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SUBMITTED TO ELECTRONIC DOCKET

Mary Ziegler
Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW, Room S-3502
Washington, DC 20210

Via: <http://www.regulations.gov>

**Re: Comments on Docket No. RIN 1235-AA11
Defining and Delimiting the Exemptions for Executive, Administrative, Professional,
Outside Sales, and Computer Employees**

Dear Ms. Ziegler:

The National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States, strongly supports the Wage and Hour Division's proposal to update the salary level test for determining exemption from minimum wage and overtime pay protections under the Fair Labor Standards Act (FLSA). Latino workers and their families will disproportionately benefit from this proposed rule. Latinos are overrepresented among workers earning less than \$50,000 per year and in industries and states projected to be most affected by the rule change.

NCLR commends the Department of Labor's proposal for raising the salary level to restore these protections to their former strength and fulfill the FLSA's original purpose of protecting workers from overtime abuses. NCLR also supports the proposed automatic updating of the salary level as a critical step in ensuring important overtime protections do not erode between updates. These proposed regulations would positively impact a vast number of low- and moderate-earners, millions of whom are Latino, by compensating them for extra hours worked—allowing them an opportunity to enter the middle class. The Department of Labor's proposed updates to the overtime regulations will be easier for both employers and workers to understand and will ensure greater swaths of low- and moderate-income workers are entitled to overtime pay under the FLSA.

Additionally, please refer to the supportive comments submitted separately by Latino-led, Latino-serving nonprofit community organizations from across the country in the NCLR Affiliate Network. As employers in the nonprofit sector with a mission of improving opportunities for Latinos, we urge the department to finalize and implement the rule without delay.

A Critical Opportunity to Update the Current Salary Threshold

The Department of Labor's proposed update to the salary threshold for determining eligibility for overtime pay comes at a critical time when the current salary threshold no longer protects low- and moderate-earning workers from working long hours without fair compensation. Today, only 8% of full-time salaried workers are eligible for overtime pay compared to more than half (62%) in 1975.ⁱ In raw numbers, millions of salaried workers have lost overtime eligibility over the years due to an outdated salary threshold: today only 3.5 million salaried workers are eligible, compared to nearly 12 million in 1979 even though today's workforce is significantly larger.ⁱⁱ

An outdated salary threshold holds workers back and keeps many hard workers in poverty, despite working long hours. Under the current low and outdated threshold, a promotion to "shift supervisor" for a salary of just \$24,000 a year—less than the poverty threshold for a family of four—could make a worker ineligible for overtime pay. NCLR is pleased that the proposed regulations will raise the salary threshold for overtime eligibility from \$455 a week (\$23,660 a year) to about \$970 a week (\$50,440 a year), ensuring that the threshold will again cover millions of salaried low-to-moderate earners who deserve fair compensation for their overtime work.

Annually Updating the Salary Threshold Is a Necessary Change

Despite being raised seven times since 1938, the overtime salary threshold has failed to keep up with increased worker productivity and inflation, leaving millions of hard workers uncompensated for overtime work. This inconsistency likely contributes to the decades-long disconnect between wages and worker productivity. Analyses show that between 1979 and 2013 workforce productivity increased 64.9%, while wages increased only 6.1% over the same time period.ⁱⁱⁱ NCLR supports the Department of Labor's proposed 40th percentile standard salary level for exemption because it will prevent a future erosion of overtime and contribute to bridging the disconnect between wages and productivity by increasing wages through fairly compensated overtime work. Further, the Department of Labor's proposed automatic update of the salary threshold will more accurately track wage growth among full-time salaried workers on a yearly basis.

This Rule Will Benefit 2.1 Million Latinos

The Economic Policy Institute projects that 13.5 million salaried workers, including 2.1 million Latinos, who are currently exempt from overtime protections will be newly covered in 2016. Altogether, this represents 34.4% of all salaried Latino workers.^{iv} Latinos stand to witness an increase in overtime coverage and wages, as Latinos make up only 11.6% of the salaried workforce yet represent 15.5% of all directly benefitting workers.^v The Department of Labor's proposed raise to the overtime salary threshold will have a disproportionately positive impact on working Latinos because as a group, Latinos are likely to earn poverty-level wages, have low levels of household wealth, work in industries projected to be the most affected, and are also a quickly growing population in a majority of states projected to see the largest benefits.

