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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Statement

Of the

National Association of Mutual Insurance Companies

To the

United States House of Representatives

Committee on Small Business

Hearing on

"Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees"

2360 Rayburn House Office Building

June 23, 2016

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide testimony on the impact of public policy of the Administration's Overtime Rule and its consequences for workers, students, nonprofits, and small businesses.

NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,300 member companies including regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members serve more than 135 million auto, home and business policyholders, with more than $208 billion in premiums accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market.

On May 18, 2016, the U.S. Department of Labor's Wage and Hour Division ("DOL") issued a final rule modifying overtime eligibility under the Fair Labor Standards Act ("FLSA"), implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's "EAP" or "white collar" exemption.

The stated goals of the Rule are updating the section 13(a) (1) exemption's salary requirements, by:

- Setting the standard salary level equal to the 40th percentile of earnings for full-time salaried workers; which increases that level from the current level where an executive, administrative, or professional employee must be paid at least $455 per week or $23,660 per year for a full-year worker, to $47,476 annually for a full-year worker;

- Increasing the highly compensated employee annual compensation level equal from the current $100,000 to $ $134,004 annually; and,

- Adopting a mechanism to automatically update the salary and compensation thresholds on an annual basis using either a fixed percentile of wages or the Consumer Price Index for All Urban Consumers.

The Rule Will Result In Negative Consequences for Both Employers and Employees of Mutual Insurance Companies

The changes proposed in the Rule will have a significant impact on NAMIC members. According to a September 2014 report by the Economic Policy Institute, a non-partisan think-tank based in Washington, D.C. affiliated with the labor movement, 6.3 percent of insurance sales agents are currently automatically covered by overtime protections, but more than 50 percent would be automatically covered by overtime protections if the thresholds were raised to the levels set by the Rule. For insurance claims and policy processing clerks, that level would rise from 12 percent to approximately 70 percent. For customer service representatives, the level

would rise from eight percent to over 60 percent. Overall, the study concluded that 3.4 percent of full-time, salaried supervisory/managerial/professional workers are currently automatically covered, but that figure would increase to nearly a third, 32.9 percent, if the threshold were raised.

The Rule is ill-suited to both the underlying business and the practical interests of the employees in mutual property/casualty insurance. The employees of the mutual property/casualty insurance companies that are NAMIC members are highly trained financial services professionals that provide the highest level of service and integrity to policyholders. These are highly valued employees that generally have training and experience that is not easily replicable. We have no evidence from human resource coordinators or state insurance regulators that the problems that the Rule seeks to address exist or have existed for any employees of any NAMIC members.

The Rule also assumes that the employer will simply pay more employees more money, when the options for the business are more varied and complex. Mutual insurance companies exist for the protection of policyholders, and robotically increasing employee costs may not be in the best interests of protecting policyholders. The proposed automatic adjustments may be too much for mutual companies to adopt and still fulfill the mandate to protect policyholders.

The Department does not appear to appreciate fully how businesses work. As a consequence to employees, many organizations may also be forced to choose among other options:

- The mutual company may be forced to lay off employees to fund the increase in wages for retained employees. This will necessitate curtailing aspects of their operations, resulting in less policyholder protection while increasing the workloads of the remaining exempt workforce.

- In order to maintain payroll budgets, the mutual company may need to lower the hourly wages of non-exempt employees, so that their total annual compensation, including overtime payments, remains at the budgeted level. This will have a negative impact on employee morale, and could result in employees seeking other employment. This in turn would increase recruiting and training expenses.

- The mutual company will need to adopt more restrictions on the overtime hours worked by non-exempt employees, relying on temporary or part-time staff for additional personnel resources at straight-time rates, or forcing exempt employees to absorb some of their non-exempt colleagues' duties.

Many employees who are reclassified as non-exempt at a lower hourly wage will experience no increase in total annual compensation to make up for the perceived demotion, and morale problems will develop if they find themselves working the same long hours but earning less on

an hourly basis than lower-level non-exempt employees whose job requirements had never included extended hours.

