



Division of Regulations, Legislation, and Interpretation
Wage and Hour Division, U.S. Department of Labor
200 Constitution Avenue NW, Room S-3502
Washington, DC 20210

November 3, 2023

RE: PCCYFS Comments to Regulatory Information Number (RIN) 1235-AA39, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*

The Pennsylvania Council of Children, Youth & Family Services (PCCYFS) appreciates the opportunity to comment on the U.S. Department of Labor Wage and Hour Division (Department) proposed rule: *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*.

PCCYFS is the collective voice for private agencies that serve Pennsylvania's most vulnerable children and their families. PCCYFS represents nearly 100 private agencies employing more than 12,000 professionals statewide. These services include foster care/kinship care, adoption, residential treatment, behavioral health services, education, counseling, independent living/transitional living services and others.

PCCYFS wholeheartedly supports the intent of the Department's proposed rule and appreciates the need for greater employee protection. However, for a non-profit or other organization that relies heavily or exclusively on government funding, such an immediate adjustment is inaccessible. On behalf of its members, PCCYFS proposes that, when implementing this proposed rule, the Department:

1. Ensure that adequate funding is appropriated to account for non-profit organizations and other agencies that rely largely on government funding to operate their programming, especially child welfare, juvenile justice, and children's behavioral health organizations, and
2. Propose a temporary differential salary threshold for non-profit employees and other agencies that rely largely on government funding to operate their programming while also reviewing the needed financial investment across all programming to bring agencies to equal levels by the next third year adjustment.

While our members work hard to compete with the private sector, they rely almost exclusively on government and quasi-public agencies that are held to strict budgets funded by taxpayer

dollars. The current proposed rule is in contrast with the history of the Department's more gradual adjustments to the salary threshold for exempt employees, which more appropriately acknowledged and accounted for pay and funding differences across sectors.

Given the nature of the work, many employees in human services regularly respond to crisis situations in response to the needs of the children and families they serve, which may require non-traditional schedules. PCCYFS surveyed its members in 2015 in response to the Department's last initiative to raise the salary threshold to 40 percent of the salaried workforce, which showed:

- Approximately 45% of member employees are currently designated as exempt and 63% of this category of worker would be reclassified as non-exempt under the proposed salary level for exempt employees – a rate that is likely much higher today.
- Agencies indicated that the financial impact of either paying overtime or raising salaries to the proposed level for these employees would equate to an additional \$100,000 to \$6.5 million depending on the size of the agency – a gap that additional fundraising would not be able to meaningfully address.
 - The gap also does not account for increased costs for tracking time, adjustments for pay equity/salary compression, social security, retirement, unemployment compensation, and other resulting expenses.

Human service organizations that are funded through government contracts (a mix of federal, state, and local funding) for legally mandated services, are not paid rates that cover the true costs of providing the service and the rates do not allow them to compensate currently classified exempt employees at the salary level referenced in the rule. As a result, many agencies have reported that they will have to review options such as eliminating positions, reducing services, eliminating administrative responsibilities, downsizing or eliminating programming, or scaling back on plans to grow programs.

Through the COVID-19 Pandemic, the Great Resignation, and significant inflation increases, employers have had to evaluate all aspects of employee relations, including pay rates in order to remain competitive. This has already left non-profit and other government-funded organizations at a significant disadvantage. Simultaneously, organizations are making every effort to limit employee hours to support a worker's ability to retain quality work-life balance.

While well-meaning, PCCYFS also requests that the Department exercise caution in considering an outright exception for the nonprofit sector. The fields of child welfare, juvenile justice, and children's behavioral health are facing unprecedented levels of turnover and vacancies. Any exceptions to this rule will only limit a nonprofit organizations' ability to remain competitive with others in the private sector. Nonprofit work should not mean employees must accept historically lower wages.

Again, in light of these concerns, we ask that the Department:

1. Ensure that adequate funding is appropriated to account for non-profit organizations and other agencies that rely largely on government funding to operate their programming, especially child welfare, juvenile justice, and children's behavioral health organizations, and
2. Propose a temporary differential salary threshold for non-profit employees and other agencies that rely largely on government funding to operate their programming while also reviewing the needed financial investment across all programming to bring agencies to equal levels by the next third year adjustment.

Thank you for the opportunity to submit comment and considering these concerns.