NATIONAL ASSOCIATION of COUNTIES NACo

August 31, 2015

Mary Zeigler
Director of the Division of Regulations, Legislation, and
Interpretation, Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue, NW
Washington, DC 20210

Re: Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees; Proposed Rule; Regulatory Information Number (RIN) 1235-AA11

Dear Director Zeigler:

On behalf of the nation's 3,069 counties, the National Association of Counties (NACo) respectfully submits the following comments on the proposed rule to amend regulations under the Fair Labor Standards Act governing the "white collar" exemption from overtime pay for executive, administrative and professional employees. In the proposed rule, the U.S. Department of Labor (DOL) would change the salary threshold for employees who are eligible for overtime pay from $23,660 to $50,440. This salary threshold would also be updated annually in the Federal Register.

Founded in 1935, NACo is the only national organization that represents county governments in the United States and assists them in pursuing excellence in public service to produce healthy, vibrant, safe and resilient communities and provide their residents with essential services such as education, law enforcement, search and rescue, road maintenance and public health.

County governments are a major employer and economic engine for workers across the U.S. Today, America's 3,069 county governments employ more than 3.3 million people, providing service to over 305 million county residents. Counties provide health benefits to nearly 2.5 million employees and nearly 2.4 million of their dependents. For health insurance premiums alone, counties spend an estimated $20 to $24 billion annually.

Because counties are responsible for everything from transportation and infrastructure, to justice and public safety, to public health, to search and emergency rescue, 911 operations, fire prevention, and much more, this proposed rule could have a major impact on county operations—and the ability of county governments to provide these critical services to the people we serve—especially during crisis events or even disasters.

NACo's comments reflect our concerns about the proposed rule to increase the threshold amount for "white collar" employee exemption from overtime pay—and the potential impact that the proposed rule could have on county government budgets and administration. The proposed rule could also potentially have a substantial impact on the nation's rural counties (almost 70 percent of counties are considered rural and have less than 50,000 residents).

Because counties need additional time to examine and calculate the potential economic or administrative impact on their county, NACo respectfully urges DOL to extend the comment period provided in the proposed rule. We also urge DOL to perform further analysis on the potential impact of the proposed rule on county and local governments prior to its finalization.

Concerns with Changing the Overtime Pay Exemption Threshold

Under the proposed rule, DOL would require employers to more than double the minimum salary level for an employee to qualify as "exempt" from overtime pay. DOL would change the salary threshold for "white collar" employees who are eligible for overtime pay, from $23,660 to $50,440. This is a substantial increase over a one-year period.

This increase could have harmful consequences on county governments—and ultimately on county employees—particularly when many are still recovering from the U.S. recession. According to NACo's 2014 County Economic Tracker report, only 65 county economies had recovered (based on four indicators—job growth, unemployment rates, economic input (GDP) and median home prices) to their pre-recession levels.[1] As employers, county governments provide both wages and benefits to their employees. The proposed overtime pay exemption threshold increase could negatively impact county employees' wages and benefits at a time when county economies are still in a fragile state.

Some counties have calculated that the overtime pay change could increase their payroll costs dramatically in the first year of implementation and beyond. For example, according to Berks County, Pennsylvania, 97 of the current 419 exempt employees would be eligible for overtime pay. Under the proposed rule, Berks County has estimated that the additional financial burden could cost the county as much as $1.5 million in the first year alone. ***Most counties must operate on a balanced budget and many do not have the financial resources to make major pay increases without increasing taxes, reducing employee fringe benefits and/or reducing their county employee work hours or staff.***

In fact, 43 states have some type of limitation on the property taxes collected by counties, including 38 states that impose statutory limitations on property tax rate, property tax assessments or both. Only 12 states authorize counties to collect their own local gas taxes, which are limited to a maximum rate in most cases and often involve additional approvals for implementation.

In many counties, the overtime salary change could reduce the number of exempt employees and change their classifications. The change from exempt to non-exempt status could reduce these county employees' fringe benefits and incentive compensation. For instance, in Columbia County, Pennsylvania the proposed overtime pay guidelines would make an additional 43 currently exempt employees eligible for overtime pay. For this rural county, the proposed rule would have a major financial impact.

NACo urges DOL to allow for an extended comment period and to perform additional analysis on the impact of the proposed rule on county government. The proposed changes are substantial, and thus would result in the need of county governments to increase both administrative time and expenses to ensure that they are in compliance.

[1] Istrate, Emilia, Nicholas Lyell. County Economic Tracker 2014: Progress through Adversity, Washington D.C.: National Association of Counties. Available at http://www.naco.org/sites/default/files/documents/County_Economic_Tracker2014-FINAL.pdf

Concerns with Automatic Annual Adjustments/Increases

The proposed rule would also annually adjust the overtime pay threshold—potentially increasing the exempt threshold each year. **This change would create uncertainty for county governments and would place an undue administrative and monetary burden on county governments, as it would become difficult to plan for and implement salary increases due to these annual undefined overtime pay changes.** ***NACo urges DOL to provide additional clarity into the potential annual increase and to strongly consider the increased administrative and financial burdens it could place on county governments on an annual basis.***

Requesting Separate Comment Period for Changes to Duties Test

In the proposed rule, DOL is considering whether there should be changes made to the "duties" test under this proposed rule. A duties test examines employees' functions to determine whether they are exempt or non-exempt. The Department modernized the duties test in 2004. ***NACo urges DOL to not make any changes to the "duties" test at this time, but instead publish a separate proposed rule and give adequate time for comments on potential changes to the "duties" test.***

Additional Time Needed for Public Comment

Many counties have expressed concerns about the length of the comment period provided in the proposed rule. The 60 day timeframe has not been sufficient for many counties to calculate the economic or administrative impact on their county and provide comments. ***NACo urges DOL to consider extending the public comment period for at least an additional 90 days.***

We thank you for the opportunity to comment. If you have any questions, please feel free to contact Daria Daniel, NACo's Associate Legislative Director at ddaniel@naco.org or 202.942.4212.

Sincerely,

Matthew D. Chase
Executive Director
National Association of Counties