NATIONAL COUNCIL OF NONPROFITS

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The Nonprofit Overtime Implementation Conundrum

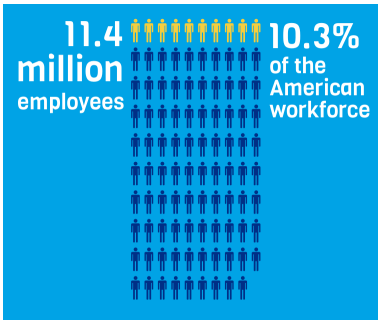
Results of the National Survey of Nonprofits with Government Grants and Contracts Regarding the New DOL Overtime Rules

Background

The Issue

The U.S. Department of Labor recently published its Overtime Final Rule that will require most employers, including nonprofits, to pay overtime to all employees earning less than $47,476 per year, more than double the current threshold of $23,660. The new salary level threshold will trigger overtime pay requirements regardless of whether individual employees are considered salaried (exempt) or hourly (nonexempt). The new overtime rules take effect on December 1, 2016.

As employers of ten percent of the American workforce, the rule will have a significant impact on many nonprofits, their employees, and the people they serve. The nonprofit sector earns almost one third of its combined revenues from government grants and contracts. The confluence of these two issues led the National Council of Nonprofits (Council of Nonprofits) to put a nationwide survey in the field in May 2016.



Source: Research Data on the Nonprofit Sector, U.S. Bureau of Labor Statistics (data for 2012).

The Survey

The survey, targeted to nonprofit organizations with government grants and contracts, sought to identify views on the impact of the overtime rule changes from the Department of Labor.[1] Rather than focusing on opinions about the rule itself, the survey asked for practical insights on the implementation of the new rule. The National Survey was in the field for about two weeks before the Overtime Final Rule was published and almost two weeks afterward. More than one thousand individuals (1,094) from all 50 states responded. Survey participants were generally representative of the nonprofit community at large. Fifty-seven percent of respondents worked at human services providers. Arts organizations made up 10 percent of those responding and education nonprofits represented nine percent. Most of the responding nonprofits would be considered medium-sized in terms of their annual budgets; almost half having budgets of more than $1 million but less than $10

[1] Survey questions also addressed a separate issue related to procurement policies being implemented by the federal Office of Management and Budget.

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million, with a concentration of between $1 million and $3 million. Six percent of the respondents reported they do not have any government grants or contracts at this time.

The survey asked nonprofits with government grants and contracts to identify what impact, if any, they anticipate the new overtime regulations will have on the ability of their organizations to perform under existing government grants and contracts. It asked respondents to identify the actions their organizations are most likely to take to comply with the change in legal obligations. The survey also sought to determine whether the participants' government agreements contain a way to reopen or renegotiate existing government grants and contracts to address such unanticipated changes in the law and whether other alternatives are available to them for adapting to changed circumstances. In addition to the survey responses, more than 300 individuals offered additional insights by submitting comments, many of which are quoted and/or reflected in this report.

Executive Summary

On May 23, 2016, the U.S. Department of Labor published its new overtime regulations that will require most employers, including many nonprofits, to pay overtime to all employees earning less than $47,476. The Overtime Final Rule goes into effect on December 1, which for many nonprofits will be during the performance period of their existing written agreements with governments to deliver certain services. This timing is significant not only for nonprofits with grants or contracts issued by local, state, tribal, or federal governments, but also for members of the public who rely on services those nonprofits provide. Recognizing that the sector as a whole earns almost a third (32.5 percent) of all revenues from government grants and contracts,[2] the National Council of Nonprofits conducted a national survey seeking insights from nonprofits with government grants and contracts about how changes to federal employment law could affect their costs and operations. The survey focused on those organizations because of both the likelihood they will face common challenges in complying with the new regulations while fulfilling service obligations on behalf of governments, and the extensive work of the network of the Council of Nonprofits on the topic of government grants and contracts.

