

May 25, 2023

Re: Request for Abandonment or at Least Postponement of DOL’s Anticipated Overtime Regulations under the Fair Labor Standards Act

Dear Acting Secretary Su:

The Partnership to Protect Workplace Opportunity (PPWO or Partnership) and the 104 undersigned organizations again¹ urge the Department of Labor’s (DOL or Department) Wage and Hour Division to abandon or at least postpone issuance of its announced proposed rulemaking altering the overtime regulations under the Fair Labor Standards Act (FLSA). The Department’s Fall 2022 Regulatory Agenda targeted this May for release of a proposed rule. Even though the COVID-19 public health emergency has been lifted, concerns with supply chain disruptions, workforce shortages, inflationary pressures, and the shifting dynamics of the American workforce persist, and any rule change now would threaten a particularly vulnerable and recovering economy.

PPWO is a coalition of a diverse group of associations, businesses, and other stakeholders representing employers with millions of employees across the country in almost every industry. Formed in 2014, the Partnership is dedicated to advocating for the interests of its members in the regulatory debate on changes to the FLSA overtime regulations. PPWO’s members believe that employees and employers alike are best served with a system that promotes maximum flexibility in structuring employee hours, employees’ career advancement opportunities, and clarity for employers when classifying employees.

In the Fall 2021 Regulatory Agenda, DOL announced that it planned to issue a Notice of Proposed Rulemaking (NPRM) on the “exemption of bona fide executive, administrative, and professional employees from the Fair Labor Standards Act’s minimum wage and overtime requirements” (also known as the white-collar exemptions). In anticipation of the NPRM, PPWO called on DOL “to follow past precedents and hold meetings with the regulated community to obtain input on the potential impact of any changes to the overtime exemption requirements.” PPWO thanks the Department for holding listening sessions last Spring in response to the coalition’s request.

As DOL heard throughout their meetings with the employer community, changes to the white-collar exemptions under the FLSA would disrupt a vulnerable economy. That remains as true today as it was last year. The National Federation of Independent Business’ Small Business Optimism Index decreased by 1.1 points in April to 89.0. This marks the 16th consecutive month below the survey’s 49-year average of 98.2. The NFIB also found that business owners expecting better business conditions over the next six months declined two points to a net negative 49 percent.

¹ PPWO Letter to DOL (May 11, 2022), available at http://protectingopportunity.org/wp-content/uploads/2022/05/PPWO_Letter-to-Walsh_May-2022-FINAL.pdf.

² *NFIB Small Business Economic Trends* (April 2023), available at <https://strgnfibcom.blob.core.windows.net/nfibcom/SBET-Apr-2023.pdf>.

Industries across the country are still recovering from the impact of the COVID-19 pandemic. Some industries were hit significantly harder than others, including restaurants, the travel industry, and workout facilities. Further, current workforce shortages, supply chain disruptions, economic contraction, and inflation are pushing operational costs ever higher. Inflation remains historically and persistently high, supply chains still struggle to keep up with demand, and businesses nationwide cannot hire enough workers to operate at full capacity. At the same time, we are seeing economic contraction in some sectors and face the specter of both inflation and a recession. Many businesses are not well-positioned to absorb new labor costs associated with changes to the overtime pay regulations, and such changes would only exacerbate the difficulties businesses are currently facing.

Additionally, as we noted in our letter last year, the COVID-19 pandemic forced the American economy and workforce to adapt to changing circumstances. One of the most significant changes was the move towards remote, hybrid, or part-time work for a significant number of workers, and many of these workers want to continue to work in these new arrangements. This new normal makes compliance with potential changes to the white-collar exemptions measurably more difficult. To comply with overtime regulations, employers will be obligated to monitor non-exempt employees' worktime, but that may not be compatible with these new workforce dynamics. Consequently, changes to the white-collar exemptions may leave many workers unable to enjoy the part-time or remote work they've come to appreciate. Moreover, DOL's last update to the overtime regulations went into effect in 2020 – just three years ago, which strongly suggests there is no need for urgency in issuing more changes.

For these reasons, we urge the Department to abandon or at least postpone issuance of its announced NPRM until the current economic situation stabilizes and improves to allow the American workforce, employer community, and DOL itself to more fully understand how the pandemic has shifted the paradigm of work in America.

Thank you for considering these comments.

Sincerely,

Partnership to Protect Workplace Opportunity
AASA, The School Superintendents Association
AICC, The Independent Packaging Association
Air Conditioning Contractors of America
American Association of Advertising Agencies (4A's)
American Bakers Association
American Bus Association
American Car Rental Association
American Council of Engineering Companies
American Foundry Society
American Horticulture Industry Association (AmericanHort)
American Hotel & Lodging Association
American Mold Builders Association

American Society of Travel Advisors (ASTA)
American Staffing Association
American Trucking Associations
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Association of Educational Service Agencies
Association of School Business Officials International (ASBO)
Building Service Contractors Association International (BSCAI)
CAWA – Representing the Automotive Parts Industry
Ceramic Tile Distributors Association
Coalition of Franchisee Associations
College and University Professional Association for Human Resources
Construction Industry Round Table
Consumer Technology Association
Convenience Distribution Association
FMI – The Food Industry Association
Foodservice Equipment Distributors Association
Forging Industry Association
Franchise Business Services
Global Cold Chain Alliance
Heating, Air-conditioning, & Refrigeration Distributors International
HR Policy Association
IAAPA, The Global Association for the Attractions Industry
Independent Electrical Contractors
Independent Insurance Agents & Brokers of America (Big “I”)
Independent Lubricant Manufacturers Association
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
ISSA, The Worldwide Cleaning Industry Association
Littler Workplace Policy Institute
Manufactured Housing Institute
MEMA, The Vehicle Suppliers Association
National Association of College Stores
National Association of Convenience Stores
National Association of Electrical Distributors
National Association of Home Builders
National Association of Independent Colleges and Universities
National Association of Landscape Professionals
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Professional Insurance Agents
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Beer Wholesalers Association

National Confectioners Association
National Cotton Ginners Association
National Council of Chain Restaurants
National Demolition Association
National Federation of Independent Business
National Franchisee Associations
National Funeral Directors Association
National Grocers Association
National Lumber & Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council (NMHC)
National Public Employer Labor Relations Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Rural Education Advocacy Consortium
National Rural Education Association
National RV Dealers Association (RVDA)
National Small Business Association
National Stone, Sand, & Gravel Association
National Tooling and Machining Association
NATSO, Representing America's Travel Plazas and Truck Stops
North American Die Casting Association
Outdoor Power Equipment and Engine Service Association
Pennsylvania Food Merchants Association
Petroleum Equipment Institute
Portland Cement Association
Precision Machined Products Association
Precision Metalforming Association
Public Sector HR Association (PSHRA)
Saturation Mailers Coalition
Service Station Dealers of America and Allied Trades (SSDA-AT)
SIGMA: America's Leading Fuel Marketers
Small Business & Entrepreneurship Council
Southeastern Cotton Ginners Association
Texas Cotton Ginners' Association
Textile Care Allied Trades Association
The Latino Coalition
The Society of American Florists
The Transportation Alliance
Tire Industry Association (TIA)
Transportation Intermediaries Association
U.S. Chamber of Commerce
Workplace Solutions Association
World Millwork Alliance