MERCATUS CENTER
George Mason University

3434 WASHINGTON BLVD.
4TH FLOOR
ARLINGTON, VA 22201

PHONE: 703.993.4930 / 800.815.5711
FAX: 703.993.4935
WWW.MERCATUS.ORG

Getting Worker Classification Right: Evidence, Tradeoffs, and the Future of Independent Work

Liya Palagashvili
Senior Research Fellow and Director of Labor Policy
Mercatus Center at George Mason University

Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act
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Introduction

The US Department of Labor has proposed to rescind the 2024 independent contractor rule and replace it with a modified version of the 2021 framework for determining employee or independent contractor status under the Fair Labor Standards Act, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act.[1] I am grateful for the opportunity to submit a comment in response to the Department's proposed rule.

The Mercatus Center at George Mason University is dedicated to advancing knowledge about the effects of regulation and policy on society. Accordingly, my comment is designed to aid the Department as it considers the impact of the proposed rule.

The Department's proposal to rescind the 2024 Rule and return to a framework that gives greater weight to control and opportunity for profit or loss would likely better preserve lawful independent contracting arrangements. This matters because independent work is not a fringe part of the labor market. It is an important source of income, flexibility, and entrepreneurship for millions of workers across industries. Independent contracting is especially valuable for workers who rely on flexibility, including caregivers, women, supplemental earners, and individuals using independent work as a bridge after income loss or unemployment.

The evidence from stricter worker classification policies suggests that more restrictive rules do not simply move independent contractors into traditional employment. Instead, they can reduce self-employment, eliminate earning opportunities, and leave many workers without either the flexibility of independent work or the benefits of traditional employment. For this reason,

[1] Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act*, 91 Fed. Reg. 9932 (proposed Feb. 27, 2026) (to be codified at 29 C.F.R. pts. 500, 795, and 825).*

classification rules should be evaluated not only by whether they reduce misclassification, but also by whether they preserve legitimate independent work opportunities for workers who are already properly classified.

This comment builds on my prior comments on the 2021 and 2024 independent contractor rules, my amicus briefs addressing the 2024 Rule's cost-benefit analysis, and my coauthored research on California's ABC test, which the Department cites in this proposed rule.[2]

I recommend that the Department strengthen the final rule's economic analysis in four ways: first, by accurately representing the scale of worker misclassification; second, by incorporating evidence from California's AB5 and broader state ABC test adoption showing that restrictive classification rules can reduce work opportunities; third, by clarifying that voluntary benefits do not create evidence of employment; and fourth, by assessing the impact of classification restrictions on women and caregivers.

The sections below elaborate on each of these recommendations.

I. The Analysis Should Accurately Represent the Scale of Worker Misclassification

Misclassification is real and should be addressed through enforcement. Workers who are legally employees should receive the protections to which they are entitled. But the scale, distribution, and measurement of misclassification matter. A policy calibrated to an overstated view of the problem can easily overshoot its target and reduce lawful independent work opportunities for workers who are already properly classified.

In the economic analysis section of the proposed rule, the Department states that "the prevalence of misclassification is unknown, but it is generally agreed to be common,"[3] and cites the National Employment Law Project's literature review for the claim that the share of employers misclassifying workers ranges from 10 to 30 percent. The Department is correct that the true prevalence of misclassification is difficult to measure. But the commonly cited 10 to 30 percent figure should be presented with important qualifications.

It is generally an employer-level measure, not a worker-level measure; it is often drawn from targeted or mixed audit samples, not representative random samples; and it does not distinguish intentional evasion from misunderstanding, administrative error, or difficulty applying complex classification rules. The final rule should be more precise about what this figure measures and what it does not measure.

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[2] Liya Palagashvili, *Four Recommendations for Analyzing the Department of Labor's Proposed Rule on Employees vs. Independent Contractors*, Public Interest Comment, Mercatus Center at George Mason University (Oct. 26, 2020). Liya Palagashvili, *Analyzing the Impact of the Department of Labor's Rule on Restricting Independent Contracting*, Public Interest Comment, Mercatus Center at George Mason University (Dec. 13, 2022). Brief of Amicus Curiae Dr. Liya Palagashvili, *Coalition for Workforce Innovation v. Su*, No. 1:21-cv-00130-MAC (E.D. Tex. May 3, 2024).

