



March 6, 2024

Dear Senators and Representatives:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 23,000 members, I write in support of the Congressional Review Act resolution to nullify the U.S. Department of Labor's independent contractor final rule.

ABC opposes the DOL's new proposed rule, which eliminates the 2021 final rule's emphasis on two "core" factors: a worker's control over their work, and their opportunity for profit or loss, both of which are paramount in making an independent contractor determination. Instead, the department's approach is to restore a "totality-of-the-circumstances" analysis of the "economic reality test."

The proposal creates an ambiguous and difficult-to-interpret standard under which employers will be forced to guess which factors will be more important in the determination and how to analyze the facts of their contractual relationships under multiple factors. This confusion will lead to more litigation, as employers and workers alike will not understand who qualifies as independent contractors.

The proposed rule also contains inconsistent guidance on the factors to be given weight in determining independent status. In particular, the proposed rule gives undue weight to enforcement of governmental safety requirements on jobsites as somehow proving "control" of employee status.

Additionally, the proposed rule creates new confusion regarding the "integral" nature of work performed, the duration of the work, entrepreneurial opportunities, investment in tools or equipment and the weight given to specialized skills. While this is not an exclusive list of the errors in the proposal, it shows the proposed rule will cause workers who have long been properly classified as independent contractors in the construction industry to improperly lose their independent status.

Finally, the proposed rule falsely assumes independent contractors are dissatisfied or somehow exploited, when numerous studies have shown the vast majority of independent contractors prefer their freedom and independence and do not want to be reclassified as employees at all.

ABC supports the resolution's purpose of protecting legitimate independent contractors across all sectors, including construction. This resolution would not only prevent the rule from going into effect but would also prohibit a similar rule from being issued in the future.

ABC urges the U.S. House of Representatives and U.S. Senate committees of jurisdiction to the Congressional Review Act resolution to nullify the U.S. Department of Labor's independent contractor final rule. ABC is asking for both chambers to pass the resolution to nullify the DOL's independent contractor rule and ensure millions of Americans can continue to work as independent contractors.

Sincerely,

Kristen Swearingen
Vice President, Legislative & Political Affairs