

Advocacy Recommends that DOL Publish a Supplemental Analysis of Small Business Costs and Consider Less Burdensome Alternatives to the FLSA Overtime Regulation

On September 4, the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor (DOL) regarding its proposed rule entitled, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule*. A complete copy of Advocacy's letter to DOL may be accessed at: <http://www.sba.gov/advocacy/>.

- The Fair Labor Standards Act (FLSA) guarantees minimum wage and overtime pay of time and a half for work over 40 hours a week; there is a “white collar” exemption for executive, administrative and professional employees. To be considered exempt, employees must meet a job “duties” test and be paid on a salary not less than a minimum threshold. In this proposed rule based on a 2014 Presidential Memorandum, DOL would change the salary threshold for employees eligible to receive overtime pay from \$23,660 to \$50,440.
- DOL estimates that 211,000 small establishments and their estimated 1.8 million workers will be affected by this rule and eligible for overtime pay. DOL is also proposing a mechanism to automatically update the salary threshold annually. DOL does not propose changes to the “duties” tests, but is seeking feedback on this issue.
- At Advocacy Roundtables held in the District of Columbia, Kentucky and Louisiana, small businesses commented that this increase in the salary threshold imposes significant compliance costs and paperwork burdens on small entities, particularly businesses in low wage regions and in industries that operate with low profit margins.
- Advocacy is concerned that the Initial Regulatory Flexibility Analysis (IRFA) contained in the proposed rule does not properly analyze the numbers of small business affected by this rule and the economic impact of this rule on these entities. Advocacy recommends that DOL publish a Supplemental IRFA providing additional analysis on the economic impact of this rule on small entities and adopt recommended small business alternatives.

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.