

# FYI<sup>®</sup> Alert

## For Your Information<sup>®</sup>

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## DOL Proposes Significant Expansion of Overtime Eligibility

More than a year ago, the president directed the secretary of labor to “modernize” long-standing overtime regulations and “restore the common sense principles” governing who is entitled to overtime pay. The DOL has now unveiled proposed rules that would significantly expand overtime eligibility by more than doubling the salary threshold for the so-called “white-collar” exemptions. Under these rules, full-time salaried workers making less than an estimated \$970 per week, or \$50,440 annually, in 2016 would be entitled to overtime — altering long-standing pay practices with significant financial implications for most employers.

### Background

The Fair Labor Standards Act (FLSA) establishes minimum pay standards for public and private sector employers. 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 all hours worked in excess of 40 in any workweek. FLSA regulations, enforced by the DOL’s Wage and Hour Division, provide exemptions from federal minimum wage and overtime requirements for salaried “executive, administrative, and professional” employees (known as “white-collar” employees) and certain other categories of employees who satisfy minimum earnings and job duties tests.

In March 2014, President Barack Obama directed the secretary of labor to modernize and streamline existing overtime pay regulations. (See our [March 14, 2014 FYI Alert](#).) Since then, there has been much speculation about what changes would be proposed, and when. (See our [March 31, 2015 For Your Information](#).)

### The Proposed Regulations

Today, the DOL unveiled its long-awaited [proposal](#), “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.” As was widely expected, the proposed regulations substantially raise the minimum salary level required to qualify for the FLSA’s white-collar exemption, which was last updated in 2004.



### Increased Salary Threshold

The DOL proposal would more than double the minimum salary threshold under which most white-collar salaried workers are eligible to receive overtime pay — from the current \$455 a week (\$23,660 annually) to a projected level of \$970 per week (\$50,440 annually) in 2016. Those salary levels reflect the 40<sup>th</sup> percentile of earnings for full-time salaried workers. The proposal similarly increases the total annual compensation level required to exempt highly compensated employees — from the current \$100,000 to \$122,148 annually (or the 90<sup>th</sup> percentile of weekly wages of all full-time salaried employees). The DOL is also proposing to update the salary and compensation thresholds automatically based on inflation or wage growth annually.

**Comment.** Because the DOL relied on 2013 data in developing its proposal, the regulations include lower salary thresholds of \$921 per week (or \$47,892 annually). However, the DOL projects the final regulations would include the updated salary levels indicated above, assuming it similarly adopts the proposed salary threshold of the 40<sup>th</sup> percentile of weekly earnings.

A [Fact Sheet](#) issued by the White House states that the DOL proposal would extend minimum wage and overtime protection under the FLSA to nearly 5 million white-collar workers who are exempt under current regulations, and to most salaried workers earning less than an estimated \$50,440 in 2016. It also provides a [state-by-state](#) breakdown of workers whose overtime rights would be affected.

### Job Duties

For an exemption to apply, an employee's specific job duties and compensation must meet the requirements of the DOL's regulations. Significantly, however, the DOL did not propose changes to the current job duties tests. Rather, the DOL is requesting comments on the current requirements, considering whether and what changes may be needed, and soliciting suggestions for additional occupation examples.

### Effective Date

Consistent with the normal rulemaking process, there will be a 60-day comment period following publication of the proposed regulations in the Federal Register. After reviewing and considering comments, the DOL will determine what to include in a final rule. Even assuming expeditious rulemaking, new regulations likely will not take effect before 2016. Legal challenges could further delay their implementation.

### In Closing

The proposed regulations would significantly alter long-standing pay practices for most employers — expanding overtime eligibility to an estimated 5 million workers. With potentially major implications for their bottom lines, employers will want to monitor these developments closely.

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