



PARTNERSHIP TO PROTECT WORKPLACE OPPORTUNITY

How The DOL's Proposed Overtime Rule Impacts Nonprofits, Students, and Local Governments

Currently under the Fair Labor Standards Act (FLSA), a person must satisfy three criteria to qualify as exempt from the federal overtime pay requirements: first, they must make a salary; second, that salary must be more than \$455/week (\$23,660 annually); and third, their "primary duties" must be consistent with managerial, professional, or administrative positions as defined by the US Department of Labor (DOL).

On June 30, 2015, the Obama Administration released its proposal to more than double the current threshold of \$455 per week (\$23,660 annually) to \$970 per week (or \$50,440) in 2016. The proposed salary threshold is higher than minimums set under *any* state laws and does not take into account significant wage differences across regions. On top of this 113% increase, DOL also plans to automatically increase the threshold every year thereafter using an aggressive and unpredictable methodology. This indexed increase would be published *only* 60 days before it becomes effective each year.

While a modest increase to the salary threshold is due, the magnitude proposed by the DOL is unprecedented and will not achieve the Obama Administration's purported goal of increasing overtime pay for hourly workers. Rather, the regulation will hurt nonprofits, primary and secondary education institutions, state and local governments, and the economy as a whole. In an already stagnant economy, the consequences will be devastating. That is why the Partnership to Protect Workplace Opportunity (PPWO) is working to push the administration to take into account the thousands of public comments it received and to pursue a more measured approach. Below are important points about DOL's proposal and its potential impacts on nonprofits.

Diverts Resources from Those Who Need Help

- **Fewer Public Services:** Nonprofits, schools and municipal governments throughout the country face increased administrative and payroll costs and rigid restrictions on staffing as salaried employees are moved to hourly positions. Each organization's overhead costs will substantially increase, as it has to track and limit employee hours. In the face of already dwindling budgets, this will **decrease or eliminate the number and frequency of services provided to people in need, students, and taxpayers.**
- **Depresses Giving:** Nonprofits receive funding and are evaluated by the percentage of resources spent on administration versus programs, and this could have a **real, negative impact on day-to-day operations costs that funders would rather see go to services, not overhead.**
- **Weakens Classroom Instruction and Increases Tuition:** **Implementing higher salary requirements will significantly impact funds available for education purposes** forcing volunteer school boards to enlarge classroom size and college administrators to increase tuition.

Unintended Consequences Ignore the Unique Position of Nonprofits, Schools, and Municipalities

- **Hurts Morale:** Typical nonprofit employees work for a lower salary because of the charitable work they provide and desire to serve others in need – **some nonprofit CEOs make below the \$50,440 threshold** – and the new rule would cause negative impacts on "white collar" employee morale as many salaries change to hourly and employees face restriction on when, where and how much they may work.
- **Ignores Regional Differences:** Varying wages and cost of living across the US were not appropriately accounted for in the DOL's analysis and **63% of those surveyed by WomanTrend agree a "one-size-fits-all" approach is inappropriate.**
- **Reduces Benefits:** Benefits are not included in the exemption threshold, and if this remains, **nonprofits could be forced to reduce their benefits packages which** they're already struggling to provide in order to fund the additional overtime pay and new costs associated with the rule.

- **Constrains Flexibility:** Many positions impacted by the DOL rule have been exempt for many years with employees enjoying workplace autonomy, opportunities for training, and **workplace flexibility that would be stripped under the proposed rule.**

The DOL received thousands of comments submitted in response to the proposed overtime rule. Included below are excerpts of what nonprofits, primary and secondary education institutions, and state and local governments have to say about the negative implications of this excessive change to the salary threshold.

Impact to Nonprofits

[Habitat for Humanity](#)

“Habitat for Humanity (Habitat) and other charitable organizations will be disproportionately impacted by the proposed rule and unable to comply without reducing access to products and services... it is estimated that 65 percent of Habitat affiliates employing paid staff will be impacted by the proposal... The nearly \$27,000 increase in the minimum salary to qualify for the overtime exemption, for example, represents one-third to one-quarter of the cost of building a typical Habitat home. For a smaller, rural affiliate... it may be impossible to absorb the increased cost... Such an affiliate may have no choice but to cease operations, even if it is the only affordable housing provider in the community it serves.”

