

Congress of the United States
Washington, DC 20515

May 21, 2019

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

Re: Comments on Notice of Proposed Rulemaking, RIN 1235-AA20, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (EAP)

Dear Secretary Acosta:

As members of Congress, we write to offer comments to U.S. Department of Labor's Notice of Proposed Rulemaking (NPRM) on Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (EAP), published on March 22, 2019.¹ We are deeply concerned that this proposal does not go far enough to strengthen overtime protections for America's low-income and middle-class workers.

Congress established overtime standards under the Fair Labor Standards Act (FLSA) that provide covered employees one-and-a-half their regular rate of pay for any hours in excess of 40 in a single workweek. These overtime standards were intended to prevent workers with limited bargaining power from being forced to work excessive hours without being properly compensated and to incentivize employers to hire additional employees instead of overworking current employees. The FLSA does, however, exempt from overtime protections bona fide executive, administrative, and professional employees, ("white collar" exemption) who are likely to have real bargaining power. Under FLSA regulations, salaried workers earning below a certain salary level, currently set to \$23,660 a year (\$455 per week), are not exempt and automatically eligible for overtime pay.

The failure to adequately update the salary level has eroded the effectiveness of overtime protections. In 1975, more than 60 percent of full-time salaried workers earned less than the salary threshold and were eligible for overtime based on their pay. Today, because of the erosion of the salary threshold, that number is less than seven percent. Even workers who earn less than the federal poverty level for a family of four, currently \$25,750, may earn too much to automatically qualify for overtime. If the 1975 salary threshold had been updated for inflation, it would be nearly \$58,000 in 2020.

¹Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 84 Fed. Reg. 10900 (No. 56) (Proposed March 22, 2019).

In 2016, the Obama Administration's Department of Labor finalized a rule that would have partially restored the value of the salary threshold. The 2016 rule would have raised the threshold to a rate that would equal \$47,476 per year (\$913 a week) in 2016. It would have also included automatic increases every three years to reflect increases in wages over time; in 2020, the threshold would have been approximately \$51,053 (\$982 per week). The 2016 final rule would have extended overtime protections to 4.2 million workers and strengthened existing overtime protections to an additional 8.9 million workers². Unfortunately, in 2017, a Texas federal district court invalidated that rule based on flawed reasoning that rejects the jurisprudence and legislative history behind this exemption, almost entirely discounting the proper role of the salary threshold for determining white-collar exempt status.

Instead of standing up for workers and defending the 2016 rule in court, the Department has chosen to propose a rule that would leave millions behind. The NPRM sets the salary threshold to \$35,308 per year (\$679 per week) in 2020. Estimates from the Economic Policy Institute show that only 15 percent full-time salaried workers would be covered under this proposal based on their pay and 8.2 million workers will be left behind in 2020 compared to the 2016 rule.³ This includes 4.2 million women, 3 million workers of color, and 2.7 million parents of children under 18 years old. The proposed salary threshold would also result in about \$1.2 billion in lost wages in 2020, compared to the 2016 rule. We are concerned that the Department's estimate that 2.8 million fewer people will be affected compared to the 2016 final rule excludes those who would have seen their protections strengthened, dramatically undercounting the total number of affected workers.⁴

Additionally, we are deeply concerned that the proposal does not include automatic updates to keep pace with changes in wages over time. Instead, the Department states that it will be "affirming its intention to propose increasing the earnings threshold every four years"⁵ — not unlike the Department's similar unmet commitment in 2004.⁶ This statement of intention is inadequate for the millions of American workers who have seen their overtime protections erode over the last four decades. Without an automatic indexing of the salary threshold, the number of workers left behind under the NPRM will grow to 11.5 million people and the loss of annual earnings will grow to \$1.6 billion over the first ten years of implementation.

²Ross Eisenbrey & Lawrence Mishel, "Raising the Overtime Threshold Would Directly Benefit 13.5 Million Workers," Economic Policy Institute (August 3, 2015),

<https://www.epi.org/publication/breakdownovertimebeneficiaries/>

³Heidi Shierholz, "More than eight million workers will be left behind by the Trump overtime proposal," Economic Policy Institute (April 8, 2019), <https://www.epi.org/publication/trump-overtime-proposal-april-update/>

⁴84 Fed. Reg. 10951 (No. 56) (Proposed March 22, 2019).

⁵84 Fed. Reg. 10915.

