

## Grossman, David M - WHD

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**From:** Navarro, Montaniel S - WHD  
**Sent:** Monday, November 1, 2021 12:31 PM  
**To:** DeBisschop, Amy M - WHD  
**Subject:** FW: FLSA and Teachers Powerpoint  
**Attachments:** FLSA Teacher Exception Presentation 10.28.21.pdf

Fyi.

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**From:** Garcia, Kristin M - WHD <(b)(6)@dol.gov>  
**Sent:** Friday, October 29, 2021 10:31 AM  
**To:** Navarro, Montaniel S - WHD <(b)(6)@dol.gov>; Davidson, Patricia J - WHD <(b)(6)@dol.gov>; Kravitz, Michael - WHD <(b)(6)@dol.gov>; Looman, Jessica - WHD <(b)(6)@dol.gov>; Brown, Brandon S - WHD <(b)(6)@dol.gov>; Dunbar, Lee A - WHD <(b)(6)@dol.gov>; Thomas, Terri - WHD <(b)(6)@dol.gov>  
**Subject:** FW: FLSA and Teachers Powerpoint

FYI.

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**From:** Nunez, Lucia B - OSEC <(b)(6)@dol.gov>  
**Sent:** Thursday, October 28, 2021 4:07 PM  
**To:** Looman, Jessica - WHD <(b)(6)@dol.gov>; Garcia, Kristin M - WHD <(b)(6)@dol.gov>; Treves, Valeria - OSEC <(b)(6)@dol.gov>  
**Subject:** Fwd: FLSA and Teachers Powerpoint

PowerPoint attached!

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**From:** Alam, Lubna [NEA-GC] <lalam@nea.org>  
**Sent:** Thursday, October 28, 2021 1:41:40 PM  
**To:** Nunez, Lucia B - OSEC <Nunez.Lucia.B@dol.gov>  
**Cc:** aobrien@nea.org <aobrien@nea.org>  
**Subject:** FLSA and Teachers Powerpoint

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Lucia,

Attached is NEA's slide deck that we shared during our meeting today regarding the FLSA and teachers. Thanks for today's meeting - we look forward to discussing these issues further and in more detail.

All the best,

Lubna

Lubna A. Alam

[lalam@nea.org](mailto:lalam@nea.org)

Staff Counsel, Office of General Counsel

National Education Association



# FLSA

**FAIR LABOR STANDARDS ACT**

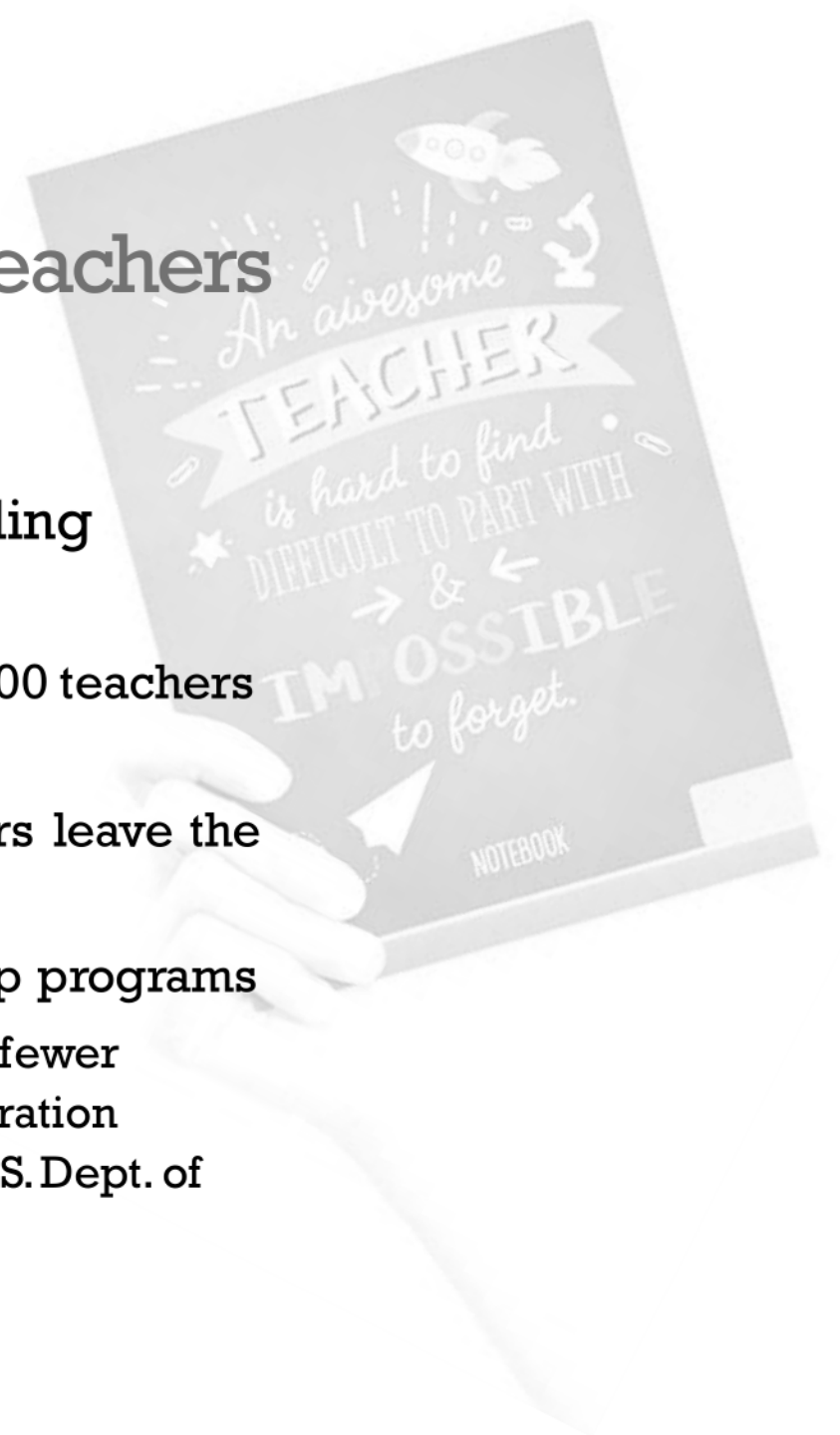
## Needed Regulatory Reform of the FLSA Teacher Exception

Alice O'Brien, Lubna Alam, Dale Templeton & Stacey Pelika

National Education Association

# Critical Ongoing Lack of Teachers Nationwide

- School districts have difficulty finding qualified teachers.
  - Estimated annual shortage of 100,000 teachers (LPI 2016)
  - High rates of attrition: 8% of teachers leave the profession annually (LPI 2016)
  - Plunging enrollment in teacher prep programs
    - In 2018-19, approximately 157,000 fewer students enrolled in teacher preparation programs compared to 2008-09 (U.S. Dept. of Ed.)