[3] Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, *91 Fed. Reg. 9932, 10035 (proposed Feb. 27, 2026) (to be codified at 29 C.F.R. pts. 500, 795, and 825).*

Employer-Level and Worker-Level Rates Measure Different Things

The figure most commonly cited in discussions of misclassification—that 10 to 30 percent of employers misclassify workers—measures the share of employers that have misclassified at least one worker. This is not the same as the share of workers who are misclassified.

That distinction is central to the Department's economic analysis. An employer that misclassifies one worker out of 20,000 counts the same in an employer-level statistic as an employer that misclassifies half of its workforce. Employer-level statistics can help identify whether misclassification occurs across firms. They do not tell us how many workers are affected.

The more relevant measure for evaluating the scope of worker harm is the worker-level rate: the percentage of workers who are actually misclassified. Random or mostly random audit evidence suggests that worker-level misclassification is substantially lower than the employer-level figures commonly cited in policy debates. In several random or mostly random state audit studies, the worker-level rate is closer to 1 to 4 percent, depending on the state, year, industry mix, and audit methodology.[4]

This does not mean misclassification is unimportant. Even a 1 to 4 percent worker-level rate can represent tens of thousands of workers in a given state. But it does mean that employer-level misclassification rates should not be presented or interpreted as though they measure the share of workers who are misclassified.

Targeted Audits Are Not Representative of the Broader Economy

A second problem is that many commonly cited misclassification figures come from targeted audits or mixed audit samples. Targeted audits are enforcement investigations focused on employers already suspected of violations, employers referred by complaints, or industries where misclassification is believed to be more common, such as construction or janitorial services.

Targeted audits are essential enforcement tools. They help agencies find violations where violations are most likely to occur. But they are not representative samples of the broader employer population. Using targeted audit results to justify economy-wide restrictions on independent contracting treats misclassification patterns in higher-risk sectors as though they apply uniformly to freelance writers, graphic designers, consultants, tutors, translators, platform-based caregivers, and other legitimate independent workers across the economy.

The Department's own earlier research has acknowledged this limitation. The 2000 Planmatics report[5] prepared for the Department noted that, in states where audits are selected predominantly on a nonrandom basis or through a combination of random and nonrandom methods, the estimates are not representative of the entire state employer population. That methodological caveat is important because the same report is often cited as support for broad claims about the prevalence of misclassification.

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[4] Author's analysis of available state audit reports on worker misclassification and Planmatics, Inc., *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, prepared for the U.S. Department of Labor, Employment and Training Administration (2000).

[5] Planmatics, Inc., *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, prepared for the U.S. Department of Labor, Employment and Training Administration (2000).

The final rule should therefore distinguish between random audits, targeted audits, and mixed audit samples. It should also clarify that audit results from targeted or partially targeted samples should not be presented as representative estimates of misclassification across the economy.

The Evidence Suggests Misclassification Is Often Low-Intensity

Even employer-level figures can overstate the severity of the problem if they are interpreted as evidence of widespread, firm-wide, or intentional evasion. Some state audit evidence suggests that many employers found to have misclassified workers misclassified only one or two workers. For example, Minnesota's 2024 worker misclassification report found that roughly two-thirds of misclassifying employers misclassified one or two workers.[6] The report also noted that auditors do not systematically determine employer intent, meaning that these findings identify compliance failures rather than whether the employer acted deliberately.

This distinction matters. UI audits can identify misclassification when an employer treats a worker as an independent contractor or when an employer fails to report a worker to the unemployment insurance system. These findings can reflect intentional evasion, but they can also reflect misunderstanding, administrative error, confusion about reporting requirements, or difficulty applying classification criteria—especially for small employers and short-term or marginal workers.

Misclassification is real and should be addressed through enforcement. But enforcement policy should distinguish between deliberate evasion and compliance confusion. Treating every audit finding as evidence of intentional fraud can mischaracterize the problem and lead to overbroad policy responses.

Why Representative Misclassification Statistics Matter for the Impact Analysis

The Department's economic analysis should not treat misclassification as an economy-wide, double-digit worker-level problem unless the evidence supports that claim. The available audit evidence does not support that inference.

The final rule should explain that the often-cited 10 to 30 percent figure is an employer-level figure, often drawn from targeted or mixed audit samples. It should not be presented as the share of independent contractors or workers who are misclassified. Nor should it be presented as a representative estimate of employer-level misclassification because the underlying audit sample is not random.

