

114TH CONGRESS
2D SESSION

S. 3464

To provide incremental increases to the salary threshold for exemptions for executive, administrative, professional, outside sales, and computer employees under the Fair Labor Standards Act of 1938, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2016

Mr. ALEXANDER (for himself, Ms. COLLINS, Mr. LANKFORD, Mr. SCOTT, and Mr. FLAKE) introduced the following bill; which was read the first time

A BILL

To provide incremental increases to the salary threshold for exemptions for executive, administrative, professional, outside sales, and computer employees under the Fair Labor Standards Act of 1938, and for other purposes.

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 “Overtime Reform and
5 Review Act”.

6 **SEC. 2. INCREMENTAL INCREASES TO SALARY THRESHOLD.**

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

1 (1) in subsection (a)(1), by inserting “sub-
2 section (k) and” after “subject to”; and

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

4 “(k) REQUIREMENTS FOR SALARY THRESHOLD.—

5 “(1) IN GENERAL.—In promulgating regula-
6 tions for purposes of defining and delimiting the
7 terms defining employees exempt under subsection
8 (a)(1), the Secretary shall require that any employee
9 exempt under such subsection is compensated at a
10 rate that is not less than the applicable salary
11 threshold established under paragraph (2).

12 “(2) INCREMENTAL INCREASES.—

13 “(A) INITIAL THRESHOLD.—The Secretary
14 shall establish an applicable salary threshold,
15 beginning on December 1, 2016, that is a rate
16 of compensation equal to \$35,984 per year, or
17 \$692 per week.

18 “(B) SUBSEQUENT INCREASES.—Notwith-
19 standing subparagraph (A) and subject to para-
20 graph (3), the applicable salary threshold estab-
21 lished under subparagraph (A) may be in-
22 creased to a rate of compensation that is equal
23 to—

24 “(i) beginning on December 1, 2018,
25 \$39,780 per year or \$765 per week;

1 “(ii) beginning on December 1, 2019,
2 \$43,628 per year or \$839 per week;

3 “(iii) beginning on December 1, 2020,
4 \$47,476 per year or \$913 per week; and

5 “(iv) beginning on December 1, 2021,
6 any rate of compensation provided by the
7 Secretary in accordance with paragraph
8 (4) and subsection (l).

9 “(3) REQUIREMENTS FOR INCREASES.—With
10 respect to nonprofit organizations (including non-
11 profit institutions of higher education), Medicare or
12 Medicaid dependent health care providers, and State
13 and local governments, the increases provided in
14 clauses (i), (ii), and (iii) of paragraph (2)(B) shall
15 occur only if—

16 “(A) the Comptroller General of the
17 United States conducts and submits the study
18 under section 3 of the Overtime Reform and
19 Review Act in accordance with that section; and

20 “(B) not later than June 1, 2018, the
21 Comptroller General, in coordination with the
22 Secretary and the Chief Counsel for Advocacy
23 of the Small Business Administration, certifies
24 that the increase in the salary threshold under

1 paragraph (2)(A) from the salary threshold in
2 effect prior to December 1, 2016, has not—

3 “(i) resulted in an increased rate of
4 part-time employment; or

5 “(ii) negatively impacted workplace
6 flexibility, benefit structures, career ad-
7 vancement opportunity, or job growth.

8 “(4) SALARY THRESHOLD AFTER DECEMBER 1,
9 2021.—Not prior to December 1, 2021, the Secretary
10 may issue a rule through notice and comment rule-
11 making in accordance with section 553 of title 5,
12 United States Code, to change the rate of compensa-
13 tion for the applicable salary threshold under para-
14 graph (2).

15 “(5) RULE OF CONSTRUCTION.—Nothing in
16 this subsection shall require the Secretary to pro-
17 mulgate the regulations described in this subsection
18 in accordance with the formal rulemaking provisions
19 of sections 556 and 557 of title 5, United States
20 Code.”.

21 (b) DEFINITIONS.—Section 3 of the Fair Labor
22 Standards Act of 1938 (29 U.S.C. 203) is amended by
23 adding at the end the following:

24 “(z) ‘Medicare or Medicaid dependent health care
25 provider’ means an employer who derives more than 50

1 percent of its revenue from payments under the Medicare
2 program established under title XVIII of the Social Secu-
3 rity Act (42 U.S.C. 1395 et seq.), a State plan under the
4 Medicaid program under title XIX of such Act (42 U.S.C.
5 1396 et seq.), or both.”.

6 (c) EFFECTIVE DATE.—This section, and the amend-
7 ments made by this section, shall take effect on December
8 1, 2016.

9 **SEC. 3. GAO STUDY.**

10 (a) IN GENERAL.—Not later than March 1, 2018, the
11 Comptroller General of the United States shall conduct,
12 and submit in accordance with subsection (c), a study on
13 the implementation of the salary threshold provided under
14 section 13(k)(2)(A) of the Fair Labor Standards Act of
15 1938 (29 U.S.C. 213(k)(2)(A)).

16 (b) CONTENTS.—The study under this section shall
17 include each of the following:

18 (1) The number of small entities affected by the
19 increase in the salary threshold provided under sec-
20 tion 13(k)(2)(A) of the Fair Labor Standards Act of
21 1938 compared to the salary threshold in effect
22 prior to December 1, 2016.

23 (2) An analysis of the impact of such increase
24 based on regional, State, metropolitan, and non-

1 metropolitan salary data and cost-of-living dif-
2 ferences.

3 (3) The percentile of full-time salaried workers
4 affected by such increase, including disaggregation
5 by—

6 (A) State;

7 (B) industry subsector;

8 (C) small organizations;

9 (D) small government jurisdictions;

10 (E) nonprofit organizations;

11 (F) institutions of higher education as de-
12 fined in section 101 of the Higher Education
13 Act of 1965 (20 U.S.C. 1001);

14 (G) Medicare or Medicaid dependent
15 health care providers, as defined in section 3 of
16 the Fair Labor Standards Act of 1938 (29
17 U.S.C. 203); and

18 (H) small businesses.

19 (4) Management and human resource costs for
20 all employers in implementing such increase.

21 (5) The impact of the increase on lower-wage
22 industries, including by geographic area.

23 (6) All nonfinancial costs associated with the
24 increase, including the impact on employment (in-
25 cluding rates of unemployment and part-time em-

1 ployment), workplace flexibility, employee benefit
2 structures, career advancement opportunity, new
3 business formation and termination, and loss of
4 market share to foreign competition.

5 (7) The impact of the increase on the number
6 of individuals in the United States who are “margin-
7 ally attached” or “discouraged” as defined by the
8 Bureau of Labor Statistics.

9 (c) SUBMISSION.—The study under this section shall
10 be submitted to the Committee on Health, Education,
11 Labor, and Pensions of the Senate, the Committee on
12 Education and the Workforce of the House of Representa-
13 tives, the Committee on Small Business and Entrepre-
14 neurship of the Senate, and the Committee on Small Busi-
15 ness of the House of Representatives.

16 **SEC. 4. ENFORCEMENT OF DEPARTMENT OF LABOR RULE.**

17 (a) IN GENERAL.—Beginning on the date of enact-
18 ment of this Act, or December 1, 2016, whichever date
19 is earlier—

20 (1) the rule submitted by the Department of
21 Labor entitled “Defining and Delimiting the Exemp-
22 tions for Executive, Administrative, Professional,
23 Outside Sales and Computer Employees” (81 Fed.
24 Reg. 32391 (May 23, 2016)) shall cease to have any
25 force or effect;

1 (2) the Secretary of Labor shall not enforce
2 such rule based on conduct occurring before or after
3 such date;

4 (3) an employee shall not have any right of ac-
5 tion against an employer for the employer's failure
6 to comply with such rule at any time prior to or
7 after such date; and

8 (4) any regulations that were amended by such
9 rule shall be restored and revived as if such rule had
10 never taken effect.

11 (b) CLARIFICATION.—Notwithstanding subsection
12 (a), nothing in this Act shall be construed to create a right
13 of action for an employer against an employee for the
14 recoupment of any payments made to the employee prior
15 to the date of enactment of this Act, or December 1, 2016,
16 whichever date is earlier, that were in compliance with the
17 rule described in subsection (a)(1).

18 **SEC. 5. FAIR LABOR STANDARDS ACT OF 1938 CLARIFICA-**
19 **TION.**

20 (a) SENSE OF THE SENATE.—It is the sense of the
21 Senate that section 13(a)(1) of the Fair Labor Standards
22 Act of 1938 (29 U.S.C. 213(a)(1)), including as in effect
23 on the day before the date of enactment of this Act—

24 (1) requires the Secretary of Labor to issue a
25 new rule through notice and comment rulemaking in

1 accordance with section 553 of title 5, United States
2 Code, for each specific and enumerated change to
3 the salary threshold provided in regulations promul-
4 gated under such section 13(a)(1), proposed by the
5 Secretary of Labor; and

6 (2) prohibits any rule that would result in a
7 change to the salary threshold for which a specific
8 and enumerated rate of compensation for the salary
9 threshold was not proposed, including any procedure
10 that automatically updates the salary threshold.

11 (b) FLSA AMENDMENT.—Section 13 of the Fair
12 Labor Standards Act of 1938 (29 U.S.C. 213), as amend-
13 ed by section 2, is further amended—

14 (1) in subsection (a)(1), by inserting “in ac-
15 cordance with subsection (l)” after “regulations of
16 the Secretary”; and

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

18 “(l) REQUIREMENTS FOR UPDATING THE SALARY
19 THRESHOLD.—

20 “(1) IN GENERAL.—For any change to the sal-
21 ary threshold provided in regulations promulgated
22 under subsection (a)(1), the Secretary shall—

23 “(A) propose a specific and enumerated
24 rate of compensation required for an employee
25 to be exempt under such subsection; and

1 “(B) issue a rule through notice and com-
2 ment rulemaking in accordance with section
3 553 of title 5, United States Code.

4 “(2) PROHIBITION ON AUTOMATIC UPDATES.—
5 In accordance with paragraph (1), the Secretary
6 may not issue any rule that would result in a change
7 to the salary threshold provided in regulations pro-
8 mulgated under subsection (a)(1) based on any pro-
9 cedure that automatically updates the salary thresh-
10 old without taking each action required under para-
11 graph (1).”.

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