



November 6, 2023

Ms. Amy DeBisschop  
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: Proposed Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees**  
WHD-2023-0001-0001; (RIN) 1235-AA39

Dear Ms. DeBisschop:

The Providers' Council welcomes this opportunity to submit formal comments regarding the above-captioned Proposed Rule published by the U.S. Department of Labor on September 8, 2023. Many of the Council's nearly 220 members across Massachusetts – the vast majority of which are community-based human services nonprofits – would be directly impacted by the Fair Labor Standards Act (FLSA) regulations in this rulemaking. Our comments are informed through discussions with our members, our committees and our Board of Directors.

The Providers' Council is the state's largest human services membership association and represents a sector that has more than 160,000 jobs across Massachusetts. These workers are our other first responders and have a vital role in creating a safer and healthier state, providing services to hundreds of thousands of Massachusetts residents. Services include supports for women and children, elder residents who need care, children and adults with intellectual and developmental disabilities (including those on the autism spectrum), a growing number of people with an opioid or alcohol addiction, survivors of domestic violence, our veterans, individuals and families experiencing homelessness and many others.

Our comments will focus on increasing the overtime threshold; adding a phased-in approach to the increase; and eliminating the automatic increase proposed for every three years. We have briefly discussed each issue and our recommendation below:

- **The overtime threshold for all workers should increase above the current \$35,568 level – but the proposed amount of \$55,068 should be the absolute ceiling for increasing the threshold at this time.**

The Providers' Council understands the incredible value of our human services workforce, and we believe the work they do needs to be valued and dignified. The Providers' Council has been a staunch advocate for increasing salaries for community-based human services workers, urging the Commonwealth of Massachusetts to increase benchmark salaries it uses when setting human services rates. In conversations with our members, many agreed that the overtime threshold should be increased above the current \$35,568 level, though we would caution that increasing it above the proposed \$55,068 threshold would make it increasingly difficult for already short-staffed human services nonprofits. We thank the Department of Labor for proposing to increase the amount, and the Council is in support of this provision.

- **There should be a phased-in approach from the current level of \$35,568 per year to the proposed amount of \$55,068 rather than moving to the new level immediately.**

The primary funder for most community-based human services organizations in the Commonwealth of Massachusetts. Under the human services rate setting system – known as Chapter 257 of the Acts of 2008 – the rates for all human services programs are updated every two years. When rates are updated, the state takes several factors into account, including “the reasonable cost to social service program providers of any existing or new governmental mandate that has been enacted, promulgated or imposed by any governmental unit or federal governmental authority.”

If the Department of Labor chose to move the threshold overnight to \$55,068, this could potentially be destabilizing to some human services nonprofits, as the state would not have time to review rates and account for this new governmental mandate. By creating a phase-in approach, the Commonwealth of Massachusetts would have time to build this cost into rates in the future, ensuring this change does not represent an unfunded mandate for providers.

The Providers' Council requests the Department of Labor implement a new salary threshold in three stages over two years – moving one-third of the way to the new salary threshold on the implementation date, two-thirds of the way to the new salary threshold one year after the implementation date, and to the new salary threshold two years after the implementation date. This would give Massachusetts ample time to plan for these increases and include funding to account for them into human services rates.

- **The Providers' Council opposes the proposal to adjust the threshold automatically every three years, and we ask for the Department of Labor instead to engage in a similar review process to this and solicit comments from stakeholders on any new proposed increases.**

The Providers' Council is urging the Department of Labor to drop its proposal to create a system that would automatically adjust the salary threshold every three years using the methodologies and formulae designated in the proposed rule.

*November 6, 2023*

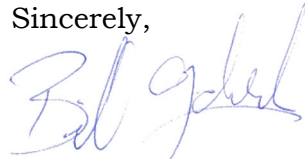
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We feel it is critically important for the Department of Labor to solicit input from stakeholders and go through the regulatory process when making changes in the future to the salary thresholds. Additionally, the courts have previously struck down this provision, including in 2016 when the Department of Labor sought to have an automatic increase added to the overtime rules at that time.

The regulatory process ensures all stakeholders have a right to discuss changes with the Department of Labor, and we think it is critical that process is maintained rather than having automatic increases go into effect.

On behalf of the Providers' Council and our nearly 220 members in Massachusetts, thank you for the opportunity to submit comments on these important regulations. We appreciate all the work the Department of Labor has done in crafting this proposal, and we would be pleased to discuss our comments with you in more detail at your convenience. Thank you for your positive consideration of our recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Yelenak".

Bill Yelenak  
President/CEO  
Providers' Council