



Frequently asked questions related to implementation of the Department of Labor new Overtime Rule, effective December 1, 2016.

Q1: What is the new overtime rule?

A: The “overtime” final rule, published by the Department of Labor on May 23, 2016, updates the regulations for determining whether white collar salaried employees are exempt from the Fair Labor Standards Act's minimum wage and overtime pay protections. They are exempt if they are employed in a bona fide [executive, administrative, or professional](#) capacity, as those terms are defined in the Department of Labor's regulations at [29 CFR part 541](#). This exemption from the FLSA is sometimes referred to as the "white collar" or "EAP" exemption. For more information, please visit the Department of Labor's website at <https://www.dol.gov/whd/overtime/final2016/>.

Q2: Who does the new rule apply to?

A: It covers employees working in the private sector and in Federal, State, and local governments. Generally, employees of enterprises that have an annual gross volume of sales made or business done of \$500,000 or more are covered by the FLSA. In addition, employees of certain entities are covered by the FLSA regardless of the amount of gross volume of sales or business done. These entities include: hospitals; businesses providing medical or nursing care for residents; schools (whether operated for profit or not for profit); and public agencies. **Therefore, the rule covers employees at Institutions of Higher Education, including those funded by NIFA grants.**

Q3: Did NIFA issue the new rule?

A: No. The new rule was issued by the U.S. Department of Labor. The USDA and NIFA do not have purview over implementation or enforcement of the new rule.

Q4: Can I get a waiver?

A: The USDA and NIFA do not have purview over implementation or enforcement of the new rule. You would need to contact the Department of Labor Wage and House Division who has purview.

Q5: Will NIFA provide more funds to grantees to cover increased personnel costs?

A: No. NIFA does not have the capacity to provide any additional funds for implementation of this rule; grantees may need to modify their budgets to cover increased personnel costs. To request a budget modification, the grantee must contact Awards Management Division administrative contact listed in your grant award or awards@nifa.usda.gov.



Q6: Is NIFA mandating that we increase the salary of postdoctoral researchers to \$47,476?

A: No. Grantees will have to determine whether each employee funded under a NIFA grant is exempt or nonexempt using the criteria in the FLSA. This will require a careful analysis of job duties, not just relying on the job title. If an employee is nonexempt, you will need to determine how you will meet the rule's requirements. DOL has identified numerous options to comply with the new FLSA overtime regulation, including:

1. Raise salaries to maintain exemption: grantees may choose to raise the salaries of workers who are now covered nonexempt personnel, and who regularly work overtime, to or above the new \$47,476 salary threshold to maintain their exempt station.
2. Pay current salary with overtime after 40 hours: Grantees can continue to pay employees a salary and pay overtime for the hours worked in excess of 40 hours per week.
3. Reorganize workloads, adjust schedules, or spread work hours to ensure hours worked do not exceed 40 hours per week: Grantees may reorganize workload distributions or adjust employee schedules in order to comply with the Final Rule
4. Adjust wages: Grantees can adjust the amount of an employee's earning to reallocate it between regular wages and overtime so that the total amount paid to the employee remains largely the same. Grantees may NOT, however, reduce an employee's hourly wage below the highest applicable minimum wage (federal, state, local), or continually adjust wages each workweek in order to manipulate the regular rate. The employee's hours worked must still be recorded, and overtime must be paid according to the actual number of hours worked each work week.

Q7: Will NIFA raise the minimum salary support for its AFRI ELI Postdoctoral Fellowships (Program Code – A7201) grants?

A: Yes. NIFA will set the amount available for salary support for its postdoctoral fellow grants beyond the exempt threshold. This salary level and compliance with the FLSA will be included in the RFA.

Q8: Will NIFA increase the funding level for its AFRI ELI Predoctoral Fellowships (Program Code – A7101), Higher Education Multicultural Scholars (Program Code – KF), and National Needs Graduate Fellowship (Program Code – KK) grant programs?

A: No. The individuals who receive funds under these grants are full-time students and therefore are exempt from overtime.



Q9: If the researchers and/or post docs funded by my NIFA grant need to work overtime, or if I decide to increase their salary to the exempt threshold, will NIFA be able to provide me with the additional funds to cover this increase?

A: No. NIFA does not have the appropriations to provide any additional funds for implementation of this rule; grantees may need to modify their budgets to cover increased personnel costs. To request a budget modification, the grantee must contact the Awards Management Division using the Administrative contact listed in your grant award or awards@nifa.usda.gov.

Q10: If I need to raise salaries or pay overtime, it will increase my personnel costs. Do I need a budget modification?

A: Your grant terms and conditions will outline whether you need to request prior approval to make a modification to your budget. If you do, you may submit the modification request to your National Program Leader and Awards Management Division administrative contact listed in your grant award or awards@nifa.usda.gov.

Q11: What are other Federal Agencies doing in response to the Final Rule?

A: The National Institute of Health (NIH) will increase the salary level for the Ruth L. Kirschstein National Research Services Awards (NRSA). Here is a link to their statement: <https://nexus.od.nih.gov/all/2016/05/18/nih-flsa-2016/>. The National Science Foundation posted [Frequently Asked Questions](#) on implementation of the Overtime Rule as well.

Q12: How will individuals in research track worker's hours? Since, most researchers do not fit into a regular 40/hour work week.

Tracking of time and effort in federal awards is covered in the Uniform Guidance at 2 CFR 200.430 – Compensation – personal services.

Q13: What if my state has its own overtime laws?

The FLSA provides minimum wage and hour standards, and does not prevent a state from establishing more protective standards. If a State establishes a more protective standard than the provisions of the FLSA, the higher standard applies in that State.

Q14: What impact the Final Rule will have on nonprofits with government grants and contracts?

A nonprofit organization is not considered a covered enterprise under the FLSA unless it engages in ordinary commercial activities that result in sales made or business done that meets the \$500,000 threshold. If a nonprofit meets this threshold, its employees are covered by the FLSA and entitled to overtime for work performed over 40 hours a week regardless of how the employee spends their time.



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Even if a nonprofit organization is not covered on an enterprise basis as described above, it may have individual employees who are covered individually and therefore are entitled to the FLSA's protections. An employee who engages in interstate commerce or in the production of goods for interstate commerce or in the protection of goods for interstate commerce is covered by the FLSA and is entitled to overtime pay for time worked over 40 hours in a week.

Q15: Where can I get more information about how the rule applies to our employees?

A: The Department of Labor has created both a fact sheet and an implementation guidance document for Institutions of Higher Education. You can find them on the DOL website at: <https://www.dol.gov/whd/overtime/final2016/>.