

Proposed Federal Overtime Rule Changes: Potential Impact on Colleges and Universities

Background and Proposed Changes:

- President Obama directed the Secretary of Labor to make changes to the regulations governing exemptions to the Fair Labor Standard Act's (FLSA) overtime pay requirements. These rules apply to all employers, including colleges and universities.
- Currently, employees must meet three criteria to be exempt from federal overtime pay requirements under the so-called "white collar" exemption:
 1. They are paid on a salaried basis.
 2. They earn at least \$23,660 annually.
 3. Their primary duties are executive, administrative, or professional.
- The Department of Labor (DOL) issued the proposed new rules in July 2015. Thousands of comments were submitted, including by the higher education community. While we do not know whether the Department will make any changes before issuing final rules, we expect these regulations to be released this coming summer and take effect soon after.
- Basically, the Department's draft proposal would raise the income threshold to \$50,440. Non-faculty employees earning less than that amount would have to be paid on an hourly basis and would be eligible for overtime pay. Hourly records would have to be kept for these employees.

Where Higher Education Stands on the Proposed Changes:

- An increase to the current threshold of \$23,660 is overdue. (It was last raised in 2004.)
- But an increase that more than doubles the threshold to \$50,440 is simply too high and would have to be implemented so quickly that it would present significant financial and administrative challenges to colleges and universities. At the same time, it could unintentionally reduce workplace flexibility for employees.

Impact on Higher Education Institutions, Employees and Students:

- Institutions:
 - Although all teachers are automatically considered exempt employees, schools would face increased labor costs and greater administrative burden (because many salaried employees would become hourly employees with the need to keep track of their hours).
 - Many jobs in higher education do not lend themselves to hourly work, such as post-doctoral positions or positions that require significant travel or irregular hours, e.g. athletic coaches and trainers, admissions recruiters, and student affairs and admissions staff.
- Employees:
 - Many employees would lose their exempt status, resulting in diminished workplace autonomy and fewer opportunities for flexible work arrangements, career development and advancement. Employees may see this loss of exempt status as a demotion because their flexibility and opportunities would dwindle but their compensation would remain the same.
- Students:
 - Given that salaries are a large share of college budgets at present, sharp changes to overtime requirements may force colleges and universities to raise tuition and/or decrease services to cover higher labor costs.

Recommendations:

- A salary threshold of \$50,440 is too high. The Department of Labor should set the level in the range of thresholds it has previously considered. For example, an inflation adjusted threshold would be \$29,172.
- If DOL persists with the proposed threshold, it should implement changes gradually to allow employers and employees time to adjust. This would help mitigate any negative consequences.

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To read the detailed comments the higher education community submitted in response to the proposed regulations: <http://www.acenet.edu/news-room/Pages/Comments-on-the-Labor-Department-Proposed-Overtime-Rules.aspx>