



FINANCIAL
SERVICES
INSTITUTE

VOICE OF INDEPENDENT
FINANCIAL SERVICES
FIRMS AND INDEPENDENT
FINANCIAL ADVISORS

STATEMENT FOR THE RECORD

On

**The U.S. House Committee on Education & the Workforce, Subcommittee on Health,
Employment, Labor and Pensions**

**“Protecting Workers and Small Businesses from Biden’s Attack on Worker Free Choice and
Economic Growth”**

December 13, 2023

On behalf of the Financial Services Institute (FSI), we write to express our support for the Modern Worker Empowerment Act (H.R. 5513). We are pleased that the Subcommittee is holding this hearing to consider this important legislation, which would clarify the definition of “employee” across federal law to protect independent workers. FSI represents independent financial services firms and the financial advisors affiliated with them. As discussed in further detail below, financial advisors’ independent contractor status is a defining characteristic of our industry, and this legislation will ensure that independent financial advisors remain properly classified.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the United States, there are more than 500,000 independent contractors in the financial and insurance industries, including 160,000 independent financial advisors, who account for approximately 52.7 percent of all producing independent financial advisors.¹ These financial advisors are self-employed independent contractors, rather than employees of independent financial services firms.² They own and operate approximately 130,000 financial advisory and insurance brokerage firms, employing approximately 330,000 people and accounting for 27 percent (\$47 billion) of the output of the financial-advisory and insurance-brokerage industry. Between 2015 and 2019, independent contractors in the financial services sector created approximately 54,000 new businesses and 174,000 new jobs.³

FSI’s member independent financial services firms (most dually registered as broker-dealers and investment advisers) provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial

¹ Cerulli Associates, Advisor Headcount 2019, on file with author; NERA Economic Consulting, The Role of Independent Contractors in the Finance and Insurance Sectors (Nov. 2022), attached *infra* as Ex. B (finding that more than half a million people work as independent contractors in the financial and insurance sector and in financial-services occupations).

² The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term “investment advisor” or “advisor” in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

³ NERA Economic Consulting, The Role of Independent Contractors in the Finance and Insurance Sectors, *infra* Ex. B.

services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring.

FSI's members serve ordinary Americans across all income levels. Independent financial services firms enable independent financial advisors to provide financial advice that helps the advisors' clients save for common financial needs such as college tuition, homeownership, retirement, and support for their aging parents. These advisors' services are especially important in underserved minority and rural communities that lack access to a robust financial-services market, because they frequently offer a one-stop shop for affordable investing advice, tax preparation, financial education, and estate planning. In fact, as a percentage of the financial services industry, FSI members make the highest economic activity in less populated or smaller states, which are often underserved by other parts of the financial services industry.

Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals. The business model has two players: financial advisors and independent financial services firms. Financial advisors normally establish their own business without any coordination with or approval required by the firm. Some advisors engage in limited operations, such as purchasing and selling securities on behalf of clients. Others may have a more significant enterprise, offering a full range of financial planning, investment advice, insurance, tax, and estate-planning services.

Financial advisors affiliate with independent financial services firms in order to take advantage of economies of scale and to ensure regulatory compliance. The firms offer financial advisors business services like platforms and products. They also help individual advisors comply with federal and state regulations. In particular, under the Securities Exchange Act of 1934 (Exchange Act), anyone who effectuates securities transactions or offers advice concerning investing in securities, including independent financial advisors, must register with the SEC or affiliate with a corporation that is registered with the SEC, such as an independent financial services firm. 15 U.S.C. § 78o(a)(1). Federal regulations also require registered investment advisors to implement written policies and procedures designed to prevent violations of the federal securities laws. 17 C.F.R. § 270.38a-1. Individual advisors who choose to satisfy these requirements by affiliating with a financial services firm do not individually register as broker-dealers but instead agree to supervision by their firms, which assume responsibility for ensuring compliance with applicable laws. *Id.*; FINRA Rule 3110. The firms thus oversee the securities operations of their financial advisors, including by establishing written procedures (as required by law) to ensure compliance with federal law and the conduct rules of the Financial Industry Regulatory Authority, Inc. (FINRA).

Critically, *financial advisors are not employees of independent financial services firms*. The industry's business model is successful because the key relationship is the one between a client and his or her financial advisor—not the separate, symbiotic relationship between the financial advisor and his or her affiliated independent financial service firm. Thus, the focal point of a financial advisor's business is his or her interactions with clients. Financial advisors frequently switch their firm

affiliations, taking their clients and preexisting businesses with them. The firms do not control financial advisors, who set their own hours and rates, maintain their own physical premises, and hire and supervise their own staff. Financial advisors make significant investments in their own businesses and realize profits or losses according to their own successes or failures. They generally operate their business free from the control of the firms except for purposes of compliance with federal and state rules and regulations. Many financial advisors also offer clients services wholly unrelated to their firm affiliation, like tax advice and estate planning.

Thus, financial advisors are independent contractors operating with a significant degree of independence, while complying with certain contractual obligations such as legally required regulatory compliance measures. These advisors are therefore not correctly classified as employees for purposes of the Fair Labor Standards Act (FLSA). Rather, they are independent contractors and businesspeople.

Discussion

The Modern Worker Empowerment Act would harmonize the definition of the term “employee” across the FLSA and the National Labor Relations Act (NLRA), providing independent entrepreneurs with much needed clarity. The current patchwork of definitions of the term “employee” creates uncertainty for independent financial advisors and their clients. The Modern Worker Empowerment Act creates a clear definition and standard to ensure that independent contractors remain properly classified.

Further, the bill would clarify that requiring a worker to comply with outside legal and regulatory requirements cannot be used as evidence of an employment relationship. While that language was put in place by the Department of Labor’s (DOL) 2021 Independent Contractor Rule, the DOL is proposing to rescind it and replace it with a multi-factor totality of the circumstances test. FSI opposes the Proposed Rule, which eliminates the streamlined “core factor” framework of the 2021 Rule, making it harder for workers and businesses to correctly classify workers.⁴ The Proposed Rule goes against the DOL’s stated objective of regulatory clarity, and contravenes the Administrative Procedure Act, the FLSA, and Supreme Court precedent. The Proposed Rule would allow regulators to count regulatory compliance requirements such as those imposed by federal and state governments—not by the employer—as evidence of control ⁵~~(00)~~. The Modern Worker Empowerment Act would clarify that supervision to ensure compliance with outside legal and regulatory requirements (such as FINRA and SEC rules) cannot be used as evidence of an employment relationship. This is critical to ensure that independent financial advisors remain properly classified as independent contractors.

⁴ Financial Services Institute, Comment Letter on Employee or Independent Contractor Classification Under the Fair Labor Standards Act (December 13, 2022) available at: <https://www.regulations.gov/comment/WHD-2022-0003-53818>

⁵ Financial Services Institute, Statement for the Record on the U.S. House Committee on Education & the Workforce, Subcommittee on Workforce Protections “Examining Biden’s War on Independent Contractors,” April 19, 2023.

Conclusion

We thank the Subcommittee for holding this hearing and for the work it is doing to preserve independent contractor status in the workforce. Should you have any questions or would like more information on FSI and our position on this important issue, please contact our Director of Legislative Affairs, Hanna Laver, at (202) 499-7224.