



AMERICAN COUNCIL OF ENGINEERING COMPANIES

## Oppose Regulatory Overreach

### ISSUE

The U.S. Department of Labor (DOL) has issued new regulations under the Fair Labor Standards Act (FLSA) that will impose significant costs on engineering firms and the public and private sector clients they serve. **ACEC urges lawmakers to cosponsor and support S. 2707 and H.R. 4773 to require better economic analysis of the proposed rule before it goes into effect.**

### BACKGROUND

In 1938, the FLSA was enacted to establish certain workplace standards, including rules governing overtime work and minimum wage. Employees who earn less than a specified salary threshold must be paid time and a half for any hours over 40 worked in a given week. Employees who earn more than the salary threshold may not qualify for overtime pay if their duties meet the criteria for the executive, administrative, or professional (EAP) exemptions.

The salary threshold was last updated in 2004. The EAP exemptions were also improved to provide greater clarity and ensure that employees are properly classified as exempt or non-exempt.

In May 2016, DOL issued a final rule that increases the salary threshold from \$455 per week/\$23,660 annually to \$913 per week/\$47,476, effective December 1, 2016. This is an increase of 100% and far above the 26% cumulative inflation since 2004. DOL also decided to update the salary threshold every three years on an automatic basis, instead of using the standard public comment process.

ACEC and other stakeholders, including the National Association of Counties and the National League of Cities, have raised serious concerns over the cost of DOL's proposed rule and other issues. In response to these concerns, Senators Tim Scott (R-SC) and Lamar Alexander (R-TN) have introduced S. 2707, and companion House legislation (H.R. 4773) has been introduced by Congressmen Tim Walberg (R-MI) and John Kline (R-MN), that would require DOL to complete additional economic analysis prior to finalizing the rule. The legislation would require DOL to seek public comment on future updates to the salary threshold, and prevent the agency from implementing changes to the EAP exemptions without first publishing them in a proposed rule.

### KEY POINTS

- DOL is doubling the FLSA salary threshold -- far beyond the rate of inflation and nearly \$10,000 more than the 2016 threshold for California and almost \$15,000 more than New York, two of the highest-cost states in the nation.
- Expanding overtime pay this significantly will have a serious impact on the budgets of state and local governments – many of which operate under a balanced budget mandate – and their ability to finance needed infrastructure projects and provide key services.

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