Dear Secretary Walsh and Acting Administrator Looman,

In response to the Department of Labor’s (DOL) recently announced plans to engage in rulemaking on employment status determination under the Fair Labor Standards Act (FLSA), we write to express our support for retaining the January 7, 2021 DOL rule on this matter and ask you to prioritize policies that advance self-employment opportunities in America without unwarranted government barriers.

Independent contracting and other flexible work policies are essential to the lifestyles and success of a growing community of over 59 million freelance workers in a broad range of occupations. In fact, flexibility is increasingly sought by people in more traditional work arrangements, as well. Recent surveys show that workers desire increased flexibility to work remotely, control their work hours, and pursue self-employment — not only in response to pandemic disruptions but because families have shifting needs, demands, schedules, and priorities in the 21st century.

Further, consider that 1 in 5 American workers have changed careers since the pandemic began, nearly 50 percent are considering a career change, and more than half of American workers that changed jobs in the past year entered new occupations or fields. Clearly this is an era where flexibility, including self-employment opportunities, are of tremendous importance to families, businesses, and consumers as they battle inflation, labor shortages, and supply chain disruptions, and seek additional work options despite more than 11 million job openings.

As you may be aware, an overwhelming majority of those who earn income as independent contractors are satisfied with those arrangements. The U.S. Bureau of Labor Statistics (BLS) found in a survey that 79 percent of independent contractors prefer their situation over traditional jobs and that fewer than 1 in 10 would prefer a traditional work arrangement.

Simply put, while it may benefit narrow special interest groups, rulemaking that diminishes freelance opportunities and turns independent contractors into traditional employees under federal law would be widely unpopular among the individuals it would impact most directly.

As we await announcement of a proposed rule from the U.S. Wage and Hour Division, we are concerned about the intent of DOL based on continued attempts to overturn the January 7, 2021 rule that remains in effect; continued references to worker misclassification as a means to undermine independent contracting; continued prioritization of the Protecting the Right to Organize Act by President Biden that would institute the unworkable “ABC” test for employment status under the National Labor Relations Act; and past actions such as the 2015 Obama/Biden Administration guidance that elevated the use of secondary economic realities test.
factors to curb independent contracting – an approach we worry President Biden may pursue again.

The January 7, 2021 DOL rule has provided clarity to the decades-old economic realities test for the modern workforce, helping to apply determinations in light of the different types of work and technologies used to work and connect with customers today. Instead of removing this clear and sensible standard and attempting to diminish or eliminate independent contracting, we urge you to preserve paths to self-employment that allow tens of millions of working Americans, parents of children with special needs, workers seeking career changes, disabled workers and workers caring for disabled family members, and entrepreneurs growing small businesses of their own to pursue work on their own terms.

During your June 24 and June 29, 2022 forums, numerous independent contractors and others made clear their strong support for self-employment and the many ways independent contracting has enriched their lives. We ask that DOL not only work to protect but further improve rather than diminish these career pathways.

DOL could do so by, among other things, supporting legislation to end government-imposed barriers to businesses voluntarily providing benefits to independent contractors and providing self-employed workers more parity with other employers in acquiring health care and other benefits on their own, such as permitting voluntary access to portable benefits/health savings accounts.

At a time when American families are increasingly concerned about the economy and their careers, now is a time to advance the flexibility they seek. Reducing paths to self-employment will only reduce opportunity and growth in the 21st century.

Sincerely,

Brent Wm. Gardner
Chief Government Affairs Officer
Americans for Prosperity

F. Vincent Vernuccio
President
Institute for the American Worker

Michael J. Lotito
Co-Chair
Littler Workplace Policy Institute

Krisztina Pusok, Ph. D.
Director of Policy and Research
The American Consumer Institute

Brandon Arnold
Executive Vice President
National Taxpayers Union

Grover Norquist
President
Americans for Tax Reform

Greg Sindelar
Chief Executive Officer
Texas Public Policy Foundation
and
Chief Executive Officer
Alliance for Opportunity
Lisa B. Nelson  
Chief Executive Officer  
American Legislative Exchange Council

Andrew F. Quinlan  
President  
Center for Freedom and Prosperity

Robert Fellner  
Vice President & Policy Director  
Nevada Policy Research Institute

Heather R. Higgins  
Chief Executive Officer  
Independent Women's Voice

Bethany Marcum  
Chief Executive Officer  
Alaska Policy Forum

Mike Stenhouse  
Chief Executive Officer  
Rhode Island Center for Freedom and Prosperity

Mike Hruby  
President  
New Jobs America

Paul Gessing  
President  
Rio Grande Foundation

Seton Motley  
President  
Less Government

Robert Alt  
President & CEO  
The Buckeye Institute

Steve Delie  
Director, Policy and Legal Affairs  
Workers for Opportunity

Brian Minnich  
Executive Vice President  
Freedom Foundation

Daniel Erspamer  
Chief Executive Officer  
Pelican Institute  
and  
Chief Executive Officer  
Alliance for Opportunity

Eric Peterson  
Director  
Pelican Center for Technology and Innovation

Randy Hicks  
President & CEO  
Georgia Center for Opportunity  
and  
President & CEO  
Alliance for Opportunity

Jeffrey Mazzella  
President  
Center for Individual Freedom

Douglas Carswell  
President & CEO  
Mississippi Center for Public Policy

David Williams  
President  
Taxpayers Protection Alliance

Ryan Ellis  
President  
Center for a Free Economy

Phil Kerpen  
President  
American Commitment

James Taylor  
President  
The Heartland Institute
Adam Brandon
President
FreedomWorks

Elaine Parker
President
Job Creators Network Foundation

Tarren Bragdon
President & CEO
Foundation for Government Accountability

Brandon Dutcher
Senior Vice President
Oklahoma Council of Public Affairs

Thomas A. Schatz
President
Citizens Against Government Waste

Justin Owen
President & CEO
Beacon Center of Tennessee

Matthew Kandrach
President
Consumer Action for a Strong Economy

Charles Mitchell
Chief Executive Officer
Commonwealth Foundation

Caden Rosenbaum
Policy Analyst, Tech and Innovation
Libertas Institute

James L. Martin
Founder/Chairman
60 Plus Association

Saulius “Saul” Anuzis
President
60 Plus Association