

Department of Labor Overtime Regulation Proposal

BACKGROUND

The Department of Labor has released a proposed regulation updating the salary level test for determining when an employee is exempt from earning overtime. Previously the Obama administration issued a final regulation in 2016 that would have raised the salary threshold from \$23,660/year (\$455/week) to \$47,476/year (\$913/week). That regulation was later invalidated by federal district judge Amos Mazzant, on the basis that the salary threshold was so high it made the duties test—considered the key determinant—no longer relevant and thus the regulation was beyond the statutory authority of the Secretary. That decision is currently on appeal in the 5th Circuit.

The new proposed regulation features the following provisions:

- Raises the threshold to \$35,308/year (\$679/week).
- Reverts to the methodology used in the 2004 rule that focused on the 20th percentile of full time wage earners in the lowest income region of the company (identified as the South) as well as the retail industry.
- Makes no changes to the duties tests.
- Does not implement an automatic update feature. However, the regulation does seek comments on conducting regularly scheduled rulemakings to update the salary threshold consistent with the methodology used in this proposal.
- Increases the total annual compensation requirement for “highly compensated employees” (HCE) from the currently-enforced level of \$100,000 to \$147,414 per year which is higher than the Obama DOL regulations threshold of \$134,004. The DOL maintained the methodology used by the Obama administration for this salary level which resulted in the higher threshold.
- Would allow nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10 percent of the standard salary test requirement. Such bonuses include, for example, nondiscretionary incentive bonuses tied to productivity and profitability. The Department recognizes that some businesses pay significantly larger bonuses; where larger bonuses are paid, however, the amount attributable toward the EAP standard salary level is capped at 10 percent of the required salary amount.

TRSA POSITION

TRSA supports the administration's initiative to rewrite regulations changing which employees are eligible to earn overtime compensation. This proposal is a measured effort to adjust the salary test.

ACTION

Provide Congressional Comments to the Administration's proposal supporting the regulation.