Who wrote to the Labor Department about independent contractors, and what the final rule has to answer

Proposed return to the 2021 test for employee or independent contractor status under the FLSA, the FMLA and the MSPA.

DOCKET	AGENCY	PROPOSED RULE
WHD-2026-0001	U.S. Department of Labor, Wage and Hour Division	91 FR 9932, Feb. 27, 2026, RIN 1235-AA46
COMMENT PERIOD	**STATUS**	**VERSION**
Feb. 27 to Apr. 28, 2026	Final rule received by OIRA Sep. 28, 2026, economically significant. OIRA concluded its review on Oct. 28, 2026, consistent with change. Not yet in the Federal Register as of Oct. 31, 2026	1.6, November 4, 2026. Data cutoff Oct. 22, 2026

QUESTION THIS REPORT ANSWERS

Who commented on the proposal, through which channels, what did each side argue, and which arguments will the final rule need to answer?

BOTTOM LINE UP FRONT

Four forms and templates wrote 95.9%[1] of the 16,363 typed comments, and all four support the proposal. The DoorDash form alone holds 11,277[2]. The arguments a court would weigh sit in the 170 attached letters, where 115 support and 48 oppose[3] the proposal.

Opposing letters ask whether weighting two "core factors" fits the statute and the Supreme Court cases, and whether the Department counted what misclassification costs workers and states. Supporting letters ask for a stable test after the changes of 2021 and 2024, and at least 43 of the 115[4] ask for changes of their own. The final rule reached the White House Office of Information and Regulatory Affairs on September 28, 2026[5], and OIRA concluded its review on October 28, 2026, consistent with change, so publication can come at any time. In court its answers to both sets of letters will count for more than the number of comments on either side.

KEY FINDINGS

Each superscript points to a source in the endnotes. The online version at https://comtiq.com/reports/independent-contractor/ opens the same source next to the number. Likelihood words follow ICD 203 and are analyst judgments.

Six findings

1 **Four forms wrote 95.9% of the typed comments, all in support.**

The DoorDash "Dasher" form holds 11,277 comments. Three templates for independent financial professionals hold 2,557[6]. An Instacart form that opens with a prompt holds 1,586[7], and 225[8] of them stop at the prompt with nothing added. A letter on women and independent work holds 270[9]. Together they make 15,690 of 16,363 typed comments.

High confidence

Every typed comment classified by its opening text and template; counts computed from the full posted record.

2 **92.3% of the DoorDash forms arrived word for word as written.**

Of 11,277 DoorDash forms, 10,413[10] carry the template body unchanged and differ only in the signature. 163[11] carry the Spanish version and 701 add or change text. The forms arrived from April 1 to April 28, the last day of the period. DoorDash also filed its own letter asking the Department to “finalize this rule substantially as proposed.”[12]

High confidence

Text comparison after removing the salutation and signature; comment 15202.

3 Once company prompts are set aside, a third of personal comments push back on pay or control.

Of the 655 personal comments outside the forms, 189[13] carry signs of a company prompt, such as a fixed opening line, a letter addressed to lawmakers or the signature block of a submission tool. In a random sample of 120, 31 of the 32 prompted comments support the proposal or independent status. Among the 88 unprompted ones, 58%[14] support it and 32%[15] oppose it or complain about pay, tips or app control, with 95% intervals of 48 to 68% and 23 to 42%. Seven of the 13 opposing comments share one writing style, which appears in 21 comments[16] across the docket.

Moderate confidence

Sample read by an analyst, random seed 11; prompt markers and phrase search applied to all typed comments.

4 The organization letters split by sector, with one exception in construction.

All six platform and staffing companies and 83 of 87 business and trade groups support the proposal. 28 of 29 worker advocacy and legal aid groups and 6 of 7 unions oppose it. Governments split, 7 against and 3 for. Two associations of union-signatory contractors, MCAA[17] and SWACCA, oppose it, and the sheet metal union and its contractors' association ask jointly for a presumption of employee status[18] on construction sites.

High confidence

Each attached letter read for its stated position; senders typed from the letterhead.

5 Nearly all of the record is visible, posted within a day of the close.

The docket counter shows 16,522[19] comments received and the public record holds 16,498[20], 99.9%. The last records were posted April 29, 2026, the day after comments closed, and the Department posted 7,549[21] on April 27 alone. The gaps are 24 submissions the Department logged and did not post, and 11 attachments we could not download. Readers can check most claims the final rule makes about the comments against the posted record. The docket also holds two ex parte

notices[22], a March 4 meeting with Direct Selling Association members and an April 9 SBA Office of Advocacy roundtable.

High confidence

Full collection of the posted docket; posting dates from the Regulations.gov API; docket page checked October 22, 2026.

6 **Supporters ask for changes too, most often to what counts as control.**

At least 43 of the 115[4] supporting letters ask the Department to clarify, add or change something in the final rule. 13 ask about control, usually that complying with legal, safety or industry rules, or using app and technology tools, is not control. 12 ask for examples from their own industry, from trucking lease-purchases to beauty schools and farm labor contractors. 7 ask to adjust other factors, and the Institute for the American Worker asks to limit or drop the integrated unit factor. Instacart asks the Department to state that "automated matching, incentive structures, and informational notifications"[23] are not control, the same kind of tools the critical personal comments describe as control.

