

# United States Department of Labor

## Wage and Hour Division

### **FREQUENTLY ASKED QUESTIONS: Overtime NPRM**

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## **GENERAL**

### **1. Q. Who is entitled to overtime pay under federal law?**

A. Most employees covered by the Fair Labor Standards Act ("FLSA") must be paid at least one and one-half times their regular rate of pay for any hours they work beyond 40 in a workweek. An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

### **2. Q. Who is covered by the Fair Labor Standards Act (FLSA)?**

A. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour. Overtime pay at a rate not less than

one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

Generally, employees of enterprises that have an annual gross volume of sales made or business done of \$500,000 or more are covered by the FLSA. In addition, employees of certain businesses are covered by the FLSA regardless of the amount of gross volume of sales or business done. These businesses include: hospitals, businesses providing medical or nursing care for residents; schools (whether operated for profit or not for profit); and public agencies.

**3. Q. Does the FLSA and the Department's proposed overtime rule for white collar workers apply to state or local government workers?**

A. Yes, state and local government employers are subject to the FLSA and the Department's proposed regulations concerning white collar employees.

**4. Q. Is there a small business exemption from the FLSA or the Department's proposed overtime rule for white collar workers?**

A. The FLSA does not provide an exemption for small businesses. Generally, the FLSA and the proposed rule apply to employees of enterprises that have an annual gross volume of sales made or business done of \$500,000 or more, and certain other businesses. The FLSA creates a level playing field for businesses by setting a floor below which employers may not pay their employees.

**5. Q. Is there an exemption for non-profit organizations from the FLSA or the Department's proposed overtime rule for white collar workers?**

A. There is no exemption for non-profit organizations under the FLSA or in the proposed rule. Thus, the proposed rule may impact non-profit organizations having an annual dollar volume of sales or business done of at least \$500,000. In determining coverage, only activities performed for a business purpose are considered and not charitable, religious, educational, or similar activities of organizations operated on a non-profit basis where such activities are not in substantial competition with other businesses.

**6. Q. How is overtime pay determined?**

A. Unless exempt, employees covered by the FLSA must receive overtime pay for all hours worked over 40 in a workweek at a rate not less than one and one-half times their regular rates of pay.

**7. Q. What are the white collar exemptions to the FLSA?**

A. The FLSA's white collar exemptions exclude certain executive, administrative, and professional employees from federal minimum wage and overtime requirements. Certain computer professionals and outside sales employees are also excluded from these requirements.

**8. Q. What determines if an employee falls within one of the white collar exemptions?**

A. Currently, to qualify for exemption, a white collar employee generally must:

1. be salaried, meaning that they are paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test");
2. be paid at least a specific salary threshold, which is \$455 per week (the equivalent of \$23,660 annually for a full-year employee) in existing regulations (the "salary level test"); and
3. primarily perform executive, administrative, or professional duties, as provided in the Department's regulations (the "duties test").

Certain employees are not subject to either the salary basis or salary level tests (for example, doctors, teachers, and lawyers).

**9. Q. I'm paid a salary and my job title is manager. Am I exempt from overtime pay?**

A. Job titles do **not** determine exempt status, and the fact that a white collar employee is paid on a salary basis does not alone provide sufficient ground to exempt that employee from the FLSA's minimum wage and overtime requirements. For an exemption to apply, an employee's specific job duties **and** salary must meet all of the applicable requirements provided in the Department's regulations.

**10. Q. What if a state has its own overtime laws?**

A. The FLSA provides minimum standards, and does not preempt a state from establishing more protective standards. If a State establishes a more protective standard than the provisions of the FLSA, the higher standard applies in that State.

**11. Q. What is the current salary level required to qualify for a white collar exemption?**

A. Under the current regulations, a white collar employee must be paid at least \$455 per week (equivalent to \$23,660 annually for a full-year employee) to qualify as an exempt executive, administrative, or professional employee. An employee may qualify as an exempt computer professional if he or she is paid at least \$455 per week or at least \$27.63 an hour, if paid on an hourly basis. There is no salary level test required to qualify as an exempt outside sales employee. Certain professionals including doctors, lawyers, and teachers are also not subject to the salary level test. Finally, the current regulations also contain a relaxed duties test for certain employees who receive total annual compensation of \$100,000 or more and are paid at least \$455 per week.

