



House Members Oppose Exemption Changes

Insights

2.15.16

Some members of the U.S. House of Representatives have written to Labor Secretary Labor Tom Perez to express concerns about the U.S. Labor Department's proposed revisions in its regulatory definitions of the federal Fair Labor Standards Act's Section 13(a)(1) exemptions.

Criticizes Salary Level, Duties-Tests Uncertainty

The letter (see link below), signed by 108 House members, summarized the many adverse effects that will be visited upon employers and employees as a result of the more-than-doubled, "one-size-fits-all" salary threshold USDOL has proposed.

The members also expressed dissatisfaction with USDOL's ambiguous stance regarding:

- Whether there will be changes in the exemptions' duties requirements, and
- What any such changes might be.

The letter further said in this respect that the current state of affairs "is not a viable substitute for a concrete regulatory proposal" (a point that we too made in our September 2015 [comments](#)).

In the end, however, the signers simply urged USDOL to "reconsider moving forward with this rule as drafted." There was no mention of any possible [Congressional Review Act](#) challenge to the regulations' final version.

The Likely Impact?

While one can of course hope otherwise, there is reason to doubt that the correspondence will have any effect whatsoever upon USDOL's actions. For one thing, recall the Wage and Hour Division's Administrator's having [rebuffed](#) a much-more-limited request from the Chairman of the House Committee on Education and the Workforce that the comment deadline be extended by 60 days.

Furthermore, [reports](#) indicate that there have already been discussions between House members and USDOL for some time now with respect to Congress's concerns. The letter of opposition might signal that USDOL's reactions have been neither accommodating nor encouraging.

Bear in mind also that this initiative is said to be among the administration's highest priorities, and that proponents are [pushing](#) for *expedited* action.

The Bottom Line

As we have said all along, employers should do what they must to be ready to take any necessary steps following USDOL's release of the final regulations. If Congressional supplications *do* cause USDOL to delay that release and/or to modify its positions, so much the better. But our view is that management should not delay its preparations in the expectation that this will happen.

EmploymentLaw 360 recently reported U.S. Solicitor of Labor M. Patricia Smith's having said that USDOL is still aiming for a July 2016 release date. Although this is consistent with the semi-annual regulatory agenda that USDOL released last November, Secretary Perez has also been quoted as expressing confidence that the publication will occur this Spring.

[U.S. House of Representatives Opposition Letter.pdf \(2.15 mb\)](#)