

September 21, 2017

Melissa Smith  
Director of the Division of Regulations, Legislation and Interpretation  
Wage and Hour Division  
U.S. Department of Labor  
Room S-3502  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Re: Request for Information; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employee, RIN 1235-AA20

Dear Ms. Smith,

The International Public Management Association for Human Resources, the International City/County Management Association, the National Public Employer Labor Relations Association, and the Government Finance Officers Association appreciate the opportunity to submit comments in response to the U.S. Department of Labor's July 26, 2017 Request for Information seeking public input prior to issuing proposed changes to the salary level test of the Fair Labor Standards Act (FLSA) regulations implementing the exemption from minimum wage and overtime pay for executive, administrative, and professional employees. Our associations represent thousands of state and local governments and professionals working in city/county management, finance, human resources, and labor relations.

State and local governments have a strong commitment to complying with all employment laws and regulations. Our associations believe that there is a need to recognize how work in the 21<sup>st</sup> century is performed and to provide a system that includes flexibility in setting employee hours, recognizes the growing use of telecommuting and different work schedules, and offering opportunities for career advancement. State and local governments perform crucial functions that improve the lives of its citizens and need to be able to recruit, retain, and develop the best and the brightest talent, which requires workplace flexibility while ensuring needed worker protections.

Additionally, state and local governments are required to have balanced budgets and as a result, we would urge the Department of Labor to consider the economic impact of any proposed changes to the salary basis level on state and local governments, some of whom have not fully recovered from the recession.

## **Updating the Salary Basis Level**

The members of our associations acknowledge the need to update the salary basis threshold from its current level of \$23,660 per year, which was set in 2004. Our associations expressed concern with the previously proposed increase in the salary basis level to \$47,476, which we believed was excessive. We would be supportive of adjusting the salary basis level for inflation since 2004. The almost 500 respondents to a recent survey of members of the International Public Management Association for Human Resources (IPMA-HR) indicated 90% support for adjusting the salary basis level to account for inflation. We would support using the consumer price index (CPI) as the measure of inflation.

## **Multiple Standard Salary Levels**

We would urge the Department of Labor in any proposed regulations to recognize that the cost of living varies in the United States. As a result, one uniform salary basis will create challenges for public employers in different areas of the country. We would recommend locality adjustments that take into account the differences in cost of living in the country. The federal government currently provides locality pay, with employees for the Department of Labor receiving different salaries based on their geographic location. There were 62% of the respondents to the IPMA-HR survey who said they would support geographic adjustments to the salary basis level.

## **Duties Tests**

Our associations would recommend that the Department of Labor consider reviewing and updating the duties tests contained in the FLSA regulations. We believe that they are ambiguous, lack clarity, and are difficult for public employers to apply. The inclusion of examples specifying how the exemptions would apply to specific occupations would be a positive step. The duties tests need to reflect the way work is performed in the 21<sup>st</sup> century. For example:

- Much more work today is done in a team-based environment where team members need to work closely and may involve exempt employees assisting with work that would be considered non-exempt.
- Public safety employees often respond to emergencies where they must deal with the current crisis and cannot assign work based on whether it would be considered exempt or non-exempt.
- Due to technology, many government employers no longer have administrative support staff, which requires exempt employees to perform some clerical tasks that previously were undertaken by administrative assistants or secretaries.

### **Automatic Adjustments to the Salary Basis Level**

Our associations would support periodic adjustments to the salary basis level. There were 70% of the IPMA-HR survey respondents who indicated support for periodic adjustments. Every five years was the preferred time frame for adjustments of 38% of the survey respondents, with every three years being selected by 25% of the survey respondents. The majority of survey respondents would like to be informed of the new salary basis level at least 180 days before it becomes effective.

Since the FLSA does not authorize automatic adjustments to the salary basis level, we would recommend that the Department of Labor give consideration to going through a formal notice and comment period before adjusting the salary basis level as would be required with any other changes to the regulations. This would allow the Department to make a more informed decision as to the salary basis level and also take into account economic conditions at the time an adjustment is being proposed.

### **Changes Made in Anticipation of the 2016 Rule**

Only 25% of the respondents to the IPMA-HR survey increased salaries in anticipation of the 2016 final rule. Of those who did, there were 6% who changed the salaries of exempt employees to their prior level. Therefore, the 2016 rule had minimal impact on our members since it was enjoined prior to its effective date.

Our associations appreciate the opportunity to submit these comments in response to your request for information. Please do not hesitate to contact us if you have any questions concerning our comments or if we can be of any assistance.

Sincerely,