COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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September 4, 2015

Mary Ziegler, 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

Reference: Regulatory Information Number (RIN) 1235-AA11

Subject: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees"

Dear Ms. Ziegler:

The Council on Governmental Relations (COGR) is an association of 190 research universities and affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions.

We appreciate the opportunity to submit comments to the Department of Labor (DOL) July 6th Federal Register notice entitled, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees."

Grant and Contract support from federal and industrial sponsors is crucial in fueling research and development while providing growth and opportunities for the next generation of scientists (i.e., graduate students and postdoctoral scholars). While we agree that realistic increases in compensation are necessary and vital to the nation's workforce and economy, the Department's proposal to more than double the minimum salary levels for non-exempt and highly compensated employees will have detrimental impacts on the entire research community, deflating the proposed benefits the Department aims to achieve.

The National Postdoctoral Association estimates that there are approximately 89,000 postdocs involved in research in the U.S. The primary goal of a postdoc is to advance his or her career in areas of research, training, or teaching. While postdocs are typically considered employees of Institutions of Higher Education (IHEs), their salaries are generally less than the minimum exempt salary currently being proposed. The federal agency supporting the largest number of postdocs is the National Institutes of Health (NIH); the current base standard for a NIH postdoctoral stipend is set at $42,840. NIH supports many postdocs, through grants to the individual, and to the institutions. If the minimum exempt salary is raised to $50,440, overtime payments would be required for postdocs working more than a 40 hour workweek. Postdocs perform a variety of functions, often including teaching and supervision of graduate students, and

they frequently choose their own research directions and the amount of teaching or other activities they wish to pursue according to their career goals. It is impractical to expect that faculty supervisors will be able to restrict these self-driven and highly competitive individuals to a 40-hour workweek, meaning that IHEs will have little alternative under the law except to increase postdoc salaries to the exempt minimum. With federal research funding decreasing in real dollars resulting in increased subsidization by IHE's, this is likely to reduce the number of postdoctoral positions, and progress in important areas of research will be delayed.

The proposed salary hike would also impact many other research administration professionals below the minimum salary requirement, especially those in entry level positions. Research is being conducted in university settings 24 hours per day, 7 days per week. While most offices maintain regular office hours, it is often necessary to work beyond regular hours to provide the professional support required by faculty and researchers. Raising the salary threshold to the proposed rate would again require new sources of revenue to offset these additional costs.

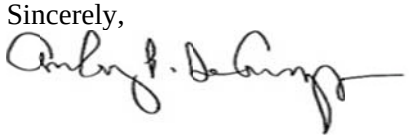
With respect to graduate research assistants, it is our understanding that the Wage and Hour Division does not assert an employee-employer relationship for graduate students who are simultaneously performing research under faculty supervision. We expect this position will not change in the final rule.

We are fully aware of the sensitivity and importance of this issue and appreciate the efforts our federal government is making to ensure fair pay and equality to all Americans. Given the importance of research to our economy, we ask that DOL consider gradual increases that would allow institutions and other federal agencies the time needed to explore alternative measures that won't unduly harm the workforce and the global research enterprise. A graduated approach to increasing postdoctoral scholar salaries has also been recommended by the National Postdoctoral Association in response to the Department's proposal, so that the increase would have a positive impact on their constituency minimizing the risk of precipitously reducing the postdoc research workforce. While the Department has reviewed the proposed rule in accordance with Executive Order 13132 determining that no federalism implications apply, we see no consideration of Executive Order 13563, Identifying and Reducing Regulatory Burdens.

As a result of the cost, time and burden associated with the proposed rule, the impact to research and training opportunities for students and scholars, and the potential for a significant adverse impact on the research workforce, we urge reconsideration of the proposed regulation. Our colleagues at the College and University Professional Association for Human Resources have made three recommendations that we fully support – lower the proposed minimum salary threshold, do not require automatic updates to the threshold, and do not implement changes to the duties test without issuing a separate NPRM.

Thank you for the opportunity to comment.

Sincerely,



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President