



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 4, 2015

Mary Zeigler
Director of the 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: Regulatory Information Number (RIN) 1235-AA11 –
Comments on the United States Department of Labor’s July 6, 2015 Notice of
Proposed Rulemaking to Revise Fair Labor Standards Act Regulations**

Dear Ms. Zeigler:

The Pennsylvania State Association of Township Supervisors (“PSATS”) respectfully submits these comments on the Notice of Proposed Rulemaking (“Notice”) issued by the United States Department of Labor (“DOL”) and published in the Federal Register on July 6, 2015. DOL seeks to amend the Fair Labor Standards Act (“FLSA”) regulations governing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees (referred to herein as the “white collar” exemption) by increasing the minimum salary level that employees must meet in order to be subject to that exemption.

PSATS is a non-profit association that represents the interests of municipal officials from over 1,400 townships of the second class in the Commonwealth of Pennsylvania for almost 100 years. Townships of the second class represent approximately 95% of the land mass of the Commonwealth of Pennsylvania and are home to more than 5.5 million Pennsylvanians. These townships are very diverse, ranging from rural communities with fewer than 200 residents to suburban communities with populations in excess of 60,000 residents. Townships of the second class employ thousands of Pennsylvanians. PSATS estimates that substantially all of its membership will be affected in some way by the proposed changes to the FLSA regulations.

PSATS objects to the proposed changes because they would significantly and negatively impact virtually all of PSATS’s members and, by extension, the residents and taxpayers they serve, who would be forced to pay higher taxes or obtain or otherwise have access to fewer vital services.

I. The Proposed Changes to the “Salary Level” Test would Adversely Affect All Municipal Government Employers, Particularly Those that are Located in More Rural Areas and have Fewer Employees.

DOL proposes to increase the minimum weekly salary level for the “white collar” exemption from \$455 to the 40th percentile of earnings for full-time salaried workers nationwide, based on Bureau of Labor Statistics (“BLS”) data. DOL currently projects that the earnings level for the first quarter of 2016 will be \$50,440, which translates to \$970/week. Therefore, if the regulations proposed in the Notice are implemented, the minimum weekly salary level will increase by almost 115%, a staggering jump.

DOL posits in the Notice that the proposed adjustment in the minimum salary level simplifies the administration of the “white collar” exemption and “establishes an appropriate dividing line between overtime-eligible workers and those who are not.” But while the proposed salary level adjustment may be easier for DOL to administer, as illustrated by the examples set forth below, the adjustment will greatly harm municipal employers because every municipal employee making less than \$50,440 will become eligible for overtime pay. This will cause incredible strain on municipal budgets and taxpayers.

In 2014, PSATS conducted a wage and benefits survey of over 1,000 Pennsylvania townships. Those townships provided wage and benefits data regarding 42 different full-time employee positions, many of which would be classified as exempt under the FLSA. Those positions include that of township manager, generally responsible for managing the day-to-day operations of the township, and finance director, generally responsible for managing the financial affairs of the township. In all, PSATS collected wage and benefits information for eleven different “management/professional” level positions. For every one of those eleven positions, the lowest full-time salary reported was below DOL’s proposed new salary floor for exempt employees. In some cases, the reported salary levels were more than \$10,000-\$15,000 below DOL’s proposed threshold. Moreover, for 28 of the remaining 31 positions, the reported average and median salaries were below the threshold. This illustrates the widespread impact that this salary level change would have across PSATS’s entire membership.

The proposed increase in the minimum salary level will also disproportionately impact municipal employers in more rural areas with smaller populations, which happens to be a significant portion of PSATS’s membership. For example, according to respondents to PSATS’s 2014 survey, in townships with populations ranging from 1,001 to 2,000 and 2,001 to 4,000, the median salary for township managers was \$50,000 and \$49,627, respectively, while the lowest salary in each was \$38,000 and \$31,907, respectively. Yet, in townships with populations over 8,000, the median salary range for township managers was \$93,743 and the lowest was \$56,243.

