Coalition to Promote Independent Entrepreneurs
IECoalition.org · (202) 659-0878

September 12, 2019

The Honorable Elise M. Stefanik
U.S. House of Representatives
Washington, DC 20515

Re: *Modern Worker Empowerment Act*

Dear Congresswoman Stefanik:

On behalf of the Coalition to Promote Independent Entrepreneurs, a national coalition of organizations, companies, and independent entrepreneurs that support an individual's right to do business and work as an independent entrepreneur, we are writing to express our strong support for H.R. 4069, the *Modern Worker Empowerment Act*. The undersigned thank you for introducing this bill.

The modern economy has introduced technological innovations that enable individuals with merely an idea and a computer or smartphone to start a business. Despite low barriers to entry for independent entrepreneurship, Bureau of Labor Statistics data reveal that the number of independent entrepreneurs relative to the civilian labor force has declined over the last ten years. Enclosed is a graph reflecting BLS data in this regard.

One factor contributing to this decline is our nation's outdated and inconsistent labor laws. At this time, more than ten different tests define the term "employee" for purposes of federal and state statutes. This patchwork of different definitions for the same term creates significant uncertainty for independent entrepreneurs and their clients. This uncertainty, in turn, creates an unfair playing field that discriminates against these independent entrepreneurs relative to their larger incorporated competitors, which stifles economic growth.

The *Modern Worker Empowerment Act* would liberate independent entrepreneurs by updating the definition of the term "employee" for purposes of the Fair Labor Standards Act ("FLSA") and conforming it to the other New Deal statutes enacted during the 1930s that also applied an "economic realities" test many years ago but now apply a common-law definition for the term.

The bill also would reconcile the FLSA with more recent United States Supreme Court decisions[1] holding that a common-law test is the proper test for the term "employee" for purposes of (i) statutes that do not define the term, and (ii) statutes, such as the FLSA, that define the term with a definition that is circular. Furthermore, adopting a common-law

[1] *Cmty. for Creative Non-Violence v. Reid,* 490 U.S. 730 (1989), *Nationwide Mut. Ins. Co. v. Darden,* 503 U.S. 318 (1992), and *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440 (2003).

test for purposes of the FLSA would have the effect of harmonizing the definition of "employee" for purposes of all federal statutes.

A harmonized definition of "employee" would be beneficial to all stakeholders. It would provide much needed certainty to independent entrepreneurs and their clients, while also enabling government agencies to more efficiently ensure proper worker classification.

We thank you for your leadership on this important issue by introducing H.R. 4069 to bring the FLSA into the 21st century.

