

116TH CONGRESS  
1ST SESSION

# S. 1786

To amend the Fair Labor Standards Act of 1938 to establish a minimum salary threshold for bona fide executive, administrative, and professional employees exempt from Federal overtime compensation requirements, and automatically update such threshold every 3 years.

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## IN THE SENATE OF THE UNITED STATES

JUNE 11, 2019

Mr. BROWN (for himself, Mrs. MURRAY, Mr. VAN HOLLEN, Ms. BALDWIN, Mr. DURBIN, Ms. WARREN, Mr. MARKEY, Mr. SANDERS, Mrs. GILLIBRAND, Mr. WHITEHOUSE, Ms. KLOBUCHAR, Ms. HARRIS, Mr. SCHATZ, Mr. CARDIN, Mr. WYDEN, Mr. MERKLEY, Ms. CANTWELL, Mr. BLUMENTHAL, Mr. BOOKER, Ms. DUCKWORTH, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Fair Labor Standards Act of 1938 to establish a minimum salary threshold for bona fide executive, administrative, and professional employees exempt from Federal overtime compensation requirements, and automatically update such threshold every 3 years.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Overtime  
5 Pay Act of 2019”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The Fair Labor Standards Act of 1938 (29  
4 U.S.C. 201 et seq.) established overtime compensa-  
5 tion requirements for certain employees when they  
6 work more than 40 hours in a given workweek.

7 (2) Under section 13(a)(1) of such Act, Con-  
8 gress delegated to the Secretary of Labor the au-  
9 thority to define and delimit the terms relating to  
10 the exemption for bona fide executive, administra-  
11 tive, and professional employees (commonly known  
12 as the “white collar exemption”).

13 (3) For more than 75 years, the Secretary of  
14 Labor has exercised its delegated authority to issue  
15 regulations that define and delimit the terms relat-  
16 ing to the white collar exemption by applying a du-  
17 ties test and applying a minimum compensation level  
18 (or salary threshold).

19 (4) The Secretary of Labor began utilizing a  
20 salary threshold in the initial regulations defining  
21 and delimiting the terms relating to the white collar  
22 exemption, which were first issued in 1938.

23 (5) Congress has long approved the use of a  
24 salary threshold by the Secretary of Labor, as dem-  
25 onstrated by the fact that Congress has amended the  
26 Fair Labor Standards Act of 1938 at least 10 times

1       since 1938 and has not precluded the Secretary  
2       from using a salary threshold.

3           (6) The salary threshold became woefully out of  
4       date and ineffective as a result of not being suffi-  
5       ciently updated to keep pace with a changing econ-  
6       omy, as evidenced by the fact that more than 60  
7       percent of all full-time salaried workers earned less  
8       than the salary threshold in 1975 and less than 7  
9       percent of these workers earned less than the salary  
10      threshold in 2016.

11          (7) The salary threshold of \$455 per week, or  
12      \$23,660 per year, that was in effect on May 22,  
13      2016, was below the poverty line for a family of 4.

14          (8) The Secretary of Labor updated the salary  
15      threshold on May 23, 2016, through a final rule en-  
16      titled “Defining and Delimiting the Exemptions for  
17      Executive, Administrative, Professional, Outside  
18      Sales and Computer Employees” (81 Fed. Reg.  
19      32391) by increasing the salary threshold to the  
20      40th percentile of earnings of full-time salaried em-  
21      ployees in the lowest-wage census region, resulting  
22      in a salary threshold of \$913 per week or \$47,476  
23      per year.

24          (9) The final rule would benefit more than  
25      13,000,000 employees by providing overtime com-

1       pensation protections to 4,200,000 new employees  
2       and strengthening overtime compensation protec-  
3       tions for 8,900,000 additional employees.

4           (10) The Secretary of Labor went through a  
5       thorough process in crafting the final rule, seeking  
6       public input and conducting extensive economic anal-  
7       ysis, including—

8           (A) spending more than a year meeting  
9       with more than 200 interested parties to obtain  
10      input before issuing the proposed rule in 2015;

11          (B) considering more than 270,000 com-  
12      ments received during the 60-day public com-  
13      ment period on the proposed rule; and

14          (C) making significant changes in response  
15      to public input before issuing the final rule.

16       (11) The public comments submitted to the  
17      Secretary of Labor regarding the proposed rule were  
18      overwhelmingly positive and supportive of the rule.

19       (12) The increase in the salary threshold, in-  
20      cluded in the final rule, to the 40th percentile of  
21      earnings of full-time salaried employees in the low-  
22      est-wage census region, resulting in a threshold of  
23      \$913 per week or \$47,476 per year, was a strong  
24      yet measured increase by almost any measure, in-  
25      cluding as compared to—

1 (A) the higher salary threshold of \$970 per  
2 week or \$50,440 per year, initially put forward  
3 by the Secretary of Labor in the proposed rule;

4 (B) the salary threshold of \$984 per week  
5 or \$51,168 per year, which would have fully ac-  
6 counted for the erosion to the value of the sal-  
7 ary threshold since 1975 due to inflation;

8 (C) the salary threshold of \$1,122 per  
9 week or \$58,344 per year, which would have  
10 covered the same share of all salaried workers  
11 as were covered in 1975 after accounting for  
12 changes in the economy; and

13 (D) the salary threshold of \$1,327 per  
14 week or \$69,004 per year, which would have  
15 covered the same percentage of all salaried  
16 workers as were covered in 1975 without ac-  
17 counting for changes in the economy.

18 (13) The United States District Court for the  
19 Eastern District of Texas erroneously called the au-  
20 thority of the Secretary of Labor under the Fair  
21 Labor Standards Act of 1938 into question when it  
22 issued a preliminary injunction enjoining the De-  
23 partment of Labor from enforcing the final overtime  
24 rule.

