Dear Congressional Leaders:

We write in support of the $25 million allocation in the President’s Fiscal Year 2011 budget that is aimed at giving the Departments of Labor and Treasury the tools they need to better address the problem of employer misclassification of workers as independent contractors.

Independent contractor misclassification is a widespread problem, hitting workers in every earnings bracket. But it especially impacts low-wage workers, who are disproportionately employed in industries such as construction, package and freight delivery, and home care where employers routinely violate the law. In addition to denying workers wages, benefits and workplace protections, a denial that undermines the quality of jobs for all workers, the practice also robs federal and state treasuries of billions in payroll tax revenues, and gives employers who engage in misclassification a competitive advantage over their peers who follow the law.

Genuine independent contractors constitute a small fraction of the American workforce—by definition, an “independent contractor” operates a business—but the number of workers misclassified as independent contractors is large and growing. According to the Government Accountability Office, 15 percent of employers misclassify their workers as independent contractors, denying worker protections and benefits to at least 3.5 million workers a year.

For many employers, the incentives to misclassify are enormous. Neither payroll tax requirements nor basic workplace standards apply to independent contractors. At the front end, misclassifying workers as independent contractors enables employers to cut payroll costs by up to 30 percent, simultaneously shaving billions from federal and state payroll tax revenues. Employers reap other savings from misclassification as well, avoiding compliance with minimum wage and overtime requirements and contributions to employer-sponsored employee benefit plans, as well as protections from invidious discrimination under both federal and state laws, for example.

For employees, the costs of misclassification are devastating. Not only are they denied minimum wage and overtime pay guarantees, they lose unemployment insurance, workers’ compensation, employer contributions into workplace health or retirement savings plans, and employer-sponsored paid leave; and they must shoulder employer-side taxes for their Social Security and Medicare contributions. Indeed, rampant independent contractors misclassification drags down the wages, benefits and working conditions of all workers, robbing their communities and the nation overall of the resources properly classified workers pump back into the economy, helping to create quality jobs that support working families.

For low-wage workers, the costs of independent contractor misclassification can be unsustainable, forcing many into an underground economy where they work all the time but fall farther and farther behind. In one recent high profile case brought on behalf of a group of over 1,000 immigrant delivery workers employed by several grocery and pharmacy chains in New York City, the workers regularly put in long hours, often working seven days a week and 10-12 hours a day for weekly earnings averaging as low as $90. The stores contended that these workers were independent contractors, running their own “bag and deliver” businesses. The court, however disagreed, and required the retail stores that employed them to pay $6 million in back wages.
This was a great victory for these workers, but we know that for every worker who has the courage to come forward with a claim, many more workers continue to labor in the shadows—especially in light of enforcement apparatus with resources inadequate to meet the challenge of ferreting out and ending misclassification. That is why we believe the initiative proposed by the President’s Fiscal Year 2011 budget is so critically important.

The Administration’s initiative devotes $25 million to this timely effort, which in turn will generate an estimated $7.3 billion in federal revenue. The following investments proposed by the Administration build on the strong track record of the states that have worked hard in recent years to identify and prosecute employers that fail to pay their fair share of taxes:

- $12 million for 90 full-time employees (FTEs) to support investigator training, producing an additional 4,700 investigations of employers in those industries that routinely misclassify workers as independent contractors.
- $11.25 million for competitive grants to state unemployment insurance agencies (and two federal FTEs) to reward and promote model state strategies that have successfully collected hundreds of millions of dollars in unpaid federal and state unemployment insurance taxes.
- $1.6 million for the Solicitor of Labor to enforce existing federal laws in high impact cases, including multi-state litigation and coordinated enforcement with federal and state officials.
- $150,000 for stronger OSHA training and guidelines for federal investigators to identify employee misclassification and better coordinate enforcement with the Wage and Hour Division.
- A necessary fix to the outdated 1978 federal “Safe Harbor” law, which now denies the IRS the authority to prospectively reclassify misclassified workers as “employees” and prohibits the IRS from issuing guidelines interpreting the law.

The undersigned organizations wholeheartedly support the President’s proposed budget allocations for remedying independent contractor abuse. These measures will move the nation closer to delivering on the promise that work will be a ladder of opportunity and an anchor of economic security for all working families, while also generating billions of dollars in much-needed federal revenue.

Sincerely,

[Signature]
Christine Owens
Executive Director

Additional signatories:

American Rights at Work
Americans for Democratic Action
Campaign for America’s Future
Campaign for Community Change (CCC)
Center for American Progress
Center for Law and Social Policy
Citizens for Tax Justice
Coalition on Human Needs
Direct Care Alliance, Inc.
Every Child Matters Education Fund
Interfaith Worker Justice
The Leadership Conference on Civil and Human Rights
Mon Valley Unemployed Committee
National Council of Jewish Women
National Council of La Raza
National Employment Lawyers Association
National Organization for Women
National Partnership for Women and Families
National Women’s Law Center
NETWORK, A National Catholic Social Justice Lobby
OMB Watch
The Partnership for Working Families
Progressive States Network
Sugar Law Center for Economic and Social Justice
United Church of Christ, Justice and Witness Ministries