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National Association of Area Agencies on Aging

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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

Re: Comments on Proposed Changes to the Fair Labor Standards Act, 29 CFR Part 541, RIN 1235–AA11

Dear Ms. Ziegler:

On behalf of the National Association of Area Agencies on Aging (n4a), which represents the country's 623 Area Agencies on Aging (AAAs) and serves as a voice in the nation's capital for the 256 Title VI Native American aging programs, we are writing in response to the recently proposed rule changes regarding the determination of exempt and non-exempt employees and related issues. While we salute the spirit of worker protections inherent in this proposed rule, we must raise serious concerns about how the change would affect our nation's aging services delivery network.

As the local component of the nation's Aging Network, AAAs and Title VI Native American aging programs successfully develop, coordinate and deliver aging services in every community across the nation, providing assistance to more than 11 million older Americans and caregivers annually. By providing a range of options that allow older adults to choose the home and community-based services that enable them to live independently, AAAs and Title VI programs make it possible for older adults to "age in place" in their homes and communities.

To achieve their missions, AAAs and Title VI programs employ a range of part and full-time workers to direct and carry out these community-based services and supports. As not-for-profit entities—whether as stand-alone nonprofits or agencies based in county or regional government—salaries at AAAs are modest and rely heavily on governmental resources. Title VI programs, operated by Indian tribes or Native Alaskan/Hawaiian organizations, are uniformly under-resourced and thus offer even more modest salaries to their few employees.

With increasingly limited federal and state funding paired with rapidly rising demand for aging services, our members are stretched very thin as they struggle to maintain the vital programs that help older adults live independently, such as home-delivered and congregate meals, in-home supportive services, transportation, legal services, health and wellness programs and much more. The effect of budget caps and sequestration on the federal funding under the Older Americans Act cannot be understated: the cuts have forced staff reductions, closed programs, reduced available services, and created or lengthened waiting lists for life-saving assistance.

It is therefore important that your pending rule changes recognize the reality that hundreds of our members, as well as the thousands of community-based service providers which AAAs contract with for service delivery, operate in today.

Staff positions at these agencies include social workers, case managers, transportation coordinators, benefits or enrollment counselors, information and referral specialists, nurses, in-home aides and other professionals assisting consumers. Many of these roles involve non-traditional work hours or settings, such as case managers who meet with clients in the evening to accommodate a family's schedule; a care transitions coach who helps a Medicare beneficiary move smoothly from hospital to home; or an outreach worker who attends community events in the evenings and on weekends.

Given the nature of the work, many staff must be responsive to clients' emergencies, which often occur outside of traditional working-day hours. Additionally, some of these standard AAA/Title VI jobs involve significant amounts of time driving to clients' homes, a task that is heightened in rural and frontier areas where reaching clients takes more time.

Our members' staff not only respond to the personal health and life crises of their clients, but they are also critical responders in times of severe weather, natural disasters and other emergency situations in their communities—all situations where hitting a 40-hour work limit could mean the difference between life or death.

A large majority of our members, when surveyed in the past month, indicated that the proposed raising of the exempt threshold from $23,660 to $50,440 would negatively affect their agency's budget, staffing and, most importantly, their ability to provide needed services/programs.

Although there were exceptions, largely among the largest AAAs in major metropolitan areas, most AAAs and Title VI programs indicated that they would need to reclassify significant numbers of their staff as non-exempt should the threshold be raised to $50,440. More than seventy percent of those agencies affected reported that $50,440 was an unreasonably high bar, given current non-profit and government salaries in their area. (Note: Even larger agencies that may not be affected by this proposed rule do not have funds for paying additional overtime; they simply are in higher-salary markets so fewer of their current professional staff would need to be re-classified.)

The proposed rule would create at least three types of major problems for these agencies: budget, administrative and mission/service delivery.

