



June 2018

PUERTO RICO

Limited Federal Data Hinder Analysis of Economic Condition and DOL's 2016 Overtime Rule

Why GAO Did This Study

Puerto Rico, the largest and most populous territory of the United States, is subject to congressional authority, although it has broad authority over matters of internal governance. After it defaulted on over \$1.5 billion in public debt since 2015, Congress passed PROMESA to establish federal oversight of fiscal affairs. This debt crisis coincided with DOL finalizing the 2016 Overtime Rule, which was invalidated in federal court and is being appealed. PROMESA included a provision for GAO to assess the rule's impact on Puerto Rico and examine its economic condition.

This report (1) examines the economic conditions in Puerto Rico as of the end of 2016, and (2) assesses the potential effects of applying the 2016 Overtime Rule to Puerto Rico. GAO analyzed 1990-2016 economic data and replicated DOL's impact analysis of the 2016 Overtime Rule using 2015 ACS data, the same year used by DOL in its analysis. GAO also reviewed federal laws, regulations, court documents, agency guidance, and criteria related to the federal overtime rule; facilitated group discussions with employers in Puerto Rico from industries most likely to be impacted by the rule; and interviewed relevant stakeholders and labor groups.

What GAO Recommends

GAO recommends that BEA include Puerto Rico in its reporting on GDP and that Census and BLS study the feasibility of including Puerto Rico in the CPS. Commerce agreed with our recommendations and DOL did not have any comments on the report.

View [GAO-18-483](#). For more information, contact Cindy Brown Barnes at (202) 512-7215 or BrownBarnesC@gao.gov or Oliver Richard at (202) 512-8424 or RichardO@gao.gov.

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Limited Federal Data Hinder Analysis of Economic Condition and DOL's 2016 Overtime Rule

What GAO Found

Unreliable economic and limited labor data make conditions in Puerto Rico difficult to evaluate.

- Puerto Rico Planning Board data show that from 2005 to 2016 Puerto Rico's gross domestic product (GDP), a principal economic indicator, decreased by over 9 percent, after adjusting for inflation, and the devastation brought by Hurricane Maria in 2017 has worsened economic conditions. While the overall downward trend is reliable, GAO found that the Planning Board uses outdated methods to calculate GDP, which results in unreliable data from year to year and can make it difficult for policymakers to fully analyze specific economic needs and develop long-range plans. The Bureau of Economic Analysis (BEA), within the U.S. Department of Commerce (Commerce), does not calculate GDP for Puerto Rico, as it does for the other U.S. territories. For 6 years, BEA has provided technical support to the Planning Board to update its methods and Planning Board officials described plans to do so, but its methods remain outdated. A 2016 Congressional Task Force recommended that BEA calculate Puerto Rico's GDP, and BEA considers it a long-term goal; however, BEA has not taken steps to do so.
- Further, Puerto Rico has limited labor statistics because it is not included in the Current Population Survey (CPS), which is produced by Commerce's Census Bureau (Census) and Department of Labor's (DOL) Bureau of Labor Statistics (BLS). CPS provides detailed information about employment, such as hours of work and earnings. The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) suggested that Census conduct a study to determine the feasibility of expanding data collection to include Puerto Rico. Census officials said that they estimated the cost of such a study but have not yet conducted it. Census officials also cited concerns with data collection burdens. However, without CPS data on Puerto Rico, policymakers are limited in estimating the full economic impact of different policy changes. For example, DOL did not have the data needed to include Puerto Rico in its assessment of the economic impact of DOL's 2016 Overtime Rule. Conducting such a study would help policymakers consider the tradeoffs of including Puerto Rico in the CPS.

GAO used a different dataset—American Community Survey (ACS)—to assess the potential effects of applying the 2016 Overtime Rule, which would have increased the salary level threshold from \$23,660 to \$47,476 at which executive, administrative, and professional workers would not be eligible for overtime pay. GAO estimated that about 47,250 of 1.06 million workers in Puerto Rico would be affected—that is, they would become eligible for overtime pay. In response to a salary level threshold increase, employers from selected industries in Puerto Rico told GAO that they might increase certain workers' salaries, but cut overtime hours for other workers, and adjust the number of staff. An economist and a labor group official said that employers could respond by adjusting the number of staff or their hours, but the impacts to employers may be limited and the workforce could benefit. In 2017, a federal district court invalidated the 2016 Overtime Rule and the overtime salary threshold remains at \$23,660, but that decision is currently on appeal.

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Abbreviations

ACS	American Community Survey
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
BEA	Bureau of Economic Analysis
BLS	Bureau of Labor Statistics
BTS	Bureau of Transportation Statistics
Census	Census Bureau
CIA	Central Intelligence Agency
Commerce	Department of Commerce
CPS	Current Population Survey
DOI	Department of the Interior
DOL	Department of Labor
EAP	Executive, Administrative, and Professional
EIA	Energy Information Administration
Factbook	World Factbook
FEMA	Federal Emergency Management Agency
FLSA	Fair Labor Standards Act
GDP	Gross Domestic Product
GNP	Gross National Product
HCE	Highly Compensated Employees
IRC	Internal Revenue Code
NPRM	Notice of Proposed Rulemaking
Oversight Board	Financial Oversight and Management Board
Planning Board	Puerto Rico Planning Board
PRCS	Puerto Rico Community Survey
PROMESA	Puerto Rico Oversight, Management, and Economic Stability Act
SHRM	Society for Human Resource Management
SNA	System of National Accounts
WHD	Wage and Hour Division

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June 29, 2018

Congressional Committees

Puerto Rico—the largest and most populous territory of the United States—has a relationship with the federal government that is in some ways similar to the states and in other ways distinct.¹ As a territory, Puerto Rico is subject to congressional authority, although it has been granted broad authority over matters of internal governance. However, since 2015, Puerto Rico has defaulted on over \$1.5 billion in debt payments. In June 2016, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was enacted.² The law established a structure for oversight of Puerto Rico’s fiscal affairs and a process for the territory to restructure its debts. Puerto Rico’s fiscal decline coincided with the Department of Labor’s (DOL) publication of a final rule that increased the salary threshold for overtime pay among executive, administrative, or professional (EAP) employees in the states and Puerto Rico.³

PROMESA included a provision for GAO to conduct an assessment and issue a report to examine the economic conditions of Puerto Rico as well as the impact of applying the regulation to Puerto Rico.⁴ Prior to its effective date, during the course of our work, the Federal District Court of the Eastern District of Texas found the rule to be unlawful. This report (1) examines the economic conditions in Puerto Rico as of the end of 2016, and (2) assesses the potential effects of applying the 2016 Overtime Rule to Puerto Rico.

¹ For the purposes of this report, we use “states” in reference to the 50 states and the District of Columbia.

² Pub. L. No. 114-187, 130 Stat. 549 (2016).

³ Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,391 (May 23, 2016) (codified at 29 C.F.R. pt. 541). For ease of reference, in this report, we will refer to these regulations as the “2016 Overtime Rule.”

⁴ Further, in order to apply the 2016 Overtime Rule to Puerto Rico, PROMESA required DOL to provide a written determination to Congress that applying the 2016 Overtime Rule to Puerto Rico would not have a negative impact on the economy of Puerto Rico. PROMESA required DOL to take this report into consideration when providing a written determination to Congress. DOL did not consider Puerto Rico in its analysis of the impact of the rule change because the territory was not included in the federal data the agency used.

To address our objectives, we collected data from fiscal years 1990 through 2016, the most recent data available, on Puerto Rico's gross domestic product (GDP) from the Puerto Rico Planning Board.⁵ We also collected monthly data from 2016 and 2017 on the flow of passengers on one-way flights to and from Puerto Rico from the Bureau of Transportation Statistics (BTS).⁶ Additionally, we collected data on individual earnings from the 2015 5-year American Community Survey (ACS) because DOL used 2015 data in its analysis of the impact of the 2016 Overtime Rule on the states. We assessed the reliability of the ACS data by reviewing data documentation and interviewing officials at the Department of Commerce's Census Bureau (Census) who use and maintain the dataset. We determined that the data from these sources were reliable for the purposes of our report.

For both objectives, we also reviewed relevant federal laws, regulations, court documents, and agency guidance related to the 2016 Overtime Rule. In addition, we reviewed federal laws and regulations related to labor in Puerto Rico, as well as agency guidance related to statistical measures for Puerto Rico. We also reviewed federal internal control standards related to management's use of quality information to achieve objectives. We interviewed DOL and Department of Commerce officials at the national level and Puerto Rican government officials. We also interviewed representatives of national and Puerto Rican employer and labor organizations and conducted 10 facilitated group discussions in Puerto Rico with employers in the restaurant, hotel, hospital, manufacturing, and professional service industries. These are some of the industries that employ the largest number of people in Puerto Rico and are among the most likely to be impacted by any changes to the

⁵ GDP measures the value of goods and services produced inside a country, or for the purpose of this report, a territory. In contrast, gross national product (GNP) measures the value of goods and services produced by its residents. GNP includes production from residents abroad and excludes production by foreign companies in a country. In Puerto Rico, GDP has consistently been greater than GNP, which means that production by foreign companies in Puerto Rico is larger than production by Puerto Rican residents in the territory and abroad. We interviewed Planning Board officials responsible for producing the annual GDP estimates to understand how the data were prepared and any limitations to the data, and concluded that the while we have concerns over the precision of real GDP data, they were sufficiently reliable for our purposes of determining the direction of growth as discussed later.

⁶ We reviewed the relevant documentation of the dataset and previous GAO reports and found the dataset sufficiently reliable for our purposes.

overtime regulations.⁷ We interviewed several economists, identified from prior work and interviews with agency officials, industry groups, and labor groups as having expertise relating to the 2016 Overtime Rule or the Puerto Rico economy, regarding the economic conditions of Puerto Rico and the potential economic impacts of the 2016 Overtime Rule.

To examine Puerto Rico's economic condition, we reviewed related GAO reports concerning Puerto Rico and its economy. To assess the potential effects of applying the 2016 Overtime Rule to Puerto Rico, we used a methodology similar to the one used by DOL in its final economic impact analysis of the 2016 Overtime Rule in the United States. Specifically, DOL estimated the number of people who would be directly affected by the rule because their salary level would make them no longer exempt from overtime pay. However, while DOL used Census's Current Population Survey (CPS) data, which does not include Puerto Rico, we used ACS data, which does. For more information on our scope and methodology, see appendix I.

We conducted this performance audit from September 2016 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁷ Facilitated discussion groups are generally designed to obtain in-depth information about specific issues that cannot be obtained as efficiently from single interviews. Methodologically, facilitated discussions are not designed to provide results that are generalizable to a larger population or provide statistically representative samples or quantitative estimates. Participants in all discussion groups were selected as nonprobability samples of their corresponding populations. The views represented are those only of the businesses that participated in our groups and may not be representative of all employers in Puerto Rico.

Background

Puerto Rico's Territorial Status and Residents' Status

Puerto Rico is the most populous U.S. territory with approximately 3.3 million residents. Puerto Rico and its residents are generally subject to the same federal laws as the states and their residents, except in cases where specific exemptions have been made, such as with certain federal programs. Individuals born in Puerto Rico are U.S. citizens and can migrate freely to the states.

Hurricane Maria

On September 20, 2017, Hurricane Maria, a category 4 storm, devastated Puerto Rico and left nearly all its residents without potable running water and electricity. In addition, the existing infrastructure for cellular and wireless service was rendered virtually useless, hampering communication. Four months after Hurricane Maria, more than a third of Puerto Rico's energy customers remained without power.⁸ The lack of power and communication impeded residents' ability to return to work. According to the Federal Emergency Management Agency (FEMA), rebuilding will take years.