[Young Men's Christian Associations of the USA \(YMCA\)](#)

“Currently, more than 12,000 of the approximately 19,000 full-time, exempt Y staff professionals nationwide earn an annual salary that falls between the existing threshold for the EAP exemptions and the proposed threshold. Many of these staff hold important management positions... a YMCA's revenue stream typically reflects the economic conditions of the surrounding community, and as noted above, many Ys are located in low income communities. We have heard from hundreds of YMCAs concerned that the proposed change to the minimum salary level for the EAP exemptions does not properly account for differing local economic conditions... urge DOL to adjust the proposed minimum salary level to better account for low cost-of-living areas in the country.”

[National Council for Behavioral Health](#)

“As a result of this harsh funding environment, provider organizations have limited ability to raise new revenue in response to increased costs of doing business. DOL's proposal to double the overtime pay exemption threshold would place a massive new burden on organizations already struggling to stay in business... We strongly urge DOL to re-examine the proposed new salary threshold, taking into account the unique pressures on health care providers and regional variations in cost of living.”

[Vermont Association of Area Agencies on Aging \(V4A\)](#)

“The threshold of over \$50,440 is not a realistic threshold for social service agencies in Vermont. Even paying a full-time worker \$20 an hour (which is generous for social service agencies here) would mean that the employee is subject to overtime pay... This rule will mean that we will be forced to eliminate any overtime or flexibility in work hours, and that will mean that client needs are not met in many instances.”

[The Salvation Army National Headquarters](#)

“The proposed increase in the minimum salary for ‘exempt’ employees would substantially increase the cost of delivering our services, most of which are provided free of charge... Based on information that has been collected to date, it appears that 50% or more of our employees nationwide who are currently classified as ‘exempt’ would become ‘non-exempt’... The significance of the effect of this change to our organization cannot be over-stated... We anticipate that staff cuts would therefore become necessary and that we would be required to reduce the religious and charitable programming that we provide nationally.”

[National Head Start Association \(NHSA\)](#)

“NHSA is the national voice of the more than a million children in Head Start and Early Head Start programs in the United States... Our concerns on the regulatory change are driven entirely by the potential negative impacts on Head Start and Early Head Start agencies... In addition to the potential direct negative impacts on staff, we remain concerned that the proposed NPRM will negatively impact the quality of services we provide to children and families as well... Without additional funding, these programs may be forced to reduce the working hours of essential staff, causing a reduction in the hours and days of operation of some programs. This development would undermine and diminish the ability for programs to meet the needs of the children and families they are trying to serve as well as pose a significant adverse impact on working parents, their employers, and the nation's broader economy.”

Impact to School Boards and Administrators

[National Association of Independent Schools, National Business Officers Association](#)

“NAIS and NBOA member schools have a number of non-teaching staff who are subject to the salary test of the Fair Labor Standards Act, and the proposed changes could affect the overall cost of student education... In this joint NBOA/NAIS survey of members, schools noted that on average 22 percent of their nonfaculty, currently exempt staff do not meet this threshold dollar amount and would potentially be affected by the proposed rule change. In addition, the new salary threshold is not representative of lower salary levels that exist in independent schools nationwide... Implementing a higher salary requirement for exempt employees will have substantial effects on both schools’ budgets and the services they provide to students.”

Impact to Colleges and Universities

[South Carolina Independent Colleges and Universities](#)

“To comply with the proposed change, colleges and universities would increase salaries for a few, but would need to reclassify the vast majority of impacted employees to hourly status... colleges and universities would be forced to reclassify employees that work in jobs that have always been and are intended to be exempt to the detriment of the employee, the institution and students... hourly pay and nonexempt status is appropriate for certain jobs, it is not appropriate for all jobs... Employers must closely track nonexempt employees’ hours to ensure compliance with overtime pay and other requirements and often limit employees’ work hours to avoid costly overtime pay... nonexempt employees often have less workplace autonomy and fewer opportunities for flexible work arrangements, career training and advancement...”

[Southeast Missouri State University](#)

“The Proposed Rules will impact nearly 31% of faculty and staff at Southeast at an annual added cost of approximately \$2,596,800. In addition, it is anticipated that Southeast will need to hire additional personnel to monitor compliance, which will increase the impact on Southeast to nearly \$2,700,000... What is alarming is that Education Services is the second largest industry that will be potentially affected by the Department’s actions.”

