

THE DISRUPTER SERIES: HOW THE SHARING
ECONOMY CREATES JOBS, BENEFITS CON-
SUMERS, AND RAISES POLICY QUESTIONS

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING,
AND TRADE
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
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THE DISRUPTER SERIES: HOW THE SHARING ECONOMY CREATES JOBS, BENEFITS CON- SUMERS, AND RAISES POLICY QUESTIONS

TUESDAY, SEPTEMBER 29, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND
TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:18 a.m., in room 2322 of the Rayburn House Office Building, Hon. Michael C. Burgess (chairman of the subcommittee) presiding.

Members present: Representatives Burgess, Lance, Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Brooks, Mullin, Upton (ex officio), Schakowsky, Clarke, Kennedy, Butterfield, Welch, and Pallone (ex officio).

Staff present: James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Andy Duberstein, Deputy Press Secretary; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Olivia Trusty, Professional Staff Member, Commerce, Manufacturing, and Trade; Dylan Vorbach, Legislative Clerk; Michelle Ash, Democratic Chief Counsel, Commerce, Manufacturing, and Trade; Jeff Carroll, Democratic Staff Director; Lisa Goldman, Democratic Counsel; Meredith Jones, Democratic Director of Communications, Member Services, and Outreach; and Adam Lowenstein, Democratic Policy Analyst.

Mr. BURGESS. The Subcommittee on Commerce, Manufacturing, and Trade will now come to order. The Chair recognizes himself for 5 minutes for the purpose of an opening statement.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Good morning, and I want to welcome everyone to our hearing this morning on the sharing economy. We are lucky to be here this morning to be able to talk about a sector of our economy that is actually putting people to work.

All of us here on the dais endure the typical Government skirmishes. We spend a lot of time quibbling over the proper size and the proper role of the Federal Government, so today it is refreshing to remind ourselves that the private sector is often working to solve problems even in spite of us some days. And we are doing that—

and the private sector is doing so in a way that fosters jobs through innovation.

The opportunities sharing platforms provide are often in addition to, not necessarily instead of, the streams of income available through traditional employment sources. The sharing economy has captured the entrepreneurial spirit of many Americans already. Those who engage in freelance jobs are expected to skyrocket to 40 percent of the workforce in the next 5 years, and almost 8 million will be participating in a sharing economy.

The sharing economy is an excellent example of why the fight exists for smaller Government. I want to hear today about how technology has built in accountability and built in consumer protections into their platforms, because eventually we must confront the question of whether and how Congress responds to these types of firms.

Many suggest no action is warranted, either by Congress or local regulators, and others are seeking direct and immediate intervention both at the Federal and the local level. There should be some limited Government oversight, particularly where safety is significant, and firms should be thinking about privacy, firms should be thinking about cybersecurity from the outset, lest they invite the very type of regulation that they sought to avoid.

But generally speaking, the sharing economy companies do face regulations, like most other firms, under the typical patchwork of Federal and State laws, and I, for one, am more concerned about existing regulations hurting new jobs than I am about the need for new regulations. The CEI estimates that the Federal Government already has stifled progress through regulation to the tune of almost \$2 trillion per year. Meanwhile, the sharing economy has generated \$15 billion in global revenues in 2013, and is likely to generate \$335 billion annually by the year 2020. We should be highly skeptical of interventions that take away new conveniences and measurable benefits for consumers.

Sharing platforms are inherently good, providing reputation feedback loops. As we look at any disrupter, we should ask ourselves, is more regulation needed, or is someone just concerned about change, and worried about change of the status quo?

I want to thank the witnesses for participating. I look forward to a lively and informative discussion. I will yield back my time, and recognize the ranking member of the subcommittee, Ms. Schakowsky, for 5 minutes for an opening statement.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

Good morning and welcome to our hearing on the sharing economy. We are lucky to be here this morning to be able to talk about a sector of the economy actually putting people to work.

All of us here on the dais endure the typical Government skirmishes—here in Washington we spend a lot of time quibbling over the proper size and role of Government.

So it is uniquely refreshing for us to remind ourselves that the private sector is often working to solve the same problems we are and doing so in a way that fosters jobs through innovation.

The opportunities sharing platforms provide are often in addition to—not necessarily instead of—the streams of income available through traditional sources.

The sharing economy has captured the entrepreneurial spirit of many Americans already. Those who engage in freelance jobs are expected to skyrocket to 40 percent

of the workforce in the next 5 years—about 7.8 million of which will be participating in the sharing economy.

The sharing economy is an excellent example of why I fight for smaller Government. And I want to hear about how technology has built in accountability and consumer protections into the platform.

Because eventually we must confront the question of whether and how Congress responds to these types of firms.

Many suggest no action is warranted either by Congress or local regulators, and others are seeking direct and immediate intervention from Congress.

There should be some limited Government oversight, particularly where safety is needed. And firms should be thinking about privacy and cybersecurity from the outset, lest they invite the very regulation they would rather avoid. But generally speaking, the sharing economy companies do face regulations, like most other firms, under the typical patchwork of Federal and State laws.

And I for one am more concerned about existing regulations hurting new jobs than I am about the need for new regulations. CEI estimates that the Federal Government has already stifled progress enough through regulation—to the tune of \$1.8 trillion per year.

Meanwhile, the sharing economy generated \$15 billion in global revenues in 2013 and will generate \$335 billion annually by 2020.

We should be highly skeptical of interventions that snatch away new conveniences and measurable benefits for consumers. Sharing platforms are inherently good at providing reputation feedback loops.

As we look at any disrupter, we really need to ask is regulation needed or is someone just scared of a change to the status quo?

I thank the witnesses for participating and look forward to a lively and informed discussion.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for holding this hearing on the sharing, some call gig, economy. This is a topic absolutely deserving of our attention, discussion, scrutiny.

Over the past few years Americans have begun to interact in ways we never imagined just a decade, or even less, ago. The sharing economy is one of the byproducts of technological change. Today people hail rides, book rooms, hire a contractor, purchase groceries, at the push of a button. This is the fastest growing sector in our economy, and while there is undoubtedly a convenience factor for those engaged with the gig economy, there are a number of adverse consequences as well.

For many millennials the gig economy model of employment may be appealing for a time, providing scheduling flexibility that many young people desire. But for many older workers, who used to have full time employment, or younger workers, seeking steady full time work, this transformational change is not always positive. The model of this economy, where people—there are people seeking economic predictability and stability, also—often eliminates benefits, like health care and pensions, and it means more questions about whether they can make ends meet, much less save for their children's education, their parents' elder care, or their own retirement.

The gig economy companies argue that the individuals who generate earnings through the use of their technology are independent contractors. They claim only to operate a neutral technology—technological platform, enabling individuals to connect. Making that claim may enable gig economy companies to avoid legal liability for much of what happens as a result of the use of their platforms, may enable them—enables them to avoid Social Security contribu-

tions, and requirements to provide overtime pay, Workers' Compensation, and Unemployment benefits. The workers are atomized, and unable to collectively bargain in their own interest. And this shift—many work related risks for employers go to workers. However, these entities are very often directly involved in almost every aspect of the transactions that occur by way of their technology. They maintain standards for users of their apps, and they have the ability to remove users from their platforms altogether, often without any mechanisms, by the way, to challenge their removal.

In June the California Labor Commission found that Uber drivers are employees, rather than contractors. That determination, if upheld, would require Uber to provide reimbursable expenses, Social Security, Workers' Compensation, and Unemployment Insurance benefits. Many gig economy businesses do not ensure that their employees met licensing, tax, and zoning requirements that are in place for the industries against which those businesses seek to compete. I believe those companies, and their employees and contractors, need to meet all existing requirements if they intend to compete with other entities honoring those standards.

It is also important that liability questions are addressed by the businesses operating in the gig economy space. Is additional insurance coverage needed to protect employees or customers of gig economy businesses? When additional protection is required, how do gig economy businesses ensure that their employees and customers are adequately covered?

These gig economy businesses are largely data driven, and there are few restrictions on how that data is used or protected. Highly sensitive information, including background checks, home addresses, credit cards, and bank account information and travel patterns are often collected by these businesses. Uber recently changed its privacy policy to allow the company to ask for location details when users aren't actively engaging with the app. It also allows Uber access to a user's contact list. Most Uber users probably have no idea about these policy changes, which is why greater oversight, transparency, and communication are needed in this emerging sector of the economy. All of these issues must be addressed if we are to ensure that the sharing economy is as much about improving the lives of working Americans as it is about increasing the market caps of gig economy companies.

So I thank the witnesses for being here today. This is a truly important, seminal discussion that we have right now. I look forward to their testimony, and I yield back the balance of my time.

[The prepared statement of Ms. Schakowsky follows:]

PREPARED STATEMENT OF HON. JANICE D. SCHAKOWSKY

Thank you, Mr. Chairman, for holding today's hearing on the sharing—or gig—economy. This is a topic deserving of our attention and scrutiny.

Over the past few years, Americans have begun to interact in ways never imagined just a decade ago. The sharing economy is one of the byproducts of technological change. Today, people hail rides, book rooms, hire a contractor, and purchase groceries at the push of a button. This is the fastest growing sector in our economy. While there is undoubtedly a convenience factor for those who engage with the gig economy, there are a number of adverse consequences as well.

For millennials, the gig economy model may be appealing for a time, providing scheduling flexibility that many young people desire. However, for many older workers who used to have full-time employment or younger workers seeking steady full-

time work, this transformational change is not a positive. The model—which eliminates benefits like health care and pensions—means more questions about whether they can make ends meet, much less save for their children's education, their parents' elder care, or their own retirement.

Gig economy companies argue that the individuals who generate earnings through the use of their technology are independent contractors. They claim only to operate a neutral technological platform, enabling individuals to connect. Making that claim may enable gig economy companies to avoid legal liability for much of what happens as a result of the use of their platforms, and enables them to avoid Social Security contributions and requirements to provide overtime pay, and workers' compensation and unemployment benefits. This shifts many work-related risks from employers to workers.

However, these entities are very often directly involved in almost every aspect of the transactions that occur by way of their technology. They maintain standards for users of their apps and they have the ability to remove users from their platforms altogether.

In June, the California Labor Commission found that Uber drivers are employees rather than contractors. That determination—if upheld—would require Uber to provide reimbursable expenses, Social Security, workers' compensation and unemployment insurance benefits.

Many gig economy businesses do not ensure that their employees meet licensing, tax, and zoning requirements that are in place for the industries against which those businesses seek to compete. I believe those companies and their employees and contractors must meet all existing requirements if they intend to compete with other entities honoring those standards.

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All of these issues must be addressed if we are to ensure that the sharing economy is as much about improving the lives of working Americans as it is about increasing the market caps of gig economy companies.

I thank our witnesses for being here today, and I look forward to their testimony. I yield back the balance of my time.

Mr. BURGESS. The Chair thanks the gentlelady. The Chair recognizes the chair of the full committee, Mr. Upton, 5 minutes for an opening statement.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman. You know, today we are here to discuss one of the most promising aspects of our recovering economy, the sharing economy. Significant innovation and advances have enabled new platforms to connect self-employed individuals or small businesses with the consumers who demand those goods and services.

The sharing economy is growing in leaps and bounds. Believe it or not, in a decade, it is expected to generate \$335 billion annually. That sort of growth cannot be ignored. So this series of hearings about disrupters, and I would include the Internet of things, and the vehicle to vehicle communications under that umbrella as well, is so important as we work to better understand how these innova-

tive companies impact consumers, job creation, and yes, our economy. I am always encouraged by the creativity and ingenuity that we see in America, and this hearing is a great forum to learn how real people are taking advantage of new opportunities to make a better life for themselves and their families. I know it is true in Michigan, as it is in the rest of the country, as families are glad to have new ways to make ends meet.

One of the most intriguing aspects of this model is that it is not tied to any particular industry. The press regularly highlights the disruption in the lodging and transportation sectors, but there is innovation in every facet of the U.S. economy. And as with any developing marketplace, we must recognize the risk of stifling the innovation with reactionary regulatory measures. At a time when jobs are still hard to find, and balancing the budget is a challenge, we should not risk job creation with hasty calls to regulate. Where new technologies and competition are responding to consumer needs, and doing so safely, we should be asking ourselves if reducing the regulatory burden makes sense. This may be true for both the new entrepreneurs and incumbents. The sharing economy has also given folks across the country a chance to make decisions about how and when they work in a way that was not feasible even a few years ago.

So we are familiar with high-profile leaders in the sharing economy, but there are many other platforms that are using technology to connect niche markets that have not been able to connect before, and I have seen that firsthand, and I am interested to hear more about those areas of the sharing economy. Our witnesses today represent a broad and diverse spectrum of the sharing economy. I would like to welcome in particular Michael Beckerman back to the committee, albeit on the other side of the dais this time around. I look forward to hearing all your stories and experiences with the sharing economy, and how we can foster an environment for community job growth and community development, and I yield back.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Today we are here to discuss one of the most promising aspects of our recovering economy: the sharing economy. Significant innovation and advances have enabled new platforms to connect self-employed individuals or small businesses with the consumers who demand their goods and services.

The sharing economy is growing in leaps and bounds. In a decade, it is expected to generate \$335 billion annually. That sort of growth cannot be ignored.

This series of hearings about disrupters—and I would include the Internet of Things and vehicle-to-vehicle communications under that umbrella as well—is important as we work to better understand how these innovative companies impact consumers, job creation, and our economy.

I am always encouraged by the creativity and ingenuity we see in America and this hearing is a great forum to learn how real people are taking advantage of new opportunities to make a better life for themselves and their families. I know that this is as true in Michigan as it is in the rest of the country, as families are glad to have new ways to make ends meet.

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consumer needs, and doing so safely, we should be asking ourselves if reducing the regulatory burden makes sense. This may be true for both the new entrepreneurs and incumbents.