Key Findings

- **Moral Support and Operational Anxiety:** The responses of charitable nonprofits to the Labor Department's Overtime Final Rule range from confidence that the "changes will help all nonprofits in the long run" to viewing the impact as "a disaster for us." Generally, nonprofits have been expressing moral support for the policy of raising the minimum salary level of white collar employees, but experiencing operational anxiety in trying to figure out how to pay the new required additional costs in very tight, or even declining, revenue environments while providing the same level of services.
- **Concern for the Public:** Nonprofit leaders from across the country shared their fears that individuals who depend on services that nonprofits provide on behalf of governments will become unintended collateral damage unless some transitionary solutions are put in place. A third of respondents (34 percent) predict that their organization will reduce staff to adjust to the new costs,

[2] The Nonprofit Sector in Brief, National Center for Charitable Statistics, 2015 (2013 data); Giving USA 2014 (2013); See also National Council of Nonprofits graph.

and a third (33 percent) further expect that their organizations will be forced to reduce the level of services currently provided to the public. This painful reality was not a threat, but honest assessments that if nonprofits could have been paying their employees more, they already would have done so – they simply don't have the revenues.

- **Between a Rock and a Hard Place**: Nonprofits with government grants and contracts expressed concern that they will be put in the position of having to comply with new federal legal requirements imposing new costs that were not known when those grants and contracts were signed. Unlike businesses that can raise prices, or governments that can raise taxes or curtail public services, nonprofits with government grants and contracts find themselves contractually bound to maintain services at now-increased costs that may not be expressly covered by existing written agreements. The view was commonly expressed that immediate, short-term solutions must be found to ensure that nonprofits are not put in the position of complying with irreconcilable realities: fixed reimbursements and service requirements of existing grant/contract terms *and* higher costs of implementing the new Overtime Final Rule.
- **Nonprofits Already Subsidizing Governments:** Many survey participants shared frustration that the new overtime rules are coming at a time when nonprofits already are experiencing increased workloads due to public needs, reduced or no reimbursement for indirect or administrative costs (sometimes called "overhead"), and contractual caps on payment of overtime. Only 13 percent of participants reported that their government grants and contracts pay all of their actual costs for providing services on behalf of governments; nearly three out of five (58 percent) responded that they receive reimbursement of between only 70 percent to 90 percent for their services. The Overtime Final Rule will add costs onto an already highly stressed contracting relationship in which governments routinely fail to pay nonprofits the full costs for delivering services provided on behalf of the governments.
- **Confusion about Current Law**: Respondents' comments also revealed a broader need for training to help nonprofit organizations understand their obligations under the federal Fair Labor Standards Act ("FLSA"). For instance, survey participants indicated that many nonprofits believe they are complying fully with their wage and hour obligations by offering their employees "flex time," compensatory time ("comp time"), and other schedule and pay adjustments that may not be appropriate or available to them under federal law. While nonprofits feel the urgency to comply with the new overtime component of the FLSA, the timing is good to expand training opportunities to promote better understanding of all of the law's requirements.

Solutions

- **Grant/Contract Reopener Urgently Needed**: Survey respondents consistently stressed that something has to give on the contractual impasse between reimbursement rates that fail to keep up with the new cost requirements while maintaining existing performance obligations and restraints on reimbursements. The comments made it clear that adjustments must be made: "Without increased government funding to cover the full costs of service, we have no choice but to cut services to our clients." Nonprofits need ways to reopen or renegotiate existing government grants and contracts either to receive reimbursement rates that incorporate the increased costs or that adjust performance obligations. Since the new costs are the result of changes to federal law, it is appropriate for the federal government to give direction to government program officers at the

federal, state, tribal, and local levels on how to revise existing grants and contracts to ensure that nonprofits are treated fairly by being made whole or put in no worse position.

