



# DOL Proposes Changes to FLSA White Collar Exemption Rules

Provided by BB&T Insurance Services, Inc.

### Quick Facts

- On June 30, 2015, the DOL proposed a rule to modify the FLSA's white collar exemption.
- The proposed changes to the exemption could affect 11 million workers across the United States.
- The proposed rule would increase the salary threshold for the white collar exemption to a projected \$50,440 per year in 2016.
- The proposal suggests implementing automatic annual updates of salary levels.

The proposed rule would require employers to review employees' exempt status, update overtime policies, notify employees of changes and adjust payroll systems.

On June 30, 2015, the U.S. Department of Labor (DOL) issued a [proposed rule](#) to modify the "white collar exemptions" provided by the Fair Labor Standards Act (FLSA). The white collar exemptions are minimum wage and overtime exception rules for executive, administrative, professional, outside sales and computer employees.

Specifically, the proposed rule seeks to:

- Increase the salary requirements for employees to be considered exempt;
- Implement automatic salary requirement updates; and
- Receive feedback on whether modifying the duties test is necessary at this time.

The DOL estimates that, if implemented, the proposed rule would extend overtime protections to approximately **5 million** workers who are currently exempt under the white collar rules and would clarify overtime compensation eligibility for another **6 million** white collar workers.

The DOL has invited the general public to comment on the proposed rule. Comments can be submitted [electronically](#) or via regular mail. All comments must be submitted or postmarked **by Aug. 29, 2015**.

### Why Is the DOL Issuing a Proposed Rule?

On March 13, 2014, President Barack Obama directed the DOL to simplify and modernize the regulations that protect "white collar" workers under the FLSA.

The Administration's concern is that current white collar exemption requirements are outdated, since the salary threshold has been changed only twice in the last 40 years. Fewer workers are eligible for overtime now than in the past due to inflation.

### White Collar Exemptions

To qualify for the white collar exemption, an employee must meet a **salary basis test**, a **salary level test** and a **duties test**.

- The salary basis test is used to make sure the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- The salary level test is used to ensure that the employee meets a minimum specified amount to qualify for the exemption.
- The duties test requires that the employee's job duties conform to executive, administrative or professional duties, as defined by law.

### **Higher Salary Requirements**

The proposed rule would increase the current minimum salary level of \$455 per week (\$23,660 per year) to **\$921 per week** or (\$47,892 per year). The proposed new salary level represents the 40th percentile of wages earned by workers across the United States in 2013. Projected data for 2016 would set these numbers to \$970 per week and \$50,440 per year.

The proposed rule would also increase the \$100,000 salary level for highly compensated individuals to **\$122,148 per year**—the 90th percentile of wages earned by workers in 2013.

The DOL is also considering special salary tests for employees in American Samoa and workers in the motion picture industry.

The DOL has stated that these updates are necessary to accurately represent the intent of minimum wage and overtime exemptions, which have not been updated since 2004.

### **Automatic Salary Requirement Updates**

If implemented, the proposed rule will automatically update minimum salary level requirements for the white collar exemptions every year. Implementing automatic annual updates would prevent salary level requirements that lag behind current wage payment trends.

In the proposed rule, the DOL explains that it is considering tying minimum salary requirements to:

- Fixed percentiles of wages paid (40th percentile for weekly wage and 90th percentile for highly compensated individuals); or
- Inflation, as measured by the consumer price index.

### **Calculating Employee Wages**

The proposed rule also states that the DOL is considering allowing an employer to apply nondiscretionary bonuses and incentive payments towards a portion of an employee's standard salary level.

The proposed rule explains that including these bonuses would more accurately represent an employee's earnings and would provide a better assessment of whether a white collar exemption should apply.

### **Public Comments on Duties Test**

The proposed rule does not include specific suggestions to modify the white collar exemption duties test.

However, the DOL is considering whether updating this test is also necessary. To this end, the DOL is inviting public comments on whether the duties test is working as intended. The DOL has included several questions in the proposed rule for commenters to consider.

### **Impact on Employers**

If implemented, the proposed rule would require employers to re-determine the exemption status of employees, update and adapt overtime policies, notify employees of policy changes and adjust their payroll systems.

These measures could trigger significant costs. For example, employers may be required to pay overtime wages to previously exempt employees or incur ongoing managerial costs because they would need to monitor more closely the work of employees they didn't have to monitor before.

On the other hand, the DOL is predicting that higher salary level requirements for white collar exemptions will simplify the process of employee classification because employers would not be required to perform a duties test for employees below the updated salary requirements. This simplification could result in fewer lawsuits and lower litigation costs for employers.

