Catholic Charities USA Comments on the Department of Labor's
Notice of Proposed Rulemaking to Revise FLSA Regulations (RIN 1235-AA11)

Catholic Charities USA (CCUSA) respectfully submits these comments in response to the U.S. Department of Labor's July 6, 2015 Notice of Proposed Rulemaking (NPRM) that would revise the regulations implementing the exemption from the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA). Catholic Charities USA is a national membership organization representing more than 160 diocesan Catholic Charities agencies that provide help and create hope for millions of people every year through a comprehensive array of social services. *While our comments do not reflect the views of each of our independent member organizations,* our feedback here concerning the impact of the proposed regulations is informed by a survey of Executive Directors and human resources professionals within our network.

General Support

First and foremost, we fully support the intent and purpose of the NPRM. As a Catholic organization, we are committed to advancing policies that support living wages for working families and individuals. As Sister Donna Markham, OP, President of CCUSA, and Archbishop Thomas Wenski, Chairman of the Committee on Domestic Justice and Human Development of the United States Conference of Catholic Bishops, recently wrote in a letter to both houses of Congress, "An economy thrives only when it is centered on the dignity and well-being of the workers and families in it." To achieve such an economy, there is no doubt that, as President Obama's March 13, 2014 Memorandum indicated, we must "modernize and streamline the existing overtime regulations." We believe the threshold for the salary level test has not kept pace with the reality of working families and needs to be raised. We support identifying the most effective policies to ensure economic stability for families.

Impact Summary and Specific Concerns

Based on feedback from many of our member agencies, we are concerned that the proposed regulations as written, particularly the extent of the proposed change to the salary level test, may have impacts that run counter to that shared purpose. We feel compelled to share what we believe could be substantially negative, and in many cases disproportionate impacts on our agencies as nonprofits. Our overriding concern is that these negative operational impacts will ultimately result in a decline in services, or quality of services, to the most vulnerable members of society who our agencies serve.

To begin, salaries in the nonprofit sector are traditionally lower than those in other sectors, and consequently, the NPRM's proposed salary threshold would require nonprofits to make up more ground than many other sectors. Among agencies providing feedback to us, more than a third (35%) of their employees on average fell into the impacted range of currently exempt employees with salaries of less than $50,440 per year. The most impacted group of employees are professional staff, in many cases licensed social workers, and four out of five agencies (82%) indicated that their

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manager-level staff have salaries below the proposed threshold. About one in five agencies (20%) reported that staff at the C-Suite level, reporting directly to the Executive Director, also have salaries below the new proposed salary test threshold. The high level of impact for management-level employees within our agencies is not consistent with the NPRM's rationale that the proposed salary level "appropriately distinguishes between overtime-protected and potentially exempt employees."

As a result, most of our agencies will face difficult management decisions about how to bring their organizations into compliance with the proposed regulation if implemented as written. These choices will be made even more difficult due to the lack of budget flexibility inherent in the nonprofit sector. Our agencies do not have large profit margins to redistribute to wages; they seek to operate with the tightest margins as they often face community needs for services that are beyond their ability to provide. Increasing salaries for our agencies would draw dollars not out of shareholder profits, but out of operational budgets supporting services to their communities. In fact, nonprofits are challenged by donor expectations to keep overhead costs as low as possible. To the extent that multi-year government contracts do not permit CCUSA or its member agencies to obtain an increase in the contract price to reflect the increased costs associated with the wage increase, it will be difficult for many agencies to maintain their current level of services while implementing such a significant shift in salary threshold for exempt employees. Most multi-year grants do not contain any mechanism to request an increase in the grant value based on the increased labor costs.

Most agencies are not sure exactly what management decisions they will make to come into compliance with the new regulation if enacted as written. The majority of our agencies (87%) indicate that they are likely to maintain their current salary levels and reclassify currently exempt workers as nonexempt as required by law. However, just one in five (20%) project that they will be able to hire more staff in order to maintain current workloads. Moreover, nonprofit work schedules rely on hours outside of a typical 9-5 workday to deliver services, which would be difficult to maintain if agencies needed to reclassify workers as non-exempt. More than 90% of agencies indicated that their workers in the impacted salary range have obligations outside of a traditional schedule. These include such critical services as being on-call for client emergencies, staffing 24/7 emergency drop-in centers, conducting community outreach events that are necessarily outside of business hours, teaching evening and weekend classes, and driving long distances to provide services in rural communities.

A limited number, about two-fifths (41%), anticipate raising some salaries to the new threshold, and only one-fifth anticipate hiring new staff (full or part time) in order to maintain workloads. About a third (33%) indicate that they may rely more heavily on volunteers and interns to fill the gaps. Some (17%) do report that they will need to let some staff go in light of raising salaries for other positions.

