



TO: WMA Members

FROM: National Association of Wholesaler-Distributors

DATE: May 2, 2016

**RE: NAW Update on Overtime Regulations**

As we reported last month, the Department of Labor (DoL) is moving forward with its proposed changes to the Wage & Hour Division's Fair Labor Standards Act (FLSA) overtime regulations.

As you know, in mid-March the Department sent its draft of a final rule to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for their required review. This was the next step toward promulgation of a final rule.

For the last 6 weeks, OIRA has been reviewing comment letters and meeting with stakeholders on the rule's real world effects. A number of members of the Partnership to Protect Workplace Opportunity (PPWO), the business coalition NAW helps manage which is leading the effort in opposition to the proposed regulations, have met with OIRA (and the representatives of other federal agencies including the White House's Domestic Policy Council, the Small Business Administration (SBA), and DoL) to explain in oftentimes granular detail, the impact of the rule.

While most of the PPWO member meetings have involved businesses or business associations, a number of the meetings were requested by individuals representing the non-profit community, higher education, local governments, etc. We are hopeful that these non-traditional allies will be effective in persuading OMB that the proposed rule will cause harm to a broad cross section of employers *and employees*.

All meetings with OIRA in the regulatory review process are a made a part of the public record. If you are interested, you can see a list of the meetings and participants on the regulations.gov website (please note that they are now more than two weeks behind in posting the meetings):

<http://www.reginfo.gov/public/do/eom12866SearchResults?view=yes&pagenum=0>

NAW requested a meeting with OIRA, and on April 22<sup>nd</sup> four NAW member company executives met for 45 minutes with officials from OMB/OIRA and the Department of Labor. This meeting gave us a great opportunity to give the government officials real-life and real-time information on the distribution industry and the negative impact of the Wage & Hour Division's proposal not just on wholesale-distribution companies, but on the workers you employ and whom DoL claims to be helping.

## **CURRENT STATE OF PLAY:**

### ***Timing:***

As of this writing, the last date on which OMB has scheduled a meeting is May 10<sup>th</sup>, and we know they have declined a request for a meeting on May 17<sup>th</sup>. Based on those dates, we believe that a final rule could be released as early May 15<sup>th</sup>. (The just-released Fiduciary rule was released only 3 days after OMB completed its review, and Labor Secretary Perez is scheduled to make a speech at the National Press Club on May 16<sup>th</sup>.)

### ***Content:***

Late last week, *Politico* reported that DoL has moved to a slightly lower threshold salary in the final rule (\$47,000) than was set forth in the proposed rule (50,400). The slightly-lower proposed salary threshold is the only change we know of in the rule DoL sent to OMB.

We do not know what action OMB will take – whether they will approve the rule now before them or instead recommend changes in the rule in response to the extensive comments they have received and meetings they have had in recent weeks.

We remain hopeful that the salary threshold will be further reduced, regional economic differences taken into consideration, the increase phased in rather than immediate, and a longer time allowed for initial implementation. In light of the President's personal interest in this matter, we see no possibility that the rule will not move forward.

Legislation has been introduced in Congress calling on DoL to withdraw the rule and do more extensive and credible studies of the economic impact of their proposal, and several Members of Congress have contacted DoL making the same request. Unfortunately, we are not optimistic that these Congressional initiatives will influence upcoming DoL action.

We will continue to keep you apprised of the situation as this rule moves forward.