Written Statement for the Record

The Honorable Jerrie Tipton
Commission Chair, Mineral County, Nevada

On Behalf of the National Association of Counties

for the hearing

“Damaging Repercussions: DOL’s Overtime Rule, Small Employers, and their Employees”

before the

Committee on Small Business
United States House of Representatives

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Washington, D.C.

Chairman Chabot, Ranking Member Velázquez and members of the Committee, thank you for the opportunity to testify today on the Impact of the U.S. Department of Labor's (DOL) final overtime rule on small entities — including small county governments like mine. As an integral part of our federal-state-local intergovernmental system, county governments have a vested interest in labor market policies.

My name is Jerrie Tipton. I am the Chairman of the Mineral County, Nevada, Board of Commissioners and also serve in leadership positions with the Nevada Association of Counties and the National Association of Counties (NACo).

About the National Association of Counties (NACo)

Founded in 1935, NACo is the only national organization that represents county government in the United States and brings together county officials to advocate with a collective voice on national policy, exchange ideas and build new leadership skills, pursue transformational county solutions, enrich the public's understanding of county government and exercise exemplary leadership in public service.

About Mineral County

Counties are highly diverse, not only in my home state of Nevada but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic, public health and environmental responsibilities. Mineral County is located in western Nevada, approximately 300 miles north west of Las Vegas.

We have a population of 4,478 and a land area of just over 2.4 million acres — of which the majority is owned by the federal government. Of those 2.4 million acres, 1.6 million are managed by the U.S. Department of the Interior's Bureau of Land Management (BLM) and nearly 400,000 more acres are managed by the U.S. Forest Service (USFS).

To put that into perspective, the BLM and Forest Service together manage an area of our county more than two times the size of Rhode Island. All told, federal lands in Mineral County, including military reserves and land held in trust for Native American tribes, are as large as Rhode Island and Delaware combined.

Mineral County is the very definition of a small governmental entity and we are very concerned about the potential impact of the new overtime rule on our ability to fulfill our fundamental responsibilities — many of which are mandated by the state and federal government. We employ 102 full time employees to serve our 4,478 residents across this vast, rugged – and beautiful – landscape.

In addition to the county, there are 60 more establishments that serve as employers in our area — many of which will also be impacted by the final rule. The majority of these are small businesses and are essential to the continued vitality of our communities.

Mr. Chairman and members of the committee, as you continue to assess DOL's new overtime rule and the potential impact on employers — and especially small entities including local governments — we respectfully submit three observations for your consideration:

1. **The nation's 3,069 counties, most with fewer than 500 employees, provide vital services to more than 300 million residents.**

2. **The new overtime rule does not adequately address the wide variations in local labor markets across the country.**

3. **The new rule will have broad consequences for taxpayers and county services.**

First, the nation's 3,069 counties, most with fewer than 500 employees, provide vital services to more than 300 million residents.

County governments are an essential component of the federal-state-local intergovernmental system, and therefore we have a vested interest in wage and hour policies that are both fair and efficient for public employers and employees.

America's 3,069 counties administer public programs and deliver public services, often on behalf of states and the federal government. Counties employ over 3.6 million people to carry out this important work. Because of our role as employers, we are concerned that the new rule could have the unintended effect of placing additional strain on already limited county budgets throughout the country, hindering our ability to provide crucial services to our local communities.

The majority of counties, almost 70 percent, can be considered rural and have fewer than 50,000 residents and are therefore categorized as small governmental jurisdictions under the Regulatory Flexibility Act (RFA). The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 (RFA, 5 U.S.C. §§ 601-12).

Small rural counties are also major employers. These counties across the country employ over 410,000 full-time employees, who collectively serve almost 40 million Americans. Like Mineral County, these small counties often deliver services over expansive areas — some even larger than smaller states. Small counties in particular have raised concerns that the new overtime rule could adversely affect their county finances as well as their county employees' work hours and benefits.

As mentioned earlier, 70 percent of our nation's counties have fewer than 50,000 residents. Despite major variations in size and population, counties across the country must provide basic public services at the local level. These include maintaining the justice and public safety system, including police and fire protection, criminal justice, courts and jails; transportation and infrastructure, including road and bridge building and maintenance, airports and transit; health, including local public health departments, hospitals, clinics, nursing homes and mental health programs; and in this election year, counties are responsible for administering

federal, state and local elections. We also serve as conveners for our communities, bringing local stakeholders together to engage with state and federal agencies on matters of local concern. Our ability to perform all these critical—and often mandated—local functions could be affected as we try to comply with the new rule.

Of Mineral County's 102 full-time employees, 13 to 17 of our county employees will eligible for overtime pay under the new rule. We simply do not have the flexibility within our local budget to pay the newly eligible employees overtime pay in compliance with the rule — especially as soon as December. Two factors limit our capacity to comply. First, we must maintain spending required under existing federal and state mandates. Second, we are constrained by limits on our ability to generate revenue imposed by the state of Nevada and by the fact that so much of our land is tax-exempt federal land. Like many other counties, the upcoming December 2016 implementation date puts our county in an even more difficult bind as we work to try to find where this extra revenue will come from. We have been "doing more with less" for so long that, absent new revenue sources, it is hard to see any alternative to cutting services.

