Credit Union National Association
CUNA

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The Honorable Kevin Kiley
Chairman
Committee on Education and the Workforce
Subcommittee on Workforce Protections
U.S. House of Representatives
Washington, DC 20515

The Honorable Alma Adams
Ranking Member
Committee on Education and Workforce
Subcommittee on Workforce Protections
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kiley and Ranking Member Adams:

On behalf of the Credit Union National Association (CUNA), I am writing regarding the Subcommittee's hearing entitled, "Bad for Business: DOL's Proposed Overtime Rule." CUNA represents America's credit unions and their more than 138 million members.

Credit unions support the Fair Labor Standards Act's (FLSA) goal to address "the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers." While the current proposal attempts to strike a balance between the Department of Labor's 2016 overtime rule and 2019 overtime rule, CUNA has concerns about how the proposal may affect small credit unions and other small entities and those credit unions in rural and low-cost areas.

As member-owned, not for profit financial cooperatives that operate to promote thrift, credit unions offer credit at competitive rates, and provide critical financial services to their member-owners. As the only consumer-owned cooperatives in the financial marketplace, credit unions have a tradition of protecting the interests of America's families. This includes empowering families with opportunities for financial success and the ability to improve their economic well-being.

Despite the large number of small credit unions and their indisputable difference in structure and resources, they have been subject to substantial regulatory changes and increased costs since the financial crisis, and more changes may be on the horizon. When a credit union spends the resources of its membership on compliance, payroll expenses, and overhead, it has less resources available to provide members safe and affordable financial products and services.

CUNA has concerns that the proposed rule's increase in the salary level test threshold may disproportionately affect small and rural credit unions. The salary test has traditionally been used to easily identify employees whose salaries are so low that they do not fall within the executive, administrative, and professional (EAP) exemption to the minimum wage and overtime requirements of the FLSA. Data collected from CUNA credit union members, however, illustrates how that may not be entirely accurate with respect to smaller credit unions and the proposed salary test threshold.

That data reflects that several credit union EAP positions fall between the current and proposed salary level test thresholds. The EAP exemption would no longer be available for those positions, unless small credit unions raised salaries for those positions above the proposed salary level test threshold. The ability of smaller credit unions to absorb these types of additional compliance costs are limited more than other credit unions and is exacerbated by the fact that smaller credit unions often provide financial services to underserved communities. Every dollar they spend toward complying with the new salary level test is a dollar that gets taken away from products and services designed to enhance the financial wellbeing of their members.

Federal regulators have often recognized the need to make exceptions or create safe harbors for entities based on situations where one standard would be unfair or lead to unintended negative effects. CUNA has concerns about applying a single national standard to rural areas and small towns outside the boundaries of major metropolitan areas. Incomes in rural areas can lag behind incomes in metropolitan areas.

CUNA also has concerns about automatically updating both the salary level test and highly compensated employees (HCE) thresholds every three years to reflect the 35th percentile of weekly earnings of full-time nonhourly workers for the salary level test and the 85th percentile of weekly earnings of full-time nonhourly workers for the HCE test. We believe the changing economy should be revaluated in a more analytical way than merely looking at a fixed percentile of the entire country to determine a threshold. While notice and comment rulemaking takes time, it also helps to ensure that defining the EAP exemption continues to consider an employee's duties rather than just an employee's salary.

On behalf of America's credit unions and their more than 138 million members, thank you for holding this important hearing and considering our views on the subject.

Sincerely,

Jim Nussle
President and CEO

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