

Coalition to Preserve Independent Contractor Status

ICCoalition.org

October 29, 2011

The Honorable Patty Murray, Co-Chair
The Honorable Jeb Hensarling, Co-Chair
Joint Select Committee on Deficit Reduction
825B Hart Senate Office Building
Washington, D.C. 20515

Dear Senator Murray and Representative Hensarling:

The Coalition to Preserve Independent Contractor Status (the “Coalition”) is dedicated to preserving an individual’s right to be self-employed, *i.e.*, to be an independent contractor, and a firm’s right to do business with independent contractors. The Coalition respectfully urges that the Joint Select Committee on Deficit Reduction reject any proposal that would repeal Section 530 of the Revenue Act of 1978 (“Section 530”) or otherwise increase the regulatory risks or uncertainty for firms that do business with independent contractors.

Independent contractors accounted for approximately \$473 billion in personal income in 2010, according to a study by Navigant Economics¹ (the “Navigant Economics Study”). Unfortunately, this important sector of our nation’s economy is under attack. The effect of government policies that discourage independent contracting would be fewer jobs and reduced economic activity – precisely the opposite of what our nation’s economy needs at this critical time.

The Obama Administration, in its *Plan for Economic Growth and Deficit Reduction*, proposes to repeal Section 530, a “safe harbor” providing businesses that meet its stringent criteria with *prospective certainty* that their treatment of individuals as independent contractors for federal employment-tax purposes will be respected. For example, Section 530 protection is available only to firms that adhere to strict information-reporting obligations, thus ensuring that substantially all of the income earned by individuals covered by the “safe-harbor” is reported annually to the Internal Revenue Service.² This “safe harbor” is essential to those firms whose business model is predicated on independent-contractor relationships and that rely on its *prospective certainty* to obtain outside capital and make decisions that are premised on their business model being viable in future years.

¹ Jeffrey A. Eisenach, *The Role of Independent Contractors in the U.S. Economy*, at 35 (December 2010), Navigant Economics, <http://www.naviganteconomics.com/docs/Role%20of%20Independent%20Contractors%20December%202010%20Final.pdf>.

² Internal Revenue Service data estimate that the tax-compliance rate for recipients of Forms 1099 (independent contractors) is 97% compared to 99% for recipients of Forms W-2 (employees). *E.g.*, GAO, *Making Significant Progress in Improving Tax Compliance Rests on Enhancing Current IRS Techniques and Adopting New Legislative Actions*, GAO-06-453T (Feb. 15, 2006); accord, GAO, *Opportunities Exist to Reduce the Tax Gap Using a Variety of Approaches*, GAO-06-1000T (Washington, D.C. July 26, 2006).

Compounding the threat, on October 13, 2011, Representative Lynn Woolsey (D-Cal.) introduced the *Employee Misclassification Prevention Act*, H.R. 3178, which would impose significant new administrative burdens on companies that do business with independent contractors and draconian financial sanctions on a firm that is determined to have misclassified an individual as an independent contractor for purposes of the Fair Labor Standards Act. The bill is premised on the unfounded assumption that many firms intentionally misclassify individuals as independent contractors. In a letter of that same date, Representative Woolsey urged your Joint Select Committee on Deficit Reduction to adopt the reforms outlined in her bill as part of its solution for reducing the deficit.

While both of these proposals are estimated to increase federal revenues, the Coalition submits that those revenue estimates are premised on unfounded or shaky assumptions, as both proposals would reduce jobs, reduce economic activity and reduce federal revenues.³

The Congressional Budget Office (“CBO”) recently observed that:

The United States is facing profound budgetary and economic challenges. At 8.5 percent of gross domestic product (GDP), the \$1.3 trillion budget deficit that the Congressional Budget Office (CBO) projects for 2011 will be the third-largest shortfall in the past 65 years (exceeded only by the deficits of the preceding two years). This year's deficit stems in part from the long shadow cast on the U.S. economy by the financial crisis and the recent recession. Although economic output began to expand again two years ago, the pace of the recovery has been slow, and the economy remains in a severe slump.⁴

The CBO's observations reinforce the important link between economic growth and reducing the deficit. In this regard, an important sector of our nation's economy is represented by self-employed individuals, otherwise known as independent contractors.⁵ The Coalition submits that this important sector should be nurtured and supported – so it prospers and leads to increased federal revenues, not vilified and intimidated by threats of prodigious penalties and aggressive government enforcement actions.

“Policy changes that curtail independent contracting ... would result in “higher unemployment, slower economic growth and reduced economic welfare,”⁶ according to The Navigant Economics Study. The study also found that curtailing independent contracting would (i) reduce job creation and small business formation, (ii) reduce competition and increase prices, (iii) create sector specific disruptions, and (iv) produce a less flexible and dynamic work force.⁷

³ See, Navigant Economics Study, pp. 35-40.

⁴ Congressional Budget Office, *The Budget and Economic Outlook: An Update* (August 2011).

⁵ The Navigant Economics Study reported, at p. i, that more than 10 million individuals work as independent contractors, representing approximately 7.4 percent of the U.S. workforce.

⁶ Navigant Economics Study at p. i.

⁷ Navigant Economics Study at p. ii.

None of these results is desirable for any economy, much less an economy that the CBO characterizes as being "in a severe slump." The consequences of policy actions along these lines would be not only fewer jobs, higher unemployment and reduced tax revenues, but also a marginalized sector of self-employed entrepreneurs who find fewer and fewer companies willing to take the regulatory risk of doing business with them.

The Coalition respectfully urges that the Joint Select Committee on Deficit Reduction reject any proposal that would repeal Section 530 or that reflects the approach proposed by Representative Woolsey's bill that would increase the regulatory risks or uncertainty for firms that do business with independent contractors.

Thank you very much for your consideration.

Sincerely,

American Trucking Associations
American Bakers Association
American Society of Travel Agents, Inc.
Associated Builders & Contractors, Inc.
College and University Professional Association for Human Resources (CUPA-HR)
Direct Selling Association
EmCare, Inc.
Financial Services Institute
The Financial Services Roundtable
Forest Resources Association Inc.
G.A. Wright, Inc.
Griswold Special Care
International Warehouse Logistics Association
Marketing Research Association
Messenger Courier Association of America
Mystery Shopping Providers Association
National Association of Home Builders
New Concepts in Marketing, Inc.
Newspaper Association of America
Private Care Association, Inc.
Snack Food Association
Society for Human Resource Management

cc: Committee Members
House Ways and Means Committee
Senate Finance Committee