Budget Impact:
If these newly non-exempt workers continued their current work patterns (e.g., working longer some days to respond to client emergencies), the agency's budget would quickly suffer because given current federal, state and local funding realities, there are not the resources to absorb such a shift. This could lead to staff reductions (e.g., fewer positions, more part-time workers) and other detrimental outcomes. For example, for AAAs based in county or city government agencies, added staffing costs could ultimately lead to greater local taxes levied on taxpayers. As mentioned previously, shrinking federal funding has already taken a dramatic toll on agency budgets, trimming all areas of the budget and often leading to service cuts to seniors. These local agencies do not have the resources to absorb new overtime costs.

Administrative Burdens:
For some AAAs, a significant number of staff would become non-exempt under the rule change, creating new administrative and management burdens. Managers would need to apply new levels of scrutiny to daily hours worked, which adds administrative time and would demand, in some cases, new timesheet protocols or software. There is the added complication of how to classify time spent off-site, off-hours answering emails or responding to clients' needs. This, in turn, becomes a budget issue as well.

Again, the nature of these social services and health care positions at AAAs/Title VIs require flexibility in order to respond to the clients' needs. According to one small Area Agency on Aging, their social workers have busy weeks and slower weeks, and mandating a strict 40-hour limit can run counter to the goals of the work, which is to help older adults maintain their health and independence. If a case manager hits her 40-hour-limit by Friday afternoon, but has another client still to check in with, what is her recourse? Would she have to receive clearance from her manager to work overtime? What if the agency had hit the maximum level of overtime hours that month and what would that mean for the client waiting for assistance?

Impact on Mission-Driven Services:
Most importantly, our members are concerned about the effect of the proposed rule change on those they serve: older adults, people with disabilities and their caregivers. The stretched-thin budgets will not allow for much, if any, overtime to be paid to agency staff.

Without additional resources to cover these regular or even occasional overtime costs, most AAAs and Title VI programs would be forced to reduce the number of program and service hours available. This means real repercussions and possible ill effects for the vulnerable older adults and people with disabilities agencies are charged to serve, and adds to the burdens of family caregivers. Reduced service hours mean a vulnerable 85-year-old client with several chronic health conditions may not get that ride she needs to the doctor next week or that home-delivered meal. The 70-year-old husband caring for his wife with dementia could lose the several hours a week of respite care he needs to maintain his own health and keep up his caregiving duties. Low-income older adults may not receive the one-on-one assistance they need to select a Medicare Part D prescription drug plan that works for their particular health conditions, or help with finding other federal or state programs that can help them financially.

All of these outcomes drive real human and economic costs. A lack of appropriate services leads to human suffering in the form of hunger, poor health, social isolation and lack of independence and safety. The financial cost of reduced services can be measured by increased expenditures on the back-end, affecting federal programs like Medicare, Medicaid and Older Americans Act; other payers in our nation's health care system; families trying to support loved ones; and, ultimately, taxpayers.

We ask that you consider the full ramifications of the proposed rule change on not-for-profit and governmental agencies, such as our members and their local partners, and the resulting impact on the people they are charged to serve.

Specifically, we ask you to reconsider:

1) The dramatic rise to a $50,440 salary threshold and the use of one measurement of median wage for all areas of the country. This specific level and, arguably, a universal formula, are not appropriate for nonprofit employers, as well as governmental agencies in lower-wage or lower-income areas, many of which are rural and thus already face other service delivery and staffing challenges.

We urge you to consider creating a more appropriate threshold formula for nonprofit and regional/local governmental employers. There is ample precedent for exempting smaller employers from employee-protection laws and the federal government's own wage scales allow for regional differences in salaries.

2) The automatic increase of this threshold annually, based on a formula. While we understand the importance of adjusting the threshold over time, an automatic increase does not take into consideration the diversity of wage growth across the country. For example, in the recent recession, some areas economically rebounded years before other parts of the country had even begun to recover. Future increases tied to a national average may create hardship in the communities most in need.

Thank you for considering our comments and recommendations.

Sincerely,

Sandy Markwood

Sandy Markwood
Chief Executive Officer