



April 28, 2026

Via Federal eRulemaking Portal

Director Daniel Navarrete
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

RE: Comments on RIN 1235-AA46, regarding the analysis for determining employee or independent contractor status.

Dear Mr. Navarrete:

On behalf of the Goldwater Institute, I am submitting comments regarding the Department of Labor's (DOL) proposed rule in Docket ID: WHD-2026-0001, or Regulatory Information Number (RIN) 1235-AA46, a Notice of which was published in the Federal Register on February 27, 2026.¹ The proposal would rescind a Biden-era rule that significantly restricted who could be classified as an independent contractor² and replace it with a modified version of the first Trump Administration's clearer and more predictable analysis regarding employee or independent contractor status. The Institute supports the proposed rule and recommends its adoption and implementation.

Founded in 1988 in Arizona with Senator Barry Goldwater's blessing, the Institute is a nonprofit free-market public policy, research, and public interest litigation organization dedicated to advancing the principles of limited government, economic freedom, and individual liberty. We're committed to empowering all Americans to live freer lives, and we accomplish tangible results for liberty by working in federal and state courts, legislatures, and communities

¹ 91 Fed. Reg. 9932 (Feb. 27, 2026).

² The Institute submitted a comment opposing the Biden-era rule. See Parker Jackson, *Two Federal Rules Threaten American Workers—Goldwater Takes Action*, Goldwater Institute (Dec. 13, 2022), <https://www.goldwaterinstitute.org/two-federal-rules-threaten-american-workers-goldwater-takes-action/>. See also Parker Jackson, *Biden Administration Continues Its Assault on American Workers*, Goldwater Institute (Jan. 10, 2024), <https://www.goldwaterinstitute.org/biden-administration-continues-its-assault-on-american-workers/>.

nationwide to advance, defend, and strengthen the freedom guaranteed by the constitutions of the United States and the fifty states.

As noted in the Institute’s prior comment opposing the 2024 rule, Arizona revised its employment law in 2016—with Goldwater’s support—to establish a procedure for declaring independent business status.³ The current rule significantly undermines Arizona’s state law, which has been instrumental in helping clarify the relationship between employers and workers and reducing the risk of misclassification in the Grand Canyon State.

Trends in the modern economy and the desires of American workers reflect the need for the proposed rule. The internet has opened the door for all manner of alternative work arrangements between businesses and workers. Web designers, computer programmers, digital marketers, dog walkers, Uber drivers, customer service agents, and more can all be connected and work through apps. Artificial intelligence tools increasingly disrupt traditional employer-employee relationships. The number of independent contractors continues to increase nationwide—now more than 7% of the total workforce—and more than 4 in 5 of those workers prefer their current arrangement over traditional employment.⁴ In Arizona alone, approximately 600,000 people work as independent contractors, generating more than \$33 billion annually in sales and revenues.⁵

Independent contractors who enjoy the flexibility and freedom that comes from “gig” work should not be wrongly classified as employees. Moreover, both independent contractors and employers deserve the predictability and clarity of the proposed analysis—predictability and clarity that was lost under the Biden Administration’s amorphous “totality of the circumstances” test.

³ Approved as House Bill 2114, A.R.S. §§ 23-1601 and 23-1602, <https://www.azleg.gov/legtext/52leg/2r/laws/0231.PDF>.

⁴ As of July 2023, independent contractors made up at least 7.4% of total national employment, comprising about 11.9 million people who are independent contractors on their sole or main job. *Contingent and Alternative Employment Arrangements Summary*, U.S. Bureau of Labor Statistics (Nov. 8, 2024), <https://www.bls.gov/news.release/conemp.nr0.htm>. Of those, 80.3% prefer their independent contracting arrangement, while only 8.3% would prefer traditional employment. *Id.* These figures do *not* include app-based work or traditional employees that perform independent contract work to supplement their income. See Liya Palagashvili & Revana Sharfuddin, *A Fresh Look at the Independent Workforce with New BLS Data*, Labor Market Matters (Nov. 26, 2024), <https://www.labormarketmatters.com/p/a-fresh-look-at-the-independent-workforce>.

⁵ Liya Palagashvili, *Bringing Portable Benefits to Arizona’s Independent Workforce*, Mercatus Center (Oct. 20, 2025), <https://www.mercatus.org/research/policy-spotlights/bringing-portable-benefits-arizonas-independent-workforce>.

The 2024 rule’s test for economic dependence conflicted with legal precedent and injected uncertainty into the analysis as to a worker’s status as an employee or independent contractor.⁶

Rather than use a variety of unweighted factors—including a “catch-all” factor⁷—the proposed rule rightly focuses on the “greater probative value” of two specific factors: “[t]he nature and degree of control over the work” and “[t]he individual’s opportunity for profit or loss.” Proposed Rule § 795.105(d)(1). These two “core” factors reflect the actual practice and expectations of employers and workers nationwide. Independent contractors routinely cite flexibility as among the primary reasons for preferring their alternative work arrangements. And employers typically do not share the risks and rewards of profit and loss directly with employees, while independent contractors frequently take on such risks and benefits.

The other remaining factors—“[t]he amount of skill required for the work,” “[t]he degree of permanence of the working relationship between the individual and the potential employer,” “[w]hether the work is part of an integrated unit of production,” and undefined “[a]dditional factors,” Proposed Rule § 795.105(d)(2)—are more likely to vary across both traditional employment and independent contracting and thus are more appropriate to consider only if the “core” factors are not dispositive. For example, highly skilled work can be performed by both employees and contractors. Some traditional employment relationships are quite short, while some independent contractor relationships last for years or even decades. And some business models rely heavily and regularly on outside work, while others use employees for “segregable” work. *See id.*

Workers and small businesses alike should be allowed to freely choose the type and terms of their business arrangements. Not everyone wants to work a typical nine-to-five job for an established company. Many choose to blaze new trails as entrepreneurs or supplement their income with a side-gig or simply work for themselves. Freelance writers, rideshare and delivery drivers, direct sales workers, and countless others stand to benefit from the renewed clarity and predictability of the proposed independent contractor rule. That clarity and predictability is further enhanced by ensuring uniformity across not only the DOL’s interpretation and implementation of the Fair Labor Standards Act (FLSA), but also extending the analysis to the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

In short, proposed rule RIN 1235-AA46 should be adopted.

Thank you for your consideration of these comments. Please contact me if you have any questions or if I can provide you with additional information.

⁶ *See* Goldwater Institute Comment to RIN 1235-AA43 at 2–3, <https://www.goldwaterinstitute.org/wp-content/uploads/2022/12/Comments-on-USDOL-Employee-or-Independent-Contractor-Classification-RIN-1235-AA43.pdf>.

⁷ *See id.*

Mr. Daniel Navarette
April 28, 2026
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Sincerely,

A handwritten signature in black ink, appearing to read "Parker Jackson", with a long horizontal flourish extending to the right.

Parker Jackson
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute