

April 17, 2023

The Honorable Kevin Kiley
Chair
Subcommittee on Workforce Protections
House Education and the Workforce Committee
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Alma Adams
Ranking Member
Subcommittee on Workforce Protections
House Education and the Workforce Committee
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chair Kiley and Ranking Member Adams:

The National Retail Federation (NRF) writes to thank the Subcommittee for holding this week's hearing entitled, "Examining Biden's War on Independent Contractors." Independent contractors are a vital element of the U.S. economy, and retailers and restaurants, like countless other businesses, maintain a wide range of business-to-business relationships with independent contractors. Efforts to stifle the innovation, imagination and risk-taking of these individuals would be harmful to our economy, aggravate already rampant inflation and cause further supply chain disruptions. Worse, such efforts hinder Americans' ability to work independently, set their own hours, be their own boss, provide for their families and achieve the American dream. NRF urges the Subcommittee to protect independent contractor status from any policies that encumber this critical driver of the nation's economic growth.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail succeed. NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

In December 2022, NRF filed comments¹ with the Department of Labor's Wage and Hour Division (WHD) on its notice of proposed rulemaking (NPRM), "Employee or Independent Contractor Classification Under the Fair Labor Standards Act" (RIN 1235-AA43). As the Subcommittee is well aware, the proposed rule, if finalized, would skew the worker classification analysis toward a finding of employment status, rather than implementing a neutral analysis to determine the true nature of the worker's relationship with a given company. In our comments, we raised several serious concerns with the rulemaking, which will create ambiguities, chill innovation and interfere with worker choice and flexibility. We further argued

¹ Comments by the National Retail Federation and National Council of Chain Restaurants, Department of Labor, Wage and Hour Division, "Employee or Independent Contractor Classification Under the Fair Labor Standards Act," 87 Fed. Reg. 62218 (RIN 1235-AA43) (October 13, 2022), available at <https://www.regulations.gov/comment/WHD-2022-0003-53227>.

that implementing this rule will add unnecessary confusion to businesses' operations, increase costs across all industries and further drive up already rampant inflation.

The current independent contractor standard is a well-reasoned, sound public policy. The current rule increases legal certainty in the application of the economic realities test and is grounded in and consistent with Supreme Court precedent. Additionally, the current rule was only put into effect in March 2022, a mere seven months before WHD issued its new NPRM. The agency should allow the rule to fully take effect, thereby giving both the agency and the regulated community the opportunity to understand and analyze its impact, before attempting to abandon it.

WHD's new proposed rulemaking will cause significant economic upheaval for the millions of entrepreneurial individuals who currently choose to manage their own businesses through independent contractor arrangements and for the businesses across the economy who rely on these entrepreneurs for their expertise. NRF, therefore, urges Congress to protect independent contractor status.

Thank you again for holding this important hearing. NRF looks forward to working with the Subcommittee on this vital issue. We respectfully request that this letter be included in the record of the hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "David French", with a stylized flourish at the end.

David French
Senior Vice President
Government Relations