

WASHINGTON OFFICE:

2410 RAYBURN HOUSE OFFICE BUILDING
(202) 225-2615 Fax: (202) 225-2154

SAN JUAN OFFICE:

157 AVENIDA DE LA CONSTITUCIÓN
ANTIGUO EDIFICIO DE MEDICINA TROPICAL
ALA DE ENFERMERÍA 2DO PISO
SAN JUAN, PUERTO RICO 00901
(787) 723-6333 Fax: (787) 729-7738

Congress of the United States
House of Representatives
Washington, DC 20515-5400

October 5, 2015

Hon. Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington DC 20210

Dear Secretary Perez:

I write regarding the potential application to Puerto Rico and the other U.S. territories of the regulations proposed by the Wage and Hour Division of the U.S. Department of Labor to implement the Fair Labor Standards Act exemption for bona fide executive, administrative, and professional employees. See Notice of Proposed Rulemaking, 80 Federal Register 38516-38612, July 6, 2015. As you are aware, the NPRM proposes to increase the threshold for exemption from the overtime provisions of the FLSA from the current \$455 per week (\$23,660 per year) to \$970 per week (\$50,440 per year). Accordingly, executive, administrative, and professional employees making between \$455 and \$970 per week in 2016 would become nonexempt from—that is, covered by—the overtime provisions of the FLSA and entitled to overtime pay for hours worked in excess of 40 per workweek.

The purpose of this letter is to register two concerns. First, the NPRM is silent on whether the Department of Labor is proposing to extend the increased salary threshold to Puerto Rico. My office was required to contact the DOL's Office of Congressional and Intergovernmental Affairs to confirm that, in this case, silence equals inclusion. Going forward, I respectfully ask DOL to make explicit in its NPRMs whether or not its proposed policy changes do or do not apply to each of the territories. I and other territory delegates should not have to go beyond the four corners of the NPRM itself in order to determine how DOL proposes to treat our constituents, especially since DOL rules sometimes apply fully in the territories, sometimes do not apply at all in the territories, sometimes apply in the territories but in a different way than they apply to the 50 states and the District of Columbia, and sometimes apply differently in individual territories.

Second, I am troubled by the inability to obtain a reasonable estimate about the potential impact of extending the higher salary threshold to Puerto Rico. On June 30th, the White House issued a document to members of Congress that provides a state-by-state breakdown of how many workers in each jurisdiction are likely to be affected by the proposed rule change. As is often the case, however, no breakdown is provided for Puerto Rico or the other territories.¹ Evidently, this document was based on a DOL statistical product—the Current Population Survey—that does not include information on the territories. I am concerned that, if DOL does not have a

¹ <https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-middle-class-economics-rewarding-hard-work-restoring-overtime>.

meaningful sense of how many employees—and, by extension, employers—in Puerto Rico will be affected by the proposed rule, it will be difficult for DOL make thoughtful and responsible policy in this area. Likewise, it is difficult for me—the elected leader of 3.5 million American citizens—to formulate an informed view on the proposed rule when I cannot predict its impact with any accuracy. If DOL does not have reliable data regarding the on-the-ground consequences of applying the higher salary threshold to Puerto Rico, and if that reliable data does not indicate that application of the rule would be a net positive for Puerto Rico, I urge DOL to exercise great caution before it includes the U.S. territory in the rule.

In closing, I note that DOL has received formal comments from numerous government and private sector stakeholders in Puerto Rico, opposing application of the proposed higher salary threshold to the U.S. territory. I hope that DOL, in its final rule, will address these comments in comprehensive fashion, explaining fully why DOL has ultimately decided to include or exclude Puerto Rico.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pierluisi", with a stylized flourish at the end.

Pedro R. Pierluisi
Member of Congress

cc: David Weil, Administrator, Wage and Hour Division, U.S. Department of Labor
Howard Shelanski, Administrator, Office of Information and Regulatory Affairs, Office of
Management and Budget, The White House