



The Nonprofit Overtime Implementation Conundrum

Results of the National Survey of Nonprofits with Government Grants and Contracts
Regarding the New DOL Overtime Rules

Executive Summary

On May 23, 2016, the U.S. Department of Labor published its [new overtime regulations](#) that will require most employers, including many nonprofits, to pay overtime to all employees earning less than \$47,476. The [Overtime Final Rule](#) goes into effect on December 1, which for many nonprofits will be during the performance period of their existing written agreements with governments to deliver certain services. This timing is significant not only for nonprofits with grants or contracts issued by local, state, tribal, or federal governments, but also for members of the public who rely on services those nonprofits provide. Recognizing that the sector as a whole earns almost a third (32.5 percent) of all revenues from government grants and contracts,¹ the National Council of Nonprofits conducted a national survey seeking insights from nonprofits with government grants and contracts about how changes to federal employment law could affect their costs and operations. The survey focused on those organizations because of both the likelihood they will face common challenges in complying with the new regulations while fulfilling service obligations on behalf of governments, and the extensive work of the network of the Council of Nonprofits on the topic of [government grants and contracts](#).

Key Findings

- **Moral Support and Operational Anxiety:** The responses of charitable nonprofits to the Labor Department's Overtime Final Rule range from confidence that the "changes will help all nonprofits in the long run" to viewing the impact as "a disaster for us." Generally, nonprofits have been expressing moral support for the policy of raising the minimum salary level of white collar employees, but experiencing operational anxiety in trying to figure out how to pay the new required additional costs in very tight, or even declining, revenue environments while providing the same level of services.
- **Concern for the Public:** Nonprofit leaders from across the country shared their fears that individuals who depend on services that nonprofits provide on behalf of governments will become unintended collateral damage unless some transitional solutions are put in place. A third of respondents (34 percent) predict that their organization will reduce staff to adjust to the new costs, and a third (33 percent) further expect that their organizations will be forced to reduce the level of services currently provided to the public. This painful reality was not a threat, but honest assessments that if nonprofits could have been paying their employees more, they already would have done so – they simply don't have the revenues.
- **Between a Rock and a Hard Place:** Nonprofits with government grants and contracts expressed concern that they will be put in the position of having to comply with new federal legal requirements imposing new costs that were not known when those grants and contracts were signed. Unlike businesses that can raise prices, or governments that can raise taxes or curtail public services, nonprofits with government grants

¹ The Nonprofit Sector in Brief, National Center for Charitable Statistics, 2015 (2013 data); Giving USA 2014 (2013); See also [National Council of Nonprofits graph](#).

and contracts find themselves contractually bound to maintain services at now-increased costs that may not be expressly covered by existing written agreements. The view was commonly expressed that immediate, short-term solutions must be found to ensure that nonprofits are not put in the position of complying with irreconcilable realities: fixed reimbursements and service requirements of existing grant/contract terms *and* higher costs of implementing the new Overtime Final Rule.

- **Nonprofits Already Subsidizing Governments:** Many survey participants shared frustration that the new overtime rules are coming at a time when nonprofits already are experiencing increased workloads due to public needs, reduced or no reimbursement for indirect or administrative costs (sometimes called “overhead”), and contractual caps on payment of overtime. Only 13 percent of participants reported that their government grants and contracts pay all of their actual costs for providing services on behalf of governments; nearly three out of five (58 percent) responded that they receive reimbursement of between only 70 percent to 90 percent for their services. The Overtime Final Rule will add costs onto an already highly stressed contracting relationship in which governments routinely fail to pay nonprofits the full costs for delivering services provided on behalf of the governments.
- **Confusion about Current Law:** Respondents’ comments also revealed a broader need for training to help nonprofit organizations understand their obligations under the federal Fair Labor Standards Act (“FLSA”). For instance, survey participants indicated that many nonprofits believe they are complying fully with their wage and hour obligations by offering their employees “flex time,” compensatory time (“comp time”), and other schedule and pay adjustments that may not be appropriate or available to them under federal law. While nonprofits feel the urgency to comply with the new overtime component of the FLSA, the timing is good to expand training opportunities to promote better understanding of all of the law’s requirements.

Solutions

- **Grant/Contract Reopener Urgently Needed:** Survey respondents consistently stressed that something has to give on the contractual impasse between reimbursement rates that fail to keep up with the new cost requirements while maintaining existing performance obligations and restraints on reimbursements. The comments made it clear that adjustments must be made: “Without increased government funding to cover the full costs of service, we have no choice but to cut services to our clients.” Nonprofits need ways to reopen or renegotiate existing government grants and contracts either to receive reimbursement rates that incorporate the increased costs or that adjust performance obligations. Since the new costs are the result of changes to federal law, it is appropriate for the federal government to give direction to government program officers at the federal, state, tribal, and local levels on how to revise existing grants and contracts to ensure that nonprofits are treated fairly by being made whole or put in no worse position.
- **Short-term Transition Support:** In addition to solutions to address government grants and contracts, survey comments revealed that nonprofits will need additional resources to maintain operations and service levels during the interim phase of implementation (the first couple of years) to give nonprofits time to renegotiate government grants and contracts when renewed. Likewise, nonprofits need additional resources to come into compliance with all aspects of the fair labor standards law. Individual and institutional donors can enhance compliance with existing and new wage and hour requirements by offering emergency funds that will enable their grantees to conduct compliance audits, develop updated job descriptions, implement time-management systems, and make other upgrades to human resources systems.