**[Organization Letterhead]**

[Date]

Melissa Smith,
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: Request for Information on Changes to the Overtime Regulations

Dear Ms. Smith,

[ASSOCIATION NAME] respectfully submits these comments in response to the U.S. Department of Labor’s July 26, 2017 Request for Information seeking public input prior to issuing proposed changes to the salary level test of the Fair Labor Standards Act (“FLSA”) regulations implementing the exemption from minimum wage and overtime pay for executive, administrative, and professional employees (the “EAP exemptions”). [ASSOCIATION NAME] is a non-profit organization organized to [\_\_\_\_\_\_\_]. We employ \_\_\_ employees, many of whom would be converted from exempt to non-exempt status if the minimum salary level for the EAP exemptions increases to $47,476, as specified in the 2016 Final Rule.

[ASSOCIATION NAME] supports raising the minimum salary level for the EAP exemptions to reflect inflation and increases in the costs of living since the previous update in 2004. The $47,476 level is too high, however. Currently, \_\_\_ % of [ASSOCIATION NAME]’s are non-exempt; if the 2016 Final Rule takes effect, that will increase to \_\_\_% of our workforce, including positions in which the employees [manage two or more full-time employees / are required to hold advanced degrees to perform their positions / have been classified as meeting the administrative exemption because of the high degree of independent judgment they exercise on matters of significance to our organization].

Converting these employees to non-exempt would have a significant adverse effect on our organization and on our employees. As a nonprofit, we operate on tight budget designed to maximize the percentage of our revenues directed towards our organizational mission. Our operating expenses are funded primarily by [member dues/donations/grant funds/payments from government agencies]. We have no paying customers to whom we can pass on increased payroll costs, and no owners or shareholders who can support an increase in total employee compensation costs through accepting a reduction in profits or dividend payments. Accordingly, any increases in overall personnel costs would require off-setting cuts in the services we provide.

 In particular, currently exempt employees provide [describe services], which entails [travel/weekend work/evening work/occasional long hours]. Under the 2016 Final Rule, [ASSOCIATION NAME] would have be pay for these at premium overtime rates. Since our budget does not provide flexibility for such a large increase in personnel payments, we are faced with unpalatable choices:

* Reduce our service levels to avoid overtime – which would undermine our effectiveness;
* Convert the affected employees to non-exempt status at a lower hourly rate, so that payment of overtime does not increase their overall annual compensation – which would harm morale and be perceived as a demotion;
* Cut positions in order to fund the additional overtime obligation – which would hurt the terminated employees and our organization; or
* Require the remaining exempt employees to absorb some of the duties of the newly non-exempt employees – which would be felt as an unfair burden by the exempt employees and restrict the newly non-exempt employees from career growth.

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 of the national average for nonprofit and/or small employers. Because the duties test will still distinguish appropriately between exempt and non-exempt positions, [ASSOCIATION NAME]’s proposed alternative of a lower salary level threshold, at least for small and/or nonprofit employers, would still meet the objectives of the FLSA. The 2016 Final Rule recognized that nonprofit institutions of higher education merited exceptions from the generally applicable changes to the salary level test, providing, for example, that academic administrative employees paid on a salary basis at least equal to the entrance salary for teachers in the same educational establishment would remain exempt even if paid below the salary level established in the Final Rule. See <https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>. [ASSOCIATION NAME] submits that it and similar nonprofits also deserve relief from the jeopardy to our missions posed by the costs resulting from more than doubling the salary level for EAP employees. Either for the non-profit sector or for all employers, we request that the minimum salary level for exempt employees meeting the EAP duties and salary basis requirements be set no higher than $\_\_\_\_\_\_ annually.

Finally, [ASSOCIATION NAME] requests that the Department clarify that the stated minimum salary level amount applies only to full-time exempt employees, and that the salary level may be pro-rated for part-time exempt employees meeting the EAP duties and salary basis requirements.

Thank you for this opportunity to provide our views.

Sincerely,

[Name, Title]