



May 9, 2019

SUBMITTED ELECTRONICALLY

Mr. Robert Waterman
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: **Wage and Hour Division, Department of Labor – RIN 1235-AA20
Proposed Rule – Defining and Delimiting the Exemptions for Executive,
Administrative, Professional, Outside Sales and Computer Employees**

Dear Mr. Waterman:

[LeadingAge](#) appreciates the opportunity to comment on the Proposed Rule, **Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees** (the “Proposed Rule”).

The mission of LeadingAge is to be the trusted voice for aging. Our over 6,000 members and partners include nonprofit organizations representing the entire field of aging services, 38 state associations, hundreds of businesses, consumer groups, foundations and research centers. LeadingAge is also a part of the Global Ageing Network, whose membership spans 30 countries. LeadingAge is a 501(c)(3) tax-exempt charitable organization focused on education, advocacy and applied research.

Dedicated to expanding the world of possibilities for aging, LeadingAge advances policies, promotes practices and conducts research that supports, enables and empowers people to live fully as they age.

LeadingAge agrees with the Department of Labor, Wage and Hour Division (the “Department”) that the salary test for the executive, administrative, professional, outside sales, and computer employee exemption (the “EAP exemption”) is outdated and should be updated. We also agree that adequate compensation is critical for our members’ workforce—a workforce that is called to serve the frailest among us.

The proposed salary test threshold is reasonable.

In our previous comments filed in 2015 and 2017 relative to this issue, we urged the Department to scale back the proposed increase in the salary test from about \$47,000 annually to around \$35,000. The salary threshold proposed in the current iteration of the rule of \$679 per week (\$35,308 annually) is consistent with our prior comments and seems like a reasonable threshold under the current circumstances. We also noted that geographical disparities alone dictated that the salary threshold be lowered to create a test that is equitable for urban, metropolitan, and rural providers. The current proposed salary test threshold accomplishes that goal.

The salary test should not be adjusted automatically on an annual basis.

One of the hallmarks of the regulatory system in this country is the public accountability and transparency that results from subjecting regulatory proposals to public analysis, assessment and comment. Annual automatic adjustment of the monetary threshold for the salary test bypasses this critical component of the regulatory process and renders the process of achieving the proper balance between employer and employee interests immune from public discourse. Additionally, some of our members believe that an automatic annual adjustment to the threshold would frustrate their efforts to maintain a stable balance between exempt and non-exempt employees. Thus, we implore the Department not to include an automatic annual adjustment of the salary test threshold.

Any further changes to the EAP Exemption should be accomplished through proposed rulemaking.

Although there are no proposed changes to the duties test, we express the same concerns about public accountability and transparency with respect to any changes the Department would like to make to the duties test of the EAP exemption in the future. Public accountability

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for any changes the Department decides to make as a result of its collection of suggestions in this Proposed Rule demands further proposed rulemaking in order to ensure the integrity of the entire regulatory system. Just as it is a matter of fairness to update the salary test of the EAP exemption, so is it a matter of fairness to afford employers, employees and other stakeholders the opportunity to respond to any specific regulatory changes to the duties test and other aspects of the EAP exemption.

LeadingAge appreciates the opportunity to submit comments. If you wish to discuss any of these comments further, please do not hesitate to contact us.

Sincerely,

Cory Kallheim

VP, Legal Affairs and Social Accountability