



April 19, 2023

The Honorable Kevin Kiley
Chairman
House Education and Workforce Committee
Subcommittee on Workforce Protections
1032 Longworth House Office Building
Washington, DC 20515

The Honorable Alma Adams
Ranking Member
House Education and Workforce Committee
Subcommittee on Workforce Protections
2436 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kiley and Ranking Member Adams:

On behalf of the Direct Selling Association (“DSA”) we submit this letter for the record to the United States House of Representatives Education and Workforce Committee, Subcommittee on Workforce Protections for the hearing entitled “Examining Biden’s War on Independent Contractors.” We appreciate the Committee holding this hearing because there has been much uncertainty regarding the continued independent contractor status of direct sellers over the last few years.

For more than a century, DSA has served as the national trade association for companies that offer entrepreneurial opportunities to individuals who market and sell products and services, typically outside of a fixed retail establishment. In 2021, direct selling took place across the United States, generating \$42.7 billion in retail sales and 7.3 million entrepreneurs in the U.S. sold products or services through the direct selling channel, providing a personalized buying experience for 44.6 million preferred customers and discount buyers.

Direct Selling Has a Positive Impact in the United States Utilizing Independent Contractors

Direct selling is a significant business model that serves Americans who desire flexibility and prefer personal relationships to purchase products and services. These individual sellers are respected by their peers, consumers, and customers. Personal testimonials by real direct sellers who enjoy the flexibility provided by the business and has allowed them to work the business

while providing for their family, being there in times of need and providing a low-cost business open to Americans regardless of age, education, or ethnicity.¹

Direct selling provides a low-cost path to starting a flexible, part-time business in the United States. For the 7.3 million United States direct sellers, 6.8 million only work the business on a part-time basis to earn modest extra income on the side.² This allows individuals to engage in their own business as much or as little as they want depending on their schedule and individual financial goals. Direct selling is overrepresented compared with the United States population by women (76%) Hispanics (23%).³ So, creating a confusing standard that could jeopardize these independent earning opportunities could have a negative impact on the underserved communities the rule seeks to help.

Fifty-nine percent of direct sellers cite flexibility as a reason for joining and sixty-one percent cite flexibility as a reason they stay in a direct selling business.⁴ Seventy-nine percent of Americans have a favorable opinion of direct selling and see the business as an attractive option for entrepreneurship. These perceptions have remained stable for the last decade.⁵ Perception has remained high with the growth of technology that has allowed direct sellers to establish and grow their businesses with an online presence.

As previously mentioned, women and Hispanics are overrepresented in direct selling as a proportion of the United States population. The Congressional Black Caucus Institute has also recognized direct selling as an accessible path to entrepreneurship, describing the business as “a viable solution, presenting meritocratic part-time, flexible opportunity for all Americans no matter their race, ethnicity, gender, or background.”⁶ The Committee should view the overrepresentation of these populations as potential diminished income sources if the rule goes forward as written because it would potentially foreclose direct selling as a flexible income earning source.

Direct Sellers' Independent Contractor Status Should be Harmonized Across Statutes

Because of our longevity in the United States economy, direct sellers have been specifically recognized as independent contractors for many years.⁷ DSA supported H.R. 5038 in the 117th Congress, bi-partisan legislation that would incorporate direct sellers' statutory status as non-employees under IRS Code 26 USC § 3508 into the Fair Labor Standards Act. By defining direct sellers as statutory non-employees under the IRS Code in 1982, Congress recognized the need

¹ Real Direct Sellers, <https://www.dsa.org/advocacy/real-direct-sellers>

² Direct Selling Association 2022 Growth & Outlook Study.

³ Women are 50.8% and Hispanics are 18.5% of the United States population according to the most recent Census data, <https://www.census.gov/quickfacts/US>

⁴ Direct Selling Association 2019 National Salesforce Survey

⁵ 2020 DSA/IPSOS Consumer Attitudes & Entrepreneurship Study, https://www.dsa.org/docs/default-source/research/dsa-ipsos-2020-consumerattitudesinfographic2-27.pdf?sfvrsn=68ddfa5_2%27

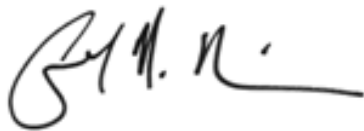
⁶ Congressional Black Caucus Institute 21st Century Council 2022 Annual Report. Available at <https://www.cbcinstitute.org/21stcenturycouncil>

⁷ *Electrolux v. Danaher* 128 Conn. 342 (1941); *Sarah Coventry, Inc. v. Caldwell* 243 Ga. 429 (1979)

for this specific recognition.⁸ DSA believes this is a superior alternative to the misguided Notice of Proposed Rulemaking regarding independent contractor status issued by the Department of Labor last year. If Congress seeks a legislative solution to protecting bona fide independent contractor arrangements, it should support similar language.

We look forward to being an active participant in hearing and legislative action regarding independent contractor issues as the Committee continues to further evaluate the important issue for direct sellers and the American economy. We are happy to answer any questions or provide any assistance that the Committee needs.

Sincerely,

A handwritten signature in black ink, appearing to read "J. N. Mariano", with a long horizontal flourish extending to the right.

Joseph N. Mariano
President
Direct Selling Association

⁸ U.S. Joint Committee on Taxation, *General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982*, JCS-38-82 (Dec. 31. 1982), at 382-383