

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

September 28, 2023

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Dear Acting Secretary Su:

The House Committee on Small Business (the Committee) writes to inquire about the recent proposed rule change to the Fair Labor Standards Act (FLSA). This proposed rule would expand eligibility for overtime pay for about three million workers under the FLSA.¹ It would raise the threshold for time-and-a-half overtime pay from \$35,568 to \$55,000.² The Department of Labor (DOL) estimates that the rule would affect 1.3 million workers who are employed by between 179,700 and 1.3 million small entities; comprising from 2.8 percent to 20.8 percent of all small entities.³ This change will cost direct employers between \$294.6 million to \$356.0 million for affected small entities just during the first year.⁴ It appears that the DOL may not have properly considered small entities during this rulemaking process.

It is important for agencies to examine small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America’s small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than October 12, 2023:

1. According to the proposed rule, there is no data available to determine whether small businesses are more or less likely than non-small businesses to employ exempt EAP workers or affected EAP workers.⁵ The DOL states that the best assumption available is to assign the same rates to all small and non-small businesses. How did the DOL come to this conclusion?

¹ Fair Labor Standards Act, (2023) Mental Health Parity and Addiction Equity Act, 88 FR 51552 (2023) (to be codified at 29 CFR Part 541).

² *Id.*

³ *Id.*


⁴ *Id.*

⁵ *Id.*


2. The DOL uses data from 2017 to estimate the number of impacted small businesses.⁶ This data is already six years old and is out-of-date. Does the DOL have any more recent data to verify these numbers?
3. The DOL estimates that it would take only an hour for each entity to become familiar with the content of this rulemaking. However, since small entities often have limited human resources or legal personnel on staff, how did the DOL reach the conclusion that it will only take an hour?
4. The DOL expects that small entities would rely on compliance assistance materials provided by the DOL or industry associations to become familiar with the final rule.⁷ Where exactly can small businesses access these materials and what materials are provided?
5. The DOL estimates that the rule would affect 1.3 million workers who are employed by between 179,700 and 1.3 million small entities; comprising from 2.8 percent to 20.8 percent of all small entities.⁸ This is an unacceptable large range. Does the DOL expect the number of affected small entities to be closer to 1.3 million or 179,700?
6. The proposed rule states that it is possible that the costs of the proposed rule are disproportionately large for small entities.⁹ What alternatives have been considered to lessen the impacts on small businesses?

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams
Chairman
Committee on Small Business



Jake Ellzey
Member of Congress
Committee on Small Business

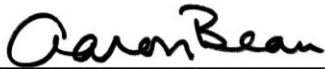
⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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A handwritten signature in black ink that reads "Aaron Bean". The signature is written in a cursive style with a horizontal line underneath it.

Aaron Bean
Member of Congress
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business