

March 11, 2013

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

RE: Proposed Information Collection Request (ICR) for the Worker Classification Survey, Document Number 2013-00389

To Whom It May Concern:

WorldatWork respectfully submits these comments to the U.S. Department of Labor's Wage and Hour Division concerning the proposed survey of employees' knowledge of basic employment laws and potential misclassification, as detailed in the *Federal Register* on Jan. 11, 2013.

Background on WorldatWork

WorldatWork (www.worldatwork.org) is a nonprofit human resources association for professionals and organizations focused on compensation, benefits, work-life effectiveness and total rewards — strategies to attract, motivate and retain an engaged and productive workforce. WorldatWork and its affiliates provide comprehensive [education](#), [certification](#), [research](#), [advocacy](#) and [community](#), enhancing careers of professionals and, ultimately, achieving better results for the organizations they serve. WorldatWork has more than 65,000 members and subscribers worldwide; 95 percent of Fortune 500 companies employ a WorldatWork member. Founded in 1955, WorldatWork is affiliated with more than [70 local human resources associations](#) and has offices in Scottsdale, Ariz., and Washington, D.C.

WorldatWork members are human resources professionals who believe there is a powerful exchange relationship between employer and employee, as demonstrated through the [WorldatWork Total Rewards Model](#). Total rewards involves the deliberate integration of five key elements that effectively attract, motivate and retain the talent required to achieve desired organizational results. The five key elements are: compensation, benefits, work-life, performance and recognition, and development and career opportunities.

This model recognizes that total rewards operates in the context of overall business strategy, organizational culture and HR strategy, as well as a complex external environment. Within this context, an employer leverages the five elements to offer and align a value proposition that benefits both the

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organization and the employee. An effective total rewards strategy results in satisfied, engaged and productive employees, who in turn deliver desired performance and results.

Comments from WorldatWork

WorldatWork appreciates the opportunity to provide the following comments on the Proposed Information Collection Request (ICR) for the Worker Classification Survey. WorldatWork members are committed to applying best practices on employee classification and remain supportive of the goals of the Fair Labor Standards Act of 1938 (FLSA). WorldatWork has certified more than 17,400 compensation professionals and educated many more with the essential knowledge needed to design, administer and communicate compensation programs, including compliance with legal and regulatory requirements. Our members are the professionals who work most closely and most often with the law, representing a broad cross-section of employer experience on FLSA classification practices. According to our October 2012 report "[Compensation Programs and Practices 2012](#)," 35% of respondents work at companies with fewer than 30% of their domestic workforce exempt from FLSA requirements. Conversely, 28% of respondents indicated that 70% to 100% of their company's domestic workforce is exempt from FLSA.

The proposed ICR asks for comment on the following issues:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Is the proposed collection of information necessary for the proper performance of the functions of the agency and will the information have practical utility?

The proposed ICR indicates that survey data will be collected on "workers' knowledge of basic employment laws and rules so as to better understand employees' experience with worker misclassification." The proposed ICR goes on to define worker misclassification as misclassifying workers who are employees as independent contractors. Compensation professionals understand and comply with applicable laws and value the use of independent contractors, as they are an important element in staffing models used in business today. While the information being collected will reflect employees' perception of the accuracy of their classification, this does not necessarily indicate that they are improperly classified. Additionally, it is unclear whether the survey will also seek further information from employees on their exemption status under the FLSA. While such information could prove useful, decisions on exemption status are typically quite clear for the vast majority of employees. Additional clarification from the Department on this issue would be welcome.

While WorldatWork appreciates the goal of determining employee knowledge of basic employment laws, we hope that the survey results do not lead to future regulatory actions that may impose

additional compliance burdens on employers and human resources professionals. The decision on worker classification as either an independent contractor or employee often is made when determining the parameters of the position itself, and not necessarily when an individual has been chosen to fill that position. In some cases, documentation of those initial decisions on worker classification may not be readily available and may have been performed by staff members who are no longer with the organization. A company may not have documentation on worker classification decisions unless they are undergoing or have recently completed a review brought about by situations such as a change in how the work is performed or organizational or job redesign. WorldatWork believes that a mandate on employers to affirmatively provide documentation on classification decisions will result in an increased workload for compensation professionals.

Is the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, accurate?

The proposed ICR indicates that the extended interview with employees for the worker survey should take approximately 15 minutes. Given the complexity of the laws concerning classification and employees' varying levels of familiarity, WorldatWork is concerned that informative interviews may require more time to get the necessary information. The estimated 60-minute length of the in-depth interviews with employers and employer groups also may not provide sufficient time to adequately understand a company's classification process, especially for larger companies. Participants are likely to require additional preparation time beforehand to gather company-wide materials and documentation in order to discuss such issues in an informed manner, and such time is not counted in the Department's estimate of the total burden and annualized cost to respondents.

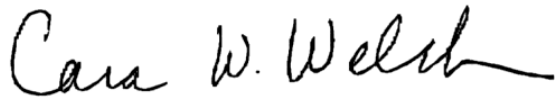
How can the agency enhance the quality, utility, and clarity of the information collected?

WorldatWork has some concerns about the selection of appropriate participants for the in-depth interview with employers and employer groups. The proposed ICR indicates that 100 "executives" from employers and employer groups will be part of the recruitment pool, with 20 selected to participate in the in-depth interviews. However, the employee with the most expertise on company-wide employee classification strategies may not be a member of the executive suite. In order to make the in-depth interviews provide relevant information on company practices, WorldatWork urges the Department to seek out the respondent with the most relevant access to company-wide classification policies, whether they are considered executive-level or located elsewhere in the company hierarchy.

WorldatWork also suggests that the Department consider increasing the number of participants in the in-depth employer interview process. While the goal of surveying 10,060 participants for the worker survey seems sufficient for gaining a representative sample, WorldatWork believes that the viewpoint of employers could be more accurately reflected by interviewing more than 20 individuals. The methods that the Department will use to select participants also are not specified. WorldatWork urges the Department to make sure that a representative sample of employers is selected. Other surveys conducted by the Department have collected data from far more employers and worksites. A broader range of business practices on employee classification would be represented with an increased number of in-depth survey participants.

WorldatWork appreciates the opportunity to provide these comments in advance of the Department's Worker Classification Survey. We look forward to analyzing the results and working cooperatively with the Department on this issue and future endeavors.

Sincerely,



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