

September 25, 2020

Director of the Division of Regulations, Legislation
and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Ave., NW
Washington, D.C. 20210

Re: RIN 1235-AA34, Independent Contractor Status under the Fair Labor Standards Act

To Whom It May Concern:

The undersigned organizations request that the Department of Labor extend the comment period for responding to the above-referenced Notice of Proposed Rulemaking for at least 30 additional days.

During the current Administration, the Department has given at least sixty days for notice and comment for most of its proposed regulations and interpretive rules coming out of the Wage & Hour Division, and has often granted extensions beyond an original 60-day time period when asked. Yet, the Department now affords only a paltry 30 days to comment on this extensive interpretation that proposes radical changes to existing rules.¹ Given the high stakes and importance of the topic covered by this independent contractor interpretive rule, a 60-day comment period should be a minimum allowance.

News outlets have reported that the Department wishes to rush this proposed regulation through what should be a thoughtful and thorough process before the end of this Presidential term.² The regulatory process is, by design, a methodical one given the importance of public input on economically-significant regulations, whether they be legislative or interpretive. The Administrative Procedure Act lays out numerous steps, procedures, and considerations to make sure that proposed regulations are not foregone conclusions, that all comments are thoughtfully considered and addressed, and that regulations are neither arbitrary nor capricious.

¹ As you are aware, the Department issued Notice of Proposed Rulemakings on a trio of topics in 2019, including on the Executive, Administrative and Professional exemptions from overtime, a rulemaking on regular rate, and an interpretive rule on joint employer. All three were ultimately given 60 days or more for the comment period, with the Department granting extensions of time on the regular rate and joint-employer proposals.

² "DOL Aims to Fast-Track Worker Classification Rule to 2020 Finish," July 2, 2020, <https://news.bloomberglaw.com/daily-labor-report/dol-aims-to-fast-track-worker-classification-rule-to-2020-finish>.

Trying to rush through the entire process in such a short time, and affording stakeholders an uncharacteristically short notice and comment period, undermines the integrity of the entire process and signals that the Department does not want thorough and reasoned comments from any person or entity that has information pertinent to the NPRM, or opposes all or part of the NPRM.

Furthermore, this NPRM covers issues of high interest and importance to a broad range of stakeholders in key sectors of our economy, including high-growth sectors and jobs that have been deemed “essential” during the COVID-19 pandemic. The Department will need thorough and reasoned analysis in order to promulgate a final guidance, and with a 30-day deadline, it will be difficult for the entities and people commenting on this NPRM to give it the time and attention that it deserves.

We propose that the Department provide at least 60 days to respond to this NPRM, providing for at least an additional 30 days. The integrity of the regulatory process demands no less.

Thank you for your consideration of this request.

Sincerely,

9to5, National Association of Working Women
A Better Balance
Advocates for Basic Legal Equality, Inc.
AFL-CIO
AH LAW, PLLC
Alianza Nacional de Campesinas
American Association of University Woman (AAUW)
American Federation of State, County & Municipal Employees
American Federation of Teachers
Asian Task Force Against Domestic Violence
Autistic Self Advocacy Network
Berger Montague PC
Bet Tzedek Legal Services
Bryan Schwartz Law
California Employment Lawyers Association (CELA)
Catholic Migration Services
Center for LGBTQ Economic Advancement & Research
Center for American Progress
Center for Disability Rights
Center for Law and Social Policy
Center for Popular Democracy
Center for WorkLife Law, University of California, Hastings Law

Center on Policy Initiatives
Centro de los Derechos del Migrante, Inc.
Centro Legal de la Raza
Coalition on Human Needs
Color of Change
Colorado Fiscal Institute
Communications Workers of America (CWA)
Community Justice Clinics, UC Hastings College of the Law
Community Labor United
Community Legal Aid, Central and Western Massachusetts
Cummins & Cummins, LLP
Curwood Law Firm, PLC
David Tykulsker & Associates
Debes Law Firm
Demos
Economic Opportunity Institute
Economic Policy Institute
Equal Justice Center
Employee Rights Center
Equal Rights Advocates
Equality California
Every Texan
Farmworker Justice
Farmworker Legal Services (Michigan)
Feinberg Jackson Worthman & Wasow LLP
First Shift Justice Project
Florida Legal Services, Inc.
Florida Policy Institute
Futures Without Violence
Georgia Budget and Policy Institute
Getman, Sweeney & Dunn, PLLC
Goldstein and Feuer
Government Accountability Project
Government Information Watch
Greater Boston Legal Services
Harvard Legal Aid Bureau
Hawks Quindel, S.C.
Head Law Firm, LLC
Institute for Women's Policy Research
International Brotherhood of Teamsters
The International Union, United Automobile, Aerospace, and Agricultural Implement Workers
of America
In The Public Interest
Jac A. Cotiguala & Associates