This point is central to the cost-benefit analysis. If worker-level misclassification is closer to 1 to 4 percent in random or mostly random audit studies, then broad classification restrictions should be evaluated against the costs they impose on the much larger group of workers who are already properly classified or who use independent work lawfully.

The right policy response is not to ignore misclassification. It is to target enforcement where misclassification is most likely and most harmful. The evidence suggests that misclassification is concentrated in particular industries and among particular employers, rather than spread evenly across all forms of independent work. That supports targeted enforcement, better

[6] Minnesota Office of the Legislative Auditor, *Worker Misclassification* (2024).

guidance, and clearer compliance standards—not economy-wide restrictions that make lawful independent work harder to access.

Understanding the real scale of misclassification helps ensure that reforms protect workers from genuine abuse without undermining legitimate independent contracting arrangements that millions of workers rely on for income, flexibility, and opportunity.

II. The Analysis Should Incorporate Evidence that Restrictive Classification Rules Can Reduce Work Opportunities

The Department's proposed rule moves away from the 2024 Rule and returns to a framework that gives greater weight to control and opportunity for profit or loss. This change would likely better preserve legitimate independent contracting arrangements because it reduces the risk that businesses will avoid working with bona fide independent contractors merely because the legal standard is too ambiguous or too restrictive.

The Department's economic analysis should strengthen this point by incorporating the growing empirical evidence on more restrictive worker classification laws. That evidence indicates that stricter classification rules do not simply convert independent contractors into employees. In many cases, they reduce independent contracting opportunities without producing a corresponding increase in traditional employment.

This issue is important because the relevant policy comparison is not always "independent contractor work versus employee work." In many cases, it is "independent contractor work versus no work." Businesses often rely on independent contractors because the work is project-based, specialized, seasonal, supplemental, or not economically viable as a full-time employment position. Small businesses, startups, nonprofits, and project-based industries may not be able to convert all contractor roles into employee positions. When the legal standard becomes too restrictive, some businesses may restructure a subset of contracts, hire a smaller number of workers as employees, or stop working with some contractors altogether.

Evidence from California's AB5

My coauthors and I published a Mercatus working paper, "Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5," which provides an empirical assessment of the employment effects of California's Assembly Bill 5.[7] AB5 adopted one of the strictest worker classification standards in the country and applied an ABC test broadly across occupations before California later adopted numerous exemptions.

Using Current Population Survey data and a difference-in-differences strategy comparing California to states with unchanged common-law classification standards, we find that AB5 was associated with significant declines in self-employment and overall employment among nonexempt occupations. Self-employment fell by 10.5 percent on average for nonexempt occupations, while overall employment fell by 4.4 percent on average. We find no robust evidence that traditional employment increased after AB5.

These findings suggest that AB5 did not simply alter the composition of the workforce as intended by lawmakers. Instead, it was associated with a decline in self-employment and overall

[7] Liya Palagashvili, Paola A. Suarez, Christopher M. Kaiser & Vitor Melo, *Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5*, Mercatus Working Paper, Mercatus Center at George Mason University (Jan. 2024).

employment for affected occupations. The paper explains that if AB5 had worked as intended, overall employment and labor force participation would have remained stable, traditional employment would have increased, and self-employment would have decreased. Instead, the results show that the reduction in self-employment was not accompanied by an equal increase in traditional employment.

The likely mechanisms are straightforward. Some businesses may hire a subset of contractors as employees. Others may restructure contracts. But many businesses cannot convert all contractor roles into employee roles, particularly when the work is project-based, part-time, specialized, or supplemental. In those cases, the contracting opportunity may disappear. The AB5 paper identifies several possible mechanisms, including employers hiring some but not most contractors as employees, employers ceasing to work with California-based contractors, some contractors declining employment offers, and small businesses shutting down when they relied heavily on contractors and could not afford to hire them as employees.

Evidence from State ABC Test Adoption

Additional research on state ABC test adoption points in the same direction. Using a Callaway and Sant'Anna difference-in-differences approach for states that adopted ABC tests, my coauthors and I find that ABC test adoption caused declines in traditional employment, self-employment, and overall employment.[8] Specifically, ABC test adoption reduced traditional W-2 employment by 4.73 percent, self-employment by 6.43 percent, and overall employment by 4.79 percent.

