The Nonprofit Overtime Implementation Conundrum

Results of the National Survey of Nonprofits with Government Grants and Contracts

Regarding the New DOL Overtime Rules

On May 23, 2016, the U.S. Department of Labor published overtime regulations that require most employers, including many nonprofits, to pay overtime to all employees earning less than $47,476. The Overtime Final Rule went into effect on Dec. 1, 2016, which for many nonprofits was during the performance period of their existing written agreements with governments to deliver certain services.
The Nonprofit Overtime Implementation Conundrum

Findings of the National Survey of Nonprofits with Government Grants and Contracts Regarding the New FLSA Overtime Rule

Moral support for fair labor standards

Many nonprofits expressed sentiments that raising salary levels and paying for overtime are good for the people nonprofits serve and for nonprofits’ employees.

...yet mixed with operational anxiety

With already stretched budgets, underfunded grants/contracts, and government spending cuts, many nonprofits are trying to figure out how to continue to provide the same level of services with increased costs, but no reliable place to turn for additional revenue.

Concern for the Public

The concerns nonprofits shared weren’t for their own organizations, but for those they serve.

People in communities will become unintended collateral damage unless transitional solutions are put in place to cover the increased costs of service delivery.

Between a Rock and a Hard Place

Nonprofits with government grants and contracts often are stuck in binding agreements that don’t cover the increasing overtime costs. Unlike businesses, nonprofits can’t just raise prices to cover the higher expenses, and unlike governments, nonprofits can’t raise taxes or cut services. Nonprofits typically are bound, in writing, to provide specific services at reimbursement rates agreed to before the change in law.

Nonprofits Already Subsidizing Governments

Nonprofits expressed frustration that government grants and contracts already fail to pay the full costs of services and some agreements even include caps on overtime. The Overtime Final Rule will go into effect in a “system” in which nonprofits and their private funders already are subsidizing governments. Nonprofits do not have the resources to fill these ever-growing funding gaps.

Confusion about Current FLSA Requirements

Comments submitted in response to the survey indicate that now would be a good time for nonprofit employers to review their compliance with all aspects of the Fair Labor Standards Act and related state laws.

SOLUTIONS

Grant/Contract Reopener

Nonprofits need ways to reopener or renegotiate existing government grants and contracts either to receive reimbursement rates that factor in the increased costs or adjust performance obligations.

Short-Term Transition Support

Private funders can help alleviate the stress caused by the Overtime Final Rule by providing additional resources during the interim phase of implementation (the first couple of years) and by offering funds to enable their grantees to conduct audits and make upgrades to human resources systems to ensure full compliance with federal and state wage and hour laws.
Recognizing that the sector as a whole earns almost a third (32.5%) of all revenues from government grants and contracts, 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. More than one thousand individuals (1,094) from all 50 states responded. Survey participants were generally representative of the nonprofit community at large.

Read the

- Executive Summary
- Full Report
- Infographic
- News Release

Findings

1. **Moral Support, Mixed with Operational Anxiety**: Individual views expressed in the National Survey ranged from confidence that the “changes will help all nonprofits in the long run” to seeing the impact as “a disaster for us.” One survey respondent captured the overriding sentiments: “We wish to be fair and pay just wages, but also need to pay the light bill as govt. funding recedes and service demand increases.”

2. **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 would become unintended collateral damage unless some transitional solutions are put in place.
3. **Between a Rock and a Hard Place**: Nonprofits with government grants and contracts expressed concern that they would 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.

4. **Nonprofits Already Subsidizing Governments**: The National Survey confirmed that seven out of eight nonprofits with government grants and contracts currently subsidize governments by providing services for which they are not fully compensated. Only 13% expressed the view that government grants contracts pay the full cost of the services provided on behalf of governments.

5. **Confusion about Current Law**: Respondents’ comments also revealed a broader need for training to help nonprofit organizations understand their obligations under the Fair Labor Standards Act.

**Solutions**

1. **Grant/Contract Reopener Urgently Needed**: 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 costs were 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 made whole or are put in no worse position.

2. **Short-term Transition Support**: Nonprofits 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 the 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.