



NATIONAL ALLIANCE OF LIFE COMPANIES

An Association of Life and Health Insurance Companies

October 26, 2020

Ms. Amy DeBisschop

Sent via email to: DeBisschop.Amy@dol.gov

Re: Regulatory Information Number 1235-AA34

Support for Rulemaking Regarding Independent Contractor Status Under the Fair Labor Standards Act

Dear Director DeBisschop:

The National Alliance of Life Companies (NALC) appreciates the opportunity to submit this letter in **support** of the proposed rulemaking on independent contractor status under the Fair Labor Standards Act (FLSA). We specifically want to thank the Department for working to streamline, simplify and sharpen the test for determining whether a person is an employee or independent contractor. With more attention provided to worker classification in the policy and legal arenas, the proposed changes bring much-needed certainty to our industry and the consumers we serve.

By matter of background, the NALC is a national trade association of small and mid-sized life and health insurance companies from across the United States. Our members include more than fifty companies and associates from across the United States.

NALC members primarily serve middle- and low-income communities who may not otherwise receive insurance coverage because these markets are not served by the larger industry. Our members typically sell simple products and often policies with a small face amount. Our members are able to serve these markets because they can rely on a number of distribution models, including independent contractors who control their own work and whose opportunity for profit and loss results from their own initiative. The proposed rule preserves this business model and the benefits it delivers insurance consumers. This is one of the many reasons it has our support.

Additionally, we appreciate that the rule simplifies the criteria for determining when an individual is an employee or independent contractor without making radical changes to this area of law. Unlike other policy proposals, the rule does not seek to upend decades of business practice by presuming one classification preference is better than the other across the entire economy.

The insurance market has evolved over many decades. It is historically mature and is very different than other industries. In insurance today, one can see the use of employees, contractors and online sales. Insurance consumers, as well as insurance producers and businesses, benefit from the presence of each of these models. For our industry in particular, any classification proposal that tips the scales one direction or the other would undoubtedly lead to lost economic opportunity and fewer consumers served, particularly consumers in the middle and lower income markets.

It is for this reason that NALC opposes the use of the ABC test as an alternative to the proposed rule for our industry. Whereas the Department's proposal builds on principles that courts have used for decades, the ABC test does not. Its application to insurance would inject uncertainty into our market. This uncertainty would lead to fewer economic opportunities for producers and less access to insurance for consumers, particularly those consumers who have not yet accumulated large savings. Taxpayers too would pay a price, as it is ultimately the government that bears the cost when fewer citizens are able to rely on the financial safety net that health and life insurance offer.

Importantly, California lawmakers agreed in 2019 that the ABC test is not appropriate for the insurance industry, and we believe the Department should adopt the same position as the State of California. California legislators made this intention clear in the text of AB5 when they exempted professionals licensed by the California Department of Insurance.

The California legislature recognized that insurance companies and insurance professionals operate in a highly regulated environment- licensed by state insurance regulators and subject to frequent oversight and specific areas of law. Producers and other professionals operating in heavily regulated environments have historically operated as independent contractors, and California correctly allowed them to continue to do so.

While NALC supports the Department's proposal, we do have one suggestion for consideration. It is offered with the hope the department will further clarify the important role independent contractors play in providing insurance protection to consumers. Specifically, we would ask for some acknowledgement that in highly regulated industries where businesses have some compliance and oversight responsibilities, these legally required supervisory responsibilities do not meet the employment conditions in the rule's classification tests.

In closing, I want to reiterate NALC's support for this rule and thank the department for its work.

Sincerely,

A handwritten signature in cursive script that reads "Jim Hodges".

Jim Hodges
Executive Director