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May 2016



# PAST TIME FOR OVERTIME:

## How Expanded Access To Overtime Protections Will Boost Wages For Working Families In New York City





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## I. EXECUTIVE SUMMARY

Over the last 40 years, working families across the United States have seen their wages and income stagnate, even as productivity has increased.

One reason pay has lagged behind productivity is the shrinking number of workers eligible for overtime pay—a trend driven partly by the federal government’s failure to raise the so-called “overtime threshold,” which caps the salary at which a salaried employee is automatically eligible to earn time-and-a-half pay. Since 1975, the overtime threshold has only been raised once and since 2004 has sat at just \$23,660 annually, below the poverty level for a family of four.

Under federal law, most hourly workers performing manual labor or working in service industries are guaranteed overtime protection at time-and-a-half when they work more than 40 hours a week. However, eligibility for salaried workers varies by their pay and the type of work they perform. Specifically, individuals in jobs deemed “executive,” “administrative,” or “professional” are not guaranteed overtime protection if they earn above \$23,660 annually. This can lead to employers misclassifying workers as “executive,” “administrative,” or “professional” to avoid paying overtime.

Thankfully, help is on the way. Today, at the direction of President Obama, the U.S. Department of Labor (DOL) raised the threshold from \$23,660 to \$47,476 annually—a step estimated to boost the incomes of 12.5 million American workers. The new rule will also peg the threshold to weekly earnings, ensuring that overtime protections do not once again erode over time.

While full implementation of the new rule isn’t scheduled until the end of the year, the changes herald a new day for many workers. The new ceiling will greatly increase the percentage of full-time salaried workers eligible for overtime, which prior to today’s increase had dwindled to just 7 percent of the salaried workforce—compared to 62 percent in 1975. In addition, the higher threshold will guarantee more workers overtime protection, making them less vulnerable to misclassification by employers because they are automatically eligible for overtime pay.

This report, by New York City Comptroller Scott M. Stringer, examines the potential impact of this change on workers in New York City. The report finds that:

- 370,000 New Yorker City workers will benefit from today’s increase in the federal overtime salary threshold.
- Of these, 110,000 salaried workers are gaining federal overtime eligibility for the first time, including 67,000 workers who are not currently eligible for New York State overtime protection. An additional 260,000 workers will see their overtime protection strengthened because the higher threshold will help guard against misclassification.
- The 67,000 workers who are not currently eligible for state overtime will see increases of about \$300 in their average annual earnings under the new federal threshold, which will put roughly \$20 million into the pockets of hardworking New Yorkers.
- Significant percentages of the 110,000 newly eligible workers are over 25 years of age (89%), women (56%), persons of color (47%), and hold college degrees (66%).

Comptroller Stringer applauds President Obama and the Department of Labor for updating the overtime threshold, so that more workers can once again earn the salary they deserve for working extra hours.

Much like raising the minimum wage to \$15 an hour, raising the overtime threshold will put more dollars directly into the pockets of working people and help to lift up local economies in New York City and across the nation.

## II. HISTORY OF OVERTIME RULES

In 1938, Congress passed the Fair Labor Standards Act (FLSA), establishing the twin pillars of an economy of shared prosperity: the minimum wage and overtime protection.

During the decades following the enactment of the FLSA, wages and productivity rose in near lock-step. However, over the past 40 years, wages and income have diverged from productivity as the value of the minimum wage and overtime pay has eroded.

As shown in the chart below, from 1973 to 2014, productivity increased 72 percent, while the average hourly compensation of a typical (production/nonsupervisory) worker rose just 9 percent.<sup>1</sup> During this period, U.S. Real Gross Domestic Product per capita also doubled.<sup>2</sup> In other words, despite the fact that workers are more efficient and the value of goods and services produced has grown, wages remain stagnant.

