International Bancshares Corporation

May 21, 2019

Via email Rulemaking Portal: www.regulations.gov

Ms. Amy DeBisschop
Acting 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: Comment Request: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; U.S. Department of Labor (the "Department")

Dear Ms. DeBisschop:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC")(NASDAQ: IBOC), a multi-bank financial holding company headquartered in Laredo, Texas. IBC holds five state nonmember banks subsidiaries serving Texas and Oklahoma. IBC is a publicly-traded holding company with approximately $12 billion in total consolidated assets. We appreciate the opportunity to comment on the Department's proposed regulations regarding defining and delimiting the exemptions under the Fair Labor Standards Act ("Proposal").

I. Overview of Proposal.

On March 7, 2019, the Department issued a notice of proposed rulemaking ("NPRM") relating to changes to the executive, administrative, professional, computer, and outside sales employee exemptions under the Fair Labor Standards Act ("FLSA"), commonly referred to as the "white collar" or "EAP" exemptions. The Department's proposed revisions dramatically increase the FLSA's minimum salary threshold for full-time salaried workers nationwide. Specifically, under the proposal, the current $455 per week threshold—which translates to an annual salary of $23,660—will be raised to $679 per week, for a minimum annual salary of at least $35,308 for an exempt white collar employee. The Department estimates that over one million white collar workers who are currently exempt could become newly entitled to FLSA overtime rights, absent any intervening action by their employer. The proposal also increases the total amount of annual compensation for highly compensated employees ("HCE") from $100,000 to $147,414 per year, permits employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the salary threshold for EAP exemptions, and proposes periodic review to update the salary threshold.

As discussed further below, we have serious concerns regarding the Department's proposal.

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II. The Proposed Change to the Salary Level Test Has a Disproportionate Adverse Effect on Employers Located in Lower-Wage Regions, Certain Industries, and Small-Location Employers and their Employees.

The Proposal to raise the salary threshold to the same level for all employers fails to take into account significant differences in different regions of the country. The average salary in many rural areas and small towns outside of major metropolitan areas and in certain lower-wage regions of the country is substantially lower than the national average. By setting one uniform minimum salary level for the nation, however, the Department unnecessarily disregards these differences. For example, IBC operates in both rural areas and major metropolitan areas so IBC's subsidiaries utilize different pay schedules for different regions because the demands and skill levels can materially differ from a small town like Freer, Texas versus a large metropolitan city like Houston, Texas. A Branch Manager in Freer, Texas, may earn $30,000 as opposed to a Branch Manager in Houston, Texas, who may earn $50,000. Adopting a "one-size, fits all" regulation for all employers, does not take into account any of these differences. Based on the foregoing, we strongly suggest to the Department that it amend its proposal so that the salary threshold is geographically established.

An additional concern to the increase to the salary threshold for full-time salaried workers nationwide is that the proposal makes no distinction for the different types of industries that would be subject to the proposed requirements. Even though the Department proposes to set the threshold based on the retail industry, the reality is that there are very real differences among industries (i.e., those with smaller profit margins who presumably pay lower salaries will be most affected by the proposal). For example, grocery stores have notoriously small profit margins versus information technology companies which are known to have large profit margins so they would not be as adversely affected by the Proposal. Thus, we strongly suggest to the Department that its minimum salary threshold take into account the various types of industry in this country that would be subject to these requirements.

Additionally, many employers, have multiple locations with a small number of employees, including community and regional banks with branch offices in rural and other underserved low-to-moderate income ("LMI") areas. Due to many of these small locations being economically-marginal, these small-location employers, are less able to absorb the increased costs of expanding the pool of overtime-eligible employees without experiencing great hardship.

The Department's proposed increase to the salary level will be especially hard for community and regional banks to implement without laying off employees or curtailing their operations. Due to the enactment of the Dodd-Frank Wall Street Reform in 2010 and the subsequent enactment of numerous and far reaching regulations, community and regional banks are currently struggling with significantly increased compliance costs and decreased revenues. In short, community and regional banks have no expectation that their revenues will increase each year to offset the increase in wage payments to employees.

