“Bad for Business: DOL’s Proposed Overtime Rule”

House Committee on Education and the Workforce
Workforce Protections Subcommittee

Testimony of Jagruti Panwala
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I. Introduction

Chairman Kiley, Ranking Member Adams, and distinguished members of the Subcommittee, thank you for the opportunity to testify before you today. It is an honor to appear before Congress and share my story. This is especially true as you consider policy initiatives that will impact small business owners across the country.

My name is Jagruti Panwala. My family and I are small business owners from Pennsylvania. Specifically, we are hoteliers - independent owners and operators of eight hotels, seven of which are in the Northeastern United States. I am also a first generation American, an entrepreneur and a franchisee. I come before you today to discuss a serious issue that will have negative consequences for not only my business but my employees as well.

I was born in Gujarat, India. My family and I immigrated to the United States in 1988 in search of opportunities for education and entrepreneurship. Very shortly after graduating from college, I decided to take the biggest risk of my life by purchasing a hotel and going into business for myself. When I was only 22 years old, my husband and I bought the Economy Inn, an independent motel with 35 operational rooms, in Levittown, Pennsylvania. We borrowed money from family and friends to make the down payment and secured a loan to get started.

In addition to working at the Inn for more than 100 hours per week, we also lived in room 201. Not only was I an owner and operator, but I was also a desk clerk, housekeeper, plumber, security guard, handyman, landscaper and janitor. The building was old and dilapidated. It posed a number of challenges, including leaky pipes, a crumbling foundation, broken furniture, rust, mildew and a general lack of customers. For two years, we repaired, replaced, renovated and marketed our motel into respectability. Even after all of our efforts to rebuild our business and our home, it was still difficult to make ends meet – particularly in that market. In order to succeed as hoteliers, we realized it was not enough to simply run the operations efficiently, but we needed to attract more customers. We found that we could do so by affiliating with a nationally recognized brand and we converted the Economy Inn into a Comfort Inn hotel through franchising with Choice Hotels. Ultimately, franchising appealed to us because we still controlled our own business. We identified the property, secured the financing, undertook all of the risk, determined how many staff people were necessary, established wages, hours, schedules, promotion and bonus criteria, eligibility for overtime, hiring, firing, and all of the daily operations and functions necessary to operate a successful business.

Today, we own and operate eight hotels located in Pennsylvania, Texas, New York, New Jersey, and Ohio. Among these properties, we employ over 200 people and maintain a very closely-knit relationship with them. The single most important aspect of our business is our employees. Many have been with us for years and they are like our family. We care about our people and are committed to helping them realize their full potential, which is why our success is our employees' success. We feel that the dedication to our employees will bring us loyalty from our guests and the communities in which we serve. For many, the flexibility of being a salaried employee allows them to grow within the organization.

In addition to running our family business, I currently serve on the Board of Directors for the American Hotel and Lodging Association (AHLA). AHLA has led the hospitality industry for over 110 years and is the national association representing all segments of the U.S. lodging market, including hotel owners, REITs, chains, franchisees, management companies, independent properties, state hotel associations, bed and breakfasts, and partners organizations. The American hotel industry is comprised of more than 62,000 hotels, 33,000 of which are small businesses These properties generate more than $300 billion in sales every year, forming a critical part of the national GDP, and support more than 8.3 million jobs, equivalent to 1 in 25 jobs in the country. Hotels are integral contributors to communities across the country and annually generate nearly $75 billion in tax revenue at the federal, state, and local levels.

I am here today to explain my perspectives as a small business owner and hotel operator, and to describe how the Department of Labor's proposed changes to the Overtime Rule will have devastating effects on my businesses, my employees and the lodging industry.

II. The Current Economic Landscape Should Drive DOL to Abandon this Rulemaking

America's hotels were hit especially hard by the COVID-19 pandemic. For the majority of our properties, we were operating at 50% capacity and were forced to limit operations, cut services, close rooms and consequently lay off many employees. In 2020, nearly 4 million jobs in the broader hospitality industry were lost due to the pandemic,[1] employment in the leisure and hospitality industry dropping 48.6 percent from February 2020 to April 2020. Only about 1 in 4 of those jobs were recovered by 2021, and even by July 2023, the industry was still 2.1 percent below its pre-COVID-19 levels.[2]

