



CLUB
MANAGEMENT
ASSOCIATION
OF AMERICA



May 20, 2019

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: Regulatory Information Number (RIN) 1235-AA20

Dear Director Smith:

On behalf of the National Golf Course Owners Association, Club Management 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.

We appreciate the Department of Labor (Department)'s measured and responsive approach to modernizing 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 the proposed revisions to EAP overtime pay:

1. Consideration for Seasonal Operations;
2. Inclusion of nondiscretionary bonuses, incentive payments, and commissions in the salary level requirement; and
3. Future Updates to the Earnings Thresholds.

Consideration for Seasonal Operations

The golf industry supports the Department's decision to propose a more reasonable increase to the standard salary level. However, we request that further consideration needs to be given to seasonable businesses.

There are many US 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.

Inclusion of Nondiscretionary Bonuses, Incentive Payments, and Commissions in the Salary Level Requirement

While the Department took an important first step towards addressing this issue by proposing to allow non-discretionary bonuses and commissions to satisfy up to 10 percent of the standard salary requirement, further consideration is required. The golf industry requests that the Department take a broader approach to defining compensation and include 25% of 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 our industry, many professionals – golf, tennis, spa, and fitness - 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 more of the value of such fees from salary calculations could inappropriately exclude from exemption young professionals in the industry. 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. Ultimately, this could be detrimental to the individual employee.

Future Updates to the Earnings Thresholds

We agree that the Department proposed methodology to evaluate the standard salary threshold and the HCE total annual compensation via an NPRM on a regular basis is sound. The utilization of this established notice-and-comment rulemaking practice ensures the opportunity for the public and those impacted to provide much-needed feedback and perspective to the Department.

The golf industry concurs that addressing this on a triennial basis is sound. Through a more frequent process, it would provide less significant increases while still providing sufficient time for business owners and operators to adjust to the changes. Any more frequent of a process would create continued uncertainty and constant flux, significantly impacting budgets and operations.


Summary

As leading representatives of the golf industry, we are proud to say that the golf industry sustains one in every 75 American jobs, with \$58.7 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, President & CEO
Club Management Association of America



Rhett Evans, CEO
Golf Course Superintendents
Association of America



Henry Wallmeyer, President and CEO
National Club Association