

Coalition to Promote Independent Entrepreneurs

ICCoalition.org · (202) 659-0878

March 22, 2016

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:

On behalf of the undersigned organizations representing millions of American workers and their families, we express our gratitude to you for your efforts to provide Congressional oversight over the Obama Administration's state grant program to address the misclassification of workers. Last year, the U.S. Department of Labor (DOL) granted \$10 million to 23 states to implement or improve worker misclassification programs. The Consolidated and Further Appropriations Act, 2015, Public Law No. 113-235, 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 second year that the DOL has awarded grants dedicated to worker misclassification.

Due to your leadership on this issue, this program, while funded for Fiscal Years 2014 and 2015, was ended, and not funded for 2016. The Obama Administration now seeks to resurrect this grant program by requesting \$10 million to fund the program in its proposed budget for Fiscal Year 2017.

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Several concerns have arisen since the DOL's announcement of these grants. There are outstanding questions regarding DOL's implementation of a "high performance bonus" program under the Fiscal Year 2014 version of the program. No such program was specified in Public Law No. 113-235 or in its predecessor, 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 Fiscal Year 2014 and 2015 awards.

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 Fiscal Year 2014 program and its "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." Similarly, the Fiscal Year 2015 version of ETA's correspondence to state workforce agencies requests "estimates of realistic quantifiable improvements and/or cost reductions (e.g., improvement might be an estimated 25 percent decrease in the number of employers who misclassify employees)." The foregoing "results oriented" criteria used to evaluate a state's eligibility for additional federal funding could create an inappropriate incentive for a state workforce agency, when making a worker-status determination, to find misclassification where none exists. The resulting financial impact on an affected company can be substantial, even if the company is ultimately successful in vindicating its classification of service providers through litigation.

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 and enforcing those laws objectively, without any financial incentive for worker misclassification findings. No program or law should be enacted that unfairly favors one status over the other – given that both can be legitimate and each arrangement deserves an objective evaluation on a case-by-case basis.

The following business organizations strongly urge Congress not to resurrect this program and to reject the President's funding request for an additional \$10 million to the DOL in Fiscal Year 2017 "for activities to address the misclassification of workers."

Sincerely,

American Bakers Association
American Society of Travel Agents
American Trucking Associations
Forest Resources Association Inc.
International Franchise Association
Marketing Research Association
Mystery Shopping Providers Association of North America
National Association of Home Builders
National Association for the Self-Employed
National Federation of Independent Business
Private Care Association