



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 28, 2023

Amy DeBisschop, Director
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: Comments on the Proposed Regulation 1235-AA39, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

Dear Director DeBisschop:

The Pennsylvania State Association of Township Supervisors (“PSATS”) respectfully submits these comments on the Proposed Rulemaking under the Fair Labor Standards Act (FLSA). The proposed regulation to increase the minimum salary required for an employee to qualify for exemption from minimum wage and overtime requirements for executive, administrative, professional, outside sales and computer employees from the current level of \$684 per week (\$35,568 *annually*) to \$1,059 per week (\$55,068 *annually*) represents an increase of 54% percent over three years and eight months. This proposal is nearly triple the effective inflation rate since the last increase took effect. The Bureau of Labor Statistics’ Consumer Price Index pegged the extreme inflation increase at 18.5% from January 2020 to July 2023.

PSATS is a non-partisan, non-profit member service organization. Member Townships represent 5.7 million Pennsylvanians – more than any other type of Pennsylvania municipal government – and cover 95 percent of the Commonwealth’s land mass. These townships are very diverse, ranging from rural communities with fewer than 200 residents to suburban communities with more than 60,000 residents. Townships employ thousands of Pennsylvanians. PSATS estimates that a significant portion of its membership would be affected negatively by this proposed rate increase.

Previously, PSATS objected to the weekly rate of \$684 that took effect in January 2020. The increase meant that our membership had to make significant changes to pay structures right as the pandemic began, putting additional strain on already tight budgets. An onerous increase now, as townships are suffering from the impacts of soaring inflation on critical governmental services, will force townships to either roll back services or pass on costs to financially struggling residents through property tax increases. Elected township officials are not interested in either option as inflation alone is already forcing many to consider tax increases.

I. The Proposed Increase Could Adversely Affect Some Municipal Government Employers, Particularly Those that are in More Rural Areas and have Fewer Employees.

The proposed increase in the minimum salary level will disproportionately impact municipal employers in more rural areas with smaller populations and a lower tax base.

A substantially similar disparity exists between the salary levels of municipal employees across the various geographic regions within Pennsylvania. As the department is aware, the Philadelphia and Pittsburgh metropolitan areas are subject to a higher cost of living than elsewhere in the state. That difference is borne out in the salary levels of municipal employees.

II. The Proposed Regulations Could Require Some Municipal Employers to Raise Taxes or Reduce Employees and Services.

PSATS is concerned that the proposed 54% increase would be devastating to municipal government. Municipal governments do not sell goods and services, they do not have "earnings" that can be transferred to their employees. Instead, municipal governments operate within a finite universe of financial resources, which are obtained almost exclusively through taxes and some limited financial help from state and federal governments and then budgeted to ensure the adequate and appropriate provision of necessary services. Thus, if forced to adapt to comply with the new regulations, municipal governing bodies will have to choose between the following options, none of which are beneficial to the municipal governments, their taxpayers and residents, or the economy as a whole.

First, if municipal employers wish to keep their current complement of employees to provide the level of services that their residents and taxpayers need and expect, they will need to levy higher taxes to account for the increased salary levels of their exempt employees. It is critical to note that municipal governments have statutory limits on the types and amounts of taxes that may be implemented. In other words, even if municipal governing bodies wanted to raise taxes to account for their increased payroll costs, they might not be able to do so. In addition, even if the municipality has the legal authority to raise property taxes, the tax base of many small, rural, or blighted municipalities is small and the increase necessary would be catastrophic for low- and fixed-income households, including many Justice40 communities.

Second, if municipal employers do not wish to raise taxes or otherwise do not have the capacity to do so, they would need to reduce the level of services that they provide to their residents and taxpayers. That could mean foregoing infrastructure repairs, laying off employees who perform critical roles for the municipality, closing parks and recreation facilities or services, or reducing the complement of officers on a police force. It is important to note that while the federal government did provide direct funding to municipalities to offset the pandemic impact (*pay adjustments and bonuses*), these funds will not be available for future cost increases as municipalities have spent or allocated funds received, and these funds must be obligated or spent by the end of 2024.

Third, municipal employers will be forced to reduce the salaries and hourly wages of other employees (*both higher and lower paid*) to ensure their compliance with the new requirements and their budgetary needs. While they could also, at least theoretically, limit the amount of overtime work available to those employees who want it, the current labor shortage is forcing many municipalities to use overtime simply to cover basic and critical services.

The very recent adjustment to this formula did not include an inflationary index and is therefore not “ripe” for action at this time. The proposed increase would be catastrophic. Municipal governments face unique budgeting challenges because they are dependent on revenues from taxes and fees imposed on their residents and business owners. Any overhead costs relating to township employees will either result in increased taxes, potential layoffs, decreased salaries, or a reduction in services to residents.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "David M. Sanko".

David M. Sanko
Executive Director