Latinos Are More Likely to Earn Poverty-Level Wages and Have Less Wealth

The proposed changes to the overtime rule will disproportionately benefit Latinos, who are overrepresented in low-wage occupations and have lower levels of household wealth than other racial and ethnic groups. Because Latinos are overrepresented in low-wage jobs, the effect of wage stagnation on their sense of economic well-being is particularly profound, with 67% of

Latinos reporting in a recent poll that they are not earning enough to meet their basic expenses.^{vi} Latinos also face an ever-growing racial wealth gap, making entry into the middle class increasingly difficult. The Great Recession had a staggeringly negative impact on Latino household wealth—during the period from 2005 to 2009, 66% of Latino household wealth disappeared—positioning Latinos as the group with the largest wealth decline during the recession.^{vii} The racial wealth gap has only continued to widen along racial lines, with White household wealth at more than 10 times that of Latino households in 2013.^{viii}

Losses of household wealth and poverty wages have contributed to a Latino poverty rate of nearly one-quarter.^{ix} In fact, 42% of all Latinos earn poverty-level wages despite having the highest rate of labor force participation among all racial and ethnic groups.^x Latinos will greatly benefit from the proposed overtime rule because as a group they have lower levels of wealth and proportionately the highest share of full-time salaried workers in supervisory, managerial, and professional occupations earning less than \$50,000 per year compared to other racial and ethnic groups.^{xi}

Latinos Are Overrepresented in Industries Where Workers Will See the Largest Benefits

Latinos are overrepresented in the industries projected to see the largest positive impacts of the proposed salary threshold increase. According to an analysis from the Economic Policy Institute, the industries where the largest percentage of workers will see the greatest impacts as a result of an increase in the overtime salary threshold are leisure and hospitality; construction; agriculture, forestry, fishing, and hunting; public administration; and other services (Table 1).^{xii} Out of the aforementioned five industries projected to have the largest impact from the salary threshold increase, in terms of the share of workers in that industry who would see a direct benefit, Latinos are overrepresented in all but one of these industries compared to their total share of the U.S. workforce of 16% (Table 1).^{xiii} An updated overtime salary threshold will have disproportionately positive impacts on Latinos, as they represent significant shares of the workforce in four out of the five industries projected to most benefit.

Table 1: Salaried Workers Directly Benefiting from the Proposed Increase in the Overtime Salary Threshold by Industry, and Latino Share of Employed by Industry, 2014

	Total salaried workers	Directly benefiting salaried workers	Share of industry's salaried workers that are directly benefiting	Latinos as a percent of total employed*
Leisure and hospitality	2,495,000	968,000	38.8%	22.3%
Other services	2,138,000	778,000	36.4%	19.0%
Construction	2,272,000	797,000	35.1%	27.3%
Agriculture, forestry, fishing, and hunting	335,000	117,000	34.9%	23.1%
Public administration	2,427,000	843,000	34.7%	11.4%

Total Workforce**	52,521,000	13,466,000	25.6%	16.0%
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Note: *The BLS data on Latinos as a percent of total employed across industries includes all workers and does not distinguish between salaried and non-salaried workers across industries.

**Total workforce for salaried workers, directly benefiting salaried workers, and share of industry's salaried workers who are directly benefiting include individual totals from industries not shown in the table above. For complete list of industries see Michel and Eisenbrey 2015. Subtotals may not add up to total due to rounding. Source: Compilation of data from Lawrence Michel and Ross Eisenbrey, Raising the Overtime Threshold Would Directly Benefit 13.5 Million Workers (Washington, DC: Economic Policy Institute, 2015), <http://www.epi.org/publication/breakdownovertimebeneficiaries/>, Table 4, and U.S. Bureau of Labor Statistics, "Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity," Current Population Survey, <http://www.bls.gov/cps/cpsaat18.htm>, Table 18.

Latinos Are a Quickly Growing Population in States that Would be Most Impacted

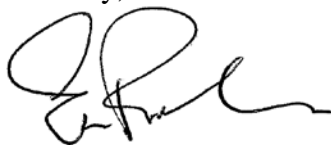
Raising the overtime salary threshold will impact workers in states all across the United States, yet some states will see a larger impact than others. The states home to the largest shares of workers projected to directly benefit from an overtime salary threshold increase are Arkansas where 35.5% of salaried workers will benefit, Hawaii with 33.8% benefitting workers, North Carolina with 32.1%, Oklahoma with 31.9%, Louisiana with 31.7%, Florida with 31.4%, Nevada with 31.0%, Tennessee with 30.2%, and Alabama with 30.0% of benefitting salaried workers.^{xiv} According to an analysis of Latino populations by state by the Pew Research Center, Latinos are a quickly growing population in four of the nine states projected to have the largest impact (Arkansas, North Carolina, Tennessee, and Alabama), and about one-quarter of the population in two additional states (Florida and Nevada).^{xv} From 2000 to 2011, Arkansas, North Carolina, Tennessee, and Alabama witnessed booming growth, exceeding 100%, in their Latino populations.^{xvi} Nevada and Florida rank fifth and sixth, respectively, in the top 10 states by their share of the Latino population.

