



August 30, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Daniel Navarette
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Application of the Fair Labor Standards Act to Domestic Service/Companionship Services

Dear Secretary Chavez-DeRemer and Director Navarette:

On July 2, 2025, the DOL published a notice of proposed rulemaking that would rescind the 2013 DOL final rule, restoring the minimum wage exemption for companion care services that had been in place prior to 2013.¹ Advocacy supports this proposed rescission of the DOL's 2013 final rule and commends the DOL for reducing regulatory burden on small entities.

Ten years after this rule has been effective, small business feedback and data shows that this rule did not fulfill the agency's goals of increasing the earnings and overtime hours for home care workers. Instead, this final rule has resulted in negative unintended consequences and significant costs for small businesses and consumers. Advocacy recommends that the DOL quantify the beneficial impacts and cost savings of the rescission of the 2013 final rule for small businesses.

¹ 90 Fed. Reg. 28,976 (July 2, 2025).

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.⁷

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁸

II. Advocacy and Small Businesses Have Previously Recommended Rule Recission

- In 1975, the DOL issued regulations that created exemptions for companion care workers from FLSA minimum wage and overtime requirements; these exemptions applied to employees of third-party employer or referral services.⁹ Companion care workers are non-medical workers that provide the elderly and infirm with assistance with daily living

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

³ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁴ 5 U.S.C. § 603.

⁵ *Id.* § 605(b).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁹ 40 Fed. Reg. 7405 (Feb. 20, 1975) (codified at 29 CFR 522.109).

activities and fellowship.

- On December 27, 2011, the DOL proposed a rule that prohibited third-party employers such as home care agencies and home care registries from utilizing this exemption.¹⁰ Advocacy held a roundtable on this proposed rule and submitted a comment letter to the DOL based on this small business feedback.¹¹ Advocacy commented that the DOL's initial regulatory flexibility analysis (IRFA) was deficient because it underestimated the economic impact of this rule on small entities.
- In response to President Trump's 2017 regulatory reform Executive Orders 13771 and 13777, Advocacy held roundtables across the country and heard from small home care companies who requested that this rule be rescinded.¹² Small home care companies reported significant losses in live-in services and general hourly services due to the 2013 final rule. In 2017 and 2018, Advocacy wrote comment letters to the Department of Labor recommending that the agency rescind this final rule.¹³
- On June 20, 2025, Advocacy recommended that the 2013 final rule be rescinded, in response to the U.S. Department of Justice and Federal Trade Commission requests for information inviting public comments to identify regulations that raise barriers to competition.¹⁴

III. The DOL Should Rescind Final 2013 Companion Care Rule

Advocacy recommends that DOL rescind the 2013 final rule. The final rule had unintended consequences for workers, small businesses, and consumers. The rule did not fulfill the agency's goals of increasing the earnings for home care workers and ensuring that the home health industry attracts and retains qualified workers.¹⁵ Five years after the DOL's final rule became effective, the United States Government Accountability Office (GAO) issued a report that found that home care workers' estimated overtime hours decreased. Further, hourly wages and weekly earnings did not change significantly following the implementation of the Home Care Rule.¹⁶

¹⁰ 76 Fed. Reg. 81,190 (Dec. 27, 2011).

¹¹ U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Application of the Fair Labor Standards Act to Domestic Service; Proposed Rule (Mar. 12, 2012), <https://www.regulations.gov/comment/WH-2011-0003-7756>.

¹² U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., REFORMING REGULATIONS AND LISTENING TO SMALL BUSINESS: SECOND PROGRESS REPORT ON THE OFFICE OF ADVOCACY'S REGIONAL REGULATORY REFORM ROUNDTABLES (Mar. 2020), <https://advocacy.sba.gov/wp-content/uploads/2020/04/2nd-Progress-Report-on-Reg-Reform-Roundtables.pdf>.

¹³ U.S. Small Bus. Admin., Off. of Advoc., Comments to the Dep't of Labor on Regulatory Reform (Oct. 4, 2017, Nov. 16, 2018) (on file with Advocacy).