Jobs to Move America
Jobs With Justice
Justice at Work (Boston)
Justice at Work (Pennsylvania)
Justice in Motion
Kakalec Law PLLC
Kentucky Equal Justice Center
Kessler Matura, P.C.
Kids Forward
Labor and Employment Committee of the National Lawyers Guild - New York City Chapter
Labor of Love Safety Training
LatinoJustice PRLDEF
The Law Office of Bartina Edwards
Law Office of Chris R. Miltenberger, PLLC
Law Office of David Vega
The Law Office of Gilda A. Hernandez
Law Offices of John E. Hill
The Lazzaro Law Firm, LLC
The Leadership Conference for Civil and Human Rights
Legal Aid at Work
Legal Aid Justice Center
The Lemons Law Firm, PLLC
Long Beach Alliance for Clean Energy
Louisiana Budget Project
Lynn Worker Center
Make the Road New York
Martin & Bonnett P.L.L.C
McGillivray Steele Elkin LLP
Metro West Worker Center -- Casa
Michigan Immigrant Rights Center
Michigan League for Public Policy
NAAPC
National Black Worker Center Project
National Center for Law and Economic Justice
National Center for Lesbian Rights
National Consumers League
National Domestic Workers Alliance
National Employment Law Project
National Employment Lawyers Association (NELA)
National Equality Action Team (NEAT)
National Immigration Law Center
National Lawyers Guild Labor & Employment
National Lawyers Guild, Massachusetts Chapter
National Legal Action Network
National LGBTQ Task Force

National Organization of Women
National Partnership for Women & Families
National Women's Law Center
NC - NELA
New Mexico Center on Law and Poverty
New York Legal Assistance Group
Nichols Kaster, PLLP
The Noble Law
North Carolina Justice Project
Northwest Workers' Justice Project
NY NJ Regional Joint Board, Workers United/SEIU
Olivier Schrieber & Chao LLP
Oregon AFL-CIO
Outten & Golden, LLP
Oxfam America
Partnership for Southern Equity
The Patriotic Millionaires
Pension Rights Center
People's Parity Project
PFLAG National
Philadelphia Drivers' Union
Philadelphia Legal Assistance
Policy Matters Ohio
Potter Bolanos LLC
Public Citizen
Public Justice Center
Public Rights Project
Restaurant Opportunities Center
Rhode Island Center for Justice
Rideshare Drivers Union – CA
Rutgers Center for Innovation in Worker Organization Labor Standards Enforcement Project
Safe Harbor Law, LLC
Sanford Law Firm, PLLC
Sciencecorps
Service Employees International Union
Silver State Equality – Nevada
Southern Poverty Law Center
Teamsters Joint Council 7
Temp Worker Justice
Texas RioGrande Legal Aid, Inc.
TIME'S UP Foundation
Towards Justice
Transnational Worker Rights Clinic, University of Texas Law School
Transport Workers Union of America
UNITE HERE

United Food and Commercial Workers Union (UFCW)
UNITED SIKHS
Victor Forberger, Esq., Madison WI
Werman Salas, P.C.
West Virginia Center on Budget and Policy
Wisconsin Faith Voices for Justice
Winebrake & Santillo, LLC
Winslow Wetsch, PLLC
Women Employed
Women's Law Project
Worker Justice Center of New York
Workers Defense Project
Workers' Rights Clinic, CUNY School of Law
Workers' Rights Clinic, University of Arizona, James E. Rogers College of Law
Workers' Rights Institute, Georgetown University Law School
Workplace Fairness
Workplace Justice Project at Loyola Law Clinic
Worksafe
Yezbak Law Offices PLLC