



September 4, 2015

Mary Ziegler
Director, Division of Regulations, Legislation, and Interpretation
U.S. Department of Labor, Wage and Hour Division
200 Constitution Avenue N.W., Room S-3502
Washington, D.C. 20210

Re: RIN 1235-AA11
Comments on the DOL's Proposed Revisions to 29 CFR Part 541

Dear Ms. Ziegler:

The Boy Scouts of America is one of the nation's largest and most prominent values-based youth development organizations. For more than 100 years, the BSA has helped build the future leaders of this country by combining educational activities and lifelong values with fun. The Boy Scouts of America believes — and, through over a century of experience, knows — that helping youth is a key to building a more conscientious, responsible, and productive society.

I. Executive Summary – The BSA and Our Local Councils

As a nonprofit corporation, the BSA primarily relies upon membership fees, corporate sponsorships, foundation grants, private bequests, and the sale of Scouting supplies to fund our operations and to deliver a program for young people that builds character, trains them in the responsibilities of participating citizenship, and develops personal fitness.

The BSA is the chartering organization for 278 local Boy Scout councils, each of which is its own nonprofit corporation with its own volunteer board of directors. The local councils are the lifeblood of our organization, but they also are leanly staffed, with only approximately 5700 total employees,¹ both exempt and non-exempt. Our council employees direct and lead marketing, recruiting, retention and fundraising programs; develop and conduct training for our adult volunteers and youth members; oversee and operate council camps and other properties; and

¹ This is an average of between 20 and 21 employees per council.





create and lead initiatives that bring Scouting to underserved populations. They also develop, test and implement refinements to our program in response to changing societal needs, such as through our pilot projects in the areas of Science, Technology, Engineering and Mathematics (STEM). The local council employees provide leadership, guidance and support to our 960,000 adult volunteers, who deliver the Scouting program to our 2.4 million youth members.

On behalf of our local councils, the BSA respectfully requests that the U.S. Department of Labor (DOL) reconsider its proposed revisions to 29 CFR Part 541 and take steps to accommodate the unique circumstances and special needs of nonprofit corporations. In particular, the chief executives of our local councils have already informed us that they will be unable to absorb the DOL's proposed massive increase in the minimum salary requirement for the Executive, Administrative and Professional (EAP) exemptions. Furthermore, because of the manner in which our local councils are funded, additional annual increases to the minimum salary requirements as proposed by the DOL will pose another huge problem.

Accordingly, we specifically request that the DOL consider all of the following: (1) establishing a reasonable and reachable minimum salary threshold for the EAP exemptions for individuals employed by nonprofits;² (2) establishing a set dollar amount as the threshold for nonprofits, as opposed to basing the salary on a percentile of the total salaried workforce; (3) setting a later date for the new salary threshold to be effective for individuals employed by nonprofits; and (4) keeping the salary threshold fixed for nonprofits, as opposed to annually increasing it based on some form of indexing. To the extent that the DOL decides that it must provide for future increases in the final regulations, we ask that the DOL take the following steps with respect to nonprofits: (1) have the increases be effective every two or three years, as opposed to on an annual basis; (2) provide at least a full 12-months' notice of any future increase; (3) when providing notice of a future increase, identify a set dollar amount for the new minimum; and (4) limit the increase to no more than 1.5 percent per year, regardless of whatever indexing method is used for for-profits.

II. Local Council Funding and Operations

Local councils primarily are funded through a combination of Friends of Scouting donations, special events, foundation grants, private bequests, local United

² Our recommendation, as discussed later in these comments, is that the minimum salary level for nonprofits be set at \$580 per week, which annualizes to \$30,160.





Way support, summer camp and camporee activity fees, endowments and investment income. In addition to covering the costs of pay and benefits for employees, our councils use this money to operate and maintain camps and other properties, to pay for insurance, to provide training, to cover the costs of supplies, and for other operational and administrative costs.

As is noted above, our local councils operate leanly, and our funding sources are limited. Unlike a for-profit corporation, we do not have the ability to raise greater revenue by increasing prices, nor do we have a profit margin from which we can draw to pay for immediate increases in salaries. Furthermore, our local councils provide camperships, registration assistance and other forms of financial support to families who would not otherwise be able to participate in Scouting. Many of the local BSA councils are located in geographic areas that will not support annual salaries at or above \$50,000, and many of our currently exempt employees are paid salaries in the \$30,000 to \$35,000 range.

Local councils are encouraged to establish budgets far in advance. Thus, our councils have largely completed their budgets for 2016. Budgets are based on current pay scales, and our local councils cannot budget effectively for 2016 when (1) we do not actually know what the dollar amount requirements will be in the final rules; and (2) we do not actually know when the final rules will go into effect.

