



April 28, 2026

VIA ELECTRONIC SUBMISSION

Daniel Navarrete  
Director  
Division of Regulations, Legislation, and Interpretation (DRLI)  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**RE: Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Worker Protection Act**

Dear Director Navarrete:

On February 27, 2026, the U.S. Department of Labor (DOL) issued a proposed rule defining “independent contractor.”<sup>1</sup> This letter constitutes the Office of Advocacy’s (Advocacy) public comments on the proposed rule. Advocacy strongly supports the simplified definition of an independent contractor. DOL’s new definition creates a clear and predictable standard that is essential to protecting small business viability, entrepreneurship, and worker choice in the modern workplace.

On October 29, 2025, Advocacy identified DOL’s 2024 independent contractor rule as one of Small Business’ Most Wanted Reforms, one of the priority agency rules for rescission, withdrawal, or modification to reduce the regulatory burden on small businesses.<sup>2</sup> Advocacy applauds the DOL for rescinding the 2024 definition of independent contractor. DOL’s proposed rule addresses the concerns of small businesses by reducing regulatory burden and will result in cost savings for small businesses and independent contractors. Using data DOL data provided in the initial regulatory flexibility analysis (IRFA), Advocacy calculates that the change will save \$2.0 billion in present value for small employers and independent contractors combined over the next 10 years when using a 7% discount rate, or \$282 million per year.<sup>3</sup>

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<sup>1</sup> 91 Fed. Reg. 9932 (Feb. 27, 2026).

<sup>2</sup> U.S. Small Bus. Admin., Office of Advocacy, *Small Business’ Most Wanted Reform*, available at: <https://advocacy.sba.gov/regulatory-reform/small-businesses-most-wanted-reform/>.

<sup>3</sup> 91 Fed. Reg. 9971 (Feb. 27, 2026).

## **I. Background**

### **A. The Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent voice within the executive branch that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),<sup>4</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>5</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.<sup>6</sup> If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.<sup>7</sup>

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>8</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.<sup>9</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>10</sup>

### **B. DOL's 2026 Proposed Rule**

On February 27, 2026, the DOL proposed a rule on the definition of an independent contractor.<sup>11</sup> The proposed rule restores the independent contractor test the agency adopted in 2021.<sup>12</sup> This

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<sup>4</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>5</sup> Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

<sup>6</sup> 5 U.S.C. § 603.

<sup>7</sup> *Id.* § 605(b).

<sup>8</sup> Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

<sup>9</sup> *Id.*

<sup>10</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>11</sup> 91 Fed. Reg. 9932 (Feb. 27, 2026). These labor statutes require employers to provide benefits to employees. 29 U.S.C. 206(a) (minimum wage and overtime requirements); 29 U.S.C. 211 (c) (recordkeeping requirements); 29 U.S.C. 26-11-2614 (unpaid, job protected leave for specified family and medical reasons); 29 U.S. C. 1801, et seq. (agricultural employment standards).

<sup>12</sup> 89 Fed. Reg. 1638 (Jan. 10, 2024).

test focuses on two core factors: the nature and degree of control over the work and the opportunity for profit or loss. In most cases, these two factors are generally determinative of an employee classification.

The rule also discusses three factors that are less probative in this determination. The other factors include:

1. the amount of skill required for the work,
2. the degree of permanence of the working relationship between the individual and the employer, and
3. whether the work is part of an integrated unit of production.<sup>13</sup> This rule is substantially similar to the rule DOL finalized in 2021.<sup>14</sup>

Millions of small businesses and independent contractors rely on the independent worker classification. In DOL's initial regulatory flexibility analysis (IRFA), the agency estimated that there are 6.4 million small businesses that could potentially use independent contractors as part of their workforce.<sup>15</sup> The DOL has estimated that there are 11.9 million independent contractors in the U.S., accounting for 7.4 percent of workers. The agency has also noted that tax data analyses show that there could be as many as 24.8 million contractors in the country.<sup>16</sup>

## **II. DOL's 2024 Final Rule Created Confusion and Compliance Costs for Small Businesses. Advocacy Supports the DOL's Proposal to Rescind it.**

Since the Fair Labor Standards Act (FLSA) was enacted in 1938, multiple federal courts and agencies have adopted variations of the economic realities test to help employers determine whether a worker is an employee or an independent contractor. This test focuses on whether the worker is economically dependent on an employer for work or is in business for themselves.<sup>15</sup> This inquiry is important because multiple labor employment statutes require employment benefits for employees, but not for independent contractors.

