Dear Colleague:

After several delays, and arriving just before Labor Day weekend, the Biden Administration has finally released its proposed rule on overtime pay for nonprofit and corporate employers. There are several key facets to the proposal that will impact higher education, but the headline is the increase in the threshold for employees to be considered exempt from overtime pay to $55,068. This represents a 55% increase from the current threshold of $35,568.

The proposed threshold would also include automatic inflation adjustments every three years. The Department of Labor will announce a schedule for conducting stakeholder meetings in the coming weeks. While this proposal will have a significant impact on many private colleges, the threshold increase is not nearly as high as the $82,000 asked for by organized labor.

The proposal is subject to a 60-day comment period before a final rule is announced, with comments due by October 29, 2023. Instructions for submitting comments can be found on the second page of the proposal.

NAICU will be working with the College and University Professional Association for Human Resources (CUPA-HR) on community comments, but it will be very important for private, nonprofit college and university leaders to weigh in on the campus-wide impact this increase will have on their institutions. While the proposed rule raises the salary threshold amount for many employees, it does not include the elimination of the teaching exemption, which was supported by organized labor groups. Faculty and other campus positions that are excluded from the pay requirements will remain excluded under this proposal.

Public Comments
The number of comments the administration receives matters greatly in affecting policy outcomes. When the Obama Administration sought to double the threshold, NAICU members submitted over 200 comments. We will need that same level of commitment now.

Due to the diversity of our institutions, this proposal will not have a uniform impact on campuses. However, we know from input from our membership that, if implemented as proposed, this rule would have a profound negative impact on many private, nonprofit colleges and universities and will be extraordinarily difficult for many colleges to implement.

The most effective comments will be campus and region specific, and include data about economic impact. As you consider preparing comments, determine such factors as:

- How many employees at your school will be affected.
- The types of positions that will be affected, and how the proposal will impact job availability on campus, including entry level jobs.
• The impact on student services, (admissions counselors, residential support, athletic coaches, etc.).
• An estimate for what it will cost your school to comply with the proposal.
• Whether you can afford this increase.
• Your institution’s ability (especially those that are tuition-dependent) to implement widescale salary adjustments in less than one academic year.
• The economic community your institution is in, particularly if your institution is located in an area with lower average wages or less economic growth.
• The economic role your institution plays in your community, including any related local economic impact that might result from implementing this proposal.

Once you have submitted your comments to the Labor Department, please email a copy to NAICU’s Director of Tax Policy, Karin Johns at karin@naicu.edu. We would also welcome any initial analysis you develop as you prepare your response. Being familiar with the impact this proposal will have on your campus will be important context for our national advocacy here in Washington.

NAICU is also meeting with potential law firms to provide outside counsel and guidance to our members to prepare for implementation of this proposal. We will keep you abreast of these and other developments, including any additional opportunities for advocacy.

I know this news and our advocacy ask comes at a difficult time as your students are returning to campus. I hope you will find the time to assess the impact this proposal will have on your campus and submit comments to the administration by October 29.

Regards,

Barbara

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President
National Association of Independent Colleges and Universities