

InfoSight Newsletter

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League InfoSight Highlight

Regulatory Alert: FLSA Final Rule

As a reminder, the Department of Labor (DOL) passed a final rule amending the Fair Labor Standards Act (FLSA) overtime exemption analysis for "white collar" or "EAP" exemptions and the "highly compensated employee" exemption. The amended rules do not impact outside sales exemptions or certain computer position exemptions.

Effective July 1, 2024, the rule increases the [required salary thresholds](#) but does not impact the "[duties](#)" side of the exemption analysis. The final rule provides for future adjustments of the salary threshold again on Jan. 1, 2025, and then on a regular basis to reflect current earnings data.

What is the FLSA?

The FLSA is a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the United States.

What do credit unions need to do to comply with the amended rules?

Every credit union (regardless of the number of employees) must review the status of every position classified as exempt to determine if adjustments are needed. The primary focus should be on determining whether the salary threshold is met and, if not, making appropriate adjustments. However, please use this opportunity to review the duties side of the analysis as well to ensure you do not have any positions misclassified.

What other compliance tips do you suggest?

Credit unions should list out every exempt position, identify the specific exemption that has been applied to date, and identify the current salary for each exempt position. A copy of each job description should also be included to complete a full analysis.

For exempt positions that fall below the new required salary threshold, the first option is for the credit union to keep the salary the same and simply remove the exemption (reclassifying the position as nonexempt). The employee would now be considered nonexempt and therefore eligible for overtime pay for hours worked over 40 in a week. If these employees have not completed detailed timesheets of hours worked in the past, they will need to begin doing so immediately. Every hour of work must be accounted for to determine hours over 40 that will be eligible for pay at a rate of time and a half.

If the credit union prefers to maintain a position as exempt, it will need to raise the salary to meet or exceed the new threshold effective July 1, 2024. (This applies to "[at-will](#)" employees as well as employees subject to an employment contract.)

Each credit union will need to determine which approach works best. Depending on the number of positions impacted, raising the salaries to meet the required threshold could have a big impact on the credit union budget. At the same time, if these positions regularly work more than 40 hours a week, the overtime pay could also have a big impact on budgets if these positions are reclassified as nonexempt. You will have to do the math and determine which approach works best for your credit union.

Keep in mind that, absent legal challenges, you will need to make ANOTHER large increase on Jan. 1, 2025, so please remember to factor that into your decision-making.

Do We Need to Analyze the "Duties Side" Test as Well?

Since you are reviewing the salary aspect of the exemption eligibility analysis, this is a good time to review the duties test as well.

Each exemption has its own specific required "duties" test that must be met in addition to meeting the salary threshold. The duties side tests have not changed; however, it is a good idea to review these too. Many employers have misclassified positions as exempt under the duties side of the test, so now is a good time to review that as well.

For example, the DOL generally leans toward loan officers being hourly nonexempt positions, but not all credit unions have them classified as such. A full review of all positions will assist in helping you avoid lawsuits and/or DOL investigations.

What are the "white collar" or "EAP" exemptions?

White collar or EAP exemptions are terms used to refer to the executive, administrative, and professional exemptions. The rule raises the required salary threshold for these exemptions.

What is the "highly compensated employee" exemption?

The FLSA includes an overtime exemption for "highly compensated employees." This exemption has an even higher required salary threshold than the EAP exemptions. However, the highly compensated employee exemption includes a

"duties test" that is significantly easier to meet than the traditional EAP exemptions.

How has the salary threshold changed?

For the EAP exemptions effective July 1, 2024, the salary threshold has been raised from \$35,568 per year to \$43,888 per year. For the highly compensated employee exemption effective July 1, 2024, the salary threshold has been raised from \$107,432 to \$132,964.

What are the anticipated future salary thresholds?

Below, please find a schedule for the anticipated future salary threshold adjustments.

Updates To EAP Salary Threshold

- Prior to July 1, 2024
 - \$684 per week (\$35,568 per year)
- July 1, 2024
 - \$844 per week (\$43,888 per year)
- Jan. 1, 2025
 - \$1,128 per week (\$58,656 per year)
- Jan. 1, 2027, and every 3 years thereafter -
 - Will be updated

Updates to Highly Compensated Employee Total Annual Compensation Threshold

- Prior to July 1, 2024
 - \$107,432 per year, including at least \$684 per week salary
- July 1, 2024
 - \$132,964 per year, including at least \$844 per week salary
- Jan. 1, 2025
 - \$151,164 per year, including at least \$1,128 per week
- Jan. 1, 2027, and every 3 years thereafter
 - Will be updated

Can bonuses be included in the salary determination?

