



December 2, 2016

Michael Paglialonga
New York State Department of Labor
Building 12, Room 509
State Campus
Albany, NY 12240

Subject: Proposed Rulemaking LAB-42-16-00015-P (Increase in Minimum Salary Level for Exempt Employees)

Dear Secretary Burgess:

The Human Services Council of New York and the 24 organizations represented below write in reference to the proposed increases in the minimum salary level for executive and administrative employees,¹ which will increase the number of workers who are eligible for overtime pay. Collectively, we support the proposed expansion of overtime eligibility as an equitable workforce policy. We are deeply concerned, however, that without additional funding to cover the cost of this expansion, the rule will have a devastating effect on the nonprofit human services sector—a sector that delivers billions of dollars' worth of services on behalf of government every year. Furthermore, given the result of the presidential and congressional elections, we are apprehensive about the future of our sector. Accordingly, we urge the Department of Labor (“DOL”) to:

1. Consider the substantial impact of the rule on nonprofit organizations;
2. Wait until the resolution of the pending federal Fair Labor Standards Act litigation before deciding whether to adopt the rule; and
3. If DOL chooses to adopt the rule, work with the Legislature to secure funding for its implementation.

The federal, state, and local governments rely heavily on nonprofit organizations to deliver essential services to diverse communities, helping individuals and families cope with challenges including cognitive and physical disability, poverty, hunger, homelessness, legal problems, systemic bias, and many others. Their workforce is comprised of caring, dedicated individuals who choose to serve their communities. Frontline workers do difficult jobs and are notoriously underpaid. Too often, many find themselves in the same financial condition as their clients.

The proposed rule would make many more nonprofit workers eligible for overtime pay. This expansion would not only improve the quality of frontline workers—most of whom are people of color and women—but it would also spur economic growth by enabling them to work their way towards financial security. Furthermore, it would improve the quality and continuity of services

¹ <http://labor.ny.gov/legal/laws/pdf/minimum-wage/19-amended-rule.pdf>

by helping organizations retain qualified staff. Accordingly, HSC commends the DOL for recognizing the importance of paying workers fairly for their labor.

Unfortunately, the vast majority of nonprofit organizations have no way of covering the cost of this proposed mandate. Faced with arbitrary limits on indirect costs by both government and philanthropic funders, as well as with stagnant contracts that have not kept pace with inflation, many organizations are already precariously balanced. In New York State, nonprofit human services providers have sustained nearly \$1 billion in funding cuts since the onset of the financial crisis and were denied cost-of-living adjustments (COLAs) in State contracts for five consecutive years. In New York City, providers waited six consecutive years for a COLA. According to the Nonprofit Finance Fund, 75 percent of New York's nonprofits reported an increase in demand in Fiscal Year 2014, and 31 percent ended FY 2014 with an operating deficit.² The sector is struggling, and one more unfunded mandate would send many organizations over the fiscal cliff.

The proposed amendments will have fiscal implications for employers in every sector.³ The nonprofit human services sector is unique, however, because nonprofit budgets are largely determined by the stagnant government contracts mentioned above. This, combined with restrictions on use of funds and increasing regulatory requirements, has left the nonprofit sector financially fragile. It is only fair for the government, as an outsourcer of human services, to ensure that its nonprofit partners are appropriately funded. Furthermore, we have reason to believe that the human services sector will be a prime target for funding cuts and increased regulation under the coming federal administration, further inhibiting its ability to serve communities. The proposed rule would add another constraint to an already fragile sector.

For these reasons, the undersigned urge the DOL to reconsider the impact of the proposed expansion on nonprofit human services organizations as it finalizes its rule.⁴ The human services sector simply cannot bear the cost of expansion without a significant increase in funding. Thank you for your consideration.

Sincerely,



Allison Sesso
Executive Director
Human Services Council of New York



² Nonprofit Finance Fund, *2015 State of the Sector Survey*. <http://survey.nonprofitfinancefund.org/?filter=state:NY>

³ The amendments will have substantial compliance implications as well, particularly if the federal rule is upheld. The interplay between the federal and State rules is unclear at this point, but many organizations have already taken steps to comply with the federal mandate.

⁴ In the event that the exemption thresholds are increased, we support the idea of differentiation based on region and employer size.

