

September 25, 2017

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Acosta:

Re: RIN 1235-AA20, Defining and Delimiting the Exemptions for Executive,
Administrative, Professional, Outside Sales and Computer Employees

On behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies, I appreciate the opportunity to reply to the U.S. Department of Labor's (DOL) Request for Information (RFI) related to "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees."

In our comments to the July 6, 2015, Notice of Proposed Rulemaking (NPRM), we supported modernizing the so-called "overtime rule" under the *Fair Labor Standards Act* (FLSA). However, we made it clear that we did not support the proposed rule, due mainly to its immediate and unrealistically high salary thresholds and regular, automatic increases – neither of which was adequately addressed in the Final Rule. Given our concerns, Business Roundtable was pleased the rule was invalidated by the U.S. District Court for the Eastern District of Texas and that DOL is not advocating for the specific salary level the rule would have put in place.

We commend DOL for reaching out to the employer community through this RFI. Business Roundtable reaffirms our previous comments on how best to modernize the overtime rule. Specifically, we recommend the updated rule:

- refine the exemption from overtime pay for administrative employees by removing the "discretion and independent judgment with respect to matters of significance" requirement;
- clarify the "production versus staff" dichotomy currently embedded in the administrative exemption, including ensuring that sales positions are not classified as production positions;

Jamie Dimon
JPMorgan Chase & Co.
Chairman

Wes Bush
Northrop Grumman
Chair, Education and
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- explicitly exempt from overtime pay for professional employees workers in professions who have substantially the same knowledge level as degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces, attending a technical school, attending a community college or other alternate forms of instruction;
- provide a “safe harbor” from overtime-related lawsuits to employers that reclassify employees as nonexempt in good faith; and
- establish clear guidelines for determining what are – and what are not – considered “hours worked” to account for today’s increasingly remote, virtual workplace.

Business Roundtable appreciates this opportunity to respond to this RFI. We encourage DOL to continue to reach out to the employer community on how best to modernize FLSA overtime exemption duties. This will better ensure future rules properly account for the characteristics of the modern economy, the best interests of employees and the needs of the employer community.

Sincerely,



Joshua Bolten