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National Association of Federally-Insured Credit Unions

May 21, 2019

Melissa Smith
Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, D.C. 20210

RE: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.
RIN: 1235-AA20

Dear Director Smith:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in regard to the Department of Labor's (DOL) proposed adjustments to overtime exemption rules under the *Fair Labor Standards Act* (FLSA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 116 million consumers with personal and small business financial service products. In general, NAFCU considers the current proposal to be a substantial improvement over the DOL's 2016 Final Rule and views the increase to the standard salary level as both reasonable and long overdue.

NAFCU and our members support the intent of the overtime rules and believe that all credit union employees should be compensated fairly. The 2016 Final Rule would have significantly disrupted the stability and growth of credit unions by more than doubling the minimum salary level used to delimit the executive, administrative, and professional (EAP) overtime exemption. It would have also codified automatic, three-year adjustments to the salary level that would have made credit union staff budgeting significantly more challenging. The decision to forego automatic adjustments in the current proposal and adopt a more reasonable salary level are welcome changes that NAFCU supported in our response to the DOL's 2017 request for information.

NAFCU does not believe that the proposed adjustment to the standard salary level is too high, but we ask that the DOL consider additional options to reduce burdens for smaller credit unions, particularly in the context of an increasingly complex and costly financial regulatory environment. A small entity compliance guide for credit unions that lack sophistication in employment law matters would be one option that could substantially reduce costs associated with future implementation of new overtime rules.

NAFCU also supports the DOL's decision to provide regulatory flexibility for certain bonuses, incentive payments, and commissions. For nondiscretionary bonuses and incentive payments paid on an annual or more frequent basis, the proposal permits such compensation to satisfy up to 10 percent of the standard salary level. In other words, these types of payments may contribute to a portion of the salary level requirement in 29 CFR § 541.600(a). The DOL should consider adjusting the 10 percent limit to accommodate a more diverse range of incentive programs, which might otherwise be curtailed if certain employees become non-exempt due to the proposed change to the standard salary level. While credit unions currently face incentive-based compensation restrictions imposed by the National Credit Union Administration (NCUA) and generally follow conservative limits, these restrictions are now being reevaluated by the NCUA Board.

To account for potential revisions to the NCUA's incentive-based compensation rules, the DOL should allow a greater share of qualifying payments to contribute to the standard salary level. In practice, incentive-based compensation arrangements may be more beneficial to employees than permanent reclassification as overtime eligible. 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 also 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 current proposal offers a reasonable framework for adjusting the standard salary level, which was last updated in 2004, future adjustments could disproportionately impact small credit unions operating in rural and underserved areas, particularly in the south. The median asset size for all federally-insured credit unions is $33 million, which corresponds with limited resources to absorb significant regulatory changes. As the DOL acknowledges, small entities often have limited or no human resources personnel on staff. In addition, future increase to the standard salary level could place strains on certain staffing arrangements. Data from the Bureau of Labor Statistics indicates that the annual mean wage for tellers engaged in credit intermediation and related activities is approximately $5,000 below the proposed salary level. Tellers account for 21.7 percent of industry employment for all depository institutions and a subset may perform duties that would qualify for the EAP exemption. Certain salaried customer service representatives with annual wages that fall just outside the national median ($35,510) could also be impacted if they perform EAP duties not typically associated with regular call center employees. While tellers and member service representatives are almost universally eligible for overtime, for professionals at the smallest credit unions who perform multiple roles that make them exempt, the transition to non-exempt status could disrupt well-established compensation arrangements, overall staffing levels, and possibly result in curtailment of hours. For small credit unions, any decision to limit work hours due to changes in the standard salary level could compromise member services and impair long-term sustainability.

Credit unions are dedicated to their employees and often provide excellent career training and growth opportunities that are not factored into the salary level but provide career-long benefits. Additional cost pressure resulting from the proposal could constrain workforce development initiatives because credit unions already struggle to cover travel, lodging, registration, and other

fees associated with training their employees. NAFCU asks that the DOL formally assess the impact of the proposal on workforce development resources at highly regulated small institutions, particularly credit unions, before proceeding with future adjustments. As mission-based cooperatives, credit unions will always seek to attract the best talent by offering competitive wages; however, the DOL should be sensitive to the reality that not every credit union will be able to maintain the highest levels of service and community engagement where changes to the overtime rules place artificial limits on staffing.

Lastly, NAFCU asks that the DOL commit to a future assessment of the proposed, four-year review of the salary level should this requirement become final. While rulemakings for future salary level adjustments are much preferred over the automatic increases contemplated in the 2016 Final Rule, lack of regularity in the notice and comment process could create greater uncertainty for credit unions. If future rulemakings are unnecessarily prolonged, or if final rules deviate substantially from initial proposals, credit unions may inadvertently inflate staff budgets to account for regulatory indecision. In such circumstances, the four-year review process could impair long term strategic planning and growth. NAFCU asks that the DOL formally assess the review process shortly after the first adjustment cycle to determine whether a four-year period provides appropriate stability.

Conclusion

On behalf of this country's credit unions, owned by 116 million members, NAFCU appreciates the DOL's efforts to modernize its overtime rules and ensure that all Americans receive fair pay. We ask that the DOL carefully consider the not-for-profit mission and cooperative structure of credit unions before making future adjustments to the standard salary level. We also ask that the DOL consider additional mechanisms for preserving the viability of small credit unions who serve as a vital source of credit in their communities but face significant challenges when adapting to any major regulatory change. Should you have any questions or concerns, please do not hesitate to contact me at amorris@nafcu.org or 703-842-2266.

Sincerely,

Andrew Morris
Senior Counsel for Research and Policy