A substantially similar disparity exists between the salary levels of municipal employees across the various geographic regions within Pennsylvania. As DOL is aware, the Philadelphia and Pittsburgh metropolitan areas are subject to a higher cost of living than elsewhere in the state. That difference is borne out in the salary levels of municipal employees. For example, according to respondents to PSATS’s survey, the median salary for parks and recreation directors, who perform the vital role of managing all aspects of municipal recreation facilities,

including swimming pools, parks, and playgrounds, in south-central Pennsylvania is \$48,760. Meanwhile, the median salary for individuals performing the same role in the southeastern part of Pennsylvania is \$68,015.

These examples illustrate the harm that an increase of over 100% in the minimum salary level for exempt workers will impose upon all municipal employers.

II. The Proposed Regulations will Require Municipal Employers to Raise Taxes or Reduce Employees and Services.

DOL correctly acknowledged that the proposed changes to the FLSA regulations will come at a cost to employers because the changes would “transfer income from employers to employees in the form of higher earnings.” But that acknowledgment ignores the critical fact that because municipal governments do not sell goods and services, they do not have “earnings” that can be transferred to their employees. Instead, municipal governments operate within a finite universe of financial resources, which are obtained almost exclusively through taxes and financial assistance from state and federal governments and then budgeted to ensure the adequate and appropriate provision of necessary services. Thus, if forced to adapt to comply with the new regulations, municipal governing bodies will have to choose between the following options, none of which are beneficial to the municipal governments, their taxpayers and residents, or the economy as a whole.

First, if municipal employers wish to keep their current complement of employees in order to provide the level of services that their residents and taxpayers expect, they will need to increase taxes to account for the increased salary levels of their exempt employees. It is worthy to note that, at least in Pennsylvania, municipal governments have statutory limits on the types and amounts of taxes that may be implemented. In other words, even if municipal governing bodies wanted to raise taxes to account for their increased payroll costs, they might not be able to do so.

Second, if municipal employers do not wish to raise taxes or otherwise do not have the capacity to do so, they would need to reduce the level of services that they provide to their residents and taxpayers. That could mean foregoing infrastructure repairs, laying off employees who perform critical roles for the municipality, closing down parks and recreation facilities, or reducing the complement of officers on the police force.

Third, municipal employers could be forced to reduce the salaries and hourly wages of other employees (both higher and lower paid) to ensure their compliance with the FLSA’s new requirements and their budgetary needs. They could also limit the amount of overtime work available to those employees who want it.

None of these are good options. There are a litany of other negative impacts that these proposed regulations could have on municipal governments and the residents and taxpayers that they serve. DOL should take into account those impacts before imposing requirements that will apply across the board to all employers, regardless of their unique status or geographic location.

PSATS recognizes that some upward adjustment in the minimum salary level may be appropriate, particularly to address the impacts of historic inflation. But DOL's proposed changes do not adequately take into account the varying cost of living levels and the fact that municipal employers, particularly in less urbanized settings, will most likely not be able to sustain themselves if forced to adjust their salary levels to comply with DOL's proposed regulations. Moreover, when one takes into consideration the challenges that municipal governments would face because they are dependent on revenues from taxes and fees, the issues are compounded.

Therefore, DOL should not implement the regulations that are proposed in the Notice. However, if DOL does move forward with the regulations, it should (1) exempt municipal governments, thereby taking into account their inability to transfer "earnings" from the employer to its employees, as for-profit employers may more easily be able to do; or (2) revise its proposed regulations to account for regionalized costs of living, which, as evidenced by the examples above, would alleviate at least some of the devastating financial impact that implementation of these proposed regulations will have on PSATS's members.

Finally, PSATS notes that DOL referenced in the Notice that it is considering whether revisions to the FLSA's "duties test" are necessary and that it is inviting comments on the issue. Because of the lack of detail regarding this issue in the Notice, PSATS opposes any changes to that test until after DOL has issued a separate Notice of Proposed Rulemaking that more fully addresses the issue.

Thank you for your consideration of these comments.

Sincerely,



David M. Sanko
Executive Director