

May 10, 2016

Chairman David Vitter  
Committee on Small Business & Entrepreneurship  
U.S. Senate  
428A Russell Senate Office Building  
Washington, DC 20510

Ranking Member Jeanne Shaheen  
Committee on Small Business & Entrepreneurship  
U.S. Senate  
428A Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Vitter and Ranking Member Shaheen:

The American Bankers Association (ABA) writes to thank you for holding today's hearing on the Department of Labor's (DOL) proposed regulation amending the exemptions for executive, administrative, professional, outside sales, and computer employees (the "EAP exemptions" or "white collar exemptions"). 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 a requirement to quantify how much time employees spend performing their primary duties.

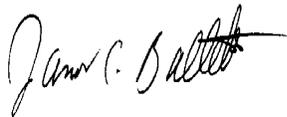
Because, contrary to past practice, DOL did not calculate its proposed salary threshold (or attendant annual increases) to address the dramatic differences in the cost of living through the country, our members that provide banking services in such areas will be significantly impacted by this "one-size-fits-all" 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 has 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, the proposed regulation does not reflect that input with respect to the salary threshold level and automatic annual updates. Recent press reports that the Department is considering lowering the overtime threshold from \$50,440 to \$47,000 confirm that DOL is not taking seriously the public's concerns with its proposal. This is still a 99 percent increase 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. Based on this information and statements made by Department officials, it is clear the Secretary is not willing to reconsider the rule in a meaningful way without Congressional action.

Accordingly, we urge all the members of the Small Business and Entrepreneurship Committee to support S. 2707, the *Protecting Workplace Advancement and Opportunity Act*. S. 2707 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.

Thank you for convening today's 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". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James C. Ballentine