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA)

PROMESA established a Financial Oversight and Management Board for Puerto Rico (Oversight Board), and granted it broad powers of fiscal and budgetary control over Puerto Rico.⁹ The Oversight Board is comprised of seven members appointed by the President of the United States from a list of recommendations from House and Senate Leadership and one ex-officio member designated by the Governor of Puerto Rico. PROMESA also established a mechanism through which the Oversight Board could petition U.S. courts on Puerto Rico's behalf to restructure debt.¹⁰

⁸U.S. Department of Energy, Infrastructure Security & Energy Restoration, *Hurricanes Maria & Irma: Event Summary*, Situation Report 87 (Jan. 17, 2018).

⁹ Pub. L. No. 114-187, 130 Stat. 549.

¹⁰ Under federal bankruptcy laws, Puerto Rico is otherwise prohibited from authorizing its municipalities and instrumentalities from petitioning U.S. courts to restructure debt. For more information on Puerto Rico's fiscal crisis see GAO, *Puerto Rico: Factors Contributing to the Debt Crisis and Potential Federal Actions to Address Them*, [GAO-18-387](#), (Washington, D.C.: May 2018).

Government Assessment of Puerto Rico's Economic Condition

Under Puerto Rico law, the Puerto Rico Planning Board (Planning Board) has the legal responsibility of developing an economic outlook and a detailed analysis of the economy, including gross domestic product (GDP), and producing an annual Economic Report to the governor and to the legislature.¹¹ The Planning Board Chairperson releases GDP measures only after approval from the governor's office, according to Planning Board officials.

The Department of Commerce's Bureau of Economic Analysis (BEA) produces economic accounts statistics that enable government and business decision-makers, researchers, and the American public to follow and understand the performance of the nation's economy. To do this, BEA collects source data, conducts research and analysis, develops and implements estimation methodologies, and disseminates statistics to the public. BEA calculates GDP for the United States, including for the territories of American Samoa, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands. Since 2009 the Department of the Interior's Office of Insular Affairs has reimbursed BEA for estimating and publishing GDP for these territories. This office carries out the administrative responsibilities of the Secretary of the Interior and the Assistant Secretary for Insular Areas by coordinating federal policy for these territories, but does not for Puerto Rico.

Census in cooperation with the Department of Labor's Bureau of Labor Statistics (BLS) produces the Current Population Survey (CPS), which provides statistics on work, earnings, and education. CPS is one of the oldest, largest, and most well-recognized surveys in the United States, according to Census. In addition to being the primary source of monthly labor force statistics, the CPS is used to collect data for a variety of other studies that provide information on economic and social well-being

¹¹ GDP is one of the most comprehensive and closely monitored economic statistics of the nation's total output of goods and services because it measures the sum of personal consumption expenditures, gross private domestic investment, government consumption expenditures, and net exports. GDP is used by the administration and Congress to prepare the federal budget, by the Federal Reserve to formulate monetary policy, by Wall Street as an indicator of economic activity, and by the business community to prepare forecasts of economic performance that influence production, investment, and employment planning decisions.

factors. The CPS does not collect or report data for Puerto Rico or any of the other U.S. territories.¹²

Census also produces the American Community Survey (ACS). It is an ongoing survey that provides national information on a yearly basis that includes information for the States, as well as for Puerto Rico. The ACS includes data on jobs and occupations, educational attainment, veterans, whether people own or rent their homes, and other topics. Information from the survey generates data that help determine how more than \$675 billion in federal and state funds are distributed each year.

Federal Labor Laws

DOL's Wage and Hour Division (WHD) administers the wage, hour, and child labor provisions of the Fair Labor Standards Act of 1938 (as amended) that sets the minimum wage and overtime pay standards applicable to most U.S. workers. The Fair Labor Standards Act (FLSA) requires employers to compensate employees who are covered by the act and not specifically exempt from its provisions, at least federal minimum wage (currently \$7.25 per hour) and with premium pay (at one-and-one-half the regular rate) for overtime hours worked in excess of 40 hours in a workweek.¹³ There are a number of exemptions from the requirements of the FLSA.¹⁴ For example, employees working in a "bona fide executive, administrative, or professional capacity" (EAP) are not entitled to premium pay for overtime.

The FLSA was enacted to address problems associated with substandard working conditions by, in part, establishing a floor on wages and a ceiling on hours, beyond which the employer is required to pay extra wages. With a requirement for overtime pay, employers would either have to hire more workers or assume extra wage costs in order to achieve the same amount of work. Employees would be assured additional pay to compensate them for the burden of a workweek in excess of 40 hours. The Minimum Wage Study Commission of 1981 justified the EAP exemption in part because these employees are associated with higher

¹² Puerto Rico's government conducts its own household survey patterned after the CPS. However, the survey does not collect as much information as CPS, such as weekly wage information.

¹³ 29 U.S.C. §§ 206, 207.

¹⁴ 29 U.S.C. § 213.

base pay, higher promotion potential, and greater job security than most of the U.S. labor force.

For employers and employees, the practical effects of the exempt employee classification can be important. An exempt employee may be required to work as many hours as it takes to complete a task. Although this may be more than 40 hours per week, the employee will not be entitled to overtime pay. Thus, an exempt financial manager may be required to work 60 hours a week and be paid a set weekly salary. On the other hand, a nonexempt bookkeeper may be required to work 60 hours per week, but must be paid for 20 hours of overtime, in addition to a set weekly salary.¹⁵

The FLSA authorizes DOL to define EAP exemptions. Balancing the competing interests of expanding exemptions and restricting them, DOL regulations establish specific tests that must be met before an employee may be classified as an EAP and exempt from overtime. In general, there are three tests:

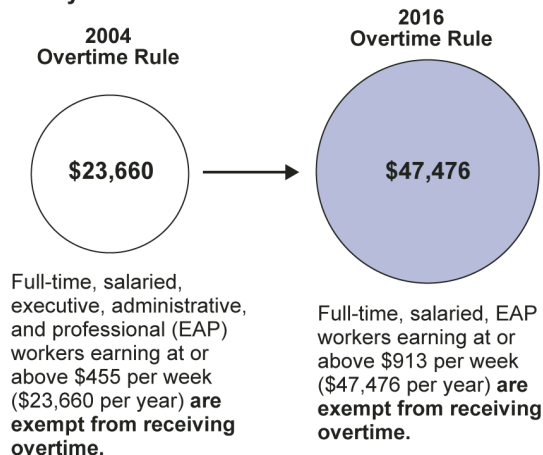
- **Salary Basis Test.** The employee must be paid on a salary basis, rather than an hourly basis. This means that the employee must be paid at least the guaranteed amount, regardless of the number of hours actually worked and the quality or quantity of worked performed.
- **Salary Level Test.** The employee must meet a minimum salary level that indicates managerial or professional status.
- **Duties Test.** The employee must have duties and responsibilities associated with an exempt EAP position.

¹⁵ Salaried workers may be either exempt or nonexempt; being paid a salary is not, by itself, determinative of an individual's exempt status.

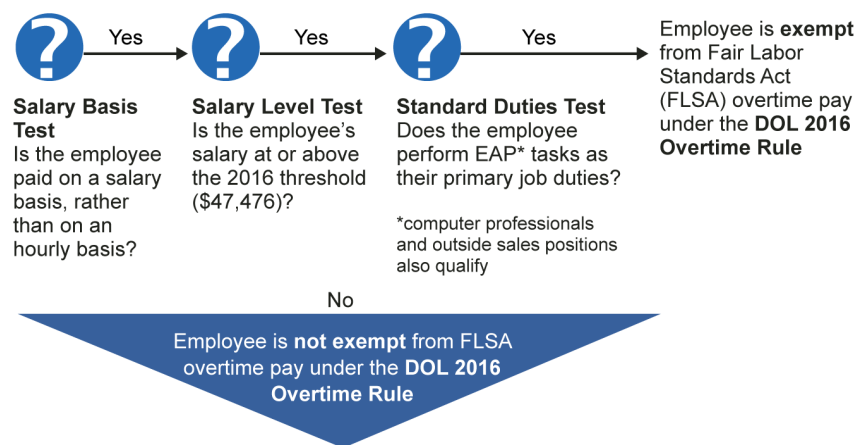
In 2003, DOL reviewed the regulations for EAP exemptions in response to a GAO recommendation.¹⁶ Based on its review, in 2004 DOL increased the minimum “salary level” threshold for an employee to be exempt from receiving overtime pay to \$23,660. In May 2016, DOL again updated minimum the salary level threshold for EAP employees to be exempt from receiving overtime pay to \$47,476 in the 2016 Overtime Rule (see fig. 1).

Figure 1: Overview and Details on Changes Made by the Department of Labor’s (DOL) 2016 Overtime Rule

2016 Overtime Rule Change in Salary Rule Threshold



Exemption Tests



Source: GAO analysis of DOL final rule. | GAO-18-483

Note: An employee must meet all three exemption test requirements to be exempt from FLSA overtime pay under the 2016 rule. Due to ongoing litigation, the 2016 Overtime Rule is not in effect, and the 2004 salary threshold remains in place.

¹⁶ GAO/ HEHS-99-164. In 1999, GAO recommended that the Secretary of Labor comprehensively review the regulations for the white-collar exemptions and make necessary changes to better meet the needs of both employers and employees in the modern work place. Some key areas of review included the categories of employees covered by the exemptions. In response, DOL convened a series of stakeholder meetings in 2002 to review the regulations for white-collar exemptions, including the categories of employees covered by the exemptions. In 2004, DOL reviewed and considered stakeholder comments, and published a final rule in the *Federal Register* that included an update to the salary level used to determine whether a worker is exempt. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 69 Fed. Reg. 22,122 (April 23, 2004) (codified at 29 C.F.R. pt. 541).

Status of the 2016 Overtime Rule

In July 2015, DOL proposed updating the overtime regulations relating to the EAP exemption, and published a notice of proposed rulemaking.¹⁷ After receiving approximately 294,000 comments, the Secretary of Labor published the final rule on May 23, 2016 (2016 Overtime Rule). The major changes included increasing the salary level threshold from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually) and providing an automatic update to the salary level every 3 years.¹⁸ DOL estimated that about 4.2 million EAP employees in the states would become newly entitled to overtime pay under the revised salary level threshold. At the time of publication, the 2016 Overtime Rule would have applied to Puerto Rico; however, on June 30, 2016, prior to the rule's effective date of December 1, 2016, PROMESA was enacted which, in part, delayed the applicability of this rule to Puerto Rico.¹⁹

Prior to the 2016 Overtime Rule going into effect, several states and various business groups challenged the rule in the Federal District Court of the Eastern District of Texas. On November 22, 2016, this court issued a nationwide preliminary injunction preventing DOL from implementing and enforcing the 2016 Overtime Rule for the duration of the case.²⁰ In the interim, the 2004 Overtime Rule salary level threshold for EAP employees of \$23,660 remained in effect. In July 2017, DOL published a Request for Information to gather additional information to begin the rulemaking process to replace and update the overtime regulations.²¹ In August 2017, the district court determined that the 2016 Overtime Rule was unlawful and ordered it invalidated.²² In October 2017, DOL filed a

¹⁷ Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 80 Fed. Reg. 38,515 (proposed Sept. 4, 2015)(to be codified at 29 C.F.R. pt. 541)

¹⁸ The 2016 final Overtime Rule also increased the total annual compensation requirement for highly compensated employees (HCE) from \$100,000 to \$134,004. Employees paid in excess of this threshold, must satisfy a less rigorous duties test to be exempt from overtime as EAP employee. For this study we do not focus on the HCE threshold.

¹⁹ Pub. L. No. 114-187, Title VI, § 404, 130 Stat. 549, 586.

²⁰ Memorandum Opinion and Order at 60, Nevada v. Dep't of Labor, No. 16-41606 (E.D.Tex. Nov. 22, 2016).

