

## **Advocacy Recommends that the DOL Reassess the Compliance Costs of Independent Contractor Rule for Small Business**

On October 13, 2022, the Department of Labor (DOL) proposed a rule that would determine whether a worker is an independent contractor or employee under the Fair Labor Standards Act. The proposed rule would rescind a 2021 final rule which highlighted two core factors that were more probative and carried more weight in the analysis: the nature and degree of control over the work and a worker's opportunity for profit or loss. With this new rule, DOL is returning to the traditional multi-factor economic reality test that analyzes the totality-of-the-circumstances in a business. On December 12, 2022, the Office of Advocacy (Advocacy) submitted a comment letter to DOL on this proposed rule.

Advocacy made the following recommendations:

- Advocacy recommends that DOL reconsider this proposal. As an alternative, Advocacy recommends that DOL clarify certain factors in this proposed test and resolve any conflicts with existing federal requirements. Small businesses told Advocacy that they are very confused on how to classify their workers and comply with DOL's regulations.
- Advocacy is concerned that DOL's Initial Regulatory Flexibility Act is deficient and severely underestimates the economic impacts of this rule on small businesses and independent contractors at under \$25 per small entity. DOL's proposed rule may be detrimental and disruptive to millions of small businesses that rely upon independent contractors as part of their workforce. Advocacy urges DOL to reassess the compliance costs from this regulation in a Supplemental Initial Regulatory Flexibility Analysis. DOL should consider significant alternatives that would accomplish the objectives of the statute while minimizing the economic impacts on small entities as required by the Regulatory Flexibility Act.
- Advocacy recommends that DOL publish a Small Business Compliance Guide and complete more small business outreach, marketing, education and training for small businesses and independent contractors regarding this rule to help with compliance.

A complete copy of Advocacy's letter to the DOL [is available online](#). For more information, please contact Janis Reyes at (202) 798-5798 or by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov).

