



NHSA Comments on Fair Labor Standard Act (FLSA) Proposed Overtime Rule Change

The National Head Start Association (NHSA) respectfully submits the following comments on the US Department of Labor's July 6, 2015 Notice of Proposed Rulemaking (NPRM) to change the Fair Labor Standard Act's (FLSA) regulations around overtime eligibility. NHSA believes that every child, regardless of circumstances at birth, has the ability to succeed in life if given the opportunity that Head Start offers to children and their families. NHSA is the national voice of the more than a million children in Head Start and Early Head Start programs in the United States, and on behalf parents, staff, programs, and associations across the nation NHSA offers the following response to the Notice of Proposed Rulemaking.

Head Start and Early Head Start represent a national commitment to providing early care and education opportunities for vulnerable children and comprehensive supports to help their families achieve long-term stability and success. Vital to realizing this commitment is a strong, dedicated, and committed workforce – one who has been critical in helping programs across the country serve their communities' most vulnerable children and families for the last fifty years. As a whole, NHSA strongly supports President Obama and the Department's desire to modernize and update the more than a decade-old regulation around the FLSA and overtime eligibility. We applaud the Department's commitment to ensuring that employees are compensated a "fair day's pay for a fair day's work" and commend them for seeking to end the all-too-common practice of employers using exempt status to abuse staff by extending hours without appropriate compensation.

However, we are concerned that the rule change will have several severe unintended consequences to Head Start and Early Head Start providers, such as diminished quality of services to children and their families, reduced number of children served in Head Start and Early Head Start, and even the termination of employees, many of whom are already struggling to make ends meet. In short, we appreciate the goals of the NPRM, but we believe that without the consideration of additional exemptions and consultation with the Administration for Children and Families the rule change will have detrimental impacts to Head Start and Early Head Start agencies across the country.

Impact of Rule Change On Head Start

Our concerns on the regulatory change are driven entirely by the potential negative impacts on Head Start and Early Head Start agencies and their staff members. While not all programs will be impacted in the exact same manner and magnitude, these negative impacts can be grouped into two main categories - direct impacts to staff and staff morale and indirect impacts on the quality of services agencies provide to children and families.

The first set of negative impacts will be seen in direct effects on staff salaries. Head Start and Early Head Start staff are already underpaid because of a tight federal budget climate and a lack of salary keeping pace with inflation over the past fifteen to twenty years. The average salary



across the nation for a Head Start teacher in 2014 was \$29,876.04¹ despite over 71% of them holding bachelor's degrees or higher. Early Head Start salaries even lower. These salaries are not low by choice, but rather, given best practices in early childhood development, federal Head Start Performance Standards and state licensing regulations, each group of children with 17-20 children must be staffed with 2-3 adults. The net effect is that where public schools might have a ratio of 1-20 or as high as 1-32 children, Head Start is at 1-10 or as low as 1-6 - meaning more staff and less funding per staff member. This means that under the new rule the vast majority of Head Start teachers, who do not work for a school system thus don't meet the teacher duty exemption, would be considered eligible for overtime. More than just teachers, however, other essential Head Start and Early Head Start staff, such as bus drivers, home visitors, family service workers, and center managers would also be eligible for overtime per the proposed change.

In and of itself, having more staff deemed 'overtime protected' is not inherently bad so long as revenues can be increased or other funds made available to pay these new overtime costs. However, unlike private employers, Head Start and Early Head Start programs operate under restricted budgets which are set annually by the political will of Congress and the Administration. This means that without additional funding, programs will have to either significantly limit staff hours or they will have to reduce/furlough other staff positions to be able to afford to pay overtime. Further, the ability of staff deemed 'overtime protected' to attend conferences, meetings, and trainings - which are crucial to their professional development - will be severely limited given the difficulty programs face in defining what hours are or are not counted as work hours while traveling.

