

Advocacy Recommends that DOL Adopt a Lower Salary Threshold for Overtime Regulations to Minimize Small Business Impacts

On September 22, 2017, the Office of Advocacy (Advocacy) filed a comment letter with the U.S. Department of Labor on its Request for Information on its overtime regulations and exemptions under the Fair Labor Standards Act (FLSA).

- The Fair Labor Standards Act (FLSA) guarantees a minimum wage and overtime pay of time and a half for work over 40 hours a week. In May 2016, DOL finalized a rule that changes the standard salary threshold for the “white collar” exemption to overtime pay under the FLSA from \$23,660 to \$47,476. The white collar exemption is for executive, administrative, professional, outside sales, and computer employees. In November 2016, one month before the rule was to become effective, the rule was temporarily enjoined by a federal court. In August 2017, the United States District Court for the Eastern District of Texas invalidated the Department of Labor’s 2016 final rule, making the injunction permanent.
- In July 2017, DOL published a Request for Information (RFI) seeking feedback on these regulations, as it plans to formulate a new proposal on this issue. DOL seeks feedback on the optimal level for the standard salary threshold, and the methodology the agency should utilize to set this threshold. DOL invited comments on whether there should be separate salary thresholds based on employer size, region, or any other factor. DOL also invited feedback on whether small entities encountered any unique challenges posed by this rule, and if they faced any economic and non-economic impacts.
- Advocacy has completed extensive outreach to small businesses across the country throughout the rulemaking period. Small businesses have told Advocacy that they believe that the standard salary level in the 2016 final rule was set too high, and created burdensome paperwork requirements and unplanned business expenses.
- Advocacy recommended that DOL adopt a lower level national salary threshold that has been adjusted to minimize small business impacts to low wage regions and industries. Advocacy commented that most small businesses do not support multiple standard salary levels, as this may cause confusion and complexity to the regulatory process.

For more information, visit Advocacy’s webpage at <http://www.sba.gov/advocacy>, or contact Assistant Chief Counsel Janis Reyes by email at Janis.Reyes@sba.gov or by phone at 202-205-6533.