**12. Q. When did the Department last revise its overtime regulations for white collar workers?**

A. The Department last updated the white collar overtime regulations in 2004. That update, which included setting the standard salary level test amount of \$455 per week, has been in effect since August 23, 2004.

**13. Q. Why is the Department revising its overtime regulations for white collar workers?**

A. To help build real, lasting economic security for more hardworking Americans, President Obama directed the Secretary of Labor to update the FLSA's overtime pay protections and to simplify the overtime rules for employers and workers alike. By way of this rulemaking, the Department seeks to update the salary level test to

ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of overtime-eligible employees, thus making the white collar exemptions easier for employers and workers to understand.

**14. Q. What are the significant proposed changes to the overtime regulations for white collar workers?**

A. To restore the effectiveness of the salary level test, the Department proposes to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers. Using 2013 data, the proposed salary amount would equal \$921 per week (which is \$47,892 annually for a full-year worker). Should the Department decide after consideration of comments received on the NPRM to set the standard salary level in the final rule at the 40th percentile of weekly earnings of full-time salaried workers, the Department estimates that a 2016 level may be about \$970 a week, or \$50,440 a year.

The Department is also proposing to set the highly compensated employee ("HCE") annual compensation level equal to the 90th percentile of earnings for full-time salaried workers (\$122,148 annually). Further, in order to prevent the salary level requirements from again becoming outdated and ineffective between rulemakings, the Department is proposing to automatically update the salary and compensation levels on an annual basis.

**15. Q. Is the Department proposing adjustments to the standard duties tests?**

A. While the Department is not proposing any specific changes to the standard duties tests, the Department is seeking comments on whether the current duties tests are working as intended to screen out employees who are not bona fide "white collar" exempt employees.

**16. Q. How does the proposed rule provide greater clarity for millions more workers so they - and their employers - know more clearly if they should be covered by overtime protection?**

A. The proposed rule will clarify the overtime requirements for approximately 11 million workers who earn below the proposed salary threshold and their employers because their entitlement to overtime pay can be determined solely on the basis of the bright line salary threshold. This group includes almost 5 million white collar workers who will become newly entitled to overtime protection because of the increase in the salary threshold, and approximately 6 million white collar employees who are currently entitled to overtime who will have their eligibility clarified because it will be determined solely by application of the salary threshold.

**17. Q. Where can I review, and how can I comment on, the Department's proposed changes to the overtime regulations for white collar workers?**

A. The Department's Notice for Proposed Rulemaking ("NPRM") is available at [www.regulations.gov](http://www.regulations.gov) under Rule Identification Number (RIN) 1235-AA11. The Department encourages all interested parties to participate in the rulemaking process by submitting written comments regarding the NPRM through the online portal provided at [www.regulations.gov](http://www.regulations.gov).

**18. Q. Will the proposed rule impact employees who use electronic devices, such as smartphones or laptops, for work-related purposes outside of regular work hours?**

A. During its outreach to stakeholders, the Department heard questions and concerns related to the use of electronic devices by white collar workers who may be newly entitled to overtime pay as a result of this rulemaking. Because this concern involves compensation for hours worked by overtime-protected employees, it is beyond the scope of this rulemaking. The Department, however, understands the importance of this concern and will publish a Request for Information (RFI) in the near future seeking information from stakeholders on the use of electronic devices by overtime-protected employees outside of scheduled work hours. The Department anticipates issuing the RFI in February 2016.

## **SALARY LEVEL**

### **1. Q. What is the proposed standard salary level?**

A. In order to re-establish the effectiveness of the salary level test as a ready method of drawing a line separating exempt from nonexempt employees, the Department proposes to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers. Using 2013 data, the proposed salary amount would equal \$921 per week (which is \$47,892 annually for a full-year worker). Should the Department decide after consideration of comments received on the NPRM to set the standard salary level in the final rule at the 40th percentile of weekly earnings of full-time salaried workers, the Department estimates that a 2016 level may be about \$970 a week, or \$50,440 a year.

