



## DOL's final overtime rules may impact retirement plans

In May 2016, the Department of Labor (DOL) issued a final rule on the Fair Labor Standards Act's (FLSA) overtime pay requirements for most "white-collar" employees. While this rule primarily affects employer's compensation practices, it may also have downstream impacts to retirement plans.

### Background and overview

The FLSA established the general standard that workers be paid overtime (time-and-a-half) for any hours worked over 40 per week. In general, hourly employees are guaranteed overtime, and salaried employees have the same guarantee unless they:

- Make more than a salary threshold set by the DOL; and
- Pass a test demonstrating that they primarily perform executive, administrative, or professional duties.

Certain occupations are not eligible for overtime pay (i.e., teachers, doctors, and lawyers) or are subject to special provisions.

The final rule expands the threshold for which salaried employees will be eligible for overtime pay from \$23,660 to \$47,476. Generally, an employee paid less than the threshold will receive overtime pay for working more than 40 hours in a given week.

The DOL has stated that employers have a wide range of options for complying with the revised salary level, including:

- Raising the employee's salary to keep the employee exempt from overtime;
- Paying overtime in addition to the employee's current salary when necessary; and
- Evaluating and realigning hours and staff workload.

The rule is effective December 1, 2016.

### Impact to retirement plans

For plans that include overtime in their definition of compensation for retirement plan contributions, the final rule may result in increased employer contributions. Additionally, plans that exclude overtime pay from the plan's definition of compensation may be affected if the definition of compensation becomes discriminatory. Reclassifications of salaried and hourly workers may also affect plans that have eligibility based on these statuses.

The final overtime rules also update the total annual compensation level above which most white collar workers will be ineligible for overtime. This is referred to as the "Highly Compensated Employee (HCE) salary level" and should not be confused with the HCE threshold amounts for nondiscrimination testing purposes in qualified retirement plans.

### Next steps

Sponsors should work with their legal counsel to discuss the impact of this rule on their compensation and job classification practices. Sponsors who may be considering changing their definition of compensation for retirement plan contributions should notify their Prudential representative.

#### Compliance Bulletin by Prudential Retirement

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