In the proposals leading up to the Rule, the Department suggests that the employee still 'wins' even if these unwanted changes occur, because the employees may have more time off or time with their families. It is staggering for the U.S. Department of Labor to suggest employees would welcome the prospect of reduced status and lower pay. NAMIC member employees are dedicated, hardworking and take pride in their jobs, and will likely feel that their value is reduced because they are reclassified as non-exempt or end up with less pay.

At mutual companies that must restrict overtime hours for all non-exempt employees, the formerly exempt employees converted to non-exempt status will also lose career-growth opportunities. Currently, exempt junior and mid-level employees at mutual companies who would convert to non-exempt status under the proposed salary level change are most vulnerable to these negative impacts. In order to control overtime costs and comply with compensable working time regulations, many mutual employers exclude non-exempt employees from off-hours access to work emails and network systems.

Similarly, non-exempt employees are commonly excluded from the conferences and annual meetings that are often the most important work events of membership organizations, because the travel time and long hours associated with attendance at such conferences would result in prohibitively expensive overtime costs. Participation in key work-related discussions and attendance at their organization's conferences, even if conducted in the evenings or over the weekends, are often highly valued building blocks to professional growth and career advancement for junior and mid-level exempt employees. If they are reclassified as non-exempt solely due to their salary level, these employees will lose meaningful opportunities to gain greater job responsibility and to cultivate relationships among those in their chosen field.

At many mutual companies, non-exempt employees may not be permitted to telecommute or to work flextime schedules that are made available to exempt employees, as these flexible work arrangements pose challenges in tracking and capturing all compensable work hours and controlling overtime costs for non-exempt employees. By contrast, the FLSA and state wage and hour laws do not require that employers record the precise hours worked each day by exempt employees, so employers have more latitude to offer flexible schedules and telework arrangements to exempt employees.

These more flexible work arrangements not only tend to improve employees' work satisfaction, but they also help employees achieve a better work-life balance. If converted to non-exempt status, currently exempt employees may lose the flexible work arrangements on which they and their families have come to rely. By setting a salary level that will categorically reclassify so many currently exempt employees as non-exempt, the proposed changes are more likely to

adversely impact the work life and personal lives of many affected employees than to result in higher incomes.

The Change to the Salary Level Test Will Have a Disproportionate Adverse Effect on Employers Located in Lower-Wage Regions, and Harms the Career Growth of Mid-level Employees

The Rule increases the minimum weekly salary level for EAP exemptions to the 40th percentile of earnings for full-time salaried workers nationwide, based on Bureau of Labor Statistic ("BLS") data. In addition, the NPRM proposes automatically adjusting the minimum salary level on an annual basis, using either a fixed percentile of wages or the Consumer Price Index. The minimum salary level is projected to jump to $51,000 in 2020.

The Rule maintains that the "bright-line test" of the salary level is a simple and administratively easy way to distinguish between exempt and non-exempt employees, but that very simplicity leads to hardship for a subset of employers in rural areas and small towns outside of major metropolitan areas.

For instance, the average salary in many rural areas and small towns outside of major metropolitan areas and in certain lower-wage regions of the country is substantially lower than the national average. A single uniform minimum salary level for the nation disregards the very real regional differences in the level of income needed to achieve a middle-class standard of living.

The federal government has regional data on average salaries. The federal government's own General Schedule ("GS") pay tables for federal employees include locality adjustments that recognize certain metropolitan areas have higher costs of living, requiring an increase in pay. Since the federal government recognizes for its own workforce that jobs with the same level of responsibility and qualifications appropriately command dramatically different salary levels depending on region, the minimum salary level for the EAP exemptions should – and can – also be tied to such regional differences.

The Rule will result in a high cost to American business and the very employees that the rule purports to help. These nationwide rules impose significant and ongoing administrative costs and liabilities to employers who are presumed without evidence to have cheated their employees from rightful wages. Businesses with fiduciary duties to shareholders and policyholders may simply pay more overtime, as the Department hopes, or they will responsibly restructure their operations under the rules to demote employees, limit employee flexibility and actually reduce employee overtime.