



SCWA Legislative/Regulatory Update

April 24, 2023



May is Target for Overtime Pay Rule

The Biden Administration's last [regulatory agenda](#) targets May (next month) for release of a NPRM containing proposed changes to the regulations governing the exemptions to federally mandated overtime pay.

Details on the substance of the NPRM are still unavailable and it remains unclear as to whether DOL will hit the target release date for the proposal.

We suspect, however, DOL will move forward with the NPRM by this fall even if does miss the May target.

We also suspect the proposal will likely include a salary threshold increase and possibly some changes to the duties test.

A [bill](#) recently introduced by Rep. Takano (D-CA) and Sen. Brown (D-OH) sets a marker for the changes unions and related interest groups would like DOL to make to the regulations. The bill, entitled the Restoring Overtime Pay Act of 2023, would tie the salary threshold for exemptions to the 55th percentile of earnings of full-time salaried workers nationally by Jan 1, 2027 (projected to be \$82,745 at that time).

The bill also would make significant changes to the duties test, requiring workers spend less than 20% of their time on non-managerial work to qualify for the overtime pay exemption.

We also wanted to pass on a recent Bloomberg [article](#) on a suit that is challenging DOL's authority to set *any* threshold.



Treasury Targets Estate Planning

While Senator Thune was offering his Death Tax Repeal Act, Senators Warren and Sanders were penning a letter to Secretary Yellen, urging Treasury to crack down on what they see as “millionaires and billionaires engaging in increasingly complex tax planning that exploits trusts to avoid paying taxes.”

The [letter](#) sent on March 20th encouraged Treasury to take a number of actions to address tax avoidance. It may have been more than a coincidence that 9 days later on March 29th the IRS issued [Revenue Ruling 2023-02](#) limiting the viability of grantor trusts which some family businesses use to plan for succession.

This notice essentially rules that property within a grantor trust cannot receive a step-up in

basis once the grantor dies if that trust is considered outside of the grantor's estate for tax purposes.

This ruling comports with informal guidance the IRS has previously issued. While this ruling applies only to specific circumstances, there is certainly room for Treasury to go even further on GRATs and it seems likely Senator Warren will continue pushing them to do so.

Some of the administration's budget proposals would make transfers to and distributions from trusts realization events for gift and income taxes which would upend countless estate plans.

Rewriting an entire succession plan for an established family business is a costly and tedious process so many small business owners view any restrictions on estate planning techniques skeptically, especially when done via administrative ruling.

Though technical changes surrounding estate/gift taxes are not "bumper sticker" type issues they are nevertheless important to ensuring family businesses have the best chance to pass to the next generation of ownership.

We encourage all small business owners planning for succession to talk to their accountants and estate planners about what the attack on succession planning means for their businesses.



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