



DIRECT SELLING ASSOCIATION



December 13, 2022

VIA ELECTRONIC SUBMISSION: WWW.REGULATIONS.GOV

Ms. Amy DeBisschop
Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Ave., N.W.
Washington, DC 20210

Re: Comments of Direct Selling Association & National Association of REALTORS® --Notice of Proposed Rulemaking: Employee or Independent Contractor Classification Under the Fair Labor Standards Act (Docket No. WHD-2022-0003)

Dear Ms. DeBisschop:

The Direct Selling Association (“DSA”) and National Association of REALTORS® (“NAR”) appreciate the opportunity to file comments on the Notice of Proposed Rulemaking (“NPRM”) regarding classification of independent contractors under the Fair Labor Standards Act (“FLSA”). Our associations represent millions of independent contractors in the United States who need clarity to operate their businesses and serve customers and clients.

In addition to comments filed individually by DSA and NAR discussing specific issues the NPRM presents for the businesses of our respective members, we file these comments to emphasize an alternative proposed by our associations. Independent contractors in both groups have longstanding recognition under federal law and this fact should be specifically recognized under a final rule by the Department.

Specifically, incorporating 26 USC § 3508 into the final rule would provide much needed clarity where the rule could cause confusion. Direct sellers and qualified real estate agents have been recognized as statutory non-employees under the Internal Revenue Code since 1982. Incorporating this statute in the final rule would promote consistency and ensure that individuals working the same business are clearly treated as independent contractors under both statutes.

If the Department wants to protect bona fide independent contractor relationships and promote clarity in a rule, it should incorporate by reference in the rule 26 USC § 3508 that would specifically define direct sellers and qualified real estate agents as independent contractors.

Thank you for the opportunity to comment. We would be pleased to answer any questions or provide further information as the Wage and Hour Division and Department of Labor sees fit.

Sincerely,

Direct Selling Association
National Association of REALTORS®