## COVID-19 has Worsened the Shortage

- 2021 RAND Survey found 25% of teachers want to leave their jobs, compared to 16% pre-pandemic
- Shortage especially acute in math, science, special education, and bilingual education
- Shortage impacts student achievement and has significant turnover costs

# Low Pay is a Major Reason for the Teacher Shortage



- **Teacher pay penalty: grown from 6.0% in 1996 to 19.2% in 2019 (EPI 2019)**
- **Teachers are paid just 80.8 cents on the dollar compared to what similarly educated college graduates are making in other professions (EPI 2019)**
- **48% of public school districts offer teachers a starting salary that is below \$40,000 (NEA 2019-2020 Salary Benchmark Report)**
  - **New teachers are unable to afford the median rent in the majority of U.S. metro areas**

# Current Regulatory Language

- **Executive, Administrative, and Professional Employees are exempt from FLSA's overtime protections if they meet the duties test, salary basis test, and salary threshold test**
- **However per DOL regulations the salary basis and threshold tests do not apply to teachers. Teachers are exempt regardless of how little they make.**
  - **29 CFR §541.303**
- **Only other professions similarly excepted from the salary tests are doctors and lawyers**
  - **29 CFR § 541.600(e)**

Fair labor standards act

# Teachers Deserve the Same Regulatory Salary Protections as Other Professionals

- **Significant number of K-12 teachers fall below the current salary threshold (\$35,568)**
  - **18% of school districts pay a starting salary below the current threshold**
  - **Preschool teachers (avg. salary: \$31,930) & many adjunct faculty also fall below current threshold**
- **Low paid teachers should not be treated the same as highly paid doctors and lawyers**
- **If salary threshold is raised without including teachers, teachers will fall further behind & wage penalty will increase**

Fair labor standards act



# Teachers Deserve the Same Regulatory Salary Protections as Other Professionals

- **Applying salary tests to teachers will:**
  - **Raise base pay or create eligibility for overtime pay**
  - **Increase retention and encourage others to enter teaching**
- **Treats teachers the same as other white collar professionals – exempt when, among other things, salary is set to an appropriate level.**
- **This can be accomplished via regulation, by removing the current regulations excepting teachers from the salary tests**

Fair labor standards act

## Grossman, David M - WHD

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**From:** Garcia, Kristin M - WHD  
**Sent:** Wednesday, May 25, 2022 10:42 AM  
**To:** Fitzgerald, Dieera - WHD; Navarro, Montaniel S - WHD; Davidson, Patricia J - WHD; Kravitz, Michael - WHD; Onwubiko, Udochi - WHD; Worstell, Bonnie R - WHD  
**Cc:** Looman, Jessica - WHD  
**Subject:** FW: Updated Final - FLSA Teacher Exclusion Regulatory Ask  
**Attachments:** 2022.25.5 End FLSA Teacher Exclusion Coalition Letter.pdf; 28284 FLSA Teacher Exemption White Paper\_Final2.pdf

Wanted to make sure that you all saw this as well as this politico article:

# Unions pressure Biden to make more teachers eligible for overtime pay

BY ELEANOR MUELLER, JUAN PEREZ JR. | 05/24/2022 06:03 PM EDT

The National Education Association is renewing its push for new regulations that would make more teachers eligible for overtime pay by bringing them under the umbrella of the Fair Labor Standards Act, according to union officials and two documents obtained by POLITICO.

Teachers are currently exempt from the law — as are doctors, lawyers, accountants and others considered to be working in “learned professions.” That means that they often are not covered by a Trump-era rule that made most workers earning less than \$684 a week, or \$35,568 a year, eligible for overtime.

Trade groups and employment attorneys are bracing for President Joe Biden’s Labor Department to roll out its own overtime regulation soon, which would likely hike that threshold to make more workers eligible. The teachers union cites the left-leaning Economic Policy Institute’s conclusion that a transformed FLSA rule would make 1.5 million K-12 and higher education teachers newly-eligible for overtime unless their employers raise their pay.

“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,” NEA; other unions, including SEIU; and progressive groups like Center for American Progress wrote in a letter they plan to send to Labor Secretary Marty Walsh on Wednesday.

Doing so would be a “historic and long overdue step,” NEA President Becky Pringle said in a statement.

"Teachers are essential to our well-being, to our economy, and to our future, and they deserve good jobs," a DOL spokesperson said in a statement. "The Department of Labor is committed to listening to the experiences and concerns of teacher across the country and is looking forward to reviewing the National Education Association's letter."

The country's second-largest teachers union, the American Federation of Teachers, has not signed its name to the effort. But local affiliates, including Education Minnesota and United Teachers Los Angeles, whose teachers are members of both NEA and AFT, have.

The AFT declined to comment on the larger union's proposal.

This isn't the first time the NEA has raised the issue. The union also tried to press the Obama administration into changing the FLSA regulation, the labor group's top lawyer told POLITICO.

"We're raising it again now because it is a regulatory matter," said Alice O'Brien, NEA's general counsel.

"It is something that the Department of Labor has had in place by regulation since 1967, and it is long past time for the department to take a look at it because we believe it would be a very effective way of putting a floor under the teaching profession," she said.

If the change is approved, O'Brien said school districts would have a range of choices to make. They could pay educators more to bring them above the threshold for overtime eligibility; offer them compensatory time if they work more than 40 hours a week; or pay them overtime.

Of course, such choices would carry significant costs and staffing implications for K-12 schools. Higher education institutions would also be affected — the NEA notes the changes would benefit faculty members who teach on a contingent or adjunct basis, including those paid per-course.

"There are huge, enormous costs to how we are currently paying teachers," O'Brien said, when classes go unfilled or get staffed with teachers who don't meet state standards because schools can't recruit or retain workers.

"If you look at all the costs, over the long run, it is better to address this issue. Place the floor under the teaching profession, pay teachers like the professionals that they are in order to stabilize the profession, increase recruitment and retention in the profession over the long run," she said.

[A white paper will accompany NEA's letter](#) to Walsh that outlines how wages play into the ongoing teacher shortage. Low pay is a key driver of the trend, according to the paper: Hiking base pay, the authors write, would "reduce teacher turnover, particularly the turnover of less experienced teachers" and help increase workforce diversity.

Teachers "should be provided the same protections as other white-collar professionals whose exempt status depends not just on job duties, but also on salary," according to the white paper. "Making that change will benefit not just teachers but schools and students."

Teachers' average starting salary for the 2020-2021 school year was \$41,770, according to NEA.

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**From:** Van Schepen, Tess [NEA-CAO-CE] <TVanSchepen@nea.org>

**Sent:** Wednesday, May 25, 2022 11:05 AM

**To:** Looman, Jessica - WHD <(b)(6)@dol.gov>; Garcia, Kristin M - WHD <(b)(6)@dol.gov>; Treves, Valeria - OSEC <(b)(6)@dol.gov>; Nunez, Lucia B - OSEC <(b)(6)@dol.gov>

**Cc:** aobrien@nea.org; McNett, Keira [HQ-GC] <kmcnett@nea.org>; Alam, Lubna [NEA-GC] <lalam@nea.org>

**Subject:** Updated Final - FLSA Teacher Exclusion Regulatory Ask

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Good morning,

I wanted to circle back and share our final white paper on the FLSA regulation change and the coalition letter addressed to Secretary Walsh. They are both attached here and linked on our website below. I'm also including a link to our press release which accompanied the announcement this morning.

