STATEMENT BEFORE
THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
HEARING ENTITLED "DAMAGING REPERCUSSIONS:
DOL'S OVERTIME RULE, SMALL EMPLOYERS, AND THEIR EMPLOYEES."

June 23, 2016

Introduction

The Independent Insurance Agents and Brokers of America (Big "I" or IIABA) submits testimony today to express our concerns over the recently released Department of Labor (DOL) rule related to worker classifications under the Fair Labor Standards Act (FLSA) that could potentially impact one million white collar workers in the insurance industry. The Big "I" is the nation's oldest and largest trade association of independent insurance agencies, representing a nationwide network of more than a quarter of a million agents, brokers and employees. These small, medium and large businesses sell all lines of insurance—property/casualty, life, health, employee benefit plans and retirement products.

The DOL rule largely requires that employees who make less than $47,476 be paid overtime, but some workers who make more than $47,476 and meet certain requirements would not generally be entitled to overtime. This requirement goes into effect on December 1, 2016. Currently, the threshold salary for this overtime exemption is $23,660. The Big "I" does not oppose the intent of the DOL in updating the current salary threshold, which has not been adjusted for inflation since 2004. However, the association is concerned about the impact this excessive 100% increase will have on independent insurance agencies and their employees.

The DOL rule also institutes an automatic inflationary adjustment to the salary threshold, tagged at the 40th percentile of worker wages in the lowest cost of living Census region. The Big "I" is concerned that the inflation adjustment will be overly burdensome for small businesses. As such, the Big "I" supports H.R. 4773, the "Protecting Workplace Advancement and Opportunity Act," by Reps. Tim Walberg (R-Michigan) and John Kline (R-Minnesota). The legislation would stop the current rule from going into effect and forbid

DOL from re-proposing the rule unless certain conditions are met, such as robust sector-specific and small business-specific impact analysis. The Big "I" is also supportive of H.J. Res 95, by Rep. Virginia Foxx (R-North Carolina) which would provide for disapproval of the rule pursuant to the Congressional Review Act.

Negative Impact on Small Businesses

Many Big "I" member agencies are small businesses that have expressed concerns regarding the rule's impact on their businesses and their employees. Big "I" member agencies have noted that they will be forced to respond to such a large salary increase in one or more of the following ways: (1) shifting all of their employees to hourly; (2) holding off on hiring new employees; (3) laying off some current employees and outsourcing or automating certain administrative work; (4) disallowing telecommuting; or (5) reducing base salaries. Many agencies expressed concern that this would decrease employee morale and flexibility, and potentially increase turnover.

Another concern is that the rule would cause a significant increase in compliance costs and paperwork burdens for small insurance agencies. Since the rule was released last month, the Big "I" has received questions nearly every day from member agencies across the country, seeking to understand the complexities of the regulation. A study performed in 2014 for the National Association of Manufacturers found that businesses with fewer than 50 employees spent 30% more per employee per year than their larger counterparts and most Big "I" members have less than 50 employees.

The Big "I" is concerned that the DOL did not complete appropriate analysis specific to the economic impact of the rule on small businesses prior to finalizing the rule. This concern has also been expressed by the Small Business Administration, which concluded that the DOL estimates of management costs may not reflect the actual experiences of small entities.

One of the greatest concerns among Big "I" small business members was that the automatic salary increases will be extremely hard to implement and track. While the original proposal only had a 60-days' notice window, which was extended to 150-days in the final rule, many businesses expressed concerned about missing these update notices and being subject to enforcement actions. Not all salary increases occur on a calendar year and budgeting can be a multi-year process. Automatic updates will require annual reviews of compensation, potential bonuses and classification of employees. This is a time and resource consuming process.

Finally, Big "I" member agencies also commented that complying by the end of the year will be difficult. Small businesses must understand this rule, evaluate and reclassify their workforce, and plan their budget and raise funding to pay for the compliance costs of this regulation.

Negative Impact on Insurance Agencies

The DOL estimates that one million potentially affected "white collar" workers in the insurance industry, so the final rule will have a profound and especially sizable impact on the insurance agencies. As such, Big "I" members, both small and large, have expressed many insurance industry specific concerns.

First, the highly regulated nature of the insurance business creates unique challenges for insurance agencies and makes it impossible for insurance agents to increase revenue to cover the new compliance costs that this rule imposes. Specifically, the prices of insurance products are closely regulated by state officials, and insurance agents are unable to charge their customers more or otherwise recover any new payroll costs from insurance buyers. The ability of agents and brokers to charge fees to their clients is also severely limited or prohibited by law in most jurisdictions.

Second, insurance agents would be limited in their ability to respond to clients in times of emergencies. Insurance sales by IIABA members represent a significant portion of the property/casualty market, meaning they play a pivotal and unique role in helping consumers following an accident, which does not always occur conveniently during working hours. Big “I” members also help policyholders following a catastrophic event. Following severe weather events and other catastrophic events, insurance claims surge and more time is required to assist policyholders.

If insurance agencies are required to convert their employees from salaried to hourly, closely tracking hours and absorbing unpredictable and irregular overtime costs, it will make it harder to assist their clients when their services are needed the most, following an accident or disaster. Currently, this type of overtime would generally be compensated with comp time, which is no longer possible under the final rule.

Third, some lines of the insurance business are seasonal and some IIABA members expressed concern that the new rule will negatively impact their businesses based on this seasonality. For example, one Big “I” member agency noted that they work to put insurance policies in place for a January 1 effective date, so currently staff works longer hours during the fall and winter and less hours during the spring and summer to make up for the overtime in the other parts of the year. Our member noted concerns that this arrangement will have to change and they would have to switch employees to hourly and cut back even further on hours during the off season to make up for the time and a half overtime costs in the fall and winter.

Of note, the rule does, for the first time, provide the option of allowing nondiscretionary bonuses and commissions to satisfy up to 10% of the standard salary level. This does provide some relief, particularly in the case of insurance agencies which rely on nondiscretionary bonuses and commissions as part of employee compensation. As this is implemented we hope that we will be able to provide feedback to the DOL on its effectiveness, with the potential for the 10% threshold to be increased in the future.

Disparate Impact on Employees and Employers in Lower Cost of Living Areas

Big “I” member agencies in lower cost of living states and with offices in multiple states expressed concerns that this rule would have a disproportionate impact on their businesses and employees. For example, white collar workers in Missouri or Iowa may be classified as hourly even though they do the same work as employees classified as exempt in New York or California, because of regional differences in pay, which are reflective of regional differences in the cost of living.

While, the DOL did change the statistical measure that will be used to set the minimum salary threshold from a national measure to a measure based on the lowest cost-of-living Census region, the threshold is still unreasonably high and a 100% increase from the current threshold. It is especially notable that the increase is higher than the current minimum requirement in every state, including California ($41,600) and New York ($35,100), two of the highest cost of living states in the country. This standard effectively sets a ceiling for states and not a floor, as is intended by the law, and will result in unfairly classifying employees who do the same work as hourly or salaried based on regional differences in pay.

Conclusion

As explained in our testimony, the Big “I” does not oppose updating the current $23,660 salary threshold, which has not been adjusted for inflation since 2004. The Big “I” is concerned that the excessive 100% increase—to $47,476—will negatively impact insurance agencies and their ability to service their clients, and have a disparate impact across the county. The Big “I” is also concerned about the automatic inflation adjustment will be overly burdensome for small businesses. The Big “I” appreciates the opportunity to express its views and thanks the Committee for holding this important hearing.