²¹ Request for Information; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 82 Fed. Reg. 34,616 (proposed July 26, 2017).

²² Memorandum Opinion and Order at 100, Nevada v. Dep't of Labor, No. 16-41606 (E.D.Tex. Aug. 31, 2017).

motion to appeal that ruling with the Fifth Circuit Court of Appeals.²³ In November 2017, DOL filed a motion to stay the appeal pending the outcome of its rulemaking, and the Fifth Circuit granted this motion.²⁴ DOL's comment period for the Request for Information ended on September 25, 2017, and the agency currently is reviewing submissions. DOL plans to publish a Notice of Proposed Rulemaking on the salary level threshold for EAP employees in October 2018.²⁵ Meanwhile, the 2004 Overtime Rule continues to remain in effect as of today, while the appeal and rulemaking are pending.²⁶

Puerto Rico's Labor Laws

In addition to FLSA, workers and employers in Puerto Rico may be subject to various other federal, Puerto Rican, and local labor laws or regulations depending on eligibility, exemptions, and other limitations.²⁷ In some cases, including sick leave, vacation leave, mandatory meal period, weekly day of rest, and maternity leave, these laws may be more generous to workers than federal law, according to Puerto Rico Department of Labor officials.²⁸

²³ Notice of Appeal at 119, *Nevada v. Dep't of Labor*, No. 16-41606 (E.D.Tex. Oct. 30, 2017).

²⁴ Order Granting Unopposed Motion at 11, *Nevada v. Dep't of Labor*, No. 17-41130 (5th Cir. Nov. 6, 2017).

²⁵ Environmental Protection Agency Program Management Office, *Department of Labor Regulatory Agenda*, <https://resources.regulations.gov/public/custom/jsp/navigation/main.jsp> (last visited Apr. 18, 2018).

²⁶ Given that the 2016 Overtime Rule has never been in effect, in this report, we refer to possible effects or impact of the 2016 Overtime Rule.

²⁷ Most states also have their own wage and hours laws. Some of these laws mirror the FLSA, while others are more or less generous to employees. In addition, local governments (such as cities and counties) often have their own wage and hour laws, particularly minimum wage laws for employers doing business locally. Generally, if more than one law applies, an employer must comply with the provision that is most favorable to employees.

²⁸ The descriptions of Puerto Rican laws below were provided to us by the Puerto Rico Department of Labor and are meant to provide examples of Puerto Rican labor requirements and are not intended to be comprehensive. These descriptions do not include the relevant federal and local labor laws that apply to employees in Puerto Rico. Additional details on applicable requirements and coverage can be found in the cited sources.

-
- **Sick leave.** Non-exempt employees in Puerto Rico are entitled to accrue at least 1 day of paid sick leave after working at least 130 hours per month.²⁹
 - **Vacation leave.** Non-exempt employees in Puerto Rico are entitled to accrue paid vacation after working at least 130 hours per month. Non-exempt employees hired before January 26, 2017, are entitled to a minimum monthly vacation leave accrual rate of one-and-a-quarter days. Non-exempt employees hired on or after January 26, 2017, are entitled to a minimum monthly vacation leave accrual rate of a half-day during the first year of service; three-quarters of a day after the first year of service up to the fifth year of service; 1 day after the fifth year of service up to the fifteenth year of service; and one-and-a-quarter days after the fifteenth year of service. However, in the case of Puerto Rico resident employers who have less than 12 employees, the minimum monthly vacation leave accrual rate is a half-day.³⁰
 - **Mandatory meal period.** Non-exempt employees in Puerto Rico are entitled to a mandatory meal period between the third and sixth consecutive hour of work. In general, any employer that employs or allows an employee to work during the meal period is required to pay said period or fraction thereof at a pay rate equal to twice or one and one-half times the regular pay rate, as applicable.³¹
 - **Weekly day of rest.** Non-exempt employees in Puerto Rico are entitled to a mandatory weekly day of rest for every six consecutive days of work.³² Work performed during the day of rest is considered overtime and requires extraordinary compensation, regardless of the total number of hours that the non-exempt employee worked in the preceding 6 days.³³
 - **Maternity leave.** Pregnant women in Puerto Rico are entitled to paid maternity leave 4 weeks before and 4 weeks after childbirth. Working mothers may opt to take only 1 week of pre-natal leave and extend

²⁹ 29 LPRA § 250d.

³⁰ 29 LPRA § 250d.

³¹ 29 LPRA § 283.

³² 29 LPRA § 295.

³³ 29 LPRA § 273d.

post-natal leave up to 7 weeks. Women who adopt a child 5 years old or younger are entitled to 8 weeks of maternity leave.³⁴

Possessions Tax Credit

The Tax Reform Act of 1976 created the possessions tax credit to assist Puerto Rico and other insular areas in obtaining employment-producing investments. The credit effectively reduced federal taxes on income earned by qualifying U.S. corporations from operations in U.S. insular areas. However, the credit was repealed in 1996, but existing claimants were allowed to continue to use the credit during a 10-year phaseout period ending in 2006. In 2006, we reported that U.S. corporations claiming the credit dominated Puerto Rico's manufacturing sector in the late 1990s and that after the tax credit began to phase out in 1996, the activities of these corporations decreased significantly.³⁵

Unreliable Economic Data Make Conditions in Puerto Rico Difficult to Evaluate

Prior to Hurricane Maria, Puerto Rico Had Already Experienced Prolonged Economic Decline

Overall Economic Decline

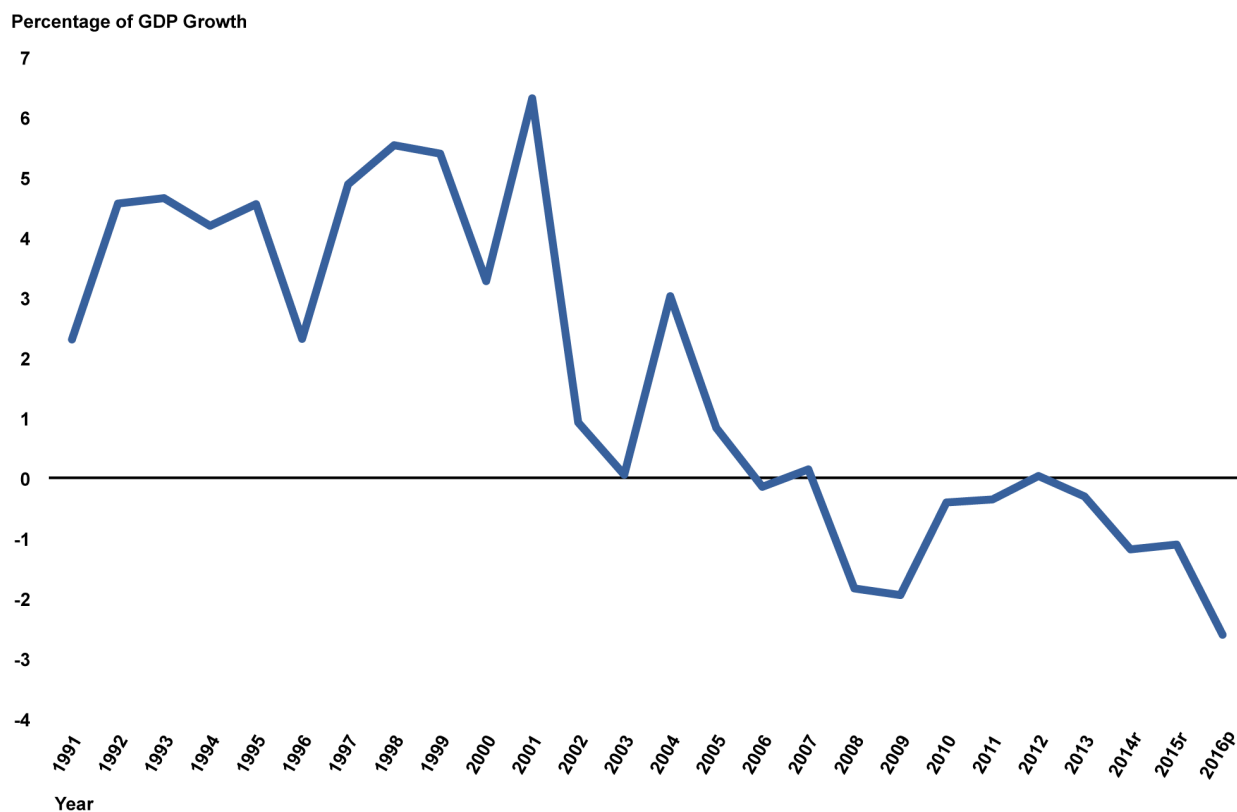
Puerto Rico Planning Board (Planning Board) data show that Puerto Rico has been in an economic decline for more than a decade. From 2005 to 2016, Puerto Rico's GDP decreased by over 9 percent, after adjusting for inflation. Beginning in 2006, Puerto Rico's economy experienced declines in real output in 9 of the next 11 years, as measured by real GDP (see fig. 2). While we have concerns about the precision of the Planning Board's

³⁴ 29 LPRA § 467.

³⁵ See GAO, *Puerto Rico: Fiscal Relations with the Federal Government and Economic Trends during the Phaseout of the Possessions Tax Credit*, [GAO-06-541](#) (Washington, D.C.: May 19, 2006).

real GDP measure from year to year, as discussed later, we are confident in the downward direction of growth.³⁶

Figure 2: Puerto Rico Real Gross Domestic Product (GDP) Growth, 1991-2016



Source: GAO analysis of Puerto Rico Planning Board data. | GAO-18-483

Notes: Years marked with “r” have revised numbers. “2016p” represents preliminary numbers for 2016.

Puerto Rico officials described the economic contraction as a downward spiral, where negative economic growth spurred outmigration by skilled workers, leading to decreased tax revenue and thereby increasing public debt per capita. This, in turn, they said decreases new investment and the cycle repeats.

³⁶ To describe the Puerto Rico economic decline, we analyzed real GDP data from the Puerto Rico Planning Board because there is no federal statistical measure. This is discussed in further detail later in this section.

Five Main Factors that Contributed to Puerto Rico's Economic Condition

In May 2018, GAO reported on five main factors it identified through discussions with officials and experts and a review of literature. The factors were:

Outmigration and diminished labor force.

Some experts tied Puerto Rico's negative economic growth to a steady decline in its population and labor force since 2005.

According to Census data, Puerto Rico's aging population means there are proportionally fewer individuals of working age.

Regulatory challenges of doing business in Puerto Rico.

Some experts cited the high cost to businesses of complying with Puerto Rico's regulations, such as the permitting process for new businesses, and federal laws, such as the minimum wage law.

High cost of importing goods and energy.

Many of the goods used by businesses in Puerto Rico must be imported, significantly increasing their costs and in turn the cost of doing business. Petroleum, the main source of electrical energy generation, is a good whose high cost was particularly consequential to Puerto Rico's economic struggles, according to Puerto Rico government officials, experts, and a literature reviews.

Phaseout of the possessions tax credit.

The loss of the tax credit was cited by some as a potential cause of Puerto Rico's economic decline since 2006; however, there was no consensus as to the magnitude.

Banking and housing struggles. Puerto Rico's banks have struggled and several have closed. Puerto Rico's housing prices peaked in 2009, but fell 25 percent by January 2017, according to Federal Housing Finance Agency data.

Source: GAO. | GAO-18-483.

In our May 2018 report examining the Puerto Rico debt crises, we spoke with officials and experts, and conducted a literature review, and identified five main factors contributing to Puerto Rico's current economic condition: outmigration and a diminished labor force; regulatory challenges of doing business in Puerto Rico; the high cost of importing goods and energy; the phaseout of the possessions tax credit; and banking and housing struggles (see sidebar).³⁷

³⁷ In [GAO-18-387](#), we interviewed federal officials, current and former Puerto Rico officials, and other experts on Puerto Rico's economy, and conducted a literature review to identify these factors.

