

It's Time to Work Overtime on Your Comments to the DOL

August 5, 2015

By [Steven F. Pockrass](#)

Now that the Obama Administration and U.S. Department of Labor (DOL or Department) have released its proposal to revise the Part 541 overtime regulations, it is important to understand what may be next and when we can expect developments with this regulatory proposal.

Time is not on your side if you are an employer who has yet to address the U. S. Department of Labor's [proposed revisions to the Fair Labor Standards Act's white collar overtime regulations](#).

The DOL's proposal was [published in the Federal Register on July 6, 2015, triggering a 60-day comment period](#) that is scheduled to run through Friday, September 4, 2015. Several Republican U.S. senators, the Society for Human Resource Management, and the U.S. Chamber of Commerce are among those who have requested an extension of the comment period, but the DOL has not provided any indication one way or the other as to whether it will extend the comment period.

However, in a July 28 email encouraging comments on the proposal, the DOL specifically stated that "The comment period on the proposed rule is open through September 4, 2015," and did not mention a possible extension. Similarly, the Wage and Hour Division's "Notice of Proposed Rulemaking: Overtime" page invites interested parties to submit written comments "on or before September 4, 2015." Thus, while an extension still is possible, and certainly is warranted, employers need to work under the assumption that all comments are due no later than September 4.

In other words, employers only have one month left to make their voices heard on several important issues raised by the proposal, including the following:

- whether the minimum salary requirement for the executive, administrative, and professional (EAP) exemptions should increase more than twofold from the current minimum requirement of \$455 per week (\$23,660 per year) to an estimated \$970 per week (\$50,440 per year);

- whether nondiscretionary bonuses and other forms of compensation should count toward some portion of the EAP minimum salary requirement;
- whether the EAP minimum salary requirement should be indexed so that it is subject to automatic annual increases, and if so, what methodology should be used for indexing;
- whether the total compensation level for the highly compensated employee (HCE) exemption should increase from the current minimum requirement of \$100,000 per year to \$122,148 per year;
- whether the total compensation level for the HCE exemption should be subject to annual increases; and
- whether any changes should be made to the job duties requirements for the EAP exemptions.

A more detailed discussion of these topics can be found in our July 9, 2015 blog post, [A Call to Action: The Comment Period on the new Proposed Overtime Regulations Begins](#). The issue of nondiscretionary bonuses is addressed in additional detail in our July 14, 2015 blog post, [Should Employers Be Allowed to Count Nondiscretionary Bonuses Toward the FLSA's Minimum Salary Threshold? The DOL Wants Your Comments](#).

It is important for employers to submit substantive comments because those comments establish the record that will be considered before a final rule is issued. They also provide a basis for litigation in the event of an unfavorable final rule. Thus far, more than 1,100 comments on this topic have been received.

Comments can be submitted electronically at [Regulations.gov](#). If you type the Regulatory Information Number (RIN) 1235-AA11 into the search box, it will take you to the DOL's proposal for purposes of submitting your comments. You also can go directly to the [DOL's proposal](#).

Employers may also mail comments to the following address:

Mary Ziegler
Director, Division of Regulations, Legislation, and Interpretation
U.S. Department of Labor, Wage and Hour Division
200 Constitution Avenue N.W., Room S-3502
Washington, D.C. 20210

Employers should submit comments either electronically or by mail, but not by both methods. They should include a reference to the U.S. Department of Labor, Wage and Hour Division and to the RIN 1235-AA11. Comments that are mailed should be sent sufficiently far in advance to be received by 11:59 p.m. on September 4.

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