

September 3, 2015

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

RE: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (RIN 1235-AA11)

Dear Director Ziegler:

The leadership team at Operation Smile is opposed to the proposed changes to the salary threshold tests, specifically the drastic increase to a salary level of \$50,400. We thank you for the opportunity to share our concerns on this topic.

Operation Smile, headquartered in Virginia Beach, Virginia, is an international children's medical charity with a presence in more than 60 countries, whose network of more than 5,400 medical volunteers from over 80 countries is dedicated to helping improve the health and lives of children. Since its founding in 1982, Operation Smile has provided more than 220,000 free surgical procedures for children and young adults born with cleft lip, cleft palate and other facial deformities.

At Operation Smile, we strongly urge the DOL to examine the tremendous negative impact of the proposed new salary threshold on non-profit organizations, especially ~~taking into account the unique challenges of an organization operating globally~~. We have made tremendous efforts over the last few years to align our non-profit salaries to be more competitive with the for-profit space. Yet still, this proposed update will increase our payroll cost by nearly \$1 million annually affecting over 50 percent of our workforce. Considering that a cleft lip surgery performed somewhere in the world costs an average of \$240, this would mean 4,166 fewer surgeries provided by Operation Smile globally each year. This is not a programmatic or financial cost we can absorb, and we will have to evaluate ways to reduce our payroll costs either through lowering base hourly rates or reducing the size of our domestic workforce. Neither option helps

us to meet the goals of providing nearly 20,000 free surgeries to children in need around the world this year.

The largest group (about thirty) of our professionals affected by this proposed change is our Program Coordinators. These individuals are responsible for planning and executing our international medical missions. They travel to low-and middle-income countries where we conduct medical missions and they have responsibility to manage our medical teams. The Program Coordinator position at Operation Smile has served as a training ground for many young professionals with a career goal to continue on to law school, medical school and many other professional careers. The experience they receive at Operation Smile is unprecedented and highly valued. If this new policy is implemented, we fear we will have to look to other resources such as hiring in our mission countries. This change would unfortunately reduce the employment opportunities for recent college graduates. With over 700 applicants annually, it would be a shame to take away this opportunity.

Less measurable is the impact this change will have on our support for a global organization that operates 24/7. Many of our exempt positions have enjoyed schedule flexibility and need the ability to work with partner countries remotely at hours outside of the normal office schedule. If we have to convert these employees to a nonexempt status, we will have to impose policies such as strict core working hours and restrictions on email and phone usage after hours. The result would be a drastic negative impact on both our responsiveness and effectiveness to get things done. Think about it, when disaster struck Haiti in 2010, our employees said "we can help, we can put together a surgical mission. They need our help." They didn't ask "are you going to pay me extra?" The unintended consequences of these proposed regulations would crush our ability to respond. Our focus needs to be on managing programs not overtime.

Additionally, we will have to deal with the morale issues associated with a more "time clock" environment. Our professionally minded employees are self-motivated and driven to do what it takes to get the job done – not because we require it, but because they believe in the cause and the mission. Asking them to perform at less than their best and to clock in and measure their time because of budget constraints would be both demoralizing and de-motivating.

Finally, we are extremely concerned about the impact this will have on our contributors. Non-profits are evaluated by the percentage of resources spent on administration verses programs. A government mandate taking away our ability to make these

difficult decisions will have a very real negative impact on both our day-to-day operations and revenues from donors who want their donations spent on surgeries not salaries.

We strongly urge the DOL to re-examine the newly proposed salary threshold, taking into consideration the many negative impacts such a change will present. These changes should be adjusted to reflect a better balance between employer and employee needs, our charitable mission and donor expectations.

Alternatively, we request the DOL pursue adopting special provisions similar to those found in the primary education field allowing non-profits to remain exempt from these thresholds and to be better able to focus on their charitable missions. We also request the removal of any wording about automatic increases annually, as this will cause a significant administrative burden and further aggravate the financial burdens described above.

One last, but related concern, is that there may be an adjustment to the "duties test," but which has not been fully defined and set out for comment. Employers need certainty and should not be placed in an untenable position of having to plan and make significant structural changes related to the proposed salary increases only to have to revisit these very difficult issues in the future because of the "duties test." The "duties test" needs to remain unchanged and employers should be given assurances to that effect.

We would be happy to participate in further discussion about the challenges outlined above that we will face in the event these changes are implemented.

Thank you for your time and consideration of these comments.

Sincerely,



Nancy Duncan
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Operation Smile
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