The sharing economy has also given folks across the country a chance to make decisions about how and when they work in a way that was not feasible even a few years ago.

We are familiar with high-profile leaders in the sharing economy, but there are many other platforms that are using technology to connect niche markets that have not been able to connect before. I am interested to hear more about those areas of the sharing economy. Our witnesses today represent a broad and diverse spectrum of the sharing economy—and I'd like to welcome Michael Beckerman back to the committee, albeit on the other side of the dais this time around. I look forward to hearing all your stories and experiences with the sharing economy and how we can foster an environment for continued job growth and community development.

Mr. BURGESS. The Chair thanks the gentleman. The gentleman yields back. We are expecting the ranking member of the full committee, Mr. Pallone, to be here at any moment. But pending that, let me just go ahead and introduce our witnesses, and then, when Mr. Pallone arrives, we will yield back to him for his opening statement. So we do want to thank all of our witnesses for being here today, thank our witnesses for taking time to testify before the subcommittee.

Our witness panel for today's hearing will include Ms. Luceele Smith, a driver-partner with Uber Technologies, Incorporated, Mr. Michael Beckerman, President and CEO of the Internet Association—and, you know, Michael, after you left the committee, so many people asked, "What happened to Michael?" And people said, "He went to a better place," so I guess the Internet Association is defined as a better place. Mr. Bob Passmore, Assistant Vice President for Personal Lines Policy with the Property and Casualty Insurance Association of America, Mr. Dean Baker, Co-Director of the Center for Economic and Policy Research, Mr. Alex Chriss, Vice President and General Manager at Intuit, and Jon Lieber, Chief Economist at Thumbtack. We do appreciate all of you being here today.

We will go ahead and proceed with the witness testimony, and we may allow Mr. Pallone to give his opening statement when he arrives. So we appreciate all of you being here. We will begin with you, Ms. Smith. You are recognized. Each of you will have 5 minutes to provide a summary of your testimony and given an opening statement. Ms. Smith, you are recognized.

STATEMENTS OF LUCEELE SMITH, DRIVER/PARTNER, UBER TECHNOLOGIES, INC.; MICHAEL BECKERMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNET ASSOCIATION; ROBERT PASSMORE, ASSISTANT VICE PRESIDENT, PERSONAL LINES, PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA; DEAN BAKER, CO-DIRECTOR, CENTER FOR ECONOMIC AND POLICY RESEARCH; ALEX CHRISS, VICE PRESIDENT, QUICKBOOKS SELF-EMPLOYED SEGMENT, INTUIT, INC.; AND JONATHAN LIEBER, CHIEF ECONOMIST, THUMBSTACK, INC.

STATEMENT OF LUCEELE SMITH

Ms. SMITH. Good morning, Chairman Burgess, Ranking Member Schakowsky, and committee members. My name is Luceele Smith,

and I appreciate this opportunity to address you today and speak about my experience working with Uber. I began driving with Uber in June 2014, and prior to that I worked in the legal field, and served 8 years in the Air Force. My son is also in the Air Force, and will soon be deployed to the United Arab Emirates.

Uber has been a great opportunity for me and many others. What I like most about Uber is the flexibility. It allows drivers to make money on their own time. I don't have a boss to report to. I don't have to be on call. I work when I want to, for as long as I want to, or as little as I want to. I use Uber as supplementary income to finance my travel. I am from the British Virgin Islands, and I use my extra income to visit my family. And when I want to travel, I don't need to ask permission. I just go.

Driving with Uber has also helped me to discover the city in new ways, which has been very rewarding. In fact, I have encouraged friends, and even riders, to become drivers because I think it is a great opportunity not only to see new parts of the city, but to connect with people in the community. And these are people that I would never otherwise have met.

Every rider that I have met is grateful for the choice, and the convenience, that Uber has brought to their lives. I particularly enjoy the people component of being an Uber driver. Having traveled all over the world, I can strike up conversation with anyone, and point out new restaurants or new shows in town. And when it comes to my riders, I have had so many good experiences. I remember I picked up a couple once from the airport and took them to a Redskins game, and when we arrived, it started to rain, and the young lady was very concerned about her hair, so I gave her my umbrella. I understood what it would be like to sit in the rain and ruin your hair. So it was just a great opportunity to help people in large and small ways.

I have worked in traditional jobs before, but there is nothing else out there where you can set your own schedule and your own goals. Sometimes drivers ask me, how much money do you make in a week? And the answer is, you can make as much as you want to. If I want to make \$500 to fly to St. Thomas for Christmas, I can do that. With other jobs, the only way to earn more money is to take another job, or to get a promotion, and that can take years. So that freedom—it removes a lot of stress from your life, and that freedom is priceless, knowing you can log in anytime and make money. That is incredible. It is unmatched. So it is an opportunity that I enjoy, and I know many people feel the same way. Thank you so much.

[The prepared statement of Ms. Smith follows:]

Driver Testimony

Good morning, Chairman Burgess, Ranking Member Schakowsky, and committee members.

My name is Luceele Smith and I appreciate the opportunity to address you today and speak about my experience working with Uber. I began driving with Uber in June 2014 and prior to that I worked in the legal field and served eight years in the Air Force. My son is also in the Air Force and will be deployed soon.

Uber has been a great opportunity for me and many others. What I like the most about Uber is the flexibility, it allows drivers to make money on their own time. I don't have a boss to report to. I don't have to be "on call." I work when I want, for as long or as little as I want. I use Uber as supplementary income to finance my travel. I'm from the British Virgin Islands and use my extra income to visit my family - and when I want to travel, I don't need to ask permission, I just go!

Driving with Uber has also helped me discover the city in new ways which has been very rewarding. In fact, I've encouraged friends and even riders to become drivers because I think it's a great opportunity not only to see new parts of your home-town, but to connect with people in your community who you otherwise would never have met.

Every rider I meet is grateful for the choice and convenience that Uber has brought to their lives. The people component is my best part. Having traveled all over the world, I can strike up a conversation with anyone and point out new restaurants or shows in town. When it comes to my riders, I have had so many good experiences. I remember I picked up a couple that was going to a Redskins game directly from the airport. It started raining and the woman was so upset about her hair, so I gave them my umbrella and they were so grateful. It's an opportunity to help people in big and small ways.

I have worked in traditional jobs before, but there's nothing else out there where you can set your own schedule and set your own goals. Sometimes drivers ask me, "how much do you make?" I tell them, "you can make as much as you want." If I want to make \$500 to fly to St. Thomas for Christmas, I know I have between now and Christmas to make that much. With other jobs, the only way to earn more money is to take another job or get a promotion - which can take years. That freedom removes a lot of stress from your life. And that freedom is priceless. Knowing you can log in anytime and make money - that's incredible. It's unmatched.

It's an opportunity that I enjoy, and I know many people feel the same way.
Thank you.

Mr. BURGESS. The Chair thanks the gentlelady. The Chair recognizes Mr. Beckerman. Five minutes for an opening statement, please.

STATEMENT OF MICHAEL BECKERMAN

Mr. BECKERMAN. Thank you. Chairman Burgess, Ranking Member Schakowsky, Chairman Upton, and Ranking Member Pallone, and members of the committee, thank you for inviting me to testify. My name is Michael Beckerman. I am the President and CEO of the Internet Association, which represents the world's most innovative Internet companies. The Internet Association is the unified voice of the Internet economy and its global community of users. We are dedicated to advancing public policy solutions to strengthen and protect Internet freedom, to foster innovation and growth, and to empower the global community of Internet users.

Included in our membership are more than 35 of the world's most innovative companies, including the sharing economy platforms, such as Airbnb, FlipKey, Lyft, Sidecar, and Uber. And as an advocate for these companies on the local, State, Federal, and international level, the Internet Association has witnessed firsthand the often heavy handed and misguided regulatory approach in markets throughout the country for these platforms. These companies have an extraordinary story to tell, a story about job creation, about economic growth, opportunity, and life changing flexibility.

Ride sharing and home sharing do get most of the attention, but these business models are really just the tip of the iceberg. Companies like Instacart, Washio, TaskRabbit, GetAround, Handy, and Thumbtack, who is here with us today, are changing the way we shop, do our laundry, rent cars, improve our homes, and so much more. The incredible consumer benefits of these platforms pales in comparison to the benefits of flexible earning opportunities for those that opt-in to meet consumer demand.

What we are seeing across the country is a tale of two cities. In some communities, regulators embrace new technology and competition. In these communities, consumers in the local economy have seen job creation and growth. Unfortunately, there are other communities where policymakers and regulators have put up roadblocks that block consumer choice and competition. In these areas, the community is worse off when arbitrary barriers are placed on new entrants to the market. Competition is stamped out, growth is stifled, and opportunities are lost.

In my testimony this morning, I would like to outline a few important principles the Internet Association thinks is helpful in this policy debate. But first I would like to help put the on demand, or sharing, economy into the proper macroeconomic context. Sidecar, or Uber, or Lyft, they are neither taxi companies nor transportation companies. They are technology platforms that connect supply and demand. Likewise, Airbnb is not a hotel or lodging company. It is a technology platform that connects supply and demand.

To just give one example, back in 1980, let us say, if you wanted a ride to the airport, you might pick up the Yellow Pages and look up a number for a car service. Then you would pick up the phone, dial the number, talk to the dispatcher, and arrange for a ride. In

that pre-Internet age, the Yellow Pages served a similar function to what Uber or Lyft does today. It connects supply, the driver, with demand, the rider. But today, thanks to the Internet, and advances in mobile payments and other technology, this connection of supply and demand happens in real time, and in a seamless way for consumers, and the same is true for the other sharing platforms.

Based on our advocacy for the Internet industry, and for the sharing economy specifically, the Internet Association suggests the following principles guide the committee as you wade into this debate. First, evidence demonstrating the clear benefits to consumers must be taken into account. These benefits include lower prices, higher quality of services, and overall increase in consumer choice. Second, in weighing these benefits against perceived harms, lawmakers should consider whether sharing economy services may, in fact, be safer than incumbent counterparts. Third, in listening to complaints against sharing economy companies in local markets, assess whether these complaints capture a genuine consumer protection concern, and are not merely complaints against increased competition that will benefit consumers. And finally, recognize the sharing economy platforms already self-regulate through various mechanisms that are hardwired into the technology, such as consumer ratings, payment systems, and GPS tracking, not to mention the intense competition between all of these platforms. And I do elaborate on each of these points in my written testimony, which I ask to be submitted for the record.

In closing, the sharing economy is an exciting innovation that collapses the distance between those offering services and those consuming services. The end result of this arrangement is increasing quality, and lower costs. The sharing economy provides clear benefits to both consumers and those who wish to earn extra money, and evidence of this fact must be considered before taking legislative or regulatory action. Thank you for allowing me to testify, and I look forward to any questions the committee may have.

[The prepared statement of Mr. Beckerman follows:]

TESTIMONY OF MICHAEL BECKERMAN
President & CEO, Internet Association
September 29, 2015

Summary

In my testimony this morning I'd like to outline a few important principles the Internet Association thinks are helpful in guiding this policy debate. But first, I'd like to put the sharing economy in the proper macroeconomic context. Sidecar, Uber and Lyft are neither taxi companies nor transportation companies. They are technology platforms connecting supply and demand. Likewise, Airbnb is not a hotel or lodging company. It too is a technology platform that connects supply and demand. In 1980, for example, if you wanted a ride to the airport, you might pick up the Yellow Pages and look up a phone number for a car service, then call to arrange a pickup. In that pre-Internet age, the Yellow Pages served a similar function that Lyft and Uber do today connecting supply (the driver) with demand (the rider). Today, thanks to the Internet and advances in mobile payments, this connection of supply and demand happens in real time and in a seamless way for consumers.

Based on our advocacy for the Internet industry generally and for the sharing economy specifically, the Internet Association suggests that the following principles should guide the committee as you consider what role you could play in this area:

- First, evidence demonstrating the *clear benefits* to consumers must be taken into account. These benefits include increased competition, lower prices, higher quality services, and an overall increase in consumer choice.
- Second, in weighing these clear benefits against any perceived harms, lawmakers should consider whether sharing economy services may, in fact, be *safer* alternatives for consumers when compared to their incumbent counterparts.
- Third, in listening to complaints against sharing economy entry into local markets, assess whether these complaints capture *genuine* consumer protection concerns, and are not simply complaints against increased competition that benefits consumers.
- Fourth, recognize that sharing economy platforms *already* self-regulate through various mechanisms that are hardwired into the technology, such as customer ratings, payment systems, and GPS tracking.

Full Written Testimony

Chairman Burgess, Ranking Member Schakowsky and members of the committee, thank you for inviting me to testify. My name is Michael Beckerman and I am the President & CEO of the Internet Association, which represents the world's leading Internet companies. The Internet Association is the unified voice of the Internet economy and its global community of users. We are dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users.

Included in our membership are more than 35 of the world's most innovative companies, including sharing economy platforms such as Airbnb, FlipKey, Lyft, Sidecar, and Uber.¹ As an advocate for these companies at the local, state, and federal level, the Internet Association has witnessed first hand the often heavy-handed and misguided regulatory approaches to these platforms in markets throughout the country. These companies have an extraordinary story to tell. Their story is about job creation, economic growth, opportunity, and life changing flexibility. Ridesharing and home sharing get most of the attention, but those business models are just the tip of the iceberg. Companies like Instacart, Washio, TaskRabbit, GetAround, Handy, and ThumbTack are changing the way we shop, do our laundry, rent cars, and improve our homes. The incredible consumer benefits of the Internet age are matched only by the flexible money earning opportunities for those that opt-in to devoting their time to participation in the sharing economy.

