



*By electronic submission to [www.regulations.gov](http://www.regulations.gov)*

Ms. Jessica Looman  
Principal Deputy Administrator, Wage and Hour Division  
U.S. Department of Labor  
Room S-3502  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Notice of Proposed Rulemaking: Employee or Independent Contractor Classification Under the Fair Labor Standards Act, Docket Number WHD-2022-0003

Dear Ms. Looman,

I am writing to express my concerns about Docket Number WHD-2022-0003, entitled the Employee or Independent Contractor Classification Under the Fair Labor Standards Act. I represent a \$22 billion industry comprised of nearly 500,000 Americans, 98 percent of which are small businesses. Approximately 35 percent of our industry relies upon the independent contractor model. This newly proposed rule would significantly change how thousands of promotional products companies interact with each other.

If this regulation were enforced, most businesses in the promotional products industry could not hire independent contractors as employees, and instead would be forced into untenable relationships that would cause significant job losses for my industry. In short, this regulation would deprive thousands of independent contractors in the promotional products industry from earning an income.

Just as with several other industries, promotional products companies rely on the services provided by independent contractors. Unlike the gig economy, this is a popular business model which is mutually beneficial for the host companies and the contractors in circumstances where traditional employment relationships are not pragmatic for either party. Promotional consultants in the U.S. are mostly small business owners—they set their own hours and schedules, they set their own rates, they select their clients, and they market under their own brands. There are several distinct factors that establish a sharp contrast between independent contractors in the promotional products industry and the gig economy. For example, in the gig economy, the workers are not operating with full autonomy because workers must use the larger company's application to provide the relevant services.

Independent contractors in the promotional products industry are entrepreneurs who operate outside the host company's control while being able to outsource many of their financial concerns to their affiliate companies. Other value-added benefits enjoyed by independent contractors in my industry include peer-to-peer support, sales and marketing tools, and supplier access.

Promotional consultants remain independent because they can run a business as their own, decide their own career path, and be active in their families and communities, among other incentives. These contractors are self-employed even though they may sell on behalf of only one company. This model is the opposite of the gig economy on which many labor law proposals have been predicated.

Without the support of a larger firm essentially acting as a lender to the consultant, the promotional consultants would either have to receive payment from end-buyers in advance or have the financial ability to finance the orders themselves. A huge majority of independent contractors in the promotional products industry are very small businesses, often sole proprietors, and are unable to self-fund these transactions.

I understand your concern about labor misclassifications. However, I want to emphasize that my situation is distinguishable from those practices. The enforcement of this new rule will have a devastating impact on tens of thousands of jobs and businesses in my industry. Unlike the members of the gig economy on which many similar labor law proposals have focused, the relationship between independent contractors in the promotional products industry and their host companies is reciprocally beneficial for both parties.

Thank you for your consideration of this important regulatory matter.