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VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS



Independent Insurance Agents & Brokers of America.



Insured Retirement Institute



NATIONAL ALLIANCE OF LIFE COMPANIES
An Association of Life and Health Insurance Companies



April 12, 2021

Via Electronic Submission

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN1235-AA34, Independent Contractor Status Under the Fair Labor Standards Act;
Withdrawal

To Whom It May Concern:

We, the undersigned trade associations, appreciate the opportunity to comment on the U.S. Department of Labor’s (DOL or Department) proposed rule¹ to withdraw the final rule on

¹ 86 FR 14027 (Mar. 12, 2021)

Independent Contractor Status under the Fair Labor Standards Act (FLSA), which was published January 7, 2021.² We reiterate our support for the final rule and urge the DOL not to withdraw it. Our previous comments to the Department have highlighted that financial professionals choosing to operate as independent contractors help generate economic growth and financial security to the local communities they serve throughout the nation. Our foremost concern remains to work with the Department on promoting and protecting Americans' financial well-being through the insurance, savings and investment, and other financial services our members provide. The work that those operating as independent contractors within our industry performs is vital to this goal.

We recognize the Department's and courts' longstanding view that whether a worker is an employee or independent contractor under the FLSA is one of economic reality based on a totality of circumstances as examined under multiple factors. For reasons stated in our prior comments, we support the final rule's streamlined and rational approach toward administering the economic realities test.

We disagree with the Department's view that the final rule is inconsistent with the principles established by decades of jurisprudence to render it a "struggle" for courts to apply it.³ Such a departure from the established contours of FLSA jurisprudence and DOL opinion would more closely resemble the strict ABC test. Unlike the economic realities test, or any other worker classification test, the ABC test completely shifts the burden of proof by creating a presumption of employee status. Moreover, it eliminates several facts and concepts that have deep roots in both the courts' and Department's application of the FLSA by moving from the court-mandated "totality-of-the-circumstances" approach based on balancing multiple factors to a dispositive set of cumulative, conjunctive elements.

For these reasons, we urge the Department to allow the final rule to become effective on May 7, 2021 and look forward to continuing to work with you on this important effort.

Respectfully submitted,

American Council of Life Insurers
American Securities Association
Financial Services Institute
Independent Insurance Agents & Brokers of America (Big "I")
Insured Retirement Institute
National Alliance of Life Companies
National Association of Health Underwriters
National Association of Insurance and Financial Advisors
National Association of Professional Insurance Agents
Securities Industry and Financial Markets Association

² 86 FR 1186 (Jan. 7, 2021)

³ Supra note 1 at 14034.