

Amy DeBisschop  
Director, Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division, U.S. Department of Labor  
Room S-3502  
200 Constitution Avenue NW  
Washington, DC 20210

**Re: RIN 1235-AA39, Comments in Support of Notice of Proposed Rulemaking, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees**

Dear Ms. DeBisschop:

The undersigned organizations are dedicated to ensuring families can balance the competing demands of work and family care, all while maintaining their health, the health of their families, and their economic security. We wholeheartedly support the proposed expansion of overtime protections to millions of workers. We applaud the positive impact the proposed rule would have on the lives of working families, by reducing excessive hours of unpaid work and ensuring employees who are required to engage in long hours are compensated fairly for doing so. While our organizations strongly support the proposed rule, we are disappointed that teachers will not benefit and encourage the Department to reevaluate how to ensure teachers are not left behind.

**Workers with Family Caregiving Responsibilities Will Benefit From The Proposed Rule, Which Will Promote Reasonable Work Hours and Ensure Employees Are Compensated Fairly When They Work Long Hours.**

The salary threshold in the current regulations is so low that it fails to provide a true incentive for employers to balance the additional hours they ask of their workers with the costs of either overtime pay or of raising salaries to the new salary threshold. This failure undermines a fundamental principle embodied in the FLSA that is critical for today's working families: that employees should be compensated at a premium when they are required to work long hours. This principle is of the utmost importance for family caregivers, for whom every minute of the day is precious when they are juggling their obligations to their employers with their responsibilities to care for their children, elderly family members, and/or family members with disabilities.

Three out of every four employees has some form of caregiving responsibility, according to a Harvard Business School study<sup>1</sup>. And 82% of Americans caring for both a child and an elderly family member at the same time are *also* employed.<sup>2</sup> For these workers, adherence to the

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<sup>1</sup>Fuller, J., Rahman, M. (2019). The caring company: How employers can help employees manage their caregiving responsibilities while reducing costs and increasing productivity. *Harvard Business School*.

<sup>2</sup>U.S. Bureau of Labor Statistics (2023). Unpaid eldercare in the United States 2021-2022 summary. Retrieved from <https://www.bls.gov/news.release/elcare.nr0.htm>.

FLSA's 40 hour workweek is often critical to their ability to meet their family care obligations. When longer work hours are required, employees should be compensated accordingly, as envisioned by the FLSA's overtime framework. This means that employees working more than 40 hours in a week should either be paid overtime pay at time and a half to compensate them for the myriad costs of long work hours or, alternatively, receive a salary that accurately reflects the responsibilities of a professional, administrator, or executive. Although modest, the Department's proposal to raise the salary threshold to \$55,068 would move our economy closer to achieving this reality, in line with the FLSA's purpose.

Additionally, we thank the Department for issuing the proposed rule because it represents an important step toward fairer pay for women, Black and Indigenous people of color (BIPOC), who are more likely to be directly caring for their family members,<sup>3</sup> and who also are overrepresented in lower-paying jobs where they are often required to work additional hours without overtime compensation.<sup>4</sup>

Finally, we support the Department's proposal to automatically update the threshold, which will provide predictability for employees and employers, while ensuring that the FLSA continues to encourage employers to offer humane work hours so employees are able to balance their obligations to their employers with their obligations to care for their loved ones.

### **The Continued Exclusion of Teachers from the Overtime Salary Threshold Not Only Harms Teachers, But it Also Worsens Our Country's Ongoing Care Crisis and Undermines The Ability of Caregivers To Participate In the Workforce.**

While we commend the Department's common sense expansion of overtime eligibility to workers earning under \$55,068, we are disheartened that teachers will not benefit from the proposed rule. The continued exclusion of teachers from the Fair Labor Standards Act's (FLSA's) salary threshold test will only increase pay disparities between their profession and all others, exacerbating a wide range of social problems, including the alarming childcare crisis that costs the U.S. \$122 billion annually in lost earnings, productivity, and revenue.<sup>5</sup> We strongly urge the Department to use its regulatory authority to eliminate the anachronistic exclusion of teachers from overtime, including preschool, transitional kindergarten (TK), pre-kindergarten (Pre-K), and kindergarten teachers—who would most benefit from inclusion.<sup>6</sup>

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<sup>3</sup> Family Caregiver Alliance. (2023). Caregiver Statistics: Demographics. Retrieved from <https://www.caregiver.org/resource/caregiver-statistics-demographics/>.

<sup>4</sup> Bleiweiss, R., Frye, J., & Khattar, R. (2021). Women of color and the wage gap. *Center for American Progress*. Retrieved from <https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/>.

<sup>5</sup> Council for a Strong America. (2023). Retrieved from <https://www.strongnation.org/articles/2038-122-billion-the-growing-annual-cost-of-the-infant-toddler-child-care-crisis>.

<sup>6</sup> Schmitt, J., Scheirholz, H., & Kandra, J. (2021). Expanding overtime protection for teachers under the Fair Labor Standards Act. *Economic Policy Institute Report*. Retrieved from <https://www.epi.org/publication/expanding-overtime-protection-for-teachers-under-the-fair-labor-standards-act/>

The main factor in the quality of early childhood care and education is the teachers.<sup>7</sup> Despite their critical role, early childhood educators are compensated with wages that are low or even below the poverty line. Because they have the lowest earnings, kindergarten and preschool teachers stand to benefit the most from including teachers in overtime eligibility. A 2021 analysis from the Economic Policy Institute found that a third of preschool and kindergarten teachers earned below the current salary threshold (\$35,568),<sup>8</sup> meaning that a third would become eligible to earn a higher salary or overtime compensation if they were no longer excluded from the FLSA's overtime protections. The percentage of preschool and kindergarten teachers who would benefit under the Department's proposed increased salary threshold (\$55,068) would be even higher.

