

Coalition to Promote Independent Entrepreneurs

ICCoalition.org · (202) 659-0878

June 16, 2015

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 Rosa DeLauro
Ranking Member
Labor, Health and Human Services, Education,
and Related Agencies Subcommittee
United States House of Representatives
Washington, D.C. 20515-3604

Dear Chairman Cole and Ranking Member DeLauro:

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.

The program also raises concerns 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."

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

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