

September 13, 2023

The Honorable Tim Walberg
U.S. House of Representatives
2266 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Cuellar
U.S. House of Representatives
2372 Rayburn House Office Building
Washington, DC 20515

The Honorable Tony Cárdenas
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable Blake Moore
U.S. House of Representatives
1131 Longworth House Office Building
Washington, DC 20515

Dear Congressmen Walberg, Cárdenas, Cuellar, and Moore,

On behalf of the millions of direct sellers and qualified real estate agents around the country who are classified as independent contractors and members of the Direct Selling Association (DSA) and the National Association of REALTORS® (NAR), thank you for introducing H.R. 5419, the “Direct Seller and Real Estate Agent Harmonization Act.”

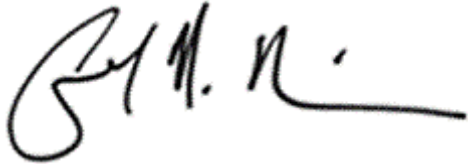
Direct sellers and qualified real estate agents have been defined as independent contractors under the Internal Revenue Code (“IRC”) for federal tax purposes since 1982. This language demonstrates the federal government’s long-standing recognition of the unique nature of the direct selling and real estate industry and, as such, the need to treat it differently than other industries. Of the 1.6 million members of NAR practicing across the country, approximately 87 percent are classified as independent contractors. All 7.3 million direct sellers in the United States are classified as independent contractors and sell to 44.6 million preferred customers, discount buyers and many other consumers. This important legislation would harmonize the *Fair Labor Standards Act* (“FLSA”) consistent with the IRC so that direct sellers and qualified real estate agents can clearly be defined as independent contractors across both statutes.

Being classified as an independent contractor is why many individuals are attracted to the direct selling and real estate sales industries – it empowers entrepreneurship, maximizes flexibility, and promotes autonomy. Preserving the ability to be classified as an independent contractor is integral to the functioning of these professions for the benefit of the consumer sales and housing markets. Direct sellers contributed \$42.7 billion to the United States economy in 2021 and the real estate industry comprises of \$3.9 trillion or 17 percent of the economy. Homeowners across the country and micro-entrepreneur direct sellers therefore rely on this status, to boost the economy.

While the ability to work as an independent contractor is recognized and protected under the IRC and many state laws, class action and wage and hour lawsuits, new state legislation, and new federal rules expanding the definition of employee, continue to threaten workers’ ability to be classified as independent contractors, including for real estate professionals and direct sellers. The United States Department of Labor is currently finalizing a rule on independent contractor status under the FLSA, which may result in unnecessary confusion for direct sellers and qualified real estate agents. Having Congress align the FLSA with the IRC would ensure professionals within these industries can continue to operate their businesses and support economic growth without uncertainty posed from conflicting statutes and regulations.

We thank you for introducing this critical legislation that provides a distinct statutory standard to protect the livelihoods of direct sellers and real estate agents serving consumers across America. Your recognition of the integral work provided by independent contractors in the economy will ensure more workers have opportunities for themselves as entrepreneurs while also supporting industries that drive broad economic growth for all.

Sincerely,



Joseph N. Mariano, President, Direct Selling Association



Tracy Kasper, President, The National Association of REALTORS®