**Chart 1: Productivity Increased Faster Than Workers' Pay**



Source: Economic Policy Institute<sup>3</sup>

By setting a federal minimum wage and a limit on the number of hours in a standard workweek, the FLSA was designed to ensure that workers would not face exploitation or overwork, and were able to secure their fair share of the productivity growth generated by their labor.<sup>4</sup>

Overtime protections apply to workers in different ways depending on whether they are paid hourly or are salaried employees. Most hourly workers performing manual labor or working in service industries are guaranteed overtime protection at time-and-a-half pay (1.5 times their regularly hour rate) for each hour worked beyond 40 hours per week.<sup>5</sup>

However, eligibility for salaried workers varies by their level of pay and the type of work they perform. Most salaried workers who earn below a certain threshold are automatically eligible for overtime. Salaried workers who earn above the threshold and are classified as executives, administrators, or professionals can be exempt from overtime, despite the fact that their actual wages may be very low.<sup>6</sup>

The premise behind the overtime threshold and exemptions was that these types of employees do not need overtime protections because—as evidenced by the nature of their work and the salaries they command—they have sufficient bargaining power with their employers.<sup>7</sup>

As shown in Chart 2, however, this premise has been undermined by the significant decrease in the real value of the threshold since 1975.

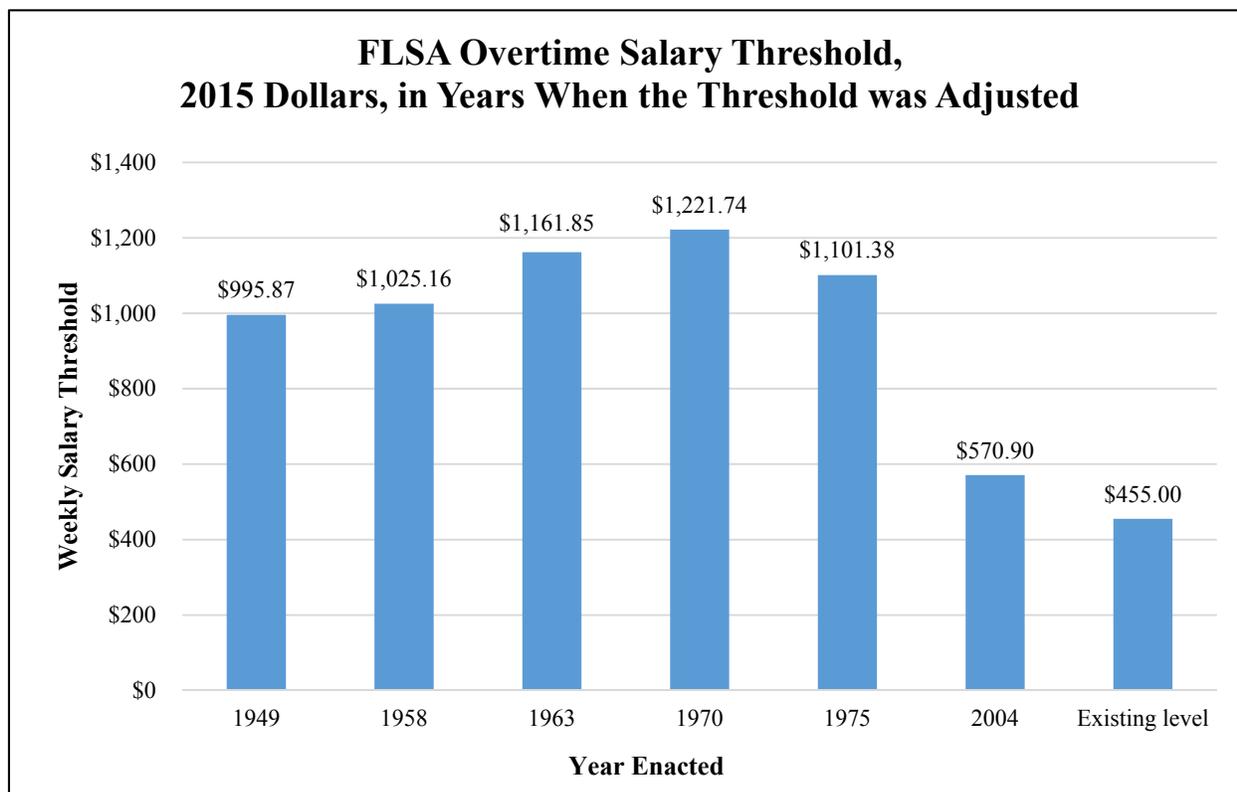
In the years following the passage of the FLSA, the threshold for overtime protection was gradually raised—even outpacing inflation. From 1938 to 1975, the threshold was raised every five to nine years by both Democratic (Truman and Kennedy) and Republican (Eisenhower, Nixon and Ford) presidents.<sup>8</sup>

