



November 7, 2023

Director Amy DeBisschop  
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: Independent Women's Forum Comments on Proposed Regulations to Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees**

Dear Ms. DeBisschop,

Independent Women's Forum (IWF) appreciates the opportunity to comment on the Department of Labor's proposed regulations to expand the number of workers eligible for overtime pay. IWF is the leading national women's organization dedicated to developing and advancing policies that are more than just well-intended but enhance people's freedom, opportunities, and well-being.

IWF is committed to advancing common-sense policy solutions that support women's unique needs in the workforce. Households are under great financial pressure today due to over two years of elevated inflation. Women, even more than men, **express** being stressed out about their financial situations. The percentage of women doing well financially hit a five-year low at just 35%. We agree with this administration's goal of increasing worker income. However, we believe this administration would be better off prioritizing inflation reduction to increase workers' real wages and earning power.

The truth is that, although this proposed overtime rule is positioned as a pay increase for workers, it will reduce flexibility for women and massively increase costs for businesses, especially small businesses. IWF's comments focus on identifying the consequences of the proposed regulation that would benefit from additional scrutiny. We urge that this rule not be implemented.

**Background**

Under the Fair Labor Standards Act (FLSA), hourly workers who log over 40 hours each week must receive overtime pay at a rate of at least one and a half times their regular pay. The FLSA exempts many employees from overtime, such as executives, managers, professionals, and salespeople.

Under current DOL regulations, any salaried employee earning below \$35,568 annually is eligible for overtime, regardless of the employee's job duties. The **new**

**proposed rule** would increase that threshold to salaried workers earning less than \$55,000 annually, including call representatives, grocery store stockers, and warehouse workers.

Over the past decade, the salary threshold has been raised by both Democratic and Republican presidents. President Barack Obama sought to nearly double the threshold from \$23,660 per year to \$47,476, but his rule was blocked by a federal judge from taking effect in 2016. In 2019, President Donald Trump raised the overtime threshold to the current level.

The Biden administration's proposal would be a 55% increase from the current level set by his predecessor. This rule is expected to affect 3.6 million people and increase employee pay by \$1.3 billion.

## Concerns

### 1. The DOL fails to fully consider the rule's costs impact on small businesses.

The DOL's economic analysis currently estimates that the proposed rule would not have a significant economic impact on a substantial number of small businesses.

IWF encourages the DOL to perform a more sophisticated analysis of the costs that the rule will impose on small businesses. As an organization with 30 all-female employees, IWF is particularly sensitive to the impact of regulations on small businesses. Women-owned businesses tend to be smaller than those owned by men.

The DOL estimates that total annualized direct employer costs would be **\$664 million** over 10 years, with small businesses bearing half or more of those costs—ranging from \$294.6 million to \$356 million. However, this analysis underestimates the likely increases in total costs and compliance costs.

For example, the DOL expects that small entities will spend just one hour in the first year of implementation getting familiarized with the new regulations and 10 minutes each subsequent year. They predict that payrolls for small businesses will increase by just 0.49% or \$2,683 per entity.

However, this makes generous—even laughable—assumptions about the time and resources that will be required for compliance. Mom-and-pop business owners are not necessarily accountants or human resource officers and will have to hire professionals to help them understand and comply with the regulations adding new costs. Going forward, the increased time tracking and reporting of impacted employees' hours will raise compliance costs and saddle small employers with new bureaucratic burdens. In addition, there is an opportunity cost; the time that new business owners and managers spend tracking hours is time not spent building and managing their businesses.

Even the DOL recognizes that their cost modeling may be too low noting, "It is possible that the costs of the proposed rule may be disproportionately large for small entities, especially because small entities often have limited human resources personnel on staff."

In addition, employers also face litigation costs. From 2001 to 2011, labor lawsuits in federal court increased by **nearly 500%** driven almost entirely by wage and hour claims including overtime—for work done while away from the office—and worker misclassification. Litigation costs are especially high in industries where virtual offices and telework thrive. The tech start-up industry alone was **estimated** to face between \$317 million and \$4.5 billion in overtime legal fees if the Obama proposal had gone into effect. Current litigation costs for wage and hour claims have surpassed those of the previous decade likely due to the pandemic forcing millions more workers into partial or full remote work.