Second, the new rule does not adequately address the wide variations in local labor markets across the country.

While it is encouraging that the rule attempted to take into account regional variations, using Census regions to determine the salary threshold is too broad and does not provide an accurate picture of the major differences in labor markets across local communities. The rule pegs the proposed salary level to the salary level of the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census region (now the South). The South Census Region includes Alabama, Arkansas, Delaware, the District of Columbia, Georgia, Florida, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia.

As is often the case with federal regulations, the new salary threshold will likely have an even greater impact on small and rural county governments. A nationwide uniform federal regulation does not, in this case, adequately take into account key measurable differences between small and rural communities and larger population centers. The new salary threshold is significantly above our Mineral County median household income of $38,664.

Consider local government average wages by state. Based on data from the Bureau of Labor Statistics, in 2015, the average annual wages paid by local governments nationally ranged from $62,482 in Hawaii to $32,911 in South Dakota. In 34 of the 50 states, local government employees earned less than $46,000 — which is less than the new DOL salary threshold.

The situation is even more uneven at the local level. In 85 percent of counties, local governments do not meet the new salary threshold of $47,476. For example, in Decatur County, Kansas the current average wage in local government is $18,465. In 97 percent of counties in the South Census region, the region used by the new rule for pegging of the threshold, average wages in local government are less than the newly proposed threshold.

Mr. Chairman, in your state of Ohio, local governments pay on average $44,526 and in 94 percent of the counties in your state, local governments pay less than the newly proposed threshold. And Ranking Member Velázquez, in New York, almost three quarters of the counties (42 of 58) pay less than the newly proposed threshold. So as you can see, the new overtime rule will have a significant impact on the nation's counties—especially those with populations of 50,000 and below.

Because we are often unable to offer wages as high as in the private sector, local governments will often compete in the labor market by offering our employees great benefits. For example, counties provide extensive health coverage to their employees, dependents and retirees. An estimated 2.5 million county employees — out of 3.5 million full-time and part-time county workers — and nearly 2.4 million of their dependents were enrolled in health plans offered by county governments in 2014. Full-time employees are eligible for county health benefits in almost all counties and 80 percent of counties offer health coverage for all employee dependents.[1]

Finally, the new rule will have broad consequences for taxpayers and county services.

Many counties are still struggling to recover from the recession and may not have the resources to absorb sudden spikes in pay increases

First and most obvious, doubling the current salary threshold amount all at once will have harmful consequences on county budgets — and ultimately on county employees — particularly as we struggle to recover from the recession. According to NACo's *County Economies 2015* report, only 214 county economies have fully recovered by 2015 (based on four indicators — jobs, unemployment rates, economic output (GDP) and median home prices) to their pre-recession levels.[2]

Some counties have calculated the impact of the overtime pay change on their payroll costs and are expecting dramatic increases to payroll in the first year of implementation and beyond. For example, according to Berks County, Penn., 97 of the 419 county employees who are currently ineligible for overtime pay because of their salary levels would be newly eligible under the final rule. Berks County has estimated that the resulting additional financial burden could cost the county as much as $1.5 million in the first year alone.

In Mineral County, of our 102 employees, approximately 13-17 would now be newly eligible for overtime pay under the new rule — and potentially cost an additional $25,000 to $45,000. This might not seem like a lot, but for our county, this poses quite a financial challenge.

[1] Istrate, Emilia. County Health Benefits 2014, Washington D.C.: National Association of Counties. Available at http://www.naco.org/sites/default/files/documents/County%20Health%20Benefits%20FINAL_06.30.2014.pdf
[2] Istrate, Emilia, Brian Knudsen. County Economies 2015: Opportunities and Challenges, Washington D.C.: National Association of Counties. Available at http://www.naco.org/sites/default/files/documents/2016%20CET-report_01.08.pdf

Many counties do not have the financial flexibility or resources to absorb sudden spikes in pay increases without reducing current service levels, decreasing employee benefits and/or reducing our county employee work hours or staff.

In the final rule, DOL does not seem to have adequately analyzed the economic impact on small governmental jurisdictions as required by the RFA. In the section of the final rule titled “Projected Impacts to Affected Small Entities,” DOL provides an analysis of the projected economic impact on small entities, including small local governments (pgs. 32,536-32,541). In Table 42 (pg. 32,540), it estimates the total costs — directs costs and payroll increases — per establishment. For state and local government establishments, DOL estimates the total cost would be $9,264.[3] However, as I noted above, my county is projecting a total cost of $25,000 to $45,000, which is significantly higher than DOL’s estimate.

