



Tennessee Independent Colleges and Universities Association
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Office of the President

February 22, 2016

Honorable Lamar Alexander
United States Senate
(via email)

Dear Senator Alexander,

The Wage and Hour Division of the Department of Labor proposed changes to the Fair Labor Standards Act (FLSA) in July 2015, after President Obama called for an expansion of the number of workers who qualify for overtime pay. The proposal is expected to increase overtime pay to some five million workers who are currently excluded under the law. Department officials are currently in the process of reviewing the over 250,000 public comments on the proposal.

The Fair Labor Standards Act (FLSA) generally requires that employers pay employees overtime, based on a formula for work in excess of 40 hours per week. The FLSA exempts certain employees from the overtime pay requirements if they earn above a certain baseline salary or have primarily teaching responsibilities. Most of the exemptions apply to employees who work in the executive, administrative, or professional fields (known as “white collar” exemptions). The main change proposed by DOL is an increase in the salary amount that would trigger the “white collar” exemption.

The proposal would more than double the salary threshold (last adjusted in 2004) from the current level of \$23,660 to \$50,440. It would also provide for automatic inflation adjustments to that amount going forward.

TICUA member colleges and universities are not opposed to increasing the current minimum salary threshold, and believe increasing the threshold would help ensure that “white collar” exemptions are not abused. However, the proposed minimum salary threshold of \$50,440 is simply too high, too fast for many college budgets to absorb. The increased threshold would also result in the inappropriate classification of many employees. Even with the current exemption for certain educators, colleges and universities will be forced to reclassify many employees who hold white collar jobs that both offer and require significant professional autonomy, that have always been exempt, and that are well suited to exempt status. Such a change is not in keeping with the intent of the FLSA. Congress created exemptions to the overtime pay requirements in the recognition that such requirements are not appropriate for all jobs.

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. If they choose, however, to reclassify those employees to an hourly schedule from a salary status, a mere 5 hours of annual collective overtime would cost \$1.1 million and 10 hours would cost \$2.3 million.

With college cost and student debt such pressing concerns among campus administrators, the families we serve and lawmakers, the magnitude of this change will cause great strain on the campus's cost containment strategies. Decisions will have to be made on whether or not to precipitously increase tuition, reduce the number of employees, or reduce the productivity of current employees.

It should also be noted that the rule change is expected to go into effect anytime between this fall and early 2017. This creates an enormous amount of uncertainty that is not in sync with university budget planning cycles nor with tuition setting decisions which are already in play for fall 2016. Consequently, the uncertainty of the pending implementation of this change makes budget planning exceptionally difficult.

Campuses go to great lengths to pay competitive salaries based on benchmark data that takes into account institutional size, regional settings, and a comprehensive pay/benefit packaging. Although we are not opposed to a reasonable increase in the minimum salary threshold, the anticipated change proposed will result in an undue burden to our campuses and the students we serve.

Thank you for your service! Please feel free to contact me if you have any questions or desire more information.

Respectfully,

A handwritten signature in cursive script that reads "Claude Russell". The signature is written in black ink and is positioned below the text "Respectfully,".