

**Congress of the United States**  
**Washington, DC 20515**

September 25, 2017

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

Re: Request for Information: *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*, (RIN) 1235-AA20.

Dear Secretary Acosta:

We write in strong support of the salary level established in the 2016 Overtime Final Rule and to urge the Department of Labor to use its authority under the Fair Labor Standards Act (FLSA) to maintain that standard.

The FLSA's overtime protections were established to prevent employers from overworking employees who have limited power to bargain for better pay and fair hours. The statute requires employers to pay a covered worker one and a half times an employee's regular pay rate for any hours worked over 40 in a workweek. Acknowledging that some employees hold real bargaining power with their employers, the FLSA exempts *bona fide* executive, administrative, and professional employees (commonly referred to as the "white collar" exemption) from the FLSA's overtime protections. In determining which white collar workers are exempt from FLSA protections, and thus likely to have real bargaining power, an employee's work duties and salary level must be considered.

The salary level has long been regarded as the single best test for determining overtime eligibility. In a 1940 report issued shortly after the passage of the FLSA, the Department of Labor stated, "The final and most effective check on the validity of the claim for exemption is the payment of a salary commensurate with the importance supposedly accorded the duties in question."<sup>1</sup> As such, the salary level used to determine whether employees have real bargaining power should be well above the minimum wage or poverty-level wages. In the same 1940 report, the Wage and Hour Administrator noted, "It was widely conceded that the terminology of section 13 (a)(1) [of the FLSA] implies a status which cannot be attained by those whose pay is close to or below the universal minimum envisaged in the act."<sup>2</sup>

However, failure to regularly raise the salary level has meant it no longer reflects the wages of white collar workers, but rather is set at poverty-level wages. In 1975, the Ford Administration set the salary level at one-and-a-half times the median wage, covering nearly 60 percent of salaried workers. According to the Bureau of Labor Statistics, median weekly earnings were \$863 in the second quarter of 2017. And yet today, the salary level is \$455 per week or \$23,660 per year, barely half of median weekly earnings. For a family of four relying on a single income, this amount is lower than the federal poverty level and most certainly not a white collar worker's

salary by societal standards. Even worse, the current salary level covers a smaller portion of the workforce than it once did—fewer than 10 percent of the full-time, salaried workforce.

To restore the tradition of the 40-hour workweek, the Department issued the 2016 Overtime Final Rule. The final rule raised the salary level to the equivalent of the 40<sup>th</sup> percentile of earnings of full-time, salaried workers in the lowest wage census region—\$47,476 a year or \$913 per week—and automatically adjusted the salary level every three years. This level restores some of the value of the salary level to its historic levels. A \$47,476 salary level would cover one-third of the full-time, salaried workforce—significantly more than those covered now (less than 10 percent),<sup>3</sup> but still significantly less than the share of those covered by the 1975 level (nearly 60 percent). The 2016 update would have provided new overtime protections to an estimated 4.2 million workers and strengthened overtime protections for an estimated 8.9 million more workers. Under this updated salary level, employers would have a disincentive to overwork these employees, choosing to either limit hours to 40 hours per week or pay time and a half pay for the extra time worked.

Additionally, the salary level in the 2016 Overtime Final Rule was a carefully crafted response to stakeholder engagement. The Department's initial 2015 proposal set the salary level to the 40<sup>th</sup> percentile of all full-time, salaried earnings and included automatic annual adjustments to the salary level. After the notice and comment period for the 2015 proposal, the Department considered over 270,000 comments, conducted extensive economic analysis, and engaged key business and worker representatives. As a result, the Department made significant changes in response to public input, including adjusting the final salary level to the lower level of the 40<sup>th</sup> percentile of earnings for full-time, salaried workers in the lowest wage census region (the South) and including an automatic adjustment every three years. The Department worked to ensure that the final rule would have a meaningful impact on working people and minimize the cost to businesses.

In order to rebuild and strengthen the middle class, we need to restore the tradition of the 40-hour-workweek and ensure strong overtime protections for working people. This means having a robust salary level to protect low- and moderate-wage workers from being required to work overtime without pay. The 2016 Overtime Final Rule did exactly that. We strongly support retaining the Department of Labor's final regulation raising the salary level to the equivalent of the 40<sup>th</sup> percentile of earnings for full-time, salaried workers in the lowest wage census region. This salary level is a modest, yet crucial, update for working people and families across the nation.

Sincerely,

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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member  
Committee on Education and the Workforce  
U.S. House of Representatives

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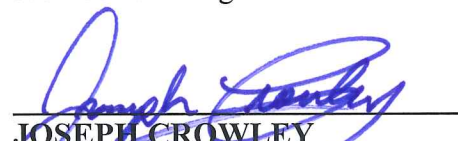
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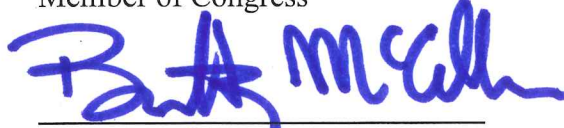
  
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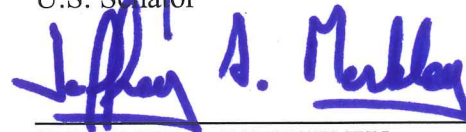
  
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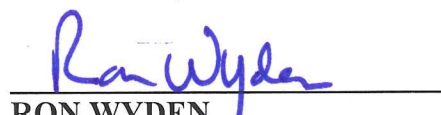
  
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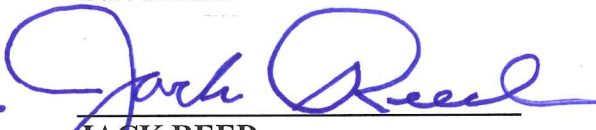
  
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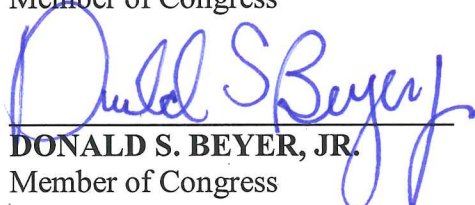
  
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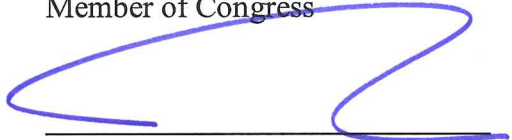
  
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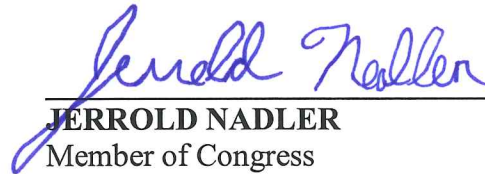
  
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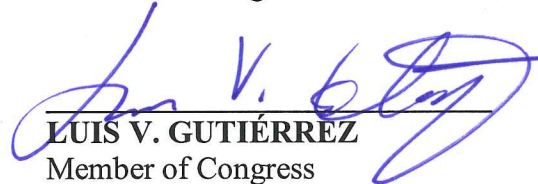
  
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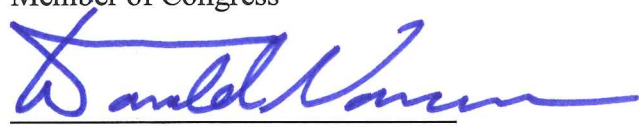
  
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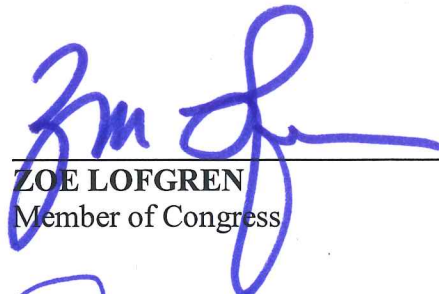
  
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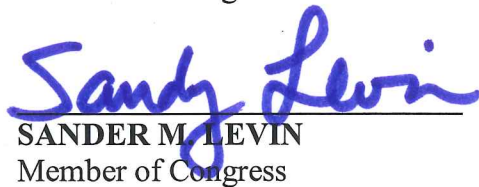
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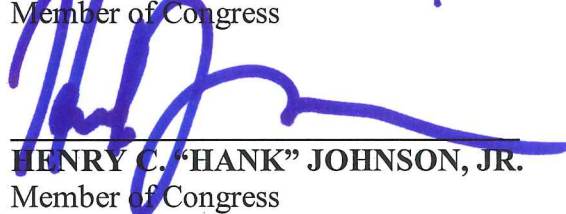
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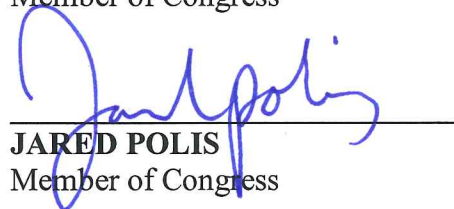
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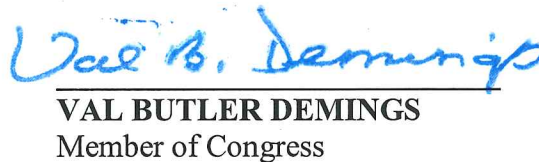
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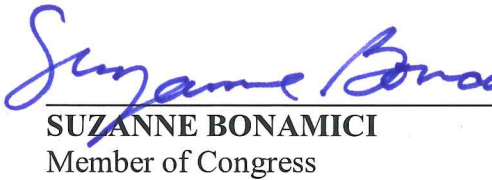
  
