

## DOL sets November target to propose changes in overtime rules

In March, President Obama directed the DOL to modernize and streamline long-standing regulations governing which employees are entitled to overtime pay. Since then, employers have been wondering what changes the DOL will propose and when it will do so. The agency recently addressed the question of when in its semiannual regulatory agenda, setting a target date of November 2014 to propose the new overtime rules. Because the DOL would still need to complete other steps before any proposed changes could become final, it is unlikely that they would be finalized before spring 2015.

### Background

The Fair Labor Standards Act (FLSA) establishes federal minimum wage and overtime pay standards that govern how and how much public and private sector employers must pay their employees. Employees covered by the FLSA must be paid at least the federal minimum wage and, in most cases, overtime at time and one-half of the employee's regular rate of pay for any hours worked over 40 in a workweek.

FLSA regulations, enforced by the DOL's Wage and Hour Division, provide exemptions from these requirements for salaried employees who satisfy minimum earnings and job duties tests. On March 13, 2014, President Barack Obama [directed](#) the DOL to narrow the scope of existing exemptions — in particular, the so-called “white-collar” exemptions for executive, administrative, and professional employees. (See our [March 14, 2014 For Your Information](#).) However, the directive provided no timeline or substantive details.

**Buck comment.** Although the president's directive contained few specifics, it is widely anticipated that the DOL will tighten eligibility for the white-collar exemptions — and extend overtime pay to a sizeable number of currently exempt workers — by raising the minimum salary threshold of \$455 per week and changing the current job duties tests. However, it is unclear what the new threshold or qualifying duties might be.

### The DOL's timeline

On May 23, the DOL released its semiannual regulatory [agenda](#), which included proposed regulations for “defining and delimiting” the FLSA's overtime exemptions for executive, administrative, professional, outside sales, and computer employees. The



DOL [set](#) a target date of November 2014 to propose new rules that would govern who is entitled to overtime pay.

Once released, the proposed regulations will be subject to a public comment period — typically between 30 and 90 days — to allow stakeholders to share their views on the new rules the DOL is seeking to put in place. After the comment period ends, the DOL would hear testimony, review and respond to the comments received, and secure approval of final regulations by the Office of Management and Budget. Even if the DOL finalizes these regulations before the Obama administration ends, legal challenges could further delay their effective date.

**Buck comment.** When the DOL last updated the regulations in 2004, it took over 18 months to implement the change. Because changes that the DOL is expected to propose later this year are likely to be more substantial, they may take longer to implement.

### In closing

Instituting regulatory change is time-consuming. Given the steps the DOL will need to complete before any changes to the current overtime rules become final, it is unlikely that new rules would be finalized before spring 2015. Because the new rules will have major implications for employers, we will continue to share details as they become available.

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