By 1975, 62 percent of full-time salaried workers were eligible for overtime pay, including a majority of college graduates.<sup>9</sup>

However, since 1975, the overtime threshold was only updated once prior to today—in 2004 by the Bush administration—and as a result has been eroded by inflation.

As shown in Chart 2, the real value of the threshold has fallen substantially. If the 1975 threshold had kept up with inflation, it would be \$1,100 per week, 143 percent higher than the existing threshold of \$455 per week.<sup>10</sup>

## Chart 2



\*1949-1975 thresholds are calculated using the short test, 2004 is calculated using the standard test threshold<sup>11</sup>

The existing overtime salary threshold of \$23,660 per year or \$455 per week,<sup>12</sup> is below the poverty level for a family of four (\$24,300 in 2016).<sup>13</sup> As a result, only 7 percent of full-time salaried workers are eligible for overtime pay.<sup>14</sup>

In addition to the decline in real value of the threshold, overtime protections have long been weakened by employers that misclassify their employees as executive, administrative, or professional, even if they spend only a small portion of their time performing these duties, in order to avoid paying overtime.<sup>15</sup>

New York State enacted a higher overtime salary threshold for individuals classified as executive and administrative employees (but not professionals). In New York State, the overtime threshold for executive and administrative employees is currently \$35,100 per year, or \$675 a week. As a result, executive and administrative employees who earn between \$23,660 and \$35,100 annually are automatically eligible for overtime under state law, but not federal law. However, instead of receiving time-and-a-half for these hours, state law provides that these individuals receive overtime pay at a rate of 1.5 times the state's minimum wage, currently set at \$9.00/hour.<sup>16</sup>

For example, taking into account both the federal and state laws, an assistant manager at a fast-food restaurant with a salary of \$36,000<sup>17</sup> can work 55 hours a week and be denied any overtime pay because she is deemed to be an "executive" even if she spends most of her time cooking fries, operating a cash register, and sweeping floors.<sup>18</sup> Raising the federal overtime threshold would enable her to be compensated for the extra hours she worked.

### III. PRESIDENT OBAMA'S PLAN TO RAISE THE THRESHOLD

On March 13, 2014, President Obama instructed the U.S. Department of Labor (DOL) to update the overtime threshold to “once again reflect the intent of the Fair Labor Standards Act,”<sup>19</sup> and on June 30, 2015, the DOL issued its draft proposal, which would have increased the overtime salary threshold to \$970 per week or \$50,440 per year. This figure represents “the 40<sup>th</sup> percentile of weekly earnings for full-time salaried workers” and is roughly what the threshold would have been had it kept up with inflation.<sup>20</sup>

Today, the DOL announced the final regulation, raising the overtime salary threshold to \$913 per week or \$47,476 per year. This figure represents “the 40<sup>th</sup> percentile of full-time salaried workers in the lowest income Census region (currently the South).” The new rule will go into effect on December 1, 2016. Additionally, it will be pegged to 40 percent of weekly earnings in the lowest income Census region and will be adjusted every three years.<sup>21</sup>

### IV. IMPACT OF THE PRESIDENT'S PROPOSAL ON NEW YORK CITY

The Department of Labor estimates that almost 4.2 million new workers will be eligible for overtime protection under the updated overtime salary threshold. This change will also strengthen overtime protection for an additional 9 million workers. The increased threshold is estimated to raise wages by \$12 billion over the next 10 years.<sup>22</sup>

Using a different methodology, the Economic Policy Institute (EPI) estimates that at the new overtime salary threshold of \$913 per week (2015 dollars), 12.5 million workers will directly benefit, including 4.9 million workers who will gain access to overtime protection for the first time, and 7.6 million workers who will see their overtime protection strengthened, many of whom may be misclassified as exempt from overtime protection.<sup>23</sup>

Using EPI's methodology, the Comptroller's Office estimates that 370,000 New York City residents will benefit from the increase in the federal overtime salary threshold. Some 110,000 salaried workers will gain federal overtime eligibility for the first time, including 67,000 who are not eligible for state overtime protection. An additional 260,000 workers will see their overtime protection strengthened because the higher threshold will help guard against misclassification.

