

The Honorable Martin J. Walsh  
Secretary  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**Re: Ending the FLSA “Teacher Exclusion” Regulation**

Dear Secretary Walsh:

As organizations concerned about public education, workers’ rights, pay equity, racial justice, and women’s economic security, we write to you in support of the National Education Association’s (NEA) call to eliminate the teacher exclusion from the Fair Labor Standards Act (“FLSA”) regulations, 29 CFR §541.303(d).

The long-smoldering crisis of teacher shortages across the United States accelerated to a five-alarm fire during the COVID-19 pandemic. Low pay and the gap between teacher pay and that of other similarly educated professionals is one of the primary factors contributing to this shortage. In addition to the numerous ways this crisis impacts student learning, losses in this heavily female profession also undermine women’s economic security, particularly to the detriment of women of color.

We call on the Department of Labor to use its regulatory authority to raise compensation standards by eliminating outdated regulatory language that lumps teachers in with doctors and lawyers to deny teachers FLSA overtime protections, even where teachers are paid on an hourly basis or are paid less than the FLSA salary threshold.

***The teacher shortage crisis is exacerbated by low pay and the teacher “wage penalty.”***

There is no question that the COVID-19 pandemic has pushed many educators to their breaking point. In a January 2022 poll of NEA members, more than half (55%) of survey respondents said they were more likely to leave or retire sooner than they planned because of the pandemic.<sup>1</sup> Black and Hispanic teachers are the most likely to leave or retire early.<sup>2</sup> Addressing the current crisis is critical to efforts to increase the recruitment and retention of teachers of color in a profession that serves a student population that is predominately comprised of students of color.<sup>3</sup>

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<sup>1</sup> GBAO, [“Stress and Burnout Pose Threat of Educator Shortages.”](#) (Jan. 31, 2022) (hereinafter, “NEA Survey”).

<sup>2</sup> [NEA Survey](#).

<sup>3</sup> As of 2018, just over 20% of public school teachers were teachers of color, whereas, the K-12 public school population is 53% students of color. [Department of Education, 2020 Title II Report](#); National Center for Education Statistics, [Percentage distribution of teachers, by school type, race/ethnicity and selected main teaching assignment: 2017–18; Percentage distribution of students enrolled in public elementary and secondary schools, by race/ethnicity: fall 2018](#).

The roots of the current crisis run deep. A 2016 report by the Learning Policy Institute (“LPI”) found that many school districts “had serious difficulty finding qualified teachers for their positions” and that, barring any major changes, the annual teacher shortage would reach about 110,000 by the 2017–2018 school year.<sup>4</sup>

Low pay and the “teacher pay penalty” — the gap between what teachers earn compared to other college educated professionals — drive the teacher shortage at both ends of the career trajectory, by increasing attrition and decreasing interest in entering the profession in the first place. “[T]eachers are paid less (in wages and compensation) than other college-educated workers with similar experience and other characteristics, and this financial penalty discourages college students from entering the teaching profession and makes it difficult for school districts to keep current teachers in the classroom.”<sup>5</sup> Importantly, raising salaries is what educators themselves, in the January 2022 NEA survey, rated as the measure most likely to keep them in the teaching profession.<sup>6</sup>

### ***The antiquated teacher exclusion regulation suppresses teacher wages.***

The teacher pay penalty is not accidental or solely the result of historic devaluing of women’s labor. The regulatory anachronism at 29 CFR §541.303(d), which excludes teachers from FLSA protections regardless of how little they are paid and even if they are paid on an hourly basis, plays a significant role in suppressing teacher salaries.

A November 2021 report by the Economic Policy Institute (EPI) calculates the direct impact of the teacher exclusion on the lowest paid teachers. EPI estimates that of the 6.5 million teachers in all public and private schools, just over 1.5 million, or 23.8% of the total, would be affected if the blanket teacher exclusion were eliminated from the FLSA regulations.<sup>7</sup> These 1.5 million teachers are either hourly or salaried but earn less than the weekly threshold for overtime eligibility (\$684 per week). Yet these teachers currently do not receive overtime when they work more than 40 hours per week because of the teacher exclusion.

Whatever rationale may have existed in 1967 to categorically deny teachers these FLSA protections without regard to salary, lumping teachers in with highly compensated lawyers and doctors while excluding them from the same FLSA protections that apply to all other

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<sup>4</sup> Leib Satcher, Linda Darling-Hammond, & Desiree Carver-Thomas, D., [A coming crisis in teaching? Teacher supply, demand, and shortages in the U.S.](#) at 1. Learning Policy Institute (2016).

<sup>5</sup> Lawrence Mishel & Sylvia Allegretto, [Teacher pay penalty dips but persists in 2019](#), Economic Policy Institute (Sept. 17, 2020).

<sup>6</sup> [NEA Survey](#).

