



**College and University Professional
Association for Human Resources**

May 11, 2016

Chairman David Vitter
Committee on Small Business &
Entrepreneurship
U.S. Senate
428A Russell Senate Office Building
Washington, DC 20510

Ranking Member Jeanne Shaheen
Committee on Small Business &
Entrepreneurship
U.S. Senate
428A Russell Senate Office Building
Washington, DC 20510

Dear Chairman Vitter and Ranking Member Shaheen:

On behalf of the College and University Professional Association for Human Resources (CUPA-HR), I thank you for holding today's hearing on the Department of Labor's proposed regulation amending the exemptions for executive, administrative, professional, outside sales, and computer employees (the "EAP exemptions" or "white collar exemptions"). CUPA-HR serves as the voice of human resources in higher education, representing more than 19,000 human resources professionals and other campus leaders at over 1,900 colleges and universities across the country, including 91 percent of all United States doctoral institutions, 77 percent of all master's institutions, 57 percent of all bachelor's institutions and 600 two-year and specialized institutions.

Colleges and universities employ over 3.9 million workers nationwide and there are institutions of higher education located in all 50 states. The Fair Labor Standards Act (FLSA) and similar state laws cover all or nearly all of these employees. Many employees on campuses are currently exempt from the FLSA's overtime pay requirements pursuant to the regulations that the U.S. Department of Labor (DOL) plans to modify.

DOL has proposed increasing the threshold salary to qualify for the exemption from \$455 (\$23,660) a week to \$970 per week (or \$50,440 per year). This 113 percent increase would take place all at once in 2016 and be automatically updated thereafter. Last month, a beltway press outlet reported that the DOL is considering lowering the threshold from \$50,440 to \$47,000. This still amounts to a 99% increase over the current threshold that would go into effect all at once in 2016.

CUPA-HR agrees that an increase to the minimum salary threshold is due and that DOL must update the salary levels and regulations from time to time to ensure the exemptions are not abused. The proposed minimum salary threshold of \$50,440 and the slightly reduced reported new threshold of \$47,000, however, are both simply too high. To comply either, colleges and universities would increase salaries for a few individuals whose current pay is closest to the new threshold, but would need to reclassify the vast majority of impacted employees to hourly status.

While in some cases these changes would be appropriate and would keep with the intent of the FLSA, in too many instances colleges and universities would be forced to reclassify employees that work in jobs that have always been exempt and are well-suited to exempt status.

This mass reclassification would be to the detriment of employees, institutions and students. Employees would face diminished workplace autonomy and fewer opportunities for flexible work arrangements, career development and advancement with no guarantee of increased compensation. As nonprofits and public entities, institutions would not be able to absorb the increased costs that come with higher salaries for exempt employees, expanded overtime payments and other labor and administrative costs associated with transitioning traditionally exempt employees into nonexempt status. In the face of these costs and challenges, institutions would need to both reduce services *and* raise tuition, to the detriment of students. The changes would also increase the costs of and thus inhibit important research done by universities and their employees.

Last summer, CUPA-HR conducted a survey of 819 members as part of the comments submitted by 18 higher education organizations in response to DOL's proposal (those comments are available at http://www.cupahr.org/advocacy/positions/cupahrcomments_otregs_sep2015.pdf). In this survey, 88% of respondents indicated any threshold over \$40,352 would be too high, with a solid majority favoring a threshold in the low \$30,000s. More recently, CUPA-HR conducted its *2016 CUPA-HR Professionals in Higher Education Salary Survey Report*, which shows that a threshold of \$47,000 still imposes significant costs on the higher education system. According to the report, institutions would face an average cost of \$209,169 if they had to adjust just *one* employee for each of the 24 professional positions reporting a median salary below the new proposal. Institutions will typically have many professionals in these slots below the threshold, particularly institutions in lower costs areas of the county, which will be those hardest hit by the rule. In addition, based on data we have received from CUPA-HR members in the last few days and over the last year, a \$47,000 threshold would still result in significant costs—the combined cost estimates of the 35 institutions that provided data near \$115 million—to institutions and would inevitably trigger tuition hikes and reductions in force and services.