The decline in traditional employment is especially important because it runs counter to the stated goal of reclassification policies. These policies are often justified on the grounds that they will move workers from independent contracting into traditional employment. But the multi-state evidence suggests that stricter classification standards can reduce both independent work and traditional employment.

One plausible mechanism is that businesses that rely on both employees and contractors reduce operations, relocate, or close when independent contracting becomes more difficult or legally uncertain. This is consistent with anecdotal evidence from California after AB5, where businesses in creative industries, media, trucking, and other sectors reported cutting contractor opportunities or leaving the state.

The Evidence Supports the Department's Proposed Direction

The Department's proposed rule and state ABC tests are not identical. The FLSA economic reality test differs from the ABC test, and the Department is not proposing to impose an ABC test. But the evidence from stricter classification rules is still informative because both types of rules affect the legal margin around independent contracting.

When a classification rule makes independent contracting more difficult or legally risky, businesses may reduce or avoid contracting relationships. When a rule better preserves lawful independent contracting, businesses may be more willing to create or maintain those opportunities.

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[8] Liya Palagashvili, Revana Sharfuddin & Markus Bjoerkheim, *ABC Tests and Labor Market Outcomes* (Mercatus Working Paper, forthcoming 2025); Liya Palagashvili & Revana Sharfuddin, *New Study: From Gig to Gone? ABC Tests and the Case of the Missing Workers*, Labor Market Matters (Jan. 10, 2025).

The Department's economic analysis already recognizes this basic logic. The proposed rule estimates that the number of independent contracting relationships could increase if the rule is finalized and specifically invites comments on whether companies would reclassify existing employees as independent contractors or instead hire new workers as independent contractors. The evidence from AB5 and state ABC tests supports the Department's view that the proposed rule may create or preserve independent contracting opportunities rather than primarily causing a large-scale conversion of existing employees into independent contractors.

The final rule should therefore use this evidence to clarify a central point: restrictive classification standards can reduce work opportunities, while rules that better preserve lawful independent contracting can expand or protect them. The relevant question is not simply whether a rule changes worker classification on paper. It is whether the rule preserves real income opportunities for workers who value or require flexible, independent work.

The Department's proposed rule draws directly on this research. In its economic analysis, the Department cites our AB5 findings to support its assumption that any increase in independent contracting under the proposed rule would occur primarily through new labor force entry rather than through reclassification of existing employees — and uses that assumption to project between 250,000 and 750,000 new independent contracting relationships and approximately $87 billion in additional earnings over ten years. That directional inference is consistent with our findings.

The Department also notes, appropriately, that our study acknowledges a lack of parallel trends in the pre-treatment period, which introduces uncertainty into any precise magnitude estimate. The Department's projection should therefore be understood as an order-of-magnitude illustration rather than a precise forecast — but the underlying logic, that less restrictive classification guidance expands independent contracting opportunities rather than simply relabeling existing employment relationships, is well-supported by the evidence.

III. The Department Should Clarify That Portable Benefits Do Not Create Evidence of Employment

The Department should consider addressing one of the biggest barriers preventing independent workers from receiving benefits: the fear that voluntary portable benefits will trigger reclassification.

Current law discourages businesses or clients from providing benefits to independent contractors because the provision of employee-type benefits can be treated as evidence of an employment relationship.[9] This creates a perverse result. Businesses may want to contribute to health insurance, retirement savings, paid leave, or other benefits for independent contractors, but they are deterred from doing so because providing those benefits could increase the legal risk that the worker will be reclassified as an employee.

This barrier has been recognized by scholars, policymakers, and business leaders across the political spectrum.[10] It is also a major reason why reclassification has dominated the policy debate. If benefits are tied only to employment, then policymakers who want more workers to receive benefits often assume the solution is to make more workers employees. But that

[9] Liya Palagashvili, *Flexible Benefits for a Flexible Workforce: Unleashing Portable Benefits Solutions for Independent Workers and the Gig Economy*, Mercatus Policy Brief, Mercatus Center at George Mason University (Feb. 2023)
[10] Id.

approach creates the tradeoff documented above: many workers may lose independent contracting opportunities without gaining employment.

A better approach is to remove the legal barrier that prevents benefits from flowing to independent workers in the first place.

