



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



August 22, 2017

Melissa Smith
Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue, NW
Washington, DC 20210

RIN 1235-AA20

Dear Director Smith:

On behalf of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), we are writing to offer comments regarding the Department of Labor's request for information regarding the "overtime" rule defining and delimiting the exemptions for executive, administrative, professional, outside sales and computer employees. We recommend the Labor Department modify the final overtime rule published in May 2016 and reduce the \$47,476 threshold salary under which overtime must be paid. Instead of setting this threshold salary level at \$47,476, we request the Labor Department adjust for inflation the current-law \$23,660 threshold that was put into place in 2004; the threshold be periodically reevaluated in future years, though not automatically adjusted until a contemporaneous analysis of prevailing labor market conditions is undertaken; and the current rules requiring that an employee's job duties primarily involve executive, administrative, or professional functions be unchanged.

By way of introduction, for more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of more than 160 state and local affiliates, NAA encompasses over 73,000 members representing nearly 9 million apartment homes globally.

Our primary concern with the Labor Department's final overtime regulation to more than double the overtime threshold to \$47,476 per year from \$23,660 per year is that it is unlikely to increase the wages of the workers it intends to assist. At the same time, the regulation could actually harm employees by reducing their flexibility, inhibiting their advancement and potentially reducing their benefits as employers seek to hold stable labor costs. In the context of the multifamily industry, there is little evidence to suggest that the Labor Department's regulation will benefit onsite property managers, maintenance managers or construction supervisors. Indeed, these hardworking professionals could be left with less flexibility and fewer opportunities should these regulations be put into place in the current form.

Employers in the multifamily industry are unlikely to substantially increase wage outlays by paying overtime to employees targeted by the overtime rule. Wages represent a substantial cost of overall operations, and apartment firms simply cannot absorb substantial cost increases. Alternatively, certain employers may decide to pay newly eligible employees overtime but could reduce employee benefits to maintain stable compensation levels.

The Labor Department's final rule would also lead many employers to structure their operations to minimize overtime paid to newly eligible employees. It is likely that many salaried employees who are currently exempt from overtime would be reclassified into hourly positions so that employers could closely monitor their hours. Not only would this harm the morale of the reclassified employees who take pride in being salaried and being viewed as professionals, but it would also diminish their flexibility.

Whereas salaried employees can today structure their schedules to attend doctor's appointments or their child's school events, hourly employees do not generally have as much control over when they work. Additionally, because it is easiest to monitor hours when employees work onsite, options for telework may disappear. Furthermore, while many employees today offer valuable employee training, this might be reduced if it means that an employer will have to pay overtime for an employee to participate.

At the same time that the apartment industry has significant concerns about more than doubling the overtime threshold, we also recognize that employees must be fairly compensated for the critical role they play in enabling the nation's economy to be the world's largest and most dynamic. While we must oppose more than doubling the overtime threshold to \$47,476 given the uncertain benefits it would confer and substantial disruptions it would impose, we support increasing the threshold to the inflation that the economy has experienced since 2004. Finally, we advocate that the overtime threshold be periodically reevaluated, though not automatically increased, to ensure that overtime laws are functioning as Congress intended. This would enable the overtime threshold to be reassessed in the context of prevailing economic and labor market conditions.

While the multifamily industry favors updating the overtime wage threshold to account for inflation, we do not favor modifying the duties test an employee must meet to attain exempt status. Exempt employees, including property, maintenance and construction managers, are often called upon to complete a wide array of tasks during any given day. That said, their primary duties are executive in nature as they retain supervisory authority over a property and other employees. To avoid establishing new and possibly arbitrary requirements, diminishing workplace flexibility and imposing additional recordkeeping requirements, we strongly recommend that the Labor Department leave the duties test unchanged. The current regulations work well for the multifamily industry, and no change is necessary.

We look forward to working with you to strike the appropriate balance between ensuring our nation's hardworking employees are fairly compensated for their services and the need for flexible labor markets that do not stymie economic activity. We see increasing the \$23,660 wage threshold to account for inflation between 2004 and today as the most appropriate means of accomplishing this objective. This threshold could be reviewed periodically but should not be automatically adjusted until an analysis of prevailing economic and labor market conditions is completed at such time an increase is contemplated. We also believe the Labor Department should not modify current rules regarding job duties. Thank you for considering our views, and please feel free to contact Cindy Chetti of NMHC at 202-974-2300 should you have any questions.

Sincerely,



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National Multifamily Housing Council



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