



Input Might Still Be Possible On Proposed "Companionship" Restrictions (Updated 12 27 12)

Insights
12.26.12

Readers will recall our earlier posts ([accessible here](#)) relating to the U.S. Labor Department's proposed regulatory revisions that would significantly limit the application of the federal Fair Labor Standards Act's Section 13(a)(15) exemption for companions. While the period for public comment on these proposals closed in March, a letter from an organization representing the interests of the disabled community, the National Council on Disability, demonstrates that it might not be too late to influence the outcome through other avenues.

A [copy](#) of correspondence from NCD to USDOL recaps an August meeting in which the NCD expressed its concerns that the proposed rule could have a "devastating impact on the community of Americans with disabilities" who rely upon domestic-service providers. NCD urged DOL to engage in a "negotiated rulemaking process" with the disability community in order to minimize these negative effects. NCD also offered to serve as a facilitator during that process, including by offering research and identifying experts to provide input that would become a "formative part of the final rule."

Whether or in what way USDOL has responded to NCD's overture is unknown. However, USDOL's taking into account thoughtful, considered contributions like those NCD has offered could certainly lead to a better outcome than basing final action upon the thousands of form-letter comments submitted earlier. For example, it is at least possible that the proposals could be changed to ensure that the exemption remains available to third-party companionship-service providers through whom many disabled persons secure those services. Whatever the likelihood is that there will be such a modification could be improved by USDOL's having a greater amount of high-quality information on the subject.

USDOL has not yet published a date for releasing a final rule, but the release might nevertheless come without forewarning. Interested parties might want to consider promptly joining the NCD's call for a "negotiated rulemaking process."

UPDATE 12/27/12: USDOL now [projects](#) that the final rule will be released in April 2013.

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