On May 18, the U.S. Department of Labor released its final overtime rule, doubling the salary threshold for white-collar exemptions to the federal overtime pay requirements under the Fair Labor Standards Act. The rule’s impact will be widespread, and higher education institutions and other employers have their work cut out for them as they make the necessary changes to comply in advance of the rule’s December 1 effective date.

Here, we offer some guidance around the new rule — what you should be doing now to prepare, which positions are proving the most challenging for higher ed, and how other institutions are navigating the change.
The Rule (in a Nutshell)
The final rule raised the exempt salary threshold from $23,660 to $47,476 ($913 per week), with an automatic increase every three years. The highly compensated threshold also increased, from $100,000 to $134,044. There were no changes to the duties test, and there are no exceptions for part-time employees. Employers must be in compliance with the new rule by December 1 of this year. (The salary threshold does not apply to teachers, and certain nonteaching “academic administrators” may qualify as exempt at a lower threshold.)

What You Should Be Doing Now
You’ve likely already begun preparing for the new rule. However, if you’re not sure you’re on the right track or if you’re stuck, Alex Passantino, labor and employment attorney and former acting administrator of DOL’s Wage and Hour Division, suggests following this trajectory:

Step 1: Identify stakeholders and champions who can help define and reach endgame objectives. Who in your institution needs to be brought into the loop? The athletics department, student life and the provost’s office will likely be on this list, as employees in those areas are likely to be affected. Develop a communications plan to engage key players and determine your process for achieving objectives before December 1. Remember, virtually every area of campus will be impacted in some way.

Step 2: Identify positions that will be affected by the new rule. Which currently exempt positions at your institution fall below the $47,476 threshold?

Step 3: Determine how many hours of overtime those employees currently work. This data is key to making informed decisions about how to move forward.

Step 4: Analyze the “duties gap.” Adjusting the salary above the threshold will not automatically make the position exempt. The duties test has not changed and will still need to be used to determine exempt or non-exempt status.

Step 5: Consider the ripple effect on upstream or cross-stream jobs. Will raising the salary to the new threshold for particular positions cause salary compression? Will you need to raise the salary for other positions that are comparable? Conduct a thorough analysis here.

Step 6: Model various compensation plans to determine the cost of increasing salaries and the cost of reclassification. What will be the annual salary and benefits increase for positions that move to the higher threshold? What needs to be budgeted for overtime for positions that will move from exempt to non-exempt status? Seeing actual numbers on paper can help you identify the best options for moving forward.

Exempt, or Not?
Many positions in higher education present challenges in trying to determine whether or not they can be classified as exempt. Here’s a little guidance. (And remember, “primary duty” is key here.)

Coaches
Athletic coaches in higher ed institutions may qualify for the rule’s teacher exemption, in which case they do not need to meet a certain salary threshold to be considered exempt from overtime. According to guidance from DOL, teaching may include instructing student-athletes in how to perform their sport. Says Alex Passantino, “Where the coach’s responsibilities include instruction of physical health, team concepts and safety or where the coach is responsible for designing instruction for individual student athletes and for specific team needs, the ability to use the exemption is improved.” However, if coaches’ primary duties are recruiting-related, DOL has said they are not considered teachers, so these recruiting-focused coaching positions will not qualify for the teacher exemption.

Coaches may also fall under the academic administrator exemption. To qualify for this exemption, a coach must have a salary of at least $913 per week as of December 1 or must meet the minimum salary requirement for teachers at the institution, and his or her primary duty must consist of “administrative functions directly related to academic instruction or training.” Says Passantino, “Coaches who are responsible for administration of an academic department or who act as academic advisors to players, assisting them with academic issues and advising them on degree requirements, are performing exempt work.”

Coaches also may qualify as exempt administrative employees. This exemption states that the individual must meet the $913 per week salary threshold, and his or her primary duty must be “office or non-manual work that requires discretion or independent judgment with respect to significant matters.” Examples of this type of work are recruiting, establishing game schedules, financial planning and budgeting, procurement and purchasing, public relations, marketing, compliance, facilities management and fundraising.

However, Passantino cautions that recruiting work is not likely to qualify if it involves using objective standards
established by the head coach to assess recruits pre-selected by the head coach. “On the other hand,” he says, “if an assistant coach plays a decisive role in determining which schools to visit, which students to recruit and offer scholarships, and how to recruit those students, that portion of his or her job is likely to qualify.”

**Athletic Trainers**
Passantino says there are a couple of options for classifying athletic trainers as exempt, granted they meet the salary threshold. Like coaches, they may qualify as **exempt administrative employees**. According to Passantino, “Where an athletic trainer has the responsibility for developing the overall sports medicine program, assisting in development of the budget, scheduling staff training, ensuring coverage at athletic events and managing inventory (including the authority to order supplies and materials), the athletic trainer may qualify as an exempt administrative employee, provided that he or she performs these tasks as his or her primary duty.”

Athletic trainers may also qualify as **exempt professionals** (again, provided they meet the salary threshold). Passantino says they are most likely to pass muster as a “learned professional” if they have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and/or are certified by the board of certification of the National Athletic Trainers Association.