Moderate confidence

Sentence-level search of the 115 supporting letters for requests to clarify, add, remove or revise, each match read and classified by an analyst; requests phrased in other ways are missed, so 43 is a lower bound.

THE RECORD IN NUMBERS

What arrived, and what it holds

16,522[19]
comments received, docket counter

16,498[20]
records posted to the public docket

15,690[1]
typed comments from four forms

655[24]
personal comments outside the forms

170[3]
attached letters, read in full

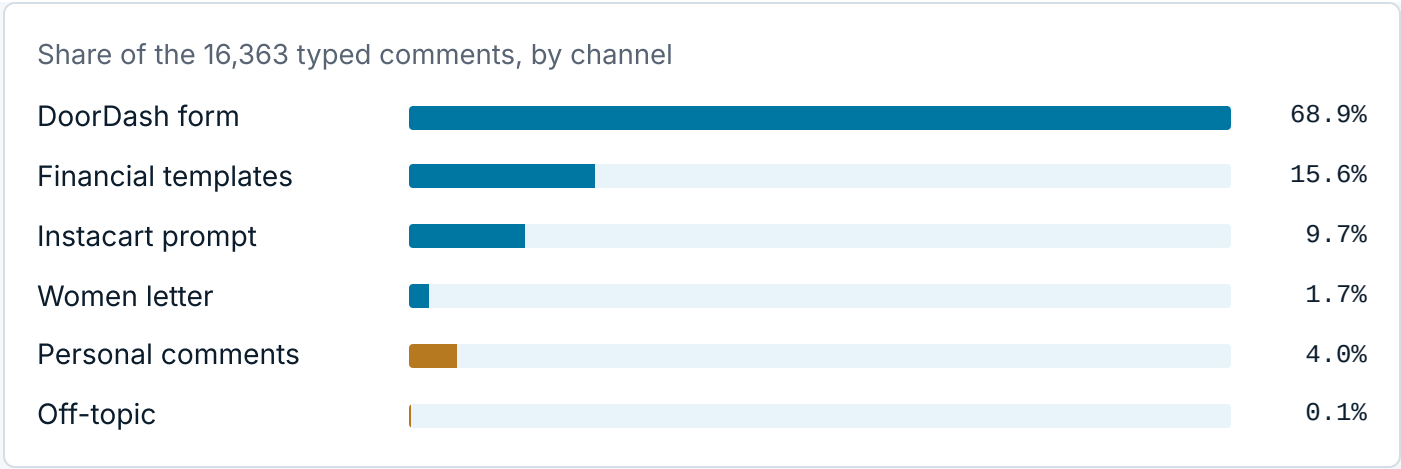
8 days[25]
median wait from receipt to posting

16,522	Received, docket counter
16,498	Posted to the public docket
16,363	Typed text; 135 more point to an attachment
15,690	From four forms and templates
655	Personal comments outside the forms
466	Personal comments with no sign of a company prompt
170	Attached letters, 164 from organizations or officials

CHANNELS

Where the typed comments came from

CHANNEL	COMMENTS	SHARE	RECEIVED	POSITION
DoorDash "Dasher" form, English and Spanish	11,277[2]	68.9%	Apr. 1 to Apr. 28	Supports
Independent financial professional letters, three templates	2,557[6]	15.6%	Mar. 27 to Apr. 28	Supports
Instacart prompt form	1,586[7]	9.7%	Mar. 16 to Apr. 23, 74% on Mar. 19	Supports flexibility
Women and independent work letter	270[9]	1.7%	Mar. 5 to Apr. 28	Supports
Personal comments, no platform named	407[24]	2.5%	Feb. 27 to Apr. 28	Mixed
Personal comments naming Instacart, Uber, Lyft or DoorDash	248[24]	1.5%	Mar. 10 to Apr. 28	Mixed
Off-topic, adult education	18	0.1%	Apr. 13 to Apr. 28	None



Shares are of 16,363 typed comments. We could not identify the sponsor of the financial professional or women's templates from the text or from a web search on October 22, 2026. 189 of the personal comments carry signs of a company prompt, described in the next sections. Positions of the forms come from their fixed wording; positions of personal comments come from the sample below.

WHO COMMENTED

Attached letters, by sender and position

SENDER	SUPPORT	OPPOSE	MAJOR CHANGES	TOTAL
Business or trade association	83	2	1	87
Worker advocacy or legal aid	0	28	1	29
Think tank or policy group	17	1	1	19
Government or elected officials	3	7	0	10
Union	0	6	1	7
App platform or staffing company	6	0	0	6
Law firm	3	3	0	6
Individual, including fellows writing in a personal capacity	3	1	2	6
All letters	**115**[3]	**48**[3]	**6**	**170**

Supporting letters include DoorDash, Instacart, Uber, Lyft and ShiftKey; the U.S. Chamber of Commerce, NFIB, the National Association of Manufacturers and the National Retail Federation; trucking groups including ATA and OOIDA; the Financial Services Institute and about a dozen broker-dealers and advisory firms; the chair and members of the Senate HELP Committee; the SBA Office of Advocacy; a group of statewide officials and state lawmakers.

Opposing letters include the AFL-CIO, SEIU, AFSCME, the Teamsters, North America's Building Trades Unions and the Carpenters; NELP, the National Domestic Workers Alliance and a coalition of farmworker legal services; a U.S. senator; the ranking members of the House Education and Workforce Committee and its workforce protections subcommittee; other members of the House; the Comptroller of Maryland and the New York City Comptroller; four local governments; a group of state legislators.

