

Testimony for United States House of Representatives

Committee on Education and the Workforce

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Good morning, Chairman Kline, Ranking Member Scott and Members of the Committee.

Thank you for providing me the opportunity to testify on the Administration's Overtime Rule that will impact our students, families, and hundreds of employees at the University of Kansas.

When fully implemented, the recent changes to the Fair Labor Standards Act (FLSA) will have a significant impact on the University of Kansas (KU). The university is a major public research university and is the flagship institution in the state of Kansas. Like many public universities across the country, the percentage of university resources that come from public funding sources has decreased precipitately over the past decade. While university leaders agree that an increase to the minimum salary threshold is due, an increase of over 100% at one time in 2016 is impossible to absorb without significantly impacting university services and our standing as a university.

For KU, this increase can be considered an unfunded mandate. Due to two state directed budget cuts in 2016 and further cuts anticipated in the upcoming fiscal year, the university does not have any central funds to apply against the financial impacts of the adjusted overtime rule of the FLSA. With no central fiscal flexibility, KU is compelled to pass any financial responsibility for addressing the FLSA response along to our schools, departments and research centers. Working on relatively fixed budgets each unit has limited options available to address the mandated changes. In the short term the primary impact will be felt in the reduction of services and/or the elimination of positions. Ultimately our most important stakeholders, students, will bear the burden of these reductions.

As of June 6, 2016 the university has 354 currently exempt employees impacted by the revised FLSA overtime rule. The projected cost to raise these employees to the new annual salary threshold of \$47,476 is \$2,937,980. The alternative, if chosen, is to switch these employees to a non-exempt status and pay them overtime. Because of the complex and cyclical nature of supporting the academic mission in higher education, many of these employees occasionally work more than 40 hours per week to fulfill the requirements of their position. If each employee transitioned to a non-exempt status

and worked just five overtime hours per week, the cost to the university would be \$2,303,554 or roughly equivalent to the cost of raising each to the new FLSA exempt threshold. During peak student support and recruitment cycles, five hours is a conservative overtime estimate to maintain current levels of student support. Since neither of these options are currently financially feasible for any of KU's units, it is inevitable that there will be a significant reduction in the services currently being provided by KU units to students as we transition employees from their current exempt to a non-exempt status without the flexibility of working more than 40 hours per week regardless of mission demands.

The one relatively flexible financial lever that the university has to increase revenue is to raise tuition. Tuition increases need to be approved by the Kansas Board of Regents and are justifiably closely scrutinized. For the upcoming fiscal year (beginning in July) the window to use a tuition increase to help mitigate the impact of the new FLSA overtime rule in 2016/2017 has closed. It is probable, however, that tuition will ultimately be pushed higher in future years in order to address the enduring impacts of the new overtime rule and in an effort to return KU student services to levels established prior to the implementation of the rule.

Due to both the near and long term fiscal impacts of the new FLSA overtime rule, KU believes that the *Protecting Workplace Advancement and Opportunity Act* is important legislation because it would require a more detailed economic analysis, including understanding and mitigating the impacts on higher education, before these dramatic changes to federal overtime pay requirements are fully implemented.

FLSA and Higher Education

Many employees on college campuses, including KU, are currently exempt from the FLSA's overtime pay requirements. To comply with the pending increase in the FLSA exempt threshold from \$23,660 to \$47,476 colleges and universities may increase the salaries for a few individuals whose current pay is closest to this new threshold, but will need to reclassify the majority of impacted employees to hourly status. While in some cases these changes are appropriate and would keep with the spirit of FLSA, in many instances KU (and our counterpart higher education institutions) are being forced to reclassify employees who work in jobs that have always been exempt and are well-suited to exempt status. It is KU's position that this widespread reclassification is to the detriment of both our employees and students. As a nonprofit and public entity, KU is reflective of the higher education industry in our inability to absorb the increased costs that come with higher salaries for exempt employees, expanded overtime payments and other labor and administrative costs associated with transitioning traditionally exempt employees into nonexempt status. In the face of these costs and challenges, KU will ultimately be forced to adjust/reduce services, eliminate/consolidate positions or, at some point, raise tuition - all to the detriment of our students. The changes will also increase the costs of and thus inhibit important research done by the university.

Projected Impact: University of Kansas

Below is a detailed listing of the 354 positions at KU that will immediately be impacted by the new FLSA overtime rule directed by University of Kansas job families:

<u>Job Family</u>	<u>Number</u>	<u>Cost (stay exempt)</u>	<u>Cost (overtime estimate)</u>
Educational Support	47	\$232,746.90	\$335,853.37
Facility Service	4	\$24,997.00	\$24,032.26
Healthcare Service	5	\$72,925.33	\$14,827.50
Information Technology	1	\$3,182.00	\$8,305.12
Library Services	8	\$37,047.00	\$64,267.69
Museum Services	5	\$29,902.00	\$33,166.31
Public Affairs	10	\$42,056.00	\$81,132.00
Publishing	2	\$10,952.00	\$15,750.00
Research Sector	127	\$949,784.37	\$854,817.04
Total Other Services	38	\$646,435.96	\$118,514.06
Grand Total	354	\$2,937,980.05	\$2,303,554.25

Listing the positions by organization provides a perspective of the campus wide impact of the initiative:

School/Unit	Number	Cost (stay exempt)	Cost (overtime estimate)
Chancellor's Office	4	\$24,708.00	\$30,974.25
Public Affairs Office	1	\$6,022.00	\$7,772.62
Edwards Campus	6	\$17,273.00	\$50,171.81
Architecture	1	\$1,164.00	\$8,683.50
Business	11	\$89,487.00	\$73,640.44
Education	5	\$75,344.65	\$14,006.69
Engineering	11	\$66,511.00	\$85,448.44
Journalism	3	\$45,881.00	\$16,500.00
Law	1	\$13,351.00	\$0.00
Liberal Arts/Sciences	87	\$756,148.55	\$548,259.84
Pharmacy	15	\$140,917.77	\$105,530.63
Social Welfare	7	\$66,196.00	\$33,316.13
Libraries	5	\$23,261.00	\$40,147.31
Research	99	\$857,307.66	\$597,705.37
Student Affairs	21	\$167,298.09	\$155,568.36
IT	1	\$3,182.00	\$8,305.12

Enrollment Management	21	\$167,298.09	\$155,568.36
Admin/Finance	1	\$19,976.00	\$0.00
Campus Operations	2	\$16,717.00	\$7,781.25
Academic Affairs	28	\$191,804.00	\$213,285.75
Faculty Development	2	\$4,387.00	\$16,980.94
Diversity and Equity	2	\$20,032.00	\$14,047.50
International Programs	20	\$138,171.00	\$147,444.38
Grand Total	354	\$2,937,980.05	\$2,303,554.25

KU Implementation Strategy:

In order to be prepared to implement the new Department of Labor FLSA overtime rules by December 1, 2016 the University of Kansas is prepared to take the following steps:

1. Our current postdoctoral workforce consists of 92 full time employees. This comprises approximately one third of our currently exempt employees who are below the new FLSA overtime threshold. On average, these 92 postdoc employees make \$7,080 below the new \$47,476 threshold. KU plans on raising all of our postdoctoral employees up to the new \$47,476 threshold. This decision is tied to a joint statement released by the Director of the National Institutes of Health and the Secretary of Labor on May 18, 2016 generally endorsing fair pay for “postdocs.” In order for KU to remain competitive to attract the best and brightest young researchers we feel compelled to be aligned with the direction being advised by these two key leaders. In addition, postdocs tend to work a varied schedule with periods where they spend many hours in the lab in order to complete critical research projects. It is not pragmatic or cost effective to transition postdocs to a non-exempt status and track their hours worked and pay overtime for any effort over 40 hours per week. We are asking our research centers to determine how to make adjustments in their budgets and, in many instances, revise their grants in order to accommodate this new cost burden. It is still unclear what the impact will be as our principal investigators (PIs) work through their fiscal adjustments. A primary concern is that our centers will not be able to afford as many postdocs and will need to cut back on the number of research openings/opportunities that are available. The standing of a major research university is directly tied to the number of post doc researchers mentored by the university. A decrease in the number of post docs may have a direct impact on the standing of KU in the national higher education research community. In addition, the mandated raising of even our junior postdocs to the new threshold will likely cause significant salary compression in this key KU job family.
2. KU will delegate the responsibility for determining the status of the remaining 262 currently exempt positions to our schools/units. KU has no central fiscal flexibility in order to assist our units address the financial impact of the new FLSA overtime rule. Each unit will have to determine what makes the most fiscal sense for them. In initial

