



March 20, 2024

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx, Ranking Member Scott and members of the House Committee on Education and the Workforce:

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 H.J. Res. 116, 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 committee to report H.J. Res. 116 for a full House vote as the next step toward nullifying the U.S. Department of Labor's independent contractor final rule to ensure millions of Americans can continue to work as independent contractors.

Sincerely,

A handwritten signature in black ink that reads 'Kristen Swearingen'.

Kristen Swearingen
Vice President, Legislative & Political Affairs