"Major changes" means the letter neither supports nor opposes the proposal and asks for a rule built differently, such as a presumption of employee status in construction. One business letter takes no position. Two letters filed twice are counted once. Comment 13090 attaches an Eleventh Circuit opinion, Galarza v. One Call Claims (Oct. 16, 2025), with no letter, and is excluded.

PERSONAL COMMENTS

What individuals wrote outside the forms

POSITION	UNPROMPTED, 88	95% INTERVAL	PROMPTED, 32	ALL, 120
Supports the proposal or independent status	51 (58%)[14]	48 to 68%	31	82 (68%)
Opposes the proposal	13 (15%)	9 to 24%	0	13 (11%)
Values flexibility and criticizes platform pay or control	7 (8%)	4 to 16%	1	8 (7%)
Complains about pay or protections, no stance on the rule	8 (9%)	5 to 17%	0	8 (7%)
Position only in an attachment	3 (3%)	1 to 10%	0	3 (3%)
Off-topic or unclear	6 (7%)	3 to 14%	0	6 (5%)

Seven of the 13 opposing comments share one writing style that recurs in 21 comments[16], a cluster with shared wording that we cannot attribute to one author; without that cluster the opposing share falls to 7% of unprompted comments. The 655 personal comments also hold 81 texts that repeat word for word in 33 groups, so they count submissions and overstate distinct people.

Most supporters describe a schedule built around children, a parent's care, school or a second job. The critics use the Department's own test against the platforms. One DoorDash driver writes that “the emphasis on worker control conceals DoorDash's manipulation of compensation terms.”[26] Another lists the hours the app does not pay, “Waiting is unpaid. Driving to hot spots is unpaid.”[27] A supporter of independent status asks for limits on “systems that pressure drivers to behave like employees.”[28] These

complaints go to the control factor, which the proposal makes one of its two core factors and measures by actual practice.

Inside the forms the same complaints appear rarely. Of the 1,586 Instacart prompt forms, 26[29] mention batched orders and 18 mention tips.

BACKGROUND

How the test got here

DATE	EVENT	SOURCE
Jan. 7, 2021	Final rule adopts the two core factors	86 FR 1168
Mar. 4, 2021	Department delays its effective date	86 FR 12535
May 6, 2021	Department withdraws the 2021 rule	86 FR 24303
Mar. 14, 2022	District court vacates the delay and the withdrawal, Coalition for Workforce Innovation v. Walsh (E.D. Tex.)	2022 WL 1073346
Jan. 10, 2024	Final rule adopts the six-factor totality test, in effect Mar. 11, 2024; five lawsuits follow	89 FR 1638
May 1, 2025	Wage and Hour Division stops applying the 2024 rule in its investigations	Field Assistance Bulletin 2025-1[30]
Feb. 27, 2026	Proposal to return to the 2021 framework and extend it to the FMLA and the MSPA	91 FR 9932
Apr. 28, 2026	Comment period closes; last records posted Apr. 29	Docket WHD-2026-0001
Sep. 28, 2026	OIRA receives the final rule	Reginfo.gov[5]
Oct. 28, 2026	OIRA concludes review, consistent with change	Reginfo.gov

Dates through May 2025 come from the history in the proposed rule, 91 FR 9932.

ARGUMENTS ON FILE

The significant arguments the final rule must confront

An agency must respond to significant comments, and a rule fails review when the agency "entirely failed to consider an important aspect of the problem."[31] The duty runs to significant comments and important aspects of the problem, and a form comment can raise one as well as a letter can. We chose the pairs below because each argument recurs across letters from different senders and goes to the statute, the cost analysis or the scope of the rule. The final rule is not public yet, so each pair sets an argument on file against what readers should look for when it is published.

A stable test and the Supreme Court cases

Supporting letters

Small Business & Entrepreneurship Council, comment 11602, with business groups

"The proposed rule appropriately restores clarity and balance by returning to a framework grounded in long-standing judicial precedent while recognizing the realities of modern commerce and work."

Supporters cite Rutherford Food and Silk too, in 31 of 115 letters, and 109 of the 115 ground their support in clarity or predictability.

What to look for

Whether the final rule shows how the two core factors produce more predictable results than the 2024 test, with examples that match the industries that asked, such as trucking, financial advice and app-based work.

Two core factors and the statute

At least 25 of 48 opposing letters

AFSCME, comment 16483, with unions and legal aid groups

"AFSCME strongly opposes this Proposed Rule and its elevation of control and opportunity for profit or loss as the 'core factors' in the Economic Realities Test."

At least 25 of the 48 opposing letters argue in so many words that giving two factors more weight conflicts with the statute or the cases. Most quote the FLSA's "suffer or permit to work" definition and cite Rutherford Food and Silk for a test of the whole relationship.

What to look for

Whether the final rule explains why weighting two factors above the rest matches those cases. After Loper Bright Enterprises v. Raimondo (2024), courts read the statute for themselves and give an agency reading weight only for its reasoning.

Costs to workers and states

40 of 48 opposing letters

Comptroller of Maryland, comment 15309

"I do not oppose independent contracting, but I do oppose this Proposed Rule, which would impose significant and unquantified costs on Maryland and states across the country without adequate justification."