On average, the 67,000 workers who are not currently eligible for state overtime will see increases of about \$300 in their annual earnings under the new federal threshold, which will put roughly \$20 million into the pockets of hardworking New Yorkers.

This influx of funds will not only increase income tax revenue, but will also spur local economic growth, since studies show low-income workers are most likely to put their increased earnings back into the local economy.<sup>24</sup>

Based on the Comptroller's analysis, raising the federal overtime salary threshold will directly benefit a broad range of workers in New York City.

- 61,000 women will be covered by federal overtime protection for the first time (women make up 48 percent of the salaried workforce, but make up 56 percent of newly eligible workers).
- 52,000 workers of color will be newly eligible for federal overtime protection (people of color make up 41 percent of the salaried workforce, but make up 47 percent of newly eligible workers).
- 38,000 workers who are newly eligible for federal overtime protection (34 percent) have not earned a bachelor's degree. By comparison, 16 percent of the salaried workforce has not earned a bachelor's degree.
- 27,000 working parents (25 percent of workers newly protected by federal overtime), will see their incomes rise, benefitting 35,000 children.
- 98,000 workers (89 percent of workers who are newly eligible for federal overtime protection) are 25 years old or older.
- 73,000 workers with a bachelor's degree or higher (66 percent of workers covered by federal overtime protection for the first time), including 15,000 holding advanced degrees, will also benefit from the federal increase.

Some have expressed concerns that increasing the overtime threshold will lead employers to cut the hours of salaried workers to avoid paying overtime costs. However, if employers cut the hours of salaried workers who are working over 40 hours a week without overtime pay, these workers would enjoy a 40 hour work week and still earn their current salary.<sup>25</sup>

Moreover, reducing their hours could lead employers to hire new workers or increase the hours of part time workers, which would create more opportunities for the underemployed and unemployed.<sup>26</sup>

**Chart 3**

<b>Demographics of Salaried Workers Newly Eligible for Federal Overtime Protection Under the Increased Salary Threshold</b>		
<b>110,000 Total Workers</b>		
<b>Group</b>	<b>Percentage*</b>	<b>Number of Workers*</b>
<b>Sex</b>		
<b>Male</b>	44%	49,000
<b>Female</b>	56%	61,000
<b>Age</b>		
<b>16-24</b>	11%	13,000
<b>25-34</b>	44%	49,000
<b>35-44</b>	13%	15,000
<b>45-54</b>	15%	17,000
<b>55-64</b>	12%	14,000
<b>65+</b>	3%	3,000
<b>Educational Attainment</b>		
<b>Less than High School</b>	4%	5,000
<b>High School</b>	13%	14,000
<b>Some College</b>	12%	13,000
<b>Associate Degree</b>	5%	6,000
<b>Bachelor's Degree</b>	52%	58,000
<b>Advanced Degree</b>	13%	15,000
<b>Race/Ethnicity**</b>		
<b>Black</b>	11%	12,000
<b>Hispanic</b>	16%	18,000
<b>Asian</b>	20%	22,000
<b>White</b>	53%	58,000
<b>County of Residence</b>		
<b>Bronx</b>	5%	5,000
<b>Brooklyn</b>	23%	26,000
<b>Manhattan</b>	39%	43,000
<b>Queens</b>	28%	31,000
<b>Staten Island</b>	5%	5,000

\*Subtotals may not add to totals due to rounding.

