

DOL Invites Public Input: Rethinking The Stalled Questions On Overtime

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Perhaps lost amidst other issues in Washington, D.C., the [Department of Labor \(DOL\)](#) announced on July 25 that it is tackling the long-awaited questions about overtime regulations. The DOL's Wage and Hour Division (WHD) is publishing a formal [Request for Information](#) that asks for public feedback on the Obama administration's overtime rule. Once the RFI is published in the Federal Register, the public will have 60 days to submit comments. You'll remember that the overtime regulations, which doubled the minimum salary levels for exempt employees, were scheduled to take effect last December. Those proposed regulations triggered widespread changes and audits among employers nationwide, and at the last minute, the regulations were halted by a preliminary injunction. The [WHD's formal request](#) asks for input on a broad scope of questions, including,

- How should adjustments be made to 2004 salary levels?
- Should there be multiple standard salary levels, and if so, by what measures (e.g., employer size, location)?
- What should be done with the historical short-test and long-test methods for evaluating exemptions?
- Do we need to change the standard duties test?
- Does the salary level test in the 2016 Final Rule eclipse the duties test in evaluating exempt status?

One question focuses on the efforts that employers made to comply with the anticipated 2016 Final Rule. In addition to seeking information about general changes, including the particular challenges for small business, the WHD Request for Information asks if employers did any other the following:

- Increased salaries of exempt employees in order retain their exempt status
- Decreased newly non-exempt employees' hours or change their implicit hourly rates so that the total amount paid would remain the same
- Converted worker pay from salaries to hourly wages, or make changes to workplace policies either to limit employee flexibility to work after normal work hours or to track work performed during those times

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The 2016 overtime regulations were likely to affect disproportionately certain industries, smaller businesses, and non-profits. The scope of the questions suggests that the current DOL is willing to listen to the challenges faced by U.S. businesses in employment.