The House ranking members write, “the Department fails to quantify or include any analysis on these potential impacts.”[32] 40 of the 48 opposing letters discuss lost unemployment insurance, payroll tax or workers' compensation, against 19 of 115 supporting letters.

What to look for

The proposal estimates $488.2 million[33] in first-year familiarization costs, $682.7 million a year in cost savings and up to $17.6 billion over ten years in benefits to workers who enter the labor force. Its section on transfers treats them as largely a change in how each worker is paid and gives no figure for state revenue. Look for whether the final analysis adds one or explains why it cannot. Four local governments and the New York City Comptroller press the same point.

Extending the test to the FMLA and the MSPA

Farmworker and caregiver groups

Farmworker legal services coalition, comment 15000

"As such, the Proposed Rule is unlikely to pass judicial scrutiny and should be withdrawn."

What to look for

Separate reasons for each statute. The proposal applies one test to all three because the FMLA and the MSPA borrow the FLSA's

A letter from 36 organizations adds that a narrower FLSA reaches the Equal Pay Act and the PUMP Act[34] for nursing mothers.

definition of employ. Southern Migrant Legal Services and Justice at Work PA write that their clients would lose protection under the FMLA and the MSPA as well.

Construction

Unions and signatory contractors

Mechanical Contractors Association of America, comment 6431

"MCAA opposes the NPRM because it will encourage the expansion of a business model in our industry that places MCAA members and other ethical contractors at a competitive disadvantage."

MCAA describes itself as an association of 3,000 signatory specialty contractors. SMART and SMACNA[18] ask jointly for a rebuttable presumption of employee status.

What to look for

Whether the rule answers the joint request from SMART and SMACNA for a rebuttable presumption of employee status on construction sites, or sends the industry to opinion letters, as MCAA expects. NABTU, the Carpenters and SWACCA raise the same concern.

Changes the supporters asked for

Supporting letters

Institute for the American Worker, comment 15001, and others

"In Section IV, we urge the Department to strengthen the Rule by rigorously limiting or even eliminating the 'integrated unit of production' factor."

23 of 115 supporting letters mention portable benefits or a safe harbor, and none of the opposing letters do; 2[4] of them ask to change the rule text on it. Financial firms ask that rules they follow under securities law not count as control.

What to look for

Which requests the final text adopts. The National Taxpayers Union and the Senate HELP letter present portable benefits as a further step for policymakers. OOIDA already welcomed the revised speed limiter example in the proposal.

Counts come from sentence-level searches of the full text of the 170 letters, with the matching passages read to confirm them. They are lower bounds for arguments made in other words, and a match can be one passage of a long letter.

IMPLICATIONS AND SCENARIOS

Where this goes next

As the timeline shows, the Department stopped applying the 2024 rule in its own investigations through Field Assistance Bulletin 2025-1[30] on May 1, 2025, and five lawsuits over the 2024 rule are stayed while it reconsiders. The 2024 rule still governs private suits until a final rule replaces it. OIRA received the final rule on September 28, 2026 and concluded its review on October 28, 2026, consistent with change. The rule had not appeared in the Federal Register or on public inspection as of October 31. The scenarios below are as logged on October 25; the conclusion of review is the signpost for the first one, and we will score it on the publication date rather than revise it.

SCENARIO	LIKELIHOOD	CONFIDENCE	BASIS	WHAT WOULD CHANGE THIS VIEW
The final rule is published before January 20, 2027	Likely	Moderate	Under OIRA review since September 28; Executive Order 12866 sets a 90-day review period that can be extended	OIRA extends review past December 27, 2026 or returns the rule
The final rule keeps the two core factors and the extension to the FMLA and the MSPA	Very likely	High	Central to the proposal; all six platform letters and 83 of 87 business letters support it	A final rule that drops the FMLA or MSPA extension or weights all factors equally
The final rule creates a presumption of employee status in construction	Very unlikely	High	The proposal readopts the 2021 framework, which has no industry presumptions	Any construction-specific provision in the regulatory text
Worker groups, states or local governments sue within six months of publication	Likely	Moderate	The 2024 rule drew five lawsuits; unions, legal aid groups, a state comptroller and four local governments say this one conflicts with the statute	A final rule that narrows its reach, or public statements by likely plaintiffs that they will not sue

Almost no chance 1-5% · Very unlikely 5-20% · Unlikely 20-45% · Roughly even 45-55% · Likely 55-80% · Very likely 80-95% · Almost certain 95-99%. The terms follow the probability scale of Intelligence Community Directive 203. They state an analyst's judgment from the sources cited and are not the output of a statistical model. Likelihood is the chance we assign to the event. Confidence is our view of the evidence behind it. High means many consistent sources, moderate credible but incomplete sources, and low thin or conflicting ones. Each judgment is recorded in the forecast log and will be scored when it resolves.

IMPLICATIONS BY SECTOR

What the record means for each stakeholder

The middle column is documented in the record. The right column is our inference and carries the uncertainty of the scenarios above. None of it is legal or investment advice.