Nondiscretionary bonuses and incentive payments (commissions) paid on an annual or more frequent basis may be used to satisfy up to 10% of the salary threshold. Nondiscretionary bonuses are performance-based and preannounced, usually with target goals.

An example of a discretionary bonus (which cannot be included in the salary threshold analysis) would be a discretionary year-end bonus tied to the success of the company. These are the types of bonuses on which the employee has no contractual expectation or reliance.

Content updates and additional information is available within the Fair Labor Standards Act (FLSA) topic under the Employment channel within [InfoSight!](#)

Suzanne Yashewski

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LIS Webinar: Cyber Incident Content Review

Join us on Tuesday, **July 30, 2024 at 2:00 pm ET** for our upcoming webinar where we will dive into the latest content updates for **RecoveryPro!** The new content includes a comprehensive Cyber Incident section, developed to address NCUA's heightened emphasis on cyber events and Business Continuity Planning (BCP).

The new content includes procedures for detecting, containing, and recovering from cyberattacks, along with communication strategies for notifying key stakeholders.

You do not need to subscribe to RecoveryPro to attend, but registration is required.

[Register now to secure your spot!](#)

News and Alerts!

NCUA: A Reflection on the Past and Future Marks Federal Credit Union Act 90th Anniversary

The National Credit Union Administration (NCUA) commemorated the 90th anniversary of the signing of the Federal Credit Union Act of 1934 into law by President Franklin Delano Roosevelt, which authorized the formation of federally chartered credit unions in all states.

[Read More](#)

CFPB Proposes Rules to Help Homeowners Avoid Foreclosure

The Consumer Financial Protection Bureau (CFPB) proposed new rules to make it easier for homeowners to get help when they are struggling to pay their mortgage.

[Read More](#)

CFPB Takes Action Against Fifth Third for Wrongfully Triggering Auto Repossessions and Opening Fake Bank Accounts

The Consumer Financial Protection Bureau (CFPB) took action against repeat offender Fifth Third Bank for a range of illegal activities that would result in the bank paying millions in penalties as well as paying redress to harmed consumers.

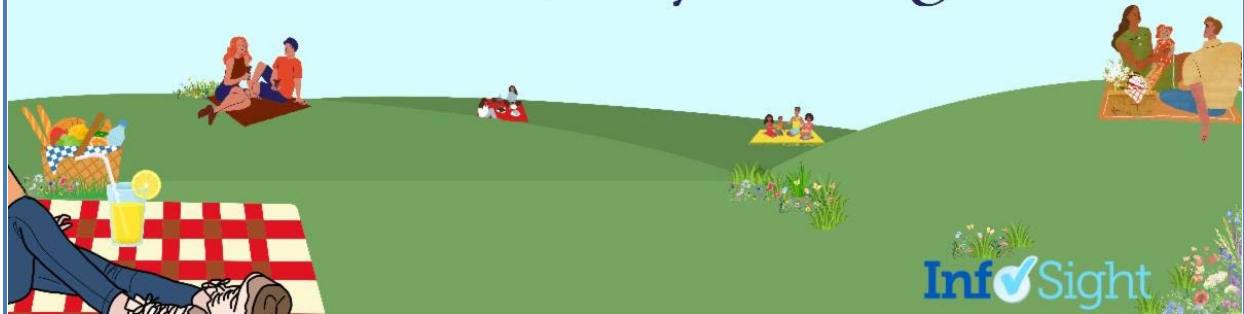
[Read More](#)

CFPB Exams Find Loan Servicing Failures, Illegal Debt Collection Practices, and Issues with Medical Payment Products

The Consumer Financial Protection Bureau (CFPB) published an edition of Supervisory Highlights sharing findings from examinations of auto and student loan servicers, debt collectors, medical payment products, and deposit and prepaid accounts

[Read More](#)

Regulatory Compliance is no summer picnic, but **InfoSight** is here to help you stress-less, all year long.



Questions, Comments, Concerns? We are here to help! Email us at info@leagueinfosight.com