ISSUE

The Department of Labor is tasked with periodically updating the salary threshold for overtime pay under the Fair Labor Standards Act (FLSA). ACEC supports an increase in the FLSA salary threshold that reflects inflation and opposes any changes to the EAP exemptions that would reduce certainty and expose engineering firms to unfair litigation.

OVERVIEW

In 1938, the FLSA was enacted to establish certain workplace standards such as child labor laws, payments for overtime work, and minimum wage rules. Under the law, 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 be exempt from overtime pay if their duties qualify them for the executive, administrative, or professional (EAP) exemptions.

Over the years, many areas of the Act failed to keep up with the realities of the ever-changing workplace. Understanding who qualified for the EAP exemptions caused enormous uncertainty for employers that were trying to comply with the regulations. They left room for interpretation and resulted in unfair and costly enforcement actions and lawsuits against many engineering firms. The Department of Labor (DOL) last updated the rules in 2004, with input from ACEC and other business organizations, and provided improved guidance for engineering firms to properly classify their employees and help protect businesses from unfair legal action.

In May 2016, DOL finalized a rule to update the FLSA overtime pay salary threshold. Under the proposal, the salary threshold would have increased from the current level of $455 per week/$23,660 annually to $913 per week/$47,476 annually. Doubling the salary threshold would have far exceeded cumulative inflation of 26 percent since 2004. DOL also intended to implement regular automatic updates to the salary threshold. Changes to the EAP exemptions were not proposed.

Doubling the salary threshold would have burdened many engineering companies, particularly small firms and those located in low-cost regions of the country. Expanding overtime pay this significantly would also have had 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.

A court challenge and injunction prevented the new salary threshold from taking effect as planned on December 1, 2016. In August 2017, a federal judge overturned the rule.

DOL issued a request for information to restart the regulatory process, and ACEC submitted comments in September 2017. A new proposed rule is expected to be released in 2018.