



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

The Department of Labor (DOL) has issued a [proposed rule](#) to update the salary level to qualify for the so-called “white collar” exemptions under the Fair Labor Standard Act’s overtime pay requirements. DOL also released a set of [FAQ’s](#) about the proposed rule.

Background

- Most employees who make less than the salary level are classified as “hourly” employees and are eligible to receive overtime pay. Employees who make more than the salary level and qualify under the “white collar” exemptions as “salaried” employees are not eligible to be paid overtime.
- In 2016, the Obama administration DOL issued a final rule that increased the overtime salary threshold from \$23,660 to \$47,476. That rule was [overturned](#) by a federal court in 2017. However, the Trump administration DOL issued a [new rule in 2019](#) that increased the threshold to **\$35,568 per year** as of January 1, 2020. This is the level it remains today.
- Currently, employees must meet three criteria to be exempt from federal overtime pay requirements under the so-called “white collar” exemptions:
 1. They are paid on a salaried basis;
 2. They earn at least \$35,568 annually; and,
 3. Their primary duties are executive, administrative, or professional.

Proposed Changes

- DOL proposes raising the standard salary threshold from its current level of \$35,568 annually to \$55,068—a nearly 55 percent increase. The proposed rule also raises the salary level for the Highly Compensated Exemption (HCE) to \$143,988 from its current level of \$107,432 (a 34 percent increase). The proposed rule does not include housing provided as part of employee compensation in calculating whether an individual employee’s compensation exceeds the threshold, nor does it provide for a pro-rata treatment of part-time employees who may exceed the threshold on a full-time schedule. In addition, the threshold would automatically be updated every three years. DOL is proposing that all aspects of this proposed rule would become effective 60 days after publication of a final rule, much shorter than either the Obama or Trump administrations.
- College and university professors or adjunct instructors are not covered by the salary threshold under DOL’s current “teacher exemption” (provided they have a primary duty of teaching, tutoring, instructing or lecturing). This includes faculty members who are engaged as teachers

but who also spend a considerable amount of their time in extracurricular activities, such as acting as moderators or advisors for drama, speech, debate or journalism programs. Regardless of what they are paid, they are excluded from the regulation. Based on current DOL policy, the threshold also likely does not apply to student workers, including teaching assistants and research assistants. Researchers do not qualify for the exemption, unless they have significant teaching responsibilities. We will share information if DOL changes its position regarding student workers.

- Athletic coaches and assistant coaches may fall under the teacher exemption if their primary activity is teaching, which DOL has said in the past may include instructing athletes in how to perform their sport. If, however, their duties primarily include recruiting athletes or doing manual labor, they would not be considered teachers.
- However, non-faculty employees earning less than the new salary threshold amount will have to be paid on an hourly basis and will be eligible for overtime pay. Hourly records would have to be kept for these employees. The regulation could affect the status of admissions officers, registrars, residential life and student personnel staff, and IT professionals among others.

Next Steps

- The proposed rule was published in the [Federal Register](#) on September 8, 2023. DOL is accepting comments on the rule for 60 days, through November 7.
- We strongly urge you to analyze the impact it would have on your institution and share any comments you wish to make with DOL.
- A number of higher education associations will be following this closely and will share information as appropriate.

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