

# Is Our Nonprofit Organization Covered by the FLSA?

## Question 1: Does Enterprise Coverage Apply?

### Question 1(A): Are We a Named Enterprise?

FLSA:

- ◆ Hospitals
- ◆ Residential centers caring for older adults and people with disabilities
- ◆ Schools - preschools, elementary and secondary schools, and institutions of higher education
- ◆ Schools for children who are mentally or physically disabled or gifted
- ◆ Governments - federal, state, and local

Non-enforcement policy for providers of Medicaid-funded services for individuals with intellectual or development disabilities in residential homes and facilities with 15 or fewer beds [See <https://www.dol.gov/whd/overtime/final2016/nonenforcementpolicy.html>]

If you are a Named Enterprise, Enterprise Coverage applies to your organization. All of your employees are overtime protected, except exempts.

If you are not a Named Enterprise, go to Question 1 (B)

### Question 1(B): Does Our Organization Have Earned Income Via Interstate Commerce with Gross Revenues Over \$500,000/year?

*Examples:* Fee for services, gift shop, space rentals, museum receipts, but only if it involves other states  
Normal nonprofit budgets over \$500,000 comprised of grants, individual and corporate contributions, membership dues, cash and in kind donations, do not constitute interstate commerce.

If you do have gross earned income from interstate commerce exceeding \$500,000/year, Enterprise Coverage applies to your organization. All of your employees are overtime protected, except exempts.

If you do not have earned income exceeding \$500,000, Enterprise Coverage does not apply. Go to Question 2: Individual Coverage.

### Question 2: Does Individual Coverage Apply to Any of Your Employees?

Yes, if they engage in interstate commerce on more than a sporadic or occasional basis. *Examples:* Email and/or phone calls to out-of-state government or funding or member contacts on more than sporadic basis. Ordering dozens of office products and other items for the organization from other states by telephone, fax or internet, on more than sporadic or occasional basis.

If the employee does engage in individual commerce, s/he is entitled to overtime pay unless exempt.

If the employee does not engage in interstate commerce, s/he is not entitled to overtime pay.