



April 28, 2026

Andrew Rogers
Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Notice of Proposed Rule: Employee of Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act (RIN: 1235- AA46)

Dear Administrator Rogers:

On behalf of the National Association of Insurance and Financial Advisors (NAIFA), I am pleased to provide the following comments on the U.S. Department of Labor’s (DOL) proposed rule on employee or independent contractor status under the Fair Labor Standards Act (FLSA) and other laws that incorporate the FLSA’s scope of covered employment.¹ As an invested stakeholder in this regulatory activity, NAIFA supports DOL’s proposal to rescind the current guidance under 29 C.F.R. 975 and replace it with guidance that is substantially similar to the guidance DOL adopted in 2021.

Role of Independent Contractors in the Insurance Industry

Founded in 1890 as The National Association of Life Underwriters (“NALU”), NAIFA is the oldest, largest, and most prestigious association representing the interests of insurance professionals from every Congressional district in the United States. Our mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members – is the reason NAIFA has consistently and resoundingly stood up for agents and called upon members to grow their knowledge while following the highest ethical standards in the industry.

The majority of NAIFA’s members – insurance producers, broker dealer representatives, and/or independent registered investment advisors – are independent contractors who provide vital

¹ 91 Fed. Reg. 9932 (Feb. 27, 2026)



financial benefits and insurance services to consumers across the country. It is estimated that independent contractors account for at least one of every seven insurance agents, financial advisors, and securities agents.

Financial professionals have the freedom to choose from many affiliation models and can decide whether they wish to engage in an employee model or an independent contractor model. Many of NAIFA's members are independent contractors and small business owners. They choose to be an independent contractor financial professional, rather than an employee of their carriers, because it gives them the ability to focus on establishing and growing a small business that is focused on their clients and their employees, and to build equity for themselves and their families.

There are over 130,000 independent contractors who own and operate financial advisory and insurance brokerage firms, employing more than 330,000 employees.² Many of these business owners are able to build equity in the firms they own. Removing the option to work as independent contractors would severely disrupt these businesses and eliminate many of these jobs.

Between 2015 and 2019, independent contractors in the financial services sector created approximately 54,000 new businesses and 174,000 new jobs, all or most of which would not have existed if independent contracting were prohibited.

Independent contractor-operated financial advisors and insurance agencies account for approximately 27% (\$47 billion) of the output of the financial advisory and insurance brokerage industries. Reducing the supply of these services would harm consumers, including by reducing financial literacy and harming their ability to accumulate wealth and save for retirement.³

NAIFA's independent members have full control over their schedule, employees, benefits, and more, giving them the same responsibility as other business owners. They also have control over the types of financial products they recommend and sell, the number of clients they serve, and the amount of time they spend performing professional duties. This enables them to create a practice that serves their community and clients, helping American investors save for the future. In a survey of NAIFA members, approximately 95% of respondents indicated they wished to remain independent contractors under regulations mirroring the 2021 Independent Contractor Rule.⁴

Independent insurance producers, brokers, and financial advisors have a long history of being independent contractors and not employees for purposes of determining the applicability of

² Bureau of Labor Statistics, "Occupational Employment and Wages, May 2021: 41-3021 Insurance Sales Agents" (March 31, 2022) <https://www.bls.gov/iag/tgs/iag52.htm>

³ Ibid

⁴ National Association of Insurance and Financial Advisors (NAIFA) Member Survey (2021).



federal and state wage and benefit provisions. These professionals are typically highly trained, highly educated, highly regulated professionals who want to own their own small businesses and assume the risks and rewards of doing so. They maintain their own offices, purchase their own insurance, hire employees, pay employment taxes, and purchase workers' compensation insurance for their employees. They enter into written agreements with insurance companies and/or independent broker-dealers that carefully set forth the terms of their independent contractor status.

The independent contractor/statutory employee model is the distribution model that most insurance companies and producers adhere to within the industry. This working model is essential to providing consumers with the greatest protection and access to insurance products.

Background

In January 2021, DOL published a rule titled "Independent Contractor Status Under the Fair Labor Standards Act" (2021 IC Rule), providing guidance on the classification of independent contractors under the FLSA applicable to workers and businesses in any industry. Under the adopted 2021 Independent Contractor Rule, often referred to as the Economic Realities Test, DOL and the courts determined whether a worker is an employee or an independent contractor by focusing primarily on five "core" factors: (1) the nature and degree of the worker's control over the work, (2) the worker's opportunity for profit or loss, (3) the amount of skill required for the work, (4) the degree of permanence of the working relationship between the worker and the potential employer, and (5) whether the work is part of an integrated unit of production.

DOL previously stated that the first two factors are the most indicative of whether a worker is economically dependent on someone else. If the first two factors supported the same determination, a substantial likelihood existed that the classification was appropriate. This threshold introduced much-needed clarity to determining appropriate worker classification.

In 2024, DOL rescinded the 2021 guidance and replaced it with guidance that provided new facts about working relationships for each of the five factors, identified an additional factor (investments by the worker and the potential employer) and stated that no factor was more demonstrative than any other factor of the worker's dependence on another entity to render services.

This approach increased the tendency to misclassify independent insurance agents and financial advisors as employees rather than contractors – resulting in significant financial exposure, penalties and fines to independent insurance professionals and small business owners.