**Admissions Counselors**
In order for admissions counselors to fall under one of the exemptions mentioned prior, they will need to exercise decision making authority on recruitment and admissions matters. Says Passantino, “Most admissions counselors do not exercise such decision-making authority, and therefore will likely need to be classified as non-exempt.”

**Academic Counselors**
As long as their salary is at least as much as the entrance salary for teachers at the institution, most academic counselors will meet the requirements of the **academic administrator exemption**. However, each employee’s actual duties must be evaluated to make sure they meet the requirements of the duties test for the exemption.

**Resident Directors**
Resident directors can fall under the **administrative/executive exemption**, but they must meet the salary threshold, and DOL has said that housing does not count toward the salary level.

**Postdocs**
Postdoctoral fellows often meet the duties test for the **learned professional exemption**. They must, however, also satisfy the salary level test to qualify.

**Partial-Year Employees**
If an employee works nine or 10 months but is paid over 12 months and meets the salary threshold during those nine or 10 months, he or she is exempt. However, these employees **cannot do any work outside of those nine or 10 months**, or they’ll have to be paid for that work, and it could jeopardize their exempt status.

**Remote Access and Tracking Hours**
It’s important to consider remote access when weighing the pros and cons of reclassifying to exempt or paying overtime. If a nonexempt employee were to reply to a text message, take a work phone call, respond to an e-mail, visit a recruit, attend a team meeting or any number of other work-related tasks outside of his or her normal working hours, the employee would need to be paid for this work (at a rate of time and a half for all time over 40 hours per week). Tracking hours when employees have remote access can be incredibly difficult. Solutions may include
restricting remote access or smartphone usage to normal working hours or crafting working hours to accommodate these tasks as part of the employee’s “normal” schedule.

**What Are Others Doing?**
No doubt, there’s a lot to consider when trying to navigate the new overtime rule. Here’s how some of your colleagues are preparing for the change.

**Analyzing and Reclassifying Positions**
At Towson University, the second largest institution in the University System of Maryland, more than 185 currently exempt positions fall below the new salary threshold. Here’s how HR leaders at Towson approached the reclassification conundrum.

First, all the possible scenarios were laid out. Says Kristi Yowell, Towson’s associate director of human resources, “We came up with four workable options for these positions, which helped us to drill down and more closely examine each position, its job description, its actual duties and its required hours.” The four options were:

1) Transition currently exempt staff to non-exempt status in existing non-exempt job classifications.

2) Do not restructure positions, but move currently exempt employees to a newly created non-exempt specification used for compensation-based decisions only. These individuals would continue to qualify for exempt status based on duties, but not based on salary. The current salaries for these individuals would remain the same, but they would become overtime eligible. Some level of exempt-status benefits would be retained.

3) Restructure positions, expanding duties and responsibilities of some exempt positions remaining exempt and reducing duties and responsibilities of others transitioning to non-exempt positions. Reclassifications would be based on duties. Decisions on salary, based on revised duties, would be explored on a case-by-case basis. Newly non-exempt positions would become overtime eligible, and remaining exempt positions would be increased to the new salary threshold.

4) Leave duties the same and increase salaries to meet the new threshold, which will in some cases result in compression and equity issues. Compression issues would be addressed at a later date, after the market has a chance to stabilize.

“After a great deal of analysis, we landed on increasing the salaries of the majority of the 185 affected positions to the new threshold,” says Yowell. “Additionally, we’re creating some new non-exempt classifications to address employees who will fall below the salary threshold due to a reduced FTE.”

**Education and Communication**
Many institutions have already determined which positions will be reclassified and which will not and have now moved on to education and training, which can be a monumental undertaking in and of itself. Amy King, vice chancellor for human resources at University of Denver, says her team is in the process of educating supervisors of affected employees on things like timekeeping responsibilities, how to calculate travel time, policies for cell phone usage after work hours, how to address performance issues so that poor performance isn’t contributing to overtime and how to evaluate efficiencies in work processes (again, with an eye toward reducing or eliminating overtime).

Human resources at University of Missouri System devised a strategic communications plan early in the process, identifying key communication objectives, target audiences, key messages, communication vehicles and mechanisms, communication deliverables and timing, and anticipated impact and risks. Says Eric Smetana of UM System human resources, “Our communications plan encompasses all levels of employees across the university system. We’re using a variety of media and approaches, including campus forums, mass e-mails, an FLSA web page, FAQs, talking points and an e-mail inbox to which questions can be sent.”

Smetana says the next step will be working with campus partners on individualized communications for affected employees and delivering specific training tailored for these employees and their managers regarding timekeeping, overtime, remote access and other FLSA-related material.

**An Opportunity for HR**
Getting to compliance with the new overtime rule can seem like a daunting task and will no doubt be challenging. Nonetheless, human resources is well positioned to take the lead in this effort, and in doing so can highlight its strategic value to the institution. With a structured approach of gathering data, conducting thorough analyses, communicating early and often with stakeholders, and training affected employees and managers on timekeeping, remote access and other FLSA-related topics, though it may not seem like it when you’re in the thick of it all, you can get there from here.