Apartment Industry Advocates,

One of the episodes on the old children's TV program, *Schoolhouse Rock*, tells us that our nation's laws are made through the rough-and-tumble legislative process within the U.S. Congress where ideas are posed, debated and if all goes well, a bill emerges that goes to the President. If all goes really, really well, the President signs it. Or, as has been the case a lot in the past seven years, he vetoes the legislation and Congress goes back to the drawing board. What you do not hear in *"I'm Just a Bill"* is that other process by which rules are made that govern our lives – federal regulations from Executive Branch agencies. Last month we were once again reminded of the immense power of a President in affecting policy without the influence of Congress.

The Department of Labor (DOL) released in May its final rule regarding workers who are eligible for overtime pay. The rule lifts the threshold under which an employee must be paid overtime from $23,660 to $47,476 – impacting an estimated 4.2 million workers nationwide. The wage threshold is tied to the 40th percentile for salaried workers in the lowest-wage region of the Labor Department's five established wage regions: Northeast, Southeast, Midwest, Southwest and West. This threshold will be updated every three years at the 40th percentile for salaried workers in the lowest-wage region, which is currently the Southeast and is likely to remain so in the future.

Rules like these which make significant changes to existing laws feel like they should be addressed via Congressional action. However, what the DOL did is an extension of the Fair Labor Standards Act (FLSA), which establishes wage and hour rules for workers, including overtime pay. The FLSA says nothing about the degree to which the Department can change wage and hour rules so more than doubling the overtime pay threshold while aggressive is not outside of DOL's authority. What is frustrating for us – and for anyone who lobbies on federal issues – is that the options to influence regulatory proposals do not favor advocates who want to limit their impact.

Going back to *Schoolhouse Rock* for a moment, the legislative process has a number of points of entry for advocacy – working with the original bill sponsor, testifying at a hearing on the bill, whipping votes in a committee markup or during floor consideration and even making small changes in House/Senate conference committees. The regulatory process has far fewer access points. There is a specific, mandatory comment period where federal agencies must listen to the concerns of the public. These can be extended for more difficult issues but ultimately the clock ticks down to zero. At some time, comments stop and the regulatory body moves forward with its rule with no requirement to accept any of the suggested changes.

Sometimes, federal agencies take comments to heart and alter their proposal. This actually happened with the DOL overtime rule where the final salary threshold was actually lower than originally stated. Many times, however, agencies move ahead with their proposal despite comments. Case in point is the Waters of the United States rule from the Environmental Protection Agency (EPA) where there were literally hundreds of thousands of comments submitted, but EPA made few substantive changes to its final rule.

Congress also faces limitations of its own in responding to regulations. There is the Congressional Review Act (CRA) which grants an expedited process for Congress to review and invalidate a federal regulation. However, like standard legislation, this requires either the support of the President or a veto-proof Congressional majority in support of the resolution. Neither are easy to come by in this Congress.

These hurdles to advocacy certainly did not stop NAA, our partners at the National Multifamily Housing Council (NMHC) or the legion of other advocacy organizations from working to stop the change when it was first proposed by DOL in 2015. NAA and NMHC joined with the Partnership to Protect Workplace Opportunity (PPOW) coalition to fight the proposal from DOL. We were part of the original submission of detailed comments on the impacts of the proposal to workers and employers in September 2015.

In 2016, we have supported legislative efforts to stop the rule via the "Protecting Workplace Advancement and Opportunity Act," introduced in the Senate and House by Senator Tim Scott (R-S.C.) and Representative Tim Walberg (R-Mich.), respectively. We will roll out a grassroots alert later this month to build support for the legislation and increase pressure on the Administration to respond to our concerns about the rule. As with a CRA resolution, these bills will need a veto-proof majority to get past an almost certain Presidential veto if they make it to the President's desk. To get that we will need the voice of every NAA member.

Regulations have always been a difficult challenge for advocates; however, this Administration has proven especially challenging because of the sheer volume of them. Looking to the future, the experience of the past seven years will either empower future administrations to advance their policy agenda in this way or chasten the Congress and Executive Branch to focus on the legislative process for dealing with the most significant issues. Time will tell.

Thanks for reading. Talk with you next month.

Regards,

Greg