DOL OVERTIME PROPOSAL

Background

Under the Fair Labor Standards Act (FLSA), employees are to be paid at a rate of at least one and a half times their regular rate for any hours worked over 40 in a week, unless they have been classified as exempt under certain specific statutory categories or meet other requirements in the regulations.

Under section 541 of the FLSA regulations, an employee may qualify as exempt from the overtime requirements if he or she satisfies a "primary duties test" (performs specific job responsibilities under the executive, administrative, professional, computer and outside sales regulations) and if he or she is paid on a "salary basis" at a rate equal to or greater than $455 per week ($23,660 annually).

Proposal

On June 30, DOL proposed increasing the salary threshold to $50,440 per year as of 2016, which is the 40th percentile of earnings for all full time salaried workers. This is an unprecedented 102% increase in the salary threshold. For the first time ever, DOL also proposed increasing this minimum salary on an annual basis by pegging it to the 40th percentile or by indexing it to inflation.

The Proposal Will Harm Employee Flexibility and Housing Affordability

By setting a high universal standard pay threshold, the DOL proposal will inappropriately result in a larger impact in areas with lower wages and cost of living. NAHB conducted an analysis that shows approximately 116,000 construction supervisors would be affected in some way by the proposal.

The DOL overtime proposal is a "one-size-fits-all" standard. Given the potential broad impact of the proposed rule, an obvious issue is that wage amounts vary greatly from location to location, as well as among business sectors. Construction wages are very regional. What one construction supervisor makes in Tennessee is different than what one earns in California—sometimes significantly.

The dramatic surge in the salary threshold that has been proposed by DOL is unlikely to result in an increase in workers' take home pay. Rather, it would force business owners to restructure their workforce to compensate by scaling back on pay and benefits, as well as taking other steps such as cutting workers hours to avoid the overtime requirements. The rule does not take into account a worker's total compensation package.