

July 24, 2015

To Whom it May Concern:

The undersigned organizations respectfully oppose any requests seeking an extension of the 60-day period in which to comment on the Wage and Hour Division's Notice of Proposed Rulemaking WHD-2015-0001-0001, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees." The Department of Labor has conducted a lengthy, comprehensive, and transparent process to design the proposed regulation, and any delay will only harm workers.

On March 13, 2014, President Obama issued a Presidential Memorandum directing the Department of Labor to update the regulations defining which white collar workers are protected by the Fair Labor Standards Act's overtime standards. Upon issuance of this Memorandum, the Department undertook an extensive effort to reach out to all types of stakeholders, conducting listening sessions with, among others, workers, employers, employers' advocates and business associations, workers' advocates, unions, state and local governments, and small businesses. At each session, stakeholders were asked to opine on the salary threshold, the duties test, and how the regulation could be simplified. Indeed, employer groups such as the National Restaurant Association [publicized](#) these sessions to their members, in order to drive member attendance.

Nearly 16 months after the issuance of the Memorandum, during which time interested stakeholders both supportive of and opposed to revising the regulation continued to meet with officials from both the Wage and Hour Division as well as the Office of Management and Budget, DOL officially issued the Notice of Proposed Rulemaking (NPRM) on July 6<sup>th</sup>, 2015.

All interested stakeholders have thus had a more-than-ample period of time to prepare their arguments, and to mobilize their members and allies to comment when the NPRM was issued. Just as thinly-resourced workers' rights organizations have been planning for the release for over a year, employer associations have been doing the same with their members as well.

During that 16 month period, some of the nation's leading advocates for employers issued significant reports, letters and recommendations about how the Department should revise, or not revise, the regulations. Though not a comprehensive list, some of the publications include:

- a 16-page [letter](#) from the Human Resources Policy Association;
- a 30-page [report](#) from the National Retail Federation;
- an 8-page [report](#) from the Heritage Foundation; and
- 6 pages of data [analysis](#) from the National Association of Home Builders.

These and other employer-generated materials address salary threshold levels comparable to what the Department has proposed, and include extensive comments about the duties test.

Based on all these factors, claims that the 60-day comment period is insufficient time to respond and coordinate one's members to respond ring hollow. The substance of the NPRM was not much of a surprise to anyone who has been following this issue for the last 16 months, except perhaps for the Department's suggestion that it may refrain from proposing any changes to the duties test at the current time. This, if anything, makes the process of preparing comments easier, rather than more difficult.

Most importantly, workers have seen their overtime protection continuously erode since the late 1970s, the last time the regulation was regularly updated to ensure that there was a sufficiently robust salary level. And the 2004 revisions did far too little to restore the lost value of the salary threshold, and significantly weakened the duties test, stripping even more protection from workers. Thus, for more than a decade, too many workers have been forced to work too many hours essentially for free. We cannot allow them to continue to suffer such abuses any longer than necessary. Similarly, the spreading of excess hours that will occur once the new regulation is finalized will provide much needed relief to the far too many under-employed and unemployed workers in our economy.

The [public](#) overwhelmingly supports the proposed rule, there is strong Congressional [support](#), it is well within the Department of Labor's power to issue a new overtime rule, and as described above, those now requesting an extension had ample opportunity and every reason to anticipate the proposed salary threshold.

The only reasonable conclusion one can come to is that opponents' only hope for defeating this regulation, is to run out the clock on DOL's ability to issue a final regulation in a timely fashion. Extending the notice and comment period for this NPRM is the first step in a campaign to accomplish just that. Indeed, one need look no further than the Chair of the House Education and Workforce Committee admitted as such to a Bloomberg/BNA reporter: "We've got a year and a half to push back," Rep. Tim Walberg (R-Mich.), who chairs the Committee on Education and the Workforce's Subcommittee on Workforce Protections, told

Bloomberg BNA July 16. “If we can hold back and put the light of day on, maybe—at the very least—in the next term we can move out.”

For these reasons, the undersigned organizations respectfully request that the Department of Labor not extend the 60-day notice and comment period for NRPM WHD-2015-0001-0001.

Sincerely,

9to5, National Association of Working Women

AFL-CIO

American Federation of State, County and Municipal Employees (AFSCME)

Americans United for Change

Bend the Arc Jewish Action

Center for Community Change Action

Center for Effective Government

Coalition on Human Needs

CREDO

Democracy for America

Economic Policy Institute

Food Chain Workers Alliance

Interfaith Worker Justice

Jobs With Justice

Leadership Conference on Civil and Human Rights

Moms Rising

MoveOn

National Council of La Raza (NCLR)

National Employment Law Project

National Employment Lawyers Association

National Partnership for Women & Families

National Women’s Law Center

Restaurant Opportunities Center United

Steelworkers Union (USW)

USAction

Voices for Progress

Working America