

June 30, 2017

DOL Last-Minute Reply Brief Drops Defense of Final Overtime Rule

By [Susan Prince](#), JD, M.S.L., Legal Editor

The U.S. Department of Labor (DOL), headed by newly appointed Secretary of Labor Alexander Acosta, has decided not to defend the overtime rule finalized under the Obama Administration. Instead, the DOL will seek to begin a new rulemaking process, likely with a lower salary threshold for exemption.



DOL Will Not Defend Obama Administration's Overtime Rule

A federal district court temporarily blocked DOL's final overtime rule on November 22, 2016, just days before it was scheduled to take effect. At the request of 21 states, the U.S. District Court for the Eastern District of Texas granted an emergency injunction request, halting the new regulations. DOL's motion to stop the lawsuit was denied on January 3, 2017.

The DOL appealed, but then requested and was granted three extensions until June 30th, to file the reply brief in order to give the Trump Administration time to review the overtime issues.

The reply brief filed on June 30, 2017, notes that when enjoining the final overtime rule "the district court reasoned that the salary-level component of this three-part test is unlawful." In contrast, the DOL argues that some salary level should be allowed.

Secretary of Labor Alexander Acosta has indicated that the increase in the salary level under the final regulations would have been too drastic a change for employers, but that a lower salary threshold may be effective in classifying exempt and nonexempt employees. The reply brief states, "Although plaintiffs defend the district court's broad reasoning, they offer no basis to call into question a regulatory test that has been in place since the FLSA's inception.... This Court



should simply lift the cloud created by the district court's broad reasoning, which would call into question *any* salary-level test adopted by the Department.”

Request for Information Signals New Rulemaking Process

The DOL has submitted a Request for Information (RFI) regarding the final [overtime rule](#) to the Office of Information and Regulatory Affairs (OIRA) for its review. An RFI is an optional step used by governmental agencies when drafting rules in order to obtain public input on whether a new rule or changes to an existing rule are warranted. The RFI in this case begins a new rulemaking process regarding overtime and the salary threshold for exemption.

The final regulations would have required employers to pay overtime to anyone earning less than \$913 per week (which amounts to \$47,476 annually) beginning December 1, 2016. DOL's regulatory changes would also have raised the threshold for highly compensated employees from \$100,000 to \$134,004 per year as of December 1, 2016. Beginning on January 1, 2020, and every 3 years thereafter, both the standard salary threshold and salary level for highly compensated employees would have been automatically updated.

This means that until further action, the minimum salary threshold for the white-collar exemptions will remain where it has been since 2004, at \$455 a week. The salary threshold for the highly compensated employee exemption will remain at \$100,000 per year.

An RFI will give individuals and groups such as employers, employees, political parties, nonprofit organizations, labor unions, and trade organizations the opportunity to provide input on the final rules, what they think should change, and whether there should be changes at all. The DOL will likely receive comments on the costs and difficulties for employers to implement large salary threshold increases, the effect on those employers who actually implemented the \$913 per week threshold in anticipation of the final rule, how the impact of a high salary threshold varies in different geographic areas around the country, and how some industries are hit much harder than others.

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