Washington Nonprofits, Washington State’s statewide nonprofit association, has prepared public comments for the Department of Labor and Industry’s request for feedback on proposed updates to the Executive, Administrative, Professional (“EAP”), and Outside Salesperson exemptions from the Minimum Wage Act. The two questions posted by the Department were:

1. What are your thoughts, concerns, etc. regarding the potential content of this rulemaking?

2. What are key questions/data that should be examined, or important considerations that need to be understood and/or addressed?

The answers that appear below are based on Washington Nonprofits’ September 2017 submission to the U.S. Department of Labor for its proposed Fair Labor Standards Act update. Please contact Washington Nonprofits with any follow up questions.

GENERAL FEEDBACK

In general, nonprofit organizations support raising wages for workers because nonprofit employees are skilled professionals who provide critical services in our communities. However, Washington Nonprofits learned from the U.S. Department of Labor’s attempt to expand overtime pay that there are significant concerns among nonprofits about the feasibility of increasing compensation. The concerns are rooted in the reality that many agencies operate with fragile business models; often based on fixed government contracts that are unlikely to cover increased personnel costs resulting from regulatory changes. When personnel costs increase, fundraising alone is insufficient to make up the difference. Complicating matters is that Washington State’s legislature has limited public funds to allocate for nonprofit services. This leaves nonprofit organizations with few options, which include: attempting to renegotiate their government contracts; imposing or raising fees for their services; decreasing staff levels or making other personnel adjustments; or shuttering programs entirely. Unfortunately, these options are unlikely to yield the results needed to provide adequate levels of service to satisfy the increasing demands in communities across Washington State. Therefore, the Department of Labor and Industry must recognize that community-serving nonprofits in Washington State face significant constraints when it comes to raising employee pay without the availability of additional resources.

POLICY AND RESEARCH RECOMMENDATIONS:

1. There are approximately 6,400 nonprofits in Washington State employing 240,200 employees, which totals 7.1% of the state’s workforce. Given the nonprofit sector’s size, we recommend that the Department of Labor and Industry conduct a statewide salary survey in order to have strong data about nonprofit employers and their compensation plans for employees. This will determine how many nonprofit employers are adhering solely to the current state-level minimum wage for white-collar employees, as well as other key data points. Conducting such a survey will help
policy makers, Washington Nonprofits, and other nonprofit associations understand the scope of the issue and make more specific public policy recommendations. Our organization is happy to partner with the Department of Labor and Industry on such an endeavor.

2. Washington Nonprofits recommends that any formula used to update the salary level should be predictable and free from political influence so that nonprofit organizations can properly forecast their personnel costs.

3. In general, nonprofits oppose a separate salary level specific to the nonprofit sector because it would likely be lower than the salary level applied to private sector employers. This would hurt the nonprofit sector’s ability to attract and retain talent as well as devalue the important work performed by nonprofit staff members.

4. If the Department of Labor and Industry decides to create different levels of salary standards based on geography (ex. Seattle metro area, Spokane metro area, etc…) it is important that the standards are predictable and free from political influence so that organizations can properly forecast their personnel costs. Additionally, the Department of Labor and Industry must address how the salary standards would apply to employers who operate in multiple geographic areas.

5. Washington Nonprofits echoes the National Council of Nonprofits’ opposition to setting different standard salary levels for the executive, administrative, and professional exemptions. As the National Council of Nonprofits explains, “charitable nonprofit organizations expect employees to wear many hats and can only comply with the FLSA by applying the highest standards.” Because of this, the same salary standard should be applied to all employees. If the Department of Labor and Industry continues to use a duties test to determine white-collar classification, then the Department of Labor and Industry should provide clear guidance to all employers about the salary standards. There is sufficient anecdotal evidence across the nonprofit sector indicating that agencies have different interpretations of the rules regarding duties and salary levels. It is critical that the Department of Labor and Industry ensure that nonprofit employees and board members easily understand the language regarding salary levels.

6. Nonprofit organizations made rapid adjustments to their financial plans and forecasts in order to be in compliance with the proposed federal Fair Labor Standards Act changes beginning December 1, 2016. The National Council of Nonprofits’ survey of nonprofit organizations found that approximately 30% of organizations planned to reduce staff and service levels in order to comply with the new rules. In practical terms, these adjustments hurt communities because of the unintended disruption to the service delivery system. There is also anecdotal evidence indicating that the new rules created problems within organizations. Many employees saw their positions reclassified; their hourly wage cut in order to cover for necessary overtime; and received caps on the number of hours they could work to complete their daily tasks. This likely created morale problems within organizations and may have led to employee turnover. Therefore, Washington Nonprofits recommends that the implementation of new state-level compensation rules be incremental in order to minimize the shock to nonprofit personnel and staffing plans.

7. Washington Nonprofits recommends that the Department of Labor and Industry and other government departments issue guidance for updating publicly funded service contracts to cover
increased personnel costs. As the National Council of Nonprofits explains, “the federal government already does [so] in protecting for-profit contractors from government-mandated labor cost increases.” Nonprofit organizations, which provide services on behalf of government, deserve the same protections.

8. Washington Nonprofits recommends that the Department of Labor and Industry refrain from using tuition and fee-based institutions as its examples for evaluating the impact of proposed pay rules. In previous communications regarding overtime rules, the U.S. Department of Labor cited case studies from hospitals and universities, which do not reflect the wider nonprofit sector because of those types of institutions’ ability to adjust their pricing. Instead, Washington Nonprofits recommends evaluating changes through case studies using nonprofit organizations contracted for services on behalf of federal, state, and local governments.

9. Washington Nonprofits recommends that the Department of Labor and Industry consult with our organization, the National Council of Nonprofits, and Independent Sector to determine the impact of its proposed regulatory changes on nonprofit organizations.

DATA SOURCES


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Washington Nonprofits is Washington’s state association for nonprofits. Its mission is to make sure nonprofits have what they need to succeed. It helps nonprofits learn, increase their influence, and connect to people and resources. Visit our website at http://www.washingtonnonprofits.org or contact Washington Nonprofits’ Public Policy Director David Streeter at (855) 299-2922 for more information.