



## EY Payroll NewsFlash

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## U.S. Department of Labor requests comments about salary threshold for white collar overtime exemption

On July 25, 2017, the U.S. Department of Labor [announced](#) that it published a request for Information (RFI) pursuant to the overtime exemption for salaried employees under the Fair Labor Standards Act (FLSA). The RFI will allow the public to provide information that would potentially be used in issuing proposed regulations.

Specifically, the RFI requests feedback concerning the salary-level test, the duties test, varying cost-of-living across different parts of the US, inclusion of non-discretionary bonuses and incentive payments to satisfy a portion of the salary level, the salary test for highly-compensated employees, and automatic updating of the salary level tests.

The RFI is available in the [Federal Register](#). There is a 60-day public comment period. Instructions on submitting public comments are in the RFI. Comments may also be submitted electronically at <http://www.regulations.gov>.

After three extension requests, the U.S. Department of Labor filed its [reply brief](#) with the U.S. Court of Appeals for the Fifth Circuit on June 30, 2017. In that brief the court was urged to rule that the U.S. Department of Labor has authority to set a salary level pursuant to the white collar exemption of the FLSA and to reverse the temporary injunction issued last November. Within the brief, the U.S. Department of Labor also stated that it will not defend the revised salary level of \$913 included in the Obama Administration's regulations, but instead plans to determine a more appropriate salary threshold to be included in future rule making.

### Background

As we reported in EY *Payroll NewsFlash* Vol. 17, #077 (5-19-2016), on May 18, 2016, the U.S. Department of Labor issued final [revised rules](#) governing the exemption from overtime

pay that applies to qualified exempt employees. The new requirements were to take effect December 1, 2016, and were expected to have the result of extending overtime pay to 4.2 million employees currently exempt and boost wages by \$12 billion over the next 10 years. ([Email from President Obama](#), May 17, 2016.)

Under the final rule, the salary threshold for salaried-exempt employees would have been \$913 per week (\$47,476 per year), double the current amount.

This salary test would have been adjusted for inflation every three years, and was expected to rise to \$981 per week (\$51,000 per year) when first updated on January 1, 2020.

On November 22, 2016, a federal judge in Texas put a [hold](#) on the federal overtime rule.

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