Hurricane Maria's Economic Impact

Puerto Rico was already experiencing a long economic contraction when Hurricane Maria made landfall in September 2017. Previous U.S. natural disasters, such as Hurricane Katrina in the Gulf Coast, have had significant adverse impacts on the economies of the affected regions, including significant outmigration. Immediately following Hurricane Katrina, the Gulf Coast experienced a number of challenges to its economy including a rise in unemployment; an increase in outmigration and decrease in housing units; a decline in state tax revenue; and a decline in imports and exports.³⁸ Puerto Rico may experience similar challenges. For example, a February 2018 Federal Reserve Bank of New York press briefing on the impact of Hurricanes Maria and Irma characterized the 4 percent local job losses in Puerto Rico as substantial.³⁹ Further, the briefing indicated that the true economic cost may be understated because some workers who are still employed likely suffered a drop in income, there may be unmeasured effects on the informal economy, and the value people place on quality of life issues are not measured.

The substantial damage to the territory also accelerated outmigration and will likely worsen its economic condition. A January 2018 report from the Puerto Rico government identified the 2017 hurricanes as having a significant impact on the economy and projected that the population will decline by 10 percent over the next 2 years and could decline by nearly 20 percent over the next 5 years as people leave the island due to poor economic conditions.⁴⁰ Initial data from the U.S. Bureau of Transportation Statistics show that 92,284 more people flew out of Puerto Rico with one-way tickets than flew into Puerto Rico in October 2017, the first full month after Hurricane Maria.⁴¹ That number represents a 255 percent increase over similar statistics in August 2017 and a 1,195 percent increase over

³⁸ Economics and Statistics Administration, U.S. Department of Commerce, *The Gulf Coast: Economic Impact & Recovery One Year after the Hurricanes*, (Washington, D.C.: Oct. 2006).

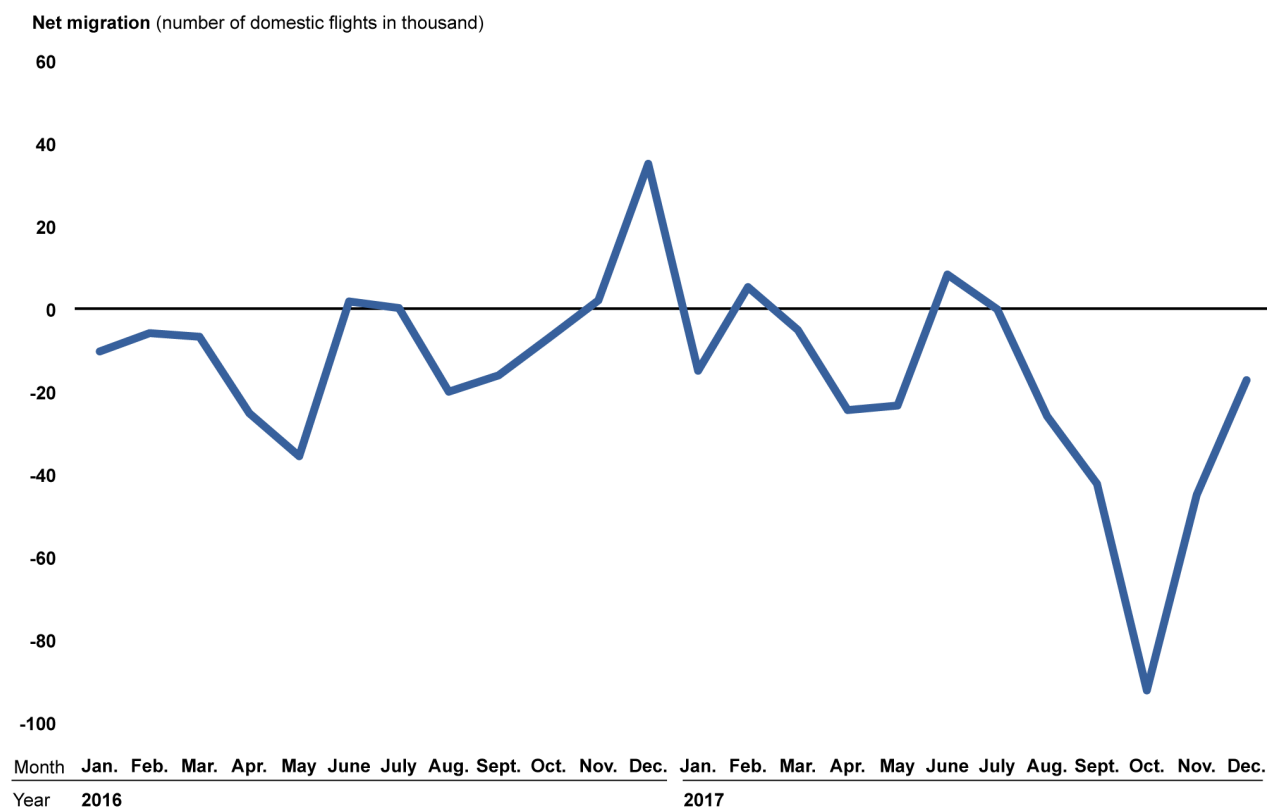
³⁹ Federal Reserve Bank of New York, Jason Bram, Officer Research Economist, *Puerto Rico and the U.S. Virgin Islands After Hurricanes Irma and Maria*, Economic Press Briefing (New York, N.Y.: Feb. 22, 2018).

⁴⁰ Government of Puerto Rico, *New Fiscal Plan for Puerto Rico, Draft Submission* (Jan. 2018).

⁴¹ In October 2017, 237,062 people flew with one-way tickets out of Puerto Rico while 144,778 flew with one-way tickets into Puerto Rico. A one-way flight out of Puerto Rico is not necessarily indicative of a person's intent to migrate, but can be used to provide a migration estimate.

October 2016 (see fig. 3). By December 2017, 17,281 more people flew out of Puerto Rico with one-way tickets than flew into Puerto Rico. This is 149 percent increase over similar statistics for December 2016. While the extent to which citizens of Puerto Rico may return to the territory is unclear, the initial outmigration could prolong negative economic growth.

Figure 3: Puerto Rico Net Migration from One-Way Domestic Airline Flights, 2016-2017



Source: GAO analysis of Bureau of Transportation Statistics data. | GAO-18-483

Methods Currently Used To Measure Puerto Rico's Economy Are Outdated and Lead to Unreliable Measures

Measuring GDP in Puerto Rico

Outdated methods for measuring GDP make it difficult for the Puerto Rico government to fully analyze specific economic needs and develop long-

range plans. There is no federal statistical measure of Puerto Rico's GDP.⁴² The U.S. Census' Economic Census of Island Areas provides some limited insights into Puerto Rico's economic performance by industry, including revenue, payroll, employee count, and inventories.⁴³ The Economic Census of Island Areas is updated every 5 years, but does not include total GDP.⁴⁴ Instead, each year, BEA calculates GDP for four other territories and is reimbursed by the Department of the Interior's Office of Insular Affairs for the estimation and publication of this information.⁴⁵

In contrast, Puerto Rico's Planning Board calculates GDP, but its methods are outdated and therefore unreliable, as they do not provide a precise measure of economic activity. Specifically, a 2011 White House Task Force Report examining Puerto Rico's economic challenges found the Planning Board's methods were outdated because they did not follow the same standards used for the rest of the United States. The Task Force also found that the methodology was not in line with modern statistical techniques, resulting in a less precise measure of Puerto Rico's economic activity.⁴⁶ Accurately calculating GDP is necessary to

⁴² BEA does not measure Puerto Rico's GDP as part of the National Income and Product Accounts, but it may be measured by other federal agencies. For example, the Central Intelligence Agency (CIA) maintains the World Factbook (Factbook), which includes information on the economies of 267 world entities, including GDP. The Factbook includes GDP data for Puerto Rico. Most Factbook GDP estimates are based on extrapolation of numbers published by the United Nations International Comparison Program and by Professors Robert Summers and Alan Heston of the University of Pennsylvania and their colleagues. However, Factbook data are not traditionally relied upon for federal statistical measures of U.S. GDP.

⁴³ For the 2012 Economic Census of Island Areas, the most recent one available, only two industries have inventories reported.

⁴⁴ The Census's Economic Census of Island Areas and the Puerto Rico Planning Board both provide data on employee compensation, but use different industries and cannot be accurately compared.

⁴⁵ The fiscal year 2017 agreement specified that BEA will provide support for the improvement of the quality of economic statistics for American Samoa, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands, including revising previously published estimates of GDP, preparing new annual estimates of GDP and its components, and revising and preparing supplementary economic measures. BEA officials told us they rely on source data from each territory when calculating GDP. The agreement further specified that DOI will reimburse BEA \$750,000 to pay for all of its actual costs.

⁴⁶ Report by the President's Task Force on Puerto Rico's Status (Washington, D.C.: March 2011).

adequately measure total output of goods and services in Puerto Rico. GDP is also useful in measuring productivity and conducting monetary policy, and may be used to develop and apply appropriate policies for promoting economic growth. For example, a reliable and timely measure of GDP helps government officials calculate more accurate projections of tax revenue.

The Planning Board's method for calculating GDP does not effectively adjust for inflation because, the methodology uses a fixed-weighted index method that assumes the structure of the economy—what is being produced and prices of what is being produced relative to each other—is roughly constant over time. Further, the Planning Board is using this method to report inflation adjusted GDP based on the prices in a 1978 “market basket”—a fixed set of goods and services that people buy for day-to-day living.⁴⁷ The Planning Board then uses 1954 as the reference year in its inflation adjustment to report GDP based on the price of goods and services.⁴⁸ Consequently, the Planning Board's real GDP measure may not be accurately adjusted to reflect current purchasing patterns and inflation in the prices of purchased products.

BEA provides Puerto Rico's Planning Board with some support in its calculation of GDP, but does not verify the accuracy of the calculation. In response to the 2011 White House Task Force findings, BEA began providing technical assistance and support to the Planning Board in updating its methods to adjust GDP for inflation and developed a report with recommendations for updating economic accounts.⁴⁹ BEA found that

⁴⁷ Planning Board officials told us that since 2009 they have taken steps to update the 1978 basket of goods over time following classifications from the North American Industry Classification System and incorporated other goods and services based on consumer's patterns. When a consumption pattern from Puerto Rico is not available, the Planning Board uses changes in the U.S. Personal Consumption Expenditures. However, the consumption pattern of the 1978 basket of goods has not been updated in 4 years and Planning Board officials still refer to it as a basket of goods from 1978 as it has not been systematically updated since then.

⁴⁸ BEA uses 2009 as a reference year for the other U.S. territories, and, rather than using a fixed-weight index method, uses different weights that are appropriate for each year.

⁴⁹ A major concern identified by BEA in the report was how the Planning Board calculates inflation-adjusted measures of GDP, or “real” GDP. U.S. Department of Commerce, Bureau of Economic Analysis, *Evaluation and Improvement of Puerto Rico's National Economic Accounts* (Sept. 2011). Economic accounts provide the quantitative view of domestic production, consumption, and investment, of exports and imports, and of national and domestic income and saving. It features the estimates of GDP.

the Planning Board's methods did not comply with the internationally agreed upon standards for compiling measures of economic activity.⁵⁰ Officials said that BEA was helping the Planning Board update its methods; however, a change in the level of communication slowed the update from 2013 through 2014. As a result, the Planning Board continued to use the same outdated methods.