STAKEHOLDER	WHAT THE RECORD SHOWS	WHAT WE INFER, AND WHAT TO WATCH
App platforms	All six platform and staffing letters support the rule; Instacart and TechNet[23] ask that app and technology tools not count as control; critical personal comments describe those tools as control	The control factor, measured by actual practice, is where classification disputes will turn. Watch whether the examples in § 795.115 of the final rule cover app-based work.
Construction contractors	Union-signatory associations oppose; SMART and SMACNA ask for a presumption of employee status; ABC asks the Department to reaffirm its existing principle for construction	The sector splits by labor model, so either treatment of construction will draw objections. Watch for a construction example or a referral to opinion letters.
Financial services firms	2,557 template comments and about a dozen firm letters support; several ask that compliance with securities rules not count as control	Firms gain most if the final text adopts that clarification. Watch the control examples.
Trucking	ATA, OOIDA and other carrier groups support; OOIDA asks for a lease-purchase example; REAL Women in Trucking opposes	Owner-operator models depend on the investment and control factors. Watch the speed limiter and lease-purchase examples.
Multi-state employers	The proposal changes the federal test only; 9 supporting letters[35] cite state ABC tests, most as a warning; New Jersey adopted final ABC rules for its wage and unemployment laws on May 5, 2026, operative October 1	Employers in ABC-test states will face overlapping classification standards after the federal change. Watch state rulemaking and legislation alongside the federal rule.
Worker groups and states	40 of 48 opposing letters discuss lost unemployment insurance, payroll tax or workers' compensation; the proposal gives no dollar figure[33] for state revenue	The cost analysis is the most concrete ground for review under State Farm. Watch whether the final analysis adds a figure.

RECOMMENDED ACTIONS

What readers could do

Platform companies	The personal comments on file describe unpaid waiting, acceptance-rate tiers and penalties for declining orders. The proposal measures control by actual practice, so review those practices with counsel against the final text when it is published.
Worker groups, states	Watch the Federal Register for the final rule. On publication, check first whether the impact analysis quantifies the state revenue effects discussed in 40 of 48 opposing letters, the ground for a claim under State Farm.
Contractors, trade groups	Construction and financial services each asked for industry-specific treatment. If the final rule declines, the next route is an opinion letter from the Wage and Hour Division, the path MCAA's letter points to.
Reporters, researchers	Report the typed comments by channel. 15,690 came through four forms, and 189 of the 655 personal comments carry signs of a company prompt. Counts of support and opposition read differently once channels are separated.

METHOD, SOURCES AND LIMITS

How we built this report

Collection. All 16,498 posted records were collected through the Regulations.gov API by the Rulemaking Observatory in July 2026. On October 22, 2026 the docket page showed 16,522 submissions received and 16,498 published, and the API returned the same 16,498. Attachments were downloaded from the public file server and converted to text, with optical character recognition for four scanned files. The proposed rule was read in the Federal Register.

Prompts. A personal comment counts as prompted when it opens with a fixed line used by many others ("I need flexibility because", "Why is flexibility important to you?", "Independence and flexibility"), is addressed to lawmakers or mentions being asked for a story, or ends in the signature block a submission tool adds and is about flexibility. The rule is a screen, and some prompted comments it misses will sit among the unprompted.

Language-model markers, exploratory. Among 347 unprompted personal comments of 200 characters or more, 1[36] meets the strict rule and 9, 2.6%, carry any marker. None of the 139 prompted comments carries one. No form template meets the strict rule, and 1 of the 701 edited DoorDash forms does; the 163 Spanish forms were not scored. Several weak words are common in professional writing, which is why the strict rule needs two of them or one strong phrase. A marker list can miss polished generated text and can flag people who write in that register, so these figures describe markers and say nothing final about authorship.

Marker lists. Strong phrases (delve, it is important to note, serves as a testament, underscore, plays a pivotal or crucial or vital role, navigate the complexities, in today's rapidly evolving, ever-evolving landscape, tapestry, as an AI) and weak words (multifaceted, holistic, nuanced, paramount, commendable, pivotal, furthermore, moreover, in conclusion, noteworthy, leverage, streamline, robust). The strict rule needs one strong phrase or two different weak words, the loose rule any one marker. Forms were scored once at the template and again on text members added.

Requests for change. Supporting letters were searched sentence by sentence for requests to clarify, add, remove, revise or include something. An analyst read every match, dropped requests to adopt the rule as proposed and grouped the rest by topic.

Classification. Each typed comment was assigned to a channel by its opening text and template, then checked by exact text comparison. Positions of personal comments come from a random sample of 120 of the 655 comments outside the forms, read in full by an analyst. Positions of the 170 attached letters come from each letter's own words, usually its opening or closing request. Sender types come from the letterhead.

Status check. On October 31, 2026, a Reginfo.gov review search for RIN 1235-AA46 showed the final rule received September 28, 2026 and concluded October 28, 2026, consistent with change. The same day the Federal Register API and the public inspection list showed no final rule.

Limits. 11 of the 184 comments with attachments could not be downloaded. Comments the Department received and did not post, 24 by the counter, cannot be analyzed. One analyst coded the sample and the letters. Term counts across letters measure mentions. The final rule is not public, so this report says what it needs to answer and cannot say how it answers. This report is analysis and is not legal advice.

Data files. Typed comments by channel (9 rows). Forecast log (4 rows). The position and sender type of each attached letter and the coding of the 120 sampled personal comments are available on request; names and IDs of individuals are withheld. PDF of this report.

APPENDIX

Documents cited

Agency. 91 FR 9932, Department of Labor, proposed rule. OIRA review of the final rule, RIN 1235-AA46, concluded October 28, 2026. Ex parte notices 16509, Direct Selling Association members, Mar. 4, 2026, and 16508, SBA Advocacy roundtable, Apr. 9, 2026.