NAIFA believes that DOL's 2024 definition of employee in sections 795.105 and 795.110 wrongly construed the scope of FLSA coverage and thus misclassified many independent insurance agents and brokers as employees. DOL's 2024 definition of what it means for a worker



to be “economically dependent” sweeps far too broadly and would require clarification to conform to FLSA text and precedent.

DOL’s 2024 Rule abandoned the 2021 Rule’s definition of “economic dependence,” which was grounded in precedent, without any clear explanation. The 2021 Rule clarified that “economic dependence” is not mere dependence on a business, since “all workers—employees and independent contractors alike—are economically dependent on others to some degree.”⁵ This important clarification of the scope of coverage was absent from DOL’s 2024 Rule. Instead, DOL put forward a new, overly broad definition of “economic dependence” declaring that a worker is an employee if they are merely “economically dependent” on a business in a small or inconsequential way.⁶ Today’s proposed guidance would rescind the 2024 guidance and adopt an economic realities test that is substantially similar to the 2021 test.

Recommendations

The majority of NAIFA’s members – insurance producers, broker dealer representatives, and/or independent registered investment advisors – are independent contractors who provide vital financial benefits and insurance services to consumers across the country.

For our members to continue to serve their communities, however, they must be able to maintain their ongoing status as independent contractors with certainty. As such, NAIFA and its members strongly support the Department’s efforts to once again codify the Economic Reality Test and provide clarity, guidance, and consistency in the classification of workers, while ensuring that such a test is not unduly restrictive or disruptive to the economy.

Specifically, NAIFA agrees that the two “core factors” proposed by the Department – the nature and degree of control over their own work and the opportunity for profit or loss – should be central to the classification analysis. In considering NAIFA’s membership, an examination of these two factors indicates that existing and ongoing independent contractor relationships would not be in danger of reclassification.

For instance, insurance producers – who may opt to operate their own businesses while engaging in substantial contractual relationships with one or more insurance companies – will often work with insurance companies to jointly set forth the terms of their relationship to ensure that the producer can maintain their independence, sell a diverse array of products on behalf of multiple insurance companies, and retain the right to direct or control their work and opportunity for profit or loss. Similarly, NAIFA members who are jointly licensed as insurance producers and broker-dealer representatives and/or independent registered investment advisors may own and

⁵ Independent Contractor Status Under the Fair Labor Standards Act, 85 Fed. Reg. 60600, 60611 (Sept. 25, 2020); see 2021 Rule, 86 Fed. Reg. at 1178.

⁶ NPRM, 87 Fed. Reg. at 62233, 62259, 62274.



operate their own small business, maintain flexibility over their business model and their product offerings, and exert independent control over their business operations.

NAIFA agrees with DOL's analysis that a worker's exposure to economic gains and losses is more demonstrative of the worker's dependence on another entity to render services than the amount of skill required for the work and the degree of permanence of the work relationship between the worker and another entity. A worker's direct exposure to financial gains and losses that arise from the worker's exercise of initiative and that are not mediated by the performance of another entity is manifestly more indicative of that worker's independence from another entity in the worker's provision of services than the relative specialization or duration of the services. NAIFA welcomes DOL's proposal to simplify the analysis and minimize contemplation of ancillary variables by describing the relative importance of the factors.

These models – which are predicated on such independent contractor arrangements – leave NAIFA members in control of their own client base and profit streams; the vendors with which they partner; and their own staff, resources, facilities, and equipment. As such, under an analysis of the proposed rule's "core factors," NAIFA members engaging in these essential relationships would presumably continue to qualify as independent contractors.

In conducting this analysis, however, NAIFA and its members want to ensure that, under the secondary factors, existing long-term and critical independent contractor relationships – which are common in the insurance and financial advisor services industry – are not undermined. In particular, with respect to the permanence and integrated unit factors articulated under the proposed five-part test, NAIFA supported the Department's 2001 interpretation in the preamble that "workers can often have long-term working relationships and still qualify under the FLSA as independent contractors"⁷ and that individuals that offer "discrete, segregable services" to individual clients or customers would indicate classification as an independent contractor.⁸

Conclusion

Independent contracting plays an essential role in the financial services and insurance industry, especially in customer-facing occupations such as licensed financial advisors, brokers, and insurance agents. Independent insurance agents constitute 17.1% of the entire insurance agent labor force while independent financial advisors account for 11.4% of the total number of advisors.⁹

⁷ Proposed Rule, *supra* note 1, at 60621.

⁸ Proposed Rule, *supra* note 1, at 60618.

⁹ U.S. Bureau of Labor Statistics, "Current Population Survey: Contingent Worker and Alternative Employment Arrangements May 2017" (available at <https://www.census.gov/data/datasets/time-series/demo/cps/cps-suppl-repwgt/cpscontingent.html>).



Independent insurance producers and independent financial advisors are vital to ensuring that millions of Americans have access to important financial benefits. These professionals are deeply rooted in their communities and are best positioned to understand the needs of consumers. Ensuring their proper classification as independent contractors is to ensure the availability of products they can provide their clients.

We greatly appreciate the opportunity to provide comments and applaud the Department's proposed adoption of a more neutral Economic Reality Test for classification as an independent contractor, thereby providing greater certainty for NAIFA members and the employment community as a whole.

If you have any questions or require additional information, please contact NAIFA's Senior Director of Government Relations, Michael Hedge, at mhedge@naifa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Gandy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Christopher L. Gandy, LACP
2026 NAIFA President