Ms. Mary Ziegler, Director
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, Professional, Outside Sales and Computer Employees - RIN 1235-AA11

Dear Ms. Ziegler:

The Indiana Credit Union League (ICUL) appreciates the opportunity to comment on the U.S. Department of Labor's (DOL) proposed rule, which amends the Fair Labor Standards Act (FLSA) to increase the threshold salary level for "white collar" employees to the 40th percentile of earnings for full-time salaried workers to receive overtime pay. The ICUL member credit unions represent 97% of assets and members of Indiana's credit unions, with those memberships totaling more than two million consumers.

While the intent of the proposed rule is understandable, we have concerns about the changes to raise the salary threshold from $455 a week ($23,660 a year) to a projected level of $970 a week ($50,440 a year) in 2016 and to establish a mechanism for automatically updating the minimum salary and compensation levels. A major concern we have in particular is the impact that this proposal will have on small credit unions. Establishing a floor based on national averages does not reflect the fact that the cost of living throughout the country varies, and salaries in different regions vary to reflect that. Federal government pay scales provide for differences in the cost of living in different parts of the country, yet the DOL would continue to apply a national average that is skewed by the higher wages in highly populated sections of the country.

ICUL supports the DOL's concept that employees should be fairly compensated. However, we believe the DOL's proposed changes for the exemption threshold for overtime pay are too extreme and will ultimately not achieve a better situation for many employees. More than doubling the threshold for overtime pay from its current level does not accurately reflect the proportional change in salaries since the last rulemaking, or reflect understanding of the additional cost burdens that credit unions are being forced to absorb resulting from other agencies' rulemaking. Credit unions continue to be overly impacted by new and revised regulations, the cost of which has significantly impacted their ability to maintain a positive bottom line while providing the services their members need and want. This proposal would add significantly to this regulatory compliance cost burden, and likely would not result in the perceived positive impact intended by the DOL. It would be extremely difficult for credit unions to find the extra resources to come into compliance with this rule, as opposed to if the DOL took a more incremental and measured approach to modifying the standards.

Indiana credit unions reported 5,954 full-time and 796 part-time employees and an average salary & benefits cost per employee of $30,697. Obviously, the significant increase in the salary threshold proposed would result in a large majority of these positions falling under the threshold. Various regulators have encouraged credit unions to expand services to rural and underserved segments of the communities. Salary data indicates that salaries in these areas are generally below the average salaries for similar positions in metropolitan areas. Credit unions and other businesses in non-metropolitan areas would be unfairly impacted by the proposed rule, and would likely have to pay overtime to a much larger percentage, or all, of their workforce. Smaller credit unions that may have fewer members and less revenue may not be in the same position to pay the same salaries as larger financial institutions. We ask that the DOL reevaluate its proposed salary threshold for overtime, and consider the differences that size, geography, cost of living, etc., have on different parts of the country. We do not believe the proposal is appropriate for credit union employees in general, but is particularly inappropriate for small credit unions and those in rural and underserved areas.

If a credit union cannot afford to increase salaries, some employees even at the management level might have to change their employment status from exempt to non-exempt. Since those in management often work over 40 hours a week this could make overtime costs increase exponentially. If employees change to a non-exempt status, previously exempt employees would lose flexibility in scheduling their hours worked, time off, etc. The proposal could also result in employers being forced to create strict rules for overtime pay, and lower-income employees who currently rely on it may not have as many opportunities to receive it.

Employee benefits may also be impacted by the proposal. If credit unions are forced to increase salaries or pay significantly more in overtime hours, this could force them to reconsider some of the benefits or "perks" that they currently offer. Credit unions may also be forced to reduce the opportunities available during off work hours for staff to attend networking events, conferences, and other opportunities for employees to meet people in their industry or managers. If employers have to pay employees overtime for these work events, they are less inclined to include non-exempt employees in these activities, limiting these individuals' opportunity for personal growth. The increased costs associated with this proposal may create an environment where credit unions are unable to hire new employees, or they may convert full-time positions to part-time.

Credit unions are currently facing substantial regulatory burdens from several other agencies as well, and their time and resources dedicated to complying with new rules and regulations are not unlimited. Squeezing resources from entities that simply have nothing left to squeeze is not the answer to creating growth and opportunity for employees. Instead, such policies will likely cause credit unions and other businesses to make cuts in other equally important areas to find the resources to pay overtime expenses.

We oppose automatically updating the salary level at the 40th, or any, fixed percentile range. If the proposed rule is finalized in its current form, we are concerned that as businesses adjust to the new threshold, more full-time positions will be converted to part-time positions. This could result in the average salary increasing significantly without there being a true increase in wages, but more likely an overall reduction in wages. As such, the average yearly salary could drastically increase, at least on paper, at the 40th percentile, not including all of the part-time workers, and may end up much higher than the $50,000 range. This would result in ongoing challenges for many business, particularly small employers.

We appreciate the DOL's attempt to take steps to improve the livelihood of American middle-class families, a group very important to credit unions and that have been the focus of many credit unions' efforts. However, we believe the DOL's proposed rule overlooks a number of important factors such as a disproportionate impact on credit unions, particularly in non-metropolitan areas, and small credit unions. Furthermore, the DOL's proposal does not account for unintended negative consequences on employees both within and outside the salary range to receive overtime pay. In addition, it has the potential to negatively impact credit union members.

We encourage the DOL to engage in further analysis about the likely impacts of its proposed rule, and to more narrowly tailor its proposal for overtime pay to include a more reasonable percentage of the workforce that does not include entire industries or entire regions of the country. We believe that, as with other employer regulations, that the DOL should carve out small employers from the proposal. We also believe that an approach that would apply incremental increase in the threshold, rather than more than doubling the threshold in one change, would be more prudent, and allow employers more time to adjust wage and benefit programs over time that would have a lesser impact on the employees. We are concerned that the proposal as it stands would have significant unintended consequences that ultimately would not result in the intended improvement in the livelihood of the middle-class families.

Thank you for the opportunity to comment on this proposed rule. If you have any questions concerning our letter, please feel free to contact me at (317) 594-5320.

Sincerely,
John McKenzie
President
Indiana Credit Union League