UHY LLP Certified Public Accountants

NOT-FOR-PROFIT INSIDER

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NEW FAIR LABOR STANDARDS ACT (FLSA) OVERTIME REGULATIONS: ARE YOU READY FOR THE CHANGES?

It only took 10 years, but this summer the Department of Labor (DOL) announced sweeping changes to the federal overtime rules. The most significant change is raising the standard salary level by which salaried employees are now eligible for overtime pay. The new rules will go into effect December 1, 2016 and apply to both for-profit and non-profit entities.

Currently, the only employees eligible for overtime pay are those who earn $23,660 or less. Salaried employees who earn above the limit, are eligible to receive overtime pay if they are not classified as administrators, executives or professionals.

The new rule requires that all full-time salaried employees, regardless of their title or duties, to be eligible for overtime pay if they earn $47,476 or less. The overtime rate is considered 1 ½ times the normal hourly pay rate for work exceeding 40 hours within 7 day work week. Salaried employees paid above this level are exempt from overtime pay if they primarily perform certain duties defined as administrative, executive or professional.

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The next level of service

WE HIGHLY RECOMMEND THAT YOU CONSULT WITH A UHY PROFESSIONAL TO ENSURE THE BEST OUTCOME FOR YOUR BUSINESS.

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Another threshold change made by the DOL was increasing the compensation level for Highly Compensated Employees (HCE) subject to the minimal duties test from the previous amount of $100,000 to $134,000 annually. The duties test under this requirement is more relaxed than is required for employees paid under standard salary level. HCEs are exempt if they customarily and regularly perform at least one of the duties under executive, professional or administrative. Under the standard salary test, the duties must be primarily to meet the exemption. Some strategies that you should consider in light of these changes include:

1. Do the math – identify which employees do not meet the minimum salary test of $47,476 or the highly compensated threshold of $134,000. Verify those employees who work more than 40 hours a week. Either accept that these employees are now non-exempt jobs and pay overtime when applicable or retain exempt status by increasing base pay to the standard level.
2. Reduce or eliminate overtime hours – Are you able to reorganize workloads, adjust schedules or spread work hours?
3. Volunteers – Increase the number of volunteers to assist with overtime duties. A volunteer generally will not be considered an employee for purposes of FLSA, if the individual freely provides public service without receipt of compensation.
4. Conduct a due diligence to understand corporate culture and how employees might perceive this change. If change is necessary, develop a communications strategy informing the affected employees.

Keep in mind, employers are still responsible for satisfying other requirements to remain in compliance with labor regulations. Given the complexity of these new regulations and how they overlap with tax rules and other issues that businesses face, we highly recommend that you consult with a UHY professional to ensure the best outcome for your business.

Important Update on FLSA:
On Nov 22, 2016, a federal judge issuing a preliminary injunction blocking the Department of Labor's new "white collar" overtime pay mandate. **Employers, including not-for-profits, are not required to comply with, or implement, the requirements of the Overtime Rule that was slated to go into effect on December 1.** U.S. District Judge Amos L. Mazzant III in Sherman, Texas said the Labor Department exceeded its authority under the Fair Labor Standards Act. The case is Nevada v U.S. Department of Labor, 16-00731, U.S. District Court, Eastern District of Texas (Sherman). The injunction will likely remain in effect for months until the case is decided.

By Denise Pisciotta,
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(St. Louis, MO)

60-DAY ELECTRONIC NOTICE (FORM 8976) REQUIREMENT FOR NEW IRC §501(C)(4) EXEMPT ORGANIZATIONS

New §501(c)(4) exempt organizations and their advisors need to be mindful of a requirement added to the Code under the PATH Act, enacted December 18, 2015. Under newly-enacted IRC §506 such organizations must electronically submit Form 8976 - Notice of Intent to Operate Under Section 501(c)(4) - within 60 days of formation. This form does not exist on paper and thus will not be found by searching at the IRS website. An individual desiring to electronically submit this form needs to establish an account at the IRS website and pay a user fee of $50 through www.pay.gov. Late filing can be penalized. (Rev. Proc. 2016-41).

LOWER PROCESSING FEE FOR FORM 1023-EZ

On July 1 the user fee to process the Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was decreased from $400 to $275 (Rev. Proc. 2016-32).

CHANGES IN FINANCIAL REPORTING FOR NOT-FOR-PROFITS

Not-for-profit (NFP) accounting and reporting has historically been challenging for many accountants and users of NFP financial statements. NFP organizations operate differently, and thus report differently from their for-profit counterparts, requiring special attention and specific industry knowledge to ensure transparent and meaningful financial information. However, many accountants and users find that certain areas of the current NFP financial reporting framework are often difficult to navigate and interpret. This becomes especially apparent in the board room and at management meetings where financial statement literacy may not always be a core skillset for all members. In an effort to address some of these concerns among users, on August 18, 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-14, Not for Profit Entities (Topic 958): *Presentation of Financial Statements of Not-For-Profit Entities.*

The current guidance for NFP accounting and reporting dates back to 1993 when the FASB issued statement number 116 (SFAS 116), *Accounting for Contributions Received and Contributions Made*, and statement number 117 (SFAS 117), *Financial Statements of Not-for-Profit Organizations*, which at the time represented significant change for NFPs. The intent of these standards was to enhance the relevance, usefulness and comparability of NFP financial statements. Since NFP financial statements are primarily used by donors, members, creditors, and others who provide resources to NFP entities, the goal of the standards was to allow these users to make better assessments concerning how well an organization can continue to provide services, the overall results of operations of the NFP, and the extent to which management discharged their stewardship. One of the key provisions of SFAS 117 introduced the concept of permanently, temporarily and unrestricted net assets in a NFP's financials statement rather than the traditional classification by funding source or group (formerly known as fund accounting).

The new standard is overarching and meant to simplify, and clarify the accounting for NFP entities, as well as increase the transparency of the financial statements for NFP entities. ASU 2016-14 focuses on a few primary areas, including net asset classification and liquidity disclosures. As an exposure draft, the proposed standard had also focused on operating performance measures; however, after the comment period, it was decided that the operating measures will be addressed in Phase 2 of the project. The standard as released will affect substantially all NFPs, as well as creditors, donors, grantors, and others that use their financial statements. NFPs will need to implement the new financial reporting model for fiscal years beginning after December 15, 2017.

Net Asset Classification

Under the SFAS 117, NFP entities were required to report three classes of net assets the face of their statement of financial position based upon the type of donor restriction placed upon a net assets, be it permanent, temporary or unrestricted. These classifications proved to be confusing to some users of NFP financial statements and many times difficult to apply in practice, especially in light of significant changes to endowment laws in recent years.

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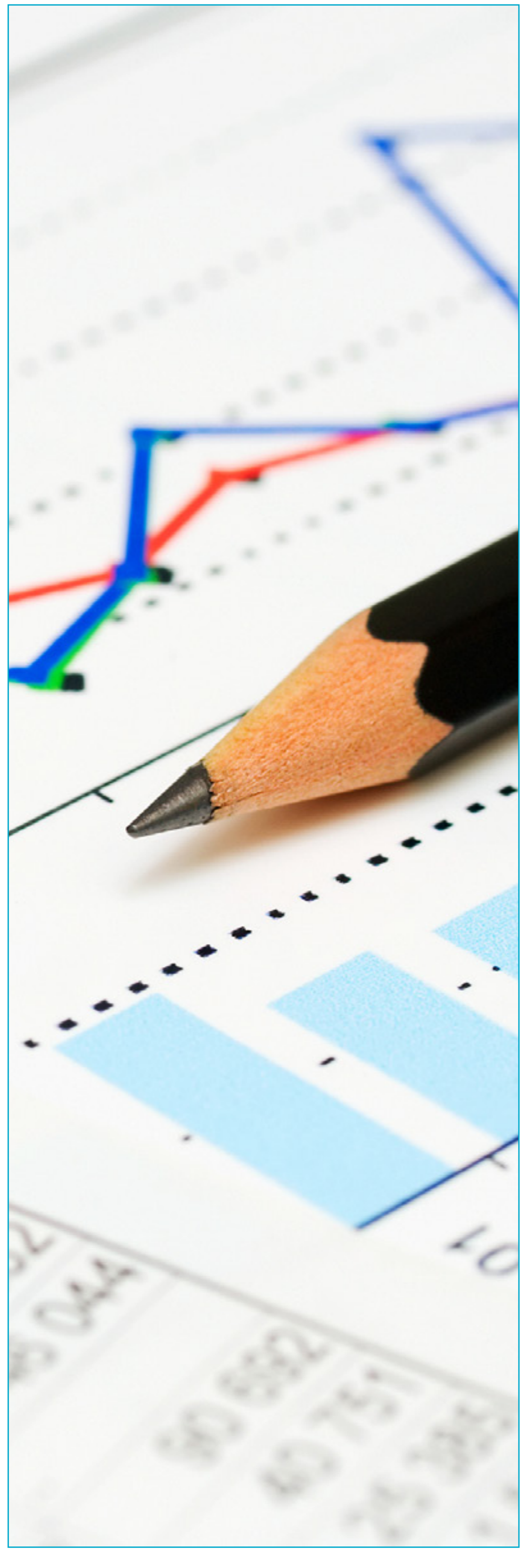

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In an effort to simplify, under the proposed new guidance, these three classifications will be replaced with two: net assets with donor restrictions, and net assets without donor restrictions. Further, in response to changes in certain endowment laws which allow for prudent spending of "underwater funds," (i.e.: permanently restricted gifts for which the value has decreased below the amount of the original gift or amount established by law), the "underwater" amount will be now classified as restricted and included with Net assets with donor restrictions, and additional disclosures will be required. Under the current rules, underwater funds are classified as unrestricted. The goal of these changes is to help users make a clearer distinction between those net assets that are available for the institutions operations and those that are not.

Statement of Cash Flows

The exposure draft originally required that all NFPs present its statement of cash flows using the direct method; however, that requirement was later retracted such that organizations may now continue to use either the direct or indirect method as set forth under previous guidance. However, to incentivize NFPs to utilize the direct method, the standard eliminates the need to provide a reconciliation of the direct method to the indirect method statement of cash flows when the direct method is presented.

Liquidity and Available Resources

The new ASU focuses on information about an organizations' available resources to enable user to better understand liquidity risk. NFPs will be required to disclose certain qualitative information about how it evaluates its liquidity position and how the entity plans to utilize its available liquid resources to meet cash needs for general expenditures within a year of the date of the statement of financial position. Further, the ASU requires quantitative disclosures of its available liquid resources that are available to meet cash needs for general expenditures within one year of the date of the statement of financial position.

Expenses

The new ASU requires other changes related to the statement of activities that include reporting information about operating expenses by both natural and functional classifications. These may be reported in one of three places, as a separate statement, on the face of the statement of activities, or as a note in the statement of activities. Certain qualitative information discussing the methods used to allocate expenses among program and support functions is also required. Finally, NFP entities will be required to include in the statement of activities, any returns on investments net of direct internal and related external expenses, as defined in the standard.

Phase 2 – Operating Measures, Alignment of Certain Cash Flow Items and Segment Reporting for Healthcare Entities

The proposed ASU exposure draft included amendments to assist users in understanding how an organization's operations are performing. While these amendments are not included in ASU 2016-14 as released, the FASB has decided to address these amendments separately in Phase 2 of the not-for-profit reporting project.

Effective Date

ASU 2016-14 is effective for annual financial statements for fiscal years beginning after December 15, 2017, and for interim periods within fiscal years beginning after December 15, 2018, with early adoption permitted. NFPs presenting comparative financial statements must apply the requirements of this ASU retrospectively, although omission of certain of the amendments is permitted for periods prior to adoption.

Although these changes will require significant effort on the part of NFPs, the FASB's goal is to improve the financial reporting of NFP entities to ensure that users of their financial statement received the most accurate picture of how the NFP is doing fiscally. These new requirements are intended to benefit not only the NFP entity but the users including donors, creditors, and others that otherwise engage in business activities with NFP entities.

"The goal of these changes is to help users make a clearer distinction between those net assets that are available for the institutions operations and those that are not."

By Michael Lipschultz, Managing Director (Albany, NY)
Michael Hoyt assisted in the preparation of this article.

NOT-FOR-PROFIT INDUSTRY INSIGHT

With the increasing complexity of laws and regulations, it's important for associations, foundations, charities, hospitals, schools and other tax-exempt entities to seek out professionals with extensive experience in nonprofit compliance issues. We understand there are many challenges affecting the industry and provide the attention needed to help clients stay focused on their job at hand.

UHY LLP's National Not-For-Profit Practice offers comprehensive audit and assurance, tax planning and compliance and business advisory services to meet the unique, complex needs of nonprofit organizations. These types of specialized services, which cut across the traditional service lines, demonstrate our philosophy of skilled professionals integrating industry expertise with technical services.

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