Reports that DOL plans to release a rule in the next week that will increase the threshold by nearly 100 percent all at once in 2016 demonstrates the administration is not taking the concerns of higher education and other stakeholders seriously and that absence congressional action the administration is not willing to reconsider the rule in a meaningful way. Accordingly, we urge all the members of the Small Business and Entrepreneurship Committee to cosponsor S. 2707, the *Protecting Workplace Advancement and Opportunity Act*, which would require the Labor Department to conduct a detailed economic analysis before making dramatic changes to federal overtime pay requirements. This bill was introduced in response to grassroots concern among colleges and universities and other employers that the dramatic changes proposed by the Labor Department will reduce opportunity and flexibility for millions of executive, professional, and administrative employees.

Please see attached document, which provide details on the costs of DOL's proposed increases to colleges and universities across the county. Thank you for convening today's hearing and for the opportunity to submit this letter for the record.

Respectfully Submitted,



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Data on Costs of DOL's OT Proposal
for Colleges and Universities

Comments From Docket

- **Higher Education Association Comments:** “For colleges and universities, the administrative and labor costs associated with these changes would be significant in a time of limited and sometimes shrinking budgets for higher education. The Iowa Association of Community College Trustees noted that “by necessity, education is personnel rich, and comprises 75% of their annual expenses,” so changes in employee salaries have a large impact on college and university budgets. As noted above, the State University System of Florida found that raising salaries to meet the threshold would cost its 12 universities a total of \$62 million annually, the Iowa Association of Community College Trustees found that doing so would cost Iowa Community Colleges \$12.6 million in the first quarter of 2016 alone, the University System of Maryland has put this cost at \$15.5 million and another university in the south told CUPA-HR that it estimates it would cost \$17 million annually. These estimates are low in that they do not account for additional costs employers would need to incur to avoid wage compression, corresponding benefits-cost impacts, and administrative costs related to implementing and administering the rule.” page 13
http://www.cupahr.org/advocacy/positions/cupahrcomments_otregs_sep2015.pdf
- **Comments of the Iowa Community College Trustees:** “the NPRM mandate impacts Iowa Community Colleges by \$12,648,786 in the first quarter of 2016 alone in salary and benefit expense.” <http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2398>
- **Comments of the State University System of Florida:** “at this point, a review of the raw data costs alone for all twelve (12) state of Florida universities' employees currently meeting the exempt tests would be in excess of \$62,000,000.00 of annual recurring salary costs if salaries were to be increased to the new proposed minimum salary threshold of \$50,440 in 2016.”
<http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2242>
- **Comments of the University of Iowa:** “the over 2,700 individuals we employ and whose status would immediately change from exempt salaried to non-exempt hourly” and “the alternative of paying overtime would generally be cost prohibitive; the annual cost of one hour of overtime per week for each of our 2,700 impacted employees would increase University payroll costs by over \$4 million.”
<http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-2316>
- **Comments of Southeast Missouri State:** “The Proposed Rules will impact nearly 31 percent of faculty and staff at Southeast at an annual added cost of approximately \$2,596,800”
<http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5266>
- **Comments of the University Texas System:** “In the case of M. D. Anderson Cancer Center, for example, over one-half of its total expected cost of complying with the compensation requirements of the NPRM would be attributable to researcher compensation - \$5.8 million total in the first year, assuming no reduction in staffing.”
<http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5579>
- **Comments of the University of California:** “Should the NPRM be finalized as currently proposed, the required increase would place enormous strain on the University's budget, likely forcing layoffs and causing delays and disruptions in ongoing research. UC would have to increase the salary of nearly 70 percent of this group of employees — an estimated 8,200 individuals — at a cost of approximately \$39 million annually.”
<http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5555>
- **Comments of Kansas State University:** “Using the salary test threshold of \$47,892 per year,

the University would incur additional costs of \$626,075 per pay period if each employee affected (total of 853) were to work one hour of overtime per pay period.” <http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-5011>