¹ Members of the Internet Association include Airbnb, Amazon, Auction.com, Coinbase, Dropbox, eBay, Etsy, Expedia, Facebook, FanDuel, Gilt, Google, Groupon, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal,

What we are seeing across the country is a tale of two cities. In some communities, policymakers and regulators embrace new technology and competition. In these communities, consumers and the local economy have seen job creation and growth. A couple in Texas, summoning a ride home on a dark and stormy night from the comfort of their smartphone can speak to the consumer-first convenience of ridesharing. A hard working family in Illinois, able to pay their mortgage with the extra money earned from Airbnb, can speak to the life-changing flexibility and opportunity brought by home sharing. Unfortunately in some other communities, policymakers and regulators have put up roadblocks to consumer choice and competition. In these areas, the community is worse off when arbitrary barriers are placed on new entrants. Competition is stamped out, growth is stifled, and opportunities are lost.

In my testimony this morning I'd like to outline a few important principles the Internet Association thinks are helpful in guiding this policy debate. But first, I'd like to put the sharing economy in the proper macroeconomic context. Sidecar, Uber, and Lyft are neither taxi companies nor transportation companies. They are technology platforms connecting supply and demand. Likewise, Airbnb is not a hotel or lodging company. It is a technology platform that connects supply and demand. In 1980, for example, if you wanted a ride to the airport, you might pick up the Yellow Pages and look up a phone number for a car service, then call to arrange a pickup. In that pre-Internet age, the Yellow Pages served a similar function that Lyft and Uber do today connecting supply (the driver) with demand (the rider). Today, thanks to the Internet and advances in mobile payments, this connection of supply and demand happens in real time and in a seamless way for consumers.

Based on our advocacy for the Internet industry generally and for the sharing economy specifically, the Internet Association suggests that the following principles should guide the committee as you consider what role you could play in this area:

- First, evidence demonstrating the *clear benefits* to consumers must be taken into account. These benefits include increased competition, lower prices, higher quality services, and an overall increase in consumer choice.
- Second, in weighing these clear benefits against any perceived harms, lawmakers should consider whether sharing economy services may, in fact, be *safer* alternatives for consumers when compared to their incumbent counterparts.
- Third, in listening to complaints against sharing economy entry into local markets, assess whether these complaints capture *genuine* consumer protection concerns, and are not simply complaints against increased competition that benefits consumers.
- Fourth, recognize that sharing economy platforms *already* self-regulate through various mechanisms that are hardwired into the technology, such as customer ratings, payment systems, intense competition, and GPS tracking.

I will elaborate on each of these points now and would be pleased to answer any questions you have about them.

1. Sharing Economy Benefits are Real and Growing

The benefits to U.S. consumers from the sharing economy are real and growing. These benefits include increased competition, lower prices, higher quality, and increased consumer choice for *all*

consumers, even those consumers who do not participate in the sharing economy. The sharing economy also benefits U.S. small business owners who supply their services to consumers using sharing economy platforms. The Internet Association submits that these benefits must be kept front-of-mind as the committee considers its approach to the sharing economy.

On the supply side of these two-sided platforms, evidence is mounting that participation in the sharing economy is a net positive for the 'microentrepreneurs' who participate in it.² In a survey done earlier this year, Airbnb commissioned the Land Econ Group to study the company's economic impact throughout San Francisco. The survey found:

- The Airbnb community contributed nearly **\$469 million** to the San Francisco economy in 2014;
- The average Airbnb host earns **\$13,000** per year hosting – money that is spent in the local economy; and
- The Airbnb community supports **3,600** jobs in the local economy.

The Land Econ Group study also found that over the last three years, Airbnb's economic impact in San Francisco has grown from \$56 million to \$469 million annually (a more than **8-fold** increase).³

On the demand side, there is increasing evidence of the benefits to consumers of increased participation in the sharing economy. PriceWaterhouseCoopers calculated that, on a global basis,

² Debbie Wosskow, "Unlocking the Sharing Economy: An Independent Review," https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378291/bis-14-1227-unlocking-the-sharing-economy-an-independent-review.pdf at 14 (2014).

³ Airbnb public policy blog, <http://publicpolicy.airbnb.com/author/davidowen/> (April 19, 2015).

the sharing economy generated **\$15 billion** in global revenues in 2013. According to PwC, this figure is estimated to rise to **\$335 billion** by 2025.⁴ A recent industry survey of consumers in the United States, Canada and the United Kingdom suggested about one in four respondents had used one or more 'collaborative economy' marketplaces in the past year.⁵ This rapid growth rate suggests that consumers are voting with their pocketbooks and have concluded that the sharing economy is beneficial to them.

Recent academic research tends to validate the confidence American consumers have placed in the sharing economy. In research conducted at NYU, Fraiberger and Sundararajan modeled the benefits to consumers from participation in the sharing economy using transaction level-data from the car rental platform Getaround and U.S. automobile industry data.⁶ The NYU study suggests that the sharing economy benefits below-median income users in particular, who also provide a majority of rental supply.⁷ The study further concludes that these consumers "will enjoy a disproportionate fraction of eventual welfare gains from [the] sharing economy through broader, inclusion, higher quality rental-based consumption, and new ownership facilitated by rental supply revenues."⁸

⁴ PwC blog, "The Sharing Economy: Sizing the Revenue Opportunity," <http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.jhtml>

⁵ Jeremiah Owyang and Alexandra Samuel, "Sharing is the New Buying," <http://www.web-strategist.com/blog/2014/03/03/report-sharing-is-the-new-buying-winning-in-the-collaborative-economy/> (2014).

⁶ Fraiberger and Sundararajan, "Peer-to-Peer Rental Markets in the Sharing Economy," NYU Stern School of Business Research Paper, at p. 1 (March 6, 2015).

⁷ *Id.*

⁸ *Id.*

2. Sharing Economy Benefits Must be Weighed Against Perceived Harms

Although the Internet Association submits that the benefits to consumers from sharing economy platforms are concrete and growing, this does not mean that consumer protection has no role to play in this space. The important question is not *whether* consumer protections should apply to the sharing economy, but rather *how* and *when* they should apply.

The Federal Trade Commission, using the mandate given to it by Congress, has in recent years been actively engaged in policy research and development on sharing economy issues. In the words of the FTC: “A forward-looking regulatory framework should allow new and innovative forms of competition to enter the marketplace unless regulation is necessary to achieve some countervailing pro-competitive or other benefit, such as protecting the public from significant harm.”⁹

The Internet Association agrees with the FTC that a balanced regulatory framework should take into account protecting the public from significant harm. However, in so doing, we also ask that the committee consider the ways in which sharing economy platforms may, in fact, be *safer* alternatives for consumers versus incumbent providers of the same service. Our experience has shown that, when dealing with sharing economy entry, regulators often labor under the misplaced assumption that the sharing economy bears the hallmarks of the Wild West when it comes to safety and consumer protection. In reality, the facts and evidence point in a different direction.

⁹ Letter to the District of Columbia Taxicab Commission from the FTC Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection and Bureau of Economics at p. 3 (June 7, 2013).

For example, although opponents of ridesharing platforms often cite safety concerns as a ground for regulation, there are several reasons why ridesharing can be considered *safer* than taking a taxi. These reasons were captured by the National League of Cities in a recent report on the sharing economy and cities. According to the report, “advocates for sharing economy services [] argue that ridesharing services can *increase* safety by providing easily-accessible transportation alternatives.”¹⁰ Ridesharing provides an easy and safe alternative for intoxicated drivers. Similarly, since ridesharing services are non-cash businesses, they may increase safety for riders and drivers alike. And systems tracking every ride using GPS technology could also help ensure both driver and rider safety.¹¹

These pro-ridesharing safety arguments find empirical support in a recent survey conducted by Zendrive, a leading driving analytics firm, in San Francisco.¹² The study looked at data from passengers’ cellphones, Zendrive measured over 1,300 miles’ worth of rides in San Francisco, including taxi and rideshare rides and – for comparison – the average driver. According to the Zendrive study, taxis were found to be speeding over 50% more than rideshares, and this figure increased during peak hours.¹³

¹⁰ National League of Cities, “Cities, the Sharing Economy and What’s Next,” at p. 25 (2015). (emphasis added).

¹¹ *Id.*

¹² Are Rideshares Really Safe? A Study of Rideshares v. Taxi in San Francisco (December, 2014), <http://blog.zendrive.com/post/104915142448/taxi-vs-rideshare-in-sf>; *see also*, <http://www.marketresearchworld.net/content/view/5934/76/>

¹³ *Id.*

3. Regulation Should Only Capture Genuine Consumer Protection Concerns

In listening to complaints about the sharing economy from incumbent players and entrenched interests, the Internet Association encourages the committee to think about whether those arguments truly reflect a genuine concern for consumers, or whether they are, in fact, complaints against increased competition as a result of sharing economy entry. It is very important to distinguish between genuine and pretextual complaints in this context because the committee should only be concerned with consumer protection, and not with protecting competitors from lower prices and higher quality that actually *benefit* consumers.

In many respects, today's sharing economy experience mirrors that of the early commercial Internet. Since its early years, the Internet has played its part in the ongoing process known as creative destruction. Of course, the Internet did not invent creative destruction; as the Austrian economist Schumpeter first explained in 1942:

*"The opening up of new markets, foreign or domestic, and the organizational development from the craft shop to such concerns as U.S. Steel illustrate the same process of industrial mutation—if I may use that biological term—that incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one. This process of Creative Destruction is the essential fact about capitalism."*¹⁴

It is a truism that the Internet has "incessantly revolutionized" many markets in recent decades. The Internet has, since its inception, lowered entry barriers for new entrants, search and transaction

¹⁴ Schumpeter, *Capitalism, Socialism, and Democracy*, at p.83 (1942).

costs for consumers, and generally corrected information asymmetries in many markets, from contact lenses¹⁵ to wine.¹⁶

As with the early Internet, today's sharing economy platforms are spurring increased competition and consumer choice in our economy. To date, the sharing economy has disrupted competition in two sectors in particular, namely transportation and lodging. These sectors have operated for centuries relatively uninterrupted by innovation and the benefits that innovation brings to consumers. The recent introduction of new technologies, such as the smartphone and trusted payments systems changed this sleepy competitive landscape. These new technologies lowered entry barriers for sharing economy apps to match supply and demand in either side of their two-sided platforms in ways considered to be impossible less than a decade ago. And the results of this new entry are clear: prices have gone down and quality has gone up.

Although creative destruction can and does benefit consumers in the form of lower prices and increased quality, it also creates anxiety on the part of market incumbents. As Schumpeter correctly concluded back in 1942, "The resistance which comes from interests threatened by an innovation in the productive process is not likely to die out as long as the capitalist order persists."¹⁷ Fast-forward to the sharing economy in 2015 and this observation still holds true. Incumbents are unlikely to ever admit that they oppose competition from new entrants and so, as in

¹⁵ See, e.g., Report from the Staff of the Federal Trade Commission, "Possible Anticompetitive Barriers to E-Commerce: Contact Lenses", at p. 1 (March 2004). ("While eye care providers still control the prescription process, consumers now not only purchase more lenses with greater frequency but they also have a greater choice of lens suppliers and modes of delivery. These changes have caused tension among eye care practitioners, bricks-and-mortar lens sellers, contact lens manufacturers, Internet lens sellers, and state officials over issues such as licensing contact lens sellers, contact lens prescription release requirements, and methods of verifying prescriptions.")

¹⁶ Report from the Staff of the Federal Trade Commission, "Possible Anticompetitive Barriers to E-Commerce: Wine" (July 2003).

¹⁷ Schumpeter, *Capitalism, Socialism, and Democracy*, at p.132-3 (1942).

the Internet's early days, they will dress their concerns up as pre-textual consumer protection¹⁸ concerns. This is predictable behavior, but it ought not to dictate policymaking by this committee today any more so than it has in the past.

4. Many Consumer Protections Are Hardwired Into Sharing Economy Platforms

While the Internet Association agrees that consumer protection has a role to play in the sharing economy, we also submit that it is important for the committee to consider the unprecedented ways in which technology *already* enables the sharing economy to self-regulate to protect consumers.

At the FTC's June 9 workshop on the sharing economy, several panelists described how consumer protections are already hardwired into sharing economy platforms - through, trusted payment mechanisms, customer rating systems, and GPS tracking. Some have argued that these mechanisms diminish the need for government regulation in the sharing economy when compared to other sectors.¹⁹ From an economic standpoint, this argument withstands scrutiny.²⁰ If the core purpose of regulation is to correct market failures due to information asymmetries between buyers and sellers,²¹ and those asymmetries are corrected by technology, then the need for government intervention *is* diminished. In light of this, the Internet Association submits that the committee

¹⁸ *Id.* at p. 21.

¹⁹ The Consumerist, Nobody Really Knows What to Do About Regulating the Sharing Economy, Kate Cox, <http://consumerist.com/2015/06/10/nobody-really-knows-what-to-do-about-regulating-the-sharing-economy/> (June 10, 2015).

²⁰ Anne Hobson, Christopher Koopman, Matthew Mitchell, and Adam Thierer, "How the Internet, the Sharing Economy, and Reputational Feedback Mechanisms Solve the 'Lemons Problem'" (Mercatus Working Paper, May 2015) <http://mercatus.org/sites/default/files/Thierer-Lemons-Problem.pdf>

²¹ George A. Akerlof, "The Market for 'Lemons': Quality, Uncertainty and the Market Mechanism," *Quarterly Journal of Economics* 84, no. 3 (August 1970).

should show restraint before assuming that additional consumer protections are appropriate in the sharing economy space.

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In sum, the sharing economy is an exciting innovation that collapses distance between those offering services and those consuming services. The end results of this unique arrangement are increased quality and lowered costs. The sharing economy provides clear benefits to consumers, and evidence of this fact must be taken into account before taking legislative or regulatory action. These benefits include increased competition, lower prices, higher quality services, and an overall increase in consumer choice.