- [Ending the FLSA Teacher Exclusion](#) – website includes both the white paper and the coalition letter addressed to the Secretary
- [Press Release](#)

Thank you for the opportunity to share this with you and for considering the positive impact this could have on teachers across the nation.

Appreciate all you do,



Tess Van Schepen  
Senior Advocacy Specialist, Strategic Federal Partnerships  
National Education Association  
Cell: 401-256-7179

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.*



May 25, 2022

Page 4

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>

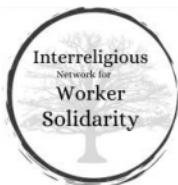
**Conclusion**

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



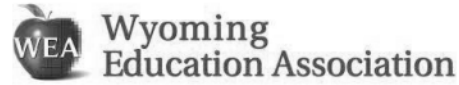
<sup>14</sup> Colleen Flaherty, [Barely Getting By](#), *Chronicle of Higher Education* (April 20, 2020).

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



May 25, 2022

Page 6



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  
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Iowa State Education Association  
Kansas National Education Association  
Maine Education Association  
Michigan Education Association  
Missouri NEA  
Ohio Education Association  
Oklahoma Education Association  
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South Dakota Education Association  
Utah Education Association  
Virginia Education Association  
Wisconsin Education Association Council  
Washington Education Association  
Wyoming Education Association

# ENDING THE FLSA TEACHER EXCLUSION:

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PUTTING A FLOOR UNDER THE TEACHING  
PROFESSION BY PROVIDING TEACHERS  
WITH THE SAME WAGE AND HOUR  
PROTECTIONS AS OTHER PROFESSIONALS

MAY 2022

## **NATIONAL EDUCATION ASSOCIATION**

The National Education Association is the nation's largest professional employee organization, representing more than 3 million elementary and secondary teachers, higher education faculty, education support professionals, school administrators, retired educators, students preparing to become teachers, healthcare workers, and public employees. Learn more at [www.nea.org](http://www.nea.org).

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# INTRODUCTION

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. The escalating crisis impacts student learning and the professional status and economic security of teachers, almost three-quarters of whom are women.

The U.S. Department of Labor must use its regulatory authority to raise compensation standards in the teaching profession. The Department can do so by rescinding its antiquated regulation that lumps teachers in with doctors and lawyers as the only professionals who are categorically excluded from the protections of the Fair Labor Standards Act.

## THE CURRENT CRISIS IN THE TEACHER PROFESSION

The COVID-19 pandemic pushed many educators to the breaking point. A January 2022 poll of NEA members, found more than half (55%) saying they were more likely to leave or retire sooner than they planned because of the pandemic.<sup>1</sup> Black and Hispanic teachers were the most likely to leave or retire early.<sup>2</sup> And low pay is one of the key reasons why teachers are leaving the teaching profession and why people decide not to join the profession in the first place.

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>3</sup> Once “indicators of teacher quality (certification, relevant training, experience, etc.) are taken into account, the shortage is even more acute than currently estimated, with high-poverty schools suffering the most from the shortage of credentialed teachers.”<sup>4</sup>

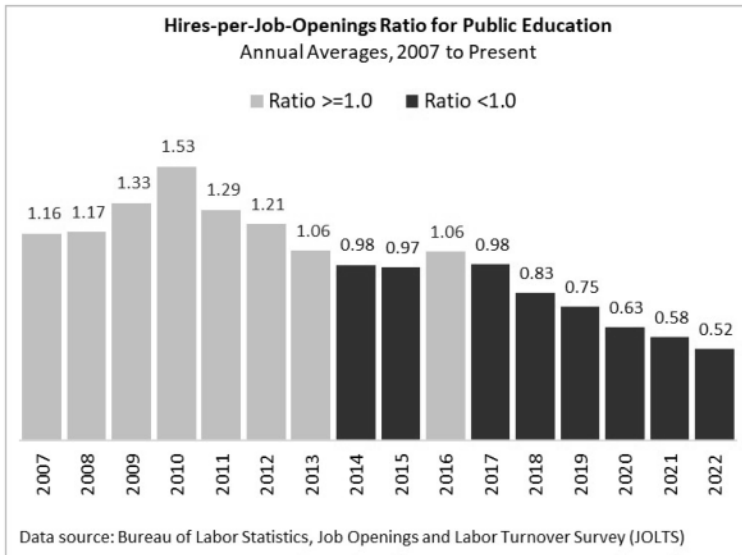
These findings predate the COVID-19 pandemic, which has exacerbated these longstanding shortages, par-

“ I work 70 hours a week, teaching and preparing lessons, while also trying to find time for my own two little girls.

It’s either teacher guilt or mom guilt! I usually grade papers at the kitchen table, and I fear that I’m neglecting my own kids who need my attention. That’s a struggle that so many educators are going through right now. We all go above and beyond, but there’s a lack of empathy, a lack of pay, and a lack of support. I don’t think people realize the mass exodus from the teaching profession that’s on the way. ”

– Lakeisha Patterson, who teaches reading, writing and social studies, Pasadena, Texas






ticularly in hard-to-staff subjects such as math, science, special education, and bilingual education. The difficulties public schools face in hiring and retaining qualified teachers are well documented. One baseline indicator – the ratio of hires to job openings in the public education sector (both K-12 and higher education) – has been declining for years and has reached new lows in the last few years. In June of 2021, the ratio of hires to job openings was 0.65 hires for every open position. Just three months later, in September 2021, it had fallen to 0.49 hires for every

open position, bringing the 2021 annual ratio down to 0.59 hires for each job opening. To date, the 2022 annual ratio is down even further to 0.52 hires for each job opening.<sup>5</sup>

These widespread staffing shortages in schools come at a time when the demands on educators have never been greater. Educators are attempting to meet the needs of students who lost parents and loved ones during the pandemic, and lost time with friends and in school as well. And educators are attempting to meet those needs in schools that are desperately short-staffed. A 2021 survey of 1,200 school and district leaders from across the country found that two-thirds of respondents reported teacher shortages, a record high, with 44% of these districts reporting difficulties with filling vacancies across all subjects and grade levels.<sup>6</sup>

The alarming number of teachers considering exiting the profession altogether spells further trouble. Since July of 2020, the percentage of NEA members reporting that they are more likely to leave or retire from the profession earlier than planned has almost doubled from 28% to 55% of members.<sup>7</sup> Other mid-pandemic surveys confirm this disturbing trend. A January 2021 RAND survey found that almost one-quarter of teachers wanted to leave their jobs; in contrast, 16% expressed that view pre-pandemic.<sup>8</sup> And the shortages themselves drive individuals out of the profession due to the stress and exhaustion of having to cover the workload for positions that have not been filled. In fact, 80% of members surveyed cited short staffing itself as a serious problem in schools.<sup>9</sup>



“As teachers, we say that we do not do what we do for the money – and that is true – but at the same time, we have families to support. About five years ago, I had little choice but to get a part-time job at the local Target because supporting my family on my teacher’s salary was just not possible. And when my student loans kick back in, paying our bills is going to be a real challenge.”

