourned.]

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