April 28, 2026

VIA ELECTRONIC SUBMISSION: http://www.regulations.gov

Daniel Navarrete
Director, Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502, 200 Constitution Avenue NW
Washington, DC 20210

Re: Employee or Independent Contractor Status under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act; Notice of Proposed Rulemaking (RIN 1235-AA46)

Dear Mr. Navarrete:

On behalf of the Associated General Contractors of America (hereinafter "AGC"), thank you for the opportunity to submit the following comments on the U.S. Department of Labor's (hereinafter "DOL" or "Department") Wage and Hour Division's (hereinafter "WHD") notice of proposed rulemaking (hereinafter "NPRM") regarding the Independent Contractor Status Under the Fair Labor Standards Act (hereinafter "FLSA"), Family and Medical Leave Act (hereinafter "FMLA"), and Migrant and Seasonal Agricultural Worker Protection Act. The NPRM was published in the Federal Register on February 27, 2026.

AGC is the leading association for the non-residential construction industry, representing more than 28,000 firms, including over 7,000 of America's leading general contractors and over 9,300 specialty contracting firms. More than 12,000 service providers and suppliers are also associated with AGC, all through a nationwide network of 87 chapters through the United States. These firms, both union and open-shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property.

AGC has long called for federal clarification of the independent contractor status and preservation of legitimate independent contractor relationships, such as those that have historically existed in the construction industry. AGC applauds the Department's proposal to adopt a consistent, clear and common-sense standard for determining independent contractor status under the FLSA and supports the adoption of an "economic reality test" in determining whether a worker is in business for himself or herself (independent contractor) or is economically dependent on a putative employer for work (employee). The NPRM's test would focus on two core factors, specifically (1) the nature and degree of the worker's control over the work, and (2) the worker's opportunity for profit or loss based on initiative and/or investment. These core factors will help determine if a worker is economically dependent on someone else's business or if the worker is in business for himself.

Promoting compliance protects companies with legitimate aims from harsh fines and from retrospective liability for employment taxes and employee benefits. It also makes enforcement more consistent, helping ensure that companies that incur the higher costs of legal compliance are not placed at a competitive disadvantage to companies that knowingly violate the law. AGC supported the Trump administration's 2021 changes to independent contractor status and opposed the Biden administration's changes.

We agree that the best reading of the FLSA's definition of "employ" requires a focus on those two core factors, rather than the multi-factor balancing test of the 2024 rule. The proposed rule identifies several Supreme Court decisions that place paramount importance on the economic reality of the employee, which is best determined through the prism of opportunity and control. To further support this reading of the statute, we offer a traditional canon of statutory construction, the presumption against effectiveness.

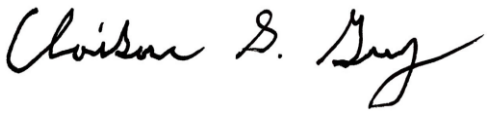
The presumption against ineffectiveness states that ambiguous language must receive a construction that is lawful, operative, definite, reasonable, and capable of being carried into effect. For our members, the key word is operative. A multi-factor balancing test that fails to weigh its factors (which often work against each other) is difficult to apply, for contractors as well as judges. Instead of taking on the risk associated with an educated guess, our members are incentivized to restrict themselves to hiring parties for whom there can be no doubt. This issue contributes to our industry's workforce development problems and delays projects while such parties are found.

Although we support the proposed rule, we believe there is one issue that warrants further consideration. In our opinion, the proposals in this NPRM do not properly consider the difficulty of meeting the varying federal standards of independent contractor definitions, including the proposed rule as well as those under the National Labor Relations Act and the federal tax code. Navigating and complying with overlapping and inconsistent standards is confusing and costly to contractors who want to keep their businesses and projects operating in compliance with the law. AGC advises that in the absence of the various agencies working together on a harmonious standard, the DOL and other agencies should provide further clarity, consistency and relief in their investigative and enforcement efforts around independent contractor statuses.

Conclusion

Thank you for your continued efforts to clarify the independent contractor regulations under the FLSA. AGC supports clear standards that make sense for today's construction employers nationwide. AGC also appreciates the opportunity to engage in the rulemaking process and looks forward to working with the WHD as it continues to amend regulations that impact construction employers. If we can aid in any way, please do not hesitate to contact me.

Sincerely,



Claiborne S. Guy
Director, Employment Policy & Practices