



May 21, 2019

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: Proposed Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

Dear Ms. Smith:

Thank you for the providing the opportunity to offer comments in response to the Proposed Rule published by the U.S. Department of Labor on March 22, 2019. The North Carolina Center for Nonprofits (the Center) is providing comments on the potential impact of future rulemaking on 501(c)(3) nonprofits in North Carolina.

The North Carolina Center for Nonprofits is a 501(c)(3) public charity that was founded in 1990 to enrich North Carolina's communities and economy through a strong nonprofit sector and nonprofit voice. Today, it serves as an information center on effective practices in nonprofit organizations, a statewide network for nonprofit board and staff members, and an advocate for the nonprofit sector as a whole. The Center has more than 1,400 member nonprofits – all of which are 501(c)(3) organizations – that serve all 100 counties of North Carolina.

The Center has received extensive feedback from nonprofits throughout North Carolina about the Department's recent efforts (beginning in 2015) to update the salary level test for determining exemption from overtime requirements under the Fair Labor Standards Act (FLSA). In 2016, the Center shared information about the Overtime Final Rule and possible compliance options through its e-newsletters, written FAQs, webinars, a series of in-person workshops, and email and phone communications with individual nonprofits from across North Carolina. Through these various communication channels, the Center heard directly from more than 200 North Carolina nonprofits about the impact of the 2016 Overtime Final Rule on their organizations' operations and ways they were considering complying with the Final Rule. Overall, most nonprofit organizations that communicated with the Center expressed:

1. Support for the underlying premise that the existing salary threshold for overtime pay under the Fair Labor Standards Act (FLSA), which was last updated in 2004, is too low; and

2. Concern that complying with the 2016 Overtime Final Rule – particularly in the six-and-a-half month time between the rules publication and effective date – would cause severe stress on their nonprofits’ operations.

Based on the feedback from nonprofits across North Carolina, the Center offers the following suggestions to the Department on the current Proposed Rule that would raise the salary threshold for overtime pay requirements under FLSA:

1. **Increase the salary threshold from the level set in 2004.** In our communications with North Carolina nonprofits about the Departments efforts, the Center has consistently heard that that the existing salary threshold of \$455 is too low and should be updated at least to reflect inflation. The nonprofits that communicated with the Center generally gave two reasons for their conceptual support for raising the salary threshold. First, many nonprofits provide services to working-class families and have seen that long working hours and low wages are a significant root cause of many problems in their communities – problems that their organizations are often working to solve. Raising the salary threshold – and thereby either increasing wages or reducing working hours – would alleviate many of these problems and thereby help their nonprofits better meet their missions. Second, many nonprofit leaders recognize that there is a stigma (or reality) that nonprofits underpay their workers. These nonprofit leaders feel that an increase in the salary threshold for FLSA exemption could be one step in raising pay among nonprofit workers and thereby eliminating this stigma (or reality).
2. **Provide adequate notice of the final change in the salary threshold (and in future increases to the salary threshold).** When the Department published its 2016 Overtime Final Rule, the Center heard from a significant number of North Carolina nonprofits that were concerned about the operational challenges that would be necessary to adjust salaries, working hours, and/or employment policies in the relatively short period of time between the publication of the Overtime Final Rule and its intended implementation date of December 1, 2016. While far fewer North Carolina nonprofits have expressed similar concerns with the current Proposed Rule, it is still important that employers have sufficient time to assess the impact of rule changes, implement compliance options, and pay for any new costs required for compliance.
3. **Seek input from nonprofits and other employers in areas of the country with below-average salaries to ensure that the increased salary threshold is reasonable in these communities.** The handful of nonprofits that have expressed operational concerns about the Proposed Rule are from rural parts of North Carolina. According to estimates from the Center (based on nonprofit wage data collected in collaboration with the N.C. Department of Commerce), the salary threshold from the Proposed Rule is higher than the average wages for nonprofit employees in 24 of the 100 counties of North Carolina. Because the proposed increase in the salary threshold will have a disproportionate operational impact on employers (both nonprofit and for-profit) in rural communities, particularly those in regions of the country with lower-than-average salaries, it is important for the Department to ensure that it is seeking feedback from these employers before developing a final rule.
4. **Treat nonprofits the same as other employers in the final change in the salary threshold and in any future changes to the FLSA exemption salary threshold.** As noted above, it is important to the nonprofit sector that labor regulations do not perpetuate the stigma (or reality) that nonprofits underpay their employees.
5. **Use a single salary threshold for executive, administrative, and professional exemptions.** Using separate salary levels for each duties test could make the process of classifying workers as exempt or non-exempt from FLSA more complicated for many charitable

nonprofits, since many of these organizations employ program and fundraising staff whose job functions do not align perfectly with traditional business roles. Many nonprofit staff have job duties that correspond to each of the three duties tests, so nonprofits must review all three tests in assessing whether they are exempt from FLSA's overtime pay requirements. Having separate salary thresholds for each duties test would further complicate this analysis.

6. Create a mechanism through which nonprofits with government grants and contracts can seek adjustments to cover unanticipated increased costs due to the higher salary threshold. As the National Council and other organizations have noted in their Joint Nonprofit Comments (<https://www.regulations.gov/document?D=WHD-2019-0001-58110>), any changes in the salary threshold present a unique challenge to nonprofits that provide public services through government grants and contracts. It is essential that the federal government create a mechanism to ensure that these nonprofits' grants and contracts are adjusted to take into account any unanticipated increase in labor costs resulting from this rulemaking. The Center fully supports the recommendations in the Joint Nonprofit Comments.
7. **Consider seeking input from nonprofits about possible changes to regulations or Department guidance on the duties tests to provide better clarity about which nonprofit employees meet the criteria for FLSA exemption.** The Center has heard that analysis of the Department's recent efforts to update the salary threshold has caused many nonprofits to review the duties tests for the first time in a number of years. Several nonprofits noted that the Department's regulations and fact sheets do not provide sufficient clarity for whether certain types of nonprofit administrative, fundraising, and program staff satisfy the duties tests. As the Department revisits its regulation of the overtime salary threshold, we encourage further outreach to nonprofits about this lack of clarity in the duties tests and the development of further regulatory or administrative guidance on whether many common nonprofit-specific positions are typically exempt from FLSA's overtime pay requirements.

Thank you for inviting input from the public on this proposed rulemaking. Please feel free to contact me if you have any questions about the Center's response.

Sincerely,



David Heinen
Vice President for Public Policy and Advocacy