- **Short-term Transition Support:** In addition to solutions to address government grants and contracts, survey comments revealed that nonprofits will need additional resources to maintain operations and service levels during the interim phase of implementation (the first couple of years) to give nonprofits time to renegotiate government grants and contracts when renewed. Likewise, nonprofits need additional resources to come into compliance with all aspects of the fair labor standards law. Individual and institutional donors can enhance compliance with existing and new wage and hour requirements by offering emergency funds that will enable their grantees to conduct compliance audits, develop updated job descriptions, implement time-management systems, and make other upgrades to human resources systems.

Findings

Finding #1: Moral Support, Mixed with Operational Anxiety

Since the moment that the federal Department of Labor released the draft overtime regulations in July 2015, nonprofit leaders have expressed their "moral support," mixed with "operational anxiety." Individual views expressed in the National Survey ranged from confidence that the "changes will help all nonprofits in the long run" to seeing the impact as "a disaster for us." One survey respondent captured the overriding sentiments: "We wish to be fair and pay just wages, but also need to pay the light bill as govt. funding recedes and service demand increases."

The moral support appears to be grounded on two firm foundations. First, the missions of many nonprofits involve helping individuals and families in need. These nonprofits recognize that when the individuals they serve are paid more, it can alleviate their need for services. Second, nonprofit leaders recognize how hard many of their employees work and the need to retain quality staff, so they want to offer reasonable compensation.

Yet notwithstanding their strong moral support for increasing incomes, nonprofit leaders have understandable operational anxiety. Already stretched beyond capacity financially, they realize that finding additional resources to pay higher salary costs could prove to be beyond reach. This reality has been reflected in recent studies documenting the widespread financial strains on nonprofits from the

East Coast[3] to the West Coast[4] and everywhere in between.[5] Besides worrying about how to raise additional resources to be able to maintain the same level of services at the higher costs, nonprofit survey participants with government grants and contracts expressed concerns about how little time they would have to transition. Plus, nonprofit leaders articulated this ever-present concern for continuing their missions: how nonprofits can transition to the higher costs without disrupting services to children, elderly residents, and other individuals who will continue to have needs, regardless whether of nonprofits can pay employees more to deliver those services.

Insights from the Front Lines: *In their own words*

Numerous respondents explained in the survey's comments sections the conflicting views – the mixed emotions they were experiencing – as they contemplated what the Overtime Final Rule will do for their mission objectives. The following comments, and subsequent "Insights from the Front Lines" quotes in this report, are only a sampling of comments provided by more than 300 survey participants. Every effort has been made to share a representative sample of the views expressed by individuals.

- I think that this change will support workers around the country…. I think this would improve work-life balance and reward hard workers who truly believe in the mission.
- As an organization we are taking proactive steps to ensure that our employees are compensated for the important work that they do - serving our community. While we believe that the proposed salary increase is TOO large for many nonprofits to make in one step, we do believe that employees should be fairly compensated.
- Although the burden of nonprofits is different from for-profit entities, we still have an obligation to our employees to treat them well.
- Many of the services to the children we provide for are unscheduled and/or emergency services. It will be very difficult to anticipate and plan for overtime costs and also difficult to control as the individuals providing the services, not the managers, often determine whether the service is necessary.
- We have such a tight budget, that if we pay overtime in the beginning of the year, we may not be able to cover staff regular paychecks at the end. We will definitely have to cut back on services to ensure that no staff works more than 40 hours a week.

