

RIN 1235-AA20

March 27, 2019

Ms. Melissa Smith
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: Notice of Proposed Rulemaking; Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales, and Computer Employees
Docket No. WHD-2019-0001-0001

Dear Ms. Ziegler:

I am the President and CEO of a professional placement firm in Nashville, TN. We employ about 55 full-time people. We are a member of the National Association of Professional Services.

I am writing to comment on the above-referenced proposed regulation to change the overtime requirements under the Fair Labor Standards Act (FLSA). Being in the professional placement business, I am uniquely qualified to weigh in on several different types of business. I am specifically concerned how the increase to the salary threshold will impact professional sales employees, nonprofit employers, small businesses, and employers in lower cost of living and rural areas of the country. This proposed increase will place a substantial financial burden upon many businesses, including my own, by increasing both salary and operational expenses with no return on investment (ROI). These additional costs, if enacted in the current form, would likely be borne

directly by my employees in the form of lower commission compensation, which would be the opposite of the intended effect. The proposed rule change would have a significant impact on my company and our professional recruiters, thus I strongly urge the Department of Labor to consider the enclosed comments, below, and reconsider the proposed changes accordingly.

The DOL's proposed rule increases the minimum salary to qualify as an exempt employee from \$455 (\$23,660 annually) per week to \$679 (\$35,308 annually) per week in 2020. Adjusting for inflation, the \$455 weekly threshold set in 2004, would have only risen to \$606 weekly (\$31,513 annually). This increase, in addition to being larger than is easily justifiable, does not fully account for commission, incentives, bonuses, benefits (such as health care, short term and long term disability, etc.), flexibility and the professional status that our employees receive. **At the very least, the full dollar value of the nondiscretionary commissions, incentives, and bonuses should be included in full instead of it only being able to count for 10% of the total.** If the full value of these payments are excluded from the calculation, then we have several options, none of which are appealing.

If we were to revert our employees to an hourly rate, they would lose the additional benefits and flexibility that arise from being a professional; some are single parents, most are primary income earners, some even work virtually. Several of our best professional recruiters need

autonomy and flexible work arrangements. These are college-educated, degreed, and in most cases, certified professionals who are responsible for their work and take it seriously. They do not need daily monitoring or hand-holding to do their jobs. It would also lead to elimination of work schedule flexibility that many of our employees cherish for positive work-life balance. With the implementation of the new rules, many of our professional employees (who were previously deemed exempt) will be unable to maintain that flexibility. In order to be paid for 40 hours per week, they must now be working 40 hours per week, whereas in the past, they were able to accommodate their personal and professional lives and make the hours work on an annual basis whenever they needed to as long as they produced. The search profession is pay-for-performance, results oriented business. There is negligible income to the firm unless a placement is consummated, no matter how many hours a recruiter puts into a search.

The backlash from our employees when the previous proposed change was announced and our pay recalibration was presented, in 2016, was fast and furious. This time, I am afraid some of them will likely go to work for another employer who may or may not abide by the new rules. Some businesses take a responsibility to uphold the law very seriously, whereas some do not. Unfortunately, these new rules will only punish those employers who are willing to abide by the rules.

Further, this would create a challenge by placing a burden on the employers to exhaustively track these newly nonexempt employees' hours to ensure compliance with overtime pay and other requirements. This tracking of hours would also produce increased human resources paperwork and technology costs to our company. In terms of the compliance burden of the proposed rule, the department has completely underestimated the time and resources it would take for our company and other businesses to understand and comply with the changes. The DOL's estimate that it would take companies only one hour to read and familiarize themselves with the rule, one hour per employee to adjust their status, and five additional minutes per week to schedule and monitor each impacted employee is inconsistent with the reality of our, and most other businesses. The magnitude of the changes made by the proposed rule are substantial, and if left unchanged, would result in significant time and expense to ensure that we are in compliance on an annual basis. This increased, ongoing overhead expense further erodes the money available to pay all or our professional recruiters.

It is absolutely not the government's role to define who is and who is not a "manager" or "professional" in the US economy by using an arbitrary salary threshold. That is a decision best made collectively by and between the business owners, executives, and employees. The

proposed overtime rules affect not only employment, but the relationship between workers and employers.

Many companies are located in rural and small towns outside of metropolitan areas and in certain lower-wage regions of the country. Setting one uniform minimum salary level for the nation disregards these differing regional salary levels. I would ask the DOL to consider the differing regional salary levels when issuing the final rule. Practically, it not possible to design "one size fits all" regulations for large sectors of the American economy without a myriad of negative, unintended consequences or regulatory excess.

These proposals are completely counter-productive to a competitive, thriving economic engine that creates good, sustainable jobs for American citizens. Federal regulations that attempt to regulate small businesses in a complex and fast changing modern economy are unhealthy and over time harm the economy. Exceptions and exclusions to a rule must be constantly added and removed to keep up with the economic realities of the day. Old job activities fade. New job titles and functions are created constantly. Some are more susceptible to economic pressures and regulatory burden than others. Jobs that were primarily "management" or "professional" yesterday, become commoditized and are best performed by "blue collar" today. Over time, the regulatory burden of this proposed rule will increase and

smother this economy with regulations that don't fit and don't make sense ... having the exact opposite outcome of the original intention. There are a thousand "exceptions" to the proposed rule. So, the prudent solution is to eliminate this proposed rule change altogether or keep the salary and compensation threshold at or below the "poverty level" to ensure it is NEVER a burden to small businesses, the documented job engines of our economy, but still remains a minimal protection for citizens from exploitative businesses.

Please consider Inside Sales Professionals for inclusion in the exemption that is currently only for outside sales roles. With advances in mobile computing, mobile networks and the rise in remote or virtual employees working from their home (or anywhere that has a stable internet connection), while providing service to customers worldwide, the need for employees to work when able and where they choose has never been greater. These individuals often carry sales quotas, in some instances, identical to outside sales roles of yesterday that are provided with the exemption. Today there is a collision between management and office (whether commercial or home) based sales reps as they battle to reach sales results and service customers but within a 40-hour work week. Please consider this growing industry for exemption.