<sup>7</sup> The EPI estimates are based on data from the Current Population Survey and teacher weekly earnings as calculated by the Bureau of Labor Statistics; public and private school teachers include all teachers in preschools, kindergartens, and elementary, middle, secondary, and postsecondary schools, as well as special education teachers at all levels. John Schmitt, Heidi Shierholz, and Jori Kandra, [Expanding overtime protection for teachers under Fair Labor Standards Act](#), Economic Policy Institute (Nov. 22, 2021) (hereinafter, “Expanding Overtime Protections”).

professionals, is nonsensical. In 2020, the median pay of doctors was \$208,000 per year; while for lawyers, the median pay was \$126,930 per year, more than double the median pay of K-12 teachers (\$63,645 in 2019-20).<sup>8</sup> Starting salaries for teachers are so low that new teachers are unable to afford the median rent in the majority of U.S. metro areas.<sup>9</sup> And while the vast majority of public school teachers are salaried, a substantial minority (approximately 10%) are paid on an hourly basis.<sup>10</sup> Unlike other hourly workers who can earn overtime for hours worked above 40 hours a week, these teachers, simply by virtue of their job and despite their low pay, cannot.

***Ending the teacher exclusion would benefit women, teachers of color, and underpaid early childhood teachers and higher education adjunct faculty.***

As EPI's report demonstrates, ending the teacher exclusion would disproportionately benefit women, teachers of color, and younger teachers.<sup>11</sup> EPI breaks down by demographics the impact of removing the teacher exclusion, finding that it would directly impact a quarter (24.8%) of women teachers, 28% of teachers of color, and two-thirds (67.3%) of teachers under 25.

The regulatory change would also benefit two segments of the teaching profession that are historically drastically underpaid. EPI estimates that a third (33.1%) of those teaching preschool and kindergarten would gain FLSA protections. Preschool teachers are amongst the lowest paid professionals, with many preschool educators living below the poverty line: 43% of their families rely on public assistance programs.<sup>12</sup> This underpaid workforce is primarily women, with nearly half being women of color.<sup>13</sup>

The change would also benefit higher education faculty members who teach on a contingent or adjunct basis, including those who are currently paid on a piecework per course basis that often results in them earning far less than minimum wage. In a recent survey of adjunct faculty, a third reported earning less than \$25,000 a year, with another

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<sup>8</sup> U.S. Bureau of Labor Statistics, [Occupational Outlook Handbook: Physicians and Surgeons](#); U.S. Bureau of Labor Statistics, [Occupational Outlook Handbook: Lawyers](#); National Center for Education Statistics, Digest of Education Statistics: [Estimated average annual salary of teachers in public elementary and secondary schools, by state: Selected years, 1969-70 through 2019-20](#). NEA's recent Rankings and Estimates report shows teacher salaries for 2020-21 increasing only 1.8% from the prior year, and inflation adjusted salaries declining by 3.9% over the past decade; the average starting salary was only \$41,770 in 2020-21. [NEA Rankings and Estimates Report](#) (Apr. 2022), at "[Educator Pay and Student Spending: How Does Your State Rank?](#)"

<sup>9</sup> Erin Richards and Matt Wynn, [Can't pay their bills with love: In many teaching jobs, teachers' salaries can't cover rent](#), USA Today (Dec. 16, 2019).

<sup>10</sup> [Expanding Overtime Protections](#).

<sup>11</sup> *Id.*

<sup>12</sup> Caitlin McLean, Marcy Whitebrook, and Eunice Roh, [From Unlivable Wages to Just Pay for Early Educators 1-3](#), Center for the Study of Child Care Employment, University of California, Berkeley (2019).

<sup>13</sup> *Id.*

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third earning less than \$50,000 a year.<sup>14</sup> Nearly 25% of adjuncts utilize public assistance programs, and 40% have trouble covering basic expenses.<sup>15</sup>

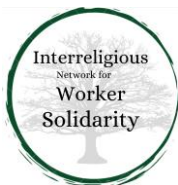
### **Conclusion**

For these reasons, we call on the Department of Labor to eliminate the “teacher exclusion” at 29 CFR § 541.303(d) and 29 CFR § 541.600(e), and thereby provide teachers with the same protections under the FLSA as other professionals. This change should be included in the upcoming rulemaking, either as part of the forthcoming proposed rule, or at the very least, as a request for information to begin the process of considering this crucial regulatory change.

Sincerely,



*Great Public Schools for Every Child*



<sup>14</sup> Colleen Flaherty, [Barely Getting By](#), *Chronicle of Higher Education* (April 20, 2020).

<sup>15</sup> American Federation of Teachers, ["An Army of Temps,"](#) AFT 2020 Adjunct Faculty Quality of Work/Life Report.



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The National Education Association  
Center for American Progress  
The Center for Popular Democracy  
Jobs with Justice  
Economic Policy Institute  
National Employment Law Project  
National Partnership for Women & Families  
National Women's Law Center  
Service Employees International Union  
Interreligious Network for Worker Solidarity  
Arise Chicago  
NEA-Alaska  
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