September 25, 2017

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

RE: Response to Department of Labor Regulatory Information Number (RIN) 1235-AA20 Request for Information regarding overtime pay exemptions, and the 2016 Final Rule under RIN 1235-AA11

Dear Director Smith:

On behalf of the National Golf Course Owners Association, Club Managers Association of America, Professional Golfers Association of America, Golf Course Superintendents Association of America, and the National Club Association, we respectfully submit the following comments regarding the 29 CFR part 541 regulations defining exemptions from the Fair Labor Standards Act's overtime requirements for certain executive, administrative, and professional (EAP) employees.

The golf industry appreciates the Department of Labor (Department)'s measured and responsive approach in issuing this Request for Information (RFI) rather than proceeding immediately to a notice of proposed rulemaking (NPRM). We share the Department's belief in the importance of gathering stakeholder input at this stage. We also wish to acknowledge the Department's efforts to modernize overtime pay regulations, and the complexity and difficulty of that task.

The golf industry has provided comments on the following items that we deem critical to any upcoming revisions to EAP overtime pay: 1. Setting an appropriate standard salary threshold; 2. Maintaining the existing duties test and balance with the salary threshold; 3. Including certain fee and incentive payments; 4. Examining regional adjustments to the standard salary level; and 5. Ensuring criteria for seasonal businesses reflect industry realities.

Setting an Appropriate Standard Salary Threshold
The golf industry supports the Department's decision not to advocate for the overturned 2016 Final Rule salary level of $913 per week, or $47,476 annually, and to undertake additional efforts to determine an appropriate salary level. As we, and leading representatives of many

other industries noted, more than doubling the minimum exempt salary level would have significant consequences for businesses throughout the country, especially small businesses that may lack the budget flexibility necessary for that degree of operational shift. The impact on small businesses is of particular importance to our industry; as of 2014, 95% of golf facilities met the Small Business Administration criteria for small businesses. Further, setting a far higher threshold could negatively impact employees financially and limit their opportunities for professional growth, as companies are forced to consider taking steps such as hiring fewer full-time salaried employees or decreasing hiring for management positions.

We are aware that the recent decision in Nevada v. U.S. Department of Labor, No. 4:16-cv-00731 (E.D. Tex. Aug. 31, 2017), to strike down the 2016 Final Rule also deemed the 2016 salary threshold to be too high. U.S. District Judge Amos Mazzant noted that, "This significant increase would essentially make an employee's duties, functions, or tasks irrelevant if the employee's salary falls below the new minimum salary level. As a result, entire categories of previously exempt employees who perform 'bona fide executive, administrative, or professional capacity' duties would now qualify for the EAP exemption based on salary alone."

Judge Mazzant also cited a Department report stating that a recommended salary threshold should be "somewhere near the lower end of the range" of salaries for such employees, so that it serves as a characteristic that helps identify bona fide EAP employees. While we recognize that there are broader issues of legal and regulatory interpretation at play regarding the specific usage of a salary threshold and the exact point at which the salary level eclipses the duties test, we feel that in practical terms, this general premise is in keeping with how our businesses operate.

The golf industry proposes a new standard salary threshold, to be used in conjunction with the duties test, whereby bona fide EAP employees with $30,827.85 or less in total annual earnings qualify for overtime pay. This figure was derived by updating the Department's April 2004 standard salary threshold of $23,660 per year to account for inflation, ensuring commensurate buying power as compared to July 2017. The measure of inflation utilized was the Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U).

Maintaining the Existing Duties Test and Balance with the Salary Threshold
The golf industry does not believe changes to the duties test are warranted. As stated above, we think the salary threshold should not be so high as to eclipse the duties test. However, we also believe that an exemption test that relies solely on duties performed by the employee and does not include a salary benchmark would likely be difficult to calibrate appropriately and cumbersome to implement. A duties test-only method could easily over- or under-include employees in the exemption, and efforts to more accurately tailor it would likely unnecessarily increase the administrative burden on American businesses, especially small businesses.

Including Certain Fee and Incentive Payments
The existing EAP exemption rules take a one-size-fits-all approach that does not account for

the varying compensation systems across different industries. While the Department took an important first step towards addressing this issue by including language in the 2016 Final Rule allowing non-discretionary bonuses and commissions to satisfy up to 10 percent of the standard salary requirement, further changes are demonstrably needed. The golf industry requests that the Department take a broader approach to defining compensation, and include all earnings an employee gains under the operation of the employer. Specifically, this would mean including earnings from lesson fees and program fees when calculating salary levels under this rule. In addition, we urge the Department not to pursue an arbitrary and artificial cap setting a specific percentage of the salary threshold that may be met through non-discretionary fees, bonuses, incentive payments, or commissions. These earnings constitute taxable income, and we believe such a cap could interfere with the ability of employers and employees to appropriately tailor the exact makeup of an employee's compensation.

