

United States Senate

WASHINGTON, DC 20510

July 12, 2021

The Honorable Martin Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, Northwest
Washington, D.C. 20210

Dear Secretary Walsh:

We are concerned about your withdrawal of a rule that would have emphasized the probative value of two factors under the economic reality test to determine if workers were to be classified as employees or independent contractors¹. That action, coupled with troubling comments you made in April about gig worker misclassification, have us concerned that any actions taken by this administration in regard to the classification of these types of workers will compromise individuals' ability to choose to work as an independent contractor and, thereby, directly impede the growth and innovation of the gig economy.

Independent work and the technology platforms that connect everyday Americans with customers and earning opportunities are here to stay. These flexible work opportunities have proven to be an essential bridge for individuals who are between traditional jobs, need to supplement their income, or take advantage of greater flexibility that more rigid, traditional employment cannot provide. And these opportunities are only growing in popularity.

For example, the Internal Revenue Service highlighted in a 2019 report, "Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data," that the independent contractor workforce increased almost 50 percent between 2001 and 2016². In addition, according to a 2018 Gallup survey, 36 percent of all workers earned some income through the gig economy, whether that be through freelancing or working through an online or app-based company³.

Given the growing popularity of this type of work and its importance to consumers and the economy at large, we encourage you to work in a pragmatic and bipartisan manner should you proceed on any matters related to the classification of independent contractors. Ultimately, the interests of millions of workers choosing to be independent contractors and work in the gig economy should be protected.

Thank you for your consideration of the importance of independent contractors to our economy. We look forward to working with you on this issue.

¹ <https://www.federalregister.gov/documents/2021/05/06/2021-09518/independent-contractor-status-under-the-fair-labor-standards-act-flsa-withdrawal>

² <https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf>, at p. 29.

³ <https://www.gallup.com/workplace/240929/workplace-leaders-learn-real-gig-economy.aspx>

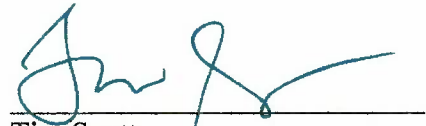
Sincerely,



John Thune
United States Senator



Richard Burr
United States Senator



Tim Scott
United States Senator