Portable Benefits Offer a Third Path

For years, the worker-classification debate has been framed as a binary choice: either force workers into traditional employment so they can access benefits, or leave them as independent contractors without benefits. Portable benefits offer a third path.

Portable benefits are worker-owned benefits that follow individuals across jobs and clients. They allow multiple businesses, clients, customers, or workers themselves to contribute to benefits accounts that are attached to the worker rather than to a single employer. This framework preserves the flexibility and autonomy that many independent workers value while expanding access to benefits.

The central legal reform is simple: clarify that the voluntary provision of benefits does not affect worker classification status.

This does not change the definition of employment. It does not alter the economic reality test. It does not create a loophole for misclassification. It simply removes one outdated barrier that prevents businesses from supporting independent workers who are already properly classified.

The Proposed Rule Already Provides the Right Logic

The Department's proposed rule already includes an analogous clarification in its treatment of compliance requirements. Under the proposal, requiring an individual to comply with legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy similar terms typical of business-to-business contractual relationships does not constitute control that makes the individual more or less likely to be an employee under the Act.

The Department should extend the same logic to portable benefits.

If requiring a contractor to carry insurance or meet safety standards does not indicate employee status, then voluntarily contributing to a contractor's benefits account should not indicate employee status either. In both cases, the relevant question remains the same: whether the worker is economically dependent on the potential employer for work or is in business for himself or herself.

I recommend that the final rule include guidance clarifying that the voluntary provision of benefits by a potential employer or client to an independent contractor—including health insurance contributions, retirement contributions, paid leave, accident insurance, or similar benefits—does not constitute evidence of an employment relationship and will not be considered in the Department's analysis under the economic reality test.

State-Level Portable Benefits Reforms Demonstrate Feasibility

The portable benefits movement is no longer theoretical. In recent years, numerous states have introduced, enacted, or piloted portable benefits frameworks. States including Alabama, Idaho, Kansas, Tennessee, Utah, West Virginia, and Wyoming have enacted voluntary portable benefits laws, while other states have considered or launched pilot programs.

The early evidence suggests that removing legal barriers can expand benefits access without disrupting labor market composition. In Utah, where a voluntary portable benefits framework took effect in 2023, early evidence shows that traditional employment and self-employment continued to grow at similar rates as before the law's enactment.[11] In Pennsylvania, a DoorDash portable benefits pilot delivered more than $1.3 million in benefits to workers, with a large share of previously uncovered workers gaining access to benefits.

The lesson is straightforward: many businesses are willing to contribute to benefits when the law gives them clarity that doing so will not trigger reclassification risk. The Department should consider how a federal clarification could support the same goal.

IV. The Analysis Should Consider the Disproportionate Impact on Women and Caregivers

The Department's economic analysis should also consider how restrictions on independent contracting affect women and caregivers. Independent work is not a monolith. It spans industries, occupations, income levels, and worker preferences. Policies that treat rideshare and delivery work as representative of all independent contracting miss much of the workforce that depends on flexibility.

This is especially important for women.

Women Use Independent Work Differently Than Men

Women's participation in independent work is often concentrated in professional services, creative work, caregiving, personal services, selling platforms, and remote freelance work. These sectors look very different from transportation platforms, where male participation is higher.

Research from the JPMorgan Chase Institute shows that when transportation platforms are excluded, women make up a greater share of income earners on digital platforms than men.[12] Women also make up a large share of sellers on platforms such as Etsy and hosts on platforms such as Airbnb.

Restrictive independent contracting rules overlook the women who use independent work to balance paid work with caregiving, to earn supplemental income, to work remotely, or to remain attached to the labor force when traditional employment is not feasible.[13]

Flexibility Is a Labor Force Participation Issue

Survey evidence consistently shows that flexibility is one of the primary reasons workers choose independent contracting. The Bureau of Labor Statistics reports that 80.3 percent of independent contractors prefer their current work arrangement, compared with just 8.3 percent

[11] Liya Palagashvili, *The Rise of Portable Benefits*, Labor Market Matters (Mar. 18, 2026), https://www.labormarketmatters.com/p/the-rise-of-portable-benefits.
[12] Diana Farrell, Fiona Greig & Amar Hamoudi, *The Online Platform Economy in 2018: Drivers, Workers, Sellers, and Lessors*, JPMorgan Chase Institute (2018).
[13] Liya Palagashvili and Paola A. Suarez, *Women as Independent Workers in the Gig Economy*, Mercatus Working Paper, Mercatus Center at George Mason University (Mar. 2021).

who would prefer a different arrangement.[14] That preference is especially important for workers who need control over when, where, and how much they work.

