Before the
DEPARTMENT OF LABOR

Notice of Proposed Rulemaking on Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act	**Docket No. WHD–2026–0001** **Submitted April 28, 2026**

NEWS/MEDIA ALLIANCE COMMENTS REGARDING NOTICE OF PROPOSED RULEMAKING ON EMPLOYEE OR INDEPENDENT CONTRACTOR STATUS

The News/Media Alliance ("NMA") is the largest trade association representing around 2,200 news, magazine, and digital media organizations and their multiplatform businesses in the United States and globally who have printed news for centuries. The Alliance represents the news media industry within Congress, the Administration, state governments, and the courts, focusing on ensuring the future of journalism through communication, research, advocacy, and innovation. The News/Media Alliance is the parent organization of the American Press Institute, which supports local and community-based media through research, programs, and products. The Alliance's membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, over 500 individual magazine brands, and dozens of digital-only properties.

NMA welcomes the opportunity to provide these comments to the Department of Labor in response to the *Notice of Proposed Rulemaking on Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act*, Docket No. WHD–2026–0001, 91 Fed. Reg. 9,932 (Feb. 27, 2026).

NMA members keep the communities they serve informed, engaged, and entertained, while employing thousands of hardworking Americans and contributing billions to the U.S. economy. The realities of the publishing ecosystem and the newspaper industry mean that publishers often rely on freelancers and other independent contractors, who provide essential services and content

to NMA's member publishers. The flexibility offered by such mutually beneficial business arrangements are key to the economic sustainability of publishers of all sizes as well as their ability to cover local, national, and international events and developments efficiently. Rescinding the Biden Administration's 2024 final rule and replacing it with a rule similar to the Department's previous 2021 rule would provide publishers with certainty – in addition to making the regulatory framework more consistent with Supreme Court and federal circuit court precedent – and protect these vital business relationships that are essential to American journalism.

NMA and our members are largely supportive of the proposed changes. We would, however, like to highlight the following considerations for when the Department is drafting the rule, focusing largely on the two core factors – control and opportunity for profit or loss.

The Nature and Degree of Control Over the Work (Proposed § 795.105(d)(1)(i)): As a threshold matter, while NMA's members are generally supportive of the control test, we oppose the proposal to further streamline the "two core factor" analysis by requiring the control factor to be considered first with a finding of potential employer control ending the analysis and resulting in an employee determination. This approach would be ill-advised and could lead to unfavorable consequences, especially without clear and adequate guidance, in industries such as publishing, where publishers may have editorial relationships with freelancers and other independent contractors that involve giving the contractors meaningful direction with respect to content – including topic assignment, house style requirements, editing and factual review – and rigid deadlines, while preserving the contributor's full economic independence, including their ability to work for multiple news outlets at a given time. Freelance contributors also bring considerable skill, training and expertise to their work, often operating as subject matter experts in a particular area. Their skills are highly marketable to a variety of publishers, and they provide a multitude of economic opportunities in the marketplace. In a streamlined analysis initially focused on the control factor, a court or agency official could put undue emphasis on the significance of the editorial direction inherent in the publishing process and find an employment relationship without considering these other important factors.

Take the example of a regular, independent contractor who is a well-known expert or industry leader in their field, who agrees to contribute a weekly column to a publisher. The contributor is free to work for other publications generally, although he or she may agree not to do so on the specific topic of the pieces which are published for a reasonable period of time in order to protect the value of the services provided. Nevertheless, the individual brings considerable skill and training to the work and may clearly be in business for himself or herself, with no dependence on the publisher for ongoing or future work. Designating these contributors as employees would severely limit publishers' ability to utilize and provide assignments to freelancers, limit consumers' access to diverse voices, and fundamentally misrepresent the business relationship and

level of control between contributors and publishers. We recommend against adopting the common law control test and urge the Department to reject such proposals for control-first approaches.

The Individual's Opportunity for Profit or Loss (Proposed § 795.105(d)(1)(ii)): NMA generally supports the Department's proposal to readopt the regulatory text of § 795.105(d)(1)(ii) from the 2021 Rule, focusing on "the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work."[1] It is vital, however, that the Department focus holistically on a worker's use of skill, acumen and judgment in securing opportunities to generate a profit or risk a loss, and does not measure this in terms of capital expenditures. Many contractors, including a significant number of freelancers, provide services that require little to no investment in materials or equipment beyond laptops and mobile devices, while still maximizing opportunities for profit or loss via their crafted and developed expertise accompanied by business initiative and business development. For example, freelance journalists are able to take on more jobs or additional projects by virtue of their freelance status and by not being tied to a single publisher can manage and plan their schedules and workloads in order to maximize profits, and can offer services to multiple potential clients through various platforms. In addition, they may exercise initiative to invest in researching potential topics for stories, developing relationships with sources and pitching ideas to publishers. We therefore request that the Department clarify the interpretation of the "opportunity for profit or loss" factor to include non-economic investment – such as investment of time and effort in skills, knowledge, relationships, and business development – as well as the initiative involved in effectively and efficiently managing ones time, workload and number of projects in order to ensure that thousands of American creatives who rely on freelancing for multiple clients can continue doing so going forward.

NMA and our members share an interest in making sure that the publisher-independent contributor relationship is fair, thriving, and sustainable. The Department's proposal to rescind the 2024 Rule and return to the principles espoused in the 2021 Rule is commendable and will provide essential legal certainty to publishers of all sizes across America. We appreciate the opportunity to provide these comments, and we stand ready to answer any questions you may have.

[1] *Notice of Proposed Rulemaking on 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. 9,932, 9,952 (Feb. 27, 2026).