Conclusion

The FLSA was enacted in 1938 to fight poverty by raising workers' wages and stimulating economic growth. These goals remain as relevant and urgent today, especially for the nation's growing Latino workforce. Extending overtime protections to 13.5 million workers by raising the eligibility salary threshold appropriately values their work and improves family economic security.

Thank you again for the opportunity to comment on this proposed rule. Should you have any questions regarding these comments, please contact Stephanie Román at sroman@nclr.org or (202) 776-1791.

Sincerely,



Eric Rodriguez
Vice President, Office of Research, Advocacy, and Legislation
National Council of La Raza

End Notes

ⁱ The White House Office of the Press Secretary, “Middle Class Economics Rewarding Hard Work by Restoring Overtime Pay,” The White House, <https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-middle-class-economics-rewarding-hard-work-restoring-overtime>. For previous analysis, see Heidi Shierholz, “It’s time to update overtime pay rules” (Washington: Economic Policy Institute, 2014), <http://www.epi.org/publication/ib381-update-overtime-pay-rules/>.

ⁱⁱ Ross Eisenbrey, Congressional Testimony Updated Overtime Rules Will Help Millions of Middle-Class Workers (Washington, DC: Economic Policy Institute, 2015), <http://www.epi.org/publication/congressional-testimony-updated-overtime-rules-will-help-millions-of-middle-class-workers/>.

ⁱⁱⁱ Economic Policy Institute, “Why It’s Time to Update Overtime Pay Rules: Frequently Asked Questions,” <http://www.epi.org/publication/time-update-overtime-pay-rules-answers-frequently/>.

^{iv} Lawrence Michel and Ross Eisenbrey, *Raising the Overtime Threshold Would Directly Benefit 13.5 Million Workers* (Washington, DC: Economic Policy Institute, 2015), <http://www.epi.org/publication/breakdownovertimebeneficiaries/>.

^v Ibid. EPI estimates most of these 13.5 million workers will be newly eligible for overtime protections. These workers are currently ineligible for overtime pay because they are classified, or wrongly classified, as having job duties that preclude receiving overtime. The rest would have their rights strengthened (they are currently at risk of being classified or misclassified as ineligible for overtime).

^{vi} Matt Barreto, “Latinos Still Feeling Effects of Recession,” Latino Decisions, <http://www.latinodecisions.com/blog/2014/07/21/latinos-still-feeling-effects-of-recession> (accessed January 2015).

^{vii} Paul Taylor et al., Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics (Washington, DC: Pew Research Center, 2011), http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf.

^{viii} Rakesh Kochhar and Richard Fry, “Wealth inequality has widened along racial, ethnic lines since end of Great Recession,” Pew Research Center, <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>.

^{ix} Kaiser Family Foundation, “Poverty Rate by Race/Ethnicity,” <http://kff.org/other/state-indicator/poverty-rate-by-raceethnicity/>.

^x Economic Policy Institute, “Share of workers earning poverty-level wages, by race and ethnicity, 1973–2013,” <http://www.stateofworkingamerica.org/chart/swa-wages-figure-4f-share-workers-earning/>.

^{xi} Heidi Shierholz, Increasing the Overtime Salary Threshold Is Family-Friendly Policy: Women, Minorities, and Younger and Less-Educated Workers Would Be Most Helped (Washington, DC: Economic Policy Institute, 2015), <http://www.epi.org/publication/increasing-overtime-salary-threshold-family/>.

^{xii} Lawrence Michel and Ross Eisenbrey, Raising the Overtime Threshold.

^{xiii} U.S. Bureau of Labor Statistics, Table 18: Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity (U.S. Department of Labor, 2015), <http://www.bls.gov/cps/cpsaat18.htm>.

^{xiv} Lawrence Michel and Ross Eisenbrey, Raising the Overtime Threshold.

^{xv} Anna Brown and Mark Hugo Lopez, Mapping the Latino Population, By State, County and City (Washington, DC: Pew Research Center, 2013) <http://www.pewhispanic.org/2013/08/29/ii-ranking-latino-populations-in-the-states/>.

^{xvi} Ibid.