



National Association of  
Independent Colleges and  
Universities

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November 3, 2023

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

RE: Submission of comments for Notice of Proposed Rulemaking, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees” (RIN 1235-AA39)

Dear Director DeBisschop:

On behalf of the National Association of Independent Colleges and Universities (NAICU) and the higher education associations listed below, I am writing to provide our collective comments regarding the Notice of Proposed Rulemaking (NPRM) RIN 1235-AA39 referenced above.

NAICU serves as the unified voice of private, nonprofit higher education. Founded in 1976, NAICU is the only national organization solely focused on representing private, nonprofit higher education on public policy issues in Washington, DC and its membership reflects the diversity of independent higher education in the U.S. Our member institutions include major research universities, faith-based colleges, Historically Black Colleges and Universities, Minority-Serving Institutions, art and design colleges, traditional liberal arts and science institutions, women’s colleges, work colleges, two-year colleges, and schools of law, medicine, engineering, business, and other professions.

With more than 5 million students attending 1,700 independent colleges and universities in all 50 states, more than 1 million employees, and a collective national economic impact of \$591.5 billion, the private sector of American higher education has a dramatic impact on our nation’s broader public interests.

On NAICU member campuses all or nearly all employees are covered by the Fair Labor Standards Act (FLSA) and similar state laws. Many campus employees are currently exempt from the FLSA’s overtime pay requirements based on the current law exemptions. While we applaud the decision by DOL to retain the current exemptions, including the teaching exemption, and not propose changes to the rules test at this time, other key components of the NPRM are of great concern to private, nonprofit colleges and universities across the country.



A recent survey of NAICU members showed that 95% are concerned about the proposal, including 75% who are “very concerned.” Additionally, 38% expect to have to lay off campus employees while 64% indicate they will have to reclassify campus jobs. The survey also shows that 67% of members are “very concerned” about the impact that the implementation of the proposal will have on employee morale.

There are two key aspects of the proposal that NAICU’s members are most worried about: 1) the increase in the threshold to be exempt from overtime pay; and 2) the automatic adjustments every three years.

1. DOL proposes several changes to the white-collar exemptions that are of concern to our institutions, including increasing the current salary threshold of \$684 per week (\$35,568 annually) by 55% to \$1,059 per week (\$55,068 annually), which the agency estimates will be the 35th percentile of weekly earnings for all full-time salaried workers in the lowest-wage Census Region (the South).

Since the passage of the FSLA 37 years ago, DOL has increased the salary threshold every 5 to 9 years. Unfortunately, more recent decades included long periods without any adjustments, which resulted in the erosion of the value of the threshold level followed by unpredictable increases for employers.

The last scheduled increase in the overtime pay threshold went into effect on January 1, 2020, following a rulemaking process during the Trump Administration. That increase, from \$23,660 to \$35,568 was long overdue, having not been adjusted in 16 years, and was largely supported by our colleges and universities. We also support examining and adjusting the salary level at regular intervals as DOL did from 1938-1975. However, an additional increase now is far too soon.

2. DOL also proposes automatic increases to the salary threshold every three years with a formula that ties the salary threshold to the 35th percentile for earnings of all full-time non-hourly (i.e., salaried) employees in the same region. While we agree with the need for a more predictable process that would benefit employers and employees alike, the proposed 3-year automatic adjustments and the formula for setting those amounts will be catastrophic for many of our member campuses.

Automatic updates will negatively impact the budgets and budget planning at our institutions, including consideration of institutional aid for students, bonuses or merit pay for employees, and overall employee morale.

Proposed increases in the salary threshold and other changes should be made through notice and comment rulemaking that complies with the Administrative Procedure Act, and the agency should provide the public with notice of the new level at least one year prior to implementation.

The pressures from the pandemic are not over for our students, and therefore, not over for us or our member’s institutional budgets. In particular, students are facing increased financial and mental health pressures and are still recovering from the K-12 learning loss they experienced because of extended remote learning during the pandemic.



Many of our members are located in some of the poorest congressional districts in the U.S. and are often the largest and most sought-after employers in these regions. These colleges don't have rainy day funds, special accounts, or endowment funds adequate to implement this adjustment at this time.

Additionally, colleges can't quickly raise tuition to help offset the effects of this rule; those amounts are approved by boards of directors' months in advance of changing academic years. And schools are dedicated to keeping costs as low as possible for their students – many of whom are Pell eligible. In fact, 41% of students at private, nonprofit colleges and universities are Pell eligible, the federal measure for low-income students.

Lastly, current law prohibits private employers, including private, nonprofit colleges and universities, from offering comp time arrangements to employees. Public employers, including public colleges and universities, can offer these types of arrangements, which ease many of the burdens of implementing salary adjustments on campuses, particularly for younger employees who work jobs with varied seasonal workloads, such as admissions counselors, student support staff, and athletic coaches.

If DOL will not reconsider the proposed overall salary threshold increase, it should do so for nonprofit employers - or consider phasing in the increase over time. In addition, DOL could use differing salary threshold levels for different regions of the country based on economic conditions and regional differences in costs of living. This would help reduce some of the negative consequences for our institutions, our employees, our communities, and the students we serve.

Sincerely,

A handwritten signature in cursive script that reads "Barbara K. Mistick".

Barbara K. Mistick, D.M

President  
National Association of Independent Colleges and Universities

On behalf of:

Alabama Association of Independent Colleges and Universities  
Association for Biblical Higher Education  
Association of Advanced Rabbinical and Talmudic Schools  
Association of Catholic Colleges and Universities  
Association of Chiropractic Colleges  
Association of Independent Colleges and Universities in Massachusetts  
Association of Independent Colleges and Universities in Pennsylvania  
Association of Independent Colleges and Universities of Rhode Island



Association of Independent Colleges of Art & Design  
Association of Independent Kentucky Colleges and Universities  
Association of Jesuit Colleges and Universities  
Association of Presbyterian Colleges and Universities  
Association of Private Colleges and Universities of Puerto Rico / Asociación de Colegios y Universidades Privadas de Puerto Rico (ACUP)  
Association of Vermont Independent Colleges  
CCCU - Council for Christian Colleges & Universities  
Conference for Mercy Higher Education  
Council of Independent Colleges in Virginia, Inc.  
CT Conference of Independent Colleges  
Federation of Independent Illinois Colleges and Universities  
Georgia Independent College Association  
Great Lakes Colleges Association  
Independent Colleges & Universities of Florida  
Independent Colleges and Universities of Missouri  
Independent Colleges and Universities of Texas  
Independent Colleges of Indiana  
Independent Higher Education of Colorado  
International Association of Baptist Colleges and Universities  
Iowa Association of Independent Colleges and Universities  
Kansas Independent College Association  
Louisiana's Association of Independent Colleges and Universities  
Maine Independent Colleges Association  
Maryland Independent College and University Association  
Michigan Independent Colleges & Universities  
Minnesota Private College Council  
Network of ELCA Colleges and Universities  
North Carolina Independent Colleges and Universities  
Oregon Alliance of Independent Colleges and Universities  
South Carolina Independent Colleges & Universities  
Tennessee Independent Colleges and Universities Association  
University Senate, The United Methodist Church  
West Virginia Independent Colleges and Universities  
Wisconsin Association of Independent Colleges and Universities  
Work Colleges Consortium