



# FAIR LABOR STANDARDS ACT FACT SHEET

## ADMISSION AND ENROLLMENT COUNSELORS

Updated May 18, 2016

### 2016 Overtime Pay Regulation - NEW

On May 18, 2016, the Department of Labor issued a final rule modifying overtime pay regulations. The new rule goes into effective on December 1, 2016, and raises the salary threshold for classifying employees as “exempt” from receiving overtime pay for hours worked in excess of 40 hours per week. The new threshold is \$913 per week, or \$47,476 per year.<sup>1</sup> The salary threshold will increase every three years.<sup>2</sup>

**New Rule**      Effective Date: December 1, 2016  
Salary Threshold: \$913 per week, or \$47,476 per year  
*Note:* threshold to be increased every 3 years

**Old Rule**      Expiration Date: November 30, 2016  
Salary Threshold: \$455 per week, or \$23,660 per year

### How do the new regulations affect admission/enrollment counselors?

The Department of Labor specifically notes in its fact sheet “Overtime Final Rule and Higher Education”<sup>3</sup> and its guidance document “Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards”<sup>4</sup> that admission counselors are considered eligible to receive overtime pay when they work more than 40 hours per week if their annual salary is less than salary threshold:

*Non-academic administrative employees:* For administrative employees who do not meet the special provision for academic administrative employees, *such as admission counselors and*

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<sup>1</sup> This federal threshold is a minimum standard. If a state imposes a higher threshold, that threshold applies in that state. See United States Department of Labor: Final Overtime Rule Questions and Answers, Question 15. <https://www.dol.gov/WHD/overtime/final2016/faq.htm#G15>

<sup>2</sup> The threshold will be raised to keep the level at the 40th percentile of full-time salaried workers in the lowest income region of the country. The White House projects the first increase, on January 1, 2020, will bring the threshold to over \$51,000. See White House Fact Sheet, “Growing Middle Class Paychecks and Helping Working Families Get Ahead By Expanding Overtime Pay.” May 18, 2016. <https://www.whitehouse.gov/the-press-office/2016/05/17/fact-sheet-growing-middle-class-paychecks-and-helping-working-families-0>

<sup>3</sup> United States Department of Labor (DOL), “Overtime Final Rule and Higher Education.” May 18, 2016. <https://www.dol.gov/sites/default/files/overtime-highereducation.pdf>

<sup>4</sup> United States Department of Labor (DOL), “Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act,” p. 7. May 18, 2016. <https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>

*recruiters*, they will be eligible for overtime if they earn below the salary level set in the final rule and they work more than 40 hours in a week.<sup>5</sup>

and

B. Administrative Exemption

*i. In General*

*The new salary level applies to administrative employees, including in higher education. To qualify for the administrative employee exemption (not the special provisions for academic administrative employees, discussed below), an employee must:*

- 1. Receive compensation on a salary basis of not less than \$913 per week (the equivalent of \$47,476 a year);*
- 2. Have a primary duty that is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers;*
- 3. Additionally, the employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.*

*Such administrative employees in the higher education context might include, for example, admissions counselors or student financial aid officers, depending on the employees' specific job duties (as job title alone is insufficient to ensure that an employee satisfies the duties test).<sup>6</sup>*

An exception to this general rule may apply to some admission counselors who are employed at public institutions of higher education and who are considered public sector employees:

*Public Higher Education Institutions May Utilize Provisions for State and Local Employees:*

*Employees of public higher education institutions may also be public sector employees for whom specific provisions in the FLSA will further limit the impact of the final rule. Specifically, public institutions may be able to use compensatory ("comp") time as an option to satisfy their obligation to provide overtime compensation.*

**Comp time:** *Pursuant to an agreement with employees or their representatives, state or local government agencies, including higher education institutions whose employees are treated as state employees under state law, may provide their employees with comp time instead of cash payment for overtime hours. Any comp time arrangement must be established pursuant to the applicable provisions of a collective bargaining agreement, memorandum of understanding, any other agreement between the public agency and representatives of overtime-protected employees, or an agreement or understanding arrived at between the employer and employee before the performance of the work. This agreement may be evidenced by a notice to the employee that comp time will be given in lieu of overtime pay (for example, providing the employee a copy of the personnel*

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<sup>5</sup> DOL, "Overtime Final Rule and Higher Education," pp. 2-3.

<sup>6</sup> DOL, "Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act," p. 7.



regulations). The comp time must be provided at a rate of one-and-one-half hours for each overtime hour worked, instead of cash overtime pay. For example, for most state government employees, if they work 44 hours in one workweek (4 hours of overtime), they would be entitled to 6 hours (1.5 times) of comp time. When used, the comp time is paid at the regular rate of pay.

*Most state and local government employees may accrue up to 240 hours of comp time. Employees engaged in seasonal activities (such as admissions counselors) may accrue up to 480 hours of comp time. An employee must be permitted to use comp time on the date requested unless doing so would “unduly disrupt” the operations of the agency.<sup>7</sup>*

### **How do the new regulations affect academic counselors? Are admission/enrollment counselors considered academic counselors?**

Academic counselors are defined as individuals “who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements.” Under the 2016 regulations, academic advisors are not eligible to receive overtime pay so long as their salary is “at least as much as the entrance salary for teachers in the educational establishment at which they are employed.”<sup>8</sup>

Admission or enrollment counselors (also referred to as ‘officers,’ ‘advisors,’ and ‘recruiters’ in NACAC parlance) are not considered academic counselors for the purpose of these regulations, and therefore are not eligible for exemption based on salaries commensurate with entry salary for teachers.

### **NACAC Note on Recruitment Travel and Overtime Pay**

NACAC is frequently asked how overtime regulations do or do not apply to admission officers while they are traveling for student recruitment. To ensure compliance, we encourage enrollment management offices to contact their university counsel with specific questions. The Department of Labor website ([www.dol.gov/whd/overtime\\_pay.htm](http://www.dol.gov/whd/overtime_pay.htm)) houses many resources, guides, and fact sheets about the Fair Labor Standards Act and overtime pay. For questions about overtime pay and hours worked while traveling, Fact Sheet #22 (Hours Worked Under the Fair Labor Standards Act) may be of particular value: [www.dol.gov/whd/regs/compliance/whdfs22.htm](http://www.dol.gov/whd/regs/compliance/whdfs22.htm).

### **Department of Labor Resources**

- Overtime Pay Landing Page: <https://www.dol.gov/overtime/>
- Overtime Final Rule Guidance – Web Version: <https://www.dol.gov/WHD/overtime/final2016/overtime-factsheet.htm>

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<sup>7</sup> DOL, “Overtime Final Rule and Higher Education,” pp. 1-2. See also DOL, “Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act,” p. 7 (“Administrative Exemption”). <https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>

<sup>8</sup> DOL, “Overtime Final Rule and Higher Education,” p. 1.



National Association for  
College Admission Counseling

- Overtime Final Rule Guidance – PDF Version:  
<https://www.dol.gov/WHD/overtime/final2016/overtime-factsheet.pdf>
- Overtime Final Rule and Higher Education Fact Sheet:  
<https://www.dol.gov/sites/default/files/overtime-highereducation.pdf>
- Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act: <https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>
- Wage and Hour Division Overtime Final Rule Landing Page:  
<https://www.dol.gov/whd/overtime/final2016/>
- Comparison Table: Current Regulations, Proposed Rule, and Final Rule:  
<https://www.dol.gov/whd/overtime/final2016/faq.htm#8>
- Overtime Rule: Complete Final Rule: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-11754.pdf>