In January 2017, the Planning Board and BEA signed an agreement to modernize Puerto Rico's economic accounts and align them with international guidelines.⁵¹ The agreement also tasked the Planning Board with providing deliverables in regular intervals beginning in spring 2017, including publication of alternative estimates of GDP that implement steps towards modernization. BEA officials told us that they are providing support to the Planning Board, and Planning Board officials told us they are working on updating the methodology. However, as of March 2018, the Planning Board had not yet produced all of the agreement deliverables, including publication of alternative GDP estimates.

Given the impact of Hurricane Maria, it may be challenging for Puerto Rico to modernize its GDP measures. Planning Board officials told us in August 2017 that they were working to update their GDP methodology, so that it is similar to the one used by BEA, and that they would be updating to a 2007 "market basket."⁵² Board officials said the new GDP figures were expected to be completed in December 2017. Their release was delayed in the aftermath of Hurricane Maria, but officials said they now expect to release GDP measures using the new methodology in summer 2018. Officials added that they plan to continue publishing GDP measures using the old methodology along with the new one for trend comparisons. The Planning Board and BEA estimated the cost to the

⁵⁰ The System of National Accounts (SNA) is the internationally agreed standard set of recommendations on how to compile measures of economic activity. The SNA is intended for use by all countries, having been designed to accommodate the needs of countries at different stages of economic development. It also provides an overarching framework for standards in other domains of economic statistics, facilitating the integration of these statistical systems to achieve consistency with the national accounts.

⁵¹ In addition to BEA and the Planning Board, the agreement includes cooperation with the Puerto Rico Institute of Statistics, which coordinates the production of statistics from government entities. The agreement calls for BEA to provide support in the form of subject matter expertise and advice, and terminates at the end of September 2018.

⁵² The Planning Board plans to incorporate Fisher price index formula to replace the modified Laspeyres price index formula that is currently used.

Puerto Rico government to modernize its GDP measure is \$2 million — including staff time and computing infrastructure.

A 2016 bi-partisan Congressional Task Force on Economic Growth in Puerto Rico (2016 Congressional Task Force) recommended BEA calculate GDP for Puerto Rico as it does for the states and other territories, and BEA's long-term goals include this objective.⁵³ Further, in February 2018, the Financial Oversight and Management Board for Puerto Rico recommended that the Governor of Puerto Rico support efforts to implement the Congressional Task Force recommendation. BEA officials told us one of the agency's long-term goals is calculating GDP for Puerto Rico and they have discussed including Puerto Rico in its reporting of GDP. Officials noted that including Puerto Rico in GDP reporting would require additional funds similar to reimbursements it received for the other four territories' calculations.

BEA's mission is to promote a better understanding of the entire U.S. economy by providing the most timely, relevant, and accurate economic accounts data in an objective and cost-effective manner. BEA has provided technical assistance and support for 6 years; however the Planning Board has not yet modernized its methods to report a reliable GDP measure, and BEA has not included Puerto Rico in its reporting efforts. Federal standards for internal control state that management should use quality information to achieve the entity's objectives.⁵⁴ The lack of a federal GDP measure for Puerto Rico makes it difficult to make reasoned policy recommendations, adds uncertainty around issues affecting Puerto Rico's economy, and makes it more difficult to identify fiscal and economic recovery plan priorities. Without modernized GDP methods, it remains difficult to compare Puerto Rico's GDP with the rest of the United States and the other four territories for which BEA calculates GDP. Finally, without such a measure of GDP, federal policy makers and private investors must rely on various and sometimes unreliable data sources to try to establish common facts about Puerto Rico's economic condition—an impediment in reaching consensus, engaging in meaningful policy discourse, and investment.

⁵³ Congressional Task Force on Economic Growth in Puerto Rico, *Report to the House and Senate* (December 20, 2016).

⁵⁴ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

U.S. Government Labor
Statistics for Puerto Rico

Federal labor statistics for Puerto Rico are incomplete because the Current Population Survey (CPS) does not include Puerto Rico and four other U.S. territories, and the American Community Survey (ACS) primarily provides data on population and housing, rather than labor.⁵⁵ PROMESA recognized this and recommended that Census consider the feasibility of including Puerto Rico, and the other territories in the CPS. Specifically, PROMESA suggested that Census conduct a study to determine the feasibility of expanding data collection to include Puerto Rico and the other four U.S. territories in the CPS and if necessary, request the funding required to conduct this feasibility study as part of its budget submission to Congress for fiscal year 2018.⁵⁶ Census officials told us they estimate a feasibility study including all of the U.S. territories will cost \$1.1 million in fiscal year 2018, but did not request funding. The 2016 Congressional Task Force also recommended that BLS and Census take reasonable steps to include the territories.

Federal standards for internal control state that management should use quality information to achieve the entity's objectives.⁵⁷ CPS data are intended to provide a comprehensive body of labor data that can be used to keep the nation informed about the economic and social well-being of its people, but Census and BLS are unable to report on the economic and social well-being of a segment of the nation and its people. Census officials told us they are concerned about unduly burdening Puerto Rico citizens with data collection efforts that would provide state level estimates. However, Census has not studied the feasibility of including Puerto Rico in the CPS, which would inform officials' decision on whether to include Puerto Rico and the other territories in the CPS. By conducting such a study, Census would better understand the tradeoffs of including or continuing to omit Puerto Rico from CPS, including the extent to which

⁵⁵ The CPS provides a wide range of information about employment, unemployment; hours of work, earnings, and people not in the labor force and is the primary source of labor statistics in the United States. The ACS primarily provides data detailing population and housing information, it does not include all the labor force data collected by CPS. Specifically, among the variables ACS does not include any indicators of whether a worker is paid hourly or works multiple jobs, information on hourly and weekly wages, and reason for not being in the labor force.

⁵⁶ Pub. L. No. 114-187, Title VI, § 404(c), 130 Stat. 549, 586-87.

⁵⁷ [GAO-14-704G](#).

it can be considered in public policy decisions, such as the 2016 Overtime Rule.⁵⁸

Increasing the Overtime Threshold Would Affect a Small Percentage of Workers in Puerto Rico and Could Affect Employment Conditions

The 2016 Overtime Threshold Increase Would Likely Affect Less Than 5 Percent of the Workforce in Puerto Rico

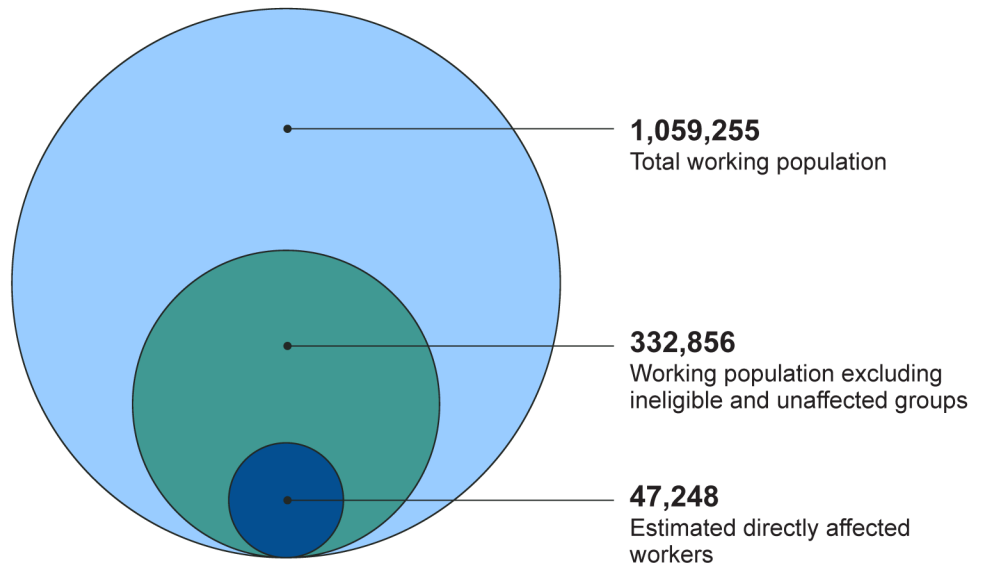
Our estimates suggest that a larger percentage (about 4.5 percent) of Puerto Rico's total workforce would have been affected by the Overtime Rule than the states (about 2.6 percent), based on our analysis of ACS data and DOL's analysis of CPS data.⁵⁹ Specifically, DOL's analysis estimated that of 159.9 million wage and salary workers in the states, about 4.2 million (or about 2.6 percent) might be directly affected by the 2016 Overtime Rule.⁶⁰ In our analysis of the Overtime Rule for Puerto Rico, we estimated that about 47,250 (about 4.5 percent) of 1.06 million wage and salary workers in Puerto Rico would have been directly affected (see fig. 4).

⁵⁸ DOL officials told us that they did not include Puerto Rico in their economic impact analysis of the 2016 Overtime Rule because they were following the methodology of the 2004 Overtime Rule economic impact analysis that used the CPS, which does not include Puerto Rico.

⁵⁹ As discussed above, Puerto Rico was not included in DOL's analysis on the economic impact of the 2016 Overtime Rule.

⁶⁰ We define directly affected workers as those that work in Executive, Administrative, or Professional occupations, earn a wage above the 2004 overtime threshold (\$23,660) and below the 2016 overtime threshold (\$47,476), and are not otherwise exempt from the 2016 Overtime Rule. In other words, directly affected workers are employees who are not eligible for overtime pay under the 2004 threshold, but would have been eligible for overtime pay under the 2016 threshold. As discussed later in this section, other workers may also be affected by the 2016 overtime depending on how employers respond to implementation.

Figure 4: Estimated Effect of Department of Labor’s 2016 Overtime Rule on Workers in Puerto Rico



Source: GAO analysis of 2015 5-Year American Community Survey data. | GAO-18-483

Note: We remove certain occupations and worker types such as self-employed, religious, and select federal employees from the sample because they are exempt from the 2016 Overtime Rule regardless of salary level, as well as several other groups of workers because they are unlikely to be affected by the rule. Directly affected workers are workers who are not eligible for overtime pay under the 2004 threshold, but would have been eligible for overtime pay under the 2016 threshold.

The lack of data from CPS on Puerto Rico and the effects of Hurricane Maria hinder our ability to fully assess the potential effect of the 2016 Overtime Rule on Puerto Rico. Instead, we used data from the 2015 5-year ACS to estimate the impact of the Overtime Rule on Puerto Rico. The ACS employment data lack multiple variables available in the CPS; hence, we were limited in what we could estimate.⁶¹ For example, DOL’s estimate for the states included the wealth transfer from employers to employees, which is important for understanding the economic effects of the 2016 Overtime Rule. We do not provide similar insights because of

⁶¹ The CPS has numerous variables pertaining to employment and income that are not included in the ACS. For example, in the DOL’s final rule analysis, they use a CPS variable to identify and remove from the sample workers that are employed on an hourly basis. The ACS does not identify whether a worker is employed on an hourly or annual salary basis. Additionally, DOL analyzed the impact of the 2016 Overtime Rule on individual worker’s propensity to work multiple jobs in their final rule; the ACS does not identify workers that are employed in multiple jobs, so and we could not perform this analysis.

the difference in variables in the ACS and CPS. (See table 2 in appendix I for the differences between our analysis and that of DOL.) Additionally, DOL estimated the effect the Overtime Rule would have on the probability that a worker had multiple jobs, but the limitations of the data we used kept us from performing this analysis.

Our analysis estimates that the impact of the 2016 Overtime Rule in Puerto Rico would have been largely concentrated in four industries: education and health services, wholesale and retail trade, public administration, and financial activities. We estimated that in these four industries about 76 percent (about 36,000) of our approximate 47,250 total workers would have been directly affected (see table 1). The largest directly affected industry, education and health services, makes up about 43 percent (about 20,000) of this total.

