

THE NATIONAL LAW REVIEW

Overtime Status Update: What the NPRM's Publication Means for the Comment Period

Friday, March 22, 2019

Slightly more than two weeks after it announced its notice of proposed rulemaking (NPRM) to revise the part 541 overtime exemption regulations, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) published the NPRM in the *Federal Register* (84 Fed. Reg. 10900) on March 22, 2019. As reported earlier, the purpose of this NPRM is to revise the standard salary level for the executive, administrative, professional, and computer employee exemptions and to increase the total annual compensation applicable to highly compensated employees. Respectively, the proposed standard salary amount is \$679 per week or \$35,308 per year and the total annual compensation amount for highly compensated employees is \$147,414 per year, of which \$679 must be paid weekly.

The comment period is 60 days and runs through May 21, 2019. By delaying publication of the NPRM by two weeks, the WHD can decline expected requests to extend the comment period by an additional 30 days because of the importance of this rulemaking. In essence, by notifying interested parties and the regulated community of the NPRM on March 7, but not publishing it in the *Federal Register* until some 15 days later, the Department arguably has padded the comment period already and any other extension of time should not be necessary. Moreover, this NPRM was preceded by a [request for information](#) (RFI) and [six listening sessions](#). All these

opportunities have afforded all interested parties and members of the regulated community an opportunity to be heard, express their opinions, and make their arguments for a final rulemaking. By limiting the comment period to the 60-day timeframe in the NPRM—or roughly the 75-day timeframe from which the WHD made known its intentions—it should be able to publish a final rule that corresponds with its expressed goal to have a January 2020 effective date.

It is important for employees and employers to submit comments if they have an opinion on the reasonableness and appropriateness of the proposed salary amount, among other provisions. One justification for updating the current salary level of \$455 per week or \$23,660 per year is that this current standard salary level is less than the 2017 poverty threshold for a family of four, or \$24,858. The NPRM essentially follows the methodology used in the 2004 rulemaking for determining the current standard salary level with some minor adjustment. The proposed standard salary level of \$674 per week or \$35,308 per year is greater than the current standard salary level but less than the \$913 per week or \$47,476 per year amount that was in the 2016 final rule that was enjoined by a federal district court.

© 2019, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

Source URL: <https://www.natlawreview.com/article/overtime-status-update-what-nprm-s-publication-means-comment-period>



Article By
[Alfred B. Robinson, Jr.](#)
[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)
[Our Insights](#) [Labor & Employment](#)
[Administrative & Regulatory](#)
[All Federal](#)