

DOL Changes to FLSA Overtime Rules Moving Towards Approval

By Hope Eastman

UPDATE: The Obama Administration's controversial new white collar overtime rules have gone to the Office of Management and Budget for approval. This is the final obstacle to making the regulations public and start the implementation process. Close watchers see an Administration attempt to get the rules through OMB before May 16, which would ensure time for an Obama veto if the Congress tries to step in to stop the regulations from taking effect and a likely late summer or early fall effective date. In the meantime, on March 17, 2016, members of the House Committee on Education and the Senate Committee on Health, Education, Labor, and Pensions introduced a bill to stop the regulations from taking effect.

The draft regulation proposes four significant changes to the white collar overtime rules:

- It would drastically increase the FLSA's salary threshold for exempt status – from \$455 a week to \$970 per week, a significant jump from the current \$23,660 per year to \$50,440 per year.
- It would also significantly increase the highly compensated threshold from the current \$100,000 to \$122,148.
- These thresholds will automatically increase with one of two standards, keeping the levels chained to the 40th and 90th percentiles of earnings or adjusting based on changes in inflation by tying them to the Consumer Price Index.
- Discretionary bonuses would be excluded from the salary basis test. At present they can be used for the highly compensated category.
- The proposed regulations made no changes in the duties test part of the regulations, but invited comments on ideas for change.

The Department of Labor received more than 250,000 comments on the proposed regulations. Any changes will be under wraps until the OMB acts. Only then will we learn whether any of the comments led to meaningful change in the above or changes to the duties tests.

Employers should be assessing the scope of the issue for their organizations, developing a strategy for moving currently exempt employees to non-exempt status which involves looking at current hours worked and how to meet those needs and deciding how to calculate overtime at a minimum, and a plan for communicating with employees.

The regulations are at the heart of the Obama Administration's push to bring more people into the middle class. At recent hearings of the House Committee on Education and the Workforce, Secretary of Labor Thomas argued that the white collar exception to overtime eligibility originally was meant for highly compensated employees, but the regulations now apply to workers earning below the poverty line for a family of four. Committee Chair John Kline (R-Minn.) and other Committee members expressed concern that the rules will stifle workplace flexibility and innovation, for both employers and employees, and make it harder, not easier, for lower-income Americans to move up the economic ladder. Stay tuned.