



# The Regulatory Gauntlet, Part 2: The Proposed New Overtime Rules

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November 30, 2023



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## Presenters



**Barbara Mistick**  
*NAICU President*



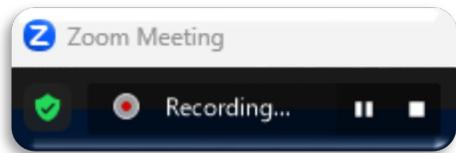
**Josh Ulman**  
*CUPA-HR's Chief  
Government  
Relations Officer*



**Karin Johns**  
*Director of Tax  
Policy*

# Rules of the Road

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Today's meeting is being recorded

- The recording and presentation slides will be available after the webinar and sent to registrants



Please use the Q&A function to pose your question(s)



In the Q&A, please “upvote” the questions you’d most like to see answered so we can prioritize

# Overview of the FLSA & Overtime Regulations

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## **Fair Labor Standards Act (FLSA)**

- 1938 federal law that establishes federal minimum wage and overtime pay standards
- Employer must track employees' hours and pay premium "overtime rate" of 1.5 times the employees' regular pay rate for hours worked over 40 per workweek

# Overview of the FLSA & Overtime Regulations

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## **Fair Labor Standards Act (FLSA)**

- FLSA contains various exemptions to overtime pay requirements, including for executive, administrative and professional employees – known as the EAP or “white collar” exemptions
- The FLSA states the Department of Labor will define and delimit by regulation the terms executive, administrative and professional employees from time to time

# Overview of the FLSA & Overtime Regulations

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## **Fair Labor Standards Act (FLSA)**

- The FLSA sets a federal “floor” and states and localities may impose additional wage and hour requirements
- This includes setting more stringent requirements for overtime pay exemptions

# Overview of the FLSA & Overtime Regulations

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## **Federal Overtime Pay Regulations**

Three-part test for EAP exemption:

1. Duties test
2. Salary basis test
3. Minimum salary level (set by weekly earnings)

# Previous Regulatory Changes

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Eight prior updates:

- 1940, 1949, 1958, 1963, 1970, 1975, 2004 and 2019

Other than 1975-2004, updates ranged from 5-15 years and increases in minimum salary ranged from 5-50%

This would be historically short time frame and large increase

# Recent Regulatory Changes

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## 2016 – Obama administration final rule

- Updates salary threshold to \$47,476 (\$913/week)
- Creates automatic increases every 3 years indexed to the 40<sup>th</sup> percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
- Enjoined by court and rescinded by Trump administration

## 2019 – Trump administration final rule

- Updates salary threshold to \$35,568 (\$684/week)
- Does NOT include automatic increases
- Went into effect January 1, 2020

# 2023 Proposed Rulemaking

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- Sets minimum salary level to 35<sup>th</sup> percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
  - This would be an over 50% increase to minimum salary from \$684/week (\$35,568 annually) to **at least \$1,059/week (\$55,068 annually)** for non-exempt employees
  - Final rule will reflect most recent wage data – **DOL projects this to be \$1,158/week (\$60,209 annually)**

# 2023 Proposed Rulemaking

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- Automatically updates the minimum salary threshold to the 35th percentiles of weekly earnings with increases set for every three years
  - Automatic updates will be issued in Federal Register at least 150 days before going into effect
  - Reserves right for DOL to temporarily delay automatic update, but must be done through NPRM

# Effective Date of the Regulations

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- A final implementation date could be as early as 60 days after a final rule is published
- Comments were due November 7
  - The DOL must review and respond to all substantive comments before publishing a final rule, which will include an implementation date.
  - We estimate that we'll see a final rule published in March 2024 with an effective date in May 2024.

# Impact of Proposed Rulemaking

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Employees most likely to impacted on college and university campuses may be:

- Academic Advisors - Counselors
- Student Admissions Counselors
- Administrative Specialists – Coordinators
- Student Success Professionals
- Student Financial Aid Counselors
- Student Residence Hall Managers
- Athletic Trainers – Physical Therapists

\*According to CUPA-  
HR salary analysis  
and data

# CUPA-HR Survey Result Highlights

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- **95%** of survey respondents indicated that they could only manage an increase to the salary threshold if it is lower than the proposed level
- **84%** of respondents indicated that they would need to reclassify previously exempt employees to nonexempt status as a result of this rule

# CUPA-HR Survey Result Highlights

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- **91%** of respondents do not support DOL automatically updating the salary threshold every 3 years
- **89%** of respondents believe that DOL should provide 180 days or more to comply with any final rule published to increase the salary threshold



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Questions?