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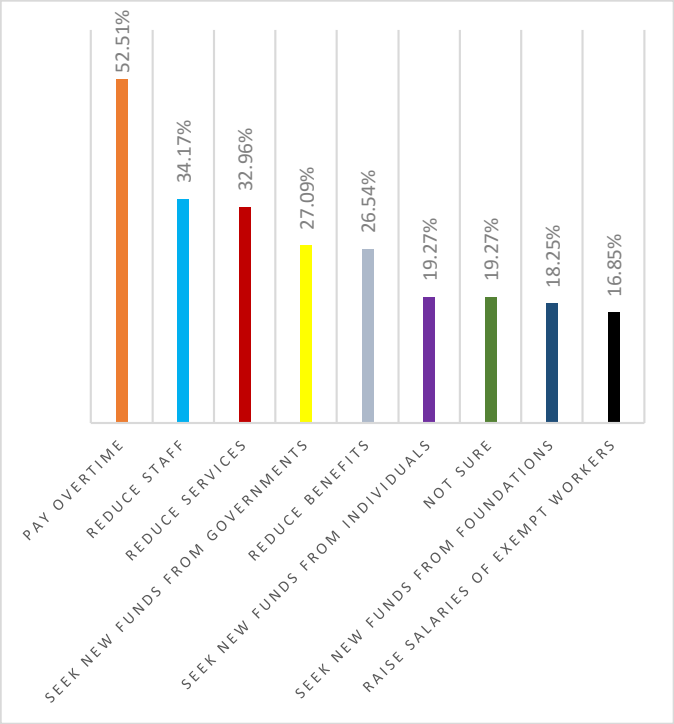
[3] See *New York Nonprofits in the Aftermath of FEGS* (March 2016; Commission to Examine Nonprofit Human Services Organization Closures) ("Underfunded government payment rates are the primary driver of financial distress. Government contracts dominate provider budgets but pay only about 80 cents or less of each dollar of true program delivery costs, leaving budget holes that private funders cannot, or should not, fill."); *Risk Management for Nonprofits* (March 2016; Oliver Wyman and SeaChange Capital Partners) ("New York City nonprofits are fragile: 10% are insolvent (18% in health and human services); as many as 40% have virtually no cash reserves…. Most nonprofit funding, especially in health and human services, comes in the form of government contracts or restricted grants that virtually guarantee a deficit…. Nonprofits provide face-to-face, labor-intensive services that do not get more productive from technology. The real cost of these services has risen substantially over time and is likely to do so in the future.").

[4] *The Generosity Gap: Donating Less in Post-Recession Los Angeles County* (May 2016; UCLA Luskin School of Public Affairs) (the nonprofit sector "is carrying a heavier load than it was ever intended to support" as "needs are surging, particularly for families in poverty, youth, the elderly, and homeless persons" and "there's a deep and widening gulf between the incredible needs of our community and the actions of donors").

[5] 2015 State of the Sector Survey, Nonprofit Finance Fund, reporting that only 41 percent of nonprofit human service providers were able to meet demand and that nationally, 53 percent of nonprofits had three months or less of cash on hand.

Finding #2: Concern for the Public

Survey participants were asked to identify the three (from a list of nine) most likely strategies or operational adjustments their organizations will take to deal with the increase in salary level test for white collar employees. While more than half (53 percent) anticipate that their organization will pay overtime to affected employees, one out of three respondents (34 percent) predicted that their organization will be forced to reduce staff to adjust to the new costs.



Surprisingly, a third of respondents (33 percent) expect that their organization will likely have to reduce the level of services currently provided to the public. This finding is startling because it is well documented that nonprofits tend to cut services as a last resort. The Urban Institute found in nationwide research in 2013, as in 2010, that "Nonprofits were most likely to cut their own capacity and less likely to reduce the number of people they served, cut services to clients, or reduce their hours of operation."[6]

Insights from the Front Lines: *In their own words*

Reduction in Services/Negative Impact on Community

- Our only recourse is to reduce services provided by exempt employees and pay overtime in the very limited instances of extra hours. Any increased costs will have to be offset by reduced resources and services to our clients.
- The new rules increasing the salary of exempt employees will decrease the amount of services we are able to provide to victims of domestic violence and sexual assault.
- The choices in how we respond to the changes do not tell the whole story…. The result will unquestionably be loss [of] staff and services.
- Unlike for profit companies, NPs cannot raise prices to offset expenses. These new regulations will force us to cut staff or reduce benefits which will hurt our ability to do our work in the community.
- Because our revenue streams for these services are capped, we are planning to shut down these services when we can no longer sustain them. Unfortunately for our clients and our employees, this will leave both groups to do without.