While some agencies do report that they believe the outcome of the NPRM would be positive in their communities, the majority of our agencies project that the net impact of these factors will be predominantly negative to their operations, employees, and clients. Those agencies anticipating positive impacts tend to fall in the minority who project they will choose to increase salaries to the new threshold level, which they believe will have positive outcomes for employee morale and will increase their retention rates. However, many agencies cite concerns that staff morale will actually decline as a result of the changes they will need to make. Additional concerns include increased monitoring burden to record hours for newly nonexempt employees, increased risk of litigation, increased financial burden and operating budget stress, and an overall shift in workplace culture. Specifically, agencies mention concerns that changing employees' status from exempt to non-exempt will be perceived as a demotion, and the need to limit those employees' hours so as to not incur overtime would stifle their willingness and desire to go above and beyond for the sake of the mission, a traditional hallmark of nonprofit organizational culture.

As a result of these management impacts, many agencies predict a decline in the quantity or quality of services that they will be able to provide to their clients. At least two agencies report that they will need to assess whether they would be able continue operations at all under the regulations as proposed. Specifically, agencies shared that they may need to reduce weekend and evening service hours, close certain program sites, cut back on community outreach activities, or limit staff from "going the extra mile" for a client if it involves after hours work. The greatest impact would be felt by emergency services programs that, by their nature, have very unpredictable workloads. These include drop-in centers, domestic violence shelters, crisis pregnancy services, and refugee resettlement programs.

Policy Options for Consideration

To help mitigate the potential negative impacts outlined above, we recommend the Department of Labor consider the following policy options when crafting the final rule. These concepts received majority, though not unanimous, support among our member agencies and deserve further consideration during the formulation of a final rule:

First, we recommend that regional cost of living differences should be taken into account when determining the salary level test. Frequently in our work, we strive to convey to policymakers that poverty is not monolithic, and using a single income threshold as the national poverty line fails to reflect the reality that poverty in rural Kentucky is not the same as poverty in Silicon Valley in light of cost of living factors. The same applies in many respects to what constitutes a living wage in those areas. This is reflected in the calculations of the Living Wage Calculator, a project of Dr. Amy K. Glasmeier and the Massachusetts Institute of Technology, which calculates living wage salaries required to support twelve different family compositions in each county in the United States. In Floyd County, KY, nine of these twelve family structures only require salaries below the NPRM's proposed salary threshold to meet a living wage standard. In contrast, in Santa Clara County in the heart of Silicon Valley, a wage below the NPRM's proposed salary threshold is only sufficient for three of the family composition structures. These differences are already taken into account in federal wages in other areas, such as through the General Schedule "GS" pay tables. Such precedent should be built on to support appropriate living wages based on local conditions.

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Second, we would urge the DOL to consider increasing the salary test threshold in stages over a five year period. A gradual phase-in would allow our agencies to appropriately plan for and fund the necessary salary and staffing adjustments, in light of their current salary levels and financial planning constraints. Our feedback suggests that expecting our agencies to jump from their current salary levels to the 40th percentile of wages all at once is not tenable without sacrificing quality or quantity of their vital services in their communities. It is also worth considering how it might be possible to factor in the value of non-salary benefits and compensation when setting and measuring the salary threshold. Many employees choose to work at our agencies because they derive benefit beyond their financial compensation through contribution to the organization's mission, as well as through traditionally very strong benefits packages.

Third, we would encourage the DOL to consider a provision to allow organizations to renegotiate all multi-year government grants and contracts based on the changing costs of labor to provide the services to which they have committed. Ensuring that government reimbursement of services matches the new regulatory salary expectations is critical to our agencies, as more than four-fifths maintain multi-year grants and contracts. Accurately building labor costs into these is critical for nonprofit operations.

Fourth, we recommend that any changes to the duties test be made only after sharing the specific proposed changes and allowing for an additional public comment period. The NPRM invited open comments regarding the duties test, however, given the nuanced nature of the duties test, we recommend that the public be given a full opportunity to react to any changes to the duties test separately.

Finally, we would stress the importance of providing clear guidance materials to help nonprofits such as our agencies understand the application of the final rule to their organizations. These comments reflect an understanding and interpretation of the FLSA that it does in fact cover many if not most of our agencies and their employees. However, competing interpretations have been shared in public discussions and the FAQ document for nonprofits released by the DOL did little to clarify diverging interpretations of FLSA coverage for our agencies. Clear guidance specific to the nonprofit community will be critical to ensure successful implementation of a final rule in our network.

Conclusion

While we applaud the Department of Labor for pursuing policies that seek to ensure fair wages and a fair working environment for all, we are concerned that the regulations as proposed could place significant burdens on our agencies and ultimately negatively impact their ability to serve in their communities, resulting in a net negative, rather than positive, impact for the most vulnerable in our communities. We hope that our comments will help ensure that a final rule achieves the best outcome for our agencies' employees as well as those who are served through their ministries and programs. We seek to be a partner with government in efforts to improve living and just wages, and would welcome further engagement and discussion with the Department of Labor to ensure a positive outcome.