THE DEPARTMENT OF LABOR SHOULD SUPPORT INDEPENDENT WORK

The Department of Labor has proposed new regulations that could hinder access to independent work. Flex's official comments detail why the Department of Labor shouldn't move forward with its proposal—here's the highlights:

WORKERS HAVE MORE CHOICES THAN EVER IN THE EVOLVING 21ST-CENTURY ECONOMY.

Thanks to technological innovation, more people now have the means to choose where, when, how often—and with which companies and for what kind of paycheck—they want to work.

The government's own economic data lends credence to this idea. With over 10 million jobs open across the U.S., there is no shortage of jobs for people looking for extra income with traditional employers. Government data also shows on worker quit rates indicate that the labor market continues to offer workers real power in which jobs they will choose.

with **10 MILLION** jobs open, workers are choosing flexibility over traditional employment.

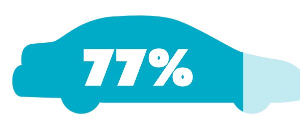
Yet, nearly 25 million people choose to earn with app-based platforms. That's because these workers recognize the freedom and competition-driven choice that comes with app-based platforms. The DoL's 2021 rule better reflects this app-driven worker empowerment.

APP-BASED WORKERS OVERWHELMINGLY PREFER TO REMAIN INDEPENDENT.

For roughly a century, U.S. labor laws have been based on a dual classification system; a worker is either an employee or an independent contractor. However, app-based platforms have transformed the way work can be done, and millions of app-based earners have voted with their feet to choose a new economic path over the traditional system.

App-based earners overwhelmingly (77%) prefer to remain independent contractors, thus preserving the flexibility and freedom to choose when, where, and how often to work. That's what the first-ever national poll of app-based workers found earlier this year, along with the facts that:

- 8 in 10 app-based earners spend 20 hours or fewer per week on app-based platforms (with 61% working 10 or fewer hours a week),
- More than 84% of app-based earners are satisfied with app-based platforms;
- 85% of app-based earners say these platforms have been fair to the flexibility of workers' schedules.



App-based earners support maintaining their current classification as independent contractors.

The current rule more effectively supports independent work, and the vast majority of people who drive, shop, and deliver goods via app-based platforms agree.

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THE 2021 RULE WORKS, HAS NOT HINDERED DOL'S ENFORCEMENT ABILITIES, AND SUCH A RAPID AND UNSUPPORTED REVERSAL PRESENTS REAL RISK.

The current rule provides a more workable and certainty-enhancing classification analysis rubric, bringing a more modern, practical, and predictable approach to the prior interactions of the multi-factor balancing test. Further, the Department has maintained its ability to bring enforcement actions against actual instances of misclassification under the current rule.

Lastly, the DoL adopted the current rule less than two years ago in the agency's first-ever notice-and comment-rulemaking process to address worker classification status under the FLSA. To make such an about-face in a short period of time runs the risk of politicizing the Labor Department and making its proposal, if adopted, vulnerable on appeal.

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If the agency does move forward, the DoL must address areas where the NPRM ignores the realities of technology-driven 21st century work (Factor #1), strays from decades of relevant case law (Factor #2), would hurt entrepreneurs and small businesses (also Factor #2), is contrary to judicial precedent and the DoL's own guidance (Factor #4), or represents an abrupt reversal by the agency and thus would likely be found arbitrary and capricious (Factor #5). For more detail, Flex's comments can be found here.

The DoL should withdraw its proposal and retain the current framework, which better reflects the 21st-century economic landscape. Particularly in a time of economic uncertainty and significant inflationary pressures, misguided regulatory interventions could increase costs and negatively impact those who turn to app-based platforms to earn extra income. Policymakers should partner with Flex to pursue common-sense policies that support the independent work that millions continue to choose even as ten million traditional jobs remain open.

ABOUT FLEX: Flex represents America's app-based rideshare and delivery platforms and the people who count on them. Our member companies—DoorDash, Grubhub, HopSkip-Drive, Instacart, Lyft, Shipt, and Uber—help provide access to crucial goods and services to customers safely and efficiently, offer flexible earning opportunities to workers, and support economic growth in communities across the country.