### **2. Q. Why is the Department proposing to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers?**

A. The Department believes that the 40th percentile of weekly earnings for full-time salaried workers represents the most appropriate line of demarcation between exempt and nonexempt employees. This amount effectively distinguishes between employees who may meet the duties requirements of the white collar exemptions and those who likely do not, without necessitating a return to the more detailed "long" duties test that existed before 2004. This salary level minimizes the risk that employees legally entitled to overtime will be subject to misclassification based solely on the salaries they receive, without excluding from exemption an unacceptably high number of employees who meet the duties test.

Currently, approximately 85 percent of white collar salaried workers who fail the duties test- and therefore are entitled to overtime protection- earn at least \$455 per week. Because the current salary level is only screening from exemption approximately 15 percent of overtime-eligible white collar salaried employees, it is not an effective test for exemption and does not serve the intended purpose of simplifying application of the exemption by reducing the number of employees for whom employers must perform a duties analysis. Increasing the standard salary level to the 40th percentile of weekly earnings for full-time salaried workers would reduce the number of white collar employees who do not meet the duties test but earn at least the proposed salary level to approximately 41 percent.

### **3. Q. Is the Department proposing to increase the salary level for highly compensated employees?**

A. The Department is proposing to set the HCE annual compensation level equal to the 90th percentile of earnings for full-time salaried workers (\$122,148 annually).

### **4. Q. Will the Department consider bonuses as part of the new salary level test?**

A. In a further effort to respond to changing conditions in the workplace, the Department is seeking comment on whether to allow nondiscretionary bonuses, such as certain production or performance bonuses, to satisfy a portion of the standard salary test requirement. Such bonuses include for example, nondiscretionary incentive bonuses tied to productivity and profitability.

## **5. Q. Why is the Department proposing to automatically update the salary level and HCE total annual compensation level?**

A. The Department is proposing to automatically update the standard salary and HCE total annual compensation requirements to ensure that they remain meaningful tests for distinguishing between bona fide executive, administrative, and professional workers who are not entitled to overtime and overtime-protected white collar workers. Experience has shown that the salary level test is a strong measure of exempt status only if it is up to date. Left unchanged, the test erodes due to inflation, becoming substantially less effective as wages for overtime-protected workers increase over time. Automatically updating the salary level and HCE total annual compensation requirement using the most recent data will ensure that these tests continue to accurately reflect current economic conditions.

## **6. Q. How is the Department proposing to automatically update the salary level and HCE total compensation levels?**

A. The Department has proposed two different methodologies for updating the standard salary and HCE total annual compensation levels. One method would keep those levels pegged to the 40th and 90th percentiles of earnings for full-time salaried workers, respectively. The other method would adjust the standard salary and HCE compensation amounts based on changes in inflation, as measured by the Consumer Price Index for all Urban Consumers (CPI-U). The Department is seeking comment on both methods of updating.

## **DUTIES TEST**

### **1. Q. How will the Department update the "duties tests" in the proposal?**

A. The Department is not making specific proposals to modify the standard duties tests; however, the Department is seeking comment on whether the standard duties tests are working as intended to screen out employees who are not bona fide white collar exempt employees.

### **2. Q. What is the basis for the standard duties test?**

A. From 1949 until 2004 the regulations contained two different tests for exemption - a long test for employees paid a lower salary, and a short test for employees paid at a higher salary level. Under the old short test/long test structure, the long duties test included a limit on the amount of nonexempt work that could be performed (20 percent for most workers and 40 percent for retail and service workers) and thus provided an adequate safeguard against the exemption of white collar workers who should be overtime-protected but who were paid between the long test salary level and the short test salary level. The short duties test did not include a cap on nonexempt work for employees paid at or above the higher short test salary level. The Department in the 2004 Final Rule replaced the short test/long test structure with a single "standard" test. The standard test based the new "standard" duties tests on the short duties tests (which did not strictly limit the amount of nonexempt work that could be performed), and tied them to a salary test level that was updated from the long test salary (which historically had been paired with a cap on nonexempt work).

