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As Comment Period for Overtime Proposal Begins, S



By [Gayle Cinquegrani](#)

July 6 — As the 60-day comment period on the overtime exemption rule begins to run, some stakeholders told Bloomberg Businessweek that a significant increase in the overtime salary threshold is sufficient.

The proposed rule on the overtime exemption for non-exempt employees was published July 6 in the Federal Register (80 Fed. Reg. 37000).

The proposed rule, unveiled by the White House June 30, would require that the overtime exemption threshold be set at the 40th percentile of salaried workers' time-and-one-half pay in a workweek. That pay level is projected to be \$50,440 per year in 2015. Under the current rule, workers who earn as little as \$23,600 annually are exempt from overtime duties.

The Obama administration estimates more than 5 million additional workers will be covered under the proposal. The goal, according to the White House, is to ensure that the overtime exemption threshold is not used to underpay low-level supervisors.

The proposal also calls for the salary threshold to be indexed so that it increases with public input as to whether the index should be a fixed percentile of wages.

DOL Left Duties Test Open

The DOL left open the question whether the proposed rule will revise the test for determining whether an employee's tasks are managerial or executive. The DOL will use a series of questions to decide what changes, if any, to make to the test.

"The whole purpose of the comment period is for the government to get input from stakeholders," said a member of Dykema's labor and employment practice group in Ann Arbor, Mich. "They're keeping some cards close to their vest" by not including a duty test that something so substantive is not included in the proposed rule. The Wage and Hour Defense Institute of the Litigation Counsel of America (WHDI) also expressed concern.

"I think 60 days, even though that's technically permissible, is not sufficient," said Boonin. "The issues are to highlight," Boonin said.

As for the salary threshold, he said, "I think many people are shocked that the increase from \$23,600 to \$50,440 is a huge leap, especially without a phase-in period."

"Taking comments during the summer vacation period probably doesn't work," he said. "Comment in a way that a rule of this magnitude would necessitate, government relations for the National Retail Federation, told Bloomberg Businessweek.

The increased salary threshold is likely to have a large impact on the number of workers currently exempt from overtime pay who earn less than \$50,000.

Previous Rulemaking Had Longer Comment Period

French noted the last time the overtime exemption was revised, in 2003, the process had a "90-day comment period" (60 DLR E-1, 3/28/03).

Representatives from groups that support the increase told Bloomberg Businessweek. "The AFL-CIO believes the 60 day comment period is typical and sufficient."

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said. "President Obama issued a presidential directive over a year ago and the business community and other commenters have been well aware of it."

Judy Conti, the National Employment Law Project's federal advocate, said that some commenters will request an extension of the comment period as much as possible in the hopes they can run out the clock on this rulemaking.

Conti disputed the need for an extension. "The salary DOL proposals floated these last 15 months," she said. "And because DOL isn't providing materials stakeholders have been circulating for the last 15 months, the comment period should be very easy and require very little new material for rulemaking."

The DOL began the rulemaking in response to a March 2014 order on overtime regulations (49 DLR AA-1, 3/13/14). The DOL told Bloomberg Businessweek in 2016.

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