–John Ross, who has spent more than 15 years in the education profession, Aiken, South Carolina

# LOW TEACHER PAY IS A KEY DRIVER OF THE CRISIS IN THE TEACHING PROFESSION

Low pay and the “teacher pay penalty” – the gap between what teachers earn compared to other college educated professionals – is a key driver of the crisis. “[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>10</sup>

Approximately 8% of the teacher workforce exited the profession each year even before the COVID-19 pandemic.<sup>11</sup> Notably, attrition rates are highest in the Southern U.S.,<sup>12</sup> where little collective bargaining takes place and teacher salaries are lower. The heavily unionized Northeastern U.S., where teacher salaries are the highest, has the lowest attrition rates.

As the Department of Labor has recognized, there is a “correlation between earnings and employee turnover – as earnings increase, employee turnover decreases.” 81 Fed. Reg. 32503 (May 23, 2016). Increasing base teacher pay reduces teacher turnover, particularly the turnover of less experienced teachers.<sup>13</sup> Specifically, a 1% increase in teacher pay reduces the turnover rate by 1.4%.<sup>14</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>15</sup>

The teaching shortage is also the result of decreased interest in entering the teaching profession. Enrollment in teacher preparation programs has dropped dramatically. From 2010 to 2018, enrollment in teacher preparation programs nationwide declined by more than one-third even while overall enrollment increased in bachelor’s degree programs.<sup>16</sup> In 2018-19, approximately 157,000 fewer students enrolled in teacher preparation programs than in 2008-09.<sup>17</sup>

Low teacher pay also harms efforts to increase the racial and ethnic diversity of the teacher workforce. As of 2018, just over 20% of public school teachers were Black, Hispanic, Native American or Asian; in

## TEACHER SHORTAGES ERODE LEARNING CONDITIONS IN SCHOOLS

- A California study examining the impact of the pandemic on school staffing found that in all 17 of the school districts studied, districts were hiring teachers without full credentials and that all had shortages in traditionally hard-to-staff fields (math, science, special education, and bilingual education) and in substitute teachers.<sup>49</sup>
- In Arizona, as of December 2020, 26% of teaching positions remained vacant a few weeks into the 2020-21 school year and just under half of positions (47%) were filled by individuals who did not meet standard teacher requirements.<sup>50</sup>
- In Michigan, there was a 44% increase in midyear retirements in 2020-2021 school compared to the 2019-2020 school year.<sup>51</sup>
- In Indiana, 96% of school districts reported teacher shortages, which is the highest level in the past seven years.<sup>52</sup>
- In Illinois, a 2020 survey revealed that 65% of school districts reported that the teacher shortage was worsening and hundreds of classes were cancelled due to the lack of teachers.<sup>53</sup> On top of the shortage of full-time teachers, there is also a widespread shortage of substitute teachers, which pushes yet more work onto already overburdened teachers who must give up valuable planning time to cover classes for which substitutes can no longer be found.<sup>54</sup>



“As an aspiring educator, I am committed to doing all I can to nurture my students’ development and advocate for everything they need and deserve. I am passionate about this work, and many others are just as dedicated as I am. What we need are more programs that will support us and help us to strengthen our professional practice so that we can be there for students and stay in the careers we love.”

– Yesenie Cano, aspiring educator at Oklahoma Panhandle State University, Hooker, Oklahoma



that same year, K-12 public schools served a student population that is 53% students of color.<sup>18</sup> College students of color, particularly Black students, carry higher levels of student loan debt,<sup>19</sup> which impacts the diversity of the teacher pipeline, as student loan burdens shape decisions about college majors. Higher student debt causes college students to shy away from lower-paying occupations such as teaching, with Black students more likely to change careers due to student loan concerns.<sup>20</sup> In addition to the financial costs of teacher shortages and turnover, the shortage of teachers of color negatively impacts a range of academic and social and emotional measures. As research by the Learning Policy Institute finds:

Teachers of color improve the academic performance, graduation rates, attendance, suspension rates, and college aspirations of students of color. Both students of color and White students report having positive perceptions of their teachers of color, including feeling cared for and academically challenged, and teachers of color often receive higher ratings than White teachers from students of all backgrounds – including White students. On a grand scale, having more interactions with individuals of other racial/ethnic backgrounds makes children less likely to hold implicit racial biases as adults.<sup>21</sup>

Teaching as a profession “must compete with other occupations for talented college and university graduates,” and retention is difficult where “[t]eachers are more likely to quit when they work in districts with lower wages and when their salaries are low relative to alternative wage opportunities, especially in high-demand fields like math and science.”<sup>55</sup>



# THE TEACHER PAY PENALTY

The U.S. teacher shortage is neither inevitable nor unavoidable. Instead, the shortage is the result of policy choices that have made teaching an unattractive career option compared to other professions. As thoroughly documented by the Economic Policy Institute (EPI) in several reports:

[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>22</sup>

The low pay of teachers is widely known. Indeed in 2018, for the first time ever, a majority of parents said they did not want their children to become teachers, and one of the most common reasons offered was low pay.<sup>23</sup> The teacher wage penalty (meaning the amount less public school teachers are paid compared to other college-educated workers) grew from 6.0% in 1996 to 19.2% in 2019, meaning that teachers are paid just 80.8 cents on the dollar compared to what similarly educated college graduates are making in other professions.<sup>24</sup>

This is a drastic reversal from when teachers were first excluded from the FLSA's protections. In the 1960s and 1970s, female teachers, who then and now form the vast majority of the teaching workforce, earned a wage premium (in 1960, female teachers were paid 14.7% more than comparatively educated women in the workforce); that premium has disappeared and been replaced with the substantial wage penalty that teachers now carry.<sup>25</sup> Even taking into account benefits, such as pensions and health care, public school teachers make far less than other college educated workers.<sup>26</sup>

Almost half (47%) of public school districts now offer teachers a starting salary that is below \$40,000.<sup>27</sup> DOL has "traditionally considered newly hired college graduates to be overtime eligible," 81 Fed. Reg. 32410 (May 23, 2016), and yet newly hired college



“ Teaching never stops. I don’t recall the last time I got a full lunch break – without behavior check-ins, a parent phone call, or the extra coverage needed due to lack of subs. Instead of planning periods, I have a million other meetings, and if I’m lucky, a bathroom break and chance to eat my cold lunch. When the bell rings at 3:30, and students go home, my grading and planning work is far from finished. To earn extra money, I also work with homebound students and as a behavior support professional with adults with special needs. While no educator will ever say, ‘I became a teacher for the pay,’ the constant need for supplemental income is defeating, exhausting, and pushing many of the nation’s best into other lines of work. ”

– Samantha Twohig, special education teacher, Putnam County, West Virginia

“I was drawn to special education because my brother has significant needs and growing up, I wanted to be a positive change for kids like him. Five years after graduating from Iron Mountain Public Schools, I returned to my district as an elementary special education teacher. The first year, I made \$30K. It’s not sustainable. I have had friends walk away from teaching because they cannot live on this salary. The only reason I can stay in teaching is that I’m married, and we have a two-income household. But with a toddler and student loans piling up, I also don’t know how much longer I can continue following my passion. We are losing really good teachers because they just can’t afford to stay in this profession.”