⁶ The 2004 final rule stated, "The Department intends in the future to update the salary levels on a more regular basis, as it did prior to 1975, and believes that a 29-year delay is unlikely to reoccur." 69 Fed. Reg. 22171 (No. 79) (Finalized April 23, 2004).

Secretary Acosta

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The Department must stand up for millions of low-income and middle-class workers and defend the 40-hour workweek. We urge the Department to withdraw this proposed rule and instead defend the 2016 final rule.

Sincerely,



Mark Takano
Member of Congress



Alma S. Adams, Ph.D.
Member of Congress



Barbara Lee
Member of Congress



Bennie G. Thompson
Member of Congress



Jackie Speier
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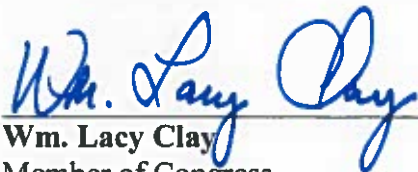
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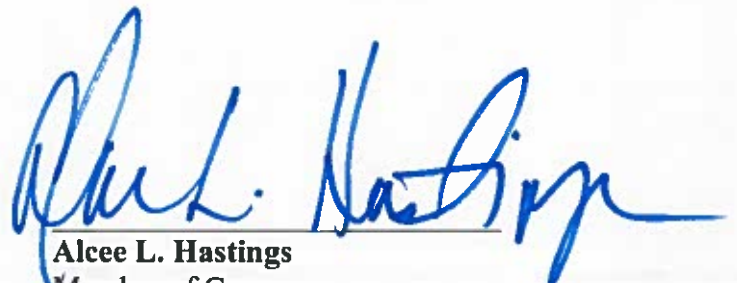
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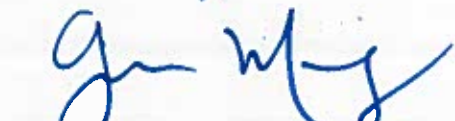
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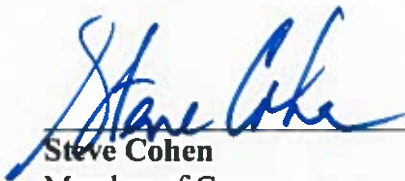
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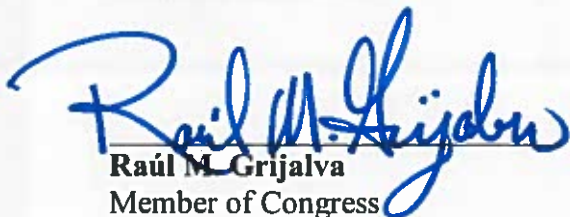
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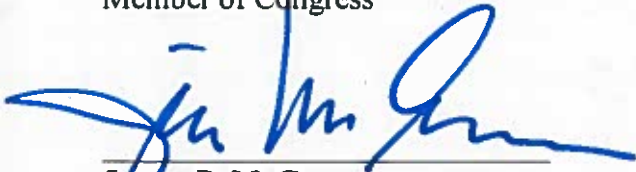
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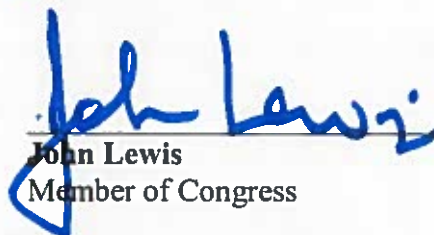
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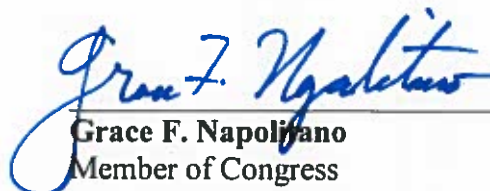
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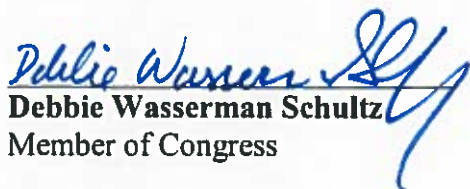
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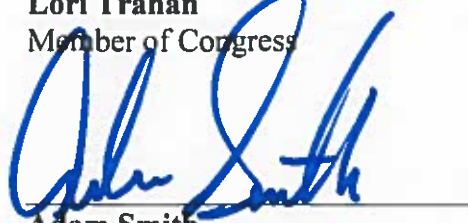
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