[6] Sarah J. Pettijohn and Elizabeth T. Boris, with Carol J. De Vita and Saunji D. Fyffe, Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey (Urban Institute Center on Nonprofits and Philanthropy; Dec. 2013) (actions reported taken due to budget constraints: only 13 percent reduced number of people served); Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants (Urban Institute; 2010) (actions reported taken due to budget constraints: only 17 percent reduced number of people served). See also Towards Common Sense Contracting: What Taxpayers Deserve (National Council of Nonprofits; May 2014).

Fear of Unintended Collateral Damage

- The wage and hour changes will have a negative affect and discourage staff from completing crisis intervention services; we cannot plan for crisis situations.
- While I'm very supportive of paying overtime to salaried employees that earn less than $50k, this rule may be an undue burden on small nonprofits with budgets between $500k and $1 million. It may result in reduced services, or cutting a full-time position to part-time.
- This [issue] is not a one size fits all. How can a small, rural state NPO be expected to meet the same requirements as one located in NYC? It's a completely different cost of living. And how can NPOs be expected to meet these requirements and still provide services?
- All our Government contracts have fixed budgets; we will have to cut services in order to keep staff below a 40 hour work week. Our staff is currently underpaid for the work they do. It would be great to be able to pay the more than $50,000 per year but our funding will not cover this. I fear this will force us to discontinue services or even close the nonprofit organization.

Finding #3: Between a Rock and a Hard Place

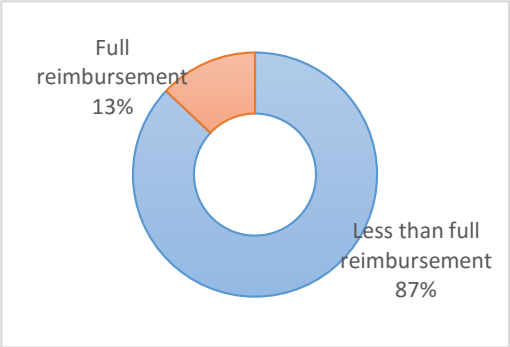
Nonprofits with government grants and contracts expressed concern that they will be put in the position of having to comply with new federal legal requirements imposing new costs that were not known when those grants and contracts were signed. The Labor Department acknowledged as much in its materials explaining the change in employment rules when it stated that there will be a challenge for nonprofits "for which some or a significant amount of funding comes from government or private grants of set amounts." Unlike businesses that can raise prices, or governments that can raise taxes or curtail public services, nonprofits with government grants and contracts find themselves contractually bound to maintain services at now increased costs that may not be expressly covered by existing written agreements. The view was commonly expressed that immediate, short-term solutions must be found to ensure that nonprofits are not put in the position of complying with irreconcilable realities: fixed costs and service requirements of existing grant/contract terms *and* higher costs of implementing the new Overtime Final Rule.

Insights from the Front Lines: *In their own words*

- The majority of our grants are set for 3 years at a time and will not allow for raises to cover these extra costs. Since we operate the only domestic violence shelter program in the area, lives are at stake when we have to cut back on services. Also, cutting back on services means that we may not be able to meet all the goals of the grants that we agreed to before this change.
- [Our nonprofit] cannot afford to pay the overtime, and the federal and state government will not adjust our contracts to accommodate the DOL's mandate. The DOL has put us in a difficult position and possibly compromised the quality of services families will receive in the future.
- Our shelter is required to operate by government contract 24 hours per day/7 days per week. We are also required to provide hotline services, and hospital accompaniment via the same contracts. We have no wiggle room in our budget for additional costs, therefore we cannot raise salaries and we cannot meet the 24 hour per day contracted requirement without management answering phones after hours. This change in overtime law has left us with no choices. The ED would be the only staff member to be on call 24 hours per day/7 days per week. This is just simply not realistic.

