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This public document was published at a total cost of \$.31. Two copies of this public document were published in this 1st printing at a cost of \$.62 each. The total cost of all printings of this document including reprints is \$.62. This document was published by the Department of State Civil Service to keep agencies, employees, and other persons informed about the personnel program under authority of Article X of the Louisiana Constitution. This material was printed in accordance with standards for printing by State Agencies pursuant to La. R.S. 43:31.

GENERAL CIRCULAR NUMBER 2015-025

DATE: June 30, 2015

TO: Heads of State Agencies and Human Resources Directors

SUBJECT: Upcoming Proposals to FLSA

The Department of State Civil Service would like to make agencies aware of newly released proposals from the Department of Labor. The DOL has announced proposed rule changes to the Fair Labor Standards Act regarding overtime pay. As proposed, this would raise the salary threshold from \$455 a week (\$23,660 a year) – below the poverty threshold for a family of four – to a projected level of \$970 a week (\$50,440 a year) in 2016.

Although the Office of Management and Budget (OMB) has reviewed and approved the Notice of Proposed Rulemaking, the document has not yet been published in the Federal Register. These rules are currently not in effect. Public comments to the proposed changes will be solicited by the DOL through the Federal Register. SCS will continue to monitor the proposed changes and provide more information as it becomes available.

A fact sheet on the proposed changes can be found below.

You can find more information on the proposed changes here:

<http://www.dol.gov/whd/overtime/NPRM2015/>

Sincerely,

s/Shannon S. Templett
Director



**FACT SHEET: PROPOSED RULEMAKING TO UPDATE
THE REGULATIONS DEFINING AND DELIMITING THE EXEMPTIONS FOR
“WHITE COLLAR” EMPLOYEES**

The Department is proposing to update the regulations governing which executive, administrative, and professional employees (white collar workers) are entitled to the Fair Labor Standards Act’s minimum wage and overtime pay protections. The Department last updated these regulations in 2004, and the current salary threshold for exemption is \$455 per week (\$23,660 per year). With this proposed rule, the Department seeks to update the salary level required for exemption to ensure that the FLSA’s intended overtime protections are fully implemented, and to simplify the identification of nonexempt employees, thus making the executive, administrative and professional employee exemption easier for employers and workers to understand and apply.

Key Provisions of the Proposed Rule

The Notice of Proposed Rulemaking (NPRM) focuses primarily on updating the salary and compensation levels needed for white collar workers to be exempt. Specifically, the Department proposes to:

- (1) set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers (\$921 per week, or \$47,892 annually);
- (2) increase the total annual compensation requirement needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$122,148 annually); and
- (3) establish a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption.

The Department’s proposal to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers represents the most appropriate line of demarcation between exempt and nonexempt employees. This salary level minimizes the risk that employees legally entitled to overtime will be subject to misclassification based solely on the salaries they receive, without excluding from exemption an unacceptably high number of employees who meet the duties test. As proposed, this would raise the salary threshold from \$455 a week (the equivalent of \$23,660 a year) to about \$970 a week (\$50,440 a year) in 2016.¹

¹ The Department of Labor relied upon 2013 data in the development of the NPRM, under which the 40th percentile of weekly earnings for full-time salaried workers was \$921 per week. These figures project what the salary level would likely be in 2016 based on the proposed rule. The

The Department is also proposing to automatically update the standard salary and HCE total annual compensation requirements to ensure that they remain meaningful tests for distinguishing between bona fide executive, administrative, and professional workers who are not entitled to overtime and overtime-protected white collar workers. Experience has shown that the salary level test is an effective measure of exempt status only if it is up to date.

In addition, the Department discusses the current duties test and solicits suggestions for additional occupation examples and requests comments on the current requirements. Similarly, the Department seeks comment on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement. The Department is not proposing specific regulatory changes on either of these issues.

Background

Since 1940, the Department's regulations have generally required each of three tests to be met for one of the FLSA's white collar exemptions to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed; (2) the amount of salary paid must meet a minimum specified amount; and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.

Certain highly compensated employees are exempt from the overtime pay requirement if they are paid total annual compensation of at least \$100,000 (which must include at least \$455 per week paid on a salary or fee basis) and if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption.

How to Comment

The Department encourages interested parties to submit comments on the NPRM. The full text of the NPRM, as well as information on the deadline for submitting comments and the procedures for submitting comments, can be found at the Wage and Hour Division's [Proposed Rule website](#).

Department will consider all comments received on this proposal in determining the salary level for the Final Rule.