Supporting. 11602 Small Business & Entrepreneurship Council, 15202 DoorDash, 16242 Instacart (Maplebear), 16486 Uber, 16487 Lyft, 16493 U.S. Chamber of Commerce, 16232 Financial Services Institute, 16246 Owner-Operator Independent Drivers Association, 15001 Institute for the American Worker (with changes), 16455 National Taxpayers Union, 16490 Chair and members, Senate HELP Committee.

Opposing. 16483 AFSCME, 15503 AFL-CIO, 16239 Ranking members, House Education and Workforce Committee, 15309 Comptroller of Maryland, 16473 New York City Comptroller, 16477 Allegheny County, Baltimore, Santa Clara County, San Francisco, 15000 Farmworker legal services coalition, 16496 36 women's, caregiving and labor organizations, 6431 Mechanical Contractors Association of America.

Major changes. 16240 SMART and SMACNA, joint.

Legal standards. Motor Vehicle Manufacturers Ass'n v. State Farm, 463 U.S. 29, 43 (1983); Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024); 5 U.S.C. § 553(c).

ABOUT THIS REPORT

Who made it, and how to correct it

Authors. Vanessa Panitz and John Panitz, ComtIQ. The collection runs on the Rulemaking Observatory.

Funding and independence. No client, funder or party to the rulemaking paid for or reviewed this report before release. ComtIQ takes no position on the rule. We report who commented, what each side argued and what the final rule will need to address.

Next. When the final rule is published, ComtIQ will release a response audit that sets each argument in this report against the Department's answer.

Corrections. If a number or quote is wrong, tell us through comtiq.com. We fix errors in a new version and list each change in the version history.

Version history. 1.0, October 22, 2026, first release. 1.1, October 22, 2026, after internal review. 1.2, October 23, 2026, after external review. 1.3, October 25, 2026, added the row on multi-state employers. 1.4, October 25, 2026, added confidence ratings and what

would change each view to the scenarios, and a forecast log. 1.5, October 31, 2026, first online edition with a source panel for every number; status updated for OIRA's conclusion of review on October 28; data links that pointed to files never published replaced with the published channel table and forecast log; note on the two counts of portable benefits and safe harbor requests clarified; note 6 recounted, adding the 303 copies of the largest financial template that open with a line of their own. 1.6, November 4, 2026, two status lines updated after OIRA concluded its review; data and findings unchanged.

ENDNOTES

Sources for the numbers in this report

1. **Four forms and templates.** “DoorDash form 11,277. Financial professional templates 2,557. Instacart prompt form 1,586. Women and independent work letter 270. Total 15,690 of 16,363 typed comments, 95.9%.” Computed by ComtIQ from the posted record, https://www.regulations.gov/docket/WHD-2026-0001. Each typed comment was assigned by its opening text and template. The remaining 673 are 655 personal comments and 18 off-topic comments.
2. **The DoorDash form.** “As a Dasher, I appreciate the Department of Labor’s proposed rule that values independent work and better protects the flexibility we want.” Opening line of the form, 11,277 comments, https://www.regulations.gov/docket/WHD-2026-0001. Each form opens "Dear Employee or Independent Contractor Status under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act," which addresses the letter to the title of the rule.
3. **Attached letters.** “170 letters: 115 support the proposal, 48 oppose it, 6 ask for major changes, 1 takes no position. 164 come from organizations or officials and 6 from individuals, two of them fellows writing in a personal capacity.” ComtIQ reading of every attachment, https://www.regulations.gov/docket/WHD-2026-0001. 173 comments with attachments were downloaded. Two letters filed twice are counted once and a court opinion filed as an attachment is excluded.
4. **Requests for change from supporters.** “43 of 115 supporting letters ask for at least one change or clarification. Control 13; examples from their industry 12; other factors 7; benefits or a safe harbor 2; structure, scope or the economic analysis 9.” ComtIQ sentence-level search of the supporting letters, every match read by an analyst (letter-level coding file available on request), https://www.regulations.gov/docket/WHD-2026-0001. Requests to adopt the rule as proposed were dropped. Requests phrased in other ways are missed, so 43 is a lower bound. The 2 here count requests to change the rule text on benefits or a safe harbor; 23 supporting letters mention portable benefits or a safe harbor in some form.
5. **Final rule at OIRA.** “Pending EO 12866 Regulatory Review. Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act. Stage: Final Rule. Received: 09/28/2026.” Reginfo.gov, OIRA review record for RIN 1235-AA46, https://www.reginfo.gov/public/do/eoDetails?rrid=1545965. Checked October 22, 2026. The page lists the rule as economically significant.

6. **Financial professional templates.** “As an independent financial professional, and small business owner, I’m writing to express support for the independent contractor rule proposed by the Department of Labor’s Wage and Hour Division.” Opening of the largest template, https://www.regulations.gov/docket/WHD-2026-0001. A recount on October 31, 2026, by exact template sentence, finds the largest template in 1,789 comments, 1,486 that open with it and 303 that place it after an opening line of their own. The two shorter templates, opening "I am an independent financial advisor", hold 381 and 375. The recount totals 2,545; the 12 fewer than the 2,557 reported here leave every share unchanged at one decimal (15.6% of typed comments). Received March 27 to April 28.