Table 1: Puerto Rico Workers Potentially Directly Affected by the Department of Labor’s (DOL) 2016 Overtime Rule by Industry

Industry	Estimated directly affected workers	Percentage of estimated directly affected population	95 percent confidence interval for the number of directly affected workers	
			Lower bound	Upper bound
Education & health services	20,426	43.23%	19,147	21,705
Wholesale & retail trade	5,825	12.33	5,016	6,634
Public administration	5,134	10.87	4,414	5,854
Financial activities	4,569	9.67	3,887	5,251
Manufacturing	3,143	6.65	2,434	3,852
Professional & business services	2,656	5.62	2,056	3,256
Construction	1,197	2.53	834	1,560
Agriculture, forestry, fishing, & hunting	1,156	2.45	791	1,521
Leisure & hospitality	1,052	2.23	700	1,404
Transportation & utilities	994	2.10	713	1,275
Information	921	1.95	638	1,204
Other services	175	0.37	59	291
Mining	-	-	-	-

Source: GAO analysis of 2015 5-year American Community Survey (ACS) data | GAO-18-483







Note: The percentage of estimated directly affected population is equal to our industry-level estimates divided by our total population point estimate, 47,248, multiplied by 100. In this analysis, we removed certain occupation and industry codes because they were exempt from the Fair Labor Standards Act (FLSA).

Raising the Overtime Threshold Could Increase Wages for Some, but Reduce Overall Hours and Employment in Certain Industries




Depending on how employers respond to an increase in the overtime threshold, the effect of amending the overtime regulations could vary across employees. Similar to employers in the states, employers in Puerto Rico could respond to changes in the overtime regulations based on the current employee’s salary and work schedule by: 1) making no changes, 2) paying overtime, 3) raising salaries, or 4) adjusting hours worked (see fig. 5). In its analysis of the impact of the 2016 Overtime Rule in the states, DOL estimated the largest impact would be an aggregate transfer of income from employers to employees, which would be seen as a positive for some employees (e.g., increased pay, fewer hours for same pay, or new hires) and a negative for others (e.g., employers in our facilitated discussion groups said they would have layoffs, move employees from salaried to hourly, or lower benefit amounts).

Figure 5: Puerto Rico Employers Potential Responses to Changes in the Department of Labor’s (DOL) 2016 Overtime Rule Threshold Increase

Static (Single employee) Labor Adjustments

Scenario 1: No changes to pay or hours	Scenario 2: Pay overtime	Scenario 3: Raise salary
<p> Employee earns \$24,000 per year.</p> <p><input checked="" type="checkbox"/> Never works over 40 hours per week.</p> <p> No overtime pay and no change in salary or hours worked is needed.</p>	<p> Employee earns \$24,000 per year.</p> <p><input checked="" type="checkbox"/> Occasionally works over 40 hours per week.</p> <p> Pay overtime instead of increasing salary.</p>	<p> Employee earns \$40,000 per year.</p> <p><input checked="" type="checkbox"/> Regularly works over 40 hours per week.</p> <p><input checked="" type="checkbox"/> Salary plus overtime is more than the 2016 overtime threshold.</p> <p> Increase salary above new threshold</p>

Dynamic (Multi-employee) Labor Adjustments

Scenario 4: Adjust Hours Worked
<p> Employee earns \$40,000 per year.</p> <p><input checked="" type="checkbox"/> Regularly works over 40 hours per week.</p> <p> Employee earns \$22,000 per year.</p> <p><input checked="" type="checkbox"/> Works 20 hours per week.</p> <p> Reduce first employee’s weekly hours to 40 hours per week. Increase second employee’s hours to cover first employee’s reduced hours. No overtime needed.</p>

Source: GAO analysis of DOL’s 2016 Final Rule and Guidance. | GAO-18-483

Note: All scenarios assume the 2004 overtime threshold of \$23,660 has increased to the 2016 threshold level of \$47,476. Scenarios also assume the employees meet the executive, administrative, and professional salary basis and duties test. If an employee does not meet either of these tests, then the employee would not be exempt under either the 2004 Overtime Rule or the 2016 Overtime Rule.

Select quotes from Puerto Rico employers participating in GAO facilitated group discussions on the Puerto Rico Economy and the 2016 Overtime Rule

"[A \$30,000 to \$35,000 threshold] is close to their pay rates currently."

"We would consider moving all managers to hourly. Then reduce hours worked and perhaps hours of operation."

"My managers work 42 hours or less per week . . . I have four managers but if the [2016] Overtime Rule [went into effect] I would only keep one. . . You either shut it down or adjust staff."

"We have 125 exempt employees. The rule change would impact our labor costs a lot. We would need to minimize employees/hours to reduce the labor costs. We may adjust our contribution to medical plans to make up for the increased labor costs."

"An increase of the threshold to \$30,000 or \$35,000 would not affect my company."

"With the new rule, half [our managers] would need to be paid overtime or increase salary. This would leave us not enough flexibility to cover the hours or operation."

"We have a total of 850 employees. About 8 would be affected by the change. Of those 8, 3 we would boost their salary; the others will be switched to hourly. This may affect their benefits."

Source: Facilitated Discussion Groups | GAO-18-483

While we were unable to conduct a full impact analysis identical to DOL's because of data limitations, we held facilitated discussion groups, to gain insight into how employers would have responded if the 2016 Overtime Rule was implemented in Puerto Rico. Views reported by participants in these groups may not be representative of all Puerto Rico employers, but they provide illustrative examples of the types of steps employers might have taken if the 2016 Overtime Rule were implemented. Employers in 2 of our 10 discussion groups said they would make staff adjustments by increasing the salary of some employees while, in some cases, minimizing the role of others. However, employers in 9 of our 10 of our discussion groups said they might also need to convert the remaining employees to part-time or hourly work, reduce their hours, or lay them off.

Through these facilitated discussion groups, we also learned that employer responses to the 2016 Overtime Rule may differ by industry. Employers in 3 of 10 industry discussion groups said they would be able to absorb some of the higher costs associated with an increase in the Overtime Rule threshold. For example, some manufacturers told us it would not be difficult for their businesses to absorb these additional costs, particularly if the salary threshold was at a somewhat lower level. Similarly, some hotel employers told us they would be able to absorb costs associated with the change across their many hotel locations, but others said they may not be able to assimilate the threshold increase. Hospital employers who participated in our facilitated discussion groups told us they have lower margins and face threats of closure even without the threshold increase. Some restaurant and hotel employers who participated in our facilitated discussion groups said they may be unable to pass associated increased labor costs to consumers; some would have to require exempt workers to work longer hours and reduce the number of full time employees or hours (see sidebar).

Employers could respond by adjusting staff if the 2016 Overtime Rule goes into effect, but the impacts to employers may be limited and the workforce could benefit from the 2016 Overtime Rule change according to our interviews with 1 economist and 1 labor group official.⁶² One

⁶² We interviewed 4 economists and 6 labor group officials.

economist suggested that instead of having two employees who work 60 hours each, an employer might hire a third employee so that each works 40 hours. Additionally, this economist said an increase to the threshold would not be as burdensome to business, because employee wages have risen above the current overtime salary threshold. One labor group representative suggested that the 2016 Overtime Rule would have a minimal impact because very few workers in Puerto Rico earn enough to meet the 2004 salary threshold. Further, one economist said that under the current threshold, workers work excessive hours and do not have the same bargaining power. An increased overtime threshold would improve these dire working conditions. Specifically, this economist said that implementing the 2016 Overtime Rule would encourage firms to hire more workers, provide employees with more bargaining power, and help prevent worker exploitation.

One economist said implementing the 2016 Overtime Rule only in the states could increase the wage differential between Puerto Rico and in turn increase outmigration from Puerto Rico. One member of the Puerto Rico Economic Administration said that if Puerto Rico were to have a lower threshold than the U.S. mainland the effects might be worse than those caused by the increased labor costs of implementing the higher threshold. Another economist said that while hours may be adjusted or layoffs may occur immediately following implementation of the Overtime Rule, these impacts would not be a major concern within 3 to 4 years.

Conclusions

Puerto Rico has long been experiencing severe economic challenges and its default on over a billion dollars of debt payments since 2015 has focused the need for attention to this territory. As Puerto Rico officials were in the process of taking action to update their methodology for reporting inflation-adjusted GDP, Hurricane Maria exacerbated the territory's economic challenges. FEMA estimates that it may take years for Puerto Rico to recover. The lack of accurate economic and comprehensive labor data hinders policymaking, including a determination of the potential impact of changes to the overtime regulations. To help address Puerto Rico's economic challenges now and in the future, the federal government and investors need updated and reliable data. Going forward, having BEA include Puerto Rico in its calculation of GDP would provide federal and local authorities, as well as businesses and investors, with reliable data on Puerto Rico's economic condition that can be directly compared with the United States and other territories. BEA's long-term goals include measuring Puerto Rico's GDP, but having reliable data now would help address significant economic

challenges in the short term. Likewise, studying whether including Puerto Rico in the Current Population Survey is feasible would allow DOL and other policymakers to be better positioned to fully consider the cost of including the territory against the implications of exclusion.

Recommendations for Executive Action

We are making a total of three recommendations, including two to Commerce and one to DOL. Specifically:

The Secretary of Commerce should ensure that the Bureau of Economic Analysis includes Puerto Rico in its reporting on gross domestic product, as it does for four other U.S. territories. (Recommendation 1)

The Secretary of Commerce, in cooperation with DOL's Bureau of Labor Statistics, should conduct a study on the feasibility of including Puerto Rico in its reporting of the Current Population Survey. (Recommendation 2)

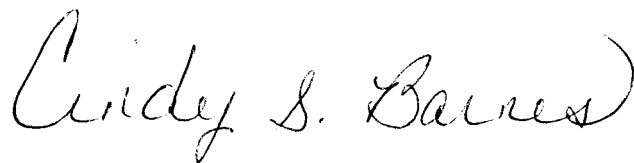
The Secretary of Labor, in cooperation with the Commerce's Census Bureau, should conduct a study on the feasibility of including Puerto Rico in its reporting of the Current Population Survey. (Recommendation 3)

Agency Comments and Our Evaluation

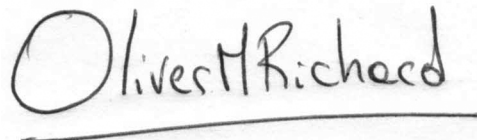
We provided a draft of the report to the Government of Puerto Rico, the Department of Commerce (Commerce), and the Department of Labor (DOL) for review and comment. In written comments that are reproduced in appendix IV, Commerce agreed with the recommendations made to it. In an email, DOL's Deputy Assistant Secretary for Policy stated that the agency did not have any comments on the report. In addition, Commerce and the Government of Puerto Rico provided technical comments, which we incorporated into the report as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Government of Puerto Rico, the Secretary of the Department of Commerce, the Secretary of the Department of Labor, and other interested parties. In addition, this report is available at no charge on the GAO website at <http://gao.gov>.

If you or your staff have any questions about this report, please contact Cindy Brown Barnes at (202) 512-7215 or Oliver Richard at (202) 512-8424. You may also reach us by e-mail at brownbarnesc@gao.gov or richardo@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Cindy Brown Barnes
Director, Education, Workforce, and Income Security Issues



Oliver Richard,
Director, Applied Research and Methods

List of Congressional Committees

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House of Representatives

The Honorable Rob Bishop
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Committee on Natural Resources
House of Representatives

Appendix I: Objectives, Scope, and Methodology

Our review addressed: (1) the economic conditions in Puerto Rico as of the end of 2016; and (2) the potential effects of implementing the 2016 Overtime Rule on Puerto Rico's economy.¹

To evaluate the current economic conditions in Puerto Rico quantitatively, we analyzed (1) data from the Puerto Rico Planning Board's (Planning Board) Statistical Appendix for the Governor that includes data on Puerto Rico's gross domestic product (GDP) from 1990 through 2016² and (2) passenger data for Puerto Rican airports for years 2016 and 2017 from the Bureau of Transportation Statistics (BTS).