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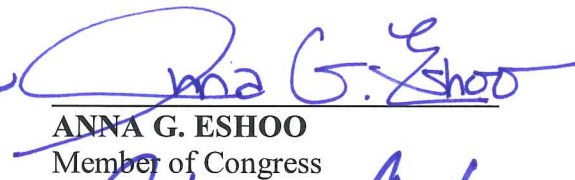
  
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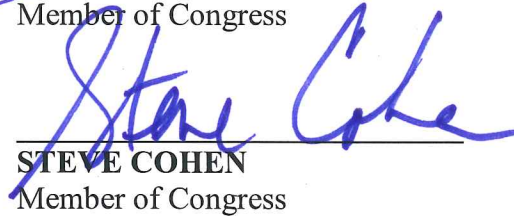
  
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**SUZANNE BONAMICI**  
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**ANNA G. ESHOO**  
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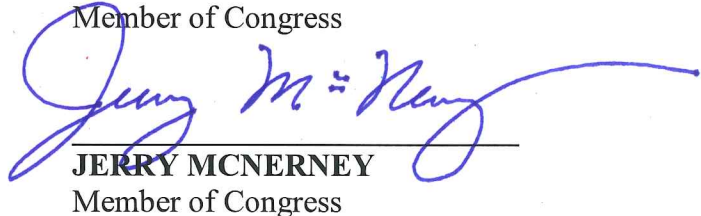
  
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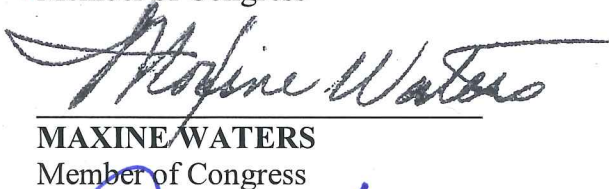
  
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**JUDY CHU**  
Member of Congress

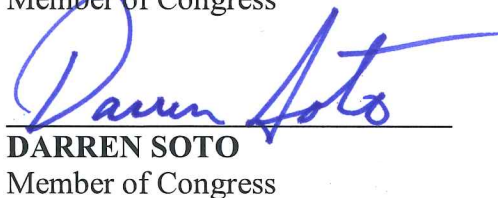
  
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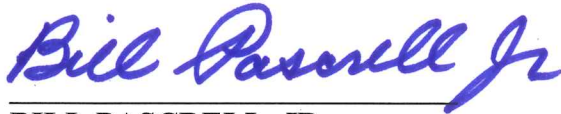
  
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**MAXINE WATERS**  
Member of Congress

  
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Member of Congress

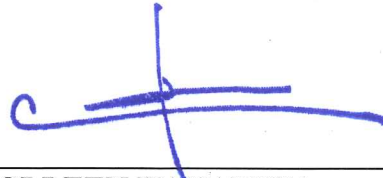
  
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**DARREN SOTO**  
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**GENE GREEN**  
Member of Congress



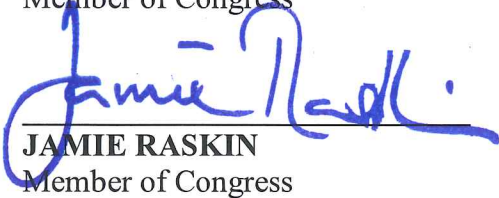
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**BILL PASCRELL, JR.**  
Member of Congress



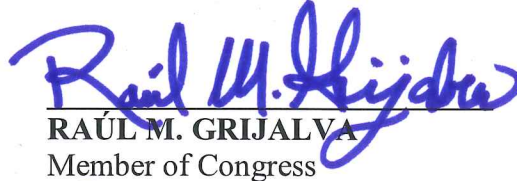
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**COLLEEN HANABUSA**  
Member of Congress



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**JAMIE RASKIN**  
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Member of Congress



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**MARCIA L. FUDGE**  
Member of Congress



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**ALAN S. LOWENTHAL**  
Member of Congress



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**ALMA S. ADAMS**  
Member of Congress

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<sup>1</sup> U.S. Department of Labor (DOL) Wage and Hour Division. "Executive, Administrative, Professional...Outside Salesman" Redefined, October 24, 1940.

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

<sup>3</sup> At its peak strength, in 1975, the overtime salary level covered over 60 percent of the full-time, salaried workforce. Testimony of Jared Bernstein, Senior Fellow at the Center on Budget and Policy Priorities, before the House Committee on Education and the Workforce. June 9, 2016. [https://edworkforce.house.gov/uploadedfiles/testimon\\_bernstein.pdf](https://edworkforce.house.gov/uploadedfiles/testimon_bernstein.pdf)