- The new overtime law will have a huge effect on how we do business. At our current contracted amounts we would have to put into place a way to monitor these employees and make sure they are not working overtime as the budget would not be able to support that. It also would not be possible for us to raise their salary so they could remain exempt employees.
- 8 years of budget cuts in [our state] have forced us to hold salaries nearly flat while health care and other costs have steadily risen. In addition, we are not permitted to reduce service volume. The toughest example is our Enhanced Care Clinics, which must ensure no waiting list for outpatient mental health services in order to receive the 25% Medicaid rate boost (which STILL doesn't meet our costs of service delivery).

Finding #4: Nonprofits Are Already Subsidizing Governments



The national survey sought to determine the current level of reimbursement by governments by asking: "How much of the actual cost to provide a service do these government funds typically cover?" In essence, the question asked how much participants with government grants and contracts currently subsidize governments by providing services for which they are not fully compensated. Participants were instructed to include both direct program costs and administrative/overhead and indirect costs to determine the actual cost of a service. Only 13 percent of respondents to the question reported that their government grants and contracts pay all of their actual costs for providing services on behalf of governments. Well over half (56 percent) responded that they receive reimbursement of between only 70 percent and 90 percent of the actual costs of the services they provide on behalf of governments. Those who answered "other" to the question explained that their reimbursement rates vary and could be as low as 10 percent to 20 percent.

These data points are generally consistent with the more intensive research conducted by the Urban Institute. In 2010, nationwide research focused on nonprofit human service providers revealed that more than two-thirds of those nonprofits (68 percent) reported a problem with governments not paying the full cost of contracted services.[7] In 2013, the Urban Institute's nationwide research of almost all types of nonprofits revealed that more than half (54 percent) of nonprofits reported problems with governments not paying the full cost of contracted services.[8]

Insights from the Front Lines: *In their own words*

- We would love to pay our employees. We can only fundraise so much and when you are subsidizing governmental reimbursement rates at 50% on the dollar and constantly dealing

[7] Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants (Urban Institute; 2010). Human services nonprofits in Rhode Island reported the worst condition of problems with governments not paying the full cost of contracted services (84 percent), followed by Maine (82 percent) and Illinois (81 percent).

[8] National Study of Nonprofit-Government Contracts and Grants 2013: State Profiles (Urban Institute; 2013). Conditions vary between states. In New Jersey, for instance, 75 percent of nonprofits reported problems with governments not covering the full cost of contracted services.

with ever increasing unfunded mandates, it is impossible. Keeping the doors open and lights on is becoming an ever increasing challenge.

- We receive federal, state, and local grants. None of the contracts allows for a renegotiated rate – it is a flat amount. There is no funding for overtime.
- We are implementing these regulations in a state where there has been no [cost-of-living adjustment] for government contracts for almost a decade. The amounts of most of the government grants we receive is set and we provide a unit cost based on that number. The demand for one of our services has increased 40% in the first quarter of this year, requiring some level of overtime and we cannot, by law, reduce the level of service. We have not had an increase to our service rates for eight years and actually sustained an overall 2% decrease in that time. With no potential for increasing revenue we cannot afford to increase our expenses. Compliance with the proposed regulations will put our organization out of business in less than three years.
- When you have not received any increase in government contracts in over 10 years the only way to address that is through staff and service reductions.
- As our [reimbursement] rates have not kept up with inflation over the past 20 years, we are already challenged to provide quality services while breaking even financially. The OT rule without any additional funding will eventually cause us to go out of business.

