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Ms. Mary Ziegler
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


Dear Ms. Ziegler:

On behalf of the University of California (UC) system, I write to comment on the U.S. Department of Labor (DoL) Notice of Proposed Rulemaking (NPRM) that would update the current Fair Labor Standards Act (FLSA) regulations on overtime pay for “executive, administrative, professional, outside sales and computer employees.”

Published in the July 6, 2015 Federal Register, the NPRM would raise the salary threshold required for the overtime exemption from $23,660 to $50,440 per year, guaranteeing overtime pay to eligible workers earning less than that amount, and establishing a mechanism for automatically updating the salary levels annually based on inflation.
UC is California’s third largest employer — behind the federal and state governments — with 195,000 employees at 10 campuses, five medical centers, the Office of the President, the Division of Agriculture and Natural Resources, and other locations.

The University supports the Administration’s efforts to address significant wage inequalities that exist for workers across the nation, and UC recognizes that an update in the regulations is long overdue. Currently, the threshold for earning overtime pay is below the poverty line for a family of four, and the number of employees eligible for overtime compensation has declined significantly since the threshold was last set.

The University of California has long been committed to supporting its workers and their families, and recently instituted a “Fair Wage/Fair Work Plan,” which raises the minimum wage for all UC employees who are hired to work at least 20 hours per week to $15 per hour, phased in over the next three years. In addition, the University is instituting a requirement that companies providing services to UC pay their employees a wage that meets or exceeds UC’s new minimum wage. This requirement will be implemented as new service contracts are established and existing contracts come up for renewal. In addition to these new policies, UC is expanding its monitoring and compliance efforts related to service contractors’ wages and working conditions.

UC understands the aim of DoL is to curb abuses that have developed in the past 40 years, leaving many workers under-compensated for long hours that they work. While “higher education” is not the focus for the change, the proposal would have a significant impact on certain academic positions, such as postdoctoral scholars and specialists, which are a key component of the workforce and research mission at the University of California.

All employees — including postdoctoral scholars and specialists supporting research — deserve fair compensation for their work. As the federal government updates its wage and salary standards, however, these changes must take into account the uniqueness of academic research and the potential negative consequences of the proposed rule’s impact on the conduct of basic research at our nation’s universities, like UC.

Postdoctoral scholars are entry-level academic employees who have earned their Ph.D.s and are gaining additional training and mentorship in their areas of research. Specialists are academic appointees engaged in research, professional activity and University public service; they do not have formal teaching responsibilities. Postdoctoral scholars and specialists play a major role in the University’s research enterprise, yet the nature of their research and research training — involving reading current literature, collaborating with individuals across the nation and the world, attending meetings and lectures, developing new experimental procedures or algorithms to solve problems, collecting and analyzing data, and writing papers and grant applications — cannot be easily quantified within a typical 40-hour work week. Not only would monitoring their hours to pay overtime be extremely difficult, but University research would suffer if the University is forced to lay off or not hire these key personnel.
At the University of California, in fiscal year 2013-14, there were 11,860 employees in Postdoctoral Scholar, Librarian and Specialist titles. Currently, all these UC salaried employees earn above the $23,660 level. Postdoctoral scholars at UC are currently paid in the $42,840 to $52,116 range with the average being $47,870 annually. Specialists at UC are currently paid in the $36,984 to $105,132 range. UC pays its postdoctoral scholars according to the National Institutes of Health (NIH) experience salary scale, according to which the minimum salary is $42,840.

Given the uniqueness of the activities that postdoctoral scholars and specialists perform, UC believes they should be excluded from the proposed rule. Should the NPRM be finalized as currently proposed, the required increase would place enormous strain on the University’s budget, likely forcing layoffs and causing delays and disruptions in ongoing research. UC would have to increase the salary of nearly 70 percent of this group of employees — an estimated 8,200 individuals — at a cost of approximately $39 million annually. The increases in base salary from the proposed rule could exceed 20 percent, which is far above the typical Cost of Living Adjustment of 2-5 percent allotted in research grants. We do not anticipate that Congress will increase federal research dollars to agencies like the NIH and the National Science Foundation to accommodate this additional expense.

In examining the impact of this change on the nation’s research enterprise, UC recommends that DoL offer a phase in for full implementation, particularly for postdoctoral scholars and similar academic research positions. This recommendation, also supported by the National Postdoctoral Association and others in the higher education community, would ensure that postdoctoral scholars are not laid off from their positions because of the sudden increase that would affect available funding. A phased-in approach would allow the University to plan and budget for the increase in order to minimize the impact on ongoing research. Finally, a phased-in approach would also permit the development of administrative processes to begin the difficult work of calculating hours worked beyond 40 per week for postdoctoral scholars and specialists.

The discussion around the overtime rule as it relates to postdoctoral scholars highlights a broader issue for the university and our nation: the development of the next generation of scientists, inventors and technological entrepreneurs, which is inextricably woven into the education and research enterprise at the University of California and other research institutions. Our postdoctoral scholars and specialists directly benefit — or suffer — from the state of investment in basic scientific research in the United States.

Unfortunately, the trend of federal investment in scientific research has been moving in the wrong direction, and we risk losing ground to those nations eager to stimulate their economies and replicate the historic impact of such investments. The pace of American investment in research and development as a percentage of the gross domestic product has slowed, placing the U.S. 10th behind Organization for Economic Co-operation and Development nations such as Germany and Japan. China, meanwhile, is projected to outspend the U.S. within the next decade. East Asia as a whole already does.
The nation and the world need the kind of discovery and imagination that U.S. universities nurture. We need the knowledge and understanding that research generates — knowledge about energy and the environment, urban design, cancer immunotherapy, the inner workings of the human brain, and all of the other scientific and technological challenges our postdoctoral scholars and specialists pursue. We need the economic vitality — the jobs and companies, creativity and culture — that comes from these ideas and discoveries.

Postdoctoral scholars and all rising researchers in the pipeline will benefit from this renewed partnership between government and our universities, which will strengthen our economy, increase access to knowledge, enhance individual prosperity, and address the great challenges of our time. Without such robust investments, however, higher compensation for individual trainees dictated by new federal wage and salary guidelines will necessarily result in the placement of fewer of them in our research institutions.

I thank you for the opportunity to comment on the NPRM. My staff would be happy to respond to questions you have about these comments. If you need more information, please contact Carolyn Henrich at (202) 974-6308, or via email at Carolyn.Henrich@ucdc.edu.

Sincerely,

John G. Falle
Associate Vice President
Office of Federal Governmental Relations