Despite the end of the COVID-19-related national emergency, other economic difficulties continue to hamper the economy, and specifically the hospitality industry, making the timing of this proposed rulemaking that much more concerning. There is still a significant workforce shortage across the industry and economy. After losing a large number of our employees during the pandemic, it became an insurmountable task for us to re-hire to full capacity. In addition, the workforce landscape has changed dramatically, making it nearly impossible to recruit and retain

[1] Oxford Economics, "Economic Impact of the US Hotel Industry," January 2021.
[2] Bureau of Labor Statistics, "The Economics Daily Report," August 10, 2023, available at https://www.bls.gov/opub/ted/2023/leisure-and-hospitality-employment-down-2-1-percent-from-february-2020-level.htm#:~:text=Employment%20in%20leisure%20and%20hospitality,of%20the%20COVID%2D19%20pandemic.

employees as people have moved or left the industry all together. We are still not staffed at levels sufficient to serve the number of guests staying at our hotels, nor have we regained the amount of employees who worked at our company in 2019. These challenges are not unique to my business; they are consistent with what all hoteliers across the country are experiencing. According to BLS data, the accommodations industry is employing 217,000 fewer people than pre-pandemic. In an AHLA survey conducted in October 2023, over 75% of hotels reported experiencing a staffing shortage, with 20% saying it is severe.

Moreover, the economy is currently dealing with historic inflationary pressures. While inflation peaked at 9.1% in June 2022 (the highest rate in over 40 years), it remains at 3.7% in the 12 months through September. Inflation is making the cost of doing business that much more expensive while simultaneously making it harder for our customers to afford services and products, including leisure and business travel. Our industry continues to face an uphill battle in its recovery from the COVID-19 pandemic.

As explained below, the impact of this proposed rule will harm our businesses, the relationships with our employees, and the ability for hoteliers to own and operate small businesses in the United States. DOL should consider all of these factors before implementing this rulemaking. At this time of economic uncertainty, DOL should allow the economy to continue to stabilize before making such a drastic change to the overtime pay requirements.

III. The Department of Labor's Proposed Overtime Rule Will Have Devastating Consequences for the Hospitality Industry and our Workforce

The Department's overtime proposed rule will have serious consequences for my business as well as my employees. It is critical to note that the proposal does not simply increase salaries for a few employees at a marginal level. Rather, an up to 70% increase will drastically impact the entire business plan well beyond compensation. We expect not only significant jump in direct staffing costs, but also substantial increases in associated labor costs including payroll taxes, federal and state unemployment taxes, insurance, and 401(k) contributions – none of which seem to be included in much of the discussion. As a passthrough business owner, I am acutely aware of and sensitive to every cost and allocation. The service industry in general and hotels specifically operate on very tight margins and shocks to our businesses handed down by the federal government with nearly no time to adjust to them could be the difference between staying open and closing our doors. I know firsthand that hoteliers across the country feel the same anxieties about this new rule as I do because I hear it every day from my family members, partners, and colleagues. According to AHLA's recent survey of its members, 90% of members anticipate cost increases associated with the proposed rule. The cost of doing business continues to increase because of current inflationary pressures and the critical workforce shortage, making these new cost increases that much harder to absorb.

In order to handle these increases, employers will be forced to take actions that we do not want to take, including actions that could set workers back in their careers. Hotel properties often have a small number of staff who have worked at a property for many years, and they work together as a family. The last thing small business owners want to do is lay off employees. Unfortunately, some hotels may be forced to do so because of this new rule in order to stay in business.

While it is true that some exempt workers may see their salaries increase to the new minimum threshold in order to ensure they remain exempt from overtime pay, many workers will likely be reclassified from salaried to hourly, making them nonexempt but also constraining their access to benefits, hours, potential flexible work arrangements, and even opportunities for career advancement. Over two-thirds of respondents to AHLA's survey (67.1%) expect to reclassify workers in response to the proposed rule. Those positions most affected will likely be mid-level managers (66.4%), housekeeping management (55.63%), and front desk/concierge management (46.4%), while sales and marketing managers (44.1%), general managers (37.2%), maintenance management (41.4%), and culinary/culinary management (31.6%) will also be impacted by changes forced by the new law.