In 2022, DOL proposed a rule on the independent contractor definition, adopting a multi-factor economic reality test that analyzes the totality of the circumstances in a business. Under this proposed rule, the factors were:

- The opportunity for profit or loss depending on managerial skill.
- The investments by the worker and the employer.
- The degree of permanence of the work relationship.
- The nature and degree of employer control.
- The extent to which the work is performed is an integral part of the employer's business.
- The worker's use of skill and initiative.

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<sup>13</sup> 91 Fed. Reg. 9947.

<sup>14</sup> 86 Fed. Reg. 1168 (Jan. 7, 2021) (hereinafter "2021 final rule"). The other three factors are: the amount of skill required for the work, the degree of permanence of the working relationship, and whether the unit is part of an integrated unit of production.

<sup>15</sup> 91 Fed. Reg. 9970 (Feb. 27, 2026), IRFA.

<sup>16</sup> 91 Fed. Reg. 9962 (Feb. 27, 2026), Current Number of Independent Contractors.

- Additional factors may be considered if they are relevant to the ultimate question of whether the workers are economically dependent on the employer for work or are in business for themselves.<sup>17</sup>

On December 12, 2022, Advocacy recommended that the DOL rescind its rule.<sup>18</sup> Small businesses told Advocacy that this test was too confusing because they could not be certain if they were classifying their independent contractors correctly. Under the 2022 test, the economic reality factors are not assigned a predetermined weight, and each factor is given the same consideration. The agency later acknowledged that the “principal flaw of this rule...is the failure to provide effective guidance on how different factors in its multi-factor balancing test should be weighted or applied together.”<sup>19</sup>

Small businesses were most concerned with the “control” factor, which stated that control by the employer for “purposes of complying with legal obligations, safety standards, or contractual or customer service standards may be indicative [of an employment relationship].”<sup>20</sup> Advocacy commented that many industries, like construction and trucking, have federally mandated standards that all workers must follow.

Advocacy commented that this rule would create a compliance risk and a chilling effect for anyone trying to use this classification for legitimate business relationships. Advocacy also warned that the DOL’s rule would be detrimental and disruptive to the millions of small businesses and independent contractors that rely on this critical work arrangement.

In 2024, the DOL finalized this independent contractor definition.<sup>21</sup> Advocacy supports the agency’s proposal to rescind the 2024 final rule and replace it with a more understandable definition of independent contractor.

### **III. DOL’s Proposed Rule will Strengthen Independent Contractor Arrangements.**

The DOL’s proposed rule simplifies and clarifies the independent contractor definition, making it possible to expand their access to talent and create economic opportunities for today’s modern workplace.

Small businesses use independent contractors as a central part of their business model in the following industries:

- Independent insurance and financial advisors at the roundtable commented that they have control over their whole operation, but they align with a broker-dealer or an insurance company for compliance and administrative assistance. They emphasized how important

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<sup>17</sup> 87 Fed.Reg. 62218 (Oct. 13, 2022),

<sup>18</sup> U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Employee or Independent Contractor Under the Fair Labor Standards Act (Dec. 12, 2022), <https://advocacy.sba.gov/wp-content/uploads/2022/12/Comment-Letter-DOL-Independent-Contractor-508c.pdf>.

<sup>19</sup> 91 Fed. Reg. 9939 (Feb. 27, 2026).

<sup>20</sup> 87 Fed.Reg. 62218, 62275 (Oct. 13, 2022).

<sup>21</sup> 89 Fed. Reg. 1638 (Jan. 10, 2024).

the independent contractor definition was for advisors to create increased profits and their own business as an asset for retirement or succession. According to a Financial Services Institute (FSI) survey regarding the DOL's 2024 final rule, 19 percent of surveyed financial advisors would choose retirement if they were required to be employees of their broker-dealer or investment adviser firm.<sup>22</sup>