meetings campus leaders have stated that the vast majority of these positions will become non-exempt due to their inability to afford to raise them to the new threshold. Three areas that KU projects will be significantly impacted are student advising, student recruiting and student enrollment services. Employees in these areas tend to work more than 40 hours per week, especially during peak student support periods. KU does not have the resources to raise these employees to the new FLSA overtime threshold in order to maintain their exempt status nor does the university have the resources to pay overtime once these employees are categorized as non-exempt. The result will be reduced services provided to our students. The one fiscal lever that KU has to mitigate this challenge is to raise tuition to cover the increase in personnel costs in these key areas. As previously stated this action is not immediately feasible but will certainly be considered in future years. If tuition must be raised, our students who already incur significant financial debt getting their education, will bear the fiscal impact of this change.

Matt Melvin, the KU Vice Provost for Enrollment Management, in a recent reflection on the impact of the new FLSA overtime rule on his organization stated: "what the new rule really does is impede our ability to customize and personalize the educational process beginning from the time a student initiates an inquiry to the time they depart/graduate. The level of personalization/customization has been a source of sustainable competitive advantage for us in a highly competitive environment as we have emphasized, and benefitted from focusing on the relational vs. transactional aspects of the work. This rule directly impedes our ability to build those relationships. In addition, I think it is direct contradiction to the national completion agenda as student access to, and availability of, academic and support personnel and services will be reduced. KU needs to highlight that decreasing services is more than reducing operating hours. It will have a profound impact on our ability to attract, retain and graduate students."

Additional Considerations:

1. There is an escalator clause in the new FLSA overtime rule. The first update will take place in 2020 and every three years thereafter. The automatic update mechanism in the new overtime rule will be difficult to address in the current fiscal environment where KU (and comparable higher education institutions) deal with declining public sector revenue.
2. The FLSA overtime rule provides a stipulation that academic administrative employees will be exempt if their salary equals or exceeds KU's entrance salary for teachers. KU, as a major public research university, is a very complex organization. The institution does not mandate an entrance salary so it varies considerably across campus based on the variable cost of hiring quality faculty into different disciplines. Based on an initial review, our starting teacher salary (defined by the annualized cost of hiring

lecturers) is above the new overtime threshold so this administrative exemption does not provide any relief for KU.

3. In lieu of paying overtime, universities are allowed to provide non-exempt employees who work over 40 hours each week compensatory time. While the Department of Labor allows organizations to carry up to 240 hours of comp time for an employee, KU has a policy capping comp time at 90 hours per employee. KU leaders are reconsidering the current 90 hour cap because of the additional stress placed on our organizations with the new FLSA overtime rule. Expanding the cap up to 240 hours adds additional financial liability and risk on our units. If KU removes the 90 hour cap it would not be feasible for any university unit to cover a lump sum payment of 240 hours if compelled to do so.
4. Fringe benefits average approximately 35% of each employee's base salary. For each employee that KU raises to the new FLSA overtime threshold there will be a comparable rise in fringe benefit costs further increasing the financial burden of the new overtime rule on KU.

Conclusion:

At KU, we appreciate the Administration's ambitious agenda to promote affordable, high-quality educational opportunities, expanding access to college, and providing the support necessary to drive students to on-time completion and long-term success. However, the new changes to the FLSA overtime rule represents a major expense for public universities and puts our campus in a further financial strain, as we continue to deal with decreased state funding. There is simply no way for universities like KU to absorb costs of this magnitude without an impact on our academic, research, and outreach missions that will be felt by the public we serve.