

September 18, 2017



**Comments on the Department of Labor's
Request for Information; Defining and Delimiting the Exemption for Executive, Administrative,
Professional, Outside Sales and Computer Employees**

Docket Number: WHD-2017-0002

Re: Request for Information on Changes to the Overtime Regulations, RIN 1235-AA20

The Michigan Society of Association Executives (MSAE) respectfully submits these comments on the U.S. Department of Labor's July 26, 2017 Notice of a Request for Information; Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales and Computer Employees

MSAE represents over 1,800 association members that range from nonprofit trade and professional associations across the state of Michigan. The total number of people directly employed by Michigan association rose in the past decade to 34,500. Our members manage nonprofit 501(c)(3), 501(c)(4), and 501(c)(6) trade associations, individual membership societies and voluntary organizations headquartered in Michigan.

We were strongly opposed to the 2016 Final Rule's increase of the salary level to \$47,476, with automatic three-year increases. The threshold was too high for our members. MSAE's members are 90% of the associations that have a staff of six or more in the state of Michigan. We were extremely concerned about the resulting reduction in worker flexibility this proposed rule created.

In fact, your question 6 asks how employers handled the change in anticipation of the 2016 Final Rule. I will share with you that many employers refigured compensation using timesheet data. So, if an employee was regularly doing overtime they backed that out of their "regular" compensation. Other employers reclassified jobs to part-time. Some reduced staff so they could compensate those positions they had to have in place. A few took the positions and made them independent contractor situations with all the requirements that go with that such as working to get specific tasks done in unspecified hours and location. As a result, I anticipate you see that this reduced fulltime employment opportunities with benefits.

At MSAE, I was ready to provide overtime compensation for a couple employees but had to share with them that their flexibility of worktime was going to be eliminated. They would have to work set hours that resulted in only 40 hours per week, no more and no less. This flexibility of work hours is a strong benefit that not-for-profits offer in the workforce.

MSAE supports raising the minimum salary level for the EAP exemptions to reflect inflation and increases in the costs of living since the previous update in 2004. We understand that if the compensation adjustment was based on the inflation calculator published by the U.S. Bureau of Labor Statistics this would increase the threshold to \$30,827.85. A salary level of \$30,830.00 is the appropriate level. As a comparison, our 2017 Compensation Report indicates that the mean salary for office managers is \$27,500 in organizations with budget under \$400,000.

In question 7 you inquire about the test for exemption. MSAE recommends that the test be focused on the decision-making responsibility that comes with the position. Does the employee set and adhere to budgets; make decisions for policies and procedures; do they set precedence? Does the employee determine their work hours to achieve the goals? If so, the position is exempt.

In addition, we recommend the Department of Labor conduct a more extensive campaign to provide education to employers on compliance with the rules. 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.

It is imperative that the notice of changes be provided 12 months in advance of the effective date of the increase, in order to allow sufficient time for budgets to be set and fund-raising goals to be adjusted.

It is time for an adjustment, but one that will not reduce flexibility, health life-balance work conditions and full time employment options.

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