

June 22, 2016

The Honorable Steve Chabot
Chairman
House Small Business Committee
Washington, D.C. 20515

The Honorable Nydia Velazquez
Ranking Member
House Small Business Committee
Washington, D.C. 20515

Dear Chairman Chabot and Ranking Member Velazquez:

The American Bankers Association (ABA) writes to thank you for holding a hearing on the “Damaging Repercussions: DOL’s Overtime Rule, Small Employers, and their Employees.” ABA’s members, many of whom are community banks, believe that employees and employers alike are best served with a system that promotes maximum flexibility in structuring employee hours, career advancement opportunities for employees, and clarity for employers when classifying employees.

On June 30, 2015, DOL proposed increasing the overtime threshold to \$50,440 per year, a 113 percent increase that would occur all at once in 2016, and in all areas of the country regardless of significant regional economic differences. The Department also proposed automatically increasing the salary threshold on an annual basis. While DOL did not offer a specific proposal to modify the standard duties tests, the Department suggested it is considering adding an unworkable requirement to quantify how much time employees spend performing their primary duties.

Because, contrary to past practice, DOL did not calculate its proposed salary threshold (or attendant annual increases) to address the dramatic differences in the cost of living through the country, our members that provide banking services in such areas will be significantly impacted by this “one-size-fits-all” rule. In our comment letter to DOL on the proposal, ABA cited a number of instances in southern states where, for example, the annual per capita income ranges from approximately \$13,945 annually to \$33,170. While bank employees generally earn good salaries based on their local cost of living, these statistics demonstrate the drastic impact of the proposed salary thresholds on banks serving these communities. ABA and a number of our members participated in Roundtables held by the Small Business Administration Office of Advocacy with DOL staff to provide input on the impact of the proposal and the need to consider less harmful alternatives. We further met with OMB to again detail our concerns with the proposal and the need to lower the proposed salary threshold.

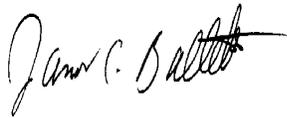
The Secretary of Labor responded to questions posed by Members of Congress about these concerns by stating that the Department met with these stakeholders and heard their concerns prior to issuing the proposed rule; however, neither the proposed nor final regulation reflect that input with respect to the salary threshold level and automatic annual updates.

The salary threshold in the final rule was lowered from \$50,440 to \$47,476 and the automatic updates will now occur every three years rather than annually. Although these changes are an improvement, this is still an increase of more than 100 percent in the salary threshold and represents a token reduction that will not alleviate the harm this rule will do to community banks and their employees. In addition, the automatic update will go into effect without the benefit of the rulemaking process or consideration of exigent economic circumstances. Thus, we believe it is clear that the Secretary is not willing to reconsider the rule in a meaningful way without Congressional action.

Absent the Department of Labor taking additional action, we urge all the members of the Committee on Small Business to support H.R. 4773, the Protecting Workplace Advancement and Opportunity Act. H.R. 4773 would nullify the proposed rule and require the Labor Department to conduct a detailed economic analysis before making dramatic changes to federal overtime pay requirements. In essence the bill would require the Department to move forward in a responsible manner.

Thank you for convening the hearing and for the opportunity to submit this letter for the record.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Ballentine", with a stylized flourish at the end.

James C. Ballentine

cc: Members of the House Committee on Small Business