



National Association
of Federal Credit Unions
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

September 3, 2015

Ms. Mary Ziegler, Director
Division of Regulations, Legislation, and Interpretation, Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

RE: Comments on Proposed Rulemaking Defining and Delimiting the
Exemptions for Executive, Administrative, Professional, Outside Sales and
Computer Employees

Dear Ms. Ziegler:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the Department of Labor's (DOL) proposed changes to the Fair Labor Standards Act (FLSA) for certain full-time salaried workers to be eligible for overtime protections. *See* 80 FR 38515 (Jul. 6, 2015). While NAFCU and our members support efforts to modernize the current regulations to ensure that all American workers are granted access to fair pay for their hard work, we are concerned that this proposal may have severe unintended consequences that harm growth opportunities for many white collar workers. NAFCU is concerned that the proposal does not adequately consider geographic salary differences or provide exceptions for non-salary based employee advancement opportunities such as travel time for conferences and training events.

General Comments

On March 13, 2014, President Obama signed a Presidential Memorandum directing the DOL to update the regulations defining which "white collar" workers are protected by the FLSA's minimum wage and overtime standards. 79 F.R. 18737 (Apr. 3, 2014). Currently, in order to meet the "white collar" exemption a worker must meet each of the following three tests: (1) the salary basis test; (2) the salary level test; and (3) the duties test. This proposal will change the second part of the white collar exemption related to the "salary level test." The DOL is proposing to update the current salary level to allow any full-time salaried worker making less than \$970 per week, or \$50,440 annually, to be eligible for overtime pay at a rate of not less than one and one-half times the employee's regular rate for hours worked over 40 in a workweek. NAFCU and our members are concerned that

this drastic change from the current salary rate of \$23,660 annually could have severe unintended consequences for the recovering U.S. economy and labor market. We would caution that while the labor market is improving nationally, the recovery is tenuous and could be subject to future shocks such as an increase in interest rates.

The DOL proposal suggests that employers could chose to raise the salary of existing employees in order to remain exempt from the cap. *See* 80 FR 38606. However, it is simply not feasible for many small community-oriented credit unions to impose a blanket raise for existing salaried workers to the \$50,440 threshold. Most small to midsized credit unions do not have the overhead margins to absorb that cost without a detrimental impact on the services that could be provided to consumers. NAFCU is concerned that the DOL proposal fails to adequately address the needs of small businesses including credit unions around the country that operate with very small financial margins in a highly competitive service-driven marketplace.

Credit union's unique relationship with employees

NAFCU's members pride themselves in investing in their employees and the local communities that they serve. Credit unions are unique financial institutions that are member owned, democratically operated, not for profit organizations, that are generally managed by a volunteer Board of Directors. Every employee of a credit union is eligible to become a member-owner of the institution. A credit union's members are its shareholders and each member has a vote, regardless of the amount on deposit. Thus, as members, the employees of a credit union have a vested interest in the credit union as well as a say in the operations of the business. In order to more appropriately acknowledge the cooperative nature of credit unions and their not-for-profit status in applying the salary-level test to employees, NAFCU and our members recommend that the DOL proposal establish an alternate 30th percentile salary designation for full-time salaried workers employed at qualifying not-for-profit institutions.

One-sized-fits-all regulatory approach

NAFCU and our members are extremely concerned that the DOL proposal takes a one-size fits all approach to establishing the salary threshold for exempt white collar employees that does not adequately address the drastic economic differences in geographic pay scales. The DOL proposal contemplates adopting a "fixed percentile" approach, which would update thresholds based on a fixed percentile of earnings for full-time salaried workers to annually maintain a level at the 40th percentile for full-time salaried workers nationally. Alternatively, the DOL proposes adopting the CPI-U approach, which would update thresholds based on changes in the Consumer Price Index for All Urban Consumers. This index excludes rural populations and represents approximately 80 percent of the U.S. population.

NAFCU and our members are concerned that neither of the proposed salary calculations adequately addresses the actual difference between an annual salary of \$50,440 in various

parts of the country. It is economically imprudent to require employers based in Huron, South Dakota to have the same covered-employee salary level as an employer based in San Francisco, California. NAFCU and our members strongly urge the DOL to adopt a salary-level that takes into consideration geographic pay differentials around the country.

Impact on employee advancement opportunities and community service events

NAFCU has heard from credit unions in communities across the country that they will have to reevaluate sending their mid-level managerial staff to training conferences and other career advancement opportunities. Currently, most credit union mid-level management staff is exempt from FLSA overtime requirements. However, if this proposal is adopted, many credit unions will have to think twice about sending their staff to an out-of-state conference or overnight stay because of the overtime pay implications. It is simply not feasible for many credit unions to bear the cost of travel, lodging, registration and other expenses, in addition to having to pay overtime to their employee along with those other costs. Instead, this proposal will negatively impact the opportunities for existing employees to receive essential job training that could facilitate their advancement within the organization. NAFCU and our members strongly urge the DOL to establish a specific rule about how employers are allowed to calculate hours accrued during an employee's participation in a business related trip or training program.

Credit unions pride themselves on adding value to the communities they serve, which often entails hosting fundraising events or volunteer services on a regular basis. Many credit union employees happily volunteer their time and their services to the betterment of these community programs. This proposed change to the FLSA could negatively impact a credit union's ability to ask their employees to volunteer for community events and could adversely affect a credit union's ability to serve its community. NAFCU and our members strongly urge the DOL to clarify that hours spent by employees at volunteer, community-based events does not count as time for calculating an employees' eligibility for overtime compensation over the 40 hour work week.

Conclusion

NAFCU appreciates the opportunity to share our thoughts on the proposed amendments to the FLSA. We look forward to continuing to work with the Department of Labor on this issue. Should you have any questions or would like to discuss these issues further, please feel free to contact me at ksubramanian@nafcuhq.org or (703) 842-2212.

Sincerely,



Kavitha Subramanian
Regulatory Affairs Counsel