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RICK W. ALLEN

12TH DISTRICT, GEORGIA

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June 29, 2022

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The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh:

I write to you today with great concern over your department's announcement¹ to engage in rulemaking to reclassify independent contractors as employees under the Fair Labor Standards Act. In 2017 when the Trump Administration promulgated their independent contractor rule, an estimated 19 million Americans were classified as independent contractors.² This number has grown and continues to grow, as our workforce shifts and evolves from traditional workplace settings. Included in the umbrella of independent contractors are gig workers and freelancers, and in 2021, a study³ found that 59 million Americans—over one-third of the United States' workforce—identified as freelancers and contributed \$1.3 trillion to the U.S. economy. The study also underscored how flexibility was a driving factor in the decision for individuals to be freelancers. These are the workers that are continuing to shape our workforce and should be allowed to keep their status and not forced into an arrangement that does not offer the same flexibility they currently enjoy.

The Trump Administration understood the benefits that independent contractors had when they were not categorized as "employees" by proposing a rule to clarify when workers should be categorized as independent contractors.⁴ This rule was expected to take effect in March 2021; however, your department delayed this rule, and ultimately withdrew this new classification of independent contractors. Furthermore, the U.S. District Court for the Eastern District of Texas

¹ <https://blog.dol.gov/2022/06/03/misclassification-of-employees-as-independent-contractors-under-the-fair-labor-standards-act>

² <https://www.federalregister.gov/documents/2020/09/25/2020-21018/independent-contractor-status-under-the-fair-labor-standards-act>


³ <https://investors.upwork.com/news-releases/news-release-details/upwork-study-finds-59-million-americans-freelancing-amid>

⁴ <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/federal-judge-reinstates-trump-era-independent-contractor-rule.aspx>

ordered the U.S. Department of Labor to reinstate the Trump Administration rule on March 14, 2021.

Should you move forward with this process, your rule would likely dismantle the flexibilities that independent contractors want, which is in many cases why they decide to be independent contractors in the first place. I urge you to reverse course and keep the rule protecting independent contractors issued by the Trump Administration.

Sincerely,



Rick W. Allen