The proposed salary level rule would result in significant negative consequences for the operations of many small-location employers, including community and regional banks, that will not have the budget flexibility to increase the wages paid to employees. As a consequence of

the proposed rule's conversion of currently exempt employees into nonexempt employees, many small-location employers, including community and regional banks, will have to choose among three unpalatable options in order to maintain current payroll budgets:

i. Lay off employees to fund the increase in wages for retained employees. This will necessitate curtailing aspects of their operations and/or increasing the workloads of the remaining exempt workforce.

ii. Lower the hourly wages of non-exempt employees, such that their total annual compensation, including overtime payments, remains at the prior year's level. This will have a negative impact on employee morale, and place small-location employers at a disadvantage in competing with large employers for qualified candidates.[1]

iii. Adopt firm restrictions on the overtime hours worked by non-exempt employees, relying on temporary or part-time staff for additional personnel resources at straight-time rates.

Each of these options would harm not only small-location employers, but their affected employees and the communities they live in as well. Employees who are laid off due to budget pressures resulting from the increase in salary level will join the ranks of the unemployed and need to find new jobs. Many employees who are reclassified as non-exempt at a lower hourly wage will experience no increase in total annual compensation to make up for the perceived demotion, and morale problems will develop if they find themselves working the same long hours but earning less on an hourly basis than lower-level non-exempt employees whose job requirements had never included extended hours. Additionally, newly designated non-exempt employees are likely to view the requirement to record their hours as unduly burdensome. For those small-location employers that choose to restrict overtime hours for all non-exempt employees, the formerly exempt employees converted to non-exempt status will lose career-growth opportunities. Furthermore, changes to overtime regulations will not necessarily result in a windfall of overtime pay hours for newly classified hourly employees. Instead, employers typically monitor labor costs closely and would likely cap or eliminate access to overtime pay. Drastic overhauls to existing overtime pay regulations could have negative effects on both employees and employers. Changes to the overtime pay regulations will limit workplace flexibility for employees and employers. Human resource experts have long understood that pay is an important element in job satisfaction but, more important is ultimate opportunity to make a job meaningful, rewarding and worth doing. These and other adverse changes are very likely to cause morale problems in the workplace and the employees will not view the Department as improving their economic position.

The argument that non-exempt employees will receive additional time off is flawed due to the flexibility it eliminates for many employees. For example, a non-exempt employee that wishes to attend a child's play at school will be forced to use vacation leave or unpaid personal time off. Exempt employees generally do not have this same problem as they are paid a salary that is not

[1] Employee morale will have already been negatively impacted by the change in status from exempt to non-exempt. This negative impact will be exacerbated by the reduction of employee's wages.

reduced if they miss an hour or two of work during the regular workday. In addition, currently, exempt junior and mid-level employees who would convert to non-exempt status under the proposed salary level change are most vulnerable to this "adverse impact." In order to control overtime costs and comply with compensable working time regulations, many small-location employers exclude non-exempt employees from off-hours access to work emails and network systems.

In many workplaces, non-exempt employees are not permitted to telecommute or to work flextime schedules that are made available to exempt employees. Such flexible work arrangements pose challenges for employers in tracking and capturing all compensable work hours and controlling overtime costs for non-exempt employees. By contrast, the FLSA and state wage and hour laws do not require that employers record the precise hours worked each day by exempt employees, so employers have more latitude to offer flexible schedules and telework arrangements to exempt employees. These more flexible work arrangements not only tend to improve employees' work satisfaction, but they also help employees achieve a better work-life balance. As a result of conversion to non-exempt status, some currently exempt employees may lose the flexible work arrangements on which they and their families have come to rely. In short, by setting a salary level that will categorically reclassify so many currently exempt employees as non-exempt, the Department is likely to adversely impact the work life and personal lives of many affected employees, without any guarantee that those employees will in fact earn higher incomes as a result of the proposed changes.

To avoid these negative consequences, the Department should either set a lower salary level applicable to all employers or set the minimum salary level at a lower percentile for small-location employers. In enacting the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Congress directed agencies to evaluate whether regulations are expected to have a significant economic impact on entities with multiple small locations and to consider less burdensome alternatives. Because the duties test will still distinguish appropriately between exempt and non-exempt positions, the proposed alternative of a lower salary level threshold, at least for small-location employers, would still meet the objectives of the FLSA.

