



January 10, 2022

The Honorable Patty Murray, Chair  
Senate Committee on Health, Education, Labor &  
Pensions  
Washington, D.C. 20510

The Honorable Richard Burr, Ranking Member  
Senate Committee on Health, Education, Labor &  
Pensions  
Washington, D.C. 20510

Dear Chair Murray and Ranking Member Burr,

On behalf of the National Taxpayers Union, the nation's oldest taxpayer advocacy organization, I write to express our views regarding the upcoming hearing of David Weil, who was nominated by President Biden to lead the U.S. Department of Labor's Wage and Hour Division (WHD). In this position, the Administrator has broad enforcement power and rulemaking authority to enforce federal workplace laws, such as minimum wage, overtime pay, family leave, and other labor laws. Unfortunately, based on his previous service at DOL and his track record of hindering job creators, NTU has serious concerns about his ability to lead this agency.

Due to the economic problems caused by the ongoing public health emergency, our federal government must do everything in its power to keep regulatory and tax burdens at a minimum. Yet, many recent nominations by President Biden make clear that his administration is not following this approach. Many of his nominees, including Weil, would seek to radically expand the power of the federal government and punish free enterprise. Should Weil again be put in charge of the WHD (a position he held from 2014-2017), it would signal a return to the overly burdensome bureaucracy that led to economic malaise and slow wage growth that defined the Obama presidency.

While many may perceive Weil's prior experience as Administrator as a positive, he had a disturbing track record of supporting labor policy that was not in the best interests of small businesses nor their workers. In many ways, his previous stint as Administrator should prove to be a mark against him, not so much a reason to confirm him. As WHD Administrator, he was the chief architect of many of the defining anti-jobs regulations implemented by the DOL that resulted in one of the weakest periods of economic growth in modern history. His actions regarding some of the more problematic items of his tenure are detailed below:

### **Overtime Rule**

Weil was the creator of the Obama administration's unreasonable overtime rule. In May 2016, the DOL finalized a sweeping and unwarranted expansion of the Fair Labor Standards Act's overtime regulations; more than doubling the threshold for time-and-a-half overtime pay from \$23,660 to \$47,467, with automatic increases every three years thereafter. Though it was described as a way to protect U.S. employees, the DOL paid little regard to the painful real-world ramifications of this new statute.

For many employees, this rule was a step backwards - knocking salaried workers back to hourly wage earners. Many of these employees worked hard to achieve the status and benefits of exempt employment, like employer-provided health insurance or retirement accounts. In essence, those

working to gain new skills in order to advance up the corporate ladder would suddenly find they needed to scale even more rungs. The rule was not compatible with the modern workforce. Today's workers, such as those at a start-up or nonprofit organization, value flexibility and often eagerly work irregular hours on behalf of a vision. Workplace innovations such as telecommuting would be more difficult to implement due to strict tracking and reporting requirements.

With few exceptions (for certain teaching and academic roles), the overtime rule was an overly broad, "one-size-fits-all" policy that didn't reflect the dynamic and increasingly diverse roles in today's economy. Businesses hard-pressed to implement the rule could be forced to re-classify employees, reduce base wages, and transition roles to part-time - forcing many employees into second jobs. For some businesses it may make more sense to ramp up automation and eliminate jobs altogether. Thankfully, the previous administration implemented an overtime rule that was more tailored to protecting workers and small businesses.

### **Joint Employer**

While Administrator of WHD, Weil issued an Administrator's Interpretation that dramatically expanded the definition of "joint employment," a type of labor model where employees are actually under the control of a parent company and not a franchise. Weil's regulatory expansion meant that the franchisee and franchisor were joint employers of the franchisee's employees. Being deemed a joint employer would make the employer liable for overtime pay, minimum wage, and other requirements for a subcontractor's or franchisee's employees. The DOL put Weil's views into practice and applied an expanded definition of joint employment to labor statutes. The "joint employer" rule was implemented by the National Labor Relations Board and threatened the existence of many businesses, including the American restaurant industry.

The [American Action Forum estimates](#) this rule could have reduced private sector employment by 1.7 million jobs, with 500,000 of those losses concentrated in the leisure and hospitality industry. Such drastic job loss would further strain taxpayer funds by necessitating greater expenditures on programs like unemployment insurance, Medicaid, and housing assistance. Thankfully, the previous administration blunted the impact of this rule through updated rulemaking in 2020.

Additionally, Weil [strongly supports](#) a \$15 minimum wage that would kill millions of jobs, and the [abolishment of the independent contractor](#) model that enables millions of Americans to work flexible work schedules. Further, he would be responsible for implementing the disastrous Protecting the Right to Organize (PRO) Act should it become law. We are increasingly concerned that if confirmed, he would use his authority to implement policies that would result in fewer jobs. Weil's policy views and previous actions are totally out of step with what employers, employees, and gig-workers need during this crucial period.

We have grave concerns about Weil's ability to properly enforce federal labor laws and fulfill taxpayers' expectations for this important position.

Sincerely,

Thomas Aiello  
Director of Federal Affairs