

# PUBLICATION

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## One More Time? DOL's Proposed Rule to Increase Salary Thresholds Again

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**The U.S. Department of Labor (DOL) announced today a Notice of Proposed Rulemaking (NPRM) to update and revise the regulations under the Fair Labor Standard Act (FLSA). Specifically, the DOL proposes an increase to the salary threshold portion of the test for determining whether certain white-collar salaried employees are exempt from minimum wage and overtime requirements under the FLSA. Employees falling below this threshold would be non-exempt and eligible to receive overtime compensation of one and a half times their regular rate of pay for all hours worked over 40 hours in a workweek.**

In the NPRM, the DOL proposes to increase the salary threshold to \$55,068 annually (a guaranteed \$1,059 per workweek), and it would increase the salary threshold for the highly compensated employee exemption (HCE) to \$143,988 annually. The DOL also proposes that these thresholds be automatically updated every three years with then-current wage data. The NPRM also includes an extension of these thresholds to all U.S. territories where minimum wage laws apply, some of which were excluded from increased thresholds in the 2019 rule addressing this issue, with the exception of American Samoa, for which the DOL would set a "special salary level."

Increasing the salary threshold under the FLSA has historically been a priority for the DOL and various administrations. As early as 2016, there was a push to increase the threshold amount, then \$23,660, and the proposed Obama-era rule would have doubled that. However, the United States District Court for the Eastern District of Texas blocked the rule holding that the DOL had exceeded its authority by raising the threshold too high. Before an appellate decision was rendered, in 2019, the [Trump-era rule was proposed](#), which raised the salary threshold to \$35,568 annually, that is, a guaranteed weekly salary amount of \$684. As for the HCE exemption, the threshold increased from \$100,000 to \$107,432 annually, of which at least \$684 must be paid on a weekly salary basis. The Trump-era rule took effect January 1, 2020.

Under both the Obama- and Trump-era rules, the duties test for white-collar exemptions (executive, administrative, and professional) were not changed. Similarly, the current NPRM would not change the duties test under either the white-collar or HCE exemptions. The NPRM invites comments during the 60-day period following its publication in the Federal Register. The NPRM has been approved by the Office of Management and Budget and has been submitted to the Office of Federal Register for publication in the coming days. The NPRM notes that its resulting final rule would be scheduled to become effective 60 days following the close of the comment period.

### Key Takeaways for Employers

According to the DOL, this salary threshold increase would render approximately 3.6 million workers eligible for overtime compensation. As we have seen from prior rounds of similar proposed rules, the DOL's proposed timeline may well be extended if road bumps like those we have historically seen are thrown in its path. This is merely the first step in the rule-making process. Nevertheless, now is the time for employers to prepare. Given the impacts of inflation and the dilution of wages, even if the NPRM does not become a final rule, some iteration of a threshold increase may result. As such, employers should identify employees who will fall below the proposed threshold and determine the working hours of those who may be impacted, to begin to assess

the financial impact. These assessments will assist employers with deciding whether to raise employee's salaries to any new threshold, reclassify the impacted employees to non-exempt, or adjust salaries to offset the overtime compensation that would be required.

Baker Donelson will continue to monitor these developments and other anticipated developments from the DOL. If you have questions about these recent developments, contact [Elizabeth Liner](#), [Donna M. Glover](#), or any member of Baker Donelson's [Labor & Employment Team](#).