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February 3, 2021

Chairman
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Republican Leader
Committee on Education and Labor
House of Representatives

Subject: *Department of Labor, Wage and Hour Division: Independent Contractor Status Under the Fair Labor Standards Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Wage and Hour Division (Department) entitled "Independent Contractor Status Under the Fair Labor Standards Act" (RIN: 1235-AA34). We received the rule on January 7, 2021. It was published in the *Federal Register* as final regulations on January 7, 2021. 86 Fed. Reg. 1168. The stated effective date of the rule is March 8, 2021.

According to the Department, the final rule revises the Department's interpretation of independent contractor status under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* The Department stated the final rule is meant to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy.

Enclosed is our assessment of the Department's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Robert Waterman
Compliance Specialist
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
WAGE AND HOUR DIVISION
ENTITLED
“INDEPENDENT CONTRACTOR STATUS
UNDER THE FAIR LABOR STANDARDS ACT”
(RIN: 1235-AA34)

(i) Cost-benefit analysis

The Department of Labor, Wage and Hour Division (Department) estimated the final rule would create regulatory familiarization costs of \$370.9 million in the first year. The Department also estimated the final rule would lead to cost savings from increased clarity in the amount of \$447 million in the first year. The Department further estimated cost savings from reduced litigation of \$48.7 million in the first year. This would lead to a net cost savings of \$125 million in the first year.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Department certified the final rule would not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Department prepared a written statement under the Act. The analysis discussed (1) the authorizing legislation, (2) an assessment of the costs and benefits of the final rule, and (3) an explanation of the least burdensome option.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On September 25, 2020, the Department published a proposed rule. 85 Fed. Reg. 60600. The Department received more than 1800 comments on the proposed rule from individuals and organizations. The Department addressed the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Department determined the final rule does not contain any information collection requirements subject to the Act.

Statutory authorization for the rule

The Department promulgated the final rule pursuant to sections 201 *et seq.* of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Department determined the final rule will be economically significant under the Order.

Executive Order No. 13132 (Federalism)

The Department did not discuss the Order in the final rule.