PARTNERSHIP TO PROTECT
WORKPLACE OPPORTUNITY

Protecting Workplace Advancement and Opportunity Act
S. 2707/H.R. 4773

Requires DOL to perform a deeper analysis on the impact changes to overtime regulations will have on small businesses, nonprofits, regional economies, local governments, Medicare and Medicaid dependent health care providers, and academic institutions, as well as employee flexibility and career advancement before proceeding with a rule.

Background – Currently, under the Fair Labor Standards Act (FLSA) a person must satisfy three criteria to qualify as exempt from federal overtime pay requirements: first, they must make a salary; second, that salary must be more than $455/week ($23,660 annually); and third, their "primary duties" must be consistent with managerial, professional or administrative positions as defined by the Department of Labor (DOL).

On June 30, 2015, DOL proposed increasing the salary threshold to $50,440 per year, a 113% increase. The Department also proposed automatically increasing the salary threshold on an annual basis. While DOL did not offer a specific proposal to modify the standard duties tests, the Department suggested it is considering making some rather extreme changes.

DOL's proposed rule has been met by widespread opposition from small and large businesses, nonprofits, local government, academic institutions and the Obama Administration's own Small Business Administration Office of Advocacy – all of which have asked the Labor Department to examine more closely the impact of its proposal and consider less harmful alternatives. The Secretary of Labor has responded to questions posed by Members of Congress about these concerns by stating that the Department met with these stakeholders and heard their concerns prior to issuing the rule. Based on these statements and others made by Department officials, it is clear the Secretary is not willing to reconsider the rule without Congressional action.

Protecting Workplace Advancement and Opportunity Act – The legislation, S. 2707/H.R.4773, which was introduced by Senators Scott and Alexander and Representatives Walberg and Kline, would block the current proposed regulation from taking effect and require the Department of Labor to perform a deeper analysis of the impact changes to overtime regulations will have on small businesses, nonprofits, regional economies, local governments, Medicare and Medicaid dependent health care providers, and academic institutions, as well as employee flexibility and career advancement before proceeding with a rule.

Specifically, the Protecting Workplace Advancement and Opportunity Act would:

- Prevent DOL from implementing the current proposal that will limit opportunities for employees and place significant burdens on job creators.
- Require DOL to fully and accurately consider the following before issuing a new rule:
    - the economic impact on small businesses, nonprofits, institutions of higher education, and others affected parties;
    - the management and human resources costs, such as costs associated with reclassifying employees and extra hours spent scheduling employees; and
    - the impact on employment, workplace flexibility, employee benefits structures for exempt and nonexempt employees, career advancement opportunities, new business formation, and business termination.
- Promote stakeholder input by requiring the comment period for any future proposed rule to be at least 120 days.
- Ease transition of future changes for employers and employees by requiring the effective date of any future rule to be at least 1 year after the rule's publication in the Federal Register.
- Ensure future changes to the salary threshold accurately reflect the economic realities facing employees and employers by making clear automatic increases are not allowed under current law.
- Promote transparency and accountability by requiring any changes to the duties tests be made only through proposed regulatory text available for public review and comment.

The Protecting Workplace Advancement and Opportunity Act is consistent with comments submitted by the Small Business Administration's Office of Advocacy, which noted that DOL's economic analysis severely underestimated the impact the proposed rule would have on small businesses, nonprofits and small governmental jurisdictions. The comments also criticized the Department's analysis for not considering the impact the proposal would have on various regions of the country with different costs of living.

The bill does not prevent an increase in the salary threshold, it merely spells out what the Department of Labor must show if a new salary threshold is to be proposed. The legislation will help employees and employers continue to rely on the congressionally authorized exemptions from overtime compensation for bona fide executive, administrative, and professional employees. This will promote workplace flexibility, career advancement, employee morale, and workplace efficiency.