In addition to potential layoffs and furloughs, several programs have expressed concern over how the rule change will impact staff morale. It will be seen as a significant loss of "professional status" by many of those currently exempt and will be a real blow to their sense of respect as a professional to suddenly be treated as hourly workers. Further, it will have a profound impact upon the flexibility and professional growth of current salaried personnel. As the American Society of Association Executives (ASAE) noted in their comments to the NPRM,

“In addition, in many workplaces, non-exempt employees are not permitted to telecommute or to work flextime schedules that are made available to exempt employees. Such flexible work arrangements pose challenges for employers in tracking and capturing all compensable work hours and controlling overtime costs for non-exempt employees...These more flexible work arrangements not only tend to improve employees' work satisfaction, but they also help employees achieve a better work-life balance. As a result of conversion to non-exempt status, some currently exempt employees may lose the flexible work arrangements on which they and their families have come to rely.”

This is precisely the experience of many Head Start and Early Head Start agencies and it reinforces our concern that the proposed changes will negatively impact staff morale. Should employee morale slip as a result of these proposed changes, it will accelerate a problem being

¹ U.S. Department of Health and Human Services. (2014, November 1). 2013-2014 Head Start Program Information Report.



experienced by too many Head Start and Early Head Start grantees - staff turnover. Best practices in early childhood development include the need for continuity of relationships between teacher and child and professional staff and parents. Turnover weakens Head Start grantee's ability to succeed in their important work.

In addition to the potential direct negative impacts on staff, we remain concerned that the proposed NPRM will negatively impact the quality of services we provide to children and families. Within Head Start and Early Head Start programs, there are surge periods during which working extra hours is vital to the program's success. These surge periods occur at the most important times of the year such as during recruitment periods, review periods, and at the start of the school year when Head Start and Early Head Start staff are required to conduct extensive health screenings for every child in the program during a very narrow window of time. These screenings, while time consuming and exhaustive, are one of the central pillars of Head Start and Early Head Start effectiveness - the foundation that leads to life-changing and cost-saving outcomes for children and families.

Further, some programs, such as Migrant Seasonal Head Start programs, are open for 12+ hours a day for a short period of time and are designed to meet the needs of parents working during a harvest. Without additional funding, these programs will be forced to limit the hours of their staff during these vitally important "surge" periods.

Finally, the US Department of Health and Human Services is also focused, through a proposed rule on the Head Start Program Performance Standards, on extending the hours of access for children across Head Start. The HHS NPRM already brings sizeable financial and human costs, and this Department of Labor rule would undermine not only the HHS-proposed changes but established programs living up to the vision of full-day Head Start. Together, these changes will significantly undermine and diminish the ability for programs to meet the needs of the children and families they are trying to serve.

Recommendations

Understanding the President's and Administration's goal of modernizing the FLSA and ensuring that workers are fairly paid, NHSA makes the following recommendations on behalf of Head Start and Early Head Start programs about the proposed rule.

1. Either set a lower salary level applicable to all employers OR set the minimum salary level at a lower percentile of the national average for nonprofits, small employers, and agencies who receive annually appropriated federal grants.
2. Continue using the more descriptive and less-loaded terms "overtime protected" and "overtime exempt" instead of "non-exempt" or "exempt."
3. Provide additional clarity on the duties exemption especially for teachers, executive, administrative, and professional employees and do not change the duties exemption without an additional public comment period.



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4. Consider deeming all Head Start and Early Head Start facilities and places where home visiting occurs as educational facilities so that teachers and home visitors will qualify for the teaching exemption.
5. Work with the Office of Head Start and the Administration for Children and Families in creating an updated Program Instruction around FLSA adherence.

While we will continue to advocate for federal funding to adequately compensate Head Start and Early Head Start staff, we do not expect under any possible scenarios that we will be able to achieve the new proposed minimum salary anytime within the foreseeable future. We appreciate the department's efforts to listen to the Head Start and Early Head Start community so that we can support both our staff and the future success of the children and families that we serve.

Sincerely,

A handwritten signature in cursive script that reads "Yasmina Vinci".

Yasmina Vinci
Executive Director
National Head Start Association