For caregivers, flexibility is not merely a preference. It can be the condition that makes work possible.[15]

Survey evidence shows that many women who engage in platform-based or independent work cite flexible hours as the primary benefit of the arrangement.[16] Many are primary caregivers in their households. Some left full-time employment because they needed flexibility or more time to care for a child, parent, or other relative. Other survey evidence finds that many stay-at-home mothers would be likely to return to work if flexible options were available.[17]

Academic research also supports this point. Self-employment rates are higher among women with young children, and self-employed mothers benefit from greater control over work location, hours, and schedules than peers in conventional employment.[18] Mothers with young children use self-employment opportunities to spend additional time with their children while remaining attached to paid work.[19]

A policy that reduces independent contracting opportunities can therefore reduce work opportunities for women and caregivers who cannot easily substitute into traditional employment.

The Department Should Assess Distributional Effects

The final rule's economic analysis should include information on the gender composition of the independent workforce, the role of independent work in women's labor force participation, and the value of flexibility for caregivers.

This does not mean that women or caregivers should be excluded from labor protections. It means the Department should assess the tradeoffs honestly. A rule that reduces lawful independent contracting may reduce work opportunities for the very workers who rely most heavily on flexibility.

The Department's final analysis should therefore consider not only how classification rules affect wages, benefits, and formal employment status, but also how they affect access to flexible work arrangements that allow people to participate in the labor force at all.

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[14] Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements — July 2023*, Table 9, USDL-24-2267 (Nov. 8, 2024).
[15] Liya Palagashvili and Paola A. Suarez, *Women as Independent Workers in the Gig Economy*, Mercatus Working Paper, Mercatus Center at George Mason University (Mar. 2021).
[16] Hyperwallet, *The Future of Gig Work Is Female: A Study on the Behaviors and Career Aspirations of Women in the Gig Economy* (2017).
[17] Kaiser Family Foundation, CBS & New York Times, *Non-Employed Poll* 25 (Dec. 2014).
[18] Katherine Lim, *Self-Employment, Workplace Flexibility, and Maternal Labor Supply: A Life-Cycle Model*, 17 Rev. Econ. Household 805 (2019).
[19] Id.

Conclusion

The Department's proposed rule moves in a direction that would likely better preserve lawful independent contracting arrangements. By returning to a framework that gives greater weight to control and opportunity for profit or loss, the Department would reduce the risk that legitimate independent work is chilled by rules that are too ambiguous or too restrictive.

The final rule's economic analysis should reinforce this point.

First, the Department should accurately represent the scale of worker misclassification. Misclassification is real and should be addressed through enforcement, but the often-cited claim that 10 to 30 percent of employers misclassify workers is an employer-level figure, often drawn from targeted or mixed audit samples. It should not be presented as the share of workers or independent contractors who are misclassified, nor should it be treated as a representative economy-wide estimate without important methodological qualifications.

Second, the Department should incorporate evidence that restrictive classification rules can reduce work opportunities. The relevant policy comparison is not always independent contractor work versus employee work. In many cases, it is independent contractor work versus no work. Evidence from California's AB5 and broader state ABC test adoption suggests that stricter classification rules reduce self-employment and overall employment without producing corresponding increases in traditional employment. This supports the Department's current direction away from the 2024 Rule and toward a framework that better preserves lawful independent contracting.

Third, the Department should clarify that portable benefits do not create evidence of employment. One of the central shortcomings of current labor policy is that it ties benefits too closely to traditional employment. A benefits safe harbor would allow businesses to contribute to portable benefits for independent workers without increasing reclassification risk.

Fourth, the Department should assess the impact of classification restrictions on women and caregivers. Independent work provides flexibility that many workers value, but for caregivers it can be the condition that makes labor force participation possible. Rules that reduce lawful independent contracting may therefore reduce opportunities for workers who rely most heavily on flexible work.

The Department can better protect workers by distinguishing genuine misclassification from lawful independent work. Better data can help target enforcement where violations are most likely. Clearer rules can help businesses comply. And a benefits safe harbor can help independent workers access benefits without sacrificing the flexibility and autonomy that draw many workers to independent work in the first place.