MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

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: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees –
RIN 1235-AA11

Submitted via: www.regulations.gov

Dear Ms. Ziegler:

The Michigan Credit Union League (MCUL), the statewide trade association representing 98% of the credit unions located in Michigan and their 4.7 million members, appreciates the opportunity to comment on the Department of Labor's (DOL) proposed rule to amend the Fair Labor Standards Act (FLSA). RIN 1235-AA11 proposes to change the standard when considering the exempt status of employees. Specifically the proposed rule would increase the annual salary threshold from $23,660 to an estimated $50,440, significantly increasing the threshold for which employees are eligible for overtime pay.

The MCUL is concerned that this proposal moves much too quickly and does not take into consideration important elements that are necessary to update such an important regulation. Credit unions are member-owned, not-for-profit financial cooperatives operating for the purpose of promoting thrift, providing affordable credit, and providing financial services to their member-owners. Since credit unions are member-owned they have historically worked to advance the American middle-class by providing employment opportunities and increasing access to financial services for members. MCUL understands the intent behind this proposed rule, however more than doubling the income threshold for overtime pay eligibility may lead to unintended consequences.

Salary Threshold

Credit unions are rooted in the communities they serve. More often than not credit unions are smaller financial institutions working to further the financial health of their members. It is not uncommon for MCUL member credit unions to have just one branch, with many having fewer than 10 employees. Oftentimes these are the credit unions serving rural and underserved areas of Michigan. In many cases senior management employees at these smaller credit unions have a salary under the proposed $50,440 threshold. When evaluating the potential impact of this proposed rule it is easy to think only tellers and call center employees will be impacted. In reality, at many smaller credit unions this proposal will impact senior managers such as Chief Executive Officers (CEO) and Chief Financial Officers.

As the Credit Union National Association (CUNA) remarked in their comment letter dated August 31, 2015, a substantial percentage of credit union employees, particularly in rural underserved areas, will be adversely impacted by this proposed rule. CUNA further commented that at some credit unions up to 80 percent of employees will see their employment status impacted. Further, according the CUNA Staff Salary Report[1], CEO compensation at credit unions with less than $10 million in assets is most often less than $50,000. At the same time all credit union CEOs are faced with ever increasing compliance burdens placed upon the financial services industry by other federal agencies. With this increasing burden the time demands on credit union executives often requires working more than the standard 40-hour work week.

The MCUL urges the DOL to reconsider the salary threshold proposed in this rule. A one-size-fits-all salary threshold at the 40th percentile for non-hourly paid employees is arbitrary and will cause undue financial hardship to credit unions and may adversely impact the services offered to their members. The MCUL also is concerned with the annual inflationary indexing of this threshold as proposed in the rule and urges the DOL to reconsider its inclusion in the proposal.

This Proposal Fails to Account for Geographic Diversity and Business Size

As mentioned above, credit unions are smaller financial institutions that are owned by their members. Credit unions exist to advance the financial needs of their membership and have a strong commitment to their communities. Each credit union is created to serve a different field of membership and because of this they vary greatly in size and complexity. The largest credit unions in Michigan have over $1 billion in assets but the smallest credit unions can have less than $1 million in assets. Varying business size impacts more than credit unions, it impacts all employers. Most small to mid-sized credit unions do not have the overhead to absorb the additional cost without a detrimental impact on the services that could be provided to consumers. Large, medium, and small businesses would all fall under the same threshold despite vast differences in their employment and compensation models.

Additionally, the DOL's proposed rule does not consider regional factors when setting the salary threshold. As the trade association representing credit unions in Michigan the MCUL feels this single nationwide threshold is flawed. Due to regional factors the cost of living in certain regions of the country such as the metropolitan areas surrounding Washington, DC, San Francisco, CA, and New York, NY, are significantly higher than they are in Michigan. This leads to higher income levels for the employees working in those areas. This factor artificially increases the 40th percentile floor the DOL is considering. Even within Michigan there are significant differences in pay rates and cost of living when comparing the metropolitan areas around Detroit and Grand Rapids with the rest of the state. The federal government recognizes geographic diversity across the nation in its General Schedule pay scale which sets the compensation of federal employees. An example of this practice in Michigan is illustrated by the fact that a federal Step-5 GS-8 employee would earn $53,988 in the Detroit-Warren-Flint area while earning $49,668 in the rest of the state[2]. This difference of $4,320 would make a federal employee in one region exempt from the proposed rule while the same employee in the rest of the state would be eligible for overtime.

