November 7, 2023

**VIA E-MAIL ONLY**

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: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees; RIN 1235–AA39**

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing nearly 200 state and nationally chartered banks, savings banks, and savings and loan associations of all sizes, their branches, and over 30,000 employees located in communities throughout the state. WBA appreciates the opportunity to comment on the Department of Labor’s (Department) proposal to update and revise the regulations issued under the Fair Labor Standards Act (FLSA) (proposal).

The FLSA requires covered employers to pay employees a minimum wage and, for employees who work more than 40 hours in a week, an overtime premium pay of at least 1.5 times the employee’s regular rate of pay. The minimum wage and overtime requirements do not apply to any employee employed in a bona fide executive, administrative, or professional capacity, often referred to as the executive, administrative, or professional (EAP) exemption. The Department has the authority to define and delimit the terms of the EAP exemption.

The EAP exemption has generally required that each of the following three tests must be met: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test); (2) the amount of salary paid must meet a minimum specified amount (the salary level test); and (3) the employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the duties test). The employer bears the burden of establishing the applicability of the exemption. Job titles and job descriptions do not determine EAP exemption status, nor does merely paying an employee a salary.

The Department also has the authority to define the category of highly compensated employees (HCE). To be exempt under the HCE test, an employee must earn at least the amount specified by the Department in total annual compensation (of which at least the standard amount per week must be paid on a salary of fee basis) and must customarily and regularly perform any one or more of the exempt duties of an EAP employee. The HCE test applies only to employees whose primary duty includes performing office or non-manual work.

The standard level salary level for the EAP exemption is currently $684 per week (equivalent to $35,568 per year), and the total annual compensation level for highly compensated employees under the HCE test is currently $107,432. The Department seeks to increase the EAP

exemption to $1,059 per week (equivalent to $55,068 annual for a full-year worker), and proposes to increase the total annual compensation level for highly compensated employees to $143,988.

WBA recognizes the Department’s authority under the FLSA. However, *this significant* of an increase at a time when the economy is still continuing to recover from the unprecedented impacts of the COVID-19 pandemic will have a devastating effect on small employers. Wisconsin’s small employers, across business sectors spectrums, have not yet recovered as many are barely able to continue the fight to remain viable.

Pay ranges within Wisconsin and the Midwest, especially in rural areas, are significantly less than in other regions. This drastic adjustment will have a crushing impact on Wisconsin’s community banks and other small employers as they work to find ways to adjust for the extraordinary increase in employment costs all at once. Employers will be forced to restructure work hours and limit overtime such that employees will lose their current scheduling flexibility.

WBA believes the Department’s proposal is too aggressive an adjustment during this unique time of economic recovery and that the Department has failed to fully understand the consequences of the proposal on small businesses, including on Wisconsin’s community banks. For this reason, WBA urges the Department to withdraw its proposal.

Once again, WBA appreciates the opportunity to comment.

Respectfully,



Rose Oswald Poels

President/CEO