

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE
NATIONAL FEDERATION OF INDEPENDENT BUSINESS

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Testimony of Albert Macre,
House Committee on Small Business
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Damaging Repercussions: DOL's Overtime Rule, Small Employers, and their Employees

Good morning, Chairman Chabot, Ranking Member Velazquez, and members of the Committee. My name is Albert F. Macre. I am a Certified Public Accountant and the owner of several small businesses located in eastern Ohio, one of which - Payroll+ Services - is affected by the new Department of Labor (DOL) overtime rule for salary exempt personnel. I am pleased to be here on behalf of the National Federation of Independent Business (NFIB) to discuss these rules at today's hearing.

NFIB is the nation's leading small business advocacy organization. Founded in 1943 as a nonprofit, nonpartisan organization, our mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 325,000 independent business owners located throughout the United States, 25,000 of which are located in my home state of Ohio.

As a small business owner with several salaried employees positioned between the current exempt overtime earnings threshold and that created by the Department of Labor's new rule, I now find myself standing with countless other small business owners forced to swallow more government "medication" prescribed before an accurate attempt at diagnosis has been completed.

NFIB believes that the rule will have a substantial negative impact on small businesses and their employees. Frankly, the 100% increase in the salary exempt threshold to \$47,476 is too much, too fast. To put the significance of this increase in perspective, from the time that the last salary threshold was increased in 2004, the Consumer Price Index has risen by only 28%. To make matters worse, the threshold will be automatically updated every three years. And while the rule allows use nondiscretionary bonuses and incentive payments to satisfy up to 10 percent of the standard salary level, the reality is that few administrative and lower level supervisory personnel are the recipients of such compensation.

NFIB estimates that the new rule will impact approximately 40% of small businesses while the DOL has said the rule could affect over 4 million employees. Instead of increasing wages for certain employees, as the DOL might project, the rule will force small business owners to take more control of employee hours and benefits to keep costs in check. These controls could ultimately result in employees taking home less money annually. And don't underestimate the impact on employee morale as affected employees are told they must now punch a time clock for the first time in their careers.

In addition to these negative impacts, the implementation window is very short. This rule will become effective on December 1, 2016, just over five months from now. Given that many small businesses are still struggling with the implementation of the Affordable Care Act five years after the enactment, this window of compliance seems barely cracked open.

From a personal perspective, this rule is likely to have negative consequences - not only to my company, but to my employees as well.

Payroll+ opened in 1995 in response to my clients' desire to farm out payroll processing services to a local, low cost provider. We currently have three salaried employees earning above the current threshold and below the proposed amount. We operate on a 30 to 35 hour workweek for 8 months of the year, but do incur substantial overtime during the four payroll tax months. Our employees appreciate the certainty of their salary-based take-home pay each period. They also appreciate the fact that they don't have to punch a time clock every day. I estimate that the roughly 600 hours of overtime our employees work each year are offset by the less than forty hour weeks they work during the slow months. Unfortunately law doesn't allow me to "bank" the short weeks to offset the long weeks. In addition, we have paid 100% of our employees' health insurance since the day we opened our doors.

Without getting into the analytical weeds, in order to keep employee take-home pays consistent, we are contemplating a system of salary advances to be recovered during those overtime months. In order to keep our company cash flow level, we are contemplating - for the first time in over twenty years - requiring employees to bear a share of the cost of their health insurance benefits.

DOL's new overtime rule will have a significant, and in my belief, negative impact on employers and employees alike. In order for small businesses to avoid costly overtime pay, managers moved from their salaried positions to hourly jobs will need to keep time cards and be prohibited from working overtime, including answering email from home. This will be a burden not only financially, but in terms of productivity, as managers and supervisors will only be allowed to work when permitted. From an employee perspective, the flexibility that so many had will become a thing of the past.

NFIB anticipates the changes will hit hardest those low-to-mid-level managers. These managers may currently make less than the proposed threshold, but value work week flexibility and benefits such health insurance and employer-provided pension benefits. Also, fewer salaried, managerial positions would signal to employees that there is little opportunity for growth at the company. These consequences will severely hamper opportunities for growth and development, not just of small businesses, but their employees as well. Unfortunately, neither can afford it.

Thank you again for allowing me to share my thoughts today. I will do my best to answer any questions you might have.