If the new minimum threshold is at or near the \$50,000 level and is implemented in the 2016 calendar year, the consequences will be devastating. Although some local council employees work only during normal business hours, the exempt employees often do not. Many Scouting-related activities and meetings must occur in the evenings or on weekends to accommodate the schedules of our volunteers and our members. As the professional faces and spokespeople for the councils, the exempt employees often are expected to and need to attend those meetings and activities, and they have the freedom and ability to adjust their schedules accordingly. At the same time, they also must be available to respond to calls, emails and other requests from co-workers and from our volunteer leaders during normal business hours. As such, their work hours can fluctuate from day to day and week to week. This is true not only for our local council employees, but also for other organizations that serve America's youth.

Attempting to raise funds to pay for large salary increases will be extremely difficult, and obtaining such funding will not happen overnight. Corporate and private donors often are more willing to make large contributions to capital campaigns or for a specific program with a naming opportunity or sponsorship





recognition than they are to provide funds for general operating expenses, such as employee salaries. Indeed, nonprofits commonly are graded based on their ability to deliver a quality program with minimal overhead and administrative costs. Foundations often provide grants that run for two or three years, which means that the funding for positions created through those grants already is set.

Finally, funding sources are unlikely to increase their contributions based on projected salary increases pursuant to a proposed rule; it will only be after a final rule is published and a definite date for implementation is set that donors are likely to be responsive to such a funding request. Moreover, donors also budget far in advance, some make payments over time, and multiple nonprofits in each community are likely to look to many of the same funding sources to help address the financial shortfall that an increase in the minimum salary requirement will create. In sum, the fundraising that will be needed to pay for higher salaries will take a significant amount of time.

Since our local council budgets cannot absorb the salary increases contemplated by the proposed regulations, the most likely consequences will be a combination of employee layoffs, program cutbacks and a reduction in services. If our councils have to convert previously salaried exempt employees to hourly non-exempt employees, those individuals will no longer have the same ability to adjust their hours as they see fit, and they instead will be required both to track and to get approval for all hours they work. When volunteers call or e-mail, responses may be delayed because the formerly exempt employees cannot perform work while off the clock. For an organization dedicated to community service, the consequences will be devastating.

Policing the hours of employees who previously had been treated as exempt also will be extremely difficult and demoralizing. Many of the local council employees were themselves involved in Scouting as youth. They did not become professional Scouters for financial gain, but because they believe in the BSA's mission. Placing them in a position where they simply are not allowed to do their best because of DOL-created budget constraints will create frustration and will lead to increases turnover.

In summary, although the DOL's goal in revising the Part 541 regulations supposedly is to increase the quality of life for U.S. workers and their families, the ultimate result with respect to nonprofits will be exactly the opposite. Some exempt employees may lose their jobs, and those who are converted to non-exempt status are likely to be unhappy. The quality of service that our local councils can provide





will be compromised, and our ability to deliver Scouting programs to those most in need will be severely weakened. Instead of providing life skills training to more young people and preparing them for the STEM careers and other occupations that will allow them to command premium pay in a changing economy, our ability to create a better quality of life in the communities we serve will be severely restricted.

III. How the DOL Can Adjust Its Proposal to Meet the Needs of Nonprofits

If approved as drafted, the DOL's proposal will more than double the minimum salary threshold for the EAP exemptions from the current level of \$455 per week (\$23,660 annualized) to whatever the 40th percentile of all salaried workers will be at some point in the future (estimated to be \$970 per week, or \$50,440 per year, when a final rule is released in 2016).

A. Set the Minimum Salary Threshold for Nonprofits at \$580 Per Week, Which Annualizes to \$30,160

As is stated above, many of the exempt local council employees currently are paid salaries in the \$30,000 to \$35,000 range, which is well above the minimum threshold under the current regulations. We believe that a salary level of \$580 per week (\$30,160 annualized) would be an appropriate minimum threshold for employees of nonprofits to qualify for one of the EAP exemptions.

The \$30,160 figure is still an increase of more than 25 percent over the current minimum, and those nonprofits who pay the current minimum may not even be able to reach that new threshold. In addition, an increase in the minimum threshold to \$30,160 also is likely to result in a significant increase in employer benefit costs, which also will need to be absorbed. Finally, the DOL needs to recognize that an increase in the salary level of one employee may have an impact on the salary levels of other employees. In some instances, an employer might need to freeze or cut the wages of higher-paid employees to fund the mandated pay increase for those who are under the minimum salary threshold. In other instances, an employer may feel pressured to increase the salaries of more senior employees or of higher-level salaried exempt employees to avoid a compression in wages. In other words, an increase in the minimum salary level to \$30,160 will have both direct and indirect financial consequences. It still will place nonprofit employers in a challenging situation, but it is better than the insurmountable situation contained in the DOL's current proposal.