[National Alliance for Public Charter Schools](#)

“There are approximately 6,700 charter schools in the United States serving nearly 3 million students. These charter schools employ more than 100,000 teachers, administrators and support staff, across 43 states and the District of Columbia... Given no vehicle with which to expand their operating budgets, public charter schools around the country inevitably will be forced to reduce their operations staff to offset the increased overtime costs associated with the Department’s proposed changes. This reduction will have a negative cascading effect on public charter schools’ ability to serve the mostly at-risk students who flock to the public charter school sector to receive the quality education provided by the National Alliance’s constituency.”

[Kentucky Community and Technical College System](#)

“...we have estimated we could potentially be subject to additional wages of at least \$2.5 million for a fiscal year, and it could impact approximately 863 of our administrative and staff employees... more than doubling the threshold will significantly impact employers and employees and requires a more thorough analysis for the economic consequences... The wages and cost of living in small towns in Kentucky is astronomically different than San Francisco and New York City and this should be considered... There is also a perception of demotion for employees who have a change in status.”

[St. Leo University \(Florida\)](#)

“...the proposed rulemaking ‘Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees’ will be a tremendous burden to nonprofits like colleges and universities. The proposed changes are not in the best interest of our students... At our best conservative estimate, the changes would cost Saint Leo University \$2.2 million per year-this at a time when the federal government is putting significant pressure on higher education not only to keep tuition costs down, but to decrease them. The only way our university could afford to manage the oversight of the proposed changes and to accommodate the increase in wages and benefits will be to raise our tuition (at best) or to lay off employees (at worst).”

Impact to State, County, and City Governments

[International City/County Management Association](#)

"ICMA surveyed its Governmental Affairs and Policy Committee in August 2015 to obtain feedback on the proposed revisions to the FLSA regulations. A majority responded that the proposed standard salary level of \$47,882 was not reasonable for their community and 75 percent of the respondents indicated they did not support the rule change as proposed... Given fiscal constraints, many local governments cannot afford to provide annual salary adjustments, which is why there are comments opposing an annual adjustment to the salary basis threshold. Automatic adjustments to one group of employees affects the entire organization and could have unintended consequences (reductions in staff, benefits, or services)."

[Riley County \(Kansas\) Board of Commissioners](#)

"...significant immediate change will be the following: every such employee's work-based smart phone usage (and email transmissions) outside a 40-hour work week must be compensated and documented. That means a new record-keeping burden will be placed nationwide upon both employees and employers, including Riley County, Kansas. So this regulatory burden will come at the cost to public and private employers of reduced employee productivity... Local government public employers like Riley County will be forced to annually budget overtime they are not now required to pay. Because their budgets depend upon property tax support, that will place additional costs upon the general public."

[City of Galax \(Virginia\)](#)

"...more than doubling the threshold is unreasonable. It will adversely impact programs that we currently offer and the ability to offer services at the same level by taking away the flexibility of the employees to work the hours needed to run the programs. It will also limit the expansion of new programs to be offered to our citizens."

[Warren County \(Ohio\) Board of Commissioners](#)

"The salary structure of smaller government entities includes numerous positions that would be adversely affected by such a drastic change. A mandate of this size removes the ability of smaller government to analyze the local job market and make related salary decisions relative to their leadership positions. Warren County prides itself on providing employees with an excellent salary and benefits package. In Warren County's organization, there are several leadership positions that meet one of the exemptions but would not meet the proposed salary test."

[Tulsa City-County Health Department \(Oklahoma\)](#)

"The biggest concern will be the work or time limits that would have to be put in place for previously exempt employees, as a cost savings measure to protect limited budgets... Especially for the program coordinator that has to work with other groups, agencies, and coalitions that meet outside of normal working hours. Or for those Epidemiologists who have to investigate a reported sickness after hours or on the weekend. The same can be said for the Sanitarians who have to go inspect food establishments about complaints... Their solution is to try and find a one size fits all approach to not have to update the exemption test rules periodically. This strategy does not work for the various demographic, regional, or economic conditions found throughout the country. Furthermore, government agencies and nonprofits work from budgets with limited resources."

[City of Houston \(Texas\)](#)

"A drastic change such as the one the Department proposes would result in a much higher cost to employers and employees. As the Department has already acknowledged in its proposal, implementing this change will cost employers millions of dollars. In essence, the proposal would force municipal employers to comply with the law and cope with significant management, budget, staffing and operational challenges on inadequate notice and with inadequate funding."