



November 6, 2023

Ms. Amy DeBisschop
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW, Room S-3502
Washington, DC 20210

Re: Proposed Rule Defining and Delimiting the Exemption for Executive,
Administrative, Professional, Outside Sales, and Computer Employees RIN 1235-AA39

Dear Ms. DeBisschop:

The National Roofing Contractors Association submits comments in response to the U.S. Department of Labor's Notice of Proposed Rulemaking entitled "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees" published in the *Federal Register* on September 8, 2023. NRCA opposes this proposed rule in its current form and urges the agency to withdraw the rule or significantly modify it given the concerns of NRCA members.

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of roofing professionals worldwide. NRCA's nearly 4,000 member companies represent all segments of the industry, including contractors, manufacturers, distributors, consultants and other employers in all 50 states and internationally. NRCA members are typically small, privately held companies with the average member employing 45 people and attaining sales of \$4.5 million per year. The U.S. roofing industry is an essential \$100 billion sector with nearly 1 million employees that provides critical materials and services to ensure home and business safety.

The DOL's proposed rulemaking would modify the regulations that govern which employees are exempt from receiving overtime compensation under the Fair Labor Standards Act. The proposal would increase the minimum annual salary threshold applicable to the FLSA overtime exemption to \$55,068, up from the current threshold of \$35,568, a nearly 55% increase. The proposal also would implement automatic increases to the salary threshold every three years which would be tied to the 35th percentile of weekly earnings of full-time, non-hourly employees in the lowest wage region of the U.S. Census. Moreover, according to some estimates given the complexity of the proposed rule, the threshold could increase to \$60,209 annually, an increase of nearly 70% from the current level.

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The Department indicates that the proposed rule is intended to increase middle class wages. While this is a laudable goal, it is incumbent upon the agency to ensure that changes in regulations are implemented in a reasonable and incremental manner without unduly burdening the employers that provide good jobs and careers for employees based on market demand from consumers. NRCA is concerned the proposed regulation would result in dramatically increased labor costs and additional paperwork burdens for employers, while also reducing workplace flexibility and compensation for many workers. NRCA has several specific concerns with the proposed rule.

First, the proposed rule is inconsistent with the historic norms of previous modifications in the FLSA overtime salary threshold. Since 1938, the DOL has updated the salary level eight times, with modifications occurring on average every 9.87 years. The Department previously increased the minimum salary from \$23,660 to \$35,568, a 50% increase, which became effective on Jan. 1, 2020. Moving forward with the current proposed rule, which could be finalized sometime in 2024, would result in an increase of up to 154% within about a five-year period. This dramatic increase is unprecedented in the history of the FLSA and will likely result in adverse consequences for employers, workers and the economy as a whole. Such a large increase in a short period of time would likely add further inflationary pressure to the economy which would be very detrimental to economic growth. As such, the proposed regulation is unnecessary and potentially counterproductive.

Second, the proposed rule would likely result in a reduction of full-time employees and ultimately reduced compensation for impacted workers. This is because most employers, when confronted with a drastic change in the law, will likely choose to shift towards part-time employees who will not have any opportunity for overtime pay nor qualify for company benefits that accrue to full-time positions. Additionally, the possible reclassification of positions could greatly reduce opportunities for remote and flexible work arrangements that have expanded rapidly since the COVID-19 pandemic and which are of great value to many employees. These consequences are likely to be disproportionately borne by entry level workers, particularly those in economically struggling regions.

Another concern is the automatic increase in the salary threshold that would take place every three years and would be tied to the 35th percentile of weekly earnings of full-time non-hourly employees in the lowest wage region of the U.S. Census. An automatic increase of this nature has been considered before by the DOL but never implemented given there is much legal uncertainty as to whether the agency has the authority to issue such a provision under the FLSA. Therefore such a requirement may not be legal under the underlying statute, thus inviting litigation that will further increase uncertainty for employers and employees. Even if this provision is eventually deemed to be legal, the possibility of negative impacts due to automatic increases on employers and employees is high. Such automatic increases could take effect at times of economic weakness or recession and thus may be implemented at times when employers can least afford to make the changes needed to comply.

Finally, NRCA is concerned the proposed rule would allow only 60 days for implementation once issued in its final form. Generally, the larger the percentage increase in the salary

threshold, the longer the time will be needed for employers to fully understand any final rule and take the steps necessary for compliance.

For the reasons outlined above, NRCA opposes the proposed rule in its current form and urges the DOL to either withdraw the proposal or substantially reduce the proposed increase in the FLSA minimum salary for exempt employees. Additionally, the DOL should engage with stakeholders within the business community in the development of solutions that are well-researched and have a broad base of support to minimize negative impacts on employers, employees and the economy.

Thank you for your consideration of NRCA's views on this proposed rule. Please contact Duane Musser at 202-546-7584 or dmusser@nrca.net for additional information or with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "McKay Daniels". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

McKay Daniels
Chief Executive Officer