## **ECONOMICS**

### **1. Q. What are the costs and benefits of the proposed rule?**

A. The Department estimates that average annualized direct employer costs will total between \$239.6 and \$255.3 million per year, depending on the updating methodology. In addition to the direct costs, this proposed rulemaking will also transfer income from employers to employees in the form of higher earnings. Average annualized transfers are estimated to be between \$1.18 and \$1.27 billion, depending on which of the two updating methodologies is used.

### **2. Q. How many employees does the Department think will be impacted by the proposed salary level increase?**

A. In the first year, the Department estimates that 4.6 million workers exempt under the current regulations who earn at least the current weekly salary level of \$455 but less than the proposed salary level of \$921 would, without some intervening action by their employers, become newly entitled to overtime protection under the FLSA. Similarly, an estimated 36,000 currently exempt workers who earn at least \$100,000 but less than \$122,148 and who meet the minimal HCE duties test but not the standard duties test may also become eligible for minimum wage and overtime. Additionally, the Department estimates that 6.0 million salaried white collar workers who are currently entitled to overtime due to their job duties, and who earn at least \$455 per week but less than the proposed salary level, would have their overtime protection strengthened because their exemption status would be clear based on the salary test alone without the need to examine their duties. This would reduce the number of overtime eligible workers potentially subject to misclassification as exempt by their employers.

### **3. Q. Where can I find the earnings information the Department used in setting the salary and total annual compensation levels?**

A. The Department set these levels using Bureau of Labor Statistics (BLS) data available at [http://www.bls.gov/cps/research\\_nonhourly\\_earnings\\_2013.htm](http://www.bls.gov/cps/research_nonhourly_earnings_2013.htm). On a quarterly basis, BLS publishes a table of deciles of the weekly wages of full-time salaried workers, calculated using Current Population Survey data. See [http://www.bls.gov/cps/research\\_series\\_earnings\\_nonhourly\\_workers.htm](http://www.bls.gov/cps/research_series_earnings_nonhourly_workers.htm)



# United States Department of Labor

## Wage and Hour Division

### Wage and Hour Division (WHD)

#### Notice of Proposed Rulemaking: Overtime



Today the Department of Labor has announced a proposed rule that would extend overtime protections to nearly 5 million white collar workers within the first year of its implementation. Failure to update the overtime regulations has left an exception to overtime eligibility originally meant for highly-compensated executive, administrative, and professional employees now applying to workers earning as little as \$23,660 a year. For example, a convenience store manager, fast food assistant

manager, or some office workers may be expected to work 50 or 60 hours a week or more, making less than the poverty level for a family of four, and not receive a dime of overtime pay. Today's proposed regulation is a critical first step toward ensuring that hard-working Americans are compensated fairly and have a chance to get ahead.

On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards. Consistent with the President's goal of ensuring workers are paid a fair day's pay for a fair day's work, the memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented.

Following issuance of the memorandum, the Department embarked on an extensive outreach program, conducting listening sessions in Washington, DC, and several other locations, as well as by conference call. The listening sessions were attended by a wide range of stakeholders: employees, employers, business associations, non-profit organizations, employee advocates, unions, state and local government representatives, tribal representatives, and small businesses. In these sessions the Department asked stakeholders to address, among other issues: (1) What is the appropriate salary level for exemption; (2) what, if any, changes should be made to the duties tests; and (3) how the regulations could be simplified. The Department's extensive outreach helped in shaping a proposed rule that is intended to be responsive to concerns raised by the regulated community.

The Notice of Proposed Rulemaking (NPRM) was published on July 6, 2015, in the Federal Register (80 FR 38515) and invited interested parties to submit written comments on the proposed rule at [www.regulations.gov](http://www.regulations.gov) by September 4, 2015. Only comments received during the comment period identified in the Federal Register published version of the NPRM will be considered part of the rulemaking record.

Written comments received during the comment period will be helpful in shaping any final rule. Based on past experience and extensive work with the regulated community on other FLSA-related matters, we believe a 60-day comment period provides sufficient time for interested parties to submit substantial comment. Equally important, a comment period of this length, coupled with the feedback already received during the initial outreach sessions, will meet the goal described above of ensuring the Department has the level of insight from the public needed to produce a quality regulation. For these reasons we will not be extending the comment period.

