

NMHC/NAA Viewpoint

NMHC and NAA do not oppose increasing the overtime threshold to \$35,308. We are also pleased DOL is not proposing to modify the duties test governing when overtime must be paid.

NMHC and NAA also strongly support DOL's decision not to automatically increase the overtime threshold and, instead, to revisit the amount every four years.

LABOR DEPARTMENT OVERTIME RULE

The Department of Labor (DOL) is reassessing overtime pay thresholds for executive, administrative and professional employees. Currently, such employees who are paid by the hour or earn less than \$23,660 annually are eligible for overtime pay. In March 2019, DOL proposed to raise the threshold to \$35,308 annually.

Prior to the release of the proposed rule, NMHC and NAA encouraged DOL to adjust the current overtime threshold of \$23,660, which was put into place in 2004, for inflation. While this would have resulted in a slightly lower threshold, the industry does not oppose DOL's proposal given that it used the same methodology to adjust the threshold as it did in 2004. In a significant win for the industry, DOL is not proposing to modify the duties test that governs when overtime must be paid. As NMHC and NAA requested, DOL is also not proposing to make automatic adjustments to the threshold and is instead intending to propose updating the threshold every four years.

The apartment industry strongly opposed an Obama-era version of the overtime rule that sought to lift the overtime pay threshold to \$47,476 and was invalidated by a Federal District Court in August 2017. NMHC and NAA opposed the Obama-era rule because, in part, it would have harmed the ability of multifamily employers to implement – and their employees to take advantage of – flexible scheduling options. Experts also contended the rule would have demoted many employees from salary to hourly pay, potentially harming employee morale.

The Fair Labor Standards Act (FLSA) generally requires employers to pay employees at least one and one-half times their regular rate of pay for any hours they work beyond 40 in a workweek. But an employee is exempt if:

1. **The employee is paid a predetermined and fixed salary** that is not subject to reduction because of variations in the quality or quantity of work performed;
2. **The amount of salary paid** meets a minimum specified amount (i.e., \$23,660); and
3. **The employee's job duties** primarily involve executive, administrative or professional duties as defined by the regulations.