



## Proposed FLSA Exemption Changes Still In Limbo

Insights

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Employers await with bated breath the release of the U.S. Labor Department's proposed new definitions for the federal Fair Labor Standards Act's Section 13(a)(1) executive, administrative, professional, outside-sales, and derivative exemptions. Apparently, they will just have to keep waiting – for how long, the U.S. Labor Department will not say.

The President directed this re-definition a year ago, and we have of course been following related developments.

### Prior Deadlines Have Passed

USDOL's own November 2014 and February 2015 deadlines about which we reported have come and gone. Now, as April approaches with nothing published, USDOL appears to have decided against setting a new expectation.

Instead, recent reports say that U.S. Labor Secretary Thomas Perez has advised the House of Representatives only that the proposed revisions will be out in "coming months".

Before significant revisions of this kind are formally released to the public for review and comment, USDOL must submit them to the federal Office of Information and Regulatory Affairs ("OIRA"). OIRA must then provide guidance as to whether the revisions are consistent with "applicable law" and "the President's priorities", among other factors.

We were recently advised that USDOL had not yet given the proposals to OIRA, but it is not clear whether this is still the case. Of course, USDOL and OIRA might have been coordinating their mutual responsibilities all along, such that there will be little further delay once OIRA receives the proposals.

### The Bottom Line

It is probably a fool's errand at this point to try to keep guessing when the proposed revisions will be announced. But there are things that employers should be doing in the interim.

To begin with, employers should reassess all currently-utilized Section 13(a)(1) exemptions, *particularly* any about which management feels less confident. It is likely any "borderline calls" today will be even less certain (or worse) under whatever the final regulations turn out to be.

Other “to-do” items could include considering:

- Whether and how to bolster the FLSA exemption status of those whom management treats as exempt under Section 13(a)(1);
- What *other* FLSA exemptions might be available if the Section 13(a)(1) ones no longer are; or
- What alternative FLSA-compliant pay plans would serve management's needs if it decides to convert one or more employees to non-exempt status. As we have said, usually there are entirely lawful ways to establish new pay plans that, when properly administered, could result in little or no increase in the employees' pay.

### ***Related People***

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