



September 2, 2015

Ms. Mary Ziegler  
Director of the Division of Regulations, Legislation,  
and Interpretation, Wage and Hour Division  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue NW  
Washington, DC 20210

Re: RIN: 1235-AA11

Dear Ms. Ziegler:

Thank you for the opportunity to comment on the Wage and Hour Division Proposed Rule regarding Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (80 Fed. Reg. 38515; July 6, 2015; RIN: 1235-AA11) (the "Proposed Rule").

On behalf of the Michigan Chamber of Commerce, which represents more than 6,800 businesses of nearly every size and type across all 83 counties of Michigan, we strongly urge you to reconsider the Proposed Rule, which would more than double the current salary threshold required for the most common employee exemptions from overtime pay from \$23,660 to \$50,440 per year.

While we agree it may be time to update the salary level last raised in 2004, the Proposed Rule goes too high, too fast and would have a negative effect on employers and employees alike. This letter is intended to highlight the concerns of Chamber members and, when possible, provide suggestions on how the Department should revise the Proposed Rule to move forward with reasonable changes that do not threaten to force labor costs to become so high, and/or to cause other, undue barriers to success for employers and employees alike.

- Salary Threshold - We strongly urge you to reconsider whether to set the minimum salary threshold for "white collar" exemptions at the 40th percentile for all non-hourly paid employees. While this one-size-fits-all threshold will negatively affect all sectors, it will disproportionately affect Michigan's lowest-wage regions and industries, and the smallest businesses. For example, tourism is Michigan's 10<sup>th</sup> largest industry, supporting nearly 215,000 jobs, many of which are in rural areas, including northern Michigan.

A large number of Michiganders working in tourism will need to be reclassified from exempt to nonexempt. Because profit margins in this industry tend to be very tight, many

companies will not be able to simply absorb the added costs of the proposed change and will be forced to significantly restructure their workplaces. This could include:

- lower hourly rates to pay to leave total pay largely unchanged;
- cuts to discretionary bonuses and benefits to leave total compensation unchanged;
- reductions in hours worked to avoid paying overtime; or
- replacing higher wage mid-management positions with lower wage employees and reassigning their supervisory responsibilities to senior management.

We urge you to find an alternative way of screening out obviously nonexempt employees, in a manner that does not simply rely on an arbitrary salary level or nationalized data, such as geographically-specific salary thresholds. This could include the application of geographically-specific thresholds.

Along these lines, we also urge you not to impose upon all employers a salary test that assumes (as does the Proposed Rule) each employer must in essence provide for a family of four with every exempt job across the nation. That is, the Proposed Rule incorrectly assumes: (i) each exempt employee is a head of household, or equivalent (e.g., “married with two children”); (ii) for any employee’s exempt status to be deemed “fair” or their work “rewarded,” they must be paid at such a level (or paid overtime); and (iii) any lower salary is not fitting for the exemptions for any human being working for any employer (see, e.g., “Rewarding Hard Work” promotion/slides, June 30, 2015, at [www.dol.gov/features/overtime](http://www.dol.gov/features/overtime)). However, these criteria and assumptions do not apply to, or hold true of, many of the employees who would be affected by the proposed rule change.

- Inflationary Index – Given the large jump in the salary threshold (approximately 113%), we ask you to reconsider the Proposed Rule’s establishing a mechanism for automatically increasing the salary levels even further, annually, based on either the 40th percentile methodology or inflation (CPI-U). This structural change, along with the initial, proposed increase in the salary threshold, would be particularly damaging to our state’s economy, could reasonably hurt morale for stronger performing employees, would increase costs to consumers and would effectively punish the business community. Indeed, the Proposed Rule, if implemented, will force employers to increase salary levels on an annual basis, regardless of performance of the individuals involved or of the organization as a whole, and regardless of competitive or budgetary pressures.
- Duties Test – We understand the agency is “seeking additional information on the duties test for consideration in the final rule,” and has posed several questions. Given changes to the duties tests could take many forms, are unknown in their specifics and could require many employers to restructure their workforce, we respectfully request the Department open a *new* 60-day comment period following notice of any such changes in their specifics so that substantive and meaningful comments on those specifics can be considered.

While the effect on employers is rather obvious, it is important to further note how employees would be affected by the Proposed Rule.

- First, even if not required, as a practical matter, many employees will be converted from salary to hourly-based compensation, thereby losing flexibility of their scheduling. If employees take time off to attend school meetings, doctor's appointments or tend to other personal or family needs, for example, employees would lose pay they otherwise would have received had they remained salaried.
- In addition, many currently-exempt employees will lose flexibility with respect to where they work because, when these employees are converted to hourly compensation, employers will be much less able to reliably and accurately track the employees' hours from a remote location.
- Finally, the Proposed Rule could hollow out middle-management opportunities, reducing avenues for professional growth and advancement.

The Proposed Rule is one of the most aggressive forms of federal governmental interference in the workplace we have seen in a decade or more and should be scaled back significantly, if not completely revamped. The federal government cannot impose a government mandate of this size and expect it not to have a negative effect on the economy or the very workers it is hoping to help. We urge you to reconsider.

Thank you again for the opportunity to comment. Please do not hesitate to contact me with any questions at (517) 371-7678 or [wblock@michamber.com](mailto:wblock@michamber.com).

Sincerely,

A handwritten signature in black ink that reads "Wendy Block". The signature is written in a cursive, flowing style.

Wendy Block  
Director of Health Policy & Human Resources  
Michigan Chamber of Commerce