## Additional Information

- [Notice of Proposed Rulemaking](#)
- [Overtime Resources](#)
- [Fact Sheet: Middle Class Economics Rewarding Hard Work by Restoring Overtime Pay](#)
- [A Hard Day's Work Deserves a Fair Day's Pay \(Huffington Post\)](#)
- [Frequently Asked Questions \(PDF\)](#)
- [Fact Sheet on Proposed Rule \(PDF\)](#)
- [Blog Post: 5 Million Reasons Why We're Updating Overtime Protections](#)

## Fact Sheet #23: Overtime Pay Requirements of the FLSA

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA.

### Characteristics

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

### Requirements

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in 29 CFR 778.415 through 778.421.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

### **Typical Problems**

**Fixed Sum for Varying Amounts of Overtime:** A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$78.00 must be included in determining the employees' regular rate.

**Salary for Workweek Exceeding 40 Hours:** A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of \$405. In this instance the regular rate is obtained by dividing the \$405 straight-time salary by 45 hours, resulting in a regular rate of \$9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ( $\$4.50 \times 5 = \$22.50$ ).

**Overtime Pay May Not Be Waived:** The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
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# United States Department of Labor

## Wage and Hour Division

## Wage and Hour Division

### **FACT SHEET: PROPOSED RULEMAKING TO UPDATE THE REGULATIONS DEFINING AND DELIMITING THE EXEMPTIONS FOR "WHITE COLLAR" EMPLOYEES**

The Department is proposing to update the regulations governing which executive, administrative, and professional employees (white collar workers) are entitled to the Fair Labor Standards Act's minimum wage and overtime pay protections. The Department last updated these regulations in 2004, and the current salary threshold for exemption is \$455 per week (\$23,660 per year). With this proposed rule, the Department seeks to update the salary level required for exemption to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of nonexempt employees, thus making the executive, administrative and professional employee exemption easier for employers and workers to understand and apply.

#### **Key Provisions of the Proposed Rule**

The Notice of Proposed Rulemaking (NPRM) focuses primarily on updating the salary and compensation levels needed for white collar workers to be exempt. Specifically, the Department proposes to:

1. set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers (\$921 per week, or \$47,892 annually);
2. increase the total annual compensation requirement needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$122,148 annually); and
3. establish a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption.

The Department's proposal to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers represents the most appropriate line of demarcation between exempt and nonexempt employees. This salary level minimizes the risk that employees legally entitled to overtime will be subject to misclassification based solely on the salaries they receive, without excluding from exemption an unacceptably high number of employees who meet the duties test. As proposed, this would raise the salary threshold from \$455 a week (the equivalent of \$23,660 a year) to about \$970 a week (\$50,440 a year) in 2016.<sup>1</sup>

The Department is also proposing to automatically update the standard salary and HCE total annual compensation requirements to ensure that they remain meaningful tests for distinguishing between bona fide executive, administrative, and professional workers who are not entitled to overtime and overtime-protected white collar workers. Experience has shown that the salary level test is an effective measure of exempt status only if it is up to date.

In addition, the Department discusses the current duties test and solicits suggestions for additional occupation examples and requests comments on the current requirements. Similarly, the Department seeks comment on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement. The Department is not proposing specific regulatory changes on either of these issues.

#### **Background**

Since 1940, the Department's regulations have generally required each of three tests to be met for one of the FLSA's white collar exemptions to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed; (2) the amount of salary paid must meet a minimum specified amount; and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.

Certain highly compensated employees are exempt from the overtime pay requirement if they are paid total annual compensation of at least \$100,000 (which must include at least \$455 per week paid on a salary or fee basis) and if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption.

### **How to Comment**

The Department encourages interested parties to submit comments on the NPRM. The full text of the NPRM, as well as information on the deadline for submitting comments and the procedures for submitting comments, can be found at the Wage and Hour Division's [Proposed Rule website](#).

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Department will consider all comments received on this proposal in determining the salary level for the Final Rule.

<sup>1</sup> The Department of Labor relied upon 2013 data in the development of the NPRM, under which the 40th percentile of weekly earnings for full-time salaried workers was \$921 per week. These figures project what the salary level would likely be in 2016 based on the proposed rule.