To analyze the real GDP of Puerto Rico from 1990 through 2016 and Puerto Rico GDP by industry for 2016, we relied on data from the Planning Board's Statistical Appendix for the Governor. We interviewed Planning Board officials responsible for producing the annual GDP estimates to understand how the data were prepared and any limitations to the data, and concluded that while we have concerns over the precision of real GDP data, they were sufficiently reliable for our purposes of determining the direction of growth.

To analyze the flow of passengers through Puerto Rican airports before and after Hurricane Maria, we relied on the BTS' monthly passenger data for 2016 and 2017 as accessed through Diio Mi: Market Intelligence for the Aviation Industry.³ Diio Mi is a private contractor that provides online access to U.S. airline financial, operation, and passenger data. We reviewed the relevant documentation of the dataset and previous GAO reports and found the dataset sufficiently reliable for our purposes.

To assess the potential effects of the 2016 Overtime Rule on Puerto Rico quantitatively, we analyzed and reported data from the American

¹ Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,391.

² GDP measures the net value of goods and services produced inside a country, or for the purpose of this report, a territory. In contrast, gross national product (GNP) measures the value of goods and services produced by its residents. GNP includes production from residents abroad and excludes production by foreign companies in a country. In Puerto Rico, GDP has consistently been greater than GNP, which means that production by foreign companies in Puerto Rico is larger than production by Puerto Rican residents in the territory and abroad.

³ Airports without passenger observations in months following Hurricane Maria were assumed accurate, based on analysis of the dataset, and included in our analysis.

Community Survey (ACS) for calendar year 2015, because DOL used 2015 data in its impact analysis of the Overtime Rule on the states. The ACS is a national survey designed and administered by the Census Bureau (Census), and it contains data on individual earnings. Since 2005, the ACS has also included the Puerto Rico Community Survey (PRCS) which extends the survey through Puerto Rico. Our data set selection process included interviews with current and former agency officials as well as review of dataset documentation such as data handbooks, data dictionaries, and guidance on the different versions of data available. The ACS is conducted annually with estimates based on 1-year and 5-year data with benefits and drawbacks for each version.⁴ The 1-year ACS is updated the earliest and gives the most current data; however, according to Census' guidance on the different ACS samples, it also contains the smallest sample size and is more appropriate for analyzing large populations than small ones. The 5-year ACS is the most reliable data, according to Census' ACS guidance, as it includes the largest population size, which can be used to analyze small populations; however, the 5-year ACS is the least current version of the data. Additionally, while the 2015 5-year ACS data were not the most recent available, we used them because the Department of Labor (DOL) used 2015 data in its impact analysis of the 2016 Overtime Rule for the states. Based on these benefits and limitations, we chose to use the 2015 ACS 5-year estimates.⁵ Estimates produced from ACS data are subject to sampling error. For all of our estimates we weighted observations based on the individual weight. We compared our estimates of values derived from our weighting procedures to those published by the DOL and found them to be consistent. In addition to estimates, we generated standard errors or the margin of error for the 95 percent confidence interval, and report them with estimates in figures and tables. Based on our data checks, reviews of documentation and interviews with agency officials, we found the ACS data to be sufficiently reliable for our purposes.

In addition to the quantitative data collected, we reviewed relevant federal laws, regulations, court documents, agency guidance, and internal controls related to the 2016 Overtime Rule, labor in Puerto Rico, and federal statistical measures for Puerto Rico. Additionally, we reviewed

⁴ Until 2013, the ACS included estimates based on 3 years of data. For our analysis we use 2015 data that only includes the 1-year and 5-year estimates.

⁵ We recognize that Hurricane Maria may have led to workforce changes; however, the ACS data for the post-hurricane period are not available as of April 2018.

previous GAO reports on Puerto Rico and its economy. We interviewed DOL and Commerce officials at the national level. We interviewed Puerto Rican government officials to better understand current economic conditions and the statistical measure used to reflect the economic conditions. We interviewed representatives of national and Puerto Rican employer and labor organizations to gain their perspectives on the impact of the 2016 Overtime Rule and the condition of the economy.⁶ We conducted 10 facilitated group discussions with Puerto Rican employers in the manufacturing, restaurant, hotel, hospital, and professional services industries.⁷ These are some of the industries that employ the largest number of people in Puerto Rico and are among the most likely to be impacted by the 2016 Overtime Rule. Employers were selected to represent both large and small business perspectives in each industry. Views reported by participants in these groups are not representative of those of all Puerto Rico employers and for that reason are not generalizable. We also interviewed four economists, identified from prior work and interviews with agency officials, industry groups, and labor groups as having expertise relating to the 2016 Overtime Rule or the Puerto Rico economy, regarding the economic conditions of Puerto Rico and the potential economic impacts of the 2016 Overtime Rule.

Analysis of American Community Survey Data

For our analysis of the effects of the 2016 Overtime Rule on Puerto Rico, we mirrored the analysis conducted by DOL for the impacts of the rule on the United States. While the methodologies are similar, the DOL analysis used the Current Population Survey (CPS) data that do not include Puerto Rico. The ACS data we use serves a similar role; however, we made a few adjustments to the analysis in light of available data. Specifically, in the ACS, there is no variable identifying whether the

⁶ Representatives were interviewed from the labor groups: American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in the United States, Society for Human Resource Management (SHRM) in the United States, the American Federation of State, County, and Municipal Employees, Office and Professional Employees International Union in Puerto Rico, AFL-CIO Puerto Rico Affiliate, SHRM in Puerto Rico, and Puerto Rico Association of Teachers.

⁷ Facilitated discussion groups are generally designed to obtain in-depth information about specific issues that cannot be obtained as efficiently from single interviews. Methodologically, they are not designed to provide results that are generalizable to a larger population or provide statistically representative samples or quantitative estimates. Participants in all discussion groups were selected as nonprobability samples of their corresponding populations. The views represented are those only of the businesses that participated in our groups and may not be representative of all employers in Puerto Rico.

individual works an hourly job. In order to simulate the removal of hourly workers from the sample, we randomly assign hourly worker designation to the same proportion of the population that are classified as hourly workers in DOL's analysis (41.01 percent). A few assumptions are associated with this manipulation: 1) We are assuming that the proportion of the population that works an hourly job in Puerto Rico is similar to that of the 50 states, and 2) when we perform industry and region analyses, we assume the same hourly worker proportion across all industries and regions. Additionally, in its final rule, DOL analyzes the impact of the 2016 Overtime Rule on individual worker's propensity to work multiple jobs; the ACS does not identify workers employed in multiple jobs and we could not perform this analysis. Also, the CPS data contain several variables on the number of hours worked that allowed DOL to analyze who likely works overtime on a regular basis. While the ACS includes a variable indicating the usual number of hours worked per week over the past year, we found it does not capture the schedule fluctuations as accurately as the CPS variables. As such, we do not calculate the dollar amount transfers from employers to employees and dead weight losses, or the loss in economic efficiency from the rule that DOL shows in its analyses. To the extent possible, we used DOL's methodology to determine the potential effect of the 2016 Overtime Rule in Puerto Rico. However, due to data limitations there were some ways in which our approach differed from the approach used by DOL.

In DOL's analysis, the sample includes only the workers covered by its regulation. We adapt the sample to match the DOL's analysis as follows: 1) remove military personnel, unpaid volunteers, self-employed individuals, clergy and other religious workers, and federal employees,⁸ 2) remove blue-collar workers and workers paid hourly; and 3) remove

⁸ Included federal employees are those in occupation codes 6370, 570, and 6770.

workers who are categorized under occupation and industry codes that are generally exempt under other exemptions.⁹

For consistency, our analysis makes the same adjustments to our sample that DOL makes in its analysis. Since we use the 2015, 5-year ACS data, we first put all wages into 2015 levels using ACS defined variables. Next, we inflate from 2015 to 2017 levels using the calendar year consumer price index (CPI-U). Just as in DOL's analysis, we do not know whether any specific worker satisfies the duties test of the 2016 Overtime Rule, so we follow the same steps DOL took in its final rule. These steps include using DOL's probabilities that specific job codes meet the duties test and assigning the probability to individual workers using the gamma distribution with the shape parameter alpha was set to the squared quotient of the sample mean divided by the sample standard deviation, and the scale parameter beta was set to the sample variance divided by the sample mean. Additionally, DOL explicitly removes certain industries and occupations from the sample and we follow its methodology exactly to remove these. Finally, to estimate the population that would have been affected by the 2016 Overtime Rule, we limit the sample to only those above the 2004 overtime salary threshold (\$23,660) and below the 2016 salary threshold (\$47,476) just as DOL did in its analysis.

DOL's estimates for industries and regions use different groupings than those provided in the ACS; however, since the ACS variables use the same coding but, a finer level, we can recreate the variables used in DOL's analysis. For example, we used Census guidance on converting 2012 industry codes to create a major industry variable from the ACS industry codes. Similarly, to compare our estimates to DOL estimates by region, we take the ACS data, which is reported state-by-state, and put it into larger regions, such as "Northeast."

⁹ List of exempted industry and occupation codes are: Agricultural industry codes = 0170, 0180, and 290; Blue collar occupation codes = 0200, 0020, and 6000; Amusement and recreation industries = 8560, 8570, 8580, 8590, and 8670; Fishing occupations = 6100, 9310, and 0280; Newspaper occupations = 2810, 2840, 2850, and 2860 within industry 6470; Switchboard operators = occupation 5010 in industries 6680 and 6690; Seamen on foreign vessels occupations = 9300, 9310, and 9570; Companion occupations = 3600, 4610, 8170, 8370, and 9290; Criminal investigator occupations = 3820, 3830, and 3910; Computer worker occupations = 110, 1000, 1010, 1020, 1040, 1060, 1100, 1110, 5800, and 7900; Motor carrier occupations = 7110, 7200, 7210, 7220, and 9130; Rail carrier occupations = 9200, 9230, 9240, and 9260; Air carrier occupations = 9030 and 7140; and Salesmen, partsmen/mechanics industries = 4750, 4760, 7110, 7150, 7160, 7200, 7210, 7220, 7240, and 7260.

Table 2: Examples of Differences in Department of Labor (DOL) and GAO Analyses Using Current Population Survey and American Community Survey

Analysis	Pertinent variable(s) for DOL and GAO analyses	Variable(s) in Current Population Survey	Variable(s) in American Community Survey
Remove self-employed, religious, select federal workers, and other exemptions	Industry and Occupation Codes; Class of Worker; Self-Employed Status	Yes	Yes
Remove blue-collar workers	Industry and Occupation Codes; Job Probability Table from DOL final rule	Yes	Yes
Remove hourly workers	PEERNHRY (Hourly Worker Status)	Yes	No. GAO removes the same proportion of the population through random assignment.
Transfers from employers to employees from 2016 Overtime Rule	Usual Hours Worked per Week, Actual Hours Worked	Yes	Only usual hours worked is reported.
Propensity for working multiple jobs	Multiple Jobs Worked Status	Yes	No
Industry-level Analysis	Major Industry Code	Yes	No, but we were able to construct the major industry codes from detailed industry following Census Bureau guidance.
Region-level Analysis (U.S.)	Census Regions	Yes	No. We construct the Census regions by using state identifiers in the ACS.

Source: GAO analysis of the DOL 2016 Overtime Rule and 2015 Current Population Survey and 2015 5-year American Community Survey (ACS) data sets | GAO-18-483

Note: To the extent possible, we used DOL’s methodology to determine the potential effect of the 2016 Overtime Rule in Puerto Rico. However, due to data limitations there were some ways in which our approach differed from the approach used by DOL.

