

# Congress of the United States

Washington, DC 20515

November 7, 2023

The Honorable Julie Su  
Acting Secretary  
Department of Labor  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington DC, 20210

Dear Acting Secretary Su:

We write today in strong support of the Department of Labor’s (Department) notice of proposed rulemaking to raise the overtime salary threshold.<sup>1</sup> Under this proposed rulemaking, salaried workers making less than the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (\$1,059 per week, or \$55,068 annually) will be deemed automatically eligible for overtime compensation.<sup>2</sup> The stark reality is that millions of workers in the United States currently work additional overtime but do not receive fair compensation for their precious time. Overtime standards are long overdue for a meaningful update, and this proposed rulemaking appropriately meets the needs of Americans workers in all stretches of the country. We are also pleased to see that under this proposed rule, the salary threshold will automatically be indexed every three years, to ensure overtime protections do not erode over time.<sup>3</sup>

Under the *Fair Labor Standards Act of 1938* (FLSA),<sup>4</sup> covered employees are guaranteed overtime pay of not less than one-and-a-half times their regular pay rate for any hours worked in excess of 40 hours in a workweek. The intention behind overtime compensation was to prevent workers from being subjected to excessive working hours and to further incentivize employers to hire additional workers.<sup>5</sup> The FLSA does, however, exempt from overtime protections for bona fide executive, administrative, and professional employees, otherwise referred to as the “white-collar” exemption. Under FLSA regulations, salaried employees who earn below a certain salary threshold do not fall under the “white-collar” exemption and are automatically eligible for overtime pay.<sup>6</sup> With this threshold currently at just \$35,568, some unscrupulous employers are exploiting the white-collar exemption to misclassify workers near the threshold with managerial titles but without the executive or professional job duties for which the exemption is meant to apply.<sup>7</sup>

For years, the overtime salary threshold has been allowed to remain flat and disconnected from the changing economy. Historically, the salary threshold has ranged from the 35th to 55th percentile of weekly earnings for full-time salaried workers nationwide.<sup>8</sup> After the threshold remained stagnant with no meaningful update for

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<sup>1</sup> Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 88 Fed. Reg. 62152 (Sept. 8, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 29 U.S.C. §§ 201 *et seq.*

<sup>5</sup> Nick Hanauer, *America Gave Up on Overtime—and It’s Costing Workers \$35,451 a Year*, TIME (Apr. 21, 2022), <https://time.com/6168310/overtime-pay-history/>.

<sup>6</sup> 29 C.F.R. § 541.600(a) (2021).

<sup>7</sup> LAUREN COHEN, UMIT GURUN, & N. BUGRA OZEL, NAT’L BUREAU ECON. RES., WORKING PAPER 30826, TOO MANY MANAGERS: THE STRATEGIC USE OF TITLES TO AVOID OVERTIME PAYMENTS (2023), [https://www.nber.org/system/files/working\\_papers/w30826/w30826.pdf](https://www.nber.org/system/files/working_papers/w30826/w30826.pdf).

<sup>8</sup> *Revisiting a Trump Regulatory Rollback: Strengthening Overtime Protections for Working People*, ECON. POL. INST. (Nov. 12, 2020), <https://www.epi.org/publication/strengthening-overtime-protections/>.

years, the Obama Administration finalized a rule in 2016 that would have increased the salary threshold to the 40th percentile of full-time salaried workers in the lowest wage Census region (at the time, \$47,476) with automatic updates to safeguard the potential erosion of overtime protections.<sup>9</sup> Yet in 2016, a district court in Texas blocked the Obama rule and prevented implementation from proceeding. Had the Obama rule been adopted, an additional 4.2 million workers would have been granted overtime protections.<sup>10</sup>

The Trump Administration subsequently implemented a woefully inadequate overtime threshold of \$35,568 per year in 2020.<sup>11</sup> The Economic Policy Institute estimated the Trump proposal left 8.2 million workers behind that could have stood to benefit from the Obama rule.<sup>12</sup> In addition to setting a woefully deficient threshold, the Trump rule further did not provide for automatic updates to ensure the threshold remains meaningful in the future.

The Biden Administration's proposed rule, by contrast, is a step in the right direction. The effects of this rulemaking would be far-reaching, and millions of additional workers will be guaranteed fair compensation for long hours of work. Automatic updates will ensure protections do not erode in the future. Through this rulemaking, the Biden Administration reaffirms its commitment to American workers by putting more money in their pockets and safeguarding their ability to balance work and family.

We applaud the Department for taking strong action to expand overtime eligibility for millions of workers and respectfully request swift implementation of this rule.


Sincerely,



MARK TAKANO  
Member of Congress



Robert C. "Bobby" Scott  
Member of Congress  
Ranking Member, Committee on  
Education and the Workforce



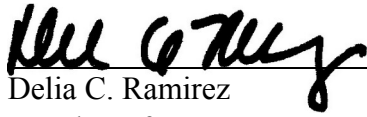
Alma S. Adams, Ph.D.  
Member of Congress

<sup>9</sup> CELINE MCNICHOLAS, SAMANTHA SANDERS & HEIDI SHIERHOLZ, ECON. POL. INST., WHAT'S AT STAKE IN THE STATES IF THE 2016 FEDERAL RAISE TO THE OVERTIME PAY THRESHOLD IS NOT PRESERVED—AND WHAT STATES CAN DO ABOUT IT: STATE ACTION TO MODERNIZE OVERTIME RULES 2 (2017), <https://files.epi.org/pdf/136291.pdf>.

<sup>10</sup> Defining & Delimiting the Exemptions for Executive Administrative Professional, Outside Sales & Computer Employees, 81 Fed. Reg. 32391, 32405 (May 23, 2016).

<sup>11</sup> *Id.* at 32392. Under this rule, the salary threshold would have reached \$51,053 in 2020 and \$59,098 in 2028. HEIDI SHIERHOLZ, ECON. POL. INST., MORE THAN EIGHT MILLION WORKERS WILL BE LEFT BEHIND BY THE TRUMP OVERTIME PROPOSAL 7 (2019), <https://www.epi.org/publication/trump-overtime-proposal-april-update/>.

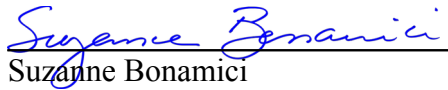
<sup>12</sup> *Id.*



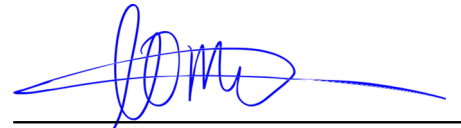
Delia C. Ramirez  
Member of Congress



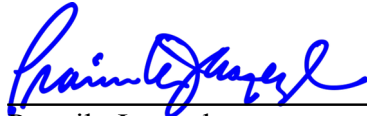
Donald Norcross  
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