—Audra DeRidder, fifth- and sixth-grade special education resource room teacher, Iron Mountain, Michigan

graduates who go into teaching are excluded from the protections afforded to other professionals, regardless of how little they earn. 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>28</sup>

The situation is even more dire for preschool teachers. A full third of all public and private preschool and kindergarten teachers are paid below the current salary threshold of \$35,568.<sup>29</sup> The average salary of a preschool teacher is approximately \$31,930 a year – below the current salary threshold.<sup>30</sup> 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>31</sup> This underpaid workforce is primarily women, with nearly half being women of color.<sup>32</sup>

Because of the low pay they receive, teachers are three times more likely than nonteachers to work a second job.<sup>56</sup> The need to work multiple jobs to make ends meet only increases the stressors that drive educators out of the profession.

At the other end of the spectrum, adjunct faculty, despite their significant levels of education, are similarly underpaid. A recent survey of adjunct faculty found that nearly 25% of adjunct faculty utilize public assistance programs and 40% have trouble covering basic expenses, with nearly a third making less than

\$25,000 a year and another third making less than \$50,000 a year.<sup>33</sup> And while adjunct faculty are highly educated professionals, their compensation often does not reflect that, with many earning below the current salary threshold.



# ADDRESSING UNJUST TEACHER PAY PENALTIES AND TEACHER SHORTAGES WITH REGULATORY CHANGE

**B**y eliminating the teacher exclusion regulation, the Department of Labor can put a floor under teacher compensation nationwide, which will help eliminate the teacher pay penalty and in turn, address unprecedented teacher shortages that harm students and drain state and local resources.

## ENDING THE ANTIQUATED TEACHER EXCLUSION REGULATION WILL PROVIDE TEACHERS THE SAME PROTECTIONS AS OTHER PROFESSIONALS.

The regulatory anachronism at 29 CFR §541.303(d), which excludes teachers from the Fair Labor Standards Act (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>34</sup> These 1.5 million teachers are either hourly or salaried but earn less than the current weekly threshold for overtime eligibility (\$684 per week). Yet these teachers are denied overtime pay when they work

## WHY WERE TEACHERS EXCLUDED?

Since FLSA was first adopted in 1938 it classified executive, administrative and professional workers as exempt from its protections and gave the Secretary of Labor broad authority to further define those terms. *Auer v. Robbins*, 519 U.S. 452, 456 (1997) (explaining that FLSA grants the Secretary broad authority to ‘defin[e] and delimit[t]’ the scope of the exemption for executive, administrative and professional employees.”). The Department of Labor did so through regulations that consider both the duties that an employee performs and the salary that the employee is paid as the key indicators of their employment status. And the Department has continued that twin-pronged approach to determining professional status to this day.

The salary threshold test, in particular, has been seen as an objective measure of employment status on the theory that individuals paid less than a specified amount cannot be considered the type of white collar employees who should be exempt from FLSA’s protections.<sup>57</sup> But early on in its regulatory efforts, the Department excepted two categories of professional employees from this salary test – lawyers and doctors. 5 Fed. Reg. 4077 (Oct. 15, 1940). The Department subsequently rejected (in 1949) a proposal to add to that exception architects, engineers, librarians, pharmacists, and nurses, explaining that the exception should remain limited to lawyers and doctors due to “the traditional standing of these professions, the recognition of doctors and lawyers as quasi-public officials, [ ] the universal requirement of licensing by the various jurisdictions[, and the] relatively simple problems of classification presented by these professions.” *Belt v. EmCare, Inc.*, 444 F.3d 403, 414 (2006) (quoting the U.S. Dep’t. of Labor, Report and Recommendations on the Proposed Revisions of Regulations, Part 541, 77 (1949)).

When FLSA was amended in 1966 to extend its protections to public employees working in schools, hospitals, and mass transit, the decision was made to classify teachers under the statute as professional employees, subject to presumably the same salary tests for professional status as other professional employees.<sup>58</sup> But in 1967, the Department proposed and finalized regulations that place teachers in the same category as lawyers and doctors, as the only professionals that are “excepted from the salary or fee requirement. This exception applies only to the traditional professions of law, medicine, and teaching and not to employees in related professions which merely serve these professions.” 32 Fed. Reg. 7823 (May 30, 1967) (emphasis added). *See also* 32 Fed. Reg. 228 (Jan. 10, 1967) (proposed exclusion of teachers from the regulatory salary test). The historical record provides no clear explanation for that regulatory decision. The most that one can glean from the rulemaking notices is that the Department believed that teachers, like doctors and lawyers, are part of a “traditional profession” and therefore the salary test was not needed as an objective measure of their professional status.

“ My workday is typically 12 hours of work for just eight hours of pay. My 2-year-old son has gotten accustomed to falling asleep to the glow of my laptop. He lays his head in my lap; I input grades with one hand and rub his back with the other. I try to meet his needs while also continuing to meet the needs of my students. I had hoped to accomplish some grading during my planning period, but instead I’ve spent that time covering other classes due to lack of substitutes, meeting with parents of kids with disabilities, drafting special education plans, returning parent phone calls, meeting with colleagues, and doing all the other duties that come with the job. Because there is no overtime, all of this goes unpaid. ”

—Brooke Davis, sixth-grade English language arts teacher, Winfield Middle School, Winfield, W.V.



more than 40 hours per week because of the teacher exclusion.

Whatever rationale may have existed in 1967 to categorically exclude teachers from 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 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>35</sup> And while the vast majority of public school teachers are salaried, a substantial minority (approximately 10%) are paid on an hourly basis.<sup>36</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.

Teachers, who are subject to similar licensing schemes and work in the very same schools as other professionals who are protected by the salary basis and threshold test (such as school-based psychologists, nurses, and social workers), should receive the same regulatory protections as other professionals.

The impact of extending the salary basis test to teachers would be the same as it is for these other

professionals. The salary threshold test for professional exempt status operates to raise starting salaries in a given profession either by increasing the base pay to maintain FLSA exempt status, or where base pay is not increased, by providing overtime pay for hours worked over 40 per week, or for public sector employees, with compensatory time off.

The EPI analysis highlights how some groups of public school teachers would be particularly aided by such a regulatory change, including teachers of color (23% to 31% make below the current salary threshold), teachers under 25 (61% make below the current salary threshold), as well as preschool and kindergarten teachers (24% make below the current salary threshold).<sup>37</sup> And if the salary threshold is raised above \$35,568, there will be significantly more teachers who would be impacted in all these groups and across the teaching profession.

The regulatory change would be particularly beneficial for preschool educators, an overwhelmingly low-paid female workforce, as well as higher education adjunct faculty. As noted above, large numbers of teachers in both groups make salaries below the current threshold.<sup>38</sup> As EPI's analysis demonstrates, both early childhood educators and postsecondary adjunct faculty would disproportionately benefit from the elimination of the FLSA teacher exclusion, with about a third of both groups becoming newly eligible for overtime.<sup>39</sup> Amending the regulations so that teacher salaries, like those of other professionals, must meet the salary test for them to be exempt, will help ensure that these professionals, who are critical to our education system, are paid appropriately.

