

Amy DeBisschop  
Director, 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:** RIN 1235-AA39, Comments in Support of Notice of Proposed Rulemaking, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

Dear Ms. DeBisschop:

As members of a broad coalition of organizations that promote economic security and equality for women in the workplace, we write to express our support for the U.S. Department of Labor (DOL) Wage and Hour Division's (WHD's) proposed rule increasing the salary threshold for determining whether an employee is exempt from overtime pay protections under the Fair Labor Standards Act (FLSA).<sup>1</sup> We support this rule because it will extend the FLSA's overtime protections to millions of lower-paid workers who have been considered exempt under the outdated current threshold, and create a much-needed mechanism for updating the threshold to keep pace with increasing prices and wages over the years. This rule will be highly beneficial for working women—particularly women of color—and their families, and we urge WHD to finalize and implement the rule without delay.

The salary threshold that DOL has established under the FLSA's exemption for executive, administrative, and professional (EAP) employees is intended to ensure that an employee cannot be deprived of overtime protections if their employer does not pay a salary that is indicative of "bona fide" EAP status. But under the current threshold, salaried workers are only automatically eligible for overtime pay if they make less than \$35,568 per year—only a few thousand dollars above the federal poverty level for a family of four.<sup>2</sup> This makes it all too easy for employers to grant an employee a promotion—often in name only—to "manager" with a salary as low as \$36,000, then require them to work 60- or 70-hour weeks with no guarantee of overtime pay.

The current salary threshold, established under the Trump Administration in 2019, was inadequate when it was issued and is even more so today, given the substantial wage growth and inflation that have occurred in the intervening years. The proposed rule would update that salary level to \$55,068, or \$1,059 per week. An estimated 3.6 million workers would benefit from this rule—workers who make between \$35,568 and \$55,068 and will now have stronger overtime protections, as well as workers who will have their salaries increased to meet the new

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<sup>1</sup> 88 Fed. Reg. 62152 (Sept. 8, 2023).

<sup>2</sup> The poverty threshold for a family with two adults and two children in 2022 was \$29,678. *Poverty Thresholds by Size of Family and Number of Children*, U.S. CENSUS BUREAU (last updated Sept. 12, 2023), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

threshold.<sup>3</sup> Just over 2 million of these workers are women, representing roughly 57% of all impacted workers, including 700,000 women of color.

Raising the overtime threshold is deeply important for the economic well-being of women and their families. Women, especially women of color, are disproportionately likely to hold lower paying jobs as a result of longstanding, systemic gender and racial injustice.<sup>4</sup> The share of women who serve as the sole or co-breadwinners in their household has steadily risen over the past several decades,<sup>5</sup> meaning that their families will also benefit from the increased economic security that comes from higher pay when they work longer hours.

The proposal would also help women by reinforcing the value of the 40-hour workweek. Because women are more likely to serve as unpaid caregivers for family members,<sup>6</sup> being forced to work long hours without overtime deprives them of the time they have available to meet those caregiving responsibilities, without even the benefit of the higher wage rate that the FLSA's overtime protections mandate. In addition, research indicates that working excessive hours contributes to occupational segregation: because women have more demands on their time than men due to family responsibilities, they are more likely to have to leave jobs in male-dominated fields—and even exit the workforce entirely—when they have to work 50 hours or more per week.<sup>7</sup>

For some newly covered workers, overtime protection will mean hundreds of dollars in additional pay each week; for others, it will mean more time outside of work to spend with their families. Moreover, as some employers shift schedules to minimize overtime costs, employees who had been involuntarily working part-time—or working fewer part-time hours than they would like—may gain the additional hours they want and need. Women are far more likely than men to work part time, but research shows that many of these part-time employees would prefer to work more hours, especially in low-paying service sector positions.<sup>8</sup> The current overtime salary threshold enables employers to assign additional work to their overtime-exempt employees at

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<sup>3</sup> See 88 Fed. Reg. 62198, 62220.