Lawmakers should consider whether sharing economy services may, in fact, be safer alternatives for consumers when compared to their incumbent counterparts. In listening to complaints against sharing economy entry into local markets, assess whether these complaints capture genuine consumer protection concerns, and are not simply complaints against increased competition that benefits consumers. In fact, safety is hardwired into sharing economy platforms through mandatory, two-way customer rating systems, and end-to-end GPS tracking.

Thank you for allowing to me to testify here today. I look forward to answering your questions.

Mr. BURGESS. The Chair thanks the gentleman. The Chair recognizes Mr. Passmore. Five minutes to summarize your testimony, sir.

STATEMENT OF ROBERT PASSMORE

Mr. PASSMORE. Let us turn on the button first. Good morning, Chairman Burgess, Ranking Member Schakowsky, and members of the committee. My name is Bob Passmore, Assistant Vice President for Personal Lines Policy at the Property Casualty Insurance Association of America, better known as PCI. On behalf of our nearly 1,000 member companies, I thank you for your invitation at—to speak today—at today's hearing.

PCI members are at the heart of the sharing economy. While innovators in the sharing economy have designed new ways of using technology to improve business models, insurers have been innovating new ways of providing protection for centuries, and similarly will be the grease that will enable the sharing economy to reach its potential. The sharing economy is typically not new commercial activity, but rather is a new business model that allows individuals to use their personal time and resources to engage in commercial activity, with the potential to provide for more efficient use of resources for society, while essentially creating millions of single-person businesses.

Where the sharing economy poses the biggest challenge, and the most controversy, is when they enter into a commercial activity that is highly regulated when conducted by a traditional business, such as a taxi company or a hotel. Essentially the same activity, but on a much smaller scale, but connected to a large sharing economy company. The policy question becomes what is the appropriate level of regulation, and does applying the same level of regulation render the sharing business model impractical or impossible? Insurers are certainly interested in the—understanding the answers to those larger policy questions, but of primary concern for insurers are critical insurance issues that are raised, as these business models blur the line between what has traditionally been thought of as a commercial or personal exposure.

A prominent example of this dynamic has been evident in the emergence of ride sharing, or transportation network companies, or TNCs. TNCs had initially relied on their—the driver's personal auto insurance policies for coverage, with the companies themselves providing some coverage that applied if the driver's coverage was exhausted. However, most personal auto policies specifically exclude coverage when the vehicle is being driven for hire, leaving TNC drivers facing some significant gaps in coverage. And since almost every State has a motor vehicle financial responsibility law that requires vehicle owners to have—maintain some kind of auto insurance coverage, disputes in coverage litigation were inevitable. If these coverage disputes would result in court decisions imposing coverage for driving for a TNC on a personal policy that was neither intended for—neither intended or priced for, this potentially shifts the cost of this—of the risk associated with driving for hire onto the personal auto insurance system, requiring that all bear—drivers bear the cost of the activities of a relatively small number of TNC drivers.

The good news is that TNCs and insurers have been able to reach a consensus on a model law that supports the sharing economy business model, while providing appropriate protection—insurance protection, as well as disclosures that protect drivers, consumers, and insurers. The consensus model also allows for the development of different private sector business solutions for personal and commercial insurance coverages that can evolve over time, and has already been adopted in over half of the States.

Over the last year it has become clear that, while there are significant insurance challenges presented by the sharing economy business models, solutions can be found by following a few principles. First, market-based approaches are preferred for both sharing business models and insurance, but in some cases State laws may need to be clarified to protect consumers in policy language certainty. Awareness of issues is essential. Many may not be aware if they have the right insurance when they enter into these activities. There needs to be proactive disclosures by the sharing business of what the insurance issues are, what coverage the sharing business is providing, and what additional coverage one may need to get prior to participation.

Finally, State laws and regulations need to be flexible to allow for different insurance solutions. The sharing economy business model creates opportunities for both personal lines and commercial lines insurance products, and the excess and surplus lines insurance market is where many new businesses, such as the sharing economy business models, find their coverage, and those avenues need to be open to the sharing economy business models as well.

PCI's mission is to promote and protect a competitive insurance market for the benefit of consumers and insurers. Our members are committed to developing and providing new insurance products to support commercial and consumer innovation for the sharing economy. We appreciate that Congress has taken an interest in these issues, and look forward to continuing to work on sharing economy issues in the future. Once again, on behalf of our members, I thank you for inviting us to share our views, and I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Passmore follows:]



**Testimony of Robert Passmore
Assistant Vice President- Personal Lines
Property Casualty Insurers Association of America (PCI)**

**US House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade Hearing**

**"The Disrupter Series: How the Sharing Economy Creates Jobs,
Benefits Consumers and Raises Policy Questions"**

September 29, 2015

Good morning Chairman Burgess, Ranking Member Schakowsky and members of the committee. On behalf of nearly 1,000 member companies of the Property Casualty Insurers Association of America (PCI), I thank you for your invitation to testify at today's hearing. My name is Robert Passmore, assistant vice president of personal lines policy at PCI. PCI is the property casualty industry's most effective and diverse trade association whose mission is to promote and protect the viability of a competitive private insurance market for the benefit of consumers and insurers.

PCI members are at the heart of the sharing economy, creating and providing new solutions for businesses and consumers to protect their personal and financial safety. PCI members have created new commercial insurance products for the sharing economy as well as new protection options for sharing economy contractors in fields ranging from ride-sharing, car-sharing, room-sharing, and a variety of small and home based businesses. PCI members have been developing new products to enable new business models and consumer products and services going back hundreds of years to the early shipping merchants. While innovators in the sharing economy have designed new ways of using new technology to improve business models, insurers have been innovating new ways of providing protection for centuries and will similarly in the future be the grease that will enable the sharing economy to evolve, thrive and provide maximum benefits to consumers and businesses.

The sharing economy has enormous potential to create new jobs and increase economic growth, allowing individuals to easily commercialize their time and property. However, policymakers, insurers and sharing economy companies will have to work together to design new regulations for the sharing economy to protect consumers as the distinction between personal and commercial activities becomes increasingly blurred. PCI has worked successfully with the ride-sharing companies and policymakers on model protections that ensure both drivers and passengers are provided with necessary insurance coverage. We look forward to working on similar solutions that support other sharing economy innovations in the future.

The sharing economy is typically not new commercial activity, but rather is a new business model that allows individuals to use their personal time and resources to engage in commercial activity. The sharing economy model has the potential to provide for more efficient use of resources for society, creating greater utilization of labor and property, while essentially creating millions of single person businesses with control over their level of engagement. There are a number of PCI members and other insurers who are helping to facilitate

the sharing economy by developing new commercial insurance policies as well as special coverage extensions for personal insurance products.

Where the sharing economy is creating the biggest challenges and the most controversy is in the area of commercial activities that are highly regulated when conducted by a traditional business (such as a taxi company or hotel) but potentially less regulated when conducted by individuals (such as carpooling or renting out an extra room) – essentially the same activity but on a granular individual scale while also connected to a large sharing economy company. The question becomes to what extent hybrid personal/commercial activities should be subjected to traditional commercial regulation and whether traditional regulatory treatment renders the new business model impractical or impossible.

These new business models also raise critical insurance issues as they blur the line between what has traditionally been thought of as commercial or personal exposure. For example, businesses are required in certain cases to have appropriate commercial auto insurance, liability protection, and workers compensation insurance. The extent to which sharing economy contractors must have similar insurance coverages is still in flux for most sectors, with some gaps and transitional confusion between coverages provided by the company versus the contractors' personal policies.

A prominent example of this dynamic has been evident in the emergence of ride sharing or transportation network companies (TNCs). Companies such as Uber and Lyft that initially had their drivers rely on their personal auto policies for coverage, with the companies themselves providing some coverage that only applied if the primary coverage was exhausted. However, most personal auto policies specifically exclude coverage when the vehicle is driven for hire (transporting persons or property for a fee) or rented out to others. The situation left TNC drivers facing significant gaps in coverage, since almost every state has a "motor vehicle financial responsibility" law that requires vehicle owners to maintain applicable auto insurance, coverage litigation was inevitable. Requiring coverage to be provided for the commercial activity of driving for a TNC was neither anticipated nor priced for and potentially shifts the costs of the risk associated with driving for hire on to the personal auto insurance system, requiring that all drivers bear the cost of the activities of a relatively small number of commercial drivers.

The good news is that, with some bumps in the road, the TNCs and insurers have been able to reach consensus on a model law that supports the sharing economy business model while providing appropriate insurance protection as well as disclosures that protect drivers, consumers and insurers. The consensus model also allows the development of different private sector business solutions for personal and commercial coverages that can evolve over time and it is quickly being adopted in the states. As of today, 21 states have passed legislation that includes the compromise model language and another 5 have passed legislation that is similar in substance.

Other sharing economy business models may not present the same dynamic as that posed by the motor vehicle financial responsibility laws. For example, renting out all or part of one's residence through sharing models like Airbnb once again presents a commercial activity that isn't new. In fact, many homeowners' insurers provide coverage when the residence is rented out on an occasional basis or offer endorsements providing coverage. There are also a variety of small or home based business programs available on the market today, with more being developed. But it is vitally important that sharing economy businesses and participants be aware of the insurance issues and take proactive steps to ensure that proper insurance coverage is in place before engaging in the commercial activity.

Over the last year it has become clear that, while there are significant insurance challenges presented by sharing economy business models, solutions can be found by following a few principles:

- Market based approaches are preferred for both sharing business models and insurance, but in some cases state laws may need to be clarified to protect predictable interpretation of insurance policy language and contract certainty.
- Awareness of insurance issues is essential; sharing economy contractors need to have a clear understanding, from proactive disclosure by the sharing business, of what the insurance issues are, what coverage the sharing business is providing and what additional coverage the contractor may need to obtain prior to participation.
- State laws and regulations need to allow flexible insurance solutions: the sharing economy business model creates opportunities for both commercial and personal lines insurance products. The excess and surplus lines insurance market is where many new business models find coverage and those avenues need to be open to the sharing economy business model as well.

PCI's mission is to promote and protect a competitive insurance market place for the benefit of consumers and insurers. Our members are committed to developing and providing new insurance products to support commercial and consumer innovation such as the sharing economy. We appreciate that Congress has taken an interest in these issues and look forward to continuing to work on sharing economy insurance issues in the future. Once again, on behalf of our members, I thank you for inviting us to share our views with you today and I would be happy to answer any questions you may have.

Mr. BURGESS. The Chair thanks the gentleman. The gentleman yields back. Mr. Baker, recognized for 5 minutes for summarizing your opening statement, please.

STATEMENT OF DEAN BAKER

Mr. BAKER. Thank you, Chairman Burgess, and Ranking Member Schakowsky. I appreciate the opportunity to address the committee. My name is Dean Baker. I am the Co-Director of the Center for Economic and Policy Research. I want to raise some general issues about the sharing economy. Certainly I would agree with comments that have been made that it offers great opportunities, basically, to take advantage of idle resources, as Ms. Smith had indicated her labor, her free time. Of course, with apartments, other sorts of idle resources to put them to greater use, that is the great opportunity, the great benefit of the sharing economy. The great risk is that it is—it—risk undermining a set of regulations at national, State, and local level that have often been put in place for very good purposes. And that is my real concern that I want to address here. And in doing so, I want to say I strongly disagree with Mr. Beckerman's comment that this is simply the Internet version of the Yellow Pages. We have that. It is called craigslist. We aren't talking about that. These are companies that have an active role in the operations that we are talking about here.

So very quickly, I want to outline four areas that I talk about in my testimony, where regulations are being called into question. First, labor regulations. Secondly, consumer, both safety and quality regulations. Third, a question on property rights that has come up in a lot of different contexts. Fourth, anti-discrimination laws and regulations. And fifth, an important issue that the committee should be concerned about, issues of tax collection at all levels of Government.

Starting with the issue of labor regulation, as Ranking Member Schakowsky raised in her opening testimony, we don't know that sharing economy companies will provide the same sorts of protections that we expect—that Congress and State and local governments have given to traditional employees. So that means wage and hour laws, do minimum wage laws apply, Workers' Comp laws. These are issues that should concern us. We don't want to see sharing economy companies benefit simply because they are capable to undermine those laws. I should also point out that in many cases, perhaps most cases, this is not an insoluble task. For example, Uber could very easily use the information that is available to ensure that all its drivers are getting minimum wage laws, and they are paid in accordance with wage and hour standards.

The second area, consumer safety regulation, we have extensive sets of regulations to ensure that, when you get into a cab, that the driver is a safe driver. I abuse my mother in this context. She is an 84-year-old woman who is a very decent person, and she has a Washington State Driver's License. I really do not think she should be driving an Uber. This is the sort of issue that we should be concerned about. We ensure that people who drive cabs, drive commercially, have commercial driver's licenses. We want to make sure that you have good drivers for Uber, or any other car driving service. Cars should be safe. Again, insurance issues. Insofar as those

are being settled, that is a big step forward, but I should point out that was not the original intention of Uber. They would—that was done under public pressure. In the case of—if we look at Airbnb, again, are they renting rooms that are safe? You know, do we know that they are—that they meet fire codes? This should be an important concern. Certainly we make sure that hotels—or at least we try to make sure that hotels are not fire traps. We would want to make sure the same is true of rooms rented through Airbnb.

The third issue has to do with property rights. Many leases, many apartment leases, prohibit subletting. Many—in many cases, someone could sublet through Airbnb in violation of that lease. Again, does Airbnb bear responsibility? I would say we would want a situation where they do bear responsibility. Condo associations also often prohibit subleasing. Again, are people renting out rooms through Airbnb, or whole units, in violation of condo laws? And then, of course, it goes beyond that. Very often you have rent stabilization rules, you have zoning rules. These have all been called into question by Airbnb. I am not saying Airbnb is necessarily wrong in these circumstances, but we need clear regulation.

