

## ***White Collar Exemptions to Overtime Pay*** **Advocacy's Letter to the U.S. Department of Labor**

On June 24, 2003, the U.S. Small Business Administration's Office of Advocacy filed a comment letter on a rule proposed by the U.S. Department of Labor (DOL). The rule specifies which employees are exempt from the Fair Labor Standards Act's overtime requirement based on their salary and duties. Advocacy encouraged DOL to continue outreach to small entities, to publish small entity compliance assistance materials, and to adopt flexible enforcement measures for small employers. A complete copy of Advocacy's comments may be accessed at <http://www.sba.gov/advo/laws/comments/>.

### **Advocacy enforces a law that requires agencies to work with small businesses.**

- The Regulatory Flexibility Act requires agencies to reach out to small businesses to explain the costs of their proposed rules and to consider less expensive approaches.
- Small businesses are pleased that DOL correctly classifies employees by their most important or primary duty, rather than by the most time-consuming duty, which may be less important. Advocacy encouraged DOL to use the new primary duty test.
- Small businesses told Advocacy that, because of regional differences in salaries and industry characteristics, they will face disproportionate burdens if DOL adopts \$425 per week as the new minimum salary to qualify for the exemption. Advocacy encouraged DOL to provide flexibility in the small business salary test, such as lower minimum salary levels, to avoid disproportionate effects. The Office of Advocacy also urged DOL not to adopt a minimum salary for small employers greater than \$425 per week.
- Advocacy encouraged DOL to update and revise its compliance assistance materials for small businesses, as well as to provide these materials to small businesses in an easily accessible fashion.
- DOL should consider flexibility in civil penalties where appropriate. Advocacy encouraged DOL to provide compliance flexibility to small businesses both in the rulemaking and in any revision of the DOL's enforcement procedures manual.
- While noting that DOL proposed valuable enforcement flexibility for correcting inadvertent violations, Advocacy pointed out that the proposed safe harbor's requirement for written policies may unintentionally exclude small businesses. Advocacy encouraged DOL to consider alternative approaches for small businesses.

### **For more information on the Office of Advocacy**

- Visit Advocacy's Web page at <http://www.sba.gov/advo> or contact Michael See at (202) 619-0312.