- **Comments of the North Dakota State University Extension Service:** “NDSU Extension has over 70 employees with salaries between \$40,000 and \$50,000 that would be affected by the proposed rule. To increase their salaries to the new minimum would significantly increase our salary expenses by approximately \$650,000 annually. It is not an inconsequential amount. In our model, counties pay half of that salary. Several of our rural counties do not have the tax base to levy taxes to fund their portion of this increase.” <http://www.regulations.gov/#!documentDetail;D=WHD-2015-0001-4273>

Costs Mentioned in Media

- **February 11, 2016 Letter by Public Sector Employers to Congress:** “The University System of Maryland’s preliminary estimate is an increase in costs between \$16 million and \$40 million in just the first year.” <http://protectingopportunity.org/wp-content/uploads/2016/02/Press-Version-Public-Employer-Letter.pdf>
- **March 17, 2016 statement by Senator Alexander on costs to Tennessee Colleges and Universities:** “In Tennessee, it is expected that the change will cost each four-year campus a minimum of \$1.3 million. For instance, one TICUA member calculated that the first year impact would translate to a \$1,000 per student increase in tuition. Another rural TICUA campus noted that the change would impact 133 employees for a total of \$3.2 million.” <http://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=309F7AB7-B6A0-45C6-8CAE-4BBFF6DC2CD0>
- **March 22, 2016 WSJ Article:** “Vanderbilt University in Nashville, Tenn., calculated that nearly half its employees would be eligible for overtime pay, up from about a third now. It would cost about \$7 million a year to increase salaries of the newly eligible workers to keep them exempt from the rule—or more than \$9 million to switch them to hourly employees logging 10 hours of overtime weekly.” <http://www.wsj.com/articles/colleges-brace-for-overtime-overhaul-1458674488>
- **March 22, 2016 WSJ Article:** “Officials at Purdue University in Indiana are meeting with department heads to find a solution for every job classification by June, said Vice President of Human Resources Trenten Klingerman. “Do they hold regular office hours and appointment schedules? Do they travel? Does their workweek fluctuate at different times of the year?” he said the school is asking nearly 1,700 of its full-time employees would be newly eligible for overtime pay and raising their salaries to keep them exempt would cost \$13 million a year. Paying them two hours of overtime weekly instead would cost \$4.7 million, though it’s unclear if that would be enough time.” <http://www.wsj.com/articles/colleges-brace-for-overtime-overhaul-1458674488>
- **March 29, 2016 Hearing Before House Workforce Protections Subcommittee:** “For the University of Michigan, the largest higher education employer in the state, the changes would affect more than 3,100 people in roles critical to our missions, including research fellows and lab staff, student housing officers, admissions recruiters, academic advisors, financial aid administrators, social workers, clinical dietitians, 2 clinical research coordinators and fundraisers. The projected cost at U-M to implement the change is as high as \$34 million; early statewide estimates from The Michigan Association of State Universities peg the cost at more than \$60 million for 11 of the 15 total member institutions reporting.” <http://edworkforce.house.gov/uploadedfiles/thomas.pdf>
- **March 30, 2016 Inside Higher Ed OpEd:** “As president of Thomas More College, a small

faith-based college in Kentucky, I worry that the changes would take a grave toll on institutions like mine that are enrollment and tuition driven . . . [W]e project our budget would increase by \$1.4 million each year . . . that is more than a 12 percent annual increase . . . An increase of that magnitude could potentially have catastrophic effects on us and other small institutions nationwide.”

<https://www.insidehighered.com/views/2016/03/29/proposed-new-overtime-pay-regulations-could-negatively-impact-colleges-and-their>

