



AMERICAN UNIVERSITY  
WASHINGTON, D.C.

## MEMORANDUM

June 21, 2004

**To:** Deans, Directors, and Department Heads

**From:** Grace C. Karmiol,  
Director, HR Policy & Regulatory Affairs

**Subject:** Changes to Federal Overtime Regulations and Self Audit

---

Over the last several months, you may have heard or read news coverage regarding changes to federal overtime regulations by the Department of Labor. If you have been following these stories, you may have wondered how these changes may impact you or your department. Outlined below is background information on overtime regulations, a description of changes, and the measures American University is taking to ensure compliance with the new rules.

### **Background**

The Fair Labor Standards Act (FLSA) requires that employers pay all employees at a rate of 1 ½ times their regular rate of pay for each hour over 40 hours worked in a given week unless the employee holds a position designated as exempt. The FLSA exempts from overtime requirements “any employee employed in a bona fide executive, administrative, or professional capacity.” While the FLSA does not provide any definition of these terms, it states that they should be “defined and delimited from time to time by regulations” of the Department of Labor. The Department of Labor long ago established both salary tests and duties tests in order to determine if a particular position could be deemed “exempt” from overtime requirements. Until the new regulations were announced by the Department of Labor on April 20, 2004, the salary level test was last updated in 1975, while the duties test was last updated in 1949. As you can imagine, many of today’s jobs did not exist when the regulations were last revised and, therefore, provided little or no guidance on the classification of modern jobs.

The Department of Labor issued proposed regulations in March 2003 and received over 75,000 comments from the public. The final regulations were published in the Federal Register on April 23, 2004, and are scheduled to take effect on August 23, 2004.

### **How have the regulations changed?**

The most significant changes to the regulations include the salary level and job duties tests. The minimum salary level for exempt status was increased from \$250 per week (\$13,000 per year) to \$455 per week (\$23,660 per year). This change insures that anyone earning less than \$455 per week is eligible for overtime pay. The salary duties tests for employees earning between \$23,660 and \$100,000 per year have been streamlined and made more relevant to the current job market. Additionally, the new regulations have established a “highly compensated” exemption for employees earning at least \$100,000 per year. Finally, the changed regulations provide explicit overtime protection for certain “blue collar” jobs such as police, firefighters, and emergency medical technicians.

Although the salary test and duties tests have changed, as in the previous regulations, employees must meet both of the tests provided for one of the exemption categories in order to be classified as exempt. Unless a position meets all of the criteria set forth under one or more of these categories it must be considered a non-exempt position, and thus eligible for overtime pay. When challenged on the classification of positions, the burden is on the employer to establish that a position meets the exemption criteria. If the employer fails to establish this, the employer may be required to pay back wages and additional penalties.

### **What does this mean for AU?**

American University, like all employers, must conduct a self audit and review their current positions to ensure proper classification in compliance with the new overtime rules. Human Resources has established an audit project team consisting of members from employee relations and the service delivery teams, with support from general counsel, payroll, budget, and e-operations. This team has already begun the process of identifying which positions are clearly classified appropriately under the new rules and which are considered “borderline” and in need of further review.

The review of borderline positions will begin with a review of the current job description on file with Human Resources and may include completion of a questionnaire by the supervisor wherever additional information is required. You will be notified by the project team if any positions in your functional area require additional review. You or the appropriate supervisors may be asked to either complete an on-line questionnaire regarding the responsibilities of each “borderline” position or answer questions related to the job description. These questions have been designed to aid us in obtaining a clearer picture of the daily activities of employees who hold the positions under review. For those supervisors asked to complete the on-line questionnaire, members of the audit project team will be available by phone to answer any questions and/or provide assistance in completing the questionnaire. Following the completion of the questionnaires, the audit project team will review the information provided in conjunction with the salary and duties tests outlined for each category of FLSA exemption. Based on this analysis, we will make a determination on the appropriate classification for each of the “borderline” positions.

## **Implications**

It is likely that some of the positions under review may need to be converted from exempt to nonexempt and, therefore, from the monthly payroll to the biweekly payroll. Because of the timeline for compliance, it may be necessary to make these conversions while the positions are occupied. The audit project team will coordinate with individual departments, payroll and the budget office to identify ways of converting these positions that will minimize disruption to both university and staff.

If you have any questions regarding these changes or the upcoming self audit please contact me on extension 3529 or employee relations on extension 2607.