- The construction and building industries are structured with prime contractors, subcontractors, and independent contractors; this flexibility lets firms manage project-based, seasonal, and specialized work. The construction and building industries have severe skilled labor shortages, and independent contractors help fill this need.
- According to the American Trucking Association (ATA), there are over 350,000 independent contractor truck drivers. Carrier representatives and owner-operator independent drivers generally expressed support for this rule, because drivers want to run their own business, work with multiple carriers, have the flexibility to select their own hours and routes to make more money.
- A representative from the National Home Delivery Association (NHDA) commented that third-party logistics firms are making final-mile bulky goods delivery, like furniture and appliances. They stated that 90 percent of deliveries are completed by an independent contractor business to meet peak/holiday demand and next-day delivery expectations.
- Representatives of the Private Care Association commented that home care registries utilize independent contractors to screen and match clients and caregivers. This client and patient-directed care provides cost efficiency, client choice, and flexibility. Advocacy spoke to two small businesses that operate both registries (and hire independent contractors) and home care agencies (and hire employees).
- A payment system company commented that they utilize independent contractors for direct sales positions. This company faced litigation in California due to a stricter independent contractor definition and was forced to relocate to another state to operate.

Small and micro businesses are nimble in their operations and utilize independent contractors to provide on-demand, sporadic, temporary, or seasonal needs. For example:

- Small businesses in retail and restaurants hire independent contractors to be flexible and competitive. For example, one main street clothing boutique commented that they hire a dozen independent contract tailors and seamstresses during prom, utilizing these skilled workers for a short period of time or on an occasional basis.
- A commenter representing start-ups noted that these innovative companies have difficulty accessing and affording talent in a variety of services like graphic design, accounting services, and artificial intelligence. They each have an intense start and scale-up period, which requires more temporary staff.

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<sup>22</sup> Oxford Economics, *The DOL's Independent Contractor Classification Rule would Decrease Access to Advice and Increase Costs for Investors*, a report for the Financial Services Institute, 12 (Jan. 2023)

- Nonprofits depend on independent contractors for specialized, intermittent tasks. Website updates, social media, and other program work are a few examples.

Independent contractors, who may also be small businesses, commented that they have chosen to work outside a traditional employment arrangement because it provides flexibility, freedom, income diversification, and an easy pathway towards entrepreneurship. Here are a few examples:

- A representative from Flex, an organization representing app-based platforms and digital workers, commented that approximately 30 million people have earned money through digital platforms. According to a Flex survey, 90 percent of app-based workers say that flexibility is the reason they choose to earn on app-based platforms.<sup>23</sup> App-based platforms generate \$32 billion in annual revenue for restaurants, grocers, and other local businesses through delivery.<sup>24</sup>
- A representative from the National Association of Women Business Owners commented that many women-owned businesses became micro-businesses, gig workers, and freelancers during the pandemic. These women value the flexibility and work/life balance that comes with an independent contractor work arrangement.<sup>25</sup>
- A small business with a research company focused on customer experience commented that they need independent contractors to do short-term reviews of brick-and-mortar businesses. This small business commented, “The gig economy has helped our growth because we are nimble. We have new ideas, and we innovate. But often, we don’t have access to all the people we need.”
- Freelance writers and communication consultants commented that the DOL should create updated and modern examples for media freelancers, noting that the newspaper example in the proposed rule is outdated, given multi-faceted, multi-channel media brands.

#### **IV. DOL’s Proposed Rule will Reduce Regulatory Burdens and Costs for Small Businesses.**

On April 9, 2026, Advocacy held a small business roundtable with DOL officials and over 150 small businesses and their representatives on the independent contractor rule. This included representatives from agriculture, beauty, construction, education, energy, finance, health care, hospitality, manufacturing, retail, sales, and transportation industries. The roundtable was also attended by independent contractors, who may also be small businesses, providing services such as consulting, music lessons, transportation, and writing.

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<sup>23</sup> Flex, *Flexible Benefits: The Time to Bring Benefits and Independence Together* (June 2024), <https://www.flexassociation.org/wp-content/uploads/2024/06/Flex-White-Paper-Portable-Benefits.pdf>

<sup>24</sup>Public First, *U.S. App-Based Rideshare and Delivery Economic Impact Report* (2024), <https://www.flexassociation.org/wp-content/uploads/2024/03/Flex-Economic-Impact-Report-2024.pdf>.

