



November 27, 2023

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The Honorable Kevin Kiley, Chairman  
Education and the Workforce Subcommittee on Workforce Protections  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Alma S. Adams, Ranking Member  
Education and the Workforce Subcommittee on Workforce Protections  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Kiley and Ranking Member Adams:

On behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing with respect to the November 29, 2023, hearing entitled “Bad for Business: DOL’s Proposed Overtime Rule.” The Department of Labor (DOL) published its Notice of Proposed Rulemaking on September 8, 2023, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.” AFSCME supports this long-overdue proposed rule because it will protect the wages of our members and millions of other workers across the country. I request that this letter be included in the hearing record.

AFSCME members serve in hundreds of occupations across the nation — from nurses to corrections officers, child care providers to sanitation workers — providing the vital services that make America happen. AFSCME advocates for fairness in the workplace, excellence in public services and freedom and opportunity for all working families. Our members include local, state and federal government workers as well as private sector workers who provide public services.

The Fair Labor Standards Act (FLSA) of 1938 was enacted to provide minimum wage and overtime protections for workers, improve working conditions and promote worker well-being. Subsequent updates established minimum earnings thresholds and clarified requirements for exemption from the law. Increases to the earnings threshold over the last nine decades, however, have not kept pace with wage growth. The earnings threshold, along with the duties test, is intended to set a guardrail so that employers do not incorrectly classify lower-paid salaried employees as exempt. The current annual earnings threshold of \$35,568 leaves millions of American workers without the protections intended by the law.

The Department’s proposal to raise the standard salary level to the 35<sup>th</sup> percentile of weekly earnings in the South Census Region (\$1,059 per week, or \$55,068 for a full-year worker) is a modest increase that will benefit millions of workers. We support the “automatic

**American Federation of State, County and Municipal Employees, AFL-CIO**

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updating mechanism” to adjust the earnings threshold because it will help preserve the benefits and impact of this rule in coming years as wages increase. The Department’s failure to update earnings thresholds on a regular basis — waiting decades to do so in one case — has blunted the positive benefits and the originally intended scope of overtime requirements in the FLSA.<sup>1</sup>

We also strongly support the DOL’s proposal to extend the earnings threshold to Puerto Rico and other U.S. territories. The earnings threshold in the U.S. territories has not been raised since 2004. This proposal is important to AFSCME Servidores Públicos Unidos de Puerto Rico, Council 95, which represents more than 10,000 of Puerto Rico’s public service workers. These workers are tireless in their efforts to keep their communities safe, healthy and strong. Moreover, they have never quit even in the toughest of times the island has faced. It is critical that these workers be entitled to the same overtime protections as workers in U.S. states and the District of Columbia.

The Department’s proposed rule will provide clarity to employers. Many salaried workers paid between \$35,568 and \$55,068 would likely not be exempt from FLSA requirements under the duties test and may remain misclassified until the Department investigates the employer. Raising the earnings threshold to at least the 35<sup>th</sup> percentile of weekly earnings is a straightforward means of clarifying those workers’ status under the FLSA.

AFSCME represents workers from California to New York, from Puerto Rico to Hawaii, from Minnesota, Michigan and Illinois to Louisiana who may directly benefit from the increased earnings threshold. Social workers — an umbrella term that includes different occupations such as child welfare and human services, mental health and substance abuse counselors and others — can often be misclassified as FLSA-exempt employees. Salaries vary widely based on geography and specific job titles, but the national median annual wage for all social workers is \$55,350<sup>2</sup>. Median wages for mental health and substance abuse counselors specifically are even lower at \$51,240, while child, family and school social workers earn a median income of \$50,820 as of May 2022. The updated earnings threshold will protect a substantial number of these workers from misclassification.

Salaried social workers often manage caseloads that require them to work beyond a 40-hour week, despite relatively low pay given educational requirements and other credentials. These occupations are also poised for much faster job growth than average due to the growing need for social services. For example, employment for substance abuse, behavioral disorder and mental health counselors is expected to grow by 18% in the next 10 years.<sup>3</sup> It is vital that workers in this rapidly growing occupational class are granted overtime protections, subject to the minimum earnings threshold.

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<sup>1</sup> The Department adopted the 1975 rule with “interim rates” intended to be subject to a study of worker earnings, but the earnings threshold was not raised until 2004.

<sup>2</sup> Bureau of Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Social Workers, at <https://www.bls.gov/ooh/community-and-social-service/social-workers.htm> (accessed September 06, 2023).

<sup>3</sup> Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Substance Abuse, Behavioral Disorder, and Mental Health Counselors, at <https://www.bls.gov/ooh/community-and-social-service/substance-abuse-behavioral-disorder-and-mental-health-counselors.htm> (accessed September 06, 2023).

Policies that promote workers' well-being and enhance productivity are essential to maintaining and building a strong middle class. An adjustment to the earnings threshold is long overdue. We urge Congress to support the Department's overtime rulemaking and appreciate the opportunity to provide our input for this congressional hearing.

Sincerely,

A handwritten signature in black ink, reading "Edwin S. Jayne". The signature is written in a cursive style with a large, stylized initial "E".

Edwin S. Jayne  
Director of Federal Government Affairs

ESJ:LM:sw

cc: Members of the Education and the Workforce Subcommittee on Workforce  
Protections, U.S. House of Representatives