



# Freedom Network USA

Amy DeBisschop  
Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue NW  
Washington DC 20210

October 26, 2020

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

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Dear Ms. DeBisschop:

On behalf of Freedom Network USA (FNUSA), I submit this comment in response to the Department of Labor's ("Department" or "DOL") Notice of Proposed Rulemaking ("proposed rule") regarding the standard for determining who is a covered employee and who is an independent contractor under the Fair Labor Standards Act ("FLSA").

FNUSA, established in 2001, is a coalition of 71 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. As the largest network of providers working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

Trafficking survivors have been robbed of their earned income by the traffickers who have exploited and abused them.<sup>1</sup> Most foreign national trafficking survivors also have incurred debts in their home country while attempting to access a well-paid job in the US. Trafficking survivors have been exploited by recruiters, employers, and poorly regulated labor sectors that regularly leave them in debt and struggling to support their families while pursuing justice.

---

<sup>1</sup> Jean Bruggeman, *Testimony for the Little Hoover Commission Labor Trafficking Study*, available at <https://freedomnetworkusa.org/app/uploads/2019/12/FNUSALittleHooverCommissionStatementLaborTrafficking.pdf>.

Members of FNUSA work with approximately 2,000 trafficking survivors, annually.<sup>2</sup> About 40% of those are adult survivors or labor or labor and sex trafficking. Another 4% are survivors of child labor or labor and sex trafficking. And yet, the federal government has repeatedly failed to take significant steps to address labor trafficking, the most severe form of employment abuse. The top recommendation for improving the US response to human trafficking, from the US State Department, is to “[i]ncrease investigation and prosecution of labor trafficking cases.”<sup>3</sup> The report also recommends that the US “increase protections for foreign workers in the United States” and “enforce federal acquisition regulations aimed at preventing trafficking in federal contracts, including pertaining to providing strong grievance mechanisms for workers.”<sup>4</sup> The report also shared that 75% of foreign adults and 73% of foreign minors recognized by the US Department of Health and Human Services as human trafficking survivors were survivors of labor trafficking.<sup>5</sup>

Unfortunately, most human trafficking survivors do not self-identify as such. They may not know that protections are available to them. Many foreign nationals do not even know that the abuse and exploitation that they have suffered is unlawful in the US, or that US authorities would protect them. Thus, they do not report their experience readily.

Employment protections are critical to the prevention of labor trafficking. Labor trafficking is more common in industries with less worker protections. Notably, labor trafficking is rife in agriculture<sup>6</sup> and domestic work, two industries historically excluded from employment protections as an ongoing legacy of slavery and reconstruction.<sup>7</sup>

The proposed rule would protect fewer workers, by allowing for their reclassification from employee to contractor. In times of high unemployment like today, individual workers have even less market power than usual to demand fair conditions, especially in jobs that historically have been undervalued; they are forced to accept take-it-or-leave-it job conditions.<sup>8</sup> In stark contrast to the State Department’s recommendations, the proposed rule would reduce the federal government’s efforts to prosecute traffickers, protect trafficking survivors, and prevent labor trafficking in the US. These harms cannot be mitigated with small

---

<sup>2</sup> *Freedom Network USA 2020 Member Report*, available at <https://freedomnetworkusa.org/app/uploads/2020/04/Freedom-Network-Member-Report-April-2020.pdf>.

<sup>3</sup> US Department of State, *Trafficking in Persons Report*, June 2020, p415, available at <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>, hereinafter 2020 TIP Report.

<sup>4</sup> Id.

<sup>5</sup> Id at 417.

<sup>6</sup> Freedom Network USA, *Human Trafficking and Farmworkers*, available at <https://freedomnetworkusa.org/app/uploads/2018/07/Farmworkers.pdf>.

<sup>7</sup> See, for example, US DOJ National Institute of Justice, *The Fight Against Human Trafficking*, available at <https://nij.ojp.gov/topics/articles/fight-against-human-trafficking>; US DOJ National Institute of Justice, *How Does Labor Trafficking Occur in US Communities and What Becomes of the Victims?*, available at <https://nij.ojp.gov/topics/articles/how-does-labor-trafficking-occur-us-communities-and-what-becomes-victims>; US DOJ National Institute of Justice, *Labor Trafficking in San Diego County: Looking for a Hidden Population*, available at <https://nij.ojp.gov/topics/articles/labor-trafficking-san-diego-county-looking-hidden-population>

<sup>8</sup> Catherine Ruckelshaus & Ceilidh Gao, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project (Sept. 2017), <https://s27147.pcdn.co/wp-content/uploads/NELP-independent-contractors-cost-2017.pdf>.

edits. This change will deter survivors from even coming forward for protection and support, leaving them in continued abuse and exploitation.

The US Government must act to protect survivors, not embolden traffickers. Therefore, Freedom Network USA urges the DOL to discard these proposed changes and to, instead, stand in solidarity with human trafficking survivors. I can be reached at [jean@freedomnetworkusa.org](mailto:jean@freedomnetworkusa.org) if you have any questions or need any further information or explanation.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jean Bruggeman  
Executive Director  
Freedom Network USA