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[1] [1] Haller, J., Dey-Marcos, C., Malla, B., *CUNA Staff Salary Report 2014-2015*, available at http://www.cuna.org/Research-And-Strategy/Products/2015-2016-CUNA-Staff-Salary-Report-(PDF) (March 5, 2015).

[2] (https://www.federalpay.org/gs/2015/michigan).

The MCUL is concerned that states such as Michigan are adversely impacted by this nationwide approach. At the same time the 40 percent threshold appears to be an arbitrary standard put forth by the DOL.

Impact to Credit Unions

As mentioned above the financial services industry has been faced with significant regulatory burden as the result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. When combined with the increased costs placed on employers due to the Patient Protection and Affordable Care Act smaller credit unions are struggling to remain open or retain talent. In order to avoid the unintended consequences of reducing access to financial services in rural and underserved communities the DOL should reconsider the factors for setting a new threshold.

There is federal precedent for allowing greater consideration of a proposed rule's impact on small businesses and on smaller financial institutions. The Consumer Financial Protection Bureau (CFPB) must consider the impact of proposed rules on consumers in rural areas. The CFPB modified a proposed mortgage lending rule that was released in January 2015 after considering the impact on small creditors in rural and underserved areas.[3]

Additionally, Congress has recognized the importance of small businesses and their impact on our nation's economic growth by exempting employers with fewer than 50 employees from the Family and Medical Leave Act of 1993. Additionally, the CFPB recognizes the difference between smaller and larger financial institutions and considers the impact of proposed regulation on credit unions with less than $550 million in assets before moving forward with proposed rules. Because of this the MCUL requests the DOL to consider these factors prior to finalizing with this proposed rule. Failure to do so may lead to an increased number of credit union mergers which could lead to fewer financial services in these areas.

Impact to Credit Union Employees and Members

As made clear, many credit unions may not be able to afford to increase salaries based on the proposed DOL threshold. This may lead to instances where CEO's and other senior managers see their employment status change from exempt to hourly. This change may have a negative impact on employee morale and reduce employee productivity. Additionally, if a credit union increases salaries of some employees to bring them above above the new threshold other employees who were just above that level may feel discouraged unless they receive a similar wage increase.

One way credit unions and all employers may deal with the new proposal would be to decrease employee hours. This not only harms employees by depriving them of the opportunity to realize greater earnings, it could adversely impact credit union members through the reduction in service hours. Credit unions, and many service based businesses, keep business hours that extend beyond the standard work day. This is done as a convenience to their members and customers. If a reduction in service hours results from compliance with this proposed rule then members may see a reduction in services.

Additional adverse impacts to employees who are reclassified as hourly rather than exempt are varied. Whether it is scheduling time off or having the opportunity to participate in training and networking events to further an employee's career, credit unions and all employers may place more restrictions on these activities in order to avoid unintended consequences.

[3] http://www.consumerfinance.gov/newsroom/cfpb-issues-proposal-to-facilitate-access-to-credit-in-rural-and-underserved-areas/

The Duties Test Need Additional Consideration

The MCUL understands the DOL is seeking additional information on the duties test for consideration when drafting the final rule, posing many questions for consideration. Since changes to this test can take many forms and the specifics of what DOL is considering are unknown, the MCUL urges the DOL to hold a **new 60-day comment** period following notice of any such changes. This would allow meaningful comments to be provided to the DOL.

Conclusion

The MCUL appreciates the opportunity to comment on this significant proposal put forward by the DOL. While the MCUL understands the motivation behind the proposal and supports the efforts to improve conditions for middle-class Americans, we believe the proposal has many gaps which create many unintended consequences for both employees and employers. Because of this, the MCUL urges the DOL to reconsider the proposed rule and engage in further dialogue to craft a more narrow and reasonable proposal.

Thank you again for the opportunity to comment.

Ken Ross
Executive Vice President & Chief Operating Officer