Finding #5: Confusion about Current FLSA Requirements

Although not a direct subject of the survey questions, comments offered by many participants reveal that the legal obligations of the Fair Labor Standards Act are not fully understood. For instance, numerous commenters made reference to the presumed availability of "flex time," or compensatory time ("comp time"), as an alternative to paying overtime. "My employees love earning comp time to use as they wish," one survey respondent commented, further suggesting that "this was a perk to working for a nonprofit." Another wrote, "Development staff put on events that are time intensive for several weeks and then take comp time to rest afterwards." From the context of these and other comments, it appears that paid time off is provided in lieu of overtime pay. It cannot be determined whether straight time or time and a half is offered in the organizations' "comp time" policies. While available to some employees of state and local governments, nonprofits and other private employers may not utilize "comp time." Indeed, the Labor Department lists granting compensatory time off in lieu of overtime as a "typical problem" that it encounters. The survey results indicate that greater understanding of the Fair Labor Standards Act is needed in order to promote compliance and avoid litigation and other costs.

Solutions

Solution #1: Nationwide, a Government-Nonprofit Grant/Contract Reopener Is Urgently Needed

The national survey responses from nonprofits with government grants and contracts reveal considerable concern about how such organizations will be able to adjust to increased costs in the fixed-reimbursement environment. More than two out of three respondents (69 percent) answering the question reported that there is ***not*** a provision in their existing grants and contracts to reopen or renegotiate the written agreements "to secure higher reimbursement rates from governments to pay for these increased costs…." Twenty-eight percent responded that they were not sure if they had a grant or contract clause that would allow them to seek adjustment of existing agreements. ***Only 33***

out of nearly 1100 respondents (3 percent) to the national survey indicated that her or his organization did have such a clause in government grants or contracts.

Survey respondents consistently stressed that something has to give on the contractual impasse between reimbursement rates that don't align the new cost realities with the existing performance obligations. One respondent observed, "Without increased government funding to cover the full costs of service, we have no choice but to cut services to our clients." That sentiment was echoed by many other survey participants.

Insights from the Front Lines: *In their own words*

- I don't necessarily object to a change in threshold, but … I think there needs to be a requirement that government contracts pay for the additional expenses.
- With all of our government funding, we're given a set amount at the beginning of the year. To make the new law work, we'll need to cut services. The funding climate has been so tough for our nonprofit that raising the funds will be difficult.
- Federal/state/local grants and contracts need to be adjusted in 2017 to reflect the actual organizational cost to grantees of the new FLSA threshold, and they also need to be adjusted every three years as the FLSA threshold adjusts. If this does not happen and if as a result grantees must reduce staff/services, then required outcomes must be adjusted to reflect the reduction in services. It's also important for government contractors to be cognizant of the costs associated with wages in those US cities that have, or will be, implementing a significant increase in the minimum wage, and to adjust their funding accordingly.
- If the feds and the state want me to be able to pay people more, they are going to have to do a heck of a lot better with reimbursement. If I can't afford to raise salaries, how is it rational that I can afford to pay overtime?

It is reasonable to ask how a nonprofit is going to maintain the same level of services to the public pursuant to government grants and contracts when its costs are likely to go up when it implements the Overtime Final Rule but its reimbursement rate is not increased. The Labor Department, in its materials explaining the change in employment rules for nonprofits, acknowledged the challenge for nonprofit "organizations for which some or a significant amount of funding comes from government or private grants of set amounts." The Labor Department has offered assurances that future grants and contracts from that federal agency will adjust reimbursement rates to recognize the new overtime requirements. It has also been announced that National Research Service Award grants from the National Institutes of Health reportedly will pay above the new salary threshold for college and university research activities. Other federal departments and agencies may announce relief for future grants and contracts, but so far no clear path has emerged to identify tools or procedures to follow, and relief will still be needed for work performed pursuant to non-federal government grants and contracts.