\*\* Race/Ethnicity categories are mutually exclusive (i.e. white non-Hispanic, black non-Hispanic, Asian non-Hispanic, and Hispanic non-white)<sup>27</sup>

## V. CONCLUSION

In his famed “fireside chat” celebrating the passage of the FLSA, President Franklin D. Roosevelt declared:

*Do not let any calamity-howling executive with an income of \$1,000.00 a day, who has been turning his employees over to the Government relief rolls in order to preserve his company’s undistributed reserves, tell you...that a wage of \$11.00 a week is going to have a disastrous effect on all American industry.*<sup>28</sup>

The President’s plan to raise the overtime threshold has already garnered similar opposition. However, the truth is that for the past 40 years, little of the profit generated from increased productivity has been shared with the workers responsible for the growth.

It’s time for a new calculus, one that furthers the goal of truly shared prosperity from coast to coast and ensures that our economy works for all workers. Raising the overtime threshold will help reinvigorate the promise of the FLSA and ensure that nearly 400,000 hardworking New York City residents are guaranteed the overtime protection they deserve.

## VI. METHODOLOGY

To estimate the number of New York City workers benefitting from increasing the overtime threshold, we started with National Bureau of Economic Research (NBER) Monthly Outgoing Rotation Group (MORG) data for 2012 to 2014 for the five counties of New York City. For months in which geographic data were not present in the MORG data (the final eight months of 2014), we matched them from the standard Current Population Survey.

The data show the weekly earnings of those employed in New York City, from which we exclude Federal and religious workers, the self-employed, workers paid hourly, and certain occupations not covered by the FLSA. For the remaining salaried workers covered by FLSA, we use Department of Labor estimates of the percentage of workers in each occupation which are managerial.

Our estimates of those benefitting include the remaining managerial employees with weekly earnings greater than the current Federal (and New York) overtime thresholds, and less than the new Federal threshold.

There may be some employers who voluntarily pay overtime beyond the salary threshold. However, due to the limitations of the data, an exact determination of the number of salaried workers legally entitled to and receiving overtime pay is not possible. Raising the threshold will level the playing field and make it easier for employers who seek to comply with legal requirements concerning overtime pay.

The Comptroller’s Office’s estimates are based on a methodology developed by the Economic Policy Institute. A step-by-step description of this methodology is available at [www.epi.org/publication/overtime-estimates-technical-memo/](http://www.epi.org/publication/overtime-estimates-technical-memo/).

## VII. ACKNOWLEDGEMENTS

Comptroller Scott M. Stringer thanks Sapna Mehta, Policy Analyst, and Andrew McWilliam, Senior Research Economist, the lead researchers and writers of this report.

Comptroller Stringer also recognizes the important contributions to this report made by: David Saltonstall, Assistant Comptroller for Policy; Andrew L. Kalloch, Deputy Policy Director; Timothy Mulligan, Deputy Comptroller for Budget; Frank Braconi, Chief Economist; Angela Chen, Senior Website Designer and Graphic Designer; Kathryn “Kay” Diaz, General Counsel; and Nicole Jacoby, Counsel to the General Counsel.