Sincerely,

American Bakers Association

Americans for Tax Reform

American Moving and Storage Association

American Society of Travel Advisors

American Trucking Associations

Auto Care Industry

Competitive Enterprise Institute

Center for Worker Freedom

Dart Transit Company

Direct Selling Association

Electronic Transactions Association

Financial Services Institute

Forest Resources Association

Freedom Foundation

HomeCare.com

Heritage Action for America

Hispanic Leadership Fund

Independent Bakers Association

Insights Association

International Franchise Association

MBO Partners

MSPA Americas

Nation Association of Home Builders

National Association for the Self-Employed

National Council for Languages and International Studies

Private Care Association

Rio Grande Foundation

Small Business & Entrepreneurship Council

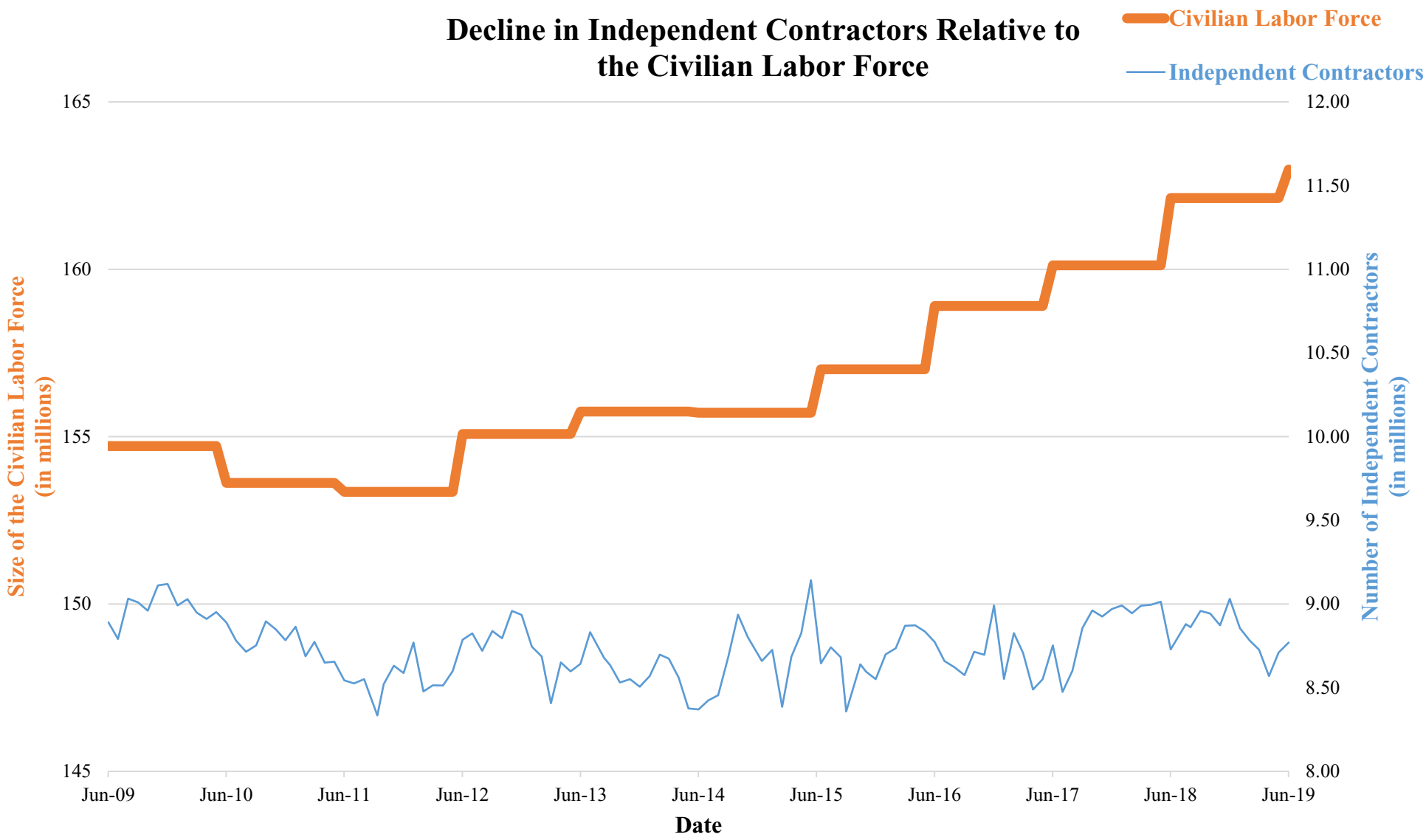
The Heartland Institute

Enclosure

cc: The Honorable Bradley Byrne
The Honorable David P. Roe
The Honorable Ron Wright

*To join as a signer to this letter, please contact Patrick Hollrah at phollrah@iecoalition.org.

Decline in Independent Contractors Relative to the Civilian Labor Force



BLS Definitions

Labor Force: The labor force includes all persons classified as employed or unemployed in accordance with the definitions contained in this glossary.

Employed Persons: Persons 16 years and over in the civilian noninstitutional population who, during the reference week, (a) did any work at all (at least 1 hour) as paid employees; worked in their own business, profession, or on their own farm, or worked 15 hours or more as unpaid workers in an enterprise operated by a member of the family; and (b) all those who were not working but who had jobs or businesses from which they were temporarily absent . . . whether or not they were paid for the time off or were seeking other jobs. Each employed person is counted only once . . . . Excluded are persons whose only activity consisted of work around their own house . . . or volunteer work for religious, charitable, and other organizations.

Unemployed Persons: Persons aged 16 years and older who had no employment during the reference week, were available for work, except for temporary illness, and had made specific efforts to find employment sometime during the 4-week period ending with the reference week. Persons who were waiting to be recalled to a job from which they had been laid off need not have been looking for work to be classified as unemployed.

Definitions available at: BLS Information (https://www.bls.gov/bls/glossary.htm#C).
Size of the Civilian Labor Force source data available at: Labor Force Statistics from the Current Population Survey, Civilian Labor Force (https://data.bls.gov/cgi-bin/surveymost?ln).
Number of Independent Contractor source data available at: Bureau of Labor Statistics, Seasonally Adjusted Data, THE EMPLOYMENT SITUATION, Table A-8.

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116TH CONGRESS
1ST SESSION

H. R. 4069

To amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2019

Ms. STEFANIK (for herself, Mr. BYRNE, and Mr. DAVID P. ROE of Tennessee) introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Modern Worker Empowerment Act''.

SEC. 2. AMENDMENTS TO THE FAIR LABOR STANDARDS ACT OF 1938 TO HARMONIZE THE DEFINITION OF EMPLOYEE.

(a) DEFINITION OF EMPLOYEE.—Section 3(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.

203(e)(1)) is amended by inserting before the period the following: ", as determined under the usual common law rules (as applied for purposes of section 3121(d) of the Internal Revenue Code of 1986)".

(b) DEFINITION OF EMPLOY.—Section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)) is amended by inserting "an employee" after "permit".

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