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Sent via email: Rowan.Carol@bls.gov

Re: Comments on Proposed Information Collection Request (ICR) for the Worker Classification Survey; Comment Request, 81 Fed. Reg. 190 (September 30, 2016)

The National Employment Law Project (NELP) submits these comments in strong support of the reinstatement of the Contingent Worker Supplement (CWS) to the Current Population Survey, and in hopes that the information can be collected in such a way as to aid policy makers, advocates, and workers to understand the scope of contingent work in the economy and the conditions for workers therein.

For years NELP has advocated on behalf of mostly low-wage workers who labor in a variety of contingent employment work conditions, including independent contractors, outsourced workers, temporary employees, and most recently within the “gig” economy. Many of these workers are misclassified and as a result lose federally mandated protections. We strongly believe that the first step to ensuring these workers experience fair and safe working conditions and all the legal protections to which they are entitled is being able to quantify the role of these employment arrangements in our economy and use evidence to assess their working conditions. In the 11 years since the last CWS researchers have been trying to combine disparate government surveys, employer data, and anecdotal worker accounts to estimate the size of this sector, therefore NELP strongly supports DOL’s effort to gather more empirical data about employees’ experiences.

We provide the following responses to the specific queries listed in the Notice:

Evaluate whether the proposed collection of information is necessary or the proper performance of the functions of the agency, including whether the information will have practical utility.

The reinstatement of the CWS will aid policy makers and other interested parties to begin to answer numerous critical questions about the role of contingent work in the United States economy:

- *The size of the contingent workforce and whether this form of employment is growing within the US economy.* Presently, researchers are challenged to establish even the size of the contingent workforce or the industries or sectors in which outsourcing is

most prevalent.¹ In the absence of the CWS, these researchers usually combine a variety of sources and come up with a wide range for possible employment in the contingent workforce. For instance, last year the U.S. Government Accountability Office reported that 40.4% of the workforce was comprised of contingent workers, while a survey conducted by the Freelancers Union stated that 34% of U.S. workers are contingent, and still other researchers believe that the new gig economy accounts for only a very small portion of the workforce.² Reinstating the CWS will be an important tool for those seeking to quantify the size of this workforce.

- *Whether those in contingent work arrangements are classified properly and are receiving the full range of benefits to which they are legally entitled.* Seth Harris, the Deputy Secretary of the U.S. DOL, testified to the Senate that misclassification “is no mere technical violation. It is a serious threat to workers and the fair application of the laws Congress has enacted to assure workers have good, safe jobs.”³ However, determining the extent of misclassification or the ramifications for workers and safety net programs is impossible without up-to-date and detailed data on the work relationships workers experience today. Further, even where workers are correctly classified it is critical for us to know the pay and benefits they receive under these work arrangements. Numerous studies on industries in which outsourcing and contingent work is prevalent indicate that workers in outsourced firms earn lower pay and receive fewer benefits than their directly employed counterparts.⁴

Enhance the quality, utility, and clarity of the information to be collected.

The DOL proposes to add several new questions to the CWS specifically to measure the size of the gig economy by asking questions about work obtained through mobile apps. This is important in order to begin to understand this very new but growing part of the workforce. Furthermore, earlier discussions of the CWS reinstatement indicated that the DOL intends to use a higher percentage of cell phone numbers in collecting data, a policy that is critical to the goal of reaching the highest possible number of workers. NELP applauds this incorporation of new technologies to reach today’s workers. However, some of the previous questions from the 2005 version of the survey should be revisited as well.

¹ Matthew Dey, Susan Houseman, and Anne Polivka. 2010. “What Do We Know About Contracting Out in the United States?": Evidence from Household and Establishment Surveys,” in *Labor in the New Economy*, Katherine G. Abraham, James R. Spletzer, and Michael J. Harper, eds. Chicago: University of Chicago Press, pp. 267-304; Howard Gospel and Mari Sako. 2010. “The Unbundling of Corporate Functions: The Evolution of Shared Services and Outsourcing in Human Resource Management,” *Industrial and Corporate Change* 19(5): 1367-1396; Annette Bernhardt, Rosemary Batt, Susan Houseman, and Eileen Appelbaum. 2015. “Domestic Outsourcing in the United States: A Research Agenda to Assess Trends and Effects on Job Quality,” working paper prepared for the *Future of Work Symposium*, U.S. Department of Labor, Washington, D.C.

² David Weil. 2014. *The Fissured Workplace*. Cambridge: Harvard University Press; Larry Mishel. 2015. “Uber Is Not the Future of Work,” *The Atlantic*, November 16.

³ Statement of Seth Harris, Deputy Secretary, U.S. DOL, Statement before the Committee on Health, Education, Labor, and Pensions of the U.S. Senate, June 17, 2010.

⁴ See for instance, Sara Hinkley, Annette Bernhardt, and Sarah Thomason. 2016. “Race to the Bottom: How Low-Road Subcontracting Affects Working Conditions in California’s Property Services Industry,” Berkeley: University of California, Berkeley, Center for Labor Research and Education; Arindrajit Dube and Ethan Kaplan. 2010. “Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards,” *Industrial and Labor Relations Review* 63(2), pp. 287-306.

As noted earlier, different data sources—even those coming from different surveys conducted by the Federal Government—resulted in widely varying estimates of the size of this workforce. Researchers have noted discrepancies, sometimes significant ones, between the size of the contingent workforce as recorded in past CWS reports and findings in other data sets, including the CES. Some researchers have speculated that distinctions between surveys that depend on self-reporting by workers and those that use firm-supplied data may be a result of employment relationships that have become so complicated that some workers do not, themselves, fully understand who pays them. Furthermore, because so many answers are given by proxy by family members other than the worker herself, there may be inadvertent but statistically significant underreporting of contingent work arrangements.⁵ Thus it is critical that after the first administration of the new CWS, the DOL carefully assess the process of the data collection and determine if either the content of the questions or the manner of soliciting responses needs to be adjusted to improve the quality of the results.

One deficiency of the CWS that is not addressed by the new additional questions is the problem of asking individual workers to self-designate their status (e.g, as employees or independent contractors, for instance). One way to address the problem of workers simply taking the label that is imposed upon them by their employers is to ask, in subsequent surveys, whether the arrangement (e.g, independent contractor) was imposed on the worker by the hiring entity or employer.

NELP greatly appreciates the efforts of the DOL to improve the available data on work arrangements and working conditions, and we wholeheartedly endorse the reinstatement of the CWS. We anticipate the new data will be invaluable to ensuring that US workers labor under fair and safe conditions, for fair pay, and with all the legal protections to which they are entitled.

⁵ For more details, see especially Houseman, “Measuring Nonstandard Employment in the United States.”