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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

March 19, 2001

The Honorable Elaine Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

By facsimile: (202) 693-6111

Dear Madame Secretary:

As part of its rush to implement a regulatory legacy, the previous administration on January 19, 2001 published a proposed rule (66 FR 5481, January 19, 2001) to the Fair Labor Standards Act (FLSA) regulations that would redefine and essentially eliminate the exemption for "companionship services" provided for under Section 13(a)(15). Comments for this proposed regulation are to close on March 20, 2001. I urge the Department of Labor to extend the comment period at least 90 days so that this proposal can receive adequate review and consideration to determine if it is consistent with the new administration's interpretation of the statutory mandate.

Many small businesses in the home health care industry have told me that this would place a tremendous burden on them. While their workers may be receiving more than the minimum wage, removing the exemption for them would make their hours subject to overtime payments which could result in a tremendous increase in wage payments by these employers. In addition, since these workers are, by definition, working and even living in the homes of clients, tracking which hours would be allocated to work functions and how many occur during a specific period would be extraordinarily difficult and will likely result in gross levels of fraud or over counting.

Yet the Wage and Hour Division in its assessment of this proposal concludes that this proposal "will not produce a significant economic or budgetary impact on affected entities." The Department's analyses under the Executive Order 12866, the Small Business Regulatory Enforcement Fairness Act, and the Regulatory Flexibility Act all deserve a thorough review to determine if they have captured adequately the impact of this proposal on small businesses.

Considering the rush of the previous administration to get this proposal into the Federal Register, I have a high degree of suspicion about the accuracy of these analyses. Therefore, I request that the Department extend the comment period for at least 90 days to allow further

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review of this proposal and the accompanying analyses. There is no urgency about this rulemaking other than the previous administration's desire to initiate it before leaving office.

Please contact Emilia DiSanto or Marc Freedman of my staff at (202) 224-5175 for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kit Bond". The signature is written in a cursive, flowing style.

Christopher S. "Kit" Bond

cc: Tom Markey, Acting Administrator, Wage and Hour Division