



February 12, 2021

Ms. Jessica Looman
Principal Deputy Administrator
Wage and Hour Division
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Via: [regulations.gov](https://www.regulations.gov)

RE: RIN 1235-AA34; Independent Contractor Status Under the Fair Labor Standards Act

Dear Administrator Looman:

The National Retail Federation (NRF) and the National Council of Chain Restaurants (NCCR) respectfully submit the following comments regarding the U.S. Department of Labor's (DOL) proposed delay of the Independent Contractor Rule's effective date by 60 days to May 7, 2021. DOL published the proposed delay in 86 Federal Register 8326 on February 5, 2021. NRF and NCCR support the final rule published by DOL in the Federal Register on January 7, 2021 and urge DOL to maintain the final rule's current effective date of March 8, 2021.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 52 million working Americans. Contributing \$3.9 trillion to annual GDP, retail is a daily barometer for the nation's economy. The retail industry provides opportunities for lifelong careers, strengthens communities, and plays a critical role in driving innovation.

NCCR, a division of the National Retail Federation, is the leading organization exclusively representing chain restaurant companies. For more than 40 years, NCCR has worked to advance sound public policy that serves restaurant businesses and the millions of people they employ. NCCR members include the country's most respected quick-service and table-service chain restaurants.

NATIONAL RETAIL FEDERATION
1101 New York Avenue, NW, Suite 1200
Washington, DC 20005
www.nrf.com

The final rule clarifies the test used under the Fair Labor Standards Act (FLSA) for determining independent contractor status. Prior to issuance of the final rule, inconsistent applications and interpretations of the “economic realities” test created unnecessary uncertainty for workers and businesses across industries. The final rule provides a clear, balanced test for stakeholders by correctly identifying and emphasizing the importance of the “core” factors relevant to worker classification, streamlining the test, and simplifying other factors that were often nebulous, overlapping, and even irrelevant. The final rule also appropriately focuses the test on actual practice rather than contractual or theoretical possibilities.

The final rule provides workers with a greater understanding of the parameters around independent work. It enables businesses to confidently enter into agreements with bona fide independent contractors without fear of inappropriately applied liability under the FLSA’s wage, overtime, and recordkeeping requirements. The final rule provides greater clarity for all stakeholders, which in turn reduces the amount of needless and costly litigation and promotes economic prosperity, innovation, and entrepreneurship.

Our members have already taken action to implement the rule finalized last month. Retailers and restaurants, many of which rely on the expertise and initiative of independent contractors to fulfill critical needs, are eager to grow the economy despite the unprecedented headwinds of the COVID-19 pandemic. Any unnecessary delay in the implementation of this rule will only result in new uncertainties and inconsistent application of the test, hindering economic growth, deterring innovation, and impeding workers’ entrepreneurship.

NRF and NCCR appreciate the opportunity to submit these comments and urge the Department of Labor not to delay the effective date of the final rule.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French
Senior Vice President
Government Relations