<sup>25</sup> See Robert Press, U.S. Small Bus. Admin, Off. of Advocacy, *Working Your Yourself: How the Self-employed Use their Time Differently* (Aug. 19, 2025), <https://advocacy.sba.gov/wp-content/uploads/2025/08/Issue-Brief-No.-22-How-Self-Employed-Use-Time-Differently.pdf>.

Small businesses and independent contractors at our roundtable unanimously supported the rescission of the 2024 independent contractor rule and the new definition of independent contractor under the 2026 proposed rule.

The DOL's proposed rule will reduce regulatory burden and result in cost savings for small businesses and independent contractors. Using the DOL data provided in the IRFA, Advocacy calculates that the change will save \$2.0 billion in present value for small employers and independent contractors combined over the next 10 years when using a 7% discount rate, or \$282 million per year.<sup>26</sup>

The following comments are reflective of issues raised during our roundtable and in other conversations with small entities:

- Small businesses and independent contractors at our roundtable strongly supported the DOL's 2026 independent contractor definition because it fixes and simplifies the independent contractor test, making its application clear and predictable. Specifically, the proposal streamlines independent contractor classification by giving more weight or importance to two primary or "core" factors: the nature and degree of control over the work and an individual's opportunity for profit or loss.<sup>27</sup> Small businesses and independent contractors at the roundtable stressed that a clear standard creates confidence and certainty in hiring decisions on worker classification. A harmonized federal standard also protects the independent contractor model and provides predictable rules across industries.
- Most small businesses do not have legal or human resources staff and will benefit from this clearer standard. Some small start-ups and transportation companies discussed using intermediaries to handle the independent contractor paperwork and payments. A management consulting firm hired a full-time worker at an annual salary of \$90,000 to manage worker classification, compliance, and payment of workers in the 19 states they are operating in. Multiple small businesses commented that they only hire independent contractors who form their own business entity, because they are afraid of accidentally misclassifying independent contractors.
- Participants at the roundtable also support the DOL's proposed change that requiring individuals to "comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships" does not constitute control that makes an individual more or less likely to be an employee.<sup>28</sup>

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<sup>26</sup> 91 Fed. Reg. 9971 (Feb. 27, 2026).

<sup>27</sup> 91 Fed. Reg. 9973 (Feb. 27, 2026).

<sup>28</sup> 91 Fed. Reg. 9974 (Feb. 27, 2026).

- Insurance and financial advisors at Advocacy’s roundtable commented that they have control over their whole operation (pay their own rent, licenses, staff, taxes), but they align with a broker-dealer or an insurance company for compliance because the securities and insurance industry is highly regulated. Small businesses from the construction and building industries support this proposed definition of control because prime contractors and construction managers are required to impose on all subcontractors certain federal, state, and local employment and workplace safety laws. Construction representatives commented that jobsites require that project managers and prime contractors exercise routine control over the site; this should not convert independent contractors into employees.

Roundtable participants with the trucking industry generally agreed with this provision, as this industry is also heavily regulated. However, multiple roundtable participants recommended that the DOL carefully craft the control provision for the trucking industry because there are cases of misclassification and abuse of the independent contractor definition. For example, final regulations or guidance should address fraud or abuse in lease-purchase programs, employer-driven debt and tuition repayment arrangements for new entrants, and exploitation of immigrant, women, and vulnerable drivers. A truck owner-operator is generally supportive of the 2026 framework but opposes excluding from the control factor items like cameras, engine monitoring, and speed limiters that are not mandated by law.<sup>29</sup>

## V. Conclusion

Advocacy strongly applauds the DOL for proposing a simplified definition of independent contractor that creates a clear and predictable standard that is essential to protecting small business viability, entrepreneurship, and worker choice in the modern workplace. The DOL’s proposed rule will reduce regulatory burden and result in cost savings for small businesses and independent contractors. Small businesses and independent contractors at Advocacy’s roundtable support this proposed rule, as it strengthens their ability to utilize independent contractors to expand their access to talent and create economic opportunities for today’s modern workplace.

If you have any questions or require additional information, please contact me or Janis Reyes at (202) 798-5798 or by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov).

Sincerely,

/s/

Everett M. Woodel, Jr.  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

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<sup>29</sup> 91 Fed. Reg. 9951 (Feb. 27, 2026).

/s/

Janis C. Reyes  
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Office of Advocacy  
U.S. Small Business Administration

Copy to: Mr. Mark Paoletta, Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget