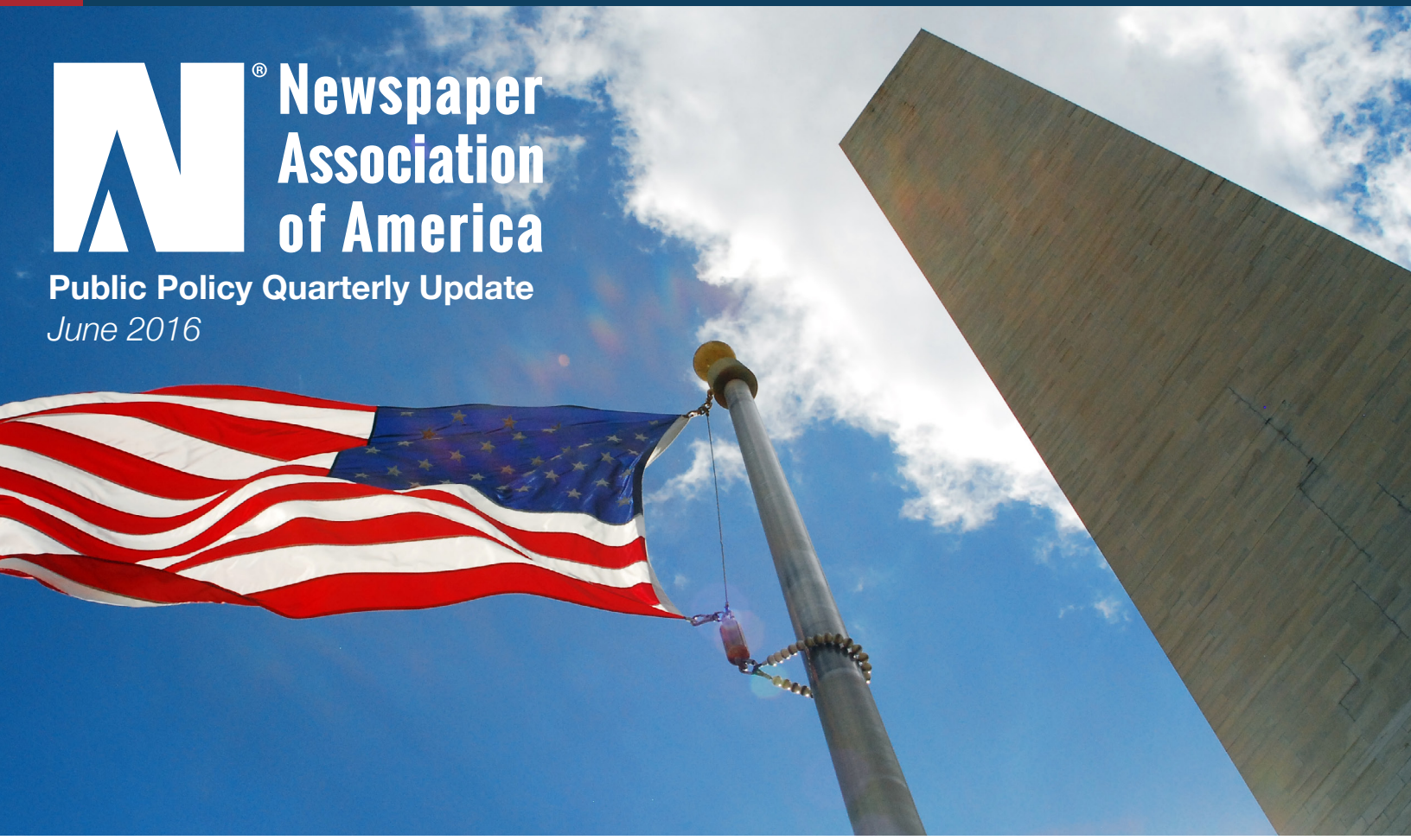
Newspaper Association of America

Public Policy Quarterly Update

June 2016



NAA Calls on FTC to Investigate Ad Blocking Firms that Deceive Consumers

NAA filed a complaint with the Federal Trade Commission on May 26 asking the agency to investigate firms that have implemented ad-blocking business models that deceive consumers. The complaint urges an investigation of Eyeo's "paid whitelisting" approach that misleads the consumer into believing the "acceptable" advertisement is based on quality, when in fact advertisements are passed along to consumers if advertisers pay a fee. The complaint seeks the investigation of other ad blocking technologies such as Brave's business model of blocking publisher ads and replacing them with advertising sold through its own network. Such a practice misleads consumers into believing that the ad the consumer receives is presented by the publisher. The complaint also calls attention to ad blockers that permit users to evade metered subscription services and paywalls that are engaging in an unfair method of competition.

According to a PageFair report, ad-blocking adoption in the United States has grown by 48 percent to

Investigate Ad Blocking Pages 1-2

Vote on FOIA Reform Page 3

Overtime Rule Finalized Page 4

EEOC Reform Act Page 5

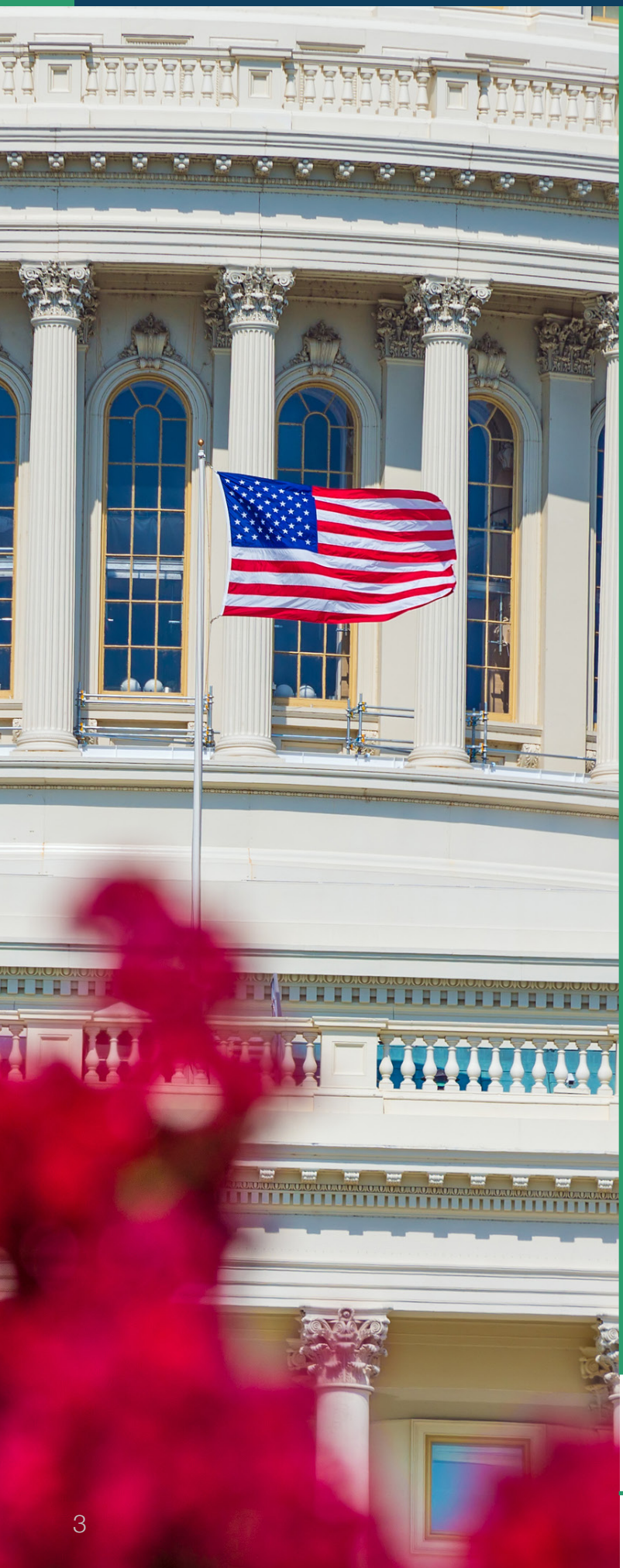
reach 45 million active users within the last year. The same report projects that ad-blocking will cost publishers nearly $22 billion in 2015. As NAA pursues avenues to discourage egregious ad-blocking business models and technologies that violate publishers' intellectual property and other rights or mislead consumers, our newspaper members are encouraged to take control of the consumers' experience on your sites. Consumers that have embraced ad-blocking measures have done so to improve load times, protect themselves against malware and to prevent tracking and targeting (and in some cases) retargeting. Publishers should monitor how content and advertising is being delivered to readers, and closely oversee third-party relationships that may be contributing to a frustrating experience for consumers.

NAA Public Policy Staff

Paul Boyle
Senior VP, Public Policy
paul.boyle@naa.org

Danielle Coffey
VP, Public Policy
danielle.coffey@naa.org

Kristina Zaumseil
Public Policy Coordinator
kristina.zaumseil@naa.org



House Passes FOIA Reforms; Bill Sent to President for Signature

For more than two years, NAA and its media and journalism partners in the Sunshine in Government Initiative (SGI) have been working with a bipartisan group of Representatives and Senators to enact meaningful reforms to strengthen the operation of the Freedom of Information Act (FOIA) before the original law turns 50 years old on July 4, 2016. On June 13, the House of Representatives unanimously approved the FOIA Improvement Act of 2016 (S. 337), which was passed by the Senate in mid-March. The legislation requires federal agencies to presumptively disclose information in response to a FOIA request unless Congress has recognized an interest that justifies withholding or if foreseeable harm would result from that disclosure. The legislation also strengthens the Office of Government Information Services, empowering the "FOIA Ombudsman" to be an independent voice for openness, to mediate disputes between agencies and requesters, and to report to Congress – not the Department of Justice – on how agencies are performing under the new FOIA law.

In a *statement* on the passage of S. 337, the Sunshine in Government Initiative expressed its gratitude to the champions of FOIA reform in the House: Reps. Jason Chaffetz (R-UT), Elijah Cummings (D-MD) and Rep. Darrell Issa (R-CA.) and in the Senate: Sens. Charles Grassley (R-IA.), Patrick Leahy (D-VT) and Senator Cornyn (R-TX). These leaders worked extremely hard to write and then build support for a bipartisan bill that will help make our government more transparent and accountable to the public. The President is expected to sign the bill into law.

Department of Labor Finalizes Overtime Rule with Only Modest Adjustments

In May, the Department of Labor (DOL) released its Final Rule to the white collar exemption of the Fair Labor Standards Act (FLSA). NAA was deeply disappointed that DOL made only modest changes to its original proposal after hearing from newspapers (and other businesses) as well as universities and non-profit organizations that the proposal likely will force employers to restructure operations in light of the unsustainable costs imposed by the mandate. Here's what you need to know about the Final Rule:

The salary threshold changed to $47,476 annually from $50,400 as originally proposed. DOL credits comments from the newspaper industry (among others) for its decision to alter the salary threshold to better account for regional differences in cost of living which it does by using a salary threshold equal to the 40th percentile of full-time salaried workers in the lowest wage Census Region (currently the South).

The salary threshold will automatically update every *three years*. DOL reduced the frequency of the automatic updates in response to concerns raised by NAA, universities, non-profits among others.

Up to 10% of salary can come from bonuses and commissions. For the first time, the standard permits employers to credit nondiscretionary bonuses, incentives and commissions toward a portion of the salary threshold. Payments must be paid on a quarterly or more frequent basis. Employers are permitted – within one pay period – to make a "catch-up" payment should an employee not earn enough in nondiscretionary or incentive pay to maintain exempt status.

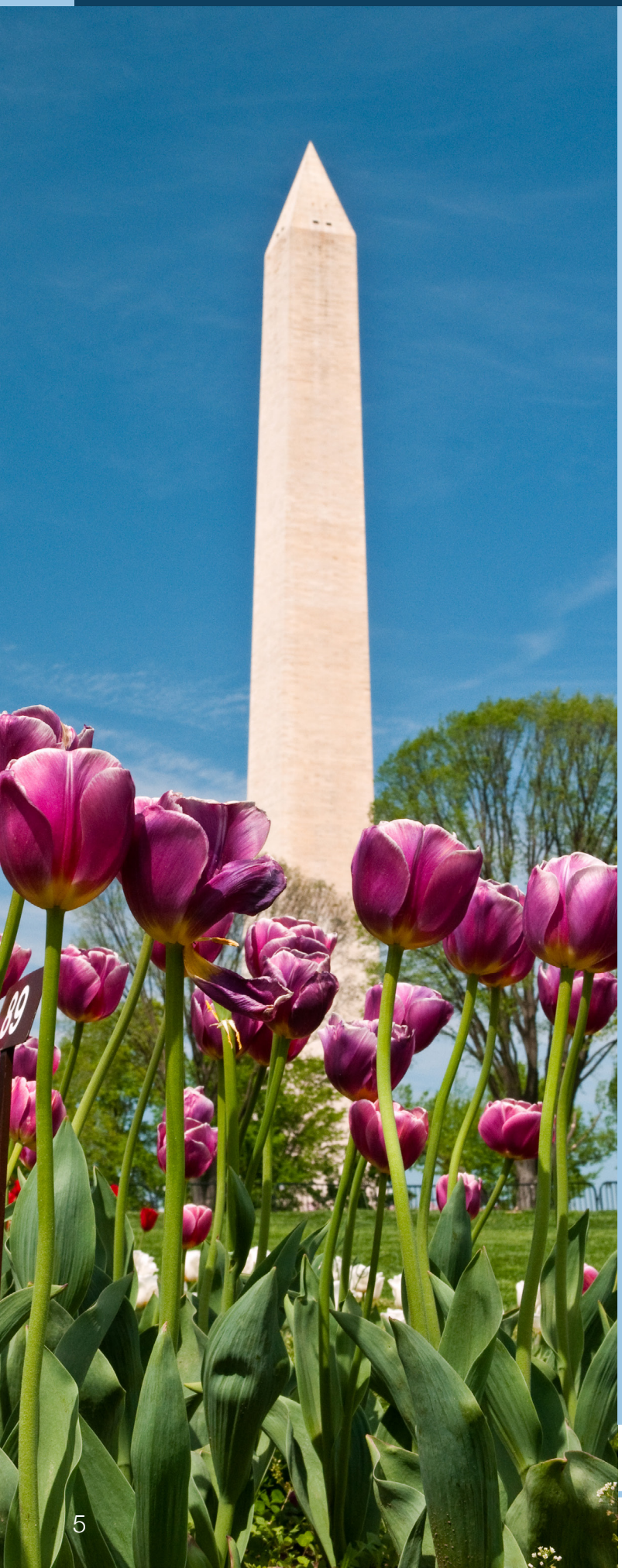
Duties test will not change. In the Notice of Proposed Rulemaking, DOL sought comment on whether the standard duties test should be changed. Many stakeholders feared the Department would make changes similar to the duties test in the state of California, which requires exempt employees to perform exempt job duties more than 50 percent of the time. DOL made no changes to the standard duties test.

The Final Rule is effective December 1, 2016. NAA and others pushed the Administration for a longer implementation period, rather than the 60 days it originally proposed.

There are efforts underway in Congress to overturn or stop the implementation of DOL's Final Rule. Given the fact that any legislation would need to be signed by the President, stopping the rule through legislation is the longest of all shots. However, it is important that Members of Congress hear from you about the impact of this rule on your employees and potentially the community that you serve. Through increased pressure, it is possible that legislators would be willing to consider a phasing of the new rule through legislation after the November election.

FIND MY LEGISLATOR ▶

For tips on scheduling meetings contact Kristina Zaumseil, *kristina.zaumseil@naa.org*



NAA joins Chamber of Commerce in Support of EEOC Reform Act

The Equal Employment Opportunity Commission (EEOC) has proposed amending the current EEO-1 reporting form to require employers to submit data regarding employees' W-2 earnings and hours worked broken down by race, ethnicity, and gender – a total of 3,360 data points. NAA is concerned about this proposal as it underestimates the employers' reporting burden by ignoring how employers currently file EEO-1 reports, requiring employers to create W-2 data, requiring hours worked data that is not normally tracked, and requiring a significant undertaking to marry data from different systems. Moreover, the EEOC has not adequately responded to privacy concerns by coming up with a credible plan to keep the sensitive data being reported private and confidential.

In our view, the proposed change will likely not produce the outcome that the EEOC is hoping for – identifying wage discrimination. The occupation categories provided are too broad, covering positions where incomes vary widely (i.e. the "professional" category covers occupations ranging from artists and dietitians to lawyers and editors) contributing to a risk of "false positives" which could lead to costly and potentially damaging investigations.

NAA joined the Chamber of Commerce and others on comments filed with the EEOC expressing our views on the proposed rule. The EEOC is expected to come up with a Final Rule this summer.

MEDIAXCHANGE
INFORMED. INSPIRED. INVESTED.

SAVE THE DATE

APRIL 30 - MAY 3, 2017

NEW ORLEANS, LA