April 3, 2026

Andrés Garcia
Internal Revenue Service
1111 Constitution Avenue, NW, Room 6526
Washington, DC 20224
pra.comments@irs.gov

Re: OMB Number: 1545-0115—Public Comment Request Notice: Recommendations on Draft Form 1099-MISC, *Miscellaneous Information*, Draft Publication 1099, *General Instructions for Certain Information Returns*, and Draft Form 1099-NEC, *Nonemployee Compensation*

Dear Mr. Garcia:

Thank you for the opportunity to offer recommendations on the draft Form 1099-MISC, *Miscellaneous Information,* draft Form 1099-NEC, *Nonemployee Compensation*, and related instructions. PayrollOrg's recommendations to reduce the administrative burden include adjusting the form used for nonqualified deferred compensation, adding the One Big Beautiful Bill Act information on overtime and tips to the Form 1099-NEC and, to the extent possible, correcting inconsistencies between definitions used by the U.S. Department of Labor and Internal Revenue Service.

**About PayrollOrg**

PayrollOrg is a nonprofit and nonpartisan association representing more than 20,000 payroll professionals throughout the United States. PayrollOrg's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws.

PayrollOrg's Government Relations Task Force works with government to help payroll professionals with compliance, while minimizing the administrative burden on government, employers, and individual workers.

**Nonqualified Deferred Compensation**

Currently, nonqualified deferred compensation information is provided to the IRS on both Form 1099-MISC and Form 1099-NEC for nonemployee directors and independent contractors. This happens because of different types of information that must be reported, such as cash distributions, whether the plan meets IRC § 409A requirements, or under a plan failure. PayrollOrg requests that the information only be provided on Form 1099-NEC to simplify filing for preparers and recipients. This is a similar request to the change that the IRS included in Instructions for Forms 1099-MISC and 1099-NEC issued in April 2025 for excess golden parachute payments, for which PayrollOrg is grateful.

Highly compensated nonemployees, such as directors and independent contractors, often are compensated with nonqualified deferred compensation plans as a means to save more in retirement above the limits found in qualified plans such as 401(k). Because they are not subject to the Employee Retirement Income Security Act, employers have significant flexibility in tailoring their plans. Avoiding confusion between the Form 1099-MISC and Form 1099-NEC would be helpful.

**One Big Beautiful Bill Act**

PayrollOrg understands that the IRS is in the process of implementing provisions of the One Big Beautiful Bill Act (OB3) with significantly fewer resources. The OB3 includes nonemployees yet also relies on definitions in the Fair Labor Standards Act (FLSA), which only covers employees. PayrollOrg recommends that the IRS not split OB3-related information reporting on different forms for nonemployees (Forms 1099-MISC and 1099-NEC) and, instead, only use Form 1099-NEC.

In addition, PayrollOrg is unsure why the instructions for Form 1099-MISC for the recipient Box 13 (cash tips) and Box 14 (overtime compensation) are also reported in Box 3 (other income), which is exempt from self-employment taxes. Similarly, the instructions for Form 1099-NEC for the recipient Box 1b (cash tips) and Box 1d (overtime compensation) are also reported in Box 1a (nonemployee compensation), which is subject to self-employment taxes.

With OB3 using the FLSA § 7 workers (see OB3 § 110102), to determine eligibility for the qualified overtime deduction, which does not include nonemployees, PayrollOrg is unsure which situations would require reporting of qualified overtime compensation on Form 1099-NEC or Form 1099-MISC rather than on Form W-2. Please explain in the form instructions and online in the OB3 question and answer pages.

**Conflicting Definitions with the U.S. Department of Labor**

PayrollOrg is concerned with the conflicting definitions of employee and independent contractor between the notice of proposed rule by the U.S. Department of Labor[1] (DOL) and the common law definition used by the IRS. Currently, there are many different tests that employers and both agencies use to determine whether an individual falls under the employee or independent contractor umbrella. In some situations, these tests can yield different results for the same individuals.

While PayrollOrg understands that the DOL and IRS have different jurisdictions and missions, employers require a clear understanding of worker classification to comply. When different definitions exist, employers are left in a grey area. Thus, PayrollOrg asks the IRS to better coordinate the definition of an independent contractor.

Thank you again for the opportunity to provide recommendations. If possible, going forward, draft forms and related instructions should be published for public comment at the same time. This will provide a much greater understanding of the IRS's interpretations.

To discuss these comments further, please contact PayrollOrg at [redacted] or [redacted].

Sincerely,

[redacted]

[redacted] Esq.
Director, Government Relations

For: Government Relations Task Force
Federal Issues Subcommittee
Chairs [redacted] CPP; [redacted] CPP; and [redacted] CPP

Cc: [redacted], Communications and Liaison, IRS, [redacted]

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[1] "Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act," RIN 1235-AA46, 91 *Fed. Reg.* 9932 (February 27, 2026).