“ When I started teaching three years ago, I owed \$64,062 in student loans, but the starting salary for teachers in my district was just \$33K. Every month, I paid \$700 on my loans, which was exactly one third of my take-home salary. The first year I lived with my parents and saved money by not spending anything — no happy hours, no new clothes, no Saturday night movies, nothing. If I hadn't still lived at home, I could not have afforded to teach. The math just doesn't add up. ”

—Nick Fuller, first-grade teacher at Stambaugh Elementary School, Iron River, Michigan



## THE NECESSARY REGULATORY CHANGE

The Fair Labor Standards Act (“FLSA”) guarantees employees an overtime pay rate of at least one and one-half times an employee's regular hourly rate for hours worked above 40 hours per workweek, or an equivalent amount of compensatory time off for public sector employees, unless that employee is “exempt.” See 29 U.S.C.A. §§ 207, 213. There are several categories of employees that are exempt from the FLSA, including “any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools),” 29 U.S.C.A. § 213(a)(1), commonly referred to as white collar exempt employees.

The Department of Labor's regulations look to both the duties that an employee performs and the amount and basis on which an employee is paid (the salary basis test and the salary threshold test) to determine if an employee qualifies as a white collar exempt employee. The Department of Labor has explained that the salary threshold test is a particularly important objective measure of employment status because “salary is the best single indicator of the degree of importance involved in a particular employee's job,” and “the best single test of the employer's good faith in characterizing the employment as of a professional nature.” 81 Fed. Reg. 32413 (May 23, 2016).

But since 1967, the Department has excluded teachers from the FLSA salary basis and threshold tests. 29 CFR §541.303(d). Rather, by the regulation below, the Department has provided that teachers qualify as FLSA exempt so long as they are engaged in the duties of teaching, regardless of how little they make, and regardless of whether they are paid on a salary or hourly basis. If an employee's primary duty is teaching, tutoring, instructing, or lecturing in an educational establishment, which is defined to include K-12 schools, institutions of higher education, and nursery school programs (29 CFR §541.204(b)), the employee is exempt no matter how little they are paid and even if they are paid on an hourly basis.

29 CFR § 541.303(d): “[t]he requirements of §541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.”

29 CFR § 541.600(e): “[i]n the case of professional employees, the compensation requirements in this section shall not apply to **employees engaged as teachers (see §541.303)**; employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see §541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see §541.304).”

By removing the regulatory language **bolded above**, the Department can extend to teachers, including higher education faculty and pre-kindergarten teachers, the same wage and hour protections as other professional employees.

## RAISING TEACHER SALARY STANDARDS WILL HELP ADDRESS THE ENORMOUS COSTS OF THE TEACHER SHORTAGE CRISIS.

The teacher shortage crisis imposes massive costs on students and schools. The shortage of qualified teachers negatively impacts student academic achievement in both math and English Language Arts, and is particularly harmful to schools with high populations of students who need additional support to excel.<sup>40</sup> More experienced teachers help students learn more, and they also have positive impacts on other student success metrics, such as improving school attendance.<sup>41</sup> In addition, increasing teacher wages helps reduce high school dropout rates, with a 10% increase in teacher pay lowering dropout rates by 3% to 4%.<sup>42</sup>

The constant churn and turnover of teachers has economic consequences as well. The total estimated annual cost of teacher turnover is an astronomical \$8 billion a year.<sup>43</sup> That huge annual turnover cost includes the costs of separation, recruiting and hiring new teachers, and training replacements; the estimated cost of replacing a teacher varies from approximately \$9,000 per lost teacher for rural school districts to \$21,000 for urban districts.<sup>44</sup> A landmark 2007 study by the National Commission

on Teaching and America's Future (NCTAF), based on a detailed analysis of school data, found that the total cost of turnover in the Chicago Public Schools was \$86 million a year and estimated that overall turnover costs nationwide were \$7 billion a year.<sup>45</sup> Accounting for inflation, these costs would be more than \$8 billion today.<sup>46</sup> Comparing these costs with federal education spending makes clear the scale of the problem: in 2019 the overall amount of federal Title I-A funding was \$15.9 billion,<sup>47</sup> and for the Individuals with Disabilities Act (IDEA), it was \$13.45 billion.<sup>48</sup> In other words, annual teacher turnover costs amount to almost a third of the total combined federal Title I-A and IDEA funding that public K-12 schools receive – a massive drain on education budgets nationwide.

And while a regulatory change that would likely increase starting salaries for some portion of the public school workforce would add to state and local budgets in one regard, it would address the more substantial costs that are either hidden or will only later be re-

“ The only way that I have been able to own my home, pay my bills, and visit family is by having two jobs – one as a high school counselor and another as a server at a restaurant. Overtime is such an interesting concept when you relate it to the education profession. When I work a double at the restaurant, management wants to ensure I am done after I hit 12 hours because after that, I begin to impact their bottom line by earning overtime pay. That mentality doesn't exist in education. So often our teachers work beyond a 40-hour work week, and yet we're not compensated for it. It would be refreshing to know that teachers who work beyond their contract could be paid overtime. ”

–Nicole Alvarado, high school counselor  
Fort Collins, Colorado



alized as future effects from long-term suppression of teacher pay. The short-term potential cost of increasing starting salaries is far outweighed by the \$8 billion a year costs of attrition, lost student learning and the subsequent costs of making up for that lost instruction, and other costs to student learning and achievement when schools are unable to find sufficiently trained and credentialed educators.

“ ‘Educators will never be compensated for all of the hours spent doing their jobs,’ I tell my daughter



who is studying to be an early childhood educator like me. I say this repeatedly to her as I arrive at school an hour before my duty day begins, remain at school two hours after my duty day ends on a daily basis, and spend seven hours on Sundays at school most weekends. This additional time given to my job has become necessary so I can complete and stay on top of the mountain of work and responsibility that have become the norm for educators. ”


—Theresa Foster, kindergarten teacher who has taught for more than 30 years, Glending Elementary School in Groveport, Ohio





## CONCLUSION

**M**odifying the FLSA regulations to extend to teachers the same salary basis and threshold test that applies to other professionals is long overdue and much needed. It no longer makes sense to treat teachers, many of whom are paid below the current salary threshold of \$35,568, the same as high-earning doctors and lawyers. Instead, teachers, a heavily female profession that suffers from a large and growing wage gap compared with other similarly educated professionals, should be provided the same protections as other white-collar professionals whose exempt status depends not just on job duties, but also on salary. And making that change will benefit not just teachers but schools and students, as it will address the long standing and growing wage gap that is driving would-be educators away from and current teachers out of the teaching profession. The time to take action is long overdue.



**“I teach aspiring educators and, like my colleagues around the country, I’ve been seeing enrollment in our teacher prep programs decline for years. I have been in education for more than 50 years – from classroom teacher to university professor – and I can tell you there simply are fewer people going into teaching today than a decade ago. Sometimes passion and purpose aren’t enough for people to follow their dreams. They must pay their bills, and teaching is no exception.”**

—Professor Arlene King-Berry, professor of special education and chair of the Faculty Senate, University of the District of Columbia, Washington, D.C.