Revising the Proposed Threshold of \$50,440 to a Potential \$47,000 Threshold

- **Large Public Research University in the South:** Using the most recent salary data from March 2016, we put together a report on the potential impact of the proposed rule. Currently 4,982 (70%) of employees are exempt from overtime pay. Under the proposed rule 1,485 of these employees would be converted to non-exempt status decreasing the current exempt population from 70 percent to 49 percent. The estimated cost to raise the salaries of the 260 research positions that fall below the proposed threshold is \$4.79 million for the first year. The cost to raise the salaries for the 278 staff whose salaries fall within 15% of the threshold is \$1.14 million in the first year. If the University were to convert 1,186 employees to hourly status and pay each employee one hour of overtime per week the university would incur additional costs of \$2.19 million per year.
- **Small Institution in Kentucky:** We estimate that a 47k threshold would cost 400,000 to implement.
- **A Small Private Liberal Arts University in Texas:** With a new threshold of \$47K, we have a total of 57 staff employees affected at a cost of \$538,237.88.
- **Large Public Research University in the South:** This University performed a FLSA impact analysis to determine the potential impact of the proposed rule. Currently this University employs 392 exempt employees who are paid an annual salary less than DOL’s proposed threshold of \$50,440. In order to maintain the exempt status for these 392 employees we would have to raise their salaries at a cost of \$4.2 million dollars. Alternatively, if we were to reclassify these employees to hourly status and pay each employee five hours of overtime per week we would incur additional costs of \$3.8 million per year.
- **Large Public University in Midwest:** At the \$50,440 threshold 387 employees will be impacted at a cost of \$4.3 million in the first year. At the \$47,000 threshold 308 employees will be impacted at a cost of \$3.2 million in the first year. The estimates do not take into consideration compression issues. For example, moving University Housing Services staff to the new threshold would result in Assistant Residence Hall Coordinators, their supervisors (Residence Hall Coordinators), and RHCs’ supervisors (Assistant Directors) having the same salary.
- **East North Central Region University:** If we raised all exempt employees who are currently below the \$47,000 salary to that amount it would impact 89 employees at an estimated cost of \$832,000.
- **A small private liberal arts college in the East:** If the limit is reduced to \$47,000 we estimate we'll have 48 employees (close to 25% of our non-faculty salaried workforce who would be affected). With moderate assumptions about overtime, I project this will cost us \$210,000 / year (in the first year); if we were to simply raise the salary of the affected employees above the floor to avoid having to schedule overtime, the cost would rise to \$580,000 / year (in the first year).

- **Small Community College in Southeastern Ohio:** We are a small Community College located in rural southeastern Ohio (Appalachia). Even at the reduced salary amount of \$47k, almost 64% of our current salaried positions will be impacted. It is estimated that it will cost almost \$260,000 to comply with this regulatory change. Also, if the duties test is changed to where faculty members would be impacted by this change, 60% of our faculty would be impacted with an estimated cost of almost \$150,000. This does not consider the morale impact that the "status" change will have on employees (moving from salaried to hourly). Also, this will affect the benefit accruals for this positions (i.e., exempt employees accrual benefits, such as vacation and sick leave, at a higher rate than their non-exempt counterparts).
- **Large Research University in the Upper Midwest:** A reduction to a \$47,000 threshold from the proposed threshold would reduce the number of individuals impacted by 21.7% and the dollar impact up to 18.7% - but that still leaves a lot of people and a lot of dollars. At the \$50,440 threshold 1709 exempt employees will be impacted costing the University as much as \$17.5 million in the first year. Were the threshold to be reduced to \$47,000, the university would still see costs as high as \$14 million and 1338 exempt employees will be impacted. This does not include the figures for postdocs.
- **Large Public Research University in the Ohio River Valley:** We have 434 Post-Docs which we estimate would require an extra 4.1 million to bring them in line with the new scale. In total, we have 2,377 affected employees that we estimate would require an extra 29.3 million to bring them in line with the new scale. This includes both salaries and fringe benefits. This is sizeable to say the least.
- **A Small Public Liberal Arts College in Colorado:** A \$47,000 salary threshold for exemption from overtime will affect 74 positions at our school. Our estimated additional cost is at least \$300,000 in the first year. The estimated annual cost figure is conservative, using a figure of 2.5 hours of overtime each week for all 74 positions.
- **Small Liberal Arts College in Minnesota:** A change in the threshold from the proposed rule to 47K would change the impact from 99 employees to 59 employees. The cost impact would move from \$458,624.27 to \$205,833.86. We still are working our way through admissions counselors, coaches, and residence life employees who work long hours but only at certain times of the year and do not earn \$47k.
- **A Large Private Research University in the Upper Midwest:** A lower \$47,000 threshold doesn't do much to fix the post doc issue in my view. We had over 300 post docs with stipends below the \$50,440 level. We still have over 230 with stipends below \$47,000. We need an exemption for post docs on the basis that they are spending a significant amount of time in research laboratories in training which is inextricably mixed with the hours they spend working.
- **A small independent, faith-based university in the South:** The \$50,440 threshold will affect 63 employees at a cost of \$615,920 to the University. The \$47,000 threshold will affect 50 employees and cost the University \$420,950 in the first year alone.
- **Mid-Sized Private University in the New York Metro Area:** Based on the 47k threshold, the impact at our institution would be about 207 positions at a cost of 1.2 million (salary without benefits). As a reference point, this is a drop from about 240 positions at over 2 million in salary at the \$50,440 threshold (without benefits).
- **Large South Atlantic Public Research University:** At the \$50,440 threshold 367 employees will be affected at a cost of \$525,299 per year. At the \$47,000 threshold 236 employees will be affected at a cost of \$334,778 per year. There would be some Classified positions that could not receive a more than 10% raise due to state regulations, for whom we would have