Finally, we strongly urge that any salary level threshold finally adopted by the DOL be implemented incrementally similar to past minimum wage increases under the FLSA. For example, the 2007 amendments increased the minimum wage to $5.85 per hour effective July 24, 2007; $6.55 per hour effective July 24, 2008; and $7.25 per hour effective July 24, 2009. As a result of the dramatic impact these changes will have on employers, especially on small employers and those in low profit margin industries, an incremental increase is necessary. Accordingly, we strongly urge the Department to implement these increases in an incremental fashion.

For the same reasons discussed above, the Proposal to increase the threshold for HCEs from $100,000 to $147,414 per year is fraught with problems for small-location employers, employers in different regions of the country, and employers in different industries. These employers will experience catastrophic consequences if their current exempt HCEs become non-exempt because they do not have the revenue or profit margin to absorb an increase of nearly

$50,000 to HCEs' salaries nor can they absorb the costs of overtime for these employees. Therefore, IBC strongly urges the Department to consider not raising the HCE salary threshold or doing so in much smaller increments.

III. The Proposal to Include Up to 10% of Certain Payments Towards the Salary Threshold is Not Enough.

While IBC supports the change in policy to permit inclusion of commissions, non-discretionary bonuses, and incentive payments in calculating the salary threshold, it does not agree that only 10% of these payments should be included. The Proposal fails to take into account significant differences in the ways that employers compensate their employees. Many employers offer diversified compensation plans, offering commissions, bonuses and other incentives to motivate employees. However, these employers will be punished, and will certainly be at a disadvantage, if only 10% of these payments are permitted to be included in the salary threshold. Therefore, IBC urges the Department to eliminate, or raise, the cap on these types of payments to level the playing field amongst all employers.

Additionally, IBC urges the Department to permit inclusion of all bonuses to count towards the salary threshold. Many employers provide discretionary bonuses to reward employees and to boost employee morale. Without inclusion in the increased salary threshold, it will disincentivize many employers from providing these payments to their employees. Therefore, IBC urges the Department to include all bonuses and incentive payments in the salary threshold calculation.

IV. Periodic Review of the Salary Threshold Should Occur No More than Every Five Years.

The Proposal will impose roughly $.9 billion in direct costs to private employers the first year alone, and in subsequent years, estimates are that private employers may experience a payroll increase of as much as roughly $500 million each year. (Due to a steep familiarization and implementation curve, employers will face more than $450 million in direct costs in the first year.) Small employers and employers without corresponding profits to offset increases in compensation need sufficient time to absorb the increased costs as well as the cost of implementation. These employers cannot sustain the burden and cost of frequent increases in the salary threshold. Each increase requires employers to update time keeping systems/software, budget increased costs, and review employee compensation. Small employers do not have the manpower and resources to do so on a regular basis; therefore, IBC urges the Department to set review of the salary threshold at a minimum of five years.

V. Conclusion.

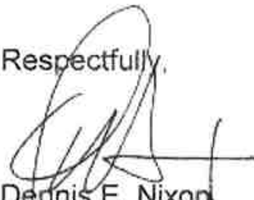
Unfortunately, the proposed overtime pay regulations, if adopted, will cause small-location employers, including community and regional banks with branch offices in rural and underserved LMI areas, to expend countless hours reviewing the final regulations and building a software system to implement and monitor their compliance with the regulations. It will be extremely difficult for community and regional banks to do so without laying off employees or curtailing their

operations. We note that if the Proposal's anticipated wage gains do not result in productivity increases that will just create wage inflation that will cause prices to rise off-setting the wage growth. So, at the end of the day, the Department Proposal's anticipated wage increases are an illusion.

Additionally, we believe the proposed regulations may cause regional and community banks with small branches in underserved LMI areas to carefully analyze whether the workforce costs make these branches economically viable. Many of these branches are not highly-profitable and imposing new and highly expensive labor costs will likely have an adverse effect on their continued viability. It must also be noted that rural areas are already suffering from a rapid decline in existing businesses and virtually no new business start-ups. Banks, as a business category, have closed thousands of branches in rural America already. These suggested changes will accelerate a terrible trend and make many marginal locations unprofitable and subject to closure. As previously noted, community and regional banks are currently struggling with significantly increased compliance costs and decreased revenues. These institutions can only take so much.

Thank you for your consideration.

Respectfully,



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