<sup>4</sup> See, e.g., *Hard Work Is Not Enough: Women in Low-Paid Jobs*, NAT'L WOMEN'S LAW CTR. (July 2023), [https://nwlc.org/wp-content/uploads/2020/04/%C6%92.NWLC\\_Reports\\_HardWorkNotEnough\\_LowPaid\\_2023.pdf](https://nwlc.org/wp-content/uploads/2020/04/%C6%92.NWLC_Reports_HardWorkNotEnough_LowPaid_2023.pdf); Jessica Mason & Katherine Gallagher Robbins, *Women's Work Is Undervalued, and It's Costing Us Billions*, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES (March 2023), <https://nationalpartnership.org/wp-content/uploads/2023/04/womens-work-is-undervalued.pdf>.

<sup>5</sup> See, e.g., Sarah Jane Glynn, *Breadwinning Mothers Are Critical to Families' Economic Security*, Ctr. For Am. Progress (March 2021), <https://www.americanprogress.org/article/breadwinning-mothers-critical-families-economic-security/>; Richard Fry et al., *In a Growing Share of U.S. Marriages, Husbands and Wives Earn About the Same*, PEW RESEARCH CTR. (Apr. 2023), <https://www.pewresearch.org/social-trends/2023/04/13/in-a-growing-share-of-u-s-marriages-husbands-and-wives-earn-about-the-same/>.

<sup>6</sup> See, e.g., Katherine Gallagher Robbins & Jessica Mason, *Women's Unpaid Caregiving Is Worth More Than \$625 Billion—and It Could Cost More*, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES (Aug. 2023), <https://nationalpartnership.org/womens-unpaid-caregiving-worth-more-than-625-billion/>.

<sup>7</sup> Youngjoo Cha, *Overwork and the Persistence of Gender Segregation in Occupations*, 27 GENDER & SOC. 158-84 (2013), <https://doi.org/10.1177/0891243212470510>.

<sup>8</sup> See, e.g., Brooke LePage, *Part-Time Workers Are Facing Heightened Uncertainty During COVID—and Most Are Women*, NATIONAL WOMEN'S LAW CTR. (Feb. 2022), <https://nwlc.org/wp-content/uploads/2020/02/Part-time-workers-factsheet-v2-2.1.22.pdf>.

no additional cost; by shrinking the pool of exempt employees, the proposed rule can incentivize employers to offer more hours to part-time staff rather than requiring their full-time employees to work overtime.

The proposed rule's provision to automatically raise the EAP exemption salary threshold every three years will also help ensure that overtime protections keep pace with wage increases and inflation. The index will be tied to the 35th percentile of earnings in the lowest-wage Census Region in the country, making it a modest and reasonable adjustment. Low-income households report experiencing the worst financial hardship from inflation, likely because they have fewer options available for cutting costs or preserving their money's value.<sup>9</sup> Given the persistent wage gaps that women, especially women of color, continue to face year after year,<sup>10</sup> it is likely that women experience the pain of inflation more acutely. Ensuring that overtime eligibility keeps up with wage growth is an imperative for women.

Finally, while the proposed rule will meaningfully benefit millions of working people across the country, one large group of professional employees will be excluded from those benefits: teachers. Women are far more likely than men to work as teachers, and they typically are paid far less than the other professionals—doctors and lawyers—who are categorically excluded from overtime pay. For example, 97% of preschool and kindergarten teachers are women,<sup>11</sup> and their average salary is \$44,540 per year,<sup>12</sup> over \$5,500 below the proposed salary threshold. While salaries are typically higher for elementary and secondary school teachers, data from the National Education Association show that *starting* salaries are usually well below the proposed threshold: the average starting salary of teachers nationwide in 2021-2022 was just \$42,845.<sup>13</sup> In addition to women teachers, young teachers, teachers of color, and adjuncts would be particularly likely to gain overtime protections if the exclusion were lifted.<sup>14</sup> Amending the regulations to require that teachers' salaries must meet the salary test for them to be exempt from FLSA overtime rules is necessary to address gender and racial pay disparities and to help attract and retain more people to this essential profession.

