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New Democrat bill on overtime regulation hits a nerve

By Marc Freedman

On July 14, Rep. Kurt Schrader (D-Ore.) [introduced his bill](#) to soften the impact of the Department of Labor's new overtime regulation. The new regulation hikes the salary threshold, below which most employees are eligible for overtime compensation if they work more than 40 hours a week, to \$47,476—a 100% increase from the current level of \$23,660. In addition to phasing in the salary threshold from December 1, 2016 to December 1, 2019, the Overtime Reform and Enhancement Act (OREA), H.R. 5813, would also remove from the regulation a provision that will increase the salary automatically every three years without going through rulemaking.

Apparently this bill hit a nerve among other House Democrats. In advance of the bill being introduced, the Democrats on the Education and Workforce Committee issued a Dear Colleague that attempts to put a happy face on a regulation that is widely expected to be hugely disruptive and seriously damaging to a wide array of workplaces and employees. The new salary level is so high it's out of synch with California, which means it's out of synch with the rest of the country, especially lower income areas and industries where sometimes the highest ranking exempt employee may not make the new salary level.

The letter's discussion of the regulation's economic impact misses the point by relying on the DOL's estimates and comparing the aggregate impact to overall payroll saying that it "will cost less than one-tenth of one percent of annual payroll for private employers. The same holds true for non-profit employers, colleges and universities, and state and local governments. Each of these sectors will see cost increases of less than one-tenth of one percent of annual payroll as a result of the rule. The impact of the rule on small establishments is also minimal. The Department estimates that the rule will cost just two-tenths of one percent of annual payroll for small establishments." This distorts the impact and obscures the actual impact on individual employers.

The rulemaking record, hearing testimonies, and even the Department's own blogs are full of comments from employers of all types making clear that this regulation will cause serious problems. Especially compelling are the comments from various nonprofits who have said that the new regulation will force them to reduce the number of people they serve, or even in some cases shut down. For instance, [Operation Smile](#) submitted comments that estimated the proposed regulation would cause them to forego almost 4200 free cleft palate surgeries globally a year. Similar comments were filed by the [Boy Scouts of America](#), [Boys and Girls Clubs of America](#), [the Salvation Army](#), [Habitat for Humanity](#), various municipalities, and various institutions of higher education. The Democrats' letter dismissively characterizes impacts to these groups as being "little to no" or "minimal."

The Democrats' letter also cites polling data that they say shows overwhelming support for the new salary threshold. But asking people if they think they should be paid more is like asking a five year old if

they want more Halloween candy. It takes adult supervision to see the bigger picture and realize this may not be appropriate.

On one point the Democrat's letter may be correct: the new "rule will have a significant impact on salaried workers who are newly eligible for overtime." Unfortunately, for them this impact may not be as positive as the Democrats claim. Many employees who have been reclassified from salaried to hourly have resented the change and consider it a demotion. In many cases, they lose the ability to define their work hours, work remotely or use portable electronic technology to do their jobs (this time will have to be compensated and tracked), and even benefits.

The Democrats' letter fails to criticize one of the most important provisions of OREA—eliminating the automatic salary update. The regulation would put in place a new salary threshold every three years without conducting a rulemaking as specified by the FLSA. Not only does the FLSA not authorize it, doing so will ensure that a new salary threshold will go into effect during a future economic downturn—precisely when labor costs on employers should not be increased. The Department's only explanation for this is that they want to avoid the trouble of rulemaking, i.e. making the case for a new increase and taking comments from those affected. Laziness is not an excuse for bad policy.

Thankfully, clear-eyed Democrats like Mr. Schrader (joined by Collin Peterson (D-Minn.), Jim Cooper (D-Ten.), and Henry Cuellar (D-Texas) have stepped up to introduce a sensible bill that will give employers time to prepare and better absorb the impact of the new regulation, as well as jettisoning the unauthorized automatic update provision.

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<http://thehill.com/blogs/congress-blog/labor/287937-new-democrat-bill-on-overtime-regulation-hits-a-nerve>