¹⁴ U.S. Small Bus. Admin., Off. of Advoc., Comments on Dep't of Justice's Request for Information Targeting Red Tape that Hinders Free Market Competition; and Federal Trade Commission's Request for Information Regarding Reducing Anti-Competitive Regulatory Barriers (June 20, 2025), <https://advocacy.sba.gov/wp-content/uploads/2025/06/Comment-Letter-DOJ-RFI-on-Anticomp-Regs-Task-Force.pdf>.

¹⁵ 76 Fed. Reg. at 81,192.

¹⁶ U.S. GOV'T ACCOUNTABILITY OFFICE., GAO-21-72, OBSERVATIONS ON THE EFFECTS OF THE HOME CARE RULE (Oct. 2020), <https://www.gao.gov/products/gao-21-72>. [hereinafter GAO Report].

The report found that private agencies and state Medicaid programs tried to limit hours to 40 hours a week and discontinued live-in care services in response to this final rule. Compliance with FLSA rules required a complex scheduling of five to eight caregiver schedules to cover these hours to minimize overtime payments, adding administrative staff costs and burdens. Consumers could not afford the overtime costs and hired extra workers, affecting the continuity, availability and cost of care.¹⁷

Ten years after the DOL's final rule became effective, small businesses told Advocacy that this rule should be rescinded because it has negatively impacted the marketplace and discouraged new businesses from entering the market accelerating industry consolidation, leading to reduced competition and fewer choices for customers.¹⁸

IV. The DOL Should Estimate Rule Recission Cost Savings for Small Businesses

Advocacy recommends that DOL quantify the beneficial impacts and cost savings of the recission of the 2013 final rule for small businesses. The IRFA must quantify the significant cost impacts and benefit impacts of regulations on small entities. The DOL's IRFA states that small entities would only incur rule familiarization costs with this rule. Using the information provided by the DOL in the 2013 rule, adjusted for inflation and the changing size of the industry, Advocacy calculates that the repeal of this rule will save the average affected small entity \$2,248 per year. Over the next 10 years, affected small entities are expected to save \$947 million total at present value discounted at 7 percent.

Based on stakeholder outreach, the actual cost savings may be significantly higher, as the DOL's initial estimates do not include the rule's unintended consequences, such as increased administrative burden and lost live-in care revenues. According to a Home Care Association of America survey,⁶⁹ home care agencies found that half of the respondents lost more than \$500,000 a year in revenue from the loss of the live-in care business. A majority of respondents reported increased overtime costs of between \$100,000-\$500,000 on an annualized basis due to this rule.¹⁹ Six small home care registries reported first year costs of \$111,000 to \$4.3 million due to this rule. These costs included regulatory familiarization, training, and loss of revenue from a drop in live-in cases and per client average care hours per week.²⁰

V. Conclusion

Advocacy supports the proposed recission of the DOL's 2013 final rule on the companion care exemption, as supported by Advocacy's previous comment letters on this issue. Ten years after this rule's effective date, the data from small businesses and the GAO show that this rule did not

¹⁷ *Id.*

¹⁸ See Note 14.

¹⁹ Home Care Ass'n of Am., *The Impact of the Companion Exemption Repeal Survey* (Apr. 2025) (internal survey) (on file with author). 68 home care agencies surveyed are considered small businesses by the Small Business Administration's small business size standard (below the \$19 million-dollar annual revenue amount).

²⁰ Lori Dahan, Priv. Care Ass'n, Comment Letter on Anti-Competitive Regulations Task Force, tbl.1 (May 8, 2025), <https://www.regulations.gov/comment/ATR-2025-0001-0071>.

fulfill the agency's goals of increasing the earnings and overtime hours for home care workers. Instead, this final rule has resulted in negative unintended consequences and significant costs for small businesses and consumers. While Advocacy recommends the rescission of this rule, we also urge the DOL to quantify the beneficial impacts and cost savings of the rescission of the 2013 final rule for small businesses.

If you have any questions or require additional information, please contact me or Janis Reyes at (202) 798-5798 or by email at Janis.Reyes@sba.gov.

Sincerely,

/s/

Dr. Casey Mulligan
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Office of Advocacy
U.S. Small Business Administration

/s/

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Copy to: Mr. Jeffrey B. Clark, Sr., Acting Administrator
Office of Information and Regulatory Affairs
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