

May 11, 2016

Chairman David Vitter
Committee on Small Business &
Entrepreneurship
U.S. Senate
428A Russell Senate Office Building
Washington, DC 20510

Ranking Member Jeanne Shaheen
Committee on Small Business &
Entrepreneurship
U.S. Senate
428A Russell Senate Office Building
Washington, DC 20510

Re: An Examination of the Administration's Overtime Rule and the Rising Costs of Doing Business

Dear Chairman Vitter and Ranking Member Shaheen,

On behalf of WorldatWork, I write today to outline and express our membership's concerns with the administration's overtime proposal.

WorldatWork is a nonprofit human resources association of professionals and organizations focused on compensation, benefits, work-life effectiveness and total rewards. WorldatWork members believe there is a powerful exchange relationship between employer and employee, as demonstrated through the [WorldatWork Total Rewards Model](#). Total rewards involves the integration of six key elements that effectively attract, motivate, retain and engage the talent required to achieve desired organizational results.

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 proposed regulation to amend the exemptions for executive, administrative and professional employee exemptions would dramatically impact the ability of WorldatWork's members to maintain that flexibility and clarity. The proposed increase to the salary level, more than doubling the current level, is far higher than what WorldatWork anticipated. Additionally, the proposed threshold does not account for regional economic differences — differences that are already accounted for in the 2015 General Schedule Locality Pay Table.

The overtime proposal also recommends annually increasing the salary threshold adjusted to the 40th percentile of full-time earners or the Consumer Price Index – Urban (CPI-U). However, this annual adjustment does not consider the salary budget nightmare that will ensue for most businesses. First, the rule does not consider that business' fiscal year might be different than the calendar year. Second, it does not consider that an update indexed on the 40th percentile of full-time earners will have a significant impact on employers as they begin to classify more employees as hourly rather than salaried.

(Please see attached [infographic](#)). Finally, the proposed rule does not address the issues related to salary compression and the potential impact of forced salary increases over merit increases.

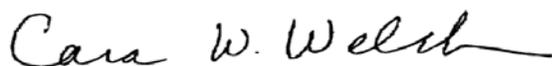
Reclassifying employees to non-exempt status likely will lead to other negative consequences. One area of concern is job flexibility. Under exempt status, employees must generally be paid the same salary regardless of the hours worked, and thus, are afforded a level of work flexibility to take a few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

Finally, our members are concerned that the proposed rule does not make any specific regulatory changes to the duties test but leaves open the possibility of regulatory action on the duties test in a final rule. Rather than simplifying the regulatory process, the Labor Department's action complicates the ability of the regulated community to provide meaningful, substantive comments. Because the Labor Department elected not to focus the discussion with specific regulatory proposals, the regulated community must use its comments to not only identify its own proposals, but also to guess what other proposals may be submitted, and then explain the presumed impacts of those hypothetical proposals.

Accordingly, we urge all the members of the Small Business & Entrepreneurship Committee 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 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 Senate Small Business & Entrepreneurship Committee as the administration moves forward with 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 Woodson Welch, Esq.
Vice President, External Affairs & Practice Leadership

CC: U.S. Senate Committee on Small Business & Entrepreneurship