

## FAIR LABOR STANDARDS ACT (FLSA) – FINAL REGULATIONS

On April 23, 2024, the Department of Labor (DoL) issued its final rule on the minimum salary level for “white collar” exemptions<sup>1</sup> under the Fair Labor Standards Act (FLSA). *This two-phase regulation will take effect on July 1, 2024, and January 1, 2025. **The rules increase the exempt threshold salary level from \$35,568 to \$43,888<sup>2</sup> annually (\$844/week) as of July 1, 2024, and again from \$43,888 to \$58,656<sup>2</sup> (\$1,128/week) as of January 1, 2025.*** Per this ruling, an employee who is currently exempt and earning a fixed salary of less than \$43,888/\$58,656 annually will be disqualified from exempt status and entitled to overtime pay. It has been five years since the threshold salary level was updated.

### **Other Key Highlights:**

- The highly compensated employee (HCE) exemption moves to \$132,964 or more as of July 1, 2024, and \$151,164 as of January 1, 2025.
- Effective July 1, 2027, and every 3 years thereafter, the salary threshold will be updated to reflect then-current earnings data, using the 35<sup>th</sup> percentile of full-time exempt workers in the lowest wage census region or such other methodology then in effect.
- Employers will be able to use **nondiscretionary bonuses and incentive payments (including commissions)** to satisfy up to 10% of the standard salary level requirement.
- The Salary Basis and Job Duties tests remain unchanged.

**Who Will Be Affected:** According to the DoL, roughly 4.3 million workers will be impacted by the new rules, making them eligible for overtime pay. Some examples of banking roles that are likely to be affected could include:

- Assistant Branch Managers/Branch Managers
- Call Center Supervisor
- Human Resources Generalist
- Office Manager

**What Employers Need to Do:** There are a number of actions that employers can take to prepare.

- Identify positions that are currently exempt but will fail to meet the new minimum salary levels.
- Create financial models to estimate the costs of reclassifying these positions to non-exempt status (factoring in estimated overtime pay) or raising salary levels to the new minimums of \$43,888/\$58,656.

*It is important to note that meeting the new threshold salary is not enough to classify an employee as exempt; the employee’s position must also pass the applicable job duties test. Conversely, an employee paid less than the new threshold salary must be non-exempt and therefore eligible for overtime pay, regardless of job duties.*

- Review benefits that are tied to exemption status, such as vacation, sick leave, PTO, etc.
- Determine how cash incentives will impact employee classification.
- Determine a communication strategy and timeline for any changes.
- As a best practice, review/update job descriptions at least annually to ensure they reflect current duties, and carefully audit FLSA classifications regularly to confirm compliance.

**Summary:** As a result of the changes to the FLSA threshold salary levels, it is critical to address individuals and positions affected. Some organizations may have to reclassify some of their positions; however, given the wide diversity of banks and financial institutions, and each organization’s unique culture, there is no one-size-fits-all recommendation.

This client alert is intended to provide a high-level summary of the final rules presented by the DoL. The full document can be found online at: <http://www.federalregister.gov>

<sup>1</sup> Includes exemption categories of executive, administrative, and professional.

<sup>2</sup> The amounts in this client alert reflect federal levels. Check to see if your state has a different salary threshold exemption level.