7. **The Instacart prompt form.** “I value my flexibility and independence with Instacart because” Fixed opening of 1,586 comments, https://www.regulations.gov/docket/WHD-2026-0001. 1,166 of them, 74%, were received on March 19, 2026.

8. **Prompts left empty.** “225 of 1,586 Instacart prompt forms contain the prompt and nothing after it.” Computed by ComtIQ from the posted record, https://www.regulations.gov/docket/WHD-2026-0001.

9. **Women and independent work.** “Women increasingly rely on independent contracting to balance earning income with raising children, caregiving, or managing other priorities.” Shared text of 270 comments, https://www.regulations.gov/docket/WHD-2026-0001. Received March 5 to April 28. The text names no sponsor.

10. **Unchanged DoorDash forms.** “10,413 of 11,277 DoorDash forms carry the template body word for word once the salutation and signature are removed.” Computed by ComtIQ from the posted record, https://www.regulations.gov/docket/WHD-2026-0001. Curly and straight apostrophes were treated as the same character. 92.3% unchanged, 163 Spanish, 701 edited.

11. **The Spanish version.** “Como Dasher, agradezco la norma propuesta por el Departamento de Trabajo que valora el trabajo independiente y protege mejor la flexibilidad que deseamos.” Opening line of the Spanish form, 163 comments, https://www.regulations.gov/docket/WHD-2026-0001.

12. **DoorDash’s own letter.** “We urge the Department to finalize this rule substantially as proposed.” DoorDash, comment 15202, https://www.regulations.gov/comment/WHD-2026-0001-15202.

13. **Signs of a company prompt.** “189 of 655 personal comments. 86 open with a fixed line used by many others, 6 are addressed to lawmakers or mention being asked for a story, and 97 end in the signature block a submission tool adds and are about flexibility.” Computed by ComtIQ from the posted record, https://www.regulations.gov/docket/WHD-2026-0001. 68 of the 84 comments naming Uber or Lyft carry one of these signs. Openings include "I need flexibility because", "Why is flexibility important to you?" and "Independence and flexibility". Some letters begin "Dear DC Lawmakers".

14. **Unprompted personal comments.** “Of the 88 unprompted comments in the sample of 120, 51 support the proposal or independent status, 13 oppose it, 7 value flexibility and criticize platform pay or control, 8 complain about pay or protections with no stance on the rule, 3 state a position only in an attachment and 6 are off-topic or unclear.” ComtIQ analyst reading, random seed 11 (sample coding file available on request). 95% interval for support, 48% to 68%. Of the 32 prompted comments, 31 support and 1 values flexibility while criticizing the platform. One analyst coded the sample.

15. **Critical personal comments.** “28 of the 88 unprompted comments oppose the proposal or criticize platform pay or control. 95% interval 23% to 42%.” ComtIQ analyst reading, random seed 11 (sample coding file available on request).

16. **One repeated style.** “Everyone is laughing and saying same thing.” Opening shared by 21 comments, received February 27 to April 20, 2026; names and IDs withheld. The 21 comments share this opening and a distinctive style and oppose the proposal. We cannot confirm they come from one person. 7 of the 13 opposing comments in the sample are among them.

17. **Signatory contractors oppose.** “MCAA opposes the NPRM because it will encourage the expansion of a business model in our industry that places MCAA members and other ethical contractors at a competitive disadvantage.” Mechanical Contractors Association of America, comment 6431, https://www.regulations.gov/comment/WHD-2026-0001-6431. MCAA describes itself as an association of 3,000 signatory specialty contractors. SWACCA, comment 6443, also opposes.

18. **A construction presumption.** “SMART and SMACNA urge the DOL to adopt a rebuttable presumption of employee status for construction workers under the economic reality test.” SMART and SMACNA, joint comment 16240, https://www.regulations.gov/comment/WHD-2026-0001-16240. A union and the contractors’ association that bargains with it filed together.

19. **Comments received.** “16,522 comments received.” Regulations.gov comment counter for the proposed rule, as recorded by ComtIQ, https://www.regulations.gov/docket/WHD-2026-0001. The docket page read "Number of submissions received 16,522" and "Number of submissions published to this docket 16,498" when checked on October 22, 2026. 24 logged submissions were not posted.

20. **The posted record.** “16,498 posted records. 16,363 carry typed text and 135 point to an attachment.” Rulemaking Observatory collection of every posted record through the Regulations.gov API, July 25, 2026; total rechecked October 22, 2026, https://www.regulations.gov/docket/WHD-2026-0001. The API total was 16,498 again on October 22, 2026. The last posting date is April 29, 2026.

21. **Posting days.** “Records were posted on 14 days. April 27 7,549; April 21 2,501; April 28 2,179; March 31 1,930; April 20 1,260.” Rulemaking Observatory collection of every posted record through the Regulations.gov API, July 25, 2026; total rechecked October 22, 2026, https://www.regulations.gov/docket/WHD-2026-0001. The three largest days hold 74.1% of the record.

22. **Ex parte notices.** “Ex Parte Notice Meeting with Direct Selling Association Members (2026-03-04). Ex Parte Notice SBA Advocacy Roundtable (2026-04-09).” Documents 16509 and 16508, posted May 14, 2026, https://www.regulations.gov/document/WHD-2026-0001-16509.