1           (14) The United States District Court for the  
 2           Eastern District of Texas issued a final decision in-  
 3           validating the rule, threatening overtime protections  
 4           for millions of workers.

5           (15) On March 7, 2019, the Secretary of Labor  
 6           proposed to update the salary threshold to \$35,308,  
 7           which would deny overtime pay eligibility to approxi-  
 8           mately 3,000,000 workers who would otherwise ben-  
 9           efit from the higher salary threshold in the 2016  
 10          final rule.

11 **SEC. 3. MINIMUM SALARY THRESHOLD FOR BONA FIDE EX-**  
 12 **ECUTIVE, ADMINISTRATIVE, AND PROFES-**  
 13 **SIONAL EMPLOYEES EXEMPT FROM FEDERAL**  
 14 **OVERTIME COMPENSATION REQUIREMENTS.**

15          (a) IN GENERAL.—Section 13 of the Fair Labor  
 16 Standards Act of 1938 (29 U.S.C. 213) is amended—

17           (1) in subsection (a)(1)—

18               (A) by inserting “subsection (k) and” after  
 19               “subject to”; and

20               (B) by inserting “(except as provided  
 21               under subsection (k)(2)(C))” after “Administra-  
 22               tive Procedure Act”; and

23           (2) by adding at the end the following:

24           “(k) MINIMUM SALARY THRESHOLD.—

1           “(1) IN GENERAL.—Beginning on the effective  
2           date of the Restoring Overtime Pay Act of 2019, the  
3           Secretary shall require that an employee described in  
4           subsection (a)(1), as a requirement for exemption  
5           under such subsection, be compensated on a salary  
6           basis, or equivalent fee basis, within the meaning of  
7           such terms in subpart G of part 541 of title 29,  
8           Code of Federal Regulations (or any successor regu-  
9           lation), at a rate per week that is not less than the  
10          salary threshold under paragraph (2).

11          “(2) SALARY THRESHOLD.—

12                 “(A) IN GENERAL.—Subject to subpara-  
13                 graphs (B) and (C), the salary threshold shall  
14                 be an amount that is equal to the 40th per-  
15                 centile of earnings of full-time salaried workers  
16                 in the lowest-wage census region, as determined  
17                 by the Bureau of Labor Statistics based on  
18                 data from the second quarter of the calendar  
19                 year preceding the calendar year in which such  
20                 amount takes effect.

21                 “(B) INCREASED THRESHOLD.—The Sec-  
22                 retary may establish, through notice and com-  
23                 ment rulemaking under section 553 of title 5,  
24                 United States Code, a salary threshold that is  
25                 an amount that—

1 “(i) is greater than the 40th per-  
2 centile of earnings of the full-time salaried  
3 workers described in subparagraph (A);  
4 and

5 “(ii) is calculated based on a data set  
6 and methodology established by the Sec-  
7 retary that are capable of being updated in  
8 accordance with subparagraph (C).

9 “(C) AUTOMATIC UPDATES.—

10 “(i) IN GENERAL.—Not later than 3  
11 years after the salary threshold first takes  
12 effect under subparagraph (A), and every  
13 3 years thereafter, or, in the case in which  
14 the Secretary establishes an increased sal-  
15 ary threshold under subparagraph (B),  
16 every 3 years after establishing such in-  
17 creased salary threshold, the Secretary  
18 shall update the amount of the salary  
19 threshold in effect under subparagraph (A)  
20 or (B), as applicable, so that such amount  
21 is equal to—

22 “(I) in the case in which the Sec-  
23 retary does not establish an increased  
24 salary threshold under subparagraph  
25 (B), the 40th percentile of earnings of



1 full-time salaried workers in the low-  
2 est-wage census region, as determined  
3 by the Bureau of Labor Statistics  
4 based on data from the second quar-  
5 ter of the calendar year preceding the  
6 calendar year in which such updated  
7 amount is to take effect; and

8 “(II) in the case in which the  
9 Secretary establishes an increased sal-  
10 ary threshold under subparagraph  
11 (B), the greater of—

12 “(aa) the 40th percentile de-  
13 scribed in subclause (I); and

14 “(bb) the increased salary  
15 threshold established under sub-  
16 paragraph (B), as updated in ac-  
17 cordance with the data set and  
18 methodology established by the  
19 Secretary under subparagraph  
20 (B)(ii).

21 “(ii) NONAPPLICABILITY OF RULE-  
22 MAKING.—Any update described in this  
23 subparagraph shall not be subject to the  
24 requirements of notice and comment rule-

1 making under section 553 of title 5,  
2 United States Code.

3 “(D) NOTICE REQUIREMENT.—Not later  
4 than 60 days before a revised salary threshold  
5 under this paragraph takes effect, the Secretary  
6 shall publish a notice announcing the amount in  
7 the Federal Register and on the internet  
8 website of the Department of Labor.

9 “(3) DUTIES TEST.—The Secretary shall, in  
10 addition to the requirement under paragraph (1),  
11 continue to require employees to satisfy a duties  
12 test, as prescribed by the Secretary, in defining and  
13 delimiting the terms described in subsection (a)(1).”.

14 (b) PUBLICATION OF EARNINGS.—Not later than 21  
15 days after the end of each calendar quarter, the Bureau  
16 of Labor Statistics shall publish on its public website, for  
17 each week of such quarter, data on the weekly earnings  
18 of nonhourly, full-time salaried workers by census region  
19 (as designated by the Bureau of the Census).

20 (c) EFFECTIVE DATE.—This Act, and the amend-  
21 ments made by this Act, shall take effect on the first day  
22 of the third month that begins after the date of enactment  
23 of this Act.

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