



Ready For The Looming Exemption Changes?

Insights

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Section 13(a)(1) "white collar" exemption definitions remains uncertain. But a growing consensus is that they are likely to be released within the next four weeks or so.

We still anticipate that the revisions' effective date will be 60 days after publication. This suggests that management should be in a position to implement its compliance plans if need be by mid-to-late July, or perhaps early August.

A Legislative "Rescue"?

We have previously reported the introduction of bills in the U.S. House and Senate that are intended to block the changes. Now, Bloomberg BNA says that House Republicans are conferring in earnest about invoking the Congressional Review Act in an effort to prevent the final regulations from taking effect.

Our sense is that neither of these initiatives is likely to be successful. Even if Congress votes in favor of one or both of them, an override-proof presidential veto seems virtually certain. At most, a CRA resolution might delay the new rules' effective date for a limited period.

A Credit For Bonuses Or Commissions?

Increasing concern about the impact of a salary threshold of more than twice the current level is leading to what might ultimately be misplaced optimism about the prospects for crediting bonuses or commissions against the higher figure.

USDOL's July 2015 proposals contained *no* specific regulatory credit or offset of any such kind. The agency simply indicated in its accompanying commentary that it was thinking about whether to permit unspecified "nondiscretionary bonuses and incentive payments" to be creditable in some unidentified way toward whatever the salary threshold turns out to be. Thus, employers should not simply assume that any such mechanism will appear in the final regulations.

Furthermore, USDOL expressed its view that such a credit or offset:

- Should be capped at 10% of the salary threshold;

- Should be limited to sums paid monthly or more frequently; and
- Should not include "commissions" (a term that USDOL did not define).

Consequently, whether or in what form any such credit or offset will appear in the final regulations remains undetermined.

The Bottom Line

Employers should not count on Congress to prevent USDOL's changes from taking effect. At best, the question is most likely not one of whether, but instead when.

Understandably, management might choose to explore the potential mitigating effects of somehow being able to count "nondiscretionary bonuses and incentive payments" toward a higher salary amount. However, employers would be wise to finalize their overall compliance plans *first* and should do so without relying upon this possibility.