DOL OVERTIME FINAL RULE

I. BACKGROUND

The Department of Labor (DOL) is revising its final “Overtime Rule” under the Fair Labor Standards Act (FLSA) by updating the earnings thresholds necessary to exempt executive, administrative or professional employees from the FLSA's minimum wage and overtime pay requirements.

The DOL is updating both the minimum weekly standard salary level and the total annual compensation requirement for “highly compensated employees” to reflect growth in wages and salaries. The new thresholds account for growth in employee earnings since the currently enforced thresholds were set in 2004.

The 2019 final rule is effective on January 1, 2020.

II. KEY PROVISIONS OF THE FINAL RULE

The final rule updates the salary and compensation levels needed for workers to be exempt by:

1. Raising the “standard salary level” from the currently enforced level of $455 to $684 per week (equivalent to $35,568 per year for a full-year worker);
2. Raising the total annual compensation level for “highly compensated employees (HCEs)” from the currently-enforced level of $100,000 to $107,432 per year; and
3. Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level. In recognition of evolving pay practices for employers to credit nondiscretionary bonuses and incentive payments toward a portion of the standard salary level test, they must make such payments on an annual or more frequent basis.

Discretionary bonuses may not be used to satisfy the salary level. If an employee does not earn enough in nondiscretionary bonus or incentive payments in a given year (52–week period) to retain his or her exempt status, the DOL permits the employer to make a “catch–up” payment within one pay period of the end of the 52–week period. This payment may be up to 10 percent of the total standard salary level for the preceding 52–week period. Any such catch–up payment will count only toward the prior year's salary amount and not toward the salary amount in the year in which it is paid.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.