## ENDNOTES

<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> Leib Sutcher, 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>4</sup> Emma García and Elaine Weiss, *The teacher shortage is real, large and growing, and worse than we thought*, Economic Policy Institute (Mar. 2019), <https://www.epi.org/publication/the-teacher-shortage-is-real-large-and-growing-and-worse-than-we-thought-the-first-report-in-the-perfect-storm-in-the-teacher-labor-market-series/>.

<sup>5</sup> Based on NEA analysis of Bureau of Labor Statistics (BLS) Job Openings and Labor Turnover Survey (JOLTS).

<sup>6</sup> Annie Buttner, *The Teacher Shortage, 2021 Edition*, Frontline Education (Apr. 19, 2021), <https://www.frontlineeducation.com/blog/teacher-shortage-2021/>.

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<sup>9</sup> NEA Survey.

<sup>10</sup> Lawrence Mishel & Sylvia Allegretto, *Teacher pay penalty dips but persists in 2019*, Economic Policy Institute (Sept. 17, 2020).

<sup>11</sup> *Coming Crisis in Teaching at 2*, [https://learningpolicyinstitute.org/sites/default/files/product-files/A\\_Coming\\_Crisis\\_in\\_Teaching\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/A_Coming_Crisis_in_Teaching_REPORT.pdf).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> Matthew D. Hendricks, *Does it Pay to Pay Teachers More? Evidence from Texas* (Dec. 5, 2013), available at <https://doi.org/10.1016/j.jpubeco.2013.11.001>; <https://www.sciencedirect.com/science/article/pii/S0047272713002119>.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> NEA Survey.

<sup>16</sup> Lisette Partelow, *What to Make of Declining Enrollment in Teacher Preparation Programs*, Center for American Progress (Dec. 3, 2019), <https://www.americanprogress.org/issues/education-k-12/reports/2019/12/03/477311/make-declining-enrollment-teacher-preparation-programs/>; *See also*, Frontline Research and Learning Institute, *A Pipeline Running Dry: Trends in Teacher Preparation Programs* (updated Feb. 2021), <https://www.frontlineeducation.com/solutions/recruiting-hiring/insights/trends-in-teacher-preparation-programs/>.

<sup>17</sup> <https://title2.ed.gov/Public/Home.aspx>

<sup>18</sup> National Center for Education Statistics, Percentage distribution of teachers, by school type, race/ethnicity and selected main teaching assignment: 2017-18, [https://nces.ed.gov/surveys/ntps/tables/ntps1718\\_21022407\\_t12n.asp](https://nces.ed.gov/surveys/ntps/tables/ntps1718_21022407_t12n.asp); National Center for Education Statistics, Percentage distribution of students enrolled in public elementary and secondary schools, by race/ethnicity: fall 2018, <https://nces.ed.gov/programs/coe/indicator/cge>.

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<sup>20</sup> Melissa Hershcopf et al., *Student Loan Debt among Educators: A National Crisis at 22*, National Education Association (2021), <https://www.nea.org/sites/default/files/2021-07/Student%20Loan%20Debt%20among%20Educators.pdf> (hereinafter *Student Loan Debt among Educators*); *See also*, Desiree Carver-Thomas, *Diversifying the Teaching Profession: How to Recruit and Retain Teachers of Color*, Learning Policy Institute (2018), [https://learningpolicyinstitute.org/sites/default/files/product-files/Diversifying\\_Teaching\\_Profession\\_REPORT\\_0.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Diversifying_Teaching_Profession_REPORT_0.pdf)

<sup>21</sup> *Student Loan Debt Among Educators at 22*, <https://www.nea.org/sites/default/files/2021-07/Student%20Loan%20Debt%20among%20Educators.pdf>.

<sup>22</sup> Lawrence Mishel & Sylvia Allegretto, *Teacher pay penalty dips but persists in 2019*, Economic Policy Institute (Sept. 17, 2020), <https://www.epi.org/publication/teacher-pay-penalty-dips-but-persists-in-2019-public-school-teachers-earn-about-20-less-in-weekly-wages-than-nonteacher-college-graduates/> (hereinafter *Teacher Pay Penalty 2019*).

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<sup>26</sup> *Id.*

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<sup>29</sup> *Id.*

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<sup>31</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), <https://cscce.berkeley.edu/wp-content/uploads/2019/05/From-Unlivable-Wages-to-Just-Pay-for-Early-Educators.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *An Army of Temps: AFT 2020 Adjunct Faculty Quality of Work/Life Report*, [https://www.aft.org/sites/default/files/adjuncts\\_qualityworklife2020.pdf](https://www.aft.org/sites/default/files/adjuncts_qualityworklife2020.pdf).

<sup>34</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"). EPI has calculated that approximately 951,641 public school teachers out of 4,608,117 (approximately 20.7%) would become newly eligible for overtime, as they earn less than \$684 a week. Because a little over half (approximately 497,427 or 52%) of the teachers earning below \$684 a week are part-time employees, who would not actually receive any overtime unless they worked over 40 hours a week, the share of public school teachers who would be financially impacted by the regulatory

change, based on the current salary threshold, is likely closer to 10% of public school teachers. (Table 2, Public Schools).

<sup>35</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.

<sup>36</sup> *Expanding Overtime Protections*.

<sup>37</sup> EPI Analysis at Table 2: Public Schools.

<sup>38</sup> U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: Preschool Teachers*, <https://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm>; Colleen Flaherty, *Barely Getting By*, Chronicle of Higher Education (April 20, 2020), <https://www.insidehighered.com/news/2020/04/20/new-report-says-many-adjuncts-make-less-3500-course-and-25000-year>.

<sup>39</sup> EPI Analysis (Table 1: Public and Private Schools).

<sup>40</sup> M. Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, American Education Research Journal, Vol 50, Issue 1, 2013.

<sup>41</sup> Tara Kini and Anne Podolsky, *Does Teaching Experience Increase Teacher Effectiveness?* A Review of the Research Learning Policy Institute (Jun. 3, 2016), <https://learningpolicyinstitute.org/product/does-teaching-experience-increase-teacher-effectiveness-review-research>.

<sup>42</sup> Susanna Loeb and Marianne E. Page, *Examining the Link between Teacher Wages and Student Outcomes: The Importance of Alternative Labor Market Opportunities and Non-Pecuniary Variation* (Aug. 1, 2000), available at <https://direct.mit.edu/rest/article/82/3/393/57185/Examining-the-Link-between-Teacher-Wages-and-authorsTabList>.

<sup>43</sup> Valerie Strauss, *Why It's a Big Problem That So Many Teachers Quit - and What to do About it*, Washington Post (Nov. 27, 2017), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/11/27/why-its-a-big-problem-that-so-many-teachers-quit-and-what-to-do-about-it/>.

<sup>44</sup> Learning Policy Institute, *What's the Cost of Teacher Turnover?* (Sept. 13, 2017), <https://learningpolicyinstitute.org/product/the-cost-of-teacher-turnover>.