The fourth issue, discrimination. Again, we have well developed sets of rules prohibiting discrimination based on race, gender. We don't want discrimination against the handicapped—handicapped individuals. We want to make sure—case of—with Uber, we want to make sure we have handicapped accessible vehicles. Again, this is something that is a matter of legitimate public concern threatened by the sharing economy companies.

The last point, we know in the case of traditional employers they are obligated to take out money for taxes for people, for their workers, and also, I should say, if you have someone renting out a unit, that can be done through Airbnb. This is a real concern. It is not a concern just for purposes of tax collection. We don't want someone to come to April 15 and suddenly find they owe the IRS \$5,000 because nothing has been taken out of their paycheck.

So these are very real concerns. So just to sum up, the whole point, to me, of the sharing economy is that it offers greater opportunities. We want to take advantage of the new technology. This should not be a way where firms are able to prosper simply by finding a more effective way to evade the law. Thank you.

[The prepared statement of Mr. Baker follows:]

“The Opportunities and Risks of the Sharing Economy”

**Written testimony of Dean Baker
Co-Director, Center for Economic and Policy Research (CEPR)**

**For the hearing on "The Disrupter Series: How the Sharing Economy Creates Jobs,
Benefits Consumers, and Raises Policy Questions"**

**Before the Subcommittee on Commerce, Manufacturing, and Trade
Of the U.S. House of Representatives Committee on Energy and Commerce**

September 29, 2015

I would like to thank Chairman Burgess and Ranking member Schakowsky for inviting me to testify on issues stemming from the growth of the sharing economy. The range of innovations that have collectively come to be known as the sharing economy offer both significant benefits to consumers and the economy more generally. Ideally, the sharing economy allows for idle assets to be more fully utilized. The sharing economy should make it easier for a household to rent out an empty house or room. It should also give people the option to do work in their spare time to earn extra income. In these and other ways the sharing economy can offer substantial benefits.

However, the sharing economy also presents substantial risks. The country has built up an extensive regulatory structure over many decades to protect workers, consumers, and property owners. The sharing economy will require the modernization of this regulatory structure. In some cases, regulations have outlived their usefulness and should be eliminated. However, many of these regulations serve important public purposes. If the sharing economy is used as a way to circumvent them, then it will impose substantial costs on society.

I will use my testimony to outline the sorts of issues that sharing economy firms have raised. Many of the regulatory issues posed by sharing economy firms arise at the state or local level. However, some of the issues affect laws set at the national level. Furthermore, the federal government can assist state and local governments in successfully modernizing regulations to deal with sharing economy innovations. For these reasons, the sharing economy raises many questions on which Congress should have input.

There are four basic types of regulatory issues posed by the sharing economy. First, it raises a number of issues on labor regulation. Most sharing economy firms treat the people who work for them as independent contractors. This denies them the range of protections they would have as employees. The appropriateness of this classification as well as the construction of alternative protections for independent contractors are important questions for policy makers.

The second category is consumer protection regulation. There are a variety of protections that have been put in place at all levels of government to ensure that services and products meet minimal standards of both quality and safety.

The third category of regulations concerns property rights. This comes up most prominently with rental services like Airbnb. Many apartment leases and condominium association rules restrict the ability to rent out units to third parties. If Airbnb and other services provide a mechanism for evading these restrictions, then it undermines their effectiveness.

The last category is rules prohibiting discrimination in the provision of services. There are laws at all levels of government prohibiting discrimination based on race, gender, and other

factors and also ensuring accessibility for people with disabilities. These laws will have to be adjusted to ensure that the growth of sharing economy firms does not undermine their purpose.

There is also an important question about collection and payment of taxes by sharing economy firms. It is possible that Internet-based providers may use this platform as a way to avoid the taxes imposed on their traditional competitors.

These issues are dealt with in turn below.

1. Labor Regulations

In the ideal vision of the sharing economy, the people who provide services are treating it as a spare-time activity, where they can earn some additional income. It is not a person's primary source of income. For this reason, sharing economy firms argue that its workers, who they treat as independent contractors, do not need the same sort of protections accorded employees.

This argument raises two issues. First, it is not clear to what extent the description is accurate. While we don't have reliable data at this point, there are certainly many accounts of people who treat their work for Uber, Lyft, or other sharing economy companies as a full-time job. The second issue is what sort of protections people working in the sharing economy should be guaranteed even if their work should not be viewed as comparable to a traditional job.

On the first point, whatever the current number of people who rely on sharing economy companies for full-time or near full-time employment is, that number is almost certain to grow as the sharing economy grows. For this reason, it is appropriate that people working for sharing

economy companies should enjoy protections that are comparable to those of traditional employees. Among these protections is the right to bargain collectively. This means that people working for companies like Uber or Lyft should be able to organize and negotiate for better pay and working conditions without the threat of being fired. There have been several cases brought before the National Labor Relations Board (NLRB) and in federal court arguing that people working for these companies are employees.

It is possible that these bodies will resolve the issue by saying that people working for these and other sharing economy companies are employees and therefore entitled to all the protections of employees. Nonetheless it is likely that, however these cases are resolved, there will still be substantial gray areas. For this reason, it would be helpful for Congress to more clearly define who should be counted as an employee, or perhaps more importantly who should be entitled to employee-like protections.

The range of issues involved is lengthy. In addition to the right to bargain collectively, employees are also subject to wage and hours regulations. This means that they are entitled to earn at least the minimum wage and to get an overtime premium if they work more than 40 hours a week. Workers are also eligible for unemployment benefits if they are laid off due to insufficient demand. They also are covered by workers' compensation through which they are insured against loss wages and medical expenses resulting from on-the-job injuries.

It would require some effort to redesign these protections to make them compatible with a sharing economy relationship that may be less formal than a traditional employer-employee relationship, but it is a doable task and there is a clear public purpose in adjusting regulation. It

makes little sense to require traditional employers to meet minimum wage standards and pay overtime premiums if we don't apply comparable rules to sharing economy competitors.¹ Not only does this put law-abiding firms at a disadvantage; it is basically giving them a back-door way around rules they choose not to follow. If we require traditional employers to meet wage and hour rules and but allow sharing economy companies to ignore them, we can expect to see rapid growth of sharing economy companies.

Furthermore, the logic of many of these rules would apply regardless of whether we think workers in the sharing economy are like traditional employees. For example, would we not expect sharing economy companies to be responsible for injuries workers have while doing work for them even if we don't classify them as employees? Also, traditional employers are expected to withhold taxes from workers' paychecks. This is done not only to increase compliance, but also to avoid situations in which workers face large tax liabilities every April. It would be possible to have comparable withholdings in a sharing economy relationship even if the worker is not classified as an employee.

2. Consumer Protection

In the sectors of the economy where the sharing economy has had the greatest impact to date, ride-hailing services and short-term rentals, their growth has posed a considerable challenge to

¹ In some cases it may be difficult to apply rules like the minimum wage to sharing economy activities, but in many cases it will not be difficult. For example, in the case of Uber, the company has information on the number of hours a worker drives and their gross revenue. It can impute costs per mile for their vehicle to back out a net wage that would have to be at least as high as required by the relevant minimum wage statutes.

the existing consumer regulatory structure. In both areas, it has proved difficult to apply the existing system of regulations directly to the new sharing economy companies that have entered the market.

In the case of ride-hailing services, the incumbent taxi industry was heavily regulated to ensure that both the cars and drivers were safe. Cities require that drivers get commercial driving licenses requiring a higher standard of driving proficiency than is needed for a normal license. They also require drivers to go through a background check to ensure that they don't have a criminal record indicating that they could pose a risk to passengers.

Taxis are also required to undergo regular inspections to ensure that they meet safety standards. In addition, taxis are generally required to carry substantial insurance so that passengers can be compensated if they are injured during a ride.

These requirements do not apply directly to Uber, Lyft, and other ride-hailing services. Both of these companies do claim to screen their drivers to ensure their competence and also to check their backgrounds. But this is done voluntarily and not as a response to regulations from which they claim exemptions. Both companies now also provide their passengers with insurance for their ride, although in many cities this may be less insurance than that required for the incumbent taxi industry.

There is also a risk in the taxi industry that the new ride-hailing services may effectively be cherry picking customers and possibly making taxi service for less affluent customers unprofitable. These services are set up so as to require that customers have both a smart phone and credit card to be able to use them. This effectively excludes the population that lacks one or

both. This group tends to be less affluent. While low- and moderate-income people may not be frequent users of taxis, they will often need them for doctor appointments, trips to the hospital, or grocery shopping. If the incumbent taxi companies cannot survive the competition from Uber and other sharing economy companies, this segment of the population may find it more difficult to meet its transportation needs. To date, this has not been an issue, but it is a potential problem that policymakers need to follow.

In the case of short-term rentals through Airbnb-type services, the established hotel industry is required to meet certain safety standards, most importantly a standard that its guests will be adequately protected against the risk of fires. Hotels are regularly inspected to ensure that they don't subject guests to excessive risks of fire and also that they are prepared to respond to a fire, should one occur. This means having working fire extinguishers readily accessible and also making sure that guest rooms have multiple exit paths in the event that one route is blocked due to a fire.

This sort of regulatory structure does not transfer readily to the Airbnb model. Airbnb does not have the ability to inspect every unit or room in a unit that is posted on its site. However, it could institute a requirement that anyone listing on the site have an insurance policy that covers guests against fire or other harm while they are staying with their host. The insurer will presumably set the price of the policy to incorporate the risk posed by the specific circumstances.

There is an argument that many regulations have been put in place over the years largely to protect incumbent firms. This is especially true in the taxi industry, where regulations

effectively prevented competition for well-entrenched incumbents. However, most consumer regulations were put in place to meet legitimate public concerns. It may often be the case that these concerns can be met with less onerous rules than now exist. For example, it may not be necessary to have taxi drivers take and pass a special drivers' education course to ensure that they are safe drivers. Nonetheless, it is reasonable to expect that people who are driving commercially will meet more than the minimal standards necessary to get a driver's license in many states. For example, my 84-year-old mother, who has a Washington State driver license, should not be an Uber driver.

State and local governments should be encouraged to experiment with more flexible forms of regulation. This can mean self-regulation. For example, a ride-sharing company can submit its procedures for ensuring that drivers and vehicles are safe to a public safety authority. The company can then be subject to random checks to ensure that it is complying with its stated policies. This sort of process is important not only for public safety but also to open up sectors to new competitors. A politically powerful firm like Uber may be confident that it can avoid being subject to existing taxi regulations, whereas an upstart competitor may not be so lucky. The goal should be clear rules that apply common standards to both existing firms and any new firms that enter the sector.

3. Property Rights

There are many restrictions on the use of rental or owned property that are imposed by other property owners. Some of these restrictions may be undermined by Airbnb and similar rental companies.

It is common for apartment leases to prohibit subleasing or renting out rooms. Such prohibitions both limit wear and tear on the apartment unit and limit the number of people who are entering the building. The latter can be both a nuisance, as in people entering and leaving at odd hours, and also a safety concern. Similar rules are also often put in place for condominium buildings or cooperatives. Using Airbnb or a similar rental service would likely be a violation of many apartment leases or condo association by-laws.

There is a fairly straightforward remedy for this problem. Services like Airbnb can require that users submit a copy of their apartment lease or condominium association rules and be held liable for violations if they allow a person to use the service for a property where such rentals are prohibited.

As a related issue, in many cities and counties, Airbnb has been held to be in violation of zoning rules that ban either the commercial use of residential property or limit an area to single-family units or in other ways restrict population density. As is the case with regulation in the taxi industry, the existing regulation may not be optimal. The best route forward is determine the extent to which the goals of the regulation meet legitimate public needs and modernize the rules to accommodate sharing economy companies.²

² There is also an issue in some cities with rent controlled or stabilized units. Airbnb can be used to evade the restrictions on rent increases, since there is no regulation applied to the charges for rentals through Airbnb.

In the same vein, there is evidence that Airbnb has been used to evade rules designed to protect affordable housing in some cities. In this case also, providing a service through the Internet should not be a mechanism for undermining regulation.³

4. Rules on Discrimination

Over the last five decades, there have been laws and regulations put in place at all levels of government that prohibit discrimination based on race, sex, religion, disability, and other factors. These laws are enforced against businesses, with companies often facing substantial penalties for violations.

Insofar as traditional hotels and motels lose out to Airbnb-type rental services, it will be considerably more difficult to enforce anti-discrimination measures. As a practical matter, it will be difficult to determine if specific individuals had discriminated in deciding to whom they would rent their unit or a room within the unit. There is not an obvious remedy to prevent such discrimination, but it is important that policymakers be aware of the risk. At the least, it would be useful to conduct regular testing to determine, for example, if African Americans, Hispanics, or other distinct groups have more difficulty renting out units than whites.⁴

³ See for example, Samaan, Ray, 2015. "Airbnb, Rising Rent, and the Housing Crisis in Los Angeles," Los Angeles, CA: Laane, available at <http://www.laane.org/airbnb-report>.

⁴ It is worth noting in this respect that one of the benefits of Uber is that African Americans can summon a car without the driver knowing their race. This prevents them from being able to discriminate in deciding whether to pick up the customer. This avoids the well-documented discrimination that African Americans face in being picked by taxis working for the incumbent industry.

One area in which discrimination can be easily detected and remedied is in the case of the people with disabilities. For example, both taxis and hotels are typically required by state or local laws to accommodate the people who use wheelchairs. In the case of taxis, this usually means having a certain percentage of the taxi fleet being wheelchair accessible. Hotels are usually required to have a portion of their rooms be wheelchair accessible. It would be possible to impose similar requirements on sharing economy firms. A company like Uber would be required to keep track of the percentage of its drivers who can accommodate customers with disabilities. A service like Airbnb could do the same with those renting units. If the percentage is below a threshold, then a fee can be assessed which would be paid to the taxi companies and hotels that are accessible. This would prevent these companies from being a situation where they could simply pass off the cost of meeting the needs of people with disabilities on their traditional competitors.

