Congress of the United States
Washington, DC 20515

August 14, 2018

The Honorable R. Alexander Acosta
Secretary
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Acosta:

We write to request that the U.S. Department of Labor develop rulemaking to clarify the current standard for determining joint employment status under the Fair Labor Standards Act (FLSA).

We have heard from locally owned businesses in numerous industries nationwide, including small franchise employers, construction companies, general contractors, service providers, and their business partners, that the federal definitions of "joint employer" have become so overly broad and vague that employers who want to do right by their employees do not understand the new, limitless rules. These local businesses have testified numerous times before Congress asking for clarity, citing how joint employer is hurting their businesses and employees.

Under the new joint employer standards, a business is liable for employees over whom it has "indirect" or even "potential" control. We have heard that this uncertainty is having a chilling effect on employers, especially on small companies without human resources departments. We have also heard examples of how these companies have sought expensive counsel to determine if simple decisions – like compiling a brand-wide employee handbook or offering franchisees software to track job applications – might put them in legal jeopardy. We have also heard how the vague joint employer rules put at risk workforce development and apprenticeship training programs simply because the existence of such programs could be construed as evidence of "indirect control". And we have learned the hard truth is that many businesses will step away from offering these crucial benefits rather than take the risk of being a guinea pig in a lawsuit.

We join these local employers and their employees in our states in calling upon their government to clarify these rules so that small businesses' know the rules of the game. You previously withdrew the Wage and Hour Administrator's overly broad administrative interpretation on joint employment in June 2017. Now we urge you to proceed toward rulemaking on joint employment under the FLSA to clarify employer responsibilities under wage and hour law.

While we believe that supplemental joint employer rulemaking by the Department would be a very positive step toward providing relief to small businesses, we also believe that Congress must continue to pursue enactment of a legislative solution to provide certainty for job creators

in our communities. The U.S. House of Representatives has already approved a bipartisan bill, the *Save Local Business Act (H.R. 3441)*, to update both the FLSA and National Labor Relations Act to help local businesses address their ongoing concerns. We urge you to use the agency's available tools to provide clarity for small businesses on this issue under the FLSA, of which your agency has jurisdiction.

Thank you for your consideration of the Department's role in mitigating joint employer uncertainty.

Sincerely,

Bradley Byrne
Member of Congress

Henry Cuellar
Member of Congress