



TTAA Legislative & Regulatory Update

January 22, 2024



Employee or Independent Contractor Classification Under the Fair Labor Standards Act

Recently, the U.S. Department of Labor announced the issuance of a final rule to help employers and workers analyze whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA).

The announcement follows a Notice of Proposed Rulemaking on October 13, 2022, which led to thousands of comments from a diverse array of stakeholders that helped inform the regulatory updates.

The final rule, Employee or Independent Contractor Classification Under the Fair Labor Standards Act, provides guidance on whether a worker is an employee or independent contractor under the FLSA.

Misclassification is a serious issue that denies employees' rights and protections under federal labor laws and hurts the economy at-large.

The Department believes this final rule will protect workers from misclassification, while at the same time providing a consistent approach for those businesses that engage (or wish to engage) with independent contractors.

It is the Department's obligation to administer and enforce the FLSA to ensure that workers who should be covered under the Act are properly classified as employees.

This final rule ensures that such workers receive the FLSA's wage and hour protections, and that employers that comply with the law are not placed at a competitive disadvantage when competing against employers that misclassify employees.

The final rule also aligns the department's approach with longstanding judicial precedent, which will reduce confusion, improve compliance, and better protect working people.

Specifically, the final rule does the following:

- Restores the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA.
- Ensures that all factors are analyzed without assigning a predetermined weight to a particular factor or set of factors.
- Uses the longstanding interpretation of the economic reality factors. These factors include opportunity for profit or loss depending on managerial skill, investments by the worker and the potential employer, the degree of permanence of the work relationship, the nature and degree of control, the extent to which the work performed is an integral part of the potential employer's business, and the worker's skill and initiative.
- **Rescinds the 2021 Independent Contractor Rule.**

For more information, please visit: [Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#)



TTAA Joins In Letter to Congress Supporting the Credit Card Competition Act

Dear Member of Congress:

We are writing to ask you to support S. 1838/H.R. 3881, the Credit Card Competition Act, sponsored in the Senate by Senators Richard Durbin and Roger Marshall, and in the House by Representatives Lance Gooden and Zoe Lofgren.

This is landmark legislation that would help fix a broken market that has allowed Wall Street megabanks and global card networks to block competition and unfairly profit at the expense of Main Street merchants and American families for far too long.

Passing this bill is one of the most important things Congress can do to provide relief for small businesses and consumers struggling amid near-record inflation in every state and congressional district.

Most consumers don't know it, but big banks and card networks like Visa and Mastercard charge merchants more than 2 percent of the customer's total bill every time a credit card is used to make a purchase. Credit and debit card swipe fees have more than doubled over the past decade and soared 16.7 percent in 2022 alone to a record \$160.7 billion.

They are most merchants' highest cost after labor – far too much to simply absorb – and drive-up consumer prices by more than \$1000 a year for the average family. With few people using cash today, merchants have no choice but to accept cards for payment.

U.S. swipe fees are the highest in the industrialized world while banks and card networks in Canada, the United Kingdom and Europe charge a fraction of the amount while still providing generous rewards programs and other consumer perks. Swipe fees have been able to rise so much because of lack of competition.

Visa and Mastercard control more than 80 percent of the credit card market. And, unlike with debit cards, they block their competitors from handling many credit transactions.

They restrict processing to their own networks, prohibiting competition from innovative independent payment networks that offer both lower fees and better security.

The Credit Card Competition Act would address this by requiring that credit cards issued by the nation's largest banks be enabled to be processed over at least two unaffiliated networks – Visa or Mastercard plus an independent network such as NYCE, Star or Shazam.

Domestic credit card networks like American Express or Discover could also be the second network, but not networks supported by foreign governments like China's Union Pay.

Merchants would be allowed to choose which network to use, meaning payment networks would have to compete to offer the best pricing, security and service.

This carefully crafted bill would apply only to financial institutions with \$100 billion or more in assets – fewer than three dozen institutions nationwide but 90 percent of Visa and Mastercard credit card volume – and would have no impact whatsoever on small community banks or small credit unions.

Furthermore, this measure would provide redundancy that is essential in a world dependent on credit cards. Currently, there is no backup if Visa or Mastercard's

networks are hacked or suffer an outage, leaving millions of consumers with empty pockets and unusable cards.

The availability of a second network would protect against such a cataclysmic breakdown of consumers’ ability to pay. While this legislation would benefit all merchants, it is small retailers who are calling for swipe fee reform more than any segment of our industry.

Small retailers have the narrowest profit margins and fewest resources and are hit hardest by continuing unjustified increases in swipe fees.

We call on you to support small business by cosponsoring the Credit Card Competition Act.

Sincerely,

Texas Tire & Automotive Association & Other Business Associations

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