TechServe Alliance CEO Mark Roberts on May 21, 2019 submitted comments in response to the Department of Labor’s (DOL) long-awaited Overtime Regulations. (See Washington Report, Spring 2019 “Federal Overtime and Regular Rate Proposed Rules Published in March; Comments Due in May.)

"Under currently enforced law, employees with a salary below $455 per week ($23,660 annually) must be paid overtime if they work more than 40 hours per week. Workers making at least this salary level may be eligible for overtime based on their job duties. This salary level was set in 2004. This new proposal would update the salary threshold using current wage data, projected to January 1, 2020. The result would boost the standard salary level from $455 to $679 per week (equivalent to $35,308 per year)."

TechServe’s comments reasserted the association’s long-held position the Fair Labor Standards Act (FLSA) does not give DOL legislative rulemaking authority to impose a salary requirement on computer professionals or narrow the scope of the exemption for those employees who satisfy the “duties” test – except that computer professionals who are “compensated on an hourly basis” must be “compensated at a rate not less than $27.63 per hour.” In its May 21 submission, TechServe urged DOL to incorporate this long-standing policy into its current rulemaking.

Roberts noted that many state overtime regulations incorporate by reference the general EAP Exemptions under the FLSA. To make clear that computer employees exempt under §13(a)(17) are deemed exempt under the EAP exemptions, TechServe asked DOL to include this language in the body of the regulations.

In addition to concerns regarding the treatment of computer professionals, TechServe weighed in on the substantive OT proposals; TechServe members employ many other types of employees in various EAP occupations to which a salary requirement may be applicable. Roberts urged DOL (1) not to include provisions for automatic adjustments, recommending that any future increases go through the formal rulemaking and public comment process; (2) to include up to 25 percent nondiscretionary bonuses in the salary level, instead of the proposed 10 percent. Roberts noted that recruiters working for staffing firms are typically compensated in a very different way than in-house recruiters.

More than 59,000 comments were submitted for the public record. While DOL continues to operate under the leadership of an acting secretary, it is rumored that the final regulations may be released soon in advance of the 2020 national elections.

UPDATE: In less than three months since the comment period closed, on August 12, 2019 DOL transmitted the final regulation to the Office of Management & Budget (OMB) Office of Information and Regulatory Affairs for review. TechServe will continue to monitor developments and will issue an update when the final regulations are released.

For more information, review TechServe Alliance’s Legislative & Regulatory updates.