5. Tax Collection

Tax collection is another area in which the sharing economy poses important policy problems. The incumbent companies competing with sharing economy companies are subject to a wide variety of taxes. For example, hotels often have to pay a special hotel tax in addition to a state and/or local sales tax. As noted earlier, traditional employers are obligated to collect income

and payroll taxes from their workers' paychecks. It does not make sense to allow a segment of the market to enjoy special tax privileges because they are ordered over the Internet.⁵

The tax laws should apply equally to individuals renting out rooms through Airbnb and to hotel chains. Sharing economy companies should be required to report income to the relevant taxing authorities. This should not be an excessive burden, since in most cases the companies will already have all the necessary information on file.

6. Conclusion

The Internet allows for a range of services to be provided at lower cost and more quickly than earlier technologies. Consumers and the economy as a whole can benefit from the spread of Internet-based sharing economy companies. However, this new technology can also be used as a mechanism to evade taxes and necessary regulation. It will be important to modernize and redesign regulations prevent sharing economy companies from going this route. We want companies to compete to provide better and cheaper services, not to determine who can more effectively game the regulatory structure and the tax code.

⁵ Amazon has gained much of its market dominance because it has been exempted for most of its existence from having to collect the same sales taxes as its brick-and-mortar competitors, most of which are far smaller businesses.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman. Mr. Chriss, you are recognized for 5 minutes for summarizing your opening statement, please.

STATEMENT OF ALEX CHRISS

Mr. CHRISS. Good morning, and thank you Chairman Burgess, Ranking Member Schakowsky, and members of the committee, for providing Intuit the opportunity to be here. My name is Alex Chriss from Intuit, and I am the Vice President for QuickBooks Self-Employed Business. I appreciate the opportunity to speak with you today about the sharing economy, and I am pleased to provide some insights we have gathered from close collaboration with our customers. I will also outline three recommendations Government could take to ease the burdens of sharing economy workers.

As context, Intuit was founded over 30 years ago with one core mission that remains today, to improve people's financial lives so profoundly they cannot imagine going back to the old way of doing things. We currently serve more than 45 million consumers and small businesses with our QuickBooks, TurboTax, and Mint offerings.

In the past few years we have noticed an acceleration of a trend that began decades ago. We believe this trend to be a massive shift in employment towards a more independent, or self-employed workforce. Intuit recently conducted a study forecasting that self-employed will grow to represent 43 percent of the workforce by 2020. A very fast growing segment of this new workforce is the sharing economy. According to our data, 3.2 million Americans are earning income from the sharing economy. Within 5 years, our survey suggests the total population of sharing economy workers will more than double, to 7.6 million.

What is not—what is often not fully appreciated is that the people who are self-employed and in the sharing economy are ultimately a small business of one in the eyes of the U.S. tax structure. They have a unique set of financial management needs. They often co-mingle business and personal expenses in a single bank account, making expense management and deduction tracking burdensome. They get paid a gross amount, often on a weekly basis, making visibility into their real income, or what is safe to spend, nearly impossible. And they are often unclear about their quarterly tax obligations, as this is most often a new and unfamiliar requirement. It is with these unique needs in mind that we created our QuickBooks Self-Employed offering. We strived to make the business aspect of being self-employed simple and pain free, while improving our users' cash flow.

I would like to outline three opportunities policymakers could be taking action on to improve the lives of this fast growing segment of the economy. The first is to clarify what constitutes a record for Schedule C tax compliance. Sharing economy workers find customers and income at the touch of a button on a mobile device. If they are required to keep paper records to verify their Schedule C deductions, this requirement raises questions about the regulatory definition of what a record entails. Flexibility with respect to the term record would benefit the growth of this worker

segment. The less time people spend managing paperwork, the more time they have to earn a living.

The second is to enable sharing platforms to give guidance without triggering worker classification issues. Sharing economy platforms can play a role in helping this segment of the workforce meet and understand their obligations. Many sharing platforms limit the advice they provide to workers for fear of triggering employment regulations that would characterize this workforce as employees. Providing this information would be beneficial to the sharing platforms, the workers, and the IRS. This creates an opportunity for Government agencies that oversee classification guidelines. Clarity around the type of communication companies can share with self-employed workers will enable them to access helpful information regarding financial literacy, tax obligations, and savings.

Finally, the third recommendation is to update Government programs to support the self-employed. A great example is the Department of Treasury. They initially released its MyRA retirement savings product to employees to access exclusively through employers. They are now planning to allow individuals to open accounts, but they were not initially being considered, and had to wait for benefits to be opened up to them. Creating a shift in mindset where self-employed are considered part of the workforce is something Government agencies should prioritize.

We encourage the committee to explore ways to adapt our current structure to meet the needs of the sharing economy workers so that the growth and success of this segment continues. Once again, Chairman Burgess, Ranking Member Schakowsky, and members of the committee, thank you for giving Intuit the opportunity to share insights from our sharing economy customers, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Chriss follows:]

Testimony of

Alex Chriss
Vice President,
QuickBooks Self-Employed Segment
Intuit

Before the Subcommittee on Commerce,
Manufacturing, and Trade
U.S. House of Representatives
The Disruptor Series: How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises
Policy Questions

Tuesday, September 29, 2015
2322 Rayburn House Office Building

Good morning and thank you Chairman Burgess, Ranking Member Schakowsky and members of the Committee for providing Intuit the opportunity to be here today. My name is Alex Chriss, and I am the Intuit Vice President responsible for the QuickBooks division for the Self-Employed. I appreciate the opportunity to speak before you about the sharing economy.

Intuit **serves the needs of the self-employed**, including those in the sharing economy, with our QuickBooks Self-Employed product. As we developed this product, working closely with our customers, we have built an understanding of both the benefits and challenges associated with working in the sharing economy, and I am pleased to **share these findings today**. We also offer **three recommendations** for actions policymakers could take to ease the burdens of sharing economy workers:

1. **Clarify What Constitutes a "Record" for Schedule C Tax Compliance;**
2. **Enable Sharing Platforms to Give Guidance Without Turning This Segment of the Workforce Into Employees;**
3. **Update Government Programs to Support the Self-Employed and Workers Joining Sharing Economy.**

Before I begin, I would like to give you an overview of Intuit and the role we play in the small business space.

About Intuit

Intuit was founded in Silicon Valley over thirty years ago. Our mission has remained unchanged: to simplify and improve people's financial lives so profoundly, they cannot imagine going back to the old way of doing things.

We began with personal finance software, which simplified the common household dilemma of balancing the family checkbook. Today, we are one of the nation's leading providers of tax and financial management tools for consumers, small businesses and accountants.

At Intuit, customers are at the heart of everything we do. We were founded on the idea of customer-driven innovation, a mindset and methodology where Intuit identifies the financial needs of individuals and small businesses and then, through technology, provides solutions for these challenges. This process has helped us create offerings that improve the financial lives of more than 45 million individual and small business customers.

Our flagship products today are TurboTax, Mint and QuickBooks. The QuickBooks ecosystem serves small business customers with products that help them manage their finances, pay their employees, and process and receive payments.

More than five million small businesses use QuickBooks. Seventy-five percent of those businesses have ten employees or less. However, we learned through customer research that there were unmet needs of another segment of the small business market, the self-employed.

The self-employed may be categorized in a variety of ways, including independent contractor, contingent worker, temporary worker, freelancer, 1099 worker, moonlighter, sharing economy service provider, and so on. They are part of a massive shift in employment that has occurred over the past few decades.

The Rise of Self-Employment in the U.S.

The size of the self-employed workforce is widely debated. This is due, in part, to different definitions of this workforce and a lack of complete or reliable data. The Bureau of Labor Statistics (BLS) introduced a Contingent Work Supplement (CWS) report in 1995, but this supplement has not been provided since 2005. In the absence of a single source of truth, there are a range of interpretations depending on both the definition of self-employment and the data source. For example, a recent (April 2015) Government Accountability Office report based on 2010 General Social Survey (GSS) data indicated that self-employed workers comprised anywhere from 7.9 percent to 40.4 percent of the labor force.¹ The high end of this range includes all individuals engaged in so-called “alternative work arrangements,” while the low end covers “core contingent arrangements,” such as contract company workers, on-call workers and agency temps.

Intuit has been developing our own research on the scope of this sector, which shows that self-employment is undeniably on the rise. Based on a study we did with Emergent Research, we forecast that the self-employed - broadly defined as any individual earning freelance income - will grow to represent 43 percent of the workforce by 2020.²

The rise of the sharing economy is part of this fundamental shift to increased self-employment and it represents the next iteration of reduced friction between supply and demand in the labor market.

We believe the sharing economy workforce will more than double by the year 2020. We recently partnered on a study³ that found that:

- There are currently 3.2 million Americans earning income from the sharing economy.

¹ “Contingent Workforce: Size, Characteristics, Earnings, and Benefits,” GAO, <http://www.gao.gov/assets/670/669766.pdf> (April 20, 2015).

² “Intuit 2020 Report,” Intuit, <http://about.intuit.com/futureofsmallbusiness/> (October 2010).

³ “Intuit Forecast: 7.6 Million People in On-Demand Economy by 2020,” Intuit, <http://www.businesswire.com/news/home/20150813005317/en/Intuit-Forecast-7.6-Million-People-On-Demand-Economy#.VgTLH49Viko> (August 13, 2015).

- 79 percent of existing sharing economy providers say their work in this sector is part-time.
- Within five years, the total population of sharing economy workers will more than double to 7.6 million.

We're continuing to study this space, looking at the demographics, motivations, and challenges of workers pursuing self-employed work, including sharing economy jobs.

Sharing Economy Customer Profiles

We believe that the sharing economy represents the new face of entrepreneurship, where ambitious, hard-working people have the freedom and flexibility to set their own schedules and work toward their own goals.

Here are three examples of sharing economy workers that Intuit has heard from which speak to the trends we see in our tens of thousands of self-employed customers:

- Jose wanted to launch a food truck business in San Diego. Startup capital was not available to him, so he drove for Uber and Lyft for nine months to earn the capital he needed to make his small business dream a reality.
- Mason left his chauffeur job to drive for Uber. Mason does not consider himself a business owner but says the thing he loves best about his work today is that he can take his son to Giants baseball games on summer days and still work in the evenings to "pay the bills."
- Margo has worked for TaskRabbit for more than a year now. He started in Austin but had to quickly move to Los Angeles when his girlfriend was relocated for her job. Without having to notify anyone, and within hours of arriving in a new city, Margo's income picked right back up through TaskRabbit.

As you can see from these anecdotes, there is no single reason why people are turning to sharing economy work. We do, however, see some categories of sharing economy workers.

Based on internal Intuit customer research, here are five common motivations for why individuals participate in this workforce:

- **Want to be their own boss** - According to an internal Intuit survey of the self-employed from last year, 29 percent of respondents cited “the ability to be my own boss” as a key motivation, making it the second most common response after “make money.” These individuals want to manage their own work lives and define their careers on their own terms.
- **Aspiring entrepreneurs** - These are people who view sharing platforms as a stepping-stone to a long-term business opportunity. They want to test out ideas in a marketplace or eventually start their own small business.
- **Displaced workers** - These are the unemployed. Some may be long-term unemployed, meaning they may not technically be in the workforce anymore since they have stopped looking for a job. Others have experienced a loss of employment or even their careers. The risk level and barrier to entry for work can be lower for sharing platforms than for traditional employment. In some cases, all that is needed to get started is something an individual already has, such as a car, a driver’s license, or a clean background check. In other cases, these individuals bring significant skills to the table. For example, we have a QuickBooks Self-Employed customer in his fifties who was laid off from his job as an engineer and now works on the TaskRabbit platform as a handyman for hire. Under less than ideal circumstances, it has enabled him to pay off debt without having to dip into his savings.
- **Part-timers who need flexibility** - These might be students, stay-at-home parents, or caregivers for family members. They are people that have demands on their time and are not currently in a position to take a job with rigid hours. Many of them would not be working at all were it not for the ability to make their own schedule. Others would be, out of dire necessity, but they would be making a monetary or time-oriented sacrifice to do so.
- **Side-giggers looking for extra cash** - These people usually already have at least one job, but they are looking for supplemental income. In many cases, they are only planning to

continue working in the sharing economy until they reach a desired financial goal or build savings. Some of them are in between jobs and the sharing economy work is a stopgap measure to keep them afloat. Others are looking to start their own business and want to dedicate most of their time to getting it off the ground, but they still need some income in the meantime. This category can also include retirees - individuals who may still receive pension or retirement but are using this income to pay for other expenses.

While these are five common explanations heard when asking people how they came to work for a sharing economy platform, it is important to remember there are often several motivations that influence people's decisions, and these profiles are fluid. Taken together though, the profiles represent a new breed of entrepreneur. They do not have to find their own customers, since they are provided by technology. They just need to have the required skill, or time, and do the work.

But this new economy does come with its challenges.

Unique Challenges of the Self-Employed

People who are self-employed, including sharing economy workers, are ultimately a business of one, and they have a unique set of financial management needs:

- They often have co-mingled business and personal expenses and banking accounts.
- They get paid a gross amount and do not have visibility into their real income or what is safe to spend. They do not have the luxury of income statements that salaried employees might take for granted.
- They are often unclear about their quarterly and year-end tax obligations. They should pay taxes quarterly and most likely owe taxes versus getting a refund.
- Many self-employed workers, especially those in the sharing economy, do not necessarily know that they are considered a small business in the eyes of the U.S. tax

structure. Therefore, they may not know that they have to keep track of expenses and receipts in order to get critical tax deductions.

