NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

November 7, 2023

Amy Debisschop
Director
Division of Regulations, Legislation, and Interpretation, Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW, Room S–3502
Washington, DC 20210

RE: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (RIN 1235-AA39)

Dear Director Debisschop:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Department of Labor's (DOL) Notice of Proposed Rulemaking, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees" (NPRM). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 138 million consumers with personal and small business financial services products. NAFCU appreciates the opportunity to provide information on the impact of the proposed rule on our members. NAFCU supports the modernization of current regulations to grant fair pay to all Americans, but urges the DOL to consider the impact to small businesses of such a significant increase in the standard salary level used to calculate employee overtime eligibility. Expansion of overtime eligibility may correspond with significant pressure on small credit unions serving rural communities who are already struggling against the forces of industry consolidation and growing regulatory burden. These smaller institutions may choose to adapt to higher labor costs by merging or closing their doors to communities that already struggle with access to affordable financial services. A reduction in community financial services could offset many of the expected benefits of the proposal.

General Comments

The Fair Labor Standards Act (FLSA or Act) requires covered employers (including credit unions) to pay employees a minimum wage (currently $7.25 an hour) and, for employees who work more than 40 hours in a week, overtime premium pay of at least 1.5 times the employee's regular rate of pay. Section 13(a)(1) of the FLSA exempts from the minimum wage and overtime pay requirements "any employee employed in a bona fide executive, administrative, or professional capacity… or in the capacity of [an] outside salesman." 29 U.S.C. 213(a)(1). The exemption is commonly referred to as the "white-collar" or executive, administrative, or professional (EAP) exemption. The FLSA does not define the terms "executive," "administrative," "professional," or "outside salesman," but rather delegates that task to the Secretary of Labor.

In 2019, the DOL issued a final rule (2019 Rule) that raised the standard salary level from the 2004 salary level of $455 to $684 per week. This rule proposes an increase from $684 per week to $1059 per week, approximately a 55% increase. Credit unions are dedicated to their employees and most reevaluate salary levels annually to provide their employees fair market rates. As not-for-profit, member-owned financial institutions, credit unions treat their employees with fairness and respect, not only because it is the right thing to do but because every employee is eligible to become a member-owner of the institution. The employees of a credit union, therefore, have a vested interest in the credit union and its competitive viability. To protect this unique relationship, the DOL should accommodate compensation structures that promote the shared success of the credit union.

While the cooperative principles of credit unions correspond with a commitment to fairly and competitively compensate employees, credit unions are also bound by unique rules that limit their ability to raise capital and absorb new labor costs. Furthermore, unlike banks, credit unions may only serve limited fields of membership. In practice, this means that not every credit union will have the flexibility to quickly expand its market footprint to fund additional overtime wages.

Federal credit unions also face statutory limits on loan interest rates and maximum maturities. In general, these factors limit the options a credit union has available to adjust to higher labor costs and could create competitive disparity with other financial institutions. For small credit unions operating in rural and underserved areas, the proposal could have a disproportionate negative impact on labor costs. As the preamble notes, southern states comprise the lowest-wage census region. For smaller credit unions, especially those operating in underserved, low-income areas, any decision to limit work hours due to changes in the standard salary level could compromise member services and impair long-term sustainability. The credit union industry continues to experience consolidation each year and wage pressure that drives closures of community financial institutions in rural communities may offset any expansion in overtime eligibility afforded by the proposal.

Automatic adjustments

NAFCU has opposed automatic adjustments in previous letters to the DOL.[1] Rather than a formula for automatic adjustments, the DOL should review the salary level on a regular basis through notice and comment rulemaking so that impacted parties may provide input to changes that directly affect them and their employees. A notice and comment period would allow credit unions to better gauge the appropriate salary increase given the specific needs and challenges of the various communities they serve and to provide valuable feedback to the DOL regarding its proposed adjustments.[2]

Further, NAFCU encourages the DOL to schedule these notice and comment periods with the same regularity as the proposed automatic updates. Long-term strategic planning is essential to ensuring the ongoing success, growth, and competitiveness of any organization, but particularly smaller credit unions that are facing a variety of different pressures. NAFCU asks that the DOL formally assess the review process shortly after the first adjustment cycle to determine whether the three-year cycle provides appropriate stability.[3]

[1] NAFCU letter to DOL RE: Request for Information – Overtime Rule (RIN 1235-AA20) (September 25, 2017) https://www.nafcu.org/system/files/files/NAFCU%20Comment%20Letter%20-%20DOL%20Overtime%20Rule.pdf
[2] *Id*.
[3] *Id*.

Effective Date

The NPRM proposes an effective date 60 days from the date of the final rule but requested feedback on whether that time was appropriate. NAFCU supports an implementation period of a full year, given the fundamental changes the rule will make to the budgeting cycle for smaller credit unions. Previous overtime wage rule changes have provided 90 to 180 days for implementation.[4] The DOL's reasoning that a briefer implementation period is appropriate, in part because employers and employees are familiar with the procedures in the current regulations from the 2019 rulemaking, is not persuasive.

Businesses have opened and closed in the four years since the last rule, and the employees who implemented past regulations may not be available to share the knowledge they gained at that time, as they may have moved on to other companies or positions. Some credit unions are particularly small enough that a human resources department of one or two employees may have turned over completely. Further, when labor budgets are small, they are often difficult to adjust mid-year. Allowing a company at least a full year to reforecast their expected labor cost would be more reasonable.

Conclusion

NAFCU appreciates the FHFA's attention to the market and issues important to credit unions and their members. If you have any questions or concerns, please do not hesitate to contact me at asmith@nafcu.org or (703) 842-2803.

Sincerely,

Amanda L. Smith

Amanda L. Smith
Senior Regulatory Affairs Counsel

---

[4] Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 88 FR 62152, 62180 (proposed September 8, 2023). https://www.federalregister.gov/documents/2023/09/08/2023-19032/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and#addresses