

Congress of the United States

Washington, DC 20510

June 15, 2022

The Honorable Marty Walsh
Secretary
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, DC 20054

Dear Secretary Walsh:

We write as a follow-up to a previous letter sent to the Department of Labor (DOL) on March 25, 2021, calling for decisive action to enhance overtime pay protections for millions of workers. Specifically, the letter urged DOL to begin the rulemaking process on adopting a salary threshold at an historical high of the 55th percentile of earnings of full-timed salaried workers nationwide. Today, as the economic environment continues to evolve and families face even greater pressure on their household budgets, we ask the Department to work expeditiously to pursue this higher salary threshold that reflects these changing dynamics and promptly announce its intent to provide these overtime pay protections to millions of workers currently facing economic uncertainty.

As businesses have sought to get more and more hours of labor from their employees in recent years, Americans deserve to be fairly paid for the work they are already doing above and beyond the standard workweek. The *Fair Labor Standards Act* (FLSA) was signed into law in 1938, and under that Act 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.¹ Overtime standards were created to prevent workers from being forced to work excessive hours without additional compensation and to incentivize employers to hire additional employees rather than overworking current ones.² The FLSA does, however, exempt from overtime protections bona fide executive, administrative, and professional employees (“white collar” exemption),³ who are likely to possess the individual bargaining power needed to push back against substandard wages and excessive working hours.⁴

Under FLSA regulations, salaried employees who earn below a certain salary threshold do not fall under the “white-collar” exemption and are thus automatically eligible for overtime pay.⁵ In 2016, the Obama Administration’s DOL finalized a rule that would have increased the salary threshold to the 40th percentile of earnings of full-time, salaried workers in the lowest wage

¹ 29 U.S.C. § 207(a)(1).

² See, e.g., *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739 (1981); *Davis v. J.P. Morgan Chase*, 587 F.3d 529, 535 (2d Cir. 2009).

³ 29 U.S.C. § 213(a)(1).

⁴ See generally Seth D. Harris, *Conceptions of Fairness and the Fair Labor Standards Act*, 18 HOFSTRA LAB. & EMP’T L.J. 19, 98–100 (2000).

⁵ 29 C.F.R. § 541.600(a) (2021).

Census Region, a rate equaling \$47,476 in 2016.⁶ The rule would have extended overtime protections to 4.2 million workers and strengthened existing overtime protections for an additional 8.9 million workers.⁷ While the Obama Administration took a step in the right direction, a significant portion of workers was deemed ineligible to receive overtime compensation. Many groups argued the Obama DOL rule was modest; however, given the preceding years without a meaningful update to the rule, it was a victory, nonetheless.

The subsequent Trump Administration finalized a rule that fell far short by setting the salary threshold to \$35,568 per year in 2020 with no automatic triennial increases.⁸ The Economic Policy Institute (EPI) estimates the Trump rule, in effect since January 2020, covers only 15 percent of full-time salaried workers based on their pay.⁹ Millions upon millions of workers were left behind under the Trump DOL rule, resulting in a loss of both protections and wages—wages that could have been taken home to families and put food on the table.

Recent economic data reinforce the need for urgent action: wage growth has slowed in recent months while inflation and rising costs of living persist.¹⁰ Therefore, it is more important than ever for the DOL to quickly pursue and enact a stronger overtime threshold. It is our sincere hope that DOL will immediately begin the rulemaking process and publicly indicate a commitment to adopt a salary threshold in line with the historical high point of salary thresholds—the 55th percentile of earnings of full-timed salaried workers nationwide. This threshold would be at least \$82,732 by 2026. It is also of paramount importance to include annual automatic updates to prevent erosion of the salary threshold.

As we begin to emerge from the COVID-19 pandemic, bold action is critical at this juncture. With the rising costs associated with inflation, hardworking Americans are finding it harder and harder to pay for gas at the pump, buy groceries for their families, and keep the lights on in their homes—while businesses continue to bring in record profits. Enacting a stronger overtime threshold would guarantee that hard work is justly rewarded and reaffirm that this administration will provide dignity, fairness, and economic security to millions of Americans working overtime without appropriate compensation.

We remain committed to improving the working-class conditions and pay for all Americans. We thank you for your attention for this matter and eagerly await action.

⁶ Defining & Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales & Computer Employees, 81 Fed. Reg. 32391, 32392 (May 23, 2016). Under this rule, the salary threshold would have reached \$51,053 in 2020 and \$59,098 in 2028. HEIDI SHIERHOLZ, ECONOMIC POLICY INSTITUTE, MORE THAN EIGHT MILLION WORKERS WILL BE LEFT BEHIND BY THE TRUMP OVERTIME PROPOSAL 7 (2019),

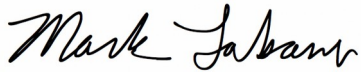
⁷ Defining & Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales & Computer Employees, 81 Fed. Reg. 32391, 32405 (May 23, 2016).

⁸ SHIERHOLZ, *supra* note 6, at 2.

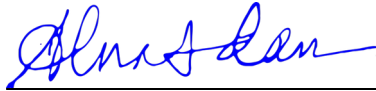
⁹ *Id.*

¹⁰ KAREN DYNAN, WILSON POWELL III, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS, US WAGE GROWTH HAS LIKELY PASSED ITS PEAK AND IS SLOWING DESPITE STRONG DEMAND FOR WORKERS.

Sincerely,



MARK TAKANO
Member of Congress



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



Pramila Jayapal
Member of Congress



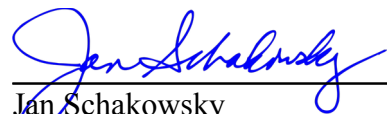
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André Carson

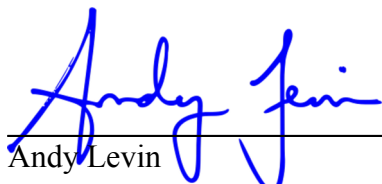
André Carson
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Dina Titus
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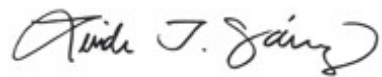
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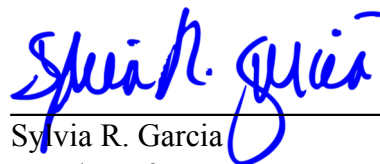
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