

September 3, 2015



Comments on the Department of Labor's Notice of Proposed Rulemaking to Revise FLSA Regulations

The Michigan Society of Association Executives (MSAE) respectfully submits these comments on the U.S. Department of Labor's July 6, 2015 Notice of Proposed Rulemaking (NPRM) to amend the Fair Labor Standards Act (FLSA) regulations implementing the exemption from minimum wage and overtime pay for administrative, computer, executive, professional and outside sales employees. MSAE represents over 1,500 association members that range from nonprofit trade and professional associations across the state of Michigan.

The Michigan Society of Association Executives (MSAE) has reviewed the proposed overtime rules with our members. We represent 90% of the associations that have a staff of six or more in the state of Michigan. We are extremely concerned about the increase in the overtime threshold and the reduction in worker flexibility this proposed rule creates.

The regulations would raise the salary threshold for workers to qualify for overtime compensation. In fact, the proposed rule amending the Fair Labor Standards Act (FLSA) would more than double the salary threshold under which workers qualify for overtime. That threshold, now \$23,660, would rise to \$50,440, much higher than any state requirement currently in law. This does not **take into account regional compensation differences**. The minimum salary level for exemption should instead be keyed to government data on regional cost-of-living.

The minimum salary level should be set lower or **exclude for nonprofit organizations**. Under the current proposal, too many senior-level employees would be reclassified as overtime-eligible because of their salary level. Many associations and other not-for-profits work with small staff teams, sometimes even one or two person teams.

It is vital to realize that not everything fits everyone, but these proposed regulations would significantly modify the employer/employee relationship in associations. To contain payroll costs from increased overtime obligations, **employers will likely either lay off employees or move them to independent contractors**. Under both scenarios, the remaining exempt employees would bear the brunt of unnecessarily increased workloads. We are already seeing more out-sourcing of work and more independent contractors who are not receiving benefits. Not only are they not receiving health care and disability benefits, but more importantly they are not receiving continuing education to expand their knowledge to advance their careers.

Before enacting these regulations, one must consider how employers will make this work. **We cannot increase expenses without increasing prices and many of us are not in fields where costs can increase significantly**. This would result in a significant change in talent utilization.

MSAE further recommends the Department of Labor considers changes to the duties test. Please add clarity to classification determinations by incorporating new examples of exempt occupations, including examples specifically addressing common job roles in membership organizations. We further recommend you avoid adopting a rigid minimum time percentage test for assessing the "primary duty" of a position.

The current proposal would adversely affect nonprofit organizations and other employers with limited revenues and would harm many affected employees with their career advancement of opportunity for flexibility. Please reject these proposed rules or at the least, exempt not-for-profit organizations.

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