

April 28, 2026

The Honorable Andrew Rogers
Administrator
U.S. Department of Labor
Wage and Hour Division
200 Constitution Avenue NW
Washington, D.C. 20210

Submitted via Regulations.gov

RE: RIN 1235-AA46, Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act and Migrant and Seasonal Agricultural Worker Protection Act

Dear Mr. Rogers:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I submit the following comments in support of the Department of Labor's Notice of Proposed Rulemaking for the "Employee or Independent Contractor Status Under the Fair Labor Standards Act." The Department's proposed rule promotes greater predictability and consistency in worker classification, ensuring compliance with federal law through a practical, clear standard.

NAR is America's largest trade association including its five commercial real estate institutes and various societies and councils. REALTORS® engage in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing professionals who are committed to the development and preservation of the nation's housing stock while ensuring its availability to the widest range of potential homebuyers. Of NAR's 1.4 million members, approximately 89 percent are classified as independent contractors.

Protecting and advancing independent contractor status is a key priority for NAR and its members. Real estate professionals play a vital role in facilitating access to housing, protecting property rights, and promoting homeownership for all. Many choose the industry for its flexibility, autonomy, and predictability, including the ability to set their own schedules and manage client relationships. Most real estate professionals elect to operate as independent contractors that work with brokers who provide oversight and guidance, particularly for newer professionals. While classification decisions are made jointly, a professional's success largely depends on their own business judgment, reflecting significant economic independence. Broker supervision may include licensure compliance, fee allocation, and expense management.

The real estate industry represents approximately 20 percent of the U.S. economy, and real estate professionals are essential to its function. NAR supports clear, consistent, and pragmatic regulations that provide predictability and ease compliance for the many real estate professionals who are small business owners. By contrast, overly broad or burdensome regulations create challenges for both businesses and consumers.

Washington, DC 20001

NAR believes the Department's proposed adoption of an economic reality test for determining employee or independent contractor status provides greater predictability. The proposed rule properly identifies two core factors as part of the analysis for determining a worker's classification status: "the nature and degree of control over the work" and "the worker's opportunity for profit or loss." These two factors should remain central and determinative in assessing worker classification. The other three factors including "the amount of skill required for the work, the degree of permanence of the working relationship, and whether the work is part of an integrated unit of production" are relevant considerations but properly deemed secondary. The proposed five factor test offers a more focused and practical framework than the prior rule and clearly explains how each factor should be weighed.

Further, NAR believes that the treatment of real estate professionals under federal labor law should be consistent with federal tax law. The Internal Revenue Code recognizes the treatment of qualified real estate agents as non-employees.¹ The Department of Labor should consider providing an exemption for the treatment of real estate professionals in a final Independent Contractor rule. Under the Internal Revenue Code, real estate professionals are non-statutory non-employees, if three factors are met. First, the real estate agent must be licensed. Second, substantially all payments for the licensed real estate agent's services must be directly related to their sales or other services must be performed pursuant to an agreement that states the real estate agent will not be treated as an employee for federal tax purposes. NAR believes that referencing 26 U.S.C. § 3508 within the final rule would specifically define qualified real estate agents as independent contractors accurately reflecting other federal laws and thus eliminating any uncertainty. The consistency for the treatment of real estate professionals across the tax code and labor regulation is essential, given the uniqueness of the real estate industry.

Therefore, NAR urges the Department to adopt a final rule that remains closely aligned with the proposed rule and includes an exemption for real estate professionals to ensure consistent treatment under federal labor and tax law that accurately reflects their role and status.

Thank you for the thoughtful review and consideration of NAR's comments. NAR welcomes the opportunity to meet with the Department to discuss the proposed rule, its implications for the industry, and to work collaboratively toward effective implementation. If you have any questions, please contact Nia Duggins, Senior Policy Representative, at 202-383-1085 or nduggins@nar.realtor.

Sincerely,



Kevin Brown
2026 President, National Association of REALTORS®