Investing in teachers, especially those teaching and caring for our youngest students, would not only benefit teachers and their own families and improve student outcomes, but it would also promote the economic security of all families by increasing women's labor force participation and wages. Indeed, mothers with reliable access to childcare, including full-time enrollment in kindergarten, are more likely to be employed.<sup>9</sup> Investing in early child care and education has been found to increase women's labor force participation and parental earnings, as access to child care allows parents to enter the workforce.<sup>10</sup>

The skyrocketing problem of chronic teacher shortages has driven student absenteeism to new levels and hindered the availability of consistent educational programming.<sup>11</sup> From the perspective of mothers and other family caregivers, a child's absence from school presents a barrier to consistent workforce participation. For the youngest children who require supervision throughout the day, a school absence often translates to a caregiver's absence from work. The

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<sup>7</sup> Coffey, M. (2022). Still underpaid and unequal: Early childhood educators face low pay and a worsening wage gap. *Center for American Progress*. Retrieved from [https://www.brookings.edu/articles/we-should-be-focusing-on-absenteeism-among-teachers-not-just-students/](https://www.americanprogress.org/article/still-underpaid-and-unequal/#:~:text=Full%2Dtime%20teachers%20of%20infant,%2411%20per%20hour%2C%20on%20average&text=This%20figure%20shows%20that%20teachers,those%20in%20preschool%2Dage%20classrooms; Hansen, M., Quintero, D. (2020). We should be focusing on absenteeism among teachers, not just students. <i>Brookings Institute</i>. Retrieved from <a href=).

<sup>8</sup> Schmitt, J., Scheirholz, H., & Kandra, J. (2021). Expanding overtime protection for teachers under the Fair Labor Standards Act. *Economic Policy Institute Report*. Retrieved from <https://www.epi.org/publication/expanding-overtime-protection-for-teachers-under-the-fair-labor-standards-act/>.

<sup>9</sup> Schochet, L. (2019). The child care crisis is keeping women out of the workforce. *Center for American Progress*. Retrieved from <https://www.americanprogress.org/article/child-care-crisis-keeping-women-workforce/#:~:text=A%20growing%20body%20of%20research%20has%20demonstrated%20that%20child%20care,education%20programs%20among%20single%20mothers.>

<sup>10</sup> Banarjee, A., Gould, E., & Sawo, M. (2021). Setting higher wages for childcare and home health care workers is long overdue. *Economic Policy Institute*. Retrieved from <https://www.epi.org/publication/higher-wages-for-child-care-and-home-health-care-workers/>

<sup>11</sup> Aleksey, A. (2023). Teacher turnover tied to chronic absenteeism at S.F. public schools. *San Francisco Examiner*. Retrieved from [https://www.sfoxaminer.com/news/teacher-turnover-tied-to-chronic-absenteeism-at-s-f-public-schools/article\\_0bcb45e0-8bab-11ed-8cba-1bb8140bfc97.html](https://www.sfoxaminer.com/news/teacher-turnover-tied-to-chronic-absenteeism-at-s-f-public-schools/article_0bcb45e0-8bab-11ed-8cba-1bb8140bfc97.html).

obligation of parents, particularly mothers, to care for their young children triggers discrimination, lower wages, and job loss,<sup>12</sup> with the harshest impacts on low-income women.<sup>13</sup>

By exercising its regulatory authority to end the exclusion of teachers from the FLSA's overtime protections, the Department would increase the wages and job satisfaction of the professionals teaching our nation's children. While only one part of the solution,<sup>14</sup> doing so would be a meaningful step in addressing the U.S. care crisis and enabling mothers to participate on equal footing in the broader economy.

We commend the Department for its common sense rule that would increase the salary threshold for the millions of employees who are included in the FLSA's overtime protections, which will not only increase compensation, but also reinforce the 40-hour workweek that many workers desperately need to have time and space to care for their loved ones. We urge the Department to consider revisiting the proposed regulation to extend the same benefits to hardworking teachers, including those who not only educate, but also provide care for our youngest students while their own parents and other adult caregivers are at work.

Sincerely,

**Center for WorkLife Law, University of California Law, San Francisco**

**Legal Aid at Work**

**Women Employed**

**Better Life Lab at New America**

**A Better Balance**

**Family Values at Work Action**

**Equal Rights Advocates**

**California Work and Family Coalition**

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<sup>12</sup> American Association of University Women. (2023). The motherhood penalty. Retrieved from <https://www.aauw.org/issues/equity/motherhood/>.

<sup>13</sup> Glauber, R. (2018). Trends in the motherhood wage penalty and fatherhood wage premium for low, middle, and high earners. *Demography*, 55 (5), 1663–1680. <https://doi.org/10.1007/s13524-018-0712-5>.

<sup>14</sup> It is important to note that it is also critical to raise the wages of childcare providers who are not included in the meaning of “teachers” for purposes of the FLSA's overtime exemption. However, that critical part of the solution is beyond the scope of the overtime rule.