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May 13, 2024

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Wage and Hour Division: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Wage and Hour Division (DOL) entitled “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees” (RIN: 1235-AA39). We received the rule on April 26, 2024. It was published in the *Federal Register* as a final rule on April 26, 2024. 89 Fed. Reg. 32842. The effective date of the rule is July 1, 2024, with two subsections applicable beginning on January 1, 2025.

According to DOL, this final rule updates and revises regulations issued under the Fair Labor Standards Act implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. DOL explained that significant revisions include increasing the standard salary level, increasing the highly compensated employee total annual compensation threshold, and adding a mechanism that will allow for the timely and efficient updating of the salary and compensation thresholds, including an initial update on July 1, 2024, to reflect earnings growth.

Enclosed is our assessment of DOL’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones
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Enclosure

cc: Daniel Navarrete
Acting Director, Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
WAGE AND HOUR DIVISION
ENTITLED
“DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE,
PROFESSIONAL, OUTSIDE SALES, AND COMPUTER EMPLOYEES”
(RIN: 1235-AA39)

(i) Cost-benefit analysis

The Department of Labor, Wage and Hour Division (DOL) conducted an economic analysis of this final rule. DOL estimated that the direct employer costs of this rule will total \$1.4 billion in the first year, with 10-year annualized direct costs of \$802.9 million per year using a 7 percent discount rate. In addition to these direct costs, according to DOL, the rule will transfer income from employers to employees. DOL stated that estimated Year 1 transfers will equal \$1.5 billion, with annualized transfers of \$1.5 billion per year using the 7 percent real discount rates and \$1.6 billion using the 3 percent discount rate. DOL explained that potential employer costs due to reduced profits and additional hiring were not quantified.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOL prepared a final regulatory flexibility analysis. The analysis included (1) a statement of the needs for and objectives of this final rule; (2) a response to a comment filed by the Small Business Administration’s Chief Counsel for Advocacy; (3) a description of significant issues raised by public comments; (4) an estimate of the number of affected small entities; description of the small entities subject to the rule; (5) projected reporting, recordkeeping, and other compliance requirements; and (5) a description of agency actions to minimize the significant economic impact on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOL determined that this final rule contains unfunded mandates. DOL determined that Year 1 costs for state and local governments would total \$197.7 million, of which \$98.9 million are direct employer costs and \$98.8 million are payroll increases. In subsequent years, state and local governments may experience payroll increases of as much as \$183.7 million in Year 10 of the rule, according to DOL. DOL also estimated that the rule will result in Year 1 costs to the private sector of approximately \$2.7 billion, of which \$1.3 billion are direct employer costs and \$1.4 billion are payroll increases. Total Year 1 costs will be \$1.4 billion in direct employer costs, \$1.5 billion in payroll increases, and \$2.9 billion in direct employer costs and payroll increases, according to DOL.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

DOL did not discuss the Act in this final rule and, in its submission to us, answered that preparation of a compliance statement was not applicable to the rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On September 8, 2023, DOL published a proposed rule. 88 Fed. Reg. 62152. During the 60-day comment period, DOL received 33,300 comments from stakeholders including employees, employers, trade associations, small business owners, labor unions, advocacy groups, nonprofit organizations, law firms, academics, educational organizations and representatives, religious organizations, economists, Members of Congress, state and local government officials, tribal representatives, and other interested members of the public. DOL stated that all timely received comments may be viewed on the <https://www.regulations.gov> website, under Docket ID WHD-2023-0001. Additionally, according to DOL, commenters’ views on the proposed rule’s merits varied widely. DOL also stated that it carefully considered the timely submitted comments about the proposal and received a number of out-of-scope comments.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOL determined that this final rule contains no information collection requirements under the Act. DOL explained that although the rulemaking does not impose new information collection requirements, burdens under the existing requirements would increase due to changes in the universe of employees for whom employers are required to maintain records. Additionally, DOL stated that it plans to submit certain information collection requests to OMB upon the rule’s publication. DOL estimated an annual burden of 9,720 hours (717 burden hours due to this rulemaking) for the “Employment Information Form” (OMB Control Number 1235-0021), and an annual burden of 1,157,993 hours (344,000 from this rulemaking) for “Records to be Kept by Employers—Fair Labor Standards Act” (OMB Control Number 1235-0018).

Statutory authorization for the rule

DOL promulgated this final rule pursuant to section 213(a)(1) of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this final rule is significant under the Order.

Executive Order No. 13132 (Federalism)

DOL determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.