## VIII. ENDNOTES

- <sup>1</sup> <http://www.epi.org/publication/charting-wage-stagnation/>
- <sup>2</sup> <https://research.stlouisfed.org/fred2/series/A939RX0Q048SBEA>
- <sup>3</sup> <http://www.epi.org/publication/the-top-charts-of-2015/>
- <sup>4</sup> <http://www.dol.gov/whd/flsa/>
- <sup>5</sup> <http://www.epi.org/publication/time-update-overtime-pay-rules-answers-frequently/>
- <sup>6</sup> [http://www.dol.gov/whd/overtime/fs17a\\_overview.htm](http://www.dol.gov/whd/overtime/fs17a_overview.htm); [http://www.dol.gov/whd/overtime/fs17d\\_professional.htm](http://www.dol.gov/whd/overtime/fs17d_professional.htm);  
Executives are defined as individuals who “manage an enterprise or a subdivision of the enterprise; such as directors, partners or vice presidents; administrators’ work is “directly related to general business operations and includes the exercise of discretion and independent judgment with respect to matters of significance” such as academic administrative personnel; and professional employees’ work requires “advanced knowledge acquired by a prolonged course of specialized intellectual instruction,” such as teachers, physicians, accountants, engineers and lawyers. The FLSA states that in order to be exempt, an employee must be a “*bona fide* executive, administrative, or professional,” (emphasis added), which means that actual duties, not arbitrary titles, determine eligibility. Information technology and outside sales employees also face similar exemptions. Some occupations, including teachers, doctors, and lawyers are not eligible for overtime pay.
- <sup>7</sup> <http://www.epi.org/publication/time-update-overtime-pay-rules-answers-frequently/>
- <sup>8</sup> <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28355>
- <sup>9</sup> <https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-middle-class-economics-rewarding-hard-work-restoring-overtime>
- <sup>10</sup> <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28355>
- <sup>11</sup> Comptroller analysis of DOL weekly salary levels for overtime exemption, see <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28355>; CPI-U data available at: <http://data.bls.gov/cgi-bin/cpicalc.pl>.
- <sup>12</sup> <https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-middle-class-economics-rewarding-hard-work-restoring-overtime>
- <sup>13</sup> <https://aspe.hhs.gov/poverty-guidelines>
- <sup>14</sup> <https://www.whitehouse.gov/the-press-office/2016/05/17/fact-sheet-growing-middle-class-paychecks-and-helping-working-families-0>
- <sup>15</sup> <http://usatoday30.usatoday.com/money/jobcenter/workplace/story/2012-04-15/workers-sue-unpaid-overtime/54301774/1>; <http://prospect.org/article/why-dols-new-overtime-rule-such-big-deal>.
- <sup>16</sup> <https://www.labor.ny.gov/formsdocs/wp/CR142.pdf>; <https://labor.ny.gov/legal/counsel/pdf/overtime-frequently-asked-questions.pdf>; <https://labor.ny.gov/legal/counsel/pdf/professional-employee-overtime-exemption-frequently-asked-questions.pdf>; <https://labor.ny.gov/legal/counsel/pdf/executive-employee-overtime-exemption-frequently-asked-questions.pdf>; and <https://labor.ny.gov/legal/counsel/pdf/administrative-employee-overtime-exemption-frequently-asked-questions.pdf>
- <sup>17</sup> Annual mean wage for first-line supervisors of food preparation and serving workers in New York, see: [http://www.bls.gov/oes/current/oes\\_ny.htm#35-0000](http://www.bls.gov/oes/current/oes_ny.htm#35-0000)
- <sup>18</sup> <http://www.epi.org/publication/time-update-overtime-pay-rules-answers-frequently/>
- <sup>19</sup> <https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-middle-class-economics-rewarding-hard-work-restoring-overtime>
- <sup>20</sup> <http://www.dol.gov/whd/overtime/NPRM2015/>
- <sup>21</sup> <https://www.whitehouse.gov/the-press-office/2016/05/17/fact-sheet-growing-middle-class-paychecks-and-helping-working-families-0>
- <sup>22</sup> <https://www.whitehouse.gov/the-press-office/2016/05/17/fact-sheet-growing-middle-class-paychecks-and-helping-working-families-0> and <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>
- <sup>23</sup> <http://www.epi.org/publication/overtime-threshold-would-benefit-13-5-million/> and <http://www.epi.org/publication/who-benefits-from-new-overtime-threshold/>
- <sup>24</sup> [http://www.epi.org/publication/minimum\\_wage\\_anniversary\\_still\\_helping\\_millions\\_of\\_workers\\_get\\_by\\_but/](http://www.epi.org/publication/minimum_wage_anniversary_still_helping_millions_of_workers_get_by_but/)
- <sup>25</sup> <http://www.epi.org/publication/time-update-overtime-pay-rules-answers-frequently/>
- <sup>26</sup> <http://www.epi.org/publication/time-update-overtime-pay-rules-answers-frequently/>
- <sup>27</sup> Comptroller analysis of U.S. Department of Labor’s Notice of Proposed Rulemaking (2015) and NBER Monthly Outgoing Rotation Group (MORG) data
- <sup>28</sup> <http://docs.fdrlibrary.marist.edu/062438.html>.







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