We conducted this performance audit from September 2016 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Effects of Implementing Alternative Overtime Rule Thresholds on Puerto Rico

Table 3 shows how different populations of workers would be affected by applying alternative overtime thresholds in Puerto Rico. For our analysis, in order to more closely replicate Department of Labor's (DOL) design, we use the same alternative salary thresholds DOL analyzed in its final rule, which are defined as follows:¹

- *Alternative 1: Inflate the 2004 Level* - takes the 2004 overtime threshold and inflates it to fiscal year 2015 dollars using the consumer price index. This method leads to an overtime threshold of \$570 per week or \$29,640 per year.
- *Alternative 2: 2004 Methodology* - uses the 2004 final rule and updates it with data from the third quarter of 2015. This method leads to an overtime threshold of \$596 per week or \$31,015 per year.
- *Alternative 3: Kantor Long Test* - is based on a 1958 Report and Recommendations on Proposed Revision of Regulations, Part 541, by Harry S. Kantor. This methodology uses data collected on actual salaries paid to executive, administrative, or professional (EAP) employees grouped by geographic region, industry group, number of employees, and city size. DOL then used the long-duties test such that no more than about 10 percent of exempt EAP employees in the lowest-wage region, lowest-wage industry, smallest establishment group, or smallest city group will fail to meet the test.² This method leads to a threshold of \$684 per week or \$35,568 per year.
- *Alternative 4: 40th Percentile of Full-time Salaried Workers (Nationally)* - takes all full-time salaried workers in the United States and calculates the 40th percentile of their wages. This method leads to a threshold of \$972 per week or \$50,544 per year.
- *Alternative 5: Kantor Short Test* - is also based on the Kantor method described in the third alternative, but uses the methodology associated with the short-duties test instead of the long-duties test. To do this, DOL took the \$684 per week of the Kantor Long Test and inflated it by the average percent wage difference between the long and short test from 1949 through 1975 (149 percent). Multiplying \$684

¹ All of the calculations of the alternative salary thresholds were conducted by the DOL and we use the thresholds as they calculated to maintain consistency with their analyses. GAO did not perform analysis of the accuracy of DOL's calculations.

² Prior to 2004, the overtime regulations required employees to meet both a "long" and "short" test to determine if their duties could be classified as Executive, Administrative, or Professional. These tests were streamlined by adopting a single standard duties test as part of the 2004 Overtime Rule, and were also included in the 2016 Overtime Rule.

**Appendix II: Effects of Implementing
Alternative Overtime Rule Thresholds on
Puerto Rico**

per week by 149 percent yields a Kantor Short Test threshold of \$1,019 per week or \$52,984 per year.

- *Alternative 6: Inflate 1975 Short Test Level* - takes the 1975 short-duties test salary level and inflates it to fiscal year 2015 dollars. This leads to a threshold level of \$1,100 per week or \$57,205 per year.

Table 3: Estimated Puerto Rican Population Directly Affected by Alternative Thresholds

Salary threshold name	Overtime salary threshold (weekly/annually)	95% confidence interval for the number of directly affected workers	
		Lower bound	Upper bound
<i>2016 Final Overtime Rule</i>	\$913 / \$47,476	45,206	49,290
<i>Alternative 1: Inflate the 2004 level</i>	\$570 / \$29,640	15,493	17,841
<i>Alternative 2: 2004 Methodology</i>	\$596 / \$31,015	17,268	20,162
<i>Alternative 3: Kantor Long Test</i>	\$684 / \$35,568	28,126	31,780
<i>Alternative 4: 40th Percentile of Full-Time Salaried Workers (Nationally)</i>	\$972 / \$50,544	47,220	51,568
<i>Alternative 5: Kantor Short Test</i>	\$1,019 / \$52,984	48,877	53,257
<i>Alternative 6: Inflate 1975 Short Test Level</i>	\$1,100 / \$57,205	52,479	56,935

Source: GAO Analysis of 2015 5-year American Community Survey data and the Department of Labor's alternative thresholds included in the DOL Final Rule, 81 Fed. Reg. 32,391. | GAO-18-483.

Appendix III: Data Checks for American Community Survey

The following tables show how the Department of Labor’s (DOL) analysis of the 2016 Overtime Rule in the United States using the analysis of Current Population Survey (CPS) data compares to our analysis using the American Community Survey (ACS) data.¹ This analysis was conducted to support using ACS data as an alternative to CPS data. The methodologies used in our analysis and the DOL analysis are similar, but some adjustments were made to our analysis to attempt to replicate the DOL’s analysis of CPS data because variables were missing from the ACS data. Between the slightly different methodologies and different data sets, we expect the estimates to be of similar magnitudes, but not necessarily identical. The results indicate that our adjustments to the methodology and use of a different data yield similar results and add validity to our estimates for Puerto Rico.

Table 4: Comparison of Current Population (CPS) Survey and America Community Survey (ACS) Data Using DOL and GAO Estimates

Estimated value	Reported value from DOL’s Final Rule	GAO estimated values
Wage and Salary Workers (Standard error)	159.9 million	157.9 million (105,367)
Subject to the Fair Labor Standards Act and DOL regulations (Standard error)	132.8 million	136.4 million (85,698)
White collar, Salaried, not eligible for another (non-EAP) overtime exemption (Standard error)	44.8 million	45.9 million (79,599)
Number of Affected Workers (Standard error)	4.2 million	4.87 million (31,037)

Source: GAO analysis of 2015 5-year ACS data and Department of Labor’s (DOL) Final Rule, 81 Fed. Reg. 32,391, which used 2015 Current Population Survey data | GAO-18-483.

Note: Standard errors are reported in parentheses below GAO estimates.

¹ Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,391.

Table 5: Comparison of Department of Labor (DOL) Estimates to GAO Estimates – by Industry

Estimated value	Reported value from DOL's Final Rule	GAO estimated values
Agriculture, forestry, fishing, & hunting	10,000	1,496 (443)
Mining	20,000	9,843 (1,435)
Construction	130,000	108,217 (5,063)
Manufacturing	360,000	337,221 (7,619)
Wholesale & retail trade	560,000	833,276 (11,812)
Transportation & utilities	130,000	125,616 (5,022)
Information	170,000	116,198 (3,915)
Financial activities	570,000	654,768 (10,977)
Professional & business services	700,000	448,480 (9,936)
Education & health services	960,000	1,533,786 (15,365)
Leisure & hospitality	230,000	194,677 (5,888)
Other services	180,000	116,902 (4,220)
Public administration	200,000	185,282 (5,391)

Source: GAO analysis of 2015 5-year American Community Survey data and DOL's Final Rule, 81 Fed. Reg. 32,391, which used 2015 Current Population Survey data | GAO-18-483.

Note: Standard errors are reported in parentheses below GAO estimates.

Table 6: Comparison of Department of Labor (DOL) Estimates to GAO Estimates – by Region

Estimated value	Reported value from DOL's Final Rule	GAO estimated values
Northeast	790,000	802,652 (11,118)
New England	190,000	233,376 (5,579)
Middle Atlantic	590,000	569,276 (9,461)
Midwest	880,000	1,090,748 (13,689)
East North Central	580,000	712,431 (9,199)
West North Central	300,000	378,317 (8,601)
South	1,740,000	1,852,256 (19,045)
South Atlantic	950,000	1,048,303 (12,548)
East South Central	250,000	197,911 (5,819)
West South Central	530,000	606,042 (10,258)
West	820,000	1,017,300 (13,268)
Mountain	290,000	346,125 (7,443)
Pacific	530,000	671,175 (10,876)

Source: GAO analysis of 2015 5-year American Community Survey data and DOL's Final Rule, 81 Fed. Reg. 32,391, which used 2015 Current Population Survey data | GAO-18-483.

Note: Standard errors are reported in parentheses below GAO estimates.

Table 7: Comparison of Department of Labor (DOL) Estimates to GAO Estimates – Alternative Thresholds

Estimated value	Salary level (annual)	Reported value from DOL's Final Rule	GAO estimated values
Inflate 2004 Level	\$29,640	0.5 million	1.065 million (13,460)
2004 Method	\$30,992	0.7 million	1.183 million (13,842)
Kantor Long Test	\$35,568	1.4 million	2.245 million (21,008)
Final Rule	\$47,476	4.2 million	4.87 million (31,037)
40th Percentile of full-time salaried workers nationally	\$50,544	4.8 million	5.444 million (31,204)
Kantor Short Test	\$52,984	5.6 million	6.501 million (34,593)
Inflate 1975 short test level	\$57,205	6.7 million	7.418 million (38,604)

Source: GAO analysis of 2015 5-year American Community Survey data and DOL's Final Rule, 81 Fed. Reg. 32,391, which used 2015 Current Population Survey data | GAO-18-483.

Note: Standard errors are reported in parentheses below GAO estimates.

Appendix IV: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

May 30, 2018

Cindy S. Brown Barnes
Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Barnes:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report entitled *Puerto Rico: Limited Federal Data Hinder Analysis of Economic Condition and DOL's 2016 Overtime Rule* (GAO-18-483).

On behalf of the Department of Commerce, I have enclosed our comments on the draft report. The Department of Commerce agrees with the recommendations.

The Bureau of Economic Analysis and the U.S. Census Bureau agree that better data would improve the ability to evaluate Puerto Rico's economic condition. We will continue to work with the Department of Labor and Puerto Rico officials to improve data collection. If you have any questions, please contact Pamela Moulder, Senior Program Analyst, at (202) 482-5997.

Sincerely,

A handwritten signature in blue ink that reads "Wilbur Ross".

Wilbur Ross

Enclosure

**Department of Commerce's Comments on
GAO Draft Report entitled *Puerto Rico: Limited Federal Data Hinder Analysis of Economic
Condition and DOL's 2016 Overtime Rule*
(GAO-18-483)**

The Department of Commerce has reviewed the draft report, and we offer the following comments for the Government Accountability Office (GAO)'s consideration.

Comments on Recommendations

GAO made two recommendations to the Department of Commerce in the report.

- **Recommendation 1:** The Secretary of Commerce should ensure that the Bureau of Economic Analysis includes Puerto Rico in its reporting on gross domestic product, as it does for four other U.S. territories.

Commerce Response: The Department of Commerce agrees with this recommendation. BEA is working internally to find a funding solution to calculate Puerto Rico's GDP, despite the limited federal data that is available. It is important to note that any short-term efforts to calculate GDP will rely heavily on data that is currently collected by the Puerto Rico Government.

- **Recommendation 2:** The Secretary of Commerce, in cooperation with DOL's Bureau of Labor Statistics, should conduct a study on the feasibility of including Puerto Rico in its reporting of the Current Population Survey.

Commerce Response: The Department of Commerce agrees with this recommendation. Since the Census Bureau conducts the Current Population Survey jointly with the Bureau of Labor Statistics (BLS), BLS would need to be consulted and would need to approve any changes in the content or scope of the CPS, including the feasibility studies of including Puerto Rico in the CPS.

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Oliver Richard (202) 512-8424 or richardo@gao.gov

GAO Acknowledgments

In addition to those named above, Kimberley Granger and Seyda Wentworth, Assistant Directors; Amber Yancey-Carroll, Analyst-in-Charge; Pedro Almoguera and Michael Naretta made key contributions to this report. Also contributing to this report were Jeffrey Arkin, David Blanding, David Chrisinger, Sarah Gilliland, Robin Marion, Jonathan S. McMurray, Sheila R. McCoy, Thomas Moscovitch, Dominic Nadarski, Mimi Nguyen, Karissa Robie, Benjamin Sinoff, Almeta Spencer, Amy Sweet, Anjali Tekchandani, Rosemary Torres Lerma, and Kathleen van Gelder.

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