B. Use a Set Dollar Amount for Nonprofits.

The \$30,160 figure recommended above is a fixed amount, as opposed to being based on a specific percentile of all salaried workers. We do not recommend that a specific percentile of all salaried workers be used when calculating the minimum salary requirements for employees of nonprofits for each of several reasons. First, it is unfair to compare employees of nonprofits and for-profit businesses. Second, our local councils pay salaries that are commensurate with the geographical areas they serve, so what may be considered a reasonable salary for an exempt employee in one community may be totally out of line and unsupported in another. Third, identifying a percentile – as opposed to identifying a set dollar amount – still creates uncertainty when budgeting and when seeking grants and donations. And fourth, the DOL’s current proposal likely will have a significant impact on the dollar equivalents at various percentiles. Thus, if some employers convert salaried employees to hourly employees in response to the DOL proposal, and if other employers increase salary levels to \$50,000 or above in response to the DOL proposal, then the ultimate consequence is likely to be an artificially inflated salary level at the 40th percentile and at all other percentiles in the years immediately following the effective date of the DOL’s revised regulations.

C. Set a Later Effective Date for Nonprofits

The DOL has not identified exactly when it intends to release a final regulation, nor has it identified how much of a grace period there will be between the publication date and the effective date of the final regulation.

Regardless of what the DOL decides the effective date should be for for-profit enterprises, the DOL should provide a later effective date for nonprofits. As noted, many nonprofit positions are grant-funded, and those grants may run for two or three years. Certainly, if a position is treated as exempt and is funded by a grant, then it ought to be grandfathered for the remainder of the grant period. In addition, nonprofits often complete their annual budgets a full six months prior to the start of the budget year, and trying to increase revenues for salaries by even a small amount is going to be difficult until after a final rule is effective. Since the corporate donors who support Scouting are going to be impacted by the increased labor costs associated with the DOL’s final rule, and large numbers of nonprofits will be seeking funds from the same donors, the DOL needs to allow sufficient time for nonprofits to line up funding or make alternative plans. Realistically, this is going to be a multi-year process, and the new rules should not be effective as to nonprofits until either





24 months after publication or 12 months after the rules become effective for for-profits, whichever is later.

D. Keep the Salary Level Fixed for Nonprofits

The disruption that the DOL's proposal will cause to nonprofits is obvious. In addition, requiring automatic increases based on some sort of indexing will only enhance the problems for the reasons discussed previously. If the minimum salary threshold increases annually, then the BSA, our local councils and other nonprofits will constantly be seeking money from a limited pool of donors to fund pay increases based solely on the regulations. That is not a sustainable business model for nonprofits, and it certainly will not be sustainable during any sort of a short-term blip in the economy, let alone in the event of another recession. Another problem with indexing is that it continues to create uncertainty with respect to hard numbers. For example, the DOL's regulatory proposal indicates that the DOL intends to provide 60 days advanced notice before a new minimum salary threshold amount would become effective. That is not enough notice for nonprofits who are attempting to establish budgets and gain commitments from donors a year in advance.

If the DOL refuses to keep the salary level fixed for nonprofits, then it should, at the very least, take additional steps to mitigate the adverse effects that future increases will have on nonprofits. First, to accommodate multi-year funding cycles, and to allow both nonprofits and donors time to adjust to these changes, increases to the minimum salary threshold for nonprofits should occur no more than every two or three years, not on an annual basis. Second, any time a new salary threshold is going to be instituted, the specific salary level should be announced at least 12 months in advance so that nonprofits can budget accordingly and can approach donors with hard numbers and specific facts.

Finally, nonprofits are going to have the greatest difficulty absorbing the costs associated with large pay increases. Therefore, even if some sort of indexing method is used to set increases for for-profit corporations, increases in the minimum salary threshold for nonprofits should be capped at a maximum of 1.5 percent per year. Earlier this month, President Obama proposed a 1 percent pay increase for federal civilian employees and a 1.3 percent pay increase for military employees in 2016. The President also has said that he may add locality payments that could increase the pay for the federal civilian employees to 1.3 percent. Thus, this proposed cap is not only reasonable, but is higher than the pay increases that





the President is proposing for federal workers, even though nonprofits are in no better position than the federal government to increase pay rates.

E. Other Items

The DOL has requested comments on various other items in its Notice of Proposed Rulemaking. For example, the DOL has asked whether nondiscretionary bonuses should be included toward the minimum salary requirement. The BSA does not oppose the inclusion of nondiscretionary bonuses, but it will be the rare case when a nonprofit pays a bonus, and the amounts of bonuses that nonprofits pay are likely to be small. This is all the more reason to identify a lower minimum salary threshold for nonprofits.

The DOL also has requested comments regarding the job duties requirements for the EAP exemptions. The BSA does not support changing the job duties requirements as part of the current rulemaking. The BSA also does not believe that establishing a requirement that exempt employees must spend a certain percentage of their hours performing exempt duties would be beneficial. The DOL's proposal already will significantly increase costs for nonprofits. Adding a requirement that each of our local councils start tracking time to determine the percentage of hours spent engaged in exempt duties will increase administrative and recordkeeping costs without providing any benefit.

We are not providing comments on any additional topics at this time, as we want to keep our focus on those aspects of the DOL's proposal that we believe will have the greatest impact on our local councils. Thank you for your thoughtful consideration of our comments.

Sincerely,

Michael A. Ashline
Chief Financial Officer

