



November 7, 2023

Amy DeBisschop
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-3502
Washington, D.C. 20210

Re: Docket ID WHD-2023-0001-0001

Dear Ms. DeBisschop:

The American Association of Community Colleges (AACC) welcomes this opportunity to comment on the Department of Labor’s (DOL) September 8, 2023, notice of proposed rulemaking (“NPRM” or “proposed rule”) amending regulations defining and delimiting the exemptions for executive, administrative, professional, outside sales, and computer employees, Docket ID WHD-2023-0001-0001. AACC represents the nation’s 1,038 community colleges and their students.

AACC has endorsed comments filed on the NPRM by the College and University Professional Association for Human Resources (CUPA-HR). These comments supplement CUPA-HR’s more comprehensive comments, highlighting issues of particular interest to community colleges.

Community colleges serve as regional economic engines, not only as educators of the workforce but also as employers. This means that they must remain sufficiently nimble in order to provide offerings that reflect the evolving needs of their local economies and their student populations. The Fair Labor Standards Act (FLSA) “white collar” exemptions help institutions by giving their employees greater flexibility in meeting their job responsibilities. We would note that community colleges are personnel-intensive operations; they commonly devote more than 80% of their total expenditures to employee costs.

As with other sectors of higher education, community colleges are able to attract high-caliber talent with lower salaries than employees might receive in other roles in part because of their missions, but also because of the benefits that they provide. These often include generous health and retirement benefits compared to similarly salaried employees, as well as flexible working hours. These are longstanding recruitment and retention benefits that the proposed salary threshold fails to capture.

On average, community colleges have fewer resources than institutions within other sectors of higher education. Budgets at community colleges are often constrained by external circumstances, including public funding, giving colleges little leeway to identify additional funds or even redeploy existing ones. This means that many of our colleges — especially those located in areas with lower costs of living, including rural areas — simply are not in a position to substantially increase the salaries of dozens of employees at once, which is one possible response to the NPRM if it is implemented as proposed. One community college in the South estimates that if the salary threshold is set at \$60,209, as projected by DOL when the final rule goes into effect, 52% of their staff would be impacted, and it would cost over \$900,000 to increase their salaries.

Additionally, an update to the salary threshold is not appropriate at this time, given that it was increased by 50% only three years ago. Historically, the minimum salary has been increased every five to 15 years (excluding 1975 to 2004) by anywhere from 5% to 50%. An increase in the salary minimum that is expected to ultimately range between 55% and 70% in the final rule is an unprecedented hike in an unusually short time frame. We agree with CUPA-HR that the salary should be updated in five-to-nine-year intervals.

Given the extremely high costs of increasing employees' salaries if the NPRM is implemented as proposed, some community colleges will have no choice but to reclassify many of their impacted employees as non-exempt. This reclassification would be inconsistent with the intent of FLSA because the affected employees who have been exempt have been given that status for a clear functional reason. These employees require the flexibility in working hours and related arrangements that come with exempt status, in part because community colleges serve large numbers of adult learners, first-generation college students, and other non-traditional students who are not always accessing resources in a traditional in-person, "9 to 5" time frame. A good example of the type of job that would be impacted by the NPRM are student success counselors, many of whom work irregular hours and, at times, for periods that would qualify

them for overtime if they were non-exempt. They are not thought of as, and only rarely classified as, hourly employees.

Mass reclassification of employees would come with costs — in expanded overtime payments and labor and administrative costs incurred by transitioning exempt employees to nonexempt status — that most community colleges are ill-prepared to shoulder. The potential widespread reclassification of employees for the purposes of the FLSA will also impact the broader overall salary structure of institutions, further adding to their financial pressures. Responses from some member institutions suggest that layoffs will also be an outcome of the policy, rather than a large-scale recalibration of an institution's personnel structure.

Lastly, AACC agrees with CUPA-HR in that DOL does not have the legal authority to impose automatic updates in the exemption threshold. However, even if DOL did have this authority, automatic updates would still be an undesirable policy because of their potential negative impact on institutional budgets. We again advocate for an update to the salary threshold every five to nine years through the notice and comment rulemaking process to reflect actual conditions on our campuses and with other entities.

AACC has little doubt that the proposed changes are of an extent that they will ultimately result in a reduction of student services, an increase in tuition, or both; there is simply no other way for institutions to acquire the additional resources that would be required by the change. We ask the Department to carefully consider the potential impact of this proposal on our colleges and the students they serve. While we are only one of portion of the American economy that will be affected by this NPRM, we are an essential one that is critically important to millions of Americans.

We thank DOL for the opportunity to comment on the proposed rule. For more information, please contact David Baime, senior vice president for government relations.

