

Coalition to Promote Independent Entrepreneurs

ICCoalition.org · (202) 659-0878

May 20, 2015

The Honorable Thad Cochran
Chairman
Appropriations Committee
United States Senate
Washington, D.C. 20510-2402

The Honorable Hal Rogers
Chairman
Appropriations Committee
United States House of Representatives
Washington, D.C. 20515-1705

The Honorable Roy Blunt
Chairman
Labor, Health and Human Services, Education, and
Related Agencies Subcommittee
United States Senate
Washington, D.C. 20510-2508

The Honorable Tom Cole
Chairman
Labor, Health and Human Services, Education, and
Related Agencies Subcommittee
United States House of Representatives
Washington, D.C. 20515-3604

The Honorable Lamar Alexander
Chairman
Health, Education, Labor & Pensions
Committee
United States Senate
Washington, D.C. 20510-4206

The Honorable Johnny Isakson
Chairman
Employment and Workforce Safety
Subcommittee
United States Senate
Washington, D.C. 20510-1008

The Honorable John Kline
Chairman
Education and the Workforce
Committee
United States House of Representatives
Washington, D.C. 20515-2302

The Honorable Tim Walberg
Chairman
Workforce Protections
Subcommittee
United States House of Representatives
Washington, D.C. 20515-2207

Dear Chairmen:

The U.S. Department of Labor (DOL) recently granted \$10.2 million to 19 states to implement or improve worker misclassification programs. The Consolidated Appropriations Act of 2014, Public Law No. 113-76, authorized this grant funding for "activities to address the misclassification of workers." While many states have existing programs designed to reduce worker misclassification, this is the first year that the DOL has awarded grants dedicated to worker misclassification.

Several concerns have arisen since the DOL's announcement of the 2014 grants. There are outstanding questions regarding DOL's implementation of a "high performance bonus" program. No such program was specified in Public Law No. 113-76. And, because the funding was appropriated to DOL's Employment and Training Administration ("ETA"), which does not have an authorized federal program to enforce worker misclassification, Congress provided ultimate flexibility to DOL in implementing the FY2014 and FY2015 awards.

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The program also raises concern about its impact on the integrity of state agencies' worker-classification determinations. In correspondence that ETA sent to state workforce agencies describing the "high performance bonus" program, ETA states that it "will make a total of \$2 million available to reward states that have demonstrated a high level of performance or significant improvement at detecting worker misclassification and enforcing state UI tax requirements on employers who failed to properly classify their workers." This could create an incentive for a state workforce agency, when making a worker-status determination, to find misclassification where none exists. Any incentive given to an agency or state to make a finding can be improperly applied.

Economic abuses can occur as a result of misclassifying individuals as independent contractors. However, any attempt that undermines the legitimate uses of independent contractors in the marketplace will have a detrimental impact on companies that do business with independent contractors. State workforce agencies should focus on educating their employees about the laws regarding independent contractors rather than appropriating money incentivizing a worker misclassification finding. No program or law should be enacted that unfairly favors one status over the other – given that both can be legitimate on a case-by-case basis.

The following business organizations strongly urge Congress to reject the President's funding request for an additional \$10 million to the DOL in FY2016 "for activities to address the misclassification of workers."

Sincerely,

American Bakers Association
American Trucking Associations
Direct Selling Association
Forest Resources Association, Inc.
International Franchise Association
National Association of Home Builders
National Association for the Self-Employed
National Federation of Independent Business
Mystery Shopping Providers Association of North America
Private Care Association