

million), Construction (\$16.7 million to \$39.4 million), Automotive Repair, Services, and Parking (\$13.9 million to \$37.1 million), Agricultural Services (\$10.4 million to \$26.4 million), and Real Estate (\$9.9 million to \$26.3 million). The 10 industries with the highest costs account for 57.4 percent to 67.0 percent of the total small business costs.

The largest recurring payroll costs as a percentage of payroll are incurred by the Educational Services industry (0.4 percent to 1.0 percent), Agricultural Services (0.2 percent to 0.6 percent), Personal Services (0.2 percent to 0.4 percent), Transportation by Air (0.1 percent to 0.3 percent), and Automotive Repair, Services, and Parking (0.1 percent to 0.2 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the General Merchandise Stores (4.5 percent to 10.6 percent), Educational Services (2.0 percent to 5.3 percent), Agricultural Services (1.1 percent to 2.8 percent), Personal Services (0.9 percent to 2.4 percent), and Eating and Drinking Places (0.8 percent to 2.2 percent).

State and Local Government Cost and Benefit Estimates

The upper bound cost estimate for State and local governments for the proposed rule ranges from \$21.0 million to \$43.6 million. This includes one-time implementation costs ranging from \$14.0 million to \$19.7 million and recurring payroll costs ranging from \$7.0 million to \$23.9 million. The cost estimates represents less than 0.005 percent of the \$1.4 trillion in general revenues received by all state and local governmental entities nationwide, and 0.01 percent to 0.03 percent of the \$150 billion in total payrolls for those entities.

The lower bound benefit estimate for State and local governments for the proposed rule ranges from \$48.5 million to \$86.2 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest costs are incurred by California (\$2.6 million to \$5.3 million), New York (\$2.3 million to \$4.7 million), Texas (\$1.3 million to \$2.8 million), Illinois (\$1.2 million to \$2.5 million), and Florida (\$1.1 million to \$2.2 million).

The largest recurring payroll costs as a percentage of payroll are incurred by Arizona (0.2 percent to 0.4 percent),

Wyoming (0.2 percent to 0.4 percent), Alabama (0.1 percent to 0.3 percent), Illinois (0.1 percent to 0.3 percent), and West Virginia (0.1 percent to 0.3 percent). As a percentage of total state and local government revenues, the recurring payroll costs do not exceed 0.01 percent in any state.

Economic Impact of Updating the Duties Tests

The economic impact of updating the duties tests includes two components. First, determining whether an employee satisfies the requirements of the updated duties tests will be less difficult than determining whether that employee satisfies the requirements of the current duties tests. As a result, employers will likely incur much lower costs associated with determining the exempt status of employees, including conducting expensive time-and-motion studies, and responding to litigation contesting their exemption decisions. The second component is the incremental payroll costs that employers would be required to pay to the employees who satisfy the updated duties test but do not satisfy the current duties test if the proposed salary level tests were adopted without simultaneously adopting the proposed duties tests.

The possible magnitude of the cost savings of the first component is indicated by the estimated numbers of employees with salaries between \$425 per week and \$1,250 per week who would have failed to satisfy the current duties tests but would pass the updated duties tests. Because very little evidence is available on the costs for this component, the only indicator that is available is the potential number of employees who might require time-and-motion studies or involve litigation. The PRIA indicates an additional 1.5 million to 2.7 million employees will be more readily identified as exempt from the overtime requirements of the FLSA because the updated duties tests will replace the current duties tests in determining their exemption. Although certification and adjudication costs would only have been incurred on behalf of some portion of those employees, the large number of employees who could bring litigation under the current regulations and their relatively high levels of compensation indicate that the impact of revising the duties tests is probably substantial.

The second component of the economic impact of the revised duties tests is the additional incremental payroll costs that employers would be required to pay if the revised salary level tests were adopted without updating duties tests. If the proposed

rule had increased the standard salary level test and highly compensated salary levels to \$425 per week and \$1,250 per week, respectively, without replacing the current long duties tests with the updated duties test, employers would have incurred incremental payroll costs for all executive, administrative, and professional employees in that salary range who would satisfy the updated duties test but would not satisfy the current long duties tests. The PRIA estimates that the incremental payroll costs for those 1.5 million to 2.7 million employees will be between \$1.839 billion and \$3.370 billion, in addition to the \$870.2 million to \$1,575.5 million for the regulation as proposed.

Finally, revising the duties tests could result in some paid hourly workers becoming salaried employees. PRIA data indicate there are 644,000 paid hourly workers working overtime in occupations with exempt administrative and professional duties that could be converted to salaried employees. All of these workers have either an associate degree or 4 year college degree or more and their average income ranges from \$50,100 to \$54,700 per year. This is an upper bound estimate based on the number of professional and administrative workers in occupations with mixed exempt and nonexempt duties employing a high level of skill or training.

V. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, requires agencies to prepare regulatory flexibility analyses, and make them available for public comment, when proposing regulations that will have "a significant economic impact on a substantial number of small entities." Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

In accordance with E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," this proposed rule has been reviewed to assess its potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Regulatory Flexibility Act. The Chief Counsel for Advocacy of the Small Business Administration was notified of a draft of this rule upon submission of the rule to the Office of Management and Budget under E.O. 12866, Regulatory Planning and Review.