



September 25, 2017

Melissa Smith  
Director of the Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division, U.S. Department of Labor  
Submitted via <http://www.regulations.gov>

**Re: Department of Labor RIN 1235-AA20**

Dear Ms. Smith,

Dēmos submits these comments in response to the Federal Register Notice from the Department of Labor seeking information regarding exemptions from the Fair Labor Standards Act's minimum wage and overtime requirements, RIN 1235-AA20. Dēmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. The updated overtime regulation located at 29 CFR part 541 effectively advances economic opportunity and equality and should be fully implemented and enforced. **Accordingly, Dēmos strongly opposes any effort to reopen or reconsider the rule, which has already been extensively assessed with abundant opportunity for all stakeholders to contribute their perspective.**

The Final Rule raises the salary threshold used to determine which employees are exempt from overtime pay to \$47,476 providing or reinforcing overtime protections for an estimated 12.5 million working Americans and their families.<sup>i</sup> According to the Department of Labor's own analysis, the overtime rule would have resulted in an average annual increase in pay of \$1.2 billion per year.<sup>ii</sup> The raise in pay would likely stimulate consumer spending. Since women, people of color, and younger workers are the most likely to work in moderately-paid salaried jobs, these workers would have seen the greatest gains and stand to lose the most from any effort to revise the salary threshold downward.

The \$47,476 salary level is amply supported by economic analysis and is essential to restoring the effectiveness of the EAP exemption determination. By the time the Department released its proposed update to the overtime salary threshold in 2015, the applicable \$23,660 threshold, set in 2004 without any mechanism for automatic increase, was below the poverty line for a family of four and covered just 8 percent of salaried workers; by comparison, the 1975 salary threshold covered 62 percent of salaried workers.

This is because as the economic analysis accompanying the Final Rule demonstrated, the 2004 revisions to the EAP Exemption (the "2004 Rule") were fatally flawed. The traditional

methodology for defining the EAP Exemption had been to pair a robust test of employee duties (the “Long Test”) with a relatively low salary-level test (the “Long-Test Salary Level”), and a less rigorous duties test (the “Short Test”) with a significantly higher salary-level test (the “Short-Test Salary Level”). In the 2004 Rule, however, the Department set a “standard” duties test by reference to the Short Test, but arrived at a “standard” salary-level test that was as low as the Long-Test Salary Level. This mismatch was not adequately justified by economic analysis and allowed, by the Department’s later estimation, well over 700,000 overtime-eligible employees to be misclassified as exempt under the EAP exemption. The Department corrected the mismatch by promulgating the 2016 Rule, which retains the Short Test as the standard duties test while returning to essentially a Short-Test Salary Level for the standard salary level.

Were DOL to revise the salary threshold downward in any meaningful fashion, it would serve to perpetuate this mismatch, necessitating a revision of the duties test in order to make it far more vigorous than it currently is. Businesses and their associations repeatedly implored DOL to leave the duties test alone, both during the extensive stakeholder engagement DOL conducted prior to issuing its proposed EAP rule, and in their comments reiterated time and time again in their comments submitted in response to the proposed rule. In deference to these stakeholders, DOL acceded to this request, but it necessitated the robust salary threshold promulgated and supported by extensive economic analysis.

Americans are working longer hours, more productively than ever before, yet their pay is still not keeping up with their labor and productivity. Instead of wasting resources revisiting the well-assessed provisions of the Final Rule, Dēmos urges the Department of Labor to stand true to its mission “to foster, promote, and develop the welfare of the wage earners” of the United States by defending the final rule and preserving the salary threshold it establishes.

Respectfully,

Amy Traub  
Associate Director, Policy and Research  
Dēmos

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<sup>i</sup> Ross Eisenbrey and Will Kimball, *The New Overtime Rule Will Directly Benefit 12.5 Million Working People*, Economic Policy Institute, 2016, <http://www.epi.org/publication/who-benefits-from-new-overtime-threshold/>

<sup>ii</sup> U.S. Department of Labor, *Overtime Final Rule: Summary of the Economic Impact Study*, 2016 <https://www.dol.gov/whd/overtime/final2016/overtimeFinalRule.pdf>