



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



LABOR DEPARTMENT OVERTIME RULE

NMHC/NAA Viewpoint

NMHC/NAA support all avenues to overturn the Labor Department's overtime rule whether through outright appeal or denying funding to enforce it. We favor legislation that would require the Labor Department to undertake a comprehensive economic analysis before finalizing a subsequent rule.

The Labor Department issued its final overtime rule in spring 2016 that lifts the overtime pay threshold from \$23,660 to \$47,476. Effective December 1, 2016, executive, administrative and professional employees who are paid by the hour, or earn less than the threshold, will be eligible for overtime pay.

NMHC and NAA have continued to work tirelessly to overturn this rule since its initial introduction because, in part, it would harm the ability of multifamily employers to implement, and their employees to take advantage of, flexible scheduling options. Some experts contend that the final rule will demote many employees from salary to hourly pay, which will harm employee morale. The final rule would also limit career advancement opportunities for employees. Those nearing 40 hours of work in a week may not be able to participate in training or other opportunities because the employer is unable to provide overtime compensation for the hours spent.

The Fair Labor Standards Act (FLSA) generally requires employers to pay employees at least one and one-half times their regular rate of pay for any hours they work beyond 40 in a workweek. But an employee would be exempt if:

The overtime rule will harm the ability of multifamily employers to implement, and their employees to take advantage of, flexible scheduling options. Salaried employees may also be demoted to hourly pay, harming morale. Finally, the rule will limit career advancement opportunities for employees.

1. **The employee is 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** meets a minimum specified amount (i.e., \$47,476); and
3. **The employee's job duties** primarily involve executive, administrative or professional duties as defined by the regulations. Notably, the final regulation does not change this requirement. Thus, employees paid over \$47,476 may remain exempt from overtime if they meet the duties test and are salaried.

The final overtime rule ties the wage threshold to the 40th percentile for salaried workers in the lowest-wage region of the Labor Department's five established wage regions: Northeast, Southeast, Midwest, Southwest and West. The threshold will be updated every three years at the 40th percentile for salaried workers in the lowest-wage region, which is currently the Southeast and it's likely to remain this region in the future.