Take for example a driver that takes fares for multiple ridesharing companies, or someone who drives in the evening through Lyft and delivers groceries during the day through Instacart. They are now getting paid a gross amount daily by each sharing platform and incurring expenses related to multiple jobs. They have to track their own income, file tax forms four times a year, and ultimately figure out how to fend for themselves as a business of one.

We created QuickBooks Self-Employed to solve these challenges. The less time people spend figuring out their expenses and taxes, the more time they have to earn a living.

QuickBooks Self-Employed

QuickBooks Self-Employed empowers the self-employed worker segment of the small business community by alleviating the business and financial uncertainties characteristic of this small business population. Customers log into the QuickBooks Self-Employed product and connect their online banking accounts so that the transactions that have occurred related to these accounts appear as a list on screen. Users then categorize the income and expense transactions from the list as business or personal. They can also split an expense between the two categories. Separating their finances into two figurative piles creates clarity for users around what is considered personal income versus business income, which then informs their quarterly tax payments. The product helps users estimate their tax payment amounts and then prepopulates the necessary forms, making the tax compliance process simple.

Additionally, as a user categorizes their business expenses within the product, they are building the documentation required to complete their Schedule C for end-of-year deductions in order to appropriately reduce their tax burden. They can take this Schedule C to their tax preparer or into tax software to use in filing their tax assessments.

QuickBooks Self-Employed is an online and mobile product, so that users can access it anywhere, making it easier to stay on top of their financial situation.

Intuit Recommendations: Opportunities to Support the Sharing Economy Workforce

Based on all that we have and will learn about our self-employed customers, Intuit continues to look for ways to support them, both through our products and our recommendations for a common sense, flexible and forward-thinking policy landscape. Much more can be done from a regulatory perspective to help the self-employed, including those working in the sharing economy.

As discussed earlier, sharing economy workers are not always aware of, or even receiving, information they need in order to make smart decisions about their finances, tax obligations or benefit opportunities, whether it be from regulators or the platforms for which they provide services.

Sharing economy workers face unique and often complex tax obligations, which can be frustrating and intimidating, especially if they are not aware of the regulatory structure they fall into. Our product helps protect sharing economy providers by ensuring that they are meeting their tax compliance obligations.

Intuit would like to see the following challenges addressed to better support the self-employed broadly, including those that work in the sharing economy:

Clarify What Constitutes a “Record” for Schedule C Tax Compliance – Sharing economy workers are now finding customers and income at the touch of a button on a mobile device. Yet they must keep paper records to verify their Schedule C deductions. This requirement raises questions about the statutory and regulatory definition of what a “record” entails. Could an online banking record of a transaction suffice as the required documentation? Is an electronic copy of the receipt sufficient? Flexibility with respect to the term “record” would certainly

benefit the development of this worker segment. Simple, clear guidelines that allow for a range of options to accommodate various circumstances would aid all small businesses, including sharing economy workers, and would be adaptable to new technology as it continues to develop.

Enable Sharing Platforms to Give Guidance Without Turning This Segment of the Workforce

Into Employees - We believe that sharing platforms should play a role in helping this segment of the workforce meet and understand their obligations. Many of these sharing platforms limit the advice they provide to workers, for fear of triggering employment regulations that would characterize this workforce as “employees.” Yet the provision of the information would be beneficial to the sharing platforms, the workers, and the IRS. There is an opportunity for government agencies that oversee classification guidelines to provide more clarity around what type of communication companies can share with self-employed workers. We would like to see helpful and common sense information that empowers self-employed workers with regard to basic financial literacy, tax obligations and savings, be exchanged between the two parties.

Update Government Programs to Support the Self-Employed and Workers Joining Sharing

Economy - We are headed towards a world where four in ten Americans will be self-employed. As part of that shift, the sharing economy is here to stay and will continue to grow, and workforce support structures and regulations need to evolve to include this new segment of the economy. There are opportunities for government agencies to assess the social programs in place already to see if they could be opened to or updated for all self-employed workers. For instance, the Department of Treasury initially released its myRA retirement savings product to employees to access through their employers. They are now planning to allow individuals to open accounts, with or without a traditional employer. This broadening of the program to include individuals, including the self-employed is important. However, this is another example where the self-employed workforce were not considered and as such, had to wait for these benefits to be open to all individuals. Creating a shift in mindset where self-employed are

considered part of the workforce is something that government agencies should continue to adopt.

Intuit and other private entities will keep innovating in this space. We believe in the power of technology to solve important customer challenges and we know that other companies have similar missions. We hope to see increased private tools and programs that will step in and fill gaps for the self-employed, including sharing economy workers. These new services, combined with opportunities for public-private partnership on solutions, will ultimately create an environment that will encourage the long-term growth and success of the self-employed.

Conclusion

Once again, Chairman Burgess, Ranking Member Schakowsky and members of the Committee, thank you for giving Intuit the opportunity to share insights from our sharing economy customers.

This hearing is a first step in the process of learning directly from this segment of small businesses as a growing part of the American workforce. It is important to draw insights about their needs and what is important to them. Through this process we can together understand the requirements of this evolution in the “new economy,” update “old economy” regulatory structures and develop the right solutions for the 21st century workforce. We encourage the Committee to continue to explore ways to adapt our current structures to meet the needs of the sharing economy’s workers. We pledge to work with the Committee on their efforts and believe that as this segment grows, the private and public sector have a great opportunity to work together to empower them to thrive.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman. Mr. Lieber, you are recognized for 5 minutes for an opening statement, please.

STATEMENT OF JONATHAN LIEBER

Mr. LIEBER. Good morning, and thank you for the opportunity to testify today. My name is Jon Lieber, and I am testifying on behalf of Thumbtack. We are a San Francisco based technology company that matches consumer with—consumers with service professionals to help them accomplish projects that are central to their lives. We are honored to be part of this discussion here today on behalf of our growing technology companies and the small businesses we serve.

Thumbtack's network of more than 150,000 active professionals help customers get started with more than 5 million projects each year. We are proud to say that we will be putting more than a billion dollars into the pockets of these professionals this year, and multiples of that in years to come. Our professionals are active across all 50 States, and here in the District of Columbia, and they offer services across more than 1,000 categories, from dog walking to bathroom remodeling. About half the service professionals on Thumbtack have been in business for themselves for 5 or more years, and similar numbers report that they have one or more employees. Two-thirds say that the businesses they run on Thumbtack is their primary form of income.

Our most active categories are events, such as DJs, photography, and catering, home improvement, including lawn care, house cleaning, plumbing, and electricians, and we also offer wellness services, like personal training, and a variety of lessons, from Spanish to horseback riding. And though we are headquartered in San Francisco, it is only our 11th biggest market. We operate only in the United States for now.

Although the hearing today is officially about the sharing economy, this name is frequently misapplied to a variety of new business technologies that are connecting people together. Thumbtack does not consider ourselves to be part of the sharing economy. We like to say we are part of the real economy. Technology is enabling the businesses who use Thumbtack to work—find work faster and cheaper than they ever could before. And not to pile on the Yellow Pages here, but while a previous generation was limited to placing an ad in the Yellow Pages and waiting for the phone to ring, Thumbtack directly connects these small businesses to customers who are looking for their services.

The ease of introducing small service businesses to new clients is solving one of the biggest problems that these businesses have. And along with back office support tools, like those offered by Intuit, is lowering the cost of starting and growing a successful small business. We believe that we are empowering these professionals to realize their dreams of working for themselves, and the stories that we hear from our pros about what Thumbtack has enabled them to do are inspiring and powerful.

In my written testimony I discuss some of the effects that technological disintermediation is having on both consumers and the professionals who serve them, and I would like to mention two of

them now. First is that although disruptive technology companies are bringing attention to issues of worker classification and workplace benefits, for small businesses, like the ones that use Thumbtack, to grown, these issues aren't new.

Because Congress has passed responsibility for certain elements of the social safety net onto employers through a combination of mandates, tax incentives, and payroll taxes, we have created a two-tier benefit system in this country, one for individuals who generally work full time at larger companies, and one for everyone else. The decision to go work for one's self has long meant giving up the comforts of traditional employment, including paid time off, and a variety of tax-preferred health and retirement benefits. And although Congress has attempted to extend some of these benefits outside the workplace through the Affordable Care Act and tax-free savings vehicles, like IRAs, there is more that could be done. To the extent possible, benefits should be tied to the worker, and not their place of work, or their form of compensation.

Small businesses are also intimately familiar with issues surrounding worker classification. Although many of the businesses we speak with would love to bring on full time workers to help them expand, the cost, not just in wages, but in compliance and benefits, are often prohibitively high. The decision to bring on a full time worker can frequently mean with—dealing with unexpected and expensive mandates, such as California's recent decision to require that all employers, regardless of size, provide paid sick leave. Often it is far easier to rely on independent contractors, who generally don't qualify for these benefits.

The second issue I would like to emphasize for the committee is the need for better measurement tools. Although all signs point to the rapid adoption of technology that will connect people together, and allow an increasing number of people to work outside of the traditional employment system over the coming decades, we don't have a great count of how many people are actually engaged in this kind of work. The Bureau of Labor Statistics hasn't had dedicated funds to study this segment of the workforce, which they call contingent workers, since 2005. Private researchers and corporations are attempting to fill the gaps, but the Government should be doing more to keep up with the pace of change in the labor market by more accurately tallying and releasing data on the number of self-employed and independent contractors on a more regular basis.

Thank you again for the opportunity to testify, and I look forward to taking your questions.

[The prepared statement of Mr. Lieber follows:]

Thumbtack

Digital Marketplaces and the Future of Work

Statement of Jonathan Lieber
Chief Economist, Thumbtack

U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade

September 29, 2015

Executive Summary

Digital technology has opened new paths for millions of Americans to find work. Although there is much confusion in the terms used to describe the different platforms that obscures important differences between them, they all share the basic feature that they are connecting people to facilitate commercial exchange. Because technology has allowed a disintermediation between the people doing the work and the people receiving the benefit of the service, we should expect to see more services being performed. Direct exchange between individuals - facilitated by digital platforms - is likely to become a more common form of commercial interaction in coming years. As a result, the people doing the work are going to be more empowered but less protected by the benefits offered by a traditional workplace.

Thumbtack is a six-year-old marketplace used by more than 150,000 active small businesses to find new customers and help them accomplish projects that are central to their lives. For the small businesses who use our platform, the issues that are currently being scrutinized by policymakers - how businesses attract and maintain a high quality workforce at a low cost with maximum flexibility - are nothing new.

There is a litany of benefits available to individuals who are traditionally employed that are not available to the legions of contingent workers in the United States. Policymakers should consider actions that extend these benefits, where feasible, to the millions of American entrepreneurs and sole proprietors who don't fall under the umbrella of traditional employment. Doing so in a smart way will also benefit the small business owners who are today employers or who aspire to be employers down the road. If they don't, judges, juries and private litigants will impose outdated solutions that will ultimately harm consumers and workers.

Introduction

Thank you for the opportunity to testify this morning. I am testifying on behalf of Thumbtack, a San Francisco-based technology company that matches consumers with small business service professionals to help them accomplish projects that are central to their lives. We are honored to be a part of this discussion here today on behalf of growing technology companies and the small businesses we serve.

Thumbtack's network of more than 150,000 active professionals each quarter helps customers get started with more than 5 million projects each year. We are proud to say that we will be putting more than a billion dollars into the pockets of these professionals this year, and multiples of that in the years to come. Our professionals are active across all 50 states and here in the District of Columbia, and they offer services across more than 1,000 categories, from dog walking to bathroom remodeling. About half of the service professionals on Thumbtack have been in business for themselves for five or more years, and similar numbers report that they have one or more employees. Two-thirds say that the business they run on Thumbtack is their primary form of income.

Our most active categories are personal training, lawn care, moving, house cleaning, DJs, catering, and photography. And though we are headquartered in San Francisco, it is only our 11th biggest market - our biggest markets are New York, Los Angeles, Dallas, Atlanta, and Chicago. We operate only in the United States for now.

The Sharing Economy - or Whatever You Want to Call It

Thumbtack represents a new class of business that simply wasn't possible to imagine a decade ago. The internet has revolutionized human interaction at an unprecedented clip. The first revolution came in how we shared information - the original use for networked computers was the exchange of information in military and later civilian

functions. In the late 1990s came a wave of innovators - from Amazon to eBay - who changed the way we shopped for goods online. In the early 2000s, social networks revolutionized human interaction. And today the coming revolution is in the way we connect with one another to provide the services important to our daily lives. This latest revolution is in many ways a combination of the commercial interaction, information sharing, and social interaction of the first three waves, and is enabled by each.

Smartphone technology, currently used by about 64 percent of Americans, means that users have a constant connection to buy groceries, hail a ride, plan a vacation, or schedule a housecleaner while they are relaxing on the beach or out walking the dog. Some of these services like Uber or Postmates use a dispatch model that sends a relatively commodified ride or a meal at the push of a button. Other services like Airbnb or Thumbtack use a marketplace model, that allows the consumer to pick and choose from a network of options best suited for their needs.

The common thread among all of these platforms is direct exchange between individuals that wasn't possible without technology enabling the transaction. Although previous generations hired service providers to complete projects for them, the search costs for finding a skilled professional were high, and for the professionals identifying and soliciting new work was a challenge that typically involved placing an ad in the Yellow Pages and hoping that the phone would ring.

