

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
ARMED SERVICES
BUDGET
ENERGY AND
NATURAL RESOURCES
INTELLIGENCE
RULES AND ADMINISTRATION

November 16, 2016

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

I write today regarding the forthcoming implementation of the Department of Labor's Final Rule *Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees*, which is set to take effect on December 1, 2016. In recognizing that the possibility for additional administrative changes to the final rule may be limited, I strongly urge you to support congressional efforts to phase in the new overtime threshold over several years in order to ease implementation for employers and more firmly cement your legacy on this issue.

I have previously communicated with your Administration regarding my serious concerns about the Department of Labor's (DOL) proposal. While I support the goal of raising the wages of all Americans, the approach taken in the final rule will present a substantial hardship to many Maine small businesses, nonprofits, institutions of higher education, and Medicare- or Medicaid-dependent service providers. The new salary threshold of \$47,476 may work well in wealthier, densely-populated areas of the country, but the more than 100 percent increase to the new threshold in one step is too dramatic an increase for Maine employers to absorb.

In a letter dated April 12, 2016, I asked your Administration to consider several ways to alter its draft rule in order to allow for both an increase to the overtime threshold as well as a much less negative impact on employers in more rural and lower-wage areas of the country. In particular, I asked that your Administration consider phasing in the new salary threshold over several years, in the same way that Congress often elects to phase in increases to the minimum wage. I also asked your Administration to rethink the new salary threshold it had proposed and to consider a threshold that more accurately reflects regional economic differences in median household incomes. In addition, I suggested that the rule's reviewers abandon the proposal to automatically update the overtime threshold in future years through indexing it to inflation or wage growth. Finally, given the complexities associated with implementation of the rule, I requested that your Administration provide businesses with at least one year to come into compliance with the final rule.

Unfortunately, the DOL's final rule did not meaningfully reflect any of these suggestions. While the final salary threshold was slightly lower than that of the proposed rule, the \$47,476 threshold is still too significant an increase for most Maine employers to absorb in one step. The final

rule's inclusion of an automatic update every three years will also present numerous challenges to employers, and the limited timeline for implementation – six months – has meant that many employers in Maine and across the country are ill-prepared to come into compliance with the new rule, particularly during the busy holiday season.

Because the final rule does not reflect the realities of many of the rural economies in the United States, this week I cosponsored S. 3464, the Overtime Reform and Review Act, introduced by Senator Lamar Alexander. This bill would phase in the new overtime threshold over several years and provide policymakers with additional analysis of the rule's impact on small businesses, nonprofits, colleges and universities, and service providers dependent upon federal funding. While I believe that there are several potential approaches your Administration or Congress could take to moderate the impact of the overtime rule, I have concluded that this legislation sets forth a reasonable approach to providing employers with a more manageable implementation schedule while still ensuring that millions of hardworking Americans are fairly compensated for their time on the job.

There are only a few weeks left before the final rule takes effect. As you look to cement your legacy on this issue and to ensure smooth implementation for employers in Maine and across the country, I strongly urge you to offer support for S.3464 or similar legislation that would provide employers with a more realistic timeline to increase salaries for workers and ensure that your goal of raising the overtime threshold is fully realized. I also urge you to explore any possible action that your Administration could take in its final weeks in office to ease implementation for employers who are struggling to come into compliance with the new rule.

Americans across the country are eager to see their wages go up, and a reasonable increase to the overtime threshold could help to achieve that goal. In its current form, however, the DOL's overtime rule will fail to have the impact that has been promised and will create many administrative challenges for employers across the country. I ask that you give serious consideration to this request and consider any legislative or administrative remedy that could facilitate a more reasonable adjustment to the overtime threshold.

Sincerely,

A handwritten signature in blue ink that reads "Angus King". The signature is stylized and includes a horizontal line at the end.

Angus S. King, Jr.
United States Senator