23. **Instacart on app tools.** “Instacart urges the Department to clarify in a final rule that technology-enabled marketplace tools, including automated matching, incentive structures, and informational notifications, do not constitute control over the performance of work.” Instacart (Maplebear), comment 16242, https://www.regulations.gov/comment/WHD-2026-0001-16242. TechNet (16054) asks the same for technology-enabled communications.

24. **Personal comments.** “655 typed comments sit outside every form. 407 name no platform, 158 name Instacart, 84 name Uber or Lyft and 6 name DoorDash.” Computed by ComtIQ from the posted record, https://www.regulations.gov/docket/WHD-2026-0001.

25. **Wait between receipt and posting.** “Median 8 days between the receive date and the posted date, 90th percentile 19 days.” Rulemaking Observatory collection of every posted record through the Regulations.gov API, July 25, 2026; total rechecked October 22, 2026, https://www.regulations.gov/docket/WHD-2026-0001. Comments were received on 57 days and posted on 14.

26. **A DoorDash driver opposes.** “I do not support the proposed rule, as the emphasis on worker control conceals DoorDash's manipulation of compensation terms and grossly violates the worker's right to fair pay.” Typed comment from an individual in the sample, name and ID withheld.

27. **Unpaid time.** “Waiting is unpaid. Driving to hot spots is unpaid. Sitting near restaurants on shift is unpaid.” Typed comment from an individual in the sample, name and ID withheld.

28. **Independence with limits.** “However, true independent work should not include systems that pressure drivers to behave like employees.” Typed comment from an individual in the sample, name and ID withheld. The same comment names acceptance-rate tiers, pay hidden until after acceptance and penalties for declining orders.

29. **Complaints inside the Instacart form.** “Of 1,586 prompt forms, 26 mention batched orders, 21 mention W-2 status or benefits, 18 mention tips and 15 use phrases about low pay.” Term search by ComtIQ, https://www.regulations.gov/docket/WHD-2026-0001. A mention is not always a complaint. The counts set an upper bound.

30. **Enforcement of the 2024 rule.** “WHD will no longer apply the 2024 Rule’s analysis” Field Assistance Bulletin 2025-1, May 1, 2025, as described in the proposed rule, https://www.federalregister.gov/d/2026-03962. The proposed rule adds that until further action, the 2024 rule remains in effect for private litigation, and that five suits over it are stayed.

31. **The legal standard.** “entirely failed to consider an important aspect of the problem” Motor Vehicle Manufacturers Ass'n v. State Farm, 463 U.S. 29, 43 (1983), https://supreme.justia.com/cases/federal/us/463/29/. Notice-and-comment rules must also give a concise general statement of basis and purpose, 5 U.S.C. 553(c).

32. **House ranking members.** “Just as in the previous rule, the Department fails to quantify or include any analysis on these potential impacts.” Ranking members, House Education and Workforce Committee and its Subcommittee on Workforce Protections, comment 16239, https://www.regulations.gov/comment/WHD-2026-0001-16239. The impacts named are lost unemployment insurance and state social insurance revenue.

33. **The Department’s own estimates.** “The Department estimates that the regulatory familiarization costs of this proposed rule would be $488.2 million in the first year. However, the Department estimates that this proposed rule would yield $682.7 million dollars in cost savings per year.” Proposed rule, regulatory impact analysis, 91 FR 9932, https://www.federalregister.gov/d/2026-03962. The analysis puts total undiscounted benefits to workers from new labor force entry at up to $17.6 billion over 10 years and counts 11.9 million independent contractors in 2023. Its transfer section describes much of the transfer as intrapersonal and states no dollar figure; the proposal mentions unemployment insurance once.

34. **Equal pay and nursing mothers.** “Moreover, because the FLSA encompasses both the Equal Pay Act and the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act, diminishing FLSA entitlement also will strip workers of the right to be free from pay discrimination and to access workplace lactation accommodations.” 36 organizations, comment 16496, https://www.regulations.gov/comment/WHD-2026-0001-16496.

35. **Supporting letters that cite state ABC tests.** “Several states - including California, Massachusetts, and New Jersey - apply the far more restrictive “ABC test,” which presumes worker status to be employment unless the hiring entity can affirmatively demonstrate all three prongs.” Cambridge Investment Research, comment 15935, https://www.regulations.gov/comment/WHD-2026-0001-15935. The nine letters: Cambridge Investment Research (15935), Littler Workplace Policy Institute (15936), TechNet (16054), Flex (16243), Wisconsin Institute for Law & Liberty (16462), Landmark Legal Foundation (16466), U.S. Chamber of Commerce (16493), an unnamed policy group (16495) and The Transportation Alliance (2037). Two further letters discuss the ABC test only as a federal option. New Jersey: NJDOL final rule adopted May 5, 2026, operative October 1, 2026, covering the Unemployment Compensation, Wage and Hour and Wage Payment laws.

36. **Language-model markers.** “Of 347 unprompted personal comments of 200 characters or more, 1 meets the strict rule and 9 meet the loose rule (2.6%, 95% interval 1.4 to 4.9%). Of 139 prompted personal comments, none meets either. Of 701 edited DoorDash forms, 1 meets the strict rule and 5 the loose rule; the 163 Spanish forms were not scored. The financial professional template carries one weak word, "paramount", and no template meets the strict rule.” ComtIQ marker battery run on October 22, 2026. The battery is listed in the method section. The July 2026 run on the same docket found 0.26% under the strict rule and 3.0% under the loose rule among original comments.

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