Most counties’ ability to raise new revenue is limited by states

Increasing taxes to pay for overtime increases is not often an option for counties, beyond the political difficulty of instituting additional taxes. In fact, 43 states impose some type of limitation on counties’ ability to increase property taxes, including 38 states with statutory limitations on property tax rates, property tax assessments or both. There are not many other revenue solutions at counties’ discretion. For example, only 12 states authorize counties to collect their own local gas taxes, which are limited to a maximum rate in most cases and often involve additional approvals for implementation.

Given these fiscal limitations, many counties may have to reduce the service levels for critical programs (public transportation and infrastructure, justice and public safety, public health, search and emergency rescue and 911 operations) and cut any non-mandated services such as critical support for economic development — to comply with the new rule.

Counties with federal land in their jurisdictions are even more limited in their ability to raise additional revenue to pay for the new overtime rule

Our ability to raise additional revenue to pay for the salary increases is not just impacted by the states — there is another complicating factor for many counties. Sixty-two percent of counties nationwide have federal land within their boundaries and in each case, those county governments provide important local services to federal public lands visitors and federal employees every day. However, once the federal government acquires land, it is removed from county tax rolls and no longer subject to local property taxes. The loss of revenue greatly impacts local schools, roads, hospitals, fire and public safety services. In Mineral County, just 3.4 percent of our county is privately held and over half of the private land has no taxable infrastructure associated with it.

Although the federal government has traditionally provided some relief for this lost revenue through the Payments in Lieu of Taxes (PILT) program, PILT often reimburses at a rate well below the land’s taxable value

[3] DOL Overtime Pay Rule; 81 Fed. Reg. 32540 (May 23, 2016) (to be codified at 29 C.F.R. Part 541)

per acre. For example, Mineral County receives $0.36 cents per acre from the PILT program, far less than the $3.84 per acre we receive in local property taxes for similar land. In addition, in recent years the fate of the PILT program has been uncertain. The lack of long-term, predictable and full funding for the program has a significant impact on the budgets of public lands counties acres the nation.

The budget process and timing for counties further complicates our ability to comply with the new rule

Many counties have a budget deadlines of July 1, if not sooner. Because the final rule was announced on May 18, counties — including mine — have very little time to conduct analysis and calculate the additional costs of the increased salary threshold and where these resources would come from. Our budget cycle is from July 1 to June 30 and for this year, we had to submit our budget, without accounting for the overtime rule, to the state by April 15.

In addition, some counties operate on a bi-annual budget, meaning some counties already have their finances accounted for in the coming fiscal year excluding the additional costs for the new rule. Furthermore, many counties, like Mineral County, must have their budgets approved or certified by the state. Once these budgets are approved, it is very difficult to change if the needs of the county shift.

It can be more challenging for small and rural counties to ensure that we are in compliance with federal regulations, because we have limited human resources personnel, legal counsel and financial advisory staff

DOL estimated that on average, an affected small "establishment" is expected to incur $100 to $600 in direct management costs, a one-hour burden for regulatory familiarization (reading and implementing the rule), a one-hour burden per each affected worker in adjustment costs, and a five-minute burden per week scheduling and monitoring each affected worker.

However, we are concerned that these estimates may not reflect the actual experiences of small entities — as we typically spend a disproportionately higher amount of time and money on compliance because we have less capacity and staff expertise to work through the required changes under the new rule. Unfortunately, we may be forced to adjust by hiring outside consultants to help us comply with these new regulations, which can cost thousands of dollars. In Mineral County, we do not have the extra funding to hire an outside consultant.

The comp time option for compliance is not a complete solution

The final rule offered alternatives to state and local governments to help us comply with the new rule. One alternative that DOL offered was to allow public sector employers, including local governments, to satisfy their overtime obligation by providing comp time rather than cash overtime premiums. State and local government employers may continue to use comp time to satisfy their overtime obligations to employees who have not accrued the maximum number of comp time hours. However, in Mineral County, we have so few full-time employees, comp time is not a real option. In most of our county departments, for example, we have one employee fulfilling certain job duties and responsibilities. If that employee has to use comp time, we may not be able to carry out the public services that are need in order to have a functioning county government.

Additionally, comp time is not budget neutral and offering it to newly overtime eligible employees will have costs associated with it. In fact, for accounting purposes, overtime paid as comp time must be regarded the same as cash. While we appreciate DOL attempting to offer options for state and local governments, ultimately, the comp time option does not seem to provide enough flexibility to be very helpful for small counties confronting significant compliance challenges.

Conclusion

Chairman Chabot, Ranking Member Velázquez and members of the Committee, as we have explained, DOL's new overtime rule will impose considerable burdens on counties, especially small counties. We thank you once again for holding this important hearing and respectfully ask that you continue to consider the interests of America's 3,069 counties in this matter – not only as employers, but as your intergovernmental partners, **providing vital services to more than 300 million residents. Unfortunately, the new overtime rule does not adequately address the wide variations in local labor markets in counties across the country. And ultimately, please remember that the new rule will have broad consequences for taxpayers — and county services.**

NACo and our member counties stand ready to work with you to craft balanced policies that are fair to workers and workable for county governments and their residents.