

June 16, 2021

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Wyden and Ranking Member Crapo:

As the Chief Executive Officers of trade associations that collectively represent more than 100,000 individual small business owners, broker-dealers and insurance companies providing financial services to more than 112 million American families, we are writing to express our members' strong concerns with a provision in the Committee's current discussion draft of the Unemployment Insurance Modernization Act.¹ Specifically, Section 212 of the discussion draft would require that states use the "ABC test" for the purpose of determining whether a worker is considered an employee eligible for unemployment insurance. This change would significantly disrupt the independent financial services and property casualty insurance industries and negatively impact their ability to help Main Street American families and businesses build secure financial futures and protect their assets.

Using the "ABC test" would create the presumption that all services performed by an individual for pay constitute employment unless the employer can satisfy all three prongs of the "ABC test." Using that test, financial services professionals who are independent contractors would likely be characterized as employees because they are not free from the broker-dealer, registered investment advisor, or insurance company's supervision – even though that supervision is solely to comply with federal and state securities and insurance laws and FINRA requirements. The insurance industry and independent broker dealers are already highly regulated. By effectively reclassifying independent contractors as employees, the discussion draft would create unintended consequences for the industry and specifically insurance producers and independent financial advisors. These individuals are vital to ensuring that Main Street Americans have access to the important advice, products and services necessary to achieve their financial goals and protect their homes, families and businesses.

Currently, financial services professionals have the option to choose among multiple business structures (often within the same firm) to select the one that best meets their needs. Some choose to engage in this work as employees, while others choose to do so as independent contractors because they want to operate their own business and offer their clients a variety of products and services. Many have relationships with one or more insurance companies, broker dealers, or registered investment advisors, which allows them to offer expanded options to their customers. For example, in order to provide more comprehensive financial planning, a financial advisor may also be licensed to sell insurance products. That financial advisor would have contractual relationships with both a broker-dealer or registered investment advisor and an insurance company. Using the "ABC test" would limit advisors' ability to have several contractual relationships, reducing the number and variety of products and services they could offer their clients. Further, the written agreements they enter into with insurance companies (or general agents of insurance companies), broker dealers or registered investment advisors clearly set forth the terms of their independent contractor status. Negating these agreements through Federal legislation would eliminate the choice these practitioners have made to serve clients independently and diminish the value of the book of business they have developed.

¹ https://www.bennet.senate.gov/public/_cache/files/e/7/e76d31fb-44f8-403c-aa05-beeba5e3c3af/A52E96B72709EEEEFF911F266B9FFA56F.ui-reform-discussion-draft-goe21427-.pdf

We understand that in developing the discussion draft, Committee staff sought to standardize the definition of employee and chose the “ABC test” because at least 20 states² already use it in some form for unemployment insurance coverage. However, the details and application of the “ABC test” vary widely among those states: most of them do not use the strict “ABC test” and some states include exemptions for specific industries and occupations. Further, a standard already exists for purposes of federal unemployment. The IRS Test uses common law principles to determine whether an employer exercises control over a worker. Its 20 factors examine the following three areas: whether the employer has behavioral and/or financial control over the worker, as well as the relationship between the employer and the worker; no single factor is determinative. Under the current framework, the IRS may consider a worker to be an independent contractor while a state may consider the same worker to be an employee. We suggest that standardizing the definition of employee using the IRS Test would provide much needed clarity for small business owners. Alternatively, we support the inclusion of an exception to the “ABC test,” which would ensure independent financial services and insurance industries would not be impacted by changes to employee classification.

As you consider unemployment insurance reform, we hope that you will be mindful of the unintended consequences that imposing a strict “ABC test” will have on the independent financial advisors and insurance producers and their Main Street American clients. As we emerge from the COVID-19 pandemic, advisors and agents are working hard to ensure that their clients have the resources to make wise financial decisions. It is important that Congress not reduce those clients’ ability to access high quality advice for their insurance, investment, and retirement security needs.

Sincerely,

Susan K. Neely
American Council of Life Insurers

Mike Becker
National Association of Professional Insurance Agents

David A. Sampson
American Property Casualty Insurance Association

Chuck DiVencenzo
National Association for Fixed Annuities

Christopher A. Iacovella
American Securities Association

Kevin M. Mayeux, CAE
National Association of Insurance and Financial Advisors

Marc Cadin
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Daniel LaBert
The National Association of Independent Life Brokerage Agencies

Dale Brown
Financial Services Institute

Chuck Chamness
National Association of Mutual Insurance Companies

Bob Rusboldt
Independent Insurance Agents and Brokers Association of America

Kenneth E. Bentsen, Jr.
Securities Industry and Financial Markets Association

Jim Hodges
National Alliance of Life Companies

² U.S. Congressional Research Service, Worker Classification: Employee Status Under the National Labor Relations Act, the Fair Labor Standards Act, and the ABC Test, R46765 (April 20, 2021) available at: <https://crsreports.congress.gov>