In the golf industry, many professionals are compensated for their work in a very different manner than their colleagues in other industries. Often, they are paid a salary but also retain fees they earn from lessons or commissions from other programs they conduct or manage at their facilities. Therefore, excluding such fees from salary calculations could inappropriately exclude from exemption young professionals in the industry. Should sufficient numbers of golf professionals earning such fees or commissions be inappropriately classified as non-exempt employees, golf facilities' ability to balance payroll costs may be challenged, forcing them to alter their traditional compensation schemes. Our primary concern in that eventuality is that such changes include options such as increasing base salaries but retaining program and lesson fees, or converting full-time salaried positions into hourly positions, and capping the hours in which they can conduct such lessons or programs.

In addition, many membership clubs have longstanding traditions of maintaining funds to pay club employees a holiday bonus at the end of the year. These bonuses do not vary year-to-year, and constitute non-discretionary payments. If they are not counted towards calculating salary levels, it will be harder for golf facilities to maintain them, and they could be driven to redirecting these funds towards salary increases to create more exempt employees, meanwhile impacting end-of-year non-discretionary bonuses for lower income non-exempt employees.

Examining Regional Adjustments to the Standard Salary Level

Our organizations thought carefully about whether and how the varying wage levels and cost-of-living across different parts of the country should be reflected in the standard salary threshold. We believe that if done appropriately, adjusting the standard salary threshold to account for geographical cost-of-living differences could be very beneficial for employees and would broadly reflect local market forces.

We recognize the complexity of this issue and are aware that there is a myriad of disparate policy approaches that could be utilized to reflect these local and regional variances, and that each has benefits and pitfalls. In addition, we acknowledge that establishing and maintaining a system of multiple regionalized standard salary levels could well increase the administrative burden and costs for the Department and for businesses. We urge the Department to study this issue and also thoroughly examine ways to alleviate this concern.

While the Department noted the potential usage of census region, census division, state, or metropolitan statistical area data in setting adjusted salary levels, we are concerned that the number of micro-markets within these areas would make them a less accurate resource. We would encourage the Department to examine the benefits and feasibility of applying county-based adjustments in high-cost markets to the selected standard salary threshold as a way of adjusting for differences in cost-of-living.

In addition, while the Department cited the Federal Government's General Schedule (GS) Locality Areas as a potential model, we do not think it is an appropriate template. We generally support the broader premise of using a percentage-based adjustment to adjust for varying cost-of-living. However, in our view, GS pay tables would not accurately translate to the private sector. GS grades are based on factors and criteria that many private industries do not use, and there is also far greater standardization of position scope and title across the federal government than across the private sector. In addition, GS pay tables would not adequately account for seasonal businesses.

Ensuring Criteria for Seasonal Businesses Reflect Industry Realities

There are a number of U.S. industries with a significant positive impact on the economy and job market whose operations and employment needs are directly tied to the seasons. These industries are inherently negatively impacted by being treated the same way under overtime pay regulations as their non-seasonal counterparts. The golf industry is particularly affected, given the impact unusual seasonal weather patterns or day-to-day weather events have on consumer demand. In addition, though golf provides players with measurable health benefits, as a recreational activity, it is a discretionary spend for its customers. These factors combine to make it quite difficult for golf businesses if they lack the ability to adjust their work schedules to fit the demands of the customer base. As the Department considers future updates to our Nation's overtime pay regulations for EAP employees, our organizations request that you carefully consider and account for the unique market realities and labor flexibility needs of seasonal operators.

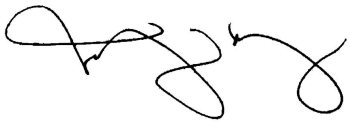
In particular, the golf industry does not believe the current criteria for identifying a company as a seasonal operator and exempting its employees from overtime pay rules accurately reflects the seasonal operators in our industry. Under the current standard, a company may only be exempt if during the prior calendar year, its average receipts for any six months of the year are no more than 33.3% of its average receipts for its busiest six months of the year. However, many golf course operators, whether they are open for part of the year, or year-round, generate a large amount of their income over a period of only a few months. In light of this, we are concerned that the current 33.3% threshold for exemption denies relief to some bona fide seasonal businesses, and we support increasing the allowable percentage of average receipts. As the Department works to update the EAP overtime regulations, we hope to act as an informational resource regarding the realities of seasonal businesses.

As leading representatives of the golf industry, we are proud to say that the golf industry sustains two million American jobs, with $55.6 billion in annual wage income. As an industry

that acts as a key employer in communities across the country, our organizations have provided these comments with the goal of serving as a resource for the Department. We urge the Department to consider and adopt our recommendations, and we hope to help advance the Department's work towards formulating sensible and well-considered updates to the existing EAP overtime pay regulations.

Sincerely,

Jay Karen, CEO
National Golf Course Owners Association



Jeff Morgan, FASAE, CAE, CEO
Club Managers Association of America

Peter P. Bevacqua, CEO
Professional Golfers Association of America

Rhett Evans, CEO
Golf Course Superintendents Association of America

Henry Wallmeyer, President and CEO
National Club Association