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August 31, 2015

Ms. Mary Ziegler
Director of the Division of Regulations, Legislation and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue N.W.
Washington, DC 20210

RE: Florida Chamber Opposes White Collar Overtime Exemption Changes (RIN 1235-AA11)

Dear Ms. Ziegler:

The Florida Chamber of Commerce is Florida's largest federation of employers, local chambers of commerce and business associations, representing every industry and all areas of the state as the voice of the business community. This letter is to provide comment on the Department of Labor's proposed rule changes on overtime to the Fair Labor Standards Act on behalf of our membership who have serious concerns about the impact this rule might have to their businesses, employees, and America's competitiveness.

The proposed changes for exempt status for employees making more than \$50,440 in an executive, administrative or professional role will impact more than five million Americans, according to your numbers. In Florida, this rule change will impact approximately 370,000 employees. While the rule change may sound well intentioned, it will undoubtedly have a substantial negative impact not only on our nation's job creators, but on the workforce as well.

The Department of Labor's proposed salary minimum for exempt status is at the 40th percentile of all salaried employees at \$50,440 for 2016. Historically, the Department of Labor has used different methodologies to set the minimum salary for exemption, and the current rule, adopted in 2004, uses the 20th percentile as the standard for exemption. The increase to \$50,440 represents a 113 percent increase from the current threshold. Additionally, several of the proposed rule supporting documents cite that inflation was not taken into account when determining the 2004 overtime rule exemption. It would take a salary increase of over 10 percent a year to get from the 2004 minimum salary of \$23,660 to the proposed \$50,440. Salaries did not increase 10 percent annually over the last decade, and many businesses were struggling to keep doors open during the Great Recession. The proposed increase is egregious compared to historical methodologies and even accounting for inflation would put the applicable salary level well below the \$50,000 threshold.

Additionally, the new proposed overtime exemption would take effect in 2016, leaving businesses little time to implement changes to absorb the increased cost of providing overtime and reorganizing their

business structure. Businesses will be forced to make tough decisions that might have a negative impact on their employees and their customers.

We have heard the following from our membership on what business decisions this proposed rule may cause them to make:

- Raising the prices of goods and services to pass on the cost to consumers,
- Layoffs,
- Changing employees from salary to hourly, which could impact benefits or mean reduced pay for weeks where less hours are worked,
- Reducing base pay to account for overtime pay,
- Reclassifying job duties,
- Inability to expand the size of the business (slowing or stopping job creation), and
- Providing less flexibility in hours worked.

Businesses that are unable to absorb the increased costs or cannot afford to comply with these changes will be forced to shut their doors, leaving employees without a job and detracting from the local economy. This proposed rule will have an even greater impact on small businesses, who generally have a smaller profit margin, and are the providers of two-thirds of all new jobs in Florida.

Lastly, the proposed rule could mean increased litigation for small businesses. Currently, there are no proposed changes to the “job duties” test that is a second prong for exemption status. The interpretation of the current job duty requirements have already opened the door for litigation as a question to whether an administrative employee is properly classified as exempt. Florida already has 23 percent of cases related to the Fair Labor Standards Act and this number will only increase and put businesses further at risk if the proposed rule is adopted.

The Florida Chamber of Commerce urges you to rethink the proposed changes to overtime exemptions in the Fair Labor Standards Act. The proposed rule, as drafted, could force some smaller businesses to close, increase litigation, and is not in line with the historical practices of the FLSA. Additionally, businesses will be forced to make decisions that will negatively impact the very people the proposed rule is drafted to assist. The unintended consequences of this rule change are numerous, and it is in the best interest of Florida, our nation, our job creators, and those that work hard day in and day out that this rule be reconsidered and not adopted.

My best,



Mark Wilson
President & CEO

Cc: Steve Knopik, Chairman, Florida Chamber of Commerce
Florida Congressional Delegation