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## Frequently Asked Questions (FAQs) on the National Science Foundation's Implementation of the Department of Labor's Fair Labor Standards Act (FLSA) Final Overtime Rule

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The Department of Labor recently announced the [Fair Labor Standards Act \(FLSA\) final overtime rule](#), which will automatically extend overtime pay protections to millions of workers and could impact some personnel on NSF grants, including postdoctoral researchers. The National Science Foundation (NSF) continues to acknowledge the contributions of postdoctoral researchers in the support of NSF-funded research, and, in general, NSF postdoctoral fellowship programs already include a stipend or salary amount in excess of the new minimum in the FLSA final overtime rule.

In order to address the many questions that have arisen as a result of the FLSA final overtime rule, NSF has created this set of Frequently Asked Questions (FAQs) specific to NSF awards. These FAQs apply to postdoctoral fellows supported on individual grants, as well as standard research grants.

Additional policy-related questions not addressed in this document should be directed to [policy@nsf.gov](mailto:policy@nsf.gov).

### **1. What is the Fair Labor Standards Act (FLSA) final overtime rule?**

The Department of Labor's final overtime rule updates overtime regulations contained in the Fair Labor Standards Act (FLSA). The final rule was announced on May 23, 2016 in the [Federal Register](#). Please visit the Department of Labor's [website](#) for additional information on the FLSA final overtime rule.

### **2. What does the FLSA final overtime rule mean for postdoctoral researchers on NSF-funded projects?**

In general, [NSF postdoctoral fellowship programs](#) already include a stipend or salary amount in excess of the new minimum announced in the Department of Labor's FLSA final overtime rule. NSF will examine Program Solicitation language to remove any restrictions that might prevent grantee compliance with the final overtime rule.

For postdoctoral fellows supported on standard research grants, the salary is determined by the grantee institution. Each institution must implement a policy to comply with the final overtime rule. This may result in the need to rebudget an existing NSF award. Please see FAQ #4 for additional information on rebudgeting.

**3. I am a postdoctoral researcher on a standard NSF research grant. Will NSF increase my salary?**

No, postdoctoral salaries on standard research grants are determined by the grantee's institutional policy, not by NSF. Each institution must implement a policy that complies with the FLSA final overtime rule. This may result in an increase to postdoctoral salaries on an existing NSF grant. Please see FAQ #4 for additional information on rebudgeting an existing award.

**4. I am a grantee. Can I rebudget an existing award in order to comply with the final overtime rule?**

Yes, the standard NSF rebudgeting policies apply for any budgetary changes resulting from implementation of the new rule. In many cases, NSF does not require prior written approval to rebudget, unless the action would result in a change in objectives or scope or involve one of the other scenarios listed in [Grant General Conditions \(Article 2\)](#) and [Award & Administration Guide \(AAG\) Chapter II.B](#).

**5. The new rule goes into effect on December 1, 2016. When can an NSF grantee rebudget as a result of the FLSA final overtime rule?**

The NSF grantee can rebudget as soon as the institution implements a policy to address the FLSA final overtime rule, which may occur before the December 1, 2016 effective date.

**6. Would rebudgeting from another budget category, e.g., materials and supplies, to cover the increased cost of a postdoctoral researcher violate NSF's cost sharing policy?**

No, this would not violate NSF's cost sharing policy. Except in programs where [cost sharing is mandatory](#), NSF's policy is that voluntary committed cost sharing is prohibited. Voluntary committed cost sharing is defined in 2 CFR § 200.99 as "cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award." This differs from voluntary uncommitted cost sharing, which are resources not included in the proposal budget or NSF award, and which are not auditable by NSF.

In general, rebudgeting is a post award action that does not affect the proposal's budget or result in a revision to the Federal award; please see [Grant General Conditions \(Article 2\)](#) for additional information on actions that would require NSF prior written approval. If, as a result of rebudgeting to comply with the final overtime rule, the grantee determines that non-NSF resources should be used in support of the NSF project, the grantee is authorized, at their discretion, to contribute voluntary uncommitted cost sharing.

**7. What if there is not enough money left in the budget to comply with the final overtime rule?**

If the grantee determines rebudgeting would result in a change in objectives or scope, or that supplemental funding is needed to comply with the final overtime rule, the grantee should contact the cognizant NSF Program Officer to discuss the issue as it relates to the award in question. Any supplemental funding support will be made at the discretion of NSF, based on

the appropriateness of the request, and subject to the availability of funds. Grantees should follow existing NSF policies for grantee requests ([AAG Chapter II.B](#)) and supplemental funding requests ([AAG Chapter I.E.4](#)).

**8. May I submit a proposal budget or rebudget costs on an existing award with funds included for overtime salary compensation?**

Overtime compensation may be included in a proposal or award budget for any category of worker that is not exempted from overtime pay protections in accordance with the FLSA final overtime rule. The payment of overtime compensation must be consistent with documented institutional policy and must be consistently applied regardless of the source of salary support. The grantee must comply with the Standards for Documentation of Personnel Expenses outlined in 2 CFR § 200.430(i) when charging salary compensation to the NSF award.

For existing NSF-funded projects, the grantee may rebudget to comply with the FLSA final overtime rule in accordance with the standard NSF rebudgeting policies. More information can be found in the Grant General Conditions (Article 2) and Award & Administration Guide (AAG) Chapter II.B. Please note that NSF is under no obligation to provide additional funding for this purpose.