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April 30, 2024

The Honorable Kevin Kiley  
United States House of Representatives  
1032 Longworth House Office Building  
Washington, D.C. 20515

Dear Representative Kiley,

On behalf of NFIB, the nation's leading small business advocacy organization, I write in support of H.J.Res. 116, *providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Labor relating to "Employee or Independent Contractor Classification Under the Fair Labor Standards Act."* This resolution would repeal the Department of Labor's (DOL) 2024 Independent Contractor Rule that added complexity to the worker classification process and will lead to frivolous litigation and enforcement actions against small businesses.

In a recent NFIB member ballot, 95% of NFIB members believe that small businesses should be able to hire independent contractors to perform tasks essential to their business.<sup>1</sup> Unfortunately, the latest DOL Independent Contractor Rule adopts a strict, multifaceted independent contractor test that significantly curtails the rights of small business owners to hire independent contractors.

Currently, there are three different tests used by state and federal government agencies for determining who is and is not an independent contractor, each of which has different factors to determine the classification of a worker.<sup>2</sup> These arbitrary and competing standards lead to confusion for small business owners and contribute to the misclassification of workers, which could result in expensive legal problems for these businesses.

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<sup>1</sup> *Mandate*, vol. 576, NFIB Member Ballot, March 2020, *Should businesses be able to hire independent contractors to perform tasks essential to their business?* (Yes: 95% No: 2% Undecided: 3%).

<sup>2</sup> Elizabeth Milto, *NFIB Guide to Independent Contractors*, NFIB Small Business Legal Center, 2022, [Guide to Independent Contractors - 2022 -1.eps \(windows.net\)](#)

In 2021, DOL finalized an Independent Contractor Rule that simplified the worker classification process by providing a straightforward test for determining who is and is not an independent contractor. Small businesses supported the simplicity and flexibility provided by DOL's 2021 rule.<sup>3</sup>

Unfortunately, DOL's 2024 Independent Contractor Rule revoked the 2021 straightforward test and replaced it with a complex, bureaucratic, and arbitrary standard. The new rule will make it more difficult for small businesses to comply, hire, and classify workers as independent contractors.

NFIB supports H.J.Res. 116 to repeal the DOL's burdensome 2024 Independent Contractor Rule and urges Congress to promptly enact this resolution. Small businesses appreciate your continued leadership to provide relief from harmful and complex red tape.

Sincerely,

A handwritten signature in black ink, appearing to read "Dylan Rosnick", written over a light gray circular stamp.

Dylan Rosnick  
Principal, Federal Government Relations  
NFIB

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<sup>3</sup> Karen Harned, *NFIB Statement on New DOL Independent Contractor Rule*, January 06, 2021, [NFIB Statement on New DOL Independent Contractor Rule - NFIB](#)