



March 27, 2019

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, N.W.
Washington, D.C. 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 March 2019 proposed "overtime" rule defining and delimiting the exemptions for executive, administrative, professional, outside sales and computer employees.

By way of introduction, for more than 20 years, NMHC and NAA have partnered 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 75,000 members representing 9.25 million apartment homes globally.

NMHC and NAA do not oppose the Labor Department's proposal to increase the threshold salary under which overtime must be paid to \$679 per week (\$35,308 annually) from the current \$455 per week (\$23,660 annually). As the threshold has not been increased since 2004, we recognize the need for an upward adjustment. While the multifamily industry had proposed simply indexing the current threshold for inflation, we understand Labor Department's decision to use the same methodology to adjust the threshold as was employed in 2004. Furthermore, we also commend the Labor Department for proposing to reevaluate the overtime threshold every four years but declining to make automatic adjustments. Finally, we greatly appreciate that the proposed rule does not modify the current duties test an employee must meet to attain exempt status.

The multifamily industry strongly opposed the Labor Department's final overtime rule adopted in 2016 that sought to increase overtime salary threshold to \$913 per week (\$47,476 annually). Our primary concern with the 2016 final rule to more than double the overtime threshold to \$47,476 was that it was unlikely to significantly increase the wages or overall compensation of the workers it intended to assist.

Had the 2016 final rule remained in effect, it is likely that many salaried employees who were previously exempt from overtime would have been reclassified into hourly positions so that employers could more closely monitor their hours. This would have had the collateral effect of harming the morale of reclassified employees who took pride in being salaried and being viewed as professionals, as well as diminished their flexibility. As an alternative to reclassifying employees, certain employers may have decided to pay overtime to newly eligible employees but simultaneously reduced employee benefits to maintain stable compensation levels.

At the same time that the apartment industry had 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. For this reason, we do not oppose the Labor Department's proposal to increase the overtime threshold to \$35,308 annually. We believe that a \$35,308 threshold will mitigate many of the concerns raised above in the context of a \$47,476 threshold. Finally, we strongly support the Labor Department's proposal to allow employers to count non-discretionary bonuses to satisfy up to 10 percent of the overtime threshold, provided such incentive compensation is paid annually or more frequently. This proposal recognizes pay practices across the economy.

NMHC and NAA are also pleased that the Labor Department's proposed rule declines to make automatic adjustments to the overtime threshold. We concur that the threshold should be periodically reevaluated and believe that doing so every four years is appropriate. The notice and comment period envisioned for future proposed increases to the overtime threshold will enable the Labor Department to both ensure that overtime laws are functioning as Congress intended and assess increases in the context of prevailing economic and labor market conditions.

Finally, NMHC and NAA are grateful that the Labor Department's proposed rule does not seek to modify 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 in any final rule. The current regulations work well for the multifamily industry, and no change is necessary.

In sum, the multifamily industry believes that the Labor Department's proposed overtime rule represents an 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 do not oppose increasing the current \$23,660 wage threshold to \$35,308 and strongly support the Labor Department's decision to review the threshold every four years while leading in place the current rules regarding job duties. Thank you for considering our views, and please feel free to contact Cindy Chetti, NMHC's Senior Vice President of Government Affairs, at 202-974-2300 or Greg Brown, NAA's Senior Vice President of Government Affairs, at 703-518-6141, should you have any questions.

Sincerely,



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Senior Vice President of Government Affairs
National Multifamily Housing Council



Gregory S. Brown
Senior Vice President of Government Affairs
National Apartment Association