

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN
THE NATURE OF A SUBSTITUTE TO H.R. 1180
OFFERED BY Mr. Takano**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Overtime Protection
3 Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Congress delegated the authority to the Sec-
7 retary of Labor to define and delimit from time to
8 time the executive, administrative and professional,
9 or white collar, exemptions through regulations.

10 (2) For over 75 years, the Department of
11 Labor has used, in conjunction with an analysis of
12 an employees’ work duties, a minimum salary level
13 that an employee must receive to qualify for the
14 white collar exemption. In the initial regulations im-
15 plementing the Fair Labor Standards Act issued in
16 October 1938, the Department established a duties
17 test for executive, administrative, and professional

1 employees, and set a minimum compensation level,
2 or salary level.

3 (3) The Department has issued regulations de-
4 fining the scope of the exemption nearly 15 times
5 since the Fair Labor Standards Act was enacted.
6 Since 1938, Congress has updated and amended the
7 Act 10 times and it has not altered the white collar
8 exemptions to preclude the use of the salary thresh-
9 old test.

10 (4) Congress has exercised its authority to cor-
11 rect the Secretary's interpretation of the Fair Labor
12 Standards Act when it disagreed with that interpre-
13 tation. For example, in the 1961 amendments to the
14 Act, Congress eased restrictions on nonexempt work
15 imposed by the Secretary on retail and service sector
16 employees. However, Congress did not limit the Sec-
17 retary's use of the salary test in any way.

18 (5) The salary level test has been long recog-
19 nized as "the best single test" of exemption status.
20 But the salary test is only a strong measure of ex-
21 emption status if it is up to date. In the 1940s, the
22 Administrator of the Wage and Hour Division of the
23 Department noted: "It was widely conceded that the
24 terminology of section 13 (a)(1) implies a status
25 which cannot be attained by those whose pay is close

1 to or below the universal minimum envisaged in the
2 Act. It was further pointed out that the good faith
3 specifically required by the Act is best shown by the
4 salary paid.”

5 (6) The salary level test has only been meaning-
6 fully updated once in the last 40 years and has fall-
7 en woefully out of date.

8 (7) In 1975 nearly half of all full time salaried
9 workers were covered by the overtime salary thresh-
10 old. This proportion had fallen to just 10 percent of
11 salaried workers in 2014.

12 (8) The last update to the salary level in 2004
13 set the salary level to \$455 a week (or \$23,660 an-
14 nually) and had not been updated in more than 10
15 years. This salary level is lower than the poverty
16 threshold for a family of four.

17 (9) Updating the salary level will benefit over
18 13 million workers by extending overtime eligibility
19 to 4.2 million workers and making it easier for an-
20 other 8.9 million workers who are already eligible for
21 overtime to prove their eligibility.

22 **SEC. 3. REGULAR ADJUSTMENT FOR INFLATION.**

23 Section 13(a)(1) of the Fair Labor Standards Act of
24 1938 (29 U.S.C. 213(a)(1)) is amended by striking “from

1 time to time” and inserting “every three years beginning
2 January 1, 2020”.

3 **SEC. 4. DEFINITION OF BONA FIDE EXECUTIVE, ADMINIS-**
4 **TRATIVE, PROFESSIONAL AND SALESMAN**
5 **EMPLOYEES.**

6 Section 3 of the Fair Labor Standards Act of 1938
7 (29 U.S.C. 203) is amended by adding at the end the fol-
8 lowing:

9 “(z) the term ‘bona fide executive, administrative, or
10 professional capacity, or in the capacity of outside sales-
11 man’ means an employee—

12 “(1) compensated on a salary or fee basis
13 amounting to the 90th percentile of full-time non-
14 hourly workers nationally, 10 percent of which sal-
15 ary or fee may be satisfied by the payment of non-
16 discretionary bonuses, incentives, and commissions,
17 that are paid quarterly or more frequently;

18 “(2) whose primary duties are executive, admin-
19 istrative, or professional in nature (as such terms
20 are defined by the Secretary); or

21 “(3) compensated on a salary or fee basis at a
22 rate per week of not less than the 40th percentile of
23 weekly earnings of full-time nonhourly workers in
24 the lowest wage Census Region (or 84 percent of
25 that amount per week, if employed in American

1 Samoa by employers other than the Federal Govern-
2 ment), exclusive of board, lodging, or other facilities,
3 10 percent of which salary or fee may be satisfied
4 by the payment of nondiscretionary bonuses, incen-
5 tives, and commissions, that are paid quarterly or
6 more frequently;”.

7 **SEC. 6. EFFECTIVE DATE.**

8 The amendments made in this Act shall take effect
9 on the date that is 30 days after the date of enactment
10 of this Act and on such date—

11 (1) the salary level set in section 13(a)(1) of
12 the Fair Labor Standards Act of 1938 (29 U.S.C.
13 213(a)(1)) for employees described in section 3(z)(3)
14 shall be no less than \$913 per week (or \$767 per
15 week, if employed in American Samoa by employers
16 other than the Federal government), exclusive of
17 board, lodging or other facilities; and

18 (2) the salary level set in such section for em-
19 ployees described in section 3(z)(1) shall be no less
20 than \$134,004.