With reclassification to hourly, employee morale will suffer. In my decades-long experience in lodging, our employees have a goal of becoming salaried for all the additional advantages that come with these positions. If workers lose their exempt status as a result of this new regulation, however, they also lose the other benefits and workplace status that come with it. Employees may no longer qualify for certain advantages including paid time off, benefits, flexible schedules, remote work, worker development opportunities or work-related travel, and have to punch in and out of work with no autonomy over how they do their duties, and general peace of mind to name a few. Survey respondents said they were concerns about the limitations to employee growth (54.5%) and the potential loss of benefits (32.2%) that will likely result from implementation of the proposed rule. Remote work flexibility has become an expectation for many employees post-COVID-19, but without the ability to monitor workers while remote and prevent their accumulation of overtime hours and pay, employers may be compelled to limit or stop offering those arrangements to reclassified employees. Hoteliers further believe staff turnover (43.5%) and lower job satisfaction (43.9%) will be significant challenges for their operations. As I shared earlier, I have spent my entire adult life in the hotel business and I have done every job there is to do – from housekeeping and maintenance, to bookkeeping and management. I know firsthand what it takes to advance in a career. The benefits of a salaried position afford employees the opportunity to learn aspects of the business beyond their immediate job duties.

This new rule would especially hurt the hotels in regions of the country that depend on seasonal visitors. Reclassified employees who work in these locations, from the coasts to the national parks, to mountains, will be particularly adversely impacted. We own three properties in Ocean City, New Jersey and another property close to Dorney Park amusement park in Allentown Pennsylvania, all of which are very seasonal. This means that during our off season we have significantly fewer hours of work to distribute to our employees. The ups and downs of seasonal businesses hit hourly workers much harder than full-time, salaried workers. Salaried workers obviously have much more predictability in their pay, while hourly workers are at the mercy of the hours of operation of their workplace. If the rulemaking is implemented, the newly reclassified workers will unavoidably have fewer hours, exposing them to unpredictable month-to-month earnings.

DOL severely underestimates how costly this regulation will be for small businesses. The Department seems to have ignored the fact that different regions of the country have significant variations in cost of living and therefore will see significant variations in the impact of the proposed rulemaking on their economies. For example, in 2023, first-line housekeeping supervisors in New York earned an average annual wage of $61,613, while the same position in Texas saw average earnings of $42,312.[3] The proposed minimum salary threshold, therefore, will hurt Texas' hoteliers considerably more than those in New York.

DOL is proposing an implementation timeline that will make the rulemaking even more burdensome for the hospitality industry. The Department only plans to provide a 60-day implementation period, but this does not provide many hoteliers with sufficient time to understand a final rule, make changes to their operations, and discuss those changes with affected workers. In my business, approximately 30% of my revenue is received three to six months after services are provided to customers. Significant increases in payroll could present cash flow issues for our operations. This is not my story alone. Many other hoteliers have operations like mine and will face similar obstacles.

Finally, the Department's effort to implement automatic updates to the minimum salary threshold will create immense problems for hoteliers, especially regarding financial projections and their ability to plan for the future. According to the proposed rulemaking, the automatic updates will occur every three years regardless of economic circumstances at the time, which means that the threshold will be updated even if economic problems exist. You can only imagine how many more small businesses would have gone under during the COVID-19 pandemic if a threshold increase occurred while the economy was shut down or recently reopened.

Additionally, DOL does not plan to provide stakeholders with an opportunity to weigh in with the Department about new increases to the threshold, and DOL proposed to announce new thresholds only 150 days before they went into effect. This is simply not enough time for hoteliers to analyze the new threshold, make necessary changes to their operations, and explain to their workers how they'll be impacted.

It's important to remember that the minimum salary threshold was intended to weed out the obviously non-exempt workers from the obviously exempt. This new rule, however, raises the threshold so high that this intended mission is entirely ignored. It restructures the overtime pay regulations in a manner that was never intended by Congress, putting at risk small businesses across the country, including my own.

IV. Conclusion

Chairman Kiley, Ranking Member Adams, and members of the Subcommittee, I sincerely thank you for the opportunity to share my story with you.

In the hotel industry, our employees' success is our success, and this misguided rule by the administration will provide less flexibility and more uncertainty in employee pay. While I'm sure

[3] Source: AHLA, Bureau of Labor Statistics, and Department of Labor

well-intentioned, this rule will not provide positive outcomes for hoteliers or their employees. Many will be forced to lay off employees just to stay in business. This is an outcome no one wants.

I strongly urge you to consider the adverse implications of the overtime proposed rulemaking on small business owners and workers when deliberating potential legislative policy proposals.

Thank you.