- to pay overtime. If all employees eligible for overtime pay worked 5 hours of overtime for 48 weeks, the university would pay \$1,008,478 in salary and an additional \$396,197 in FY16 Fringe Rate (33.1% for faculty and 42.9% for classified) totaling \$1,404,675.
- **Research Intensive Private University in the Southeast:** Even at \$47,000 we are still looking at a \$6 mil cost and higher, once post-docs are analyzed. This is for librarians, staff and faculty equivalents – post docs are not shown because there are some complications with the way their data is collected, but there are only 74 post docs who make \$47,000 or more (out of over 500.)
 - **A Private Liberal Arts College in Pennsylvania:** The total impact to the College is over \$900,000 and impacts 80 employees out of our 335 total. The College would be unable to absorb this increase without increasing tuition, cutting programs and/or services to students or reducing the workforce, and possibly would require all three to happen. We talked with the OMB and DOL heavily about the added tuition benefits we provide our employees, which gives almost \$120,000 per student in free tuition. In many cases, families have all gone to this university for free. The reduction to \$47,000 does not really provide any relief to the College and we are hoping a further reduction or delay is possible. The optimal range for some relief to the College is \$35,000-40,000.
 - **Small Liberal Arts College in Tennessee:** At the \$50,440 threshold, 100 employees will be impacted costing the college between \$1.3 million and \$1.8 million which will cause tuition to be raised \$1100 per student. At the \$47,000 threshold 90 employees will be impacted costing the college between \$1 million and \$1.6 million causing tuition to be raised \$844 per student.
 - **Large Public Research University in the South Atlantic:** If the University were to move all the employees to the new threshold it would cost \$4.8M plus another \$960K in fringe costs. If we were to make them non-exempt and they averaged 5 hours a week overtime it would cost \$6.4M. So moving to a \$47,000 threshold is still extremely costly.
 - **A Private Research University in the South:** The cost to our University at the \$50,440 threshold is \$7.5 million. At the \$47,000 threshold the cost is still \$5.2M.
 - **A Large Public Research University in the South:** We would have 336 currently exempt employees affected if the threshold were \$47,000; at \$50,440, 386 were affected. If all 336 affected employees had their salaries increased to \$47,000, it would cost \$3,106,763 in salaries, excluding 34.6% in fringe benefit costs.
 - **Large Public University in the Southwest:** Bringing the threshold to \$47,000 (or \$903.85 weekly) would affect 610 employees. To bring all of those salaries to the threshold salary would cost \$4.3 million.
 - **A Private faith-based mid-Atlantic College:** We are estimating that if the Overtime Law were to be approved at \$47,000 it would cost the College- \$253,000, impacting 35 employees. We are including in that number – employees that were hired with federal grant funds.
 - **Small College in Michigan:** To increase salaries for exempt positions up to \$47,000, it would be \$369,235.53 in just salary. It does not include additional benefit and payroll tax cost. Under the initial threshold proposal of \$50,440, the calculated impact was \$574,930.60.
 - **A Community College in Indiana:** At a \$47,000 threshold, if we were to move every exempt employee to \$47k, roughly 535 employees would be impacted at an estimated cost of \$3.2 million in salary and \$632k in benefits.
 - **A Public University in the South:** If the proposed new overtime threshold is changed to \$47,000 annually, it will impact 129 employees (at \$50,440 a total of 174 employees were