Nonprofits need ways to reopen or renegotiate existing government grants and contracts either to receive reimbursement rates that incorporate the increased costs or that adjust performance obligations. Since the new costs are the result of changes to federal law, it is appropriate for the federal government to give direction to government program officers at the federal, state, tribal, and local levels on how to revise existing grants and contracts to ensure that nonprofits are treated fairly by being made whole or put in no worse position.

Solution #2: Short-term Transition Support

Nonprofits participating in the survey expressed frustration that private funding is also a concern. Comments by survey participants made clear that nonprofits will need additional resources to maintain services and implement changes. One commenter expressed support for the salary increase, but observed that "the funders will be very slow to add new money" and opined that the "short-term result is that we may reduce benefits or salaries agency-wide to cover this unfunded increase in expense." Another noted, "Funders might not be willing to increase contracts, thus compromising current quality services provided to community." Yet another shared this fear: "I am unsure that individual donors are going to support salaries for services that they perceive to be the responsibility of the government."

It is clear from the survey comments that nonprofits will need additional resources to maintain operations and service levels during the interim phase of implementation (the first couple of years) to give nonprofits time to renegotiate government grants and contracts when renewed. Likewise, nonprofits need additional resources to come into compliance with the law. Individual and institutional donors can enhance compliance with existing and new wage and hour requirements by offering emergency funds that will enable their grantees to conduct compliance audits, develop updated job descriptions, implement time-management systems, and make other upgrades to human resources systems.

Conclusion

The results of the national survey reveal that for nonprofits with government grants and contracts, the issue of compliance is not one of civil disobedience, such that they don't want to comply. Rather, it is a matter of simple math: they won't have the dollars to implement the new rule and deliver the same level of services to the public unless the governments for which they are delivering those services adjust their existing grants and contracts. When federal law changes in the middle of a contract, fundamental fairness dictates that government-nonprofit grants and contracts should be adjusted immediately to accommodate that mandated change, To address both priorities – implementation of laws imposing higher employment standards and compliance with terms of written agreements with governments – a clear pathway must be identified for moving out of the rock-and-a-hard-place dilemma that the Overtime Final Rule creates. Governments at all levels, as well as private funders, are encouraged to join with nonprofits in finding effective solutions that maintain, and even improve, program delivery and compliance with employment laws.

The National Council of Nonprofits (Council of Nonprofits) is a trusted resource and advocate for America's charitable nonprofits. Through our powerful network of State Associations and 25,000-plus members – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve. Learn more and sign up to receive updates on this and other issues affecting nonprofits at www.councilofnonprofits.org

Resources Regarding the New DOL Overtime Rule

From the U.S. Department of Labor

- Overtime Final Rule and the Non-Profit Sector
- Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act
- June 7, 2016 webinar for nonprofits hosted by the DOL
  - Recording
  - Questions and Answers on the new overtime rule
- What activities constitute "hours worked"?
- FLSA Overtime Calculator Advisor
- Fair Labor Standards Act (FLSA) Advisor (en Español)
- FLSA Coverage & Employment Status Advisor (en Español)

From the National Council of Nonprofits

- Overtime Regulations and the Impact on Nonprofits
- Known, Unknowns, and Options for Nonprofits on the Overtime Final Rule (May 19, 2016)
- Breaking down your nonprofit's obligation to pay overtime under the new federal rules (June 22, 2016)
- Classifying Employees Correctly

From Other Sources

- What Every Nonprofit Should Know about the New Federal Rules Likely to Cause a Significant Increase in Your Non-Exempt Workforce and Overtime Pay (Venable)
- U.S. Department of Labor More Than Doubles Minimum Salary Levels for FLSA Overtime Exemptions (Pillsbury)
- The US Department of Labor's Revised White Collar Regulations:
  - Part I: Overview of the DOL's Final Rule and Its Impact on Nonprofits (Jackson Lewis P.C.)
  - Part II: Considerations and Strategies for Nonprofit Compliance (Pro Bono Partnership)
- Update for Schools on new final overtime rule (Schulte Roth& Zabel, LLP)