Increased labor, compliance, and litigation costs will be borne by workers in reduced pay and opportunities or could increase prices for many consumer goods, as food service, retail, and manufacturing would be particularly impacted by this rule.

## **2. The DOL fails to consider the negative effect of this rule on workers.**

Employers will respond to the costs imposed by expanded overtime rules by making changes to their workplace benefits and operations. Increasing the number of workers covered by overtime pay rules could lead to the following outcomes for workers:

- **Reclassification:** To keep costs in check, employers will likely reclassify newly non-exempt salaried employees to hourly employees. Employers can then reduce the employees' hourly wage to reflect expected overtime—thereby leaving total earnings unchanged. This is likely for employees who do not work much beyond 40 hours per week. In fact, economists conclude that employers will convert **millions** of salaried professional employees to hourly workers required to clock their time.
- **Reduced pay:** Employers may lower hourly pay rates to account for overtime. According to **one study**, employers covered as much as 80% of overtime costs by lowering wages.
- **Fewer benefits:** Workers who are reclassified as non-exempt from overtime pay may lose other costly benefits or have those benefits reduced.
- **Fewer hours and greater stress:** To limit the amount of overtime that reclassified employees incur, employers will more closely monitor employee schedules and cap their time at 40 hours. An estimated **11% of the 2.2 million** retail and restaurant workers would have had their hours reduced if the proposed Obama-era overtime rule had been enacted, resulting in a loss of \$2.3 billion to managers and supervisors. In other lines of work, many employees may have their hours but not their workloads reduced, forcing them to complete the same workload but in less time.
- **Increasing part-time employment:** Employers may opt to hire more part-time workers to fill their business needs rather than full-time employees (to avoid incurring overtime costs).

- **Deploying automation:** In the long term, employers may forgo new hiring and substitute non-exempt workers with labor-saving capital investments in automation.
- **Less flexible work arrangements:** Some **12.7%** of full-time employees work from home, while 28.2% work a hybrid model. Many others telecommute on an ad hoc basis or work non-traditional hours. Under the new rules, employers would have to track when employees respond to emails, conduct phone calls, or do other work-related tasks and pay them overtime. To avoid the added tracking, employers are likely to respond by limiting or eliminating telework and remote work options.

### **3. The DOL fails to consider how this rule uniquely negatively affects female workers.**

The DOL rule is expected to fall disproportionately on industries with large concentrations of women, such as fast food, retail, and health care. Some **53%** of all fast food workers, **56.5%** of retail workers, and **eight in ten** healthcare workers are women. While some women would qualify for overtime, if employers respond in the ways noted above, they will lose in pay, benefits, preferred classifications, and opportunities. Women also stand to lose a non-financial benefit that they deeply value: flexibility.

Women benefit from flexible work arrangements that allow them to take time off as needed or to structure their days around other priorities such as raising children or caregiving for aging parents, as long as they get their job done. When polled, women consistently express the need for **greater flexibility** in hours and work from home, **greater control** over their financial future, and **better work-life balance**.

This rule would lead to the elimination of the flexibility that women enjoy because it is difficult to track the activities that occur outside of traditional hours such as those noted above. For many women who are caregivers or managing their own health conditions, flexible arrangements allow them to remain attached to the labor force. Employers with female workers transitioning into or out of maternity leave can negotiate unique schedules or project-based arrangements that ensure work is done while the expectant or new moms contribute to the team. This boosts labor force attachment for women who might otherwise have to resign and ensures continuity in the workplace. However, these arrangements are not easily captured by one-size-fits-all tracking. Employers may be less apt to make these arrangements.

Many women-owned businesses and organizations, such as IWF, operate based on flexible models of work that accommodate the schedules and situations of their female workforce. This overtime rule will increase costs, bureaucracy, and red tape for nimble organizations and divert new resources away from their operations and missions.

IWF appreciates the opportunity to comment on this proposed overtime rule. This policy change may be well-intentioned, but good intentions are not good enough. An overtime expansion will lead to negative outcomes for many women and women-owned enterprises as well as increased costs and red tape for small

businesses nationwide. The Department of Labor should reconsider implementing this rule or other regulations that erode the workplace arrangements and benefits that women prefer.

Respectfully,

A handwritten signature in black ink, appearing to read 'Patrice Onwuka', with a long horizontal flourish extending to the right.

Patrice Onwuka  
*Director*  
*Center for Economic Opportunity*