

The Honorable Marty Walsh
United States Secretary of Labor
Office of the Secretary
S-2521
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Jessica Looman
Acting Administrator, Wage and Hour Division
200 Constitution Avenue NW
Washington, DC 20210

June 21st, 2022

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
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