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Expressing the sense of Congress that the overtime rule published in the Federal Register by the Secretary of Labor on May 23, 2016, would provide millions of workers with greater economic security and was a legally valid exercise of the authority of the Secretary under the Fair Labor Standards Act of 1938.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2017

Mr. BROWN (for himself, Mrs. MURRAY, Mr. BOOKER, Mr. CASEY, Mr. SANDERS, Mr. FRANKEN, Ms. WARREN, Mr. MARKEY, Mrs. GILLIBRAND, Mr. BLUMENTHAL, Ms. CANTWELL, Mrs. SHAHEEN, Ms. BALDWIN, Ms. HASSAN, Mr. MERKLEY, Mr. WYDEN, and Mr. MENENDEZ) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions

CONCURRENT RESOLUTION

Expressing the sense of Congress that the overtime rule published in the Federal Register by the Secretary of Labor on May 23, 2016, would provide millions of workers with greater economic security and was a legally valid exercise of the authority of the Secretary under the Fair Labor Standards Act of 1938.

Whereas the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) established overtime compensation requirements for certain employees when they work more than 40 hours in a given workweek;

Whereas under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), Congress delegated to the Secretary of Labor the authority to define and delimit the terms relating to the exemption for bona fide executive, administrative, and professional employees (commonly known as the “white collar exemption”);

Whereas for more than 75 years, the Secretary of Labor has exercised its delegated authority to issue regulations that define and delimit the terms relating to the white collar exemption by applying a duties test and applying a minimum compensation level or salary threshold;

Whereas the Secretary of Labor began utilizing a salary threshold in the initial regulations defining and delimiting the terms relating to the white collar exemption, which were first issued in 1938;

Whereas Congress has long approved the use of a salary threshold by the Secretary of Labor, as demonstrated by the fact that Congress has amended the Fair Labor Standards Act of 1938 at least 10 times since 1938 and has not precluded the Secretary from using a salary threshold;

Whereas the salary threshold became woefully out of date and ineffective as a result of not being sufficiently updated to keep pace with a changing economy, as evidenced by the fact that more than half of all full-time salaried workers were covered by the salary threshold in 1975 and only 8 percent of these workers were covered by the salary threshold in 2015;

Whereas the salary threshold of \$455 per week, or \$23,660 per year, that was in effect on May 22, 2016, was below the poverty line for a family of 4;

Whereas the Secretary of Labor updated the salary threshold on May 23, 2016, through a final rule entitled “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees” (81 Fed. Reg. 32391) by increasing the salary threshold to the 40th percentile of earnings of full-time salaried employees in the lowest-wage Census Region, resulting in a salary threshold of \$913 per week or \$47,476 per year;

Whereas the final rule would benefit more than 13,000,000 employees by providing overtime compensation protections to 4,200,000 new employees and strengthening overtime compensation protections for 8,900,000 additional employees;

Whereas the Secretary of Labor went through a thorough process in crafting the final rule, seeking public input and conducting extensive economic analysis, including—

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

(2) considering more than 270,000 comments received during the 60-day public comment period on the proposed rule; and

(3) making significant changes in response to public input before issuing the final rule;

Whereas the public comments submitted to the Secretary of Labor regarding the proposed rule were overwhelmingly positive and supportive of the rule;

Whereas the increase in the salary threshold, included in the final rule, to the 40th percentile of earnings of full-time salaried employees in the lowest-wage Census Region, resulting in a threshold of \$913 per week or \$47,476 per

year, was a strong yet measured increase by almost any measure, including as compared to—

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

(2) the salary threshold of \$984 per week or \$51,168 per year, which would be necessary to fully account for the erosion to the value of the salary threshold since 1975 due to inflation;

(3) the salary threshold of \$1,122 per week or \$58,344 per year, which would be necessary to cover the same share of all salaried workers as were covered in 1975 after accounting for changes in the economy; and

(4) the salary threshold of \$1,327 per week or \$69,004 per year, which would be necessary to cover the same percentage of all salaried workers as were covered in 1975;

Whereas the United States District Court for the Eastern District of Texas erroneously called the authority of the Secretary of Labor under the Fair Labor Standards Act of 1938 into question when it issued a preliminary injunction enjoining the Department of Labor from enforcing the final overtime rule; and

Whereas millions of workers eagerly await a fair day's pay for a hard day's work: Now, therefore, be it

1 *Resolved by the Senate (the House of Representatives*
 2 *concurring)*, That it is the sense of Congress that the final
 3 rule issued on May 23, 2016, by the Secretary of Labor
 4 entitled “Defining and Delimiting the Exemptions for Ex-
 5 ecutive, Administrative, Professional, Outside Sales and
 6 Computer Employees” (81 Fed. Reg. 32391)—

1 (1) would provide more than 13,000,000 work-
2 ers with greater economic security;

3 (2) was created through the legally valid exer-
4 cise of the congressionally delegated authority of the
5 Secretary of Labor under the Fair Labor Standards
6 Act of 1938; and

7 (3) should be defended and enforced with due
8 haste.

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