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<sup>9</sup> Jeff Horwich, *The Widely Varied Pain of Inflation*, FED. RESERVE BANK MINNEAPOLIS (Feb. 2022), <https://www.minneapolisfed.org/article/2022/the-widely-varied-pain-of-inflation>.

<sup>10</sup> See, e.g., *America's Women and the Wage Gap*, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES (Sept. 2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/americas-women-and-the-wage-gap.pdf>; Brooke LePage & Jasmine Tucker, *A Window Into the Wage Gap: What's Behind It and How to Close It*, NAT'L WOMEN'S LAW CTR. (Jan. 2023), <https://nwlc.org/wp-content/uploads/2023/01/2022-Wage-Gap-Factsheet-1.10.23v2.pdf>

<sup>11</sup> Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity, 2022*, U.S. DEP'T OF LABOR, <https://www.bls.gov/cps/cpsaat11.htm> (last updated Jan. 25, 2023).

<sup>12</sup> Bureau of Labor Statistics, *May 2022 National Occupational Employment & Wage Estimates*, U.S. DEP'T OF LABOR, [https://www.bls.gov/oes/current/oes\\_nat.htm#25-0000](https://www.bls.gov/oes/current/oes_nat.htm#25-0000) (last updated Apr. 25, 2023).

<sup>13</sup> *NEA 2021-2022 Teacher Salary Benchmark Report*, NAT'L EDUCATION ASSOC. (Apr. 2023), [https://www.nea.org/sites/default/files/2023-04/2021-2022-teacher-salary-benchmark-report\\_0.pdf](https://www.nea.org/sites/default/files/2023-04/2021-2022-teacher-salary-benchmark-report_0.pdf).

<sup>14</sup> See John Schmitt, Heidi Shierholz & Jori Kandra, *Expanding Overtime Protection for Teachers Under the Fair Labor Standards Act*, ECON. POLICY INST. (Nov. 2021), <https://www.epi.org/publication/expanding-overtime-protection-for-teachers-under-the-fair-labor-standards-act/>.

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We applaud WHD for proposing a rule that will help millions of low and moderately paid workers—especially women—achieve economic security. We urge you to finalize the rule without delay, and to take up new rulemaking to end the teacher exemption as soon as possible. Working women cannot afford to wait.

Sincerely,

9to5, National Association of Working Women  
A Better Balance  
All-Options  
Better Life Lab at New America  
Care In Action  
Center for Law and Social Policy (CLASP)  
Center for Popular Democracy  
Center for WorkLife Law, UC Law SF  
Civic Ventures  
Coalition on Human Needs  
Economic Opportunity Institute  
Equal Rights Advocates  
Esperanza United  
Family Values @ Work  
Florida Policy Institute  
Institute for Women's Policy Research  
Jewish Women International  
Justice for Migrant Women  
Legal Momentum, The Women's Legal Defense and Education Fund  
Maine Center for Economic Policy  
Massachusetts Interfaith Worker Justice  
MomsRising  
Monsoon Asians & Pacific Islanders in Solidarity  
National Asian Pacific American Women's Forum  
National Council of Jewish Women  
National Domestic Workers Alliance  
National Education Association  
National Network to End Domestic Violence  
National Organization for Women  
National Partnership for Women & Families

National Women's Law Center  
National Women's Political Caucus  
NCBCP Black Women's Roundtable  
NETWORK Lobby for Catholic Social Justice  
NextGen America  
Oxfam America  
Philly CLUW  
Public Justice Center  
Reproductive Freedom for All (formerly NARAL Pro-Choice America)  
Restaurant Opportunities Centers United  
Shattering Glass  
She Leads Justice  
Shriver Center on Poverty Law  
The Leadership Conference on Civil and Human Rights  
The National Domestic Violence Hotline  
Unemployed Workers United  
UnidosUS  
Women Employed  
Women's Fund of Rhode Island  
Women's Law Project  
Women's March  
ZERO TO THREE