<sup>45</sup> National Commission on Teaching and America's Future, *Policy Brief: The High Cost of Teacher Turnover* (2007), <https://files.eric.ed.gov/fulltext/ED498001.pdf>.

<sup>46</sup> Learning Policy Institute, *Memo: U.S. Teacher Shortages- Causes and Impacts 2* (Aug. 2018), [https://learningpolicyinstitute.org/sites/default/files/body/Teacher\\_Shortages\\_Causes\\_Impacts\\_2018\\_MEMO.pdf](https://learningpolicyinstitute.org/sites/default/files/body/Teacher_Shortages_Causes_Impacts_2018_MEMO.pdf).

<sup>47</sup> Rebecca R. Skinner and Clarissa G. Cooper, *FY2019 State Grants Under Title I-A of the Elementary and Secondary Education Act (ESEA) at 1*, Congressional Research Service (Mar. 11, 2020), [https://www.everycrsreport.com/files/20200311\\_R46269\\_eb6aebd236181eef9c73e8ec2f3b932a3e244798.pdf](https://www.everycrsreport.com/files/20200311_R46269_eb6aebd236181eef9c73e8ec2f3b932a3e244798.pdf).

<sup>48</sup> Congressional Research Services, *The Individuals with Disabilities Education Act Funding: A Primer* (Aug. 29, 2019), <https://sgp.fas.org/crs/misc/>

<sup>49</sup> Desiree Carver-Thomas et al., *California Teachers and COVID-19: How the Pandemic Is Impacting the Teacher Workforce at 6*, Learning Policy Institute (Mar. 4, 2021), [https://learningpolicyinstitute.org/sites/default/files/product-files/California\\_COVID\\_Teacher\\_Workforce\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/California_COVID_Teacher_Workforce_REPORT.pdf).

<sup>50</sup> Arizona School Personnel Administrators Association, Survey Results (Dec. 2020), available at <https://drive.google.com/file/d/1r9dEm0NIXILodz-sjp-CFV7C-PPY-Lz5J/view>.

<sup>51</sup> Chad Livengood, *'COVID has tipped the scales': Teacher retirements in Michigan up 44% since August*, Chalkbeat (Mar. 28, 2021), <https://detroit.chalkbeat.org/2021/3/28/22352695/teachers-retirement-michigan-coronavirus-impact>.

<sup>52</sup> Sue Loughlin, *96% of Indiana school districts report teacher shortages*, News and Tribune (Oct. 5, 2021), [https://www.tribstar.com/news/indiana-news/96-of-districts-report-teacher-shortages/article\\_a8400183-c662-5e91-89ea-9cd84611ebc5.html](https://www.tribstar.com/news/indiana-news/96-of-districts-report-teacher-shortages/article_a8400183-c662-5e91-89ea-9cd84611ebc5.html).

<sup>53</sup> Illinois Association of Regional Superintendents of Schools (IARSS), 2020 Educator Shortage, <https://iarss.org/2020-educator-shortage/>.

<sup>54</sup> Natasha Singer, *Pandemic Teacher Shortages Imperil In-Person Schooling*, New York Times (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/us/pandemic-substitute-teacher-shortages.html>.

<sup>55</sup> Linda Darling-Hammond, et al, *Addressing California's Emerging Teacher Shortage: An Analysis of Sources and Solutions* at 18, Learning Policy Institute (January 2016), [https://learningpolicyinstitute.org/sites/default/files/product-files/LPI-Report-AddressingCA\\_TeacherShortage.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/LPI-Report-AddressingCA_TeacherShortage.pdf).

<sup>56</sup> Katherine Schaeffer, *About one-in-six U.S. teachers work second jobs - and not just in the summer*, Pew Research Center (July 1, 2019), <https://www.pewresearch.org/fact-tank/2019/07/01/about-one-in-six-u-s-teachers-work-second-jobs-and-not-just-in-the-summer/>.

<sup>57</sup> GAO Report to the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives September 1999 *FAIR LABOR STANDARDS ACT White-Collar Exemptions in the Modern Workplace* GAO/HEHS-99-164.

<sup>58</sup> The initial bill in the House expanded FLSA protection to public and private hospitals, all institutions of higher education, and public and private transit systems, but did not include elementary and secondary schools. H.R. Rep. No. 89-1366 at 11 (Mar. 29, 1966). After the bill left the House committee, Rep. Harold Collier (R-Ill.) proposed covering elementary and secondary school employees, stating during debate on May 25, 1966, that he wanted to ensure that a dishwasher working in an elementary or secondary school received the same coverage as a dishwasher in a college or university cafeteria. 3 Legislative History of the Fair Labor Standards of 1966, P.L. 89-601, 80 Stat. 830 (Sept. 23, 1966). Subsequently, the House bill was amended to expand FLSA coverage to all public and private school employees. H.R. 13712, 89th Cong. (2d Sess. 1966). The August 1966 Senate version of the bill deleted the House addition of public and private school employees from FLSA protections. The accompanying Senate report stated the Senate believed there should be hearings on whether to include such employees given "the impact which a possible increase in wages for such employees might have upon local school districts that depend in part upon tax dollars for operating revenues." S.Rep. No. 89-1487 at 8 (Aug. 23, 1966). But when the bill went to conference, protections for "elementary and secondary school" employees were reinstated, schools were defined, and teachers were added back into the bill as part of the group of professions subject to the statutory exemption for professional employees, which at that time the DOL already had defined as those employees who performed certain types of job duties and were paid on a salary basis in an amount that exceeded DOL's salary threshold. 3 Legislative History of the Fair Labor Standards of 1966, P.L. 89-601, 80 Stat. 830 (Sept. 23, 1966).



## Grossman, David M - WHD

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**From:** Garcia, Kristin M - WHD  
**Sent:** Friday, October 29, 2021 9:31 AM  
**To:** Navarro, Montaniel S - WHD; Davidson, Patricia J - WHD; Kravitz, Michael - WHD; Looman, Jessica - WHD; Brown, Brandon S - WHD; Dunbar, Lee A - WHD; Thomas, Terri - WHD  
**Subject:** FW: FLSA and Teachers Powerpoint  
**Attachments:** FLSA Teacher Exception Presentation 10.28.21.pdf

FYI.

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**From:** Nunez, Lucia B - OSEC <(b)(6)>@dol.gov>  
**Sent:** Thursday, October 28, 2021 4:07 PM  
**To:** Looman, Jessica - WHD <(b)(6)>@dol.gov>; Garcia, Kristin M - WHD <(b)(6)>@dol.gov>; Treves, Valeria - OSEC <(b)(6)>@dol.gov>  
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PowerPoint attached!

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**To:** Nunez, Lucia B - OSEC <(b)(6)>@dol.gov>  
**Cc:** aobrien@nea.org <aobrien@nea.org>  
**Subject:** FLSA and Teachers Powerpoint

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Lucia,

Attached is NEA's slide deck that we shared during our meeting today regarding the FLSA and teachers. Thanks for today's meeting - we look forward to discussing these issues further and in more detail.

All the best,

Lubna

Lubna A. Alam  
[lalam@nea.org](mailto:lalam@nea.org)  
Staff Counsel, Office of General Counsel  
National Education Association