To amend the Fair Labor Standards Act of 1938 to establish a minimum salary threshold for bona fide executive, administrative, and professional employees exempt from Federal overtime compensation requirements, and automatically update such threshold each year, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Brown introduced the following bill; which was read twice and referred to the Committee on __________________

A BILL

To amend the Fair Labor Standards Act of 1938 to establish a minimum salary threshold for bona fide executive, administrative, and professional employees exempt from Federal overtime compensation requirements, and automatically update such threshold each year, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Restoring Overtime Pay Act of 2023”.
SEC. 2. FINDINGS.

Congress finds the following:

(1) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) established overtime compensation requirements for certain employees when they work more than 40 hours in a given workweek.

(2) Under section 13(a)(1) of such Act, Congress delegated to the Secretary of Labor the authority to define and delimit the terms relating to the exemption for bona fide executive, administrative, and professional employees (commonly known as the “white-collar exemption”).

(3) For more than 75 years, the Secretary of Labor has exercised the Secretary’s delegated authority to issue regulations that define and delimit the terms relating to the white-collar exemption by applying a duties test and applying a minimum compensation level (or salary threshold).

(4) The Secretary of Labor began utilizing a salary threshold in the initial regulations defining and delimiting the terms relating to the white-collar exemption, which were first issued in 1938.

(5) Congress has long approved the use of a salary threshold by the Secretary of Labor, as demonstrated by the fact that Congress has amended the Fair Labor Standards Act of 1938 at least 10 times...
since 1938 and has not precluded the Secretary from using a salary threshold.

(6) The salary threshold became woefully out of date and ineffective as a result of not being sufficiently updated to keep pace with the changing economy, as evidenced by the fact that 63 percent of all full-time salaried workers were guaranteed overtime pay under section 7 of the Fair Labor Standards Act of 1938 based on their salaries in 1975 while, in 2022, less than 15 percent of all full-time salaried workers are guaranteed such overtime pay under the overtime rule promulgated on September 27, 2019.

(7) Weak overtime protections also hurt the many workers who are forced into part-time jobs but need full-time jobs to support themselves and their families. When employers can no longer overwork employees who are exempt from overtime pay because of lax standards, they will be forced to spread work and hours across their workforce. Restoring overtime protections is especially important in 2023, as the economy of the United States is still recovering from the pandemic and many workers report their employers demanding excessive hours.

(8) In 2015, when the Department of Labor proposed an increase to the overtime salary thresh-
old rule under the Obama Administration, it found that the historic range of the overtime salary threshold under the Fair Labor Standards Act of 1938 ran from approximately the 35th to the 55th percentile of weekly earnings for all full-time salaried workers. By phasing the overtime salary threshold back up to the 55th percentile of earnings of full-time salaried workers nationally—which after adjusting for inflation is projected to translate to an annualized amount of $73,551 in 2021 and $82,745 by 2026 (roughly the level of the boldest State overtime threshold increase)—the United States can restore overtime protections to historic levels.

SEC. 3. MINIMUM SALARY THRESHOLD FOR BONA FIDE EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES EXEMPT FROM FEDERAL OVERTIME COMPENSATION REQUIREMENTS.

(a) In General.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended—

(1) in subsection (a)(1)—

(A) by inserting “subsection (k) and” after “subject to”; and

(B) by inserting “(except as provided under subsection (k)(2)(C))” after “Administrative Procedure Act”; and
(2) by adding at the end the following:

“(k) MINIMUM SALARY THRESHOLD.—

“(1) IN GENERAL.—Beginning on the effective
date of the Restoring Overtime Pay Act of 2023, the
Secretary shall require that an employee described in
subsection (a)(1), as a requirement for exemption
under such subsection, be compensated on a salary
basis, or equivalent fee basis, within the meaning of
such terms in subpart G of part 541 of title 29,
Code of Federal Regulations (or any successor regu-
lation), at a rate per week that is not less than the
weekly rate of the applicable annualized salary
threshold under paragraph (2).

“(2) SALARY THRESHOLD.—

“(A) IN GENERAL.—Subject to subpara-
graphs (B) and (C), the applicable annualized
salary threshold shall be—

“(i) $45,000, beginning on the effec-
tive date of the Restoring Overtime Pay
Act of 2023;

“(ii) $55,000, beginning on January
1, 2024;

“(iii) $65,000, beginning on January
1, 2025;
“(iv) $75,000, beginning on January 1, 2026; and

“(v) beginning on January 1, 2027, an annualized amount that is equal to the rate of the 55th percentile of weekly earnings of full-time salaried workers nationally, as determined by the Bureau of Labor Statistics based on data from the second quarter of 2026.

“(B) INCREASED THRESHOLD.—The Secretary may establish, through notice and comment rulemaking under section 553 of title 5, United States Code, a salary threshold that is a rate that—

“(i) is greater than the applicable annualized salary threshold under subparagraph (A); and

“(ii) is calculated based on a data set and methodology established by the Secretary that are capable of being updated in accordance with subparagraph (C).

“(C) AUTOMATIC UPDATES.—

“(i) IN GENERAL.—Not later than 1 year after the salary threshold first takes effect under subparagraph (A)(v), and an-
nually thereafter, or, in the case in which
the Secretary establishes an increased sal-
ary threshold under subparagraph (B), an-
ually after establishing such increased
salary threshold, the Secretary shall up-
date the rate of the salary threshold in ef-
fect under subparagraph (A)(v) or (B), as
applicable, so that such rate is equal to—

“(I) in the case in which the Sec-
retary does not establish an increased
salary threshold under subparagraph
(B), the 55th percentile of weekly
earnings of full-time salaried workers
nationally, as determined by the Bu-
reau of Labor Statistics based on data
from the second quarter of the cal-
endar year preceding the calendar
year in which such updated amount is
to take effect; and

“(II) in the case in which the
Secretary establishes an increased sal-
ary threshold under subparagraph
(B), the greater of—

“(aa) the 55th percentile de-
scribed in subclause (I); and
“(bb) the increased salary threshold established under subparagraph (B), as updated in accordance with the data set and methodology established by the Secretary under subparagraph (B)(ii).

“(ii) NONAPPLICABILITY OF RULE-MAKING.—Section 553 of title 5, United States Code, shall not apply to any update described in this subparagraph.

“(D) NOTICE REQUIREMENT.—Not later than 60 days before a revised salary threshold under this paragraph takes effect, the Secretary shall publish a notice announcing the amount in the Federal Register and on the internet website of the Department of Labor.”.

(b) PUBLICATION OF EARNINGS.—Not later than 21 days after the end of each calendar quarter, the Bureau of Labor Statistics shall publish on its public website, for each week of such quarter, data on the weekly earnings of full-time salaried workers by census region (as designated by the Bureau of the Census).
SEC. 4. NONEXEMPT DUTIES LIMIT FOR BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL EMPLOYEES.

Section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213), as amended in section 3(a)(1), is further amended—

(1) by striking “of a retail or service establishment shall not” and inserting “shall”;

(2) by striking “because of” and all that follows through “administrative activities,”;

(3) by striking “less than 40” and inserting “not less than 20”; and

(4) by striking “such activities” and inserting “activities not directly or closely related to the performance of executive or administrative activities”.

SEC. 5. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the first day of the third month that begins after the date of enactment of this Act.