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## Advocating in the Gray Areas

It's not quite accurate to say it's easy to advocate for a policy position when everyone in the charitable sector agrees; organizations still vary in levels of interest, priority, focus, etc. But it is certainly harder to take a position on an issue in which your voice must be heard when there is no consensus or there are profound disagreements over the "correct answer." How is an advocate to proceed when the answer is not black or white, but gray?

A case in point is the pending [Overtime Proposed Rule](#) from the U.S. Department of Labor that would expand employee protections and, by all estimates, raise the labor costs of most charitable nonprofits, as well as for for-profit businesses and governments. Depending on who you ask, the proposed changes would improve lives of employees and the people nonprofits serve, or they can force employers to make cutbacks, cause job losses, and lead to reduced services for the people the nonprofit is dedicated to serve.

In the face of these conflicting views, the [National Council of Nonprofits has submitted public comments](#) in advance of the **November 7** filing deadline to educate the policymakers about the unique contextual challenges nonprofits face today while addressing unasked, but longstanding related questions about how the federal government generally, and the Labor Department specifically, treats charitable nonprofits.

The [U.S. Department of Labor is proposing](#) to revise one of the tests for determining whether white-collar employees may lawfully be exempted from overtime pay. The [details of the proposal are provided in this analysis](#). Suffice it to say that the proposed revisions would benefit thousands of workers (38,000 nonprofit executives, administrators, and professionals, per the DOL estimates) and cost individual employers anywhere from thousands to multiple millions of dollars.

Charitable organizations look at these realities with a different perspective than their for-profit and governmental counterparts. This unique perspective was best explained by Liz Moore of the **Montana Nonprofit Association**, who once observed that “on these labor standards issues, we nonprofits tend to experience *moral support* as well as *operational anxiety*.” By that, she meant that policies that benefit nonprofit employees and the people nonprofits serve are to be encouraged and supported whenever possible. Yet, policies that price employers “out of the market” can mean the nonprofit’s mission is hindered or impossible to achieve. That’s particularly challenging for nonprofits now in the throes of the serious [nonprofit workforce shortage crisis](#).

With this perspective and the experiences during past rulemakings by the Labor Department, NCN set out to craft public comments that give voice to all sides of the discussion by providing data, analysis, and commentary that recognizes the validity and reality of the “push/pull” within the sector.

The [NCN Comments](#) acknowledge up front that we refrain from declaring the one, right answer to the questions presented in the Overtime Proposed Rule. The Comments state, “The National Council of Nonprofits neither recommends nor opposes the proposed formulae for the Standard Salary Level and the Salary Level for Highly Compensated Employees, and we do not express views on the proposal to adjust those levels automatically every three years.” Those are the fundamental questions presented in the rulemaking, but we took the position that between the black and white of the proposals – for or against – there is a wide swath of gray that the Labor Department must understand before making final decisions.

In an effort to provide balance, the Comments sought to present the arguments for both the ***moral support*** (“why DOL should”) and the ***operational anxiety*** (“why DOL shouldn’t”) on the proposed changes.

- **Moral Support:** The comments make clear that charitable organizations have different priorities than other employers and analyze the Overtime Proposed Rule from the lens of their missions. This means providing fair treatment is in the best interest of workers and the organization. It also means that when people are lifted out of poverty, they can reduce their dependence on the charitable organization (a real win for the mission of many nonprofits). Finally, the comments offered a detailed discussion on the decisions by six states that have set their own minimum salary levels higher than what's mandated in federal law and that the "sky didn't fall" when they did.
- **Operational Anxiety:** The Comments also provide extensive nonprofit workforce data showing that the charitable sector has not recovered from the pandemic, workforce shortages are at crisis levels, charitable giving needed to fund operations is down, while demand from the public continues to grow.

In short, there are strong arguments for both perspectives, and the Department of Labor must wade through the many competing views to reach an informed decision. NCN took the position that the DOL needed as much information as possible to be so informed.

## **Beyond the Gray Areas**

While the issues presented by the Labor Department lead to differing opinions, there are many topics on which charitable organizations agree. The NCN Comments emphasized that as part of the rulemaking process DOL must address the significant problems caused when labor standards are raised, and the Department must provide better guidance to improve nonprofit compliance.

Specifically, NCN reiterated widely held views directly relevant to the pending rulemaking. The Comments urge the Department of Labor to –

- Treat all employers the same, regardless of economic subsector (i.e., nonprofit, for-profit, government) and reject calls to carve out some employers and employees, which would essentially create second-class status;
- Retain a national salary level for nonprofit and other employers across the country, and not create confusion and costly burdens and compliance issues through regional salary levels;
- Apply the same standard salary level to the executive, administrative, and professional exemptions – thus avoiding complexity that makes compliance

more difficult;

- Treat nonprofit grantees fairly – just as the federal government protects for-profit contractors when government-mandated labor cost increases go into effect, put protections in place for nonprofits performing specific services pursuant to written agreements with the government; and
- Develop detailed, tailored educational materials devoted to expanding nonprofit understanding of and compliance with labor standards.

While the National Council of Nonprofits has sought to focus the attention of Labor Department officials on the realities of charitable nonprofit workplaces and missions, we cannot speak for all organizations or anticipate the impact of proposed new labor standards on individual organizations and operations. Nonprofits are still able to [submit public comments](#) to the Overtime Proposed Rule through Tuesday, November 7.