

**Testimony Presented to the  
House Education and Workforce Subcommittee on Workforce Protections**

**University of Michigan  
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Good morning. Thank you Mr. Chairman and members of the House Education and Workforce Subcommittee on Workforce Protections for the opportunity to talk about the proposed changes to the Fair Labor Standards Act (FLSA) by the U.S. Department of Labor. I am Laurita Thomas, associate vice president for Human Resources at the University of Michigan. I am also a member of the national board and the public policy committee of the College and University Professionals Association for HR, representing HR leaders at 1,900 U.S colleges and universities, including 91 percent of all doctoral institutions. I know I am joined by many of my human resources colleagues across the state of Michigan and the country when I say that I appreciate your willingness to hear and consider the unique impact of these proposed changes on institutions of higher learning.

On Sept. 4, 2015, CUPA-HR submitted public comments to the federal government detailing the impact of the proposed changes on our sector and the ripple effects they could have on the cost of tuition, job security and part-time employees, among others. Today, I'd like to share some detail as to how the proposed changes will likely affect the University of Michigan and many other colleges and universities in our state.

First, I want to be clear that the University of Michigan supports an increase to the wage threshold. Adjustment of the threshold has not taken place since 2004, and we believe it to be in our country's interest to support fair wages, just compensation for overtime, and wage rules that reflect today's job market as well as the wide spectrum of roles and work conditions that exist, particularly in higher education.

While we believe that adjusting the salary threshold is overdue, we also believe that trying to close that gap without adequate time for implementation is equally problematic and could be counterproductive to fair overtime pay and job security.

Specifically, the new rules call for an increase from the current wage threshold of \$23,660/year to \$50,440/year, more than double, with a very short implementation timeline and outside of the normal budget planning process used at U-M and many other schools through which we project and plan for new expenses. There are limited ways to raise revenue outside of tuition so adequate time for planning and implementation is very important.

If this change were to occur abruptly, it would be cost-prohibitive for schools like Michigan to raise the salaries of those affected to the proposed new minimum to maintain the FLSA exemption status those workers have today. For the University of Michigan, the largest higher education employer in the state, the changes would affect more than 3,100 people in roles critical to our missions, including research fellows and lab staff, student housing officers, admissions recruiters, academic advisors, financial aid administrators, social workers, clinical dietitians,

clinical research coordinators and fundraisers. The projected cost at U-M to implement the change is as high as \$34 million; early statewide estimates from The Michigan Association of State Universities peg the cost at more than \$60 million for 11 of the 15 total member institutions reporting.

If salaries were raised for just those employees close to the threshold, most of the remaining affected employees would need reclassification to non-exempt status. Since many jobs in higher education, health care and research are not well suited for hourly compensation, the change would result in reduced autonomy, fewer flexible work arrangements that are important to employees and are critical to how work is done, and diminished opportunities for needed business travel for these employees. For example: tracking and compensating overtime hours for remote workers would become much more difficult but would be necessary to comply with the law; flexible work arrangements would therefore be more limited; and costs would increase for employees who travel regularly for business events since longer hours and paid travel time would be involved.

Benefits could also be affected when tied to exemption status. In some institutions, differentials in professional development funding or tuition assistance are also in play. These advantages would be lost to the employee when reclassified to non-exempt FLSA status, and since there is no guarantee of a wage increase, this could represent a loss of total compensation for some employees and greater complexity for employers.

Additional unintended consequences include reducing opportunities for part-time employment. Many part-time roles in higher education can involve business event planning and onsite administration. In these positions, staff work longer hours for a limited number of days or weeks in exchange for reduced work hours in subsequent weeks. This meets a business need, and our costs remain constant and predictable. This would not be the case under the new rule.

The rule also could inhibit research activities. Postdoctoral researchers and fellows comprise another group unique to higher education that is impacted by this rule and crucial to the research mission. Agencies providing research grants like the National Institutes of Health often set stipends for postdocs well below the new threshold. These postdocs clearly perform learned and professional work, yet they would not be allowed a professional exemption under the new rules at the rates set by NIH. Since research often requires extended attention to experiments at various times and outside of regular hours, postdoc roles are not compatible with the new rule. Institutions would need to raise postdoc salaries to the proposed threshold, which could diminish the volume of supported research.

### **What can be done to protect both higher education and our workforce?**

Let me reiterate that we strongly support an increase to the wage threshold. What we suggest are changes to the way in which the increase is implemented, and we offer several options that would achieve both an increase in the threshold and sensible protections for some of the unique roles in higher education that directly support student success, classroom education and research.

First, consider lowering the threshold such that the immediate goal is less than the proposed increase of more than 100 percent. Or, differentiate for economic sectors by establishing a separate threshold for organizations in the nonprofit and public sectors. A survey of CUPA-HR

members revealed that nearly 87 percent supported increasing the threshold to a point between \$29,172 and \$40,352. In either case, however, the University of Michigan advocates for a phased implementation over years. This allows planning through the annual budgeting processes of our colleges and universities, and a smoother implementation with clarity for affected employees some of whom would inevitably be reclassified and need to understand the impact on timekeeping, benefits, work hours and flexible arrangements, off-hours research or lab assignments and more.

Second, if a more measured approach to increasing the threshold is not adopted, we believe the Department of Labor should consider broadening the existing teaching exemption to include the additional positions that are unique to higher education. That means recognizing exemption status in the regulations for not only those who teach and tutor but also those who advise students, conduct scientific or professional research, provide student counseling and offer services for residential life.

Third, we do not support an automatic annual increase in the wage threshold. Instead, we support a periodic review tied to cost of living and to occur not more frequently than every five years with at least a one-year notice period to employers of pending increases for planning purposes outlined previously.

Finally, unrelated to the wage threshold itself, we believe that any changes to the duties test for exemption follow the Administrative Procedure Act so that language is available to the community of employers for review and comment before enactment.

The climate for most colleges and universities in the U.S. is one of ongoing financial pressures that would curtail hiring new employees or increasing compensation as a result of these FLSA changes. We believe moving forward with an increase to the wage threshold is a positive and appropriate step, but that it must be done with recognition of differences in jobs and economic sectors to avoid unintended consequences that could harm both universities and the employees these rules are intended to protect.