- impacted). The total cost to move all employees to the new threshold would be \$1,116,279 (excluding benefits).
- **A Private University in Connecticut:** If the threshold is \$47K the \$ impact would be \$626K and 94 employees would be affected. At \$50,440 it would be \$957K and 126 would be affected.
 - **Private Liberal Arts College in Pennsylvania:** We have 121 of our 600 employees that would be affected by this change. In each instance, we are looking at limiting hours of service to students or eliminating positions in order to absorb this change. If we were to move all employees to a \$47,000 threshold, the fiscal impact would be \$2.1 million.
 - **A Private University in Deep South:** We have estimated that our additional incremental cost for the new overtime regs in just three areas, Athletics, Admission, and Res Life, will be \$610,000. Total may be close to \$750,000.
 - **Community College in Illinois:** Salaries for our non-faculty employees are typically one of the lowest in the state. Given the State of Illinois' financial situation, higher education has not received budget dollars for our current fiscal year and we are not expecting any for next fiscal year. Our shortfall from the State this current fiscal year is 1.5 million dollars. We have reduced our expenditures to bare bones. While this \$47,000 threshold may not impact some institutions... with the State of Illinois' financial situation and our bare bone budget, this high of a threshold, along with the automatic indexing, will have a significant impact to our institution and the students and communities we serve in our four-county area. The annual cost of the threshold impact change is estimated to be \$222,664 for overtime only, which for an institution of our size is a very large impact.
 - **College in Puerto Rico:** Our analysis shows that forty-eight employees (91% of our current exempt employees) will be impacted by the proposed salary threshold. The areas of impact are Academic Affairs, Student Services and Marketing as well as the Managerial Staff. If we were to increase their salaries to comply with what has been proposed, the annual impact would be \$975,855.84. If we were to increase salaries using \$47,000.00 as a revised requirement for exempt employees, the impact would be \$815,895.84. On the other hand, if we were to reclassify these employees to avoid the budget impact just mentioned, we have estimated that the overtime payments (10 hours per week) will be more than \$531,444.65 annually, this because of the duties performed by them. These amounts do not include payments that would need to be done to social security benefits, disability, etc.
 - **Large University System in the South:** At the \$47,000 threshold 1120 full time employees and 126 part time employees will be impacted costing the university \$9.6 million.
 - **A Community College in Ohio:** Sixty-three percent of our professional/technical employees are exempt. If we would raise those employees to the \$47,000 threshold, the budget impact will be 17% increase to our operating budget vs. 22% under the previous \$50,440 threshold. Salary increases would be from .47% to 58.19% for individual employees, or an average of 52.25% increase. We would have to be able to sustain this increase, plus deal with compression of other salaries. Bottom line, our operating budget cannot handle this increase, nor can it handle paying overtime, which will limit the services to our students.
 - **Large Public Research University in Midwest:** At \$50,440 threshold 2,331 full time and 869 part time employees will be impacted at a cost of \$33.3 million in the first year. At the \$47,000 threshold 1,598 full time and 811 part time employees will be impacted at a cost of \$21.7 million in the first year.
 - **A Private Faith Based College in Pennsylvania:** The delta for our college as of this moment at a \$47K threshold is 42 employees at a cost of 365k, not inclusive of benefits.

- **A Small Liberal Arts School in Arkansas:** We calculate the increased salary amount and the estimated overtime cost after restructuring to come in at \$296,000 / year (including FICA and 403(b)). Of the employees impacted 15 would remain exempt and have their salary increased, the rest would be reclassified. We anticipate 26 employees who would be reclassified, but see an increase in their annual gross wages due to paid over time. The remainder would not likely see a salary change and would simply be bound to a straight 40-hour week with the college making adjustments as needed to control cost that way. When we say “adjustments” it probably means cuts in service to our students. Additionally, we still harbor serious concerns with regards to the challenges calculating hours for assistant coaches and admissions officers who travel extensively during certain times of year.