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Larry Gregory, Executive Director  
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September 4, 2015

Ms. Mary Ziegler  
Director of the 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: Notice of Proposed Rulemaking; Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales, and Computer Employees**

Dear Ms. Ziegler:

We appreciate the opportunity to comment on the proposed regulation to alter the overtime requirements under the Fair Labor Standards Act (FLSA). I write on behalf of the Mississippi Gaming & Hospitality Association ("MGHA"), which includes among its members 26 casino operators doing business in the State of Mississippi who employ more than 18,000 individuals. For the reasons described below, MGHA strongly urges the Department of Labor (DOL) to reconsider the proposal, which will have significant and negative repercussions for all of our members and their employees.

DOL has proposed increasing the minimum salary to qualify as an exempt employee from the current \$455 per week to \$970 per week next year. An increase of this magnitude will harm our members' operations significantly. It is estimated by one of our members that the financial impact could be \$500,000 or greater. If applied across the 26 operators (with more than 18,000 employees) that equates to an **annual impact of \$13 million or greater**.

The salary threshold in the proposed rule is higher than the thresholds set under *any* state laws—more than that of California and New York, two of the states with the highest costs of living and the highest salary thresholds. **Workers in states like Mississippi with lower costs of living will be impacted disproportionately** under the proposed rule and the DOL should take this into consideration.

Of particular concern is the fact that under the proposed rule many employees currently classified as exempt will lose benefits associated with exempt status. Because employers must closely track nonexempt employees' hours to ensure compliance with overtime pay and other requirements, these employees will have **less workplace autonomy and fewer opportunities for flexible work arrangements**, career training and advancement than their colleagues who are exempt. Incentive pay and bonus structures will also have to be revised to reflect the new rules, which will likely be a negative from the perspective of the currently exempt employee.



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**Workplace flexibility will be replaced with rigidity** that most employees will not find to their benefit or liking. This would have a negative impact on an employee's quality of life and quite likely a negative impact on an employee's quality of work as well.

Moreover, we understand that for the first time, DOL is planning to annually adjust the minimum salary threshold by tying it to either the Consumer Price Index (CPI) or the 40<sup>th</sup> percentile of weekly earnings of full-time salaried employees. **Of particular concern, with regard to the annual adjustment, employers would only have a 60-day notice to adjust to the new thresholds.** Such a policy is unprecedented and unwise. This will be a time- and resource-consuming process. In addition, it would undoubtedly result in situations where **good employees are forced by federal rule to be demoted to hourly status.**

**If Congress had wanted automatic updates it could have done so in the statute, but instead Congress ordered the Department to update the exemptions from "time to time,"** presumably to take into account changes to the economy. From 1938 to 1975, DOL regularly updated the salary level every five to nine years. From 1975 to 2004, the salary level was not updated—likely because of complications in applying outdated provisions of the regulations to modern white collar employees, and in 2004, DOL remedied this by modernizing the duties test.

Apparently, **the current administration did not update the salary level within the typical five-to-nine-year time frame because of the recession and prolonged lackluster recovery.** This was a wise course of action and demonstrates why "automatic" updates would be a bad idea. By setting the threshold on automatic pilot, future difficulties in the economy would be exacerbated. Regularly updating the threshold through notice-and-comment rulemaking, as it has with every salary increase, is the best course of action and comports with Congress' intent.

Finally, public input on the current primary duties test was asked for in the proposed rule. Based on how the DOL has presented these questions, the implication is that any such changes would be included in the final rule without any opportunity for the public to review or comment on them. Such an approach would, at a minimum, **violate the intent of the Administrative Procedure Act (APA)**, and potentially the letter of the law.

The **APA exists to ensure interested parties have a meaningful opportunity to comment on regulatory actions that will affect them.** Adding new major regulatory text to a final regulation with no opportunity to see it beforehand directly contradicts the goals of the APA. Before any changes to the primary duties test are finalized, DOL should provide the public an opportunity to review and comment on a specific proposal and related cost estimates.

DOL is proposing costly changes that we simply cannot absorb and will negatively our members' employees, the organizations themselves, and the economy as a whole. I strongly urge the DOL to reconsider moving forward with such an impractical and disruptive proposal.



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Respectfully submitted,

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to read "LGG".

Larry Gregory, Executive Director  
Mississippi Gaming & Hospitality Association

cc:

*Bally's Casino – Tunica*  
*Resorts Casino – Tunica*  
*Horseshoe Casino – Tunica*  
*Roadhouse Casino – Tunica*  
*Fitzgerald's Casino – Tunica*  
*Hollywood – Tunica*  
*Sam's Town – Tunica*  
*Isle of Capri – Lula*  
*Ameristar Casino – Vicksburg*  
*Diamond Jack's – Vicksburg*  
*Lady Luck Casino – Vicksburg*  
*Riverwalk Casino – Vicksburg*  
*Harlow's Casino – Greenville*  
*Trop Casino – Greenville*  
*Isle of Capri – Natchez*  
*Magnolia Bluffs – Natchez*  
*Silver Slipper Casino – Bay St. Louis*  
*Hollywood Gulf Coast – Bay St. Louis*  
*Island View Casino – Gulfport*  
*Boomtown Casino – Biloxi*  
*Golden Nugget Casino – Biloxi*  
*Hard Rock Casino – Biloxi*  
*Harrah's Gulf Coast – Biloxi*  
*IP Casino Resort – Biloxi*  
*Palace Casino – Biloxi*  
*Treasure Bay Casino – Biloxi*