Because technology has lowered the transaction costs of finding a driver, hiring a lawn care expert, or delivering the groceries, we should expect these direct exchanges between individuals to become a more common form of commercial interaction in coming years. Digital service platforms will save labor for future generations the way household appliances like the dishwasher and clothes dryer did for previous generations. And the people doing the work, who will not be reliant on a single source of

income, will become more empowered working for themselves but less protected by the benefits offered by a traditional workplace.¹

A quick note on terminology - because these services are essentially connecting people to other people, they have attracted a variety of ever-changing terms to describe them. One popular term - the “sharing economy” - is particularly inapt due to the fact that the one feature each of these services has in common is that money is being exchanged for a service. There is no actual “sharing” in the sense of which we learned about in preschool. The gig-economy, 1099-economy, collaborative consumption, peer-to-peer, on-demand... these terms confuse the issue of what is actually happening with the changes we are seeing in how people are turning their time and effort into money.

Being precise in how we talk about these issues is important because the differences in the business models raise different sets of policy considerations. To take two prominent examples, Uber and Airbnb have both figured out how to take underutilized resources, private cars and private dwellings, and create productive assets out of them by enabling people to “share” them with others for a fee. But saying they are both part of the same sector totally obscures the radically different policy issues raised by both. Airbnb doesn't have the labor issues that Uber does, and Uber doesn't have the zoning and other issues that Airbnb does.

It is important to note here that, generally, when it comes to issues of labor laws and the relationship of a worker to an employer, the marketplace services discussed above have not run into the same kinds of problems as the dispatch services discussed above. True marketplaces like Thumbtack generally tend to be places where buyers and sellers are matched together to work out agreeable terms of exchange. The relationship between a dispatcher and a labor provider is more ambiguous, especially when the

¹ This is true at least insofar as those occupations are not yet automated by ever increasingly intelligent computer systems. For one theory on professions most likely to become automated in coming years, see [The Future of Employment: How Susceptible Are Jobs to Computerisation.](#)

dispatcher is largely responsible for setting prices and dictating the type of work which is to be provided.

Regardless of the model, the Bureau of Labor Statistics uses the term "contingent worker" to describe workers "who do not expect their jobs to last or who reported that their jobs are temporary." This term doesn't capture everything about Thumbtack pros, but for purposes of thinking about the future of work, this is the most useful term.

What We Don't Know Hurts Us

The growth in this form of earning income brings with it a problem of measurement. Looking strictly at traditional measures of self-employment show that the percent of workers who are self-employed, according to the Bureau of Labor Statistics, has declined over the last ten years. Other metrics, such as the number of workers holding multiple jobs and the number of workers working part time, haven't seen the type of increase you might expect from some of the breathless coverage of the "gig economy" in recent months.

Government statistics do not provide much insight into the contingent workforce. As outlined in a letter from the Government Accountability Office to Senators Murray and Gillibrand from April of this year, the Bureau of Labor Statistics has periodically conducted a supplemental study of individuals without "standard work arrangements." However, the BLS has not had funds to conduct this survey since 2005. Although the Appropriations Committee in both the Senate and the House have recommended the BLS conduct this study again, they have not provided additional resources to make sure this happens.

Because of the lack of information, GAO writes that "The size of the contingent workforce can range from less than 5 percent to more than a third of the total employed labor force, depending on widely-varying definitions of contingent work."

Several private organizations have attempted to count what the government has not seen. An analyst from the Bay Area Council got access to IRS tax records and documented a steady increase in the number of Form 1099s filed with the agency since the end of the last recession, as compared to relatively flat growth in Form W-2. Intuit commissioned a report that estimates 25-30 percent of the American workforce are contingent workers, and that contingent workers will be up to 40 percent of the labor force by 2020. A study by the Freelancers Union and UpWork estimates the current numbers as being slightly larger at 34 percent today and growing.

Clearly this is an area where we need better information before legislating.

Nothing New Under the Sun

As we discuss the future of work, it is important to reflect on what aspects of the future look similar to the past. The "gig economy" is the topic of the day, but many aspects of it will look very similar to small business owners. The small business owners who use Thumbtack to find new work don't think of themselves as "1099" workers, but for years they have lived with the same flexibility and uncertainty that comes with it.

These small business owners confront the changing workforce both as individuals looking for new clients and in many cases as employers.

1099 contractors - called so because of the form they have to fill out to report their income to the IRS - have long been used by businesses large and small. The BLS in a 1999 report called out that "the age of "just in time" production has given rise to "just in

time" workers — employees whom a business can hire on a moment's notice to fill a moment's need." A quick internet search on worker classification issues turns up Congressional hearings on the issue from as far back as 20 years ago, before the smartphone was even a practical concept.

According to Scott Shane, a professor at Case Western Reserve University, spending by sole proprietors on contractors nearly doubled between 2003 and 2011. Professor Shane also writes that this "probably reflects the disproportionate rise in benefits costs and the increasing need for flexibility in changing work force size."

These rising costs and the associated complexity of bringing on full-time workers can keep a growing small business from hiring their first worker at all - we frequently hear from the small businesses on Thumbtack that hiring employees is a daunting task with many pitfalls and unknown penalties for making a mistake in the byzantine process. Only 36 percent of the respondents to our 2015 Small Business Friendliness Survey reported that hiring employees was either "somewhat" or "very easy." The simplicity of bringing on a 1099 contractor where possible is in many cases preferable to the complexity and cost of a W-2 worker.

The fact that a new era of technology companies that rely on labor inputs are again drawing policymakers' attention to the issue should be celebrated and seen as an opportunity to revisit worker classification rules, and more fundamentally as a chance to rethink why we as a society have created two classes of workers and what that means for the future of work.

Benefits

Full-time employment in America has traditionally been associated with a package of non-wage benefits that either employers have opted in to as a way of attracting and

retaining high-quality workers, or that the government has mandated or encouraged as a way of ensuring workers are protected from misfortune in the labor market or to help prepare for retirement.

The table below offers a non-comprehensive overview of the traditional benefits that can be associated with full-time work in America.

Benefit	How has the government encouraged?	Received by Contractors?
Medical Insurance	Tax preferred	Generally no
Social Security	Taxed	Yes
Pension/Retirement Savings	Tax preferred	Generally no
Worker's Compensation	Mandated depending on state	Sometimes
Unemployment Insurance	Taxed	No
Paid Parental/Sick Leave	Voluntary, mandated by certain states	Generally no
Paid Vacation or Holidays	Voluntary	Generally no
FMLA Leave	Mandated	No
Overtime	Mandated	No
Minimum Wage	Mandated	No
Fringe benefits (parking, child care, Flexible Spending Accounts, etc)	Voluntary, Tax preferred	Generally no
Disability Insurance	Taxed; mandated by certain states	Yes
Sick leave	Mandated by certain states	Generally no

These benefits are either entirely voluntary, mandated by the government, incentivized through a tax benefit provided to employers, or run through fully socialized programs that collect an additional tax on an employee's wage that is credited by the government

to be delivered to the employee should a qualifying event such as disability or job loss occur.

When it comes to both voluntary and tax preferred benefits, small businesses offer benefits at rates much lower than their larger competitors, due to the expense and legal and operational compliance costs. In our [annual survey of small businesses](#), 48 percent of respondents said that getting health insurance was either somewhat or very difficult.

According to data from the BLS, employees at private firms with fewer than 50 employees had access to retirement and medical benefits, and paid sick days, vacation, and holidays at rates significantly lower than employees at larger private firms. The difference is even greater at firms with more than 500 employees.

Percent of Firms Where Employees had access to...					
	Retirement Benefits	Medical Benefits	Paid Sick Leave	Paid Vacation	Paid Holidays
Firms with fewer than 50 employees	46	53	49	65	66
Firms with 100 or more employees	84	84	72	86	86
Source: BLS					

Making a broader package of benefits available to contingent workers is a laudable goal. It would help the workers by providing a flexible safety net that could travel with them between jobs. It could help employers, including the [5 million small employers](#) in the United States, by taking the onus off of them to provide a competitive package of non-wage benefits, ultimately making compensation packages and legal compliance simpler. Detaching benefits from employers was one of [the motivations](#) behind the Affordable Care Act, and [there is evidence](#) that decoupling these benefits is effective in enabling people to work for themselves.

These changes are not without roadblocks, unfortunately.

First, it is clear that some of these benefits are easier to provide to contingent workers than others. For example, Congress acted in 1974 to create tax-preferred savings vehicles for individuals who wished to save for retirement that offered similar benefits to the employer-sponsored deferred compensation packages of their day (though with different contribution rules and limits). Congress has also already created tax-preferred savings vehicles like Health Savings Accounts or provided the child-care credit that are available to the self-employed as alternatives to employer-provided benefits like Flexible Spending Accounts.

A relatively simple, though potentially costly, change could be to create similarly tax-preferred savings vehicles designed to be used for spells of unemployment or periods of voluntary leave by contingent workers. A more burdensome route might be to require 1099 workers or the self-employed to pay FUTA (Federal Unemployment Tax Act) taxes the way they are currently required to pay FICA taxes (Federal Insurance Contributions Act, more commonly known as Payroll taxes). Expanding these taxes could be a relatively simple, though perhaps not desirable, action.

Second, providing paid vacation or maternity or paternity leave to workers who don't have a steady employer is a lot more complicated - who will pay for the work that isn't being done? When a professional photographer goes on maternity leave or when a plumber takes his family on a vacation, they aren't getting paid time off - if they aren't doing the work, there is no one there to pay them.

Workers' Compensation insurance, which was traditionally a bargain that freed employers of the legal liability from workplace accidents in exchange for creating insurance pools that benefited injured workers, is also a complicated issue with rules

and rates that vary from state to state. In the case of independent contractors and the self-employed, who can be eligible to file claims depending on the circumstance, mandating an insurance fee for Workers' Compensation would raise costs that don't currently exist. Many private companies offer workplace injury insurance for both independent contractors and the companies that employ them, and, while private incentives clearly currently exist for the purchase of such policies, Congress could examine ways to encourage its adoption.

For independent workers, more flexible, tax-preferred savings accounts could help them to save earnings for these life events, but there are probably other alternatives worth exploring by the Committee.

How to Respond to the Future

Regardless of why we are talking about these issues or who they affect, they are important issues that will have long run implications for the security of American workers and the innovative landscape in the decades to come. Stifling innovation or preventing small businesses from bringing on new employees because of government rules that don't match the times would be a regrettable policy error.

Current litigation asks jurors to decide into which of two outdated categories a new model of worker fits. The legislative process has created two classes of workers named after tax forms - W-2 and 1099 - and has provided courts very little guidance on how changing circumstances should be accounted for given this limited choice. There is very clearly at least a third class of worker - some have labelled them "dependent contractors" - for which current law is a bad fit. And if legislators don't act, courts and juries will.

To the extent possible, detaching benefits from specific employers and encouraging savings for contingent workers are goals policymakers should keep in mind when examining these issues.

Although many regulatory issues facing small businesses in America are at the state and local level, there are also many benefits that are mandated or created at the federal level, where Congress reigns supreme. And if policymakers don't act, the courts will - to the great detriment of worker flexibility, economic growth, and innovation.



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Mr. BURGESS. The Chair thanks the gentleman. The gentleman yields back. The Chair would ask unanimous consent that Mr. Pallone be allowed to give his opening statement out of order before we proceed to questions. Mr. Pallone, you are recognized for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. Today this subcommittee has the opportunity to discuss one of the fastest growing sectors of the U.S. economy, and that is the sharing economy, which is just not millennials hailing rides and renting spare rooms from their phones. In communities across the country, Americans are using their computers and smartphones to order a meal, find a gardener, sell homemade crafts, and even request a dog sitter.

Just like Google and Facebook before them, businesses like Uber, Lyft, and Airbnb are rapidly evolving from names into verbs. One recent study predicts that the five biggest sectors of the sharing economy generated \$15 billion in revenues last year, and could exceed \$330 billion in a decade. In my home State of New Jersey, Uber has already signed up 9,000 drivers. These businesses can offer benefits for both buyers and sellers. Some platforms provide temporary access to goods and services that buyers might not be able to otherwise afford. Consumers enjoy the convenience of being able to summon a ride, request a dry cleaning pickup, or order groceries from a device in their pocket. And sellers can benefit from a new source of income, sometimes just by renting items sitting unused in their basements or garages.

But the growth of the sharing economy has also raised a number of difficult issues. Many services track their users' location, potentially putting privacy and safety at risk. To verify users' identity some apps store credit card information, home and work addresses, and other personal information. Consumers often have no way of knowing if their information is protected from a data breach, or if it will be sold to or shared with an unknown third party. In addition, many apps allow both buyers and sellers to view ratings and reviews of past transactions. These reviews can push bad actors out of the market by making sure users are trustworthy and legitimate, but it can also be difficult to tell if these reviews are accurate, and it is unclear whether reviews and rankings alone can protect users' safety.

As more Americans seek to provide services in the sharing economy, the question of whether they are employees or independent contractors remains unresolved. Other than that logo on the door, there is little obvious difference between Uber drivers and cab drivers, but for the workers a lot is riding on the distinctions. Unemployment benefits and overtime pay are just a couple of the workplace protections at stake. State and local governments across the country are also grappling with the regulatory challenges posed by the growth of the sharing economy, including whether companies are responsible for paying local taxes, providing insurance, or conducting background checks.

The sharing economy is about transforming innovative ideas into services we depend on, but that innovation must be coupled with basic protections for all participants, including worker protections, privacy, data security, and safety, and I am confident that we can find a balance that protects consumers while preserving innovation, and ensuring a level playing field for businesses. And I think the—I, again, thank the chairman for holding this hearing, and giving me the opportunity to make my statement. Thank you.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today this subcommittee has the opportunity to discuss one of the fastest-growing sectors of the U.S. economy. The “sharing economy” is not just millennials hailing rides and renting spare rooms from their phones. In communities across the country, Americans are using their computers and smartphones to order a meal, find a gardener, sell homemade crafts, and even request a dog-sitter.

Just like Google and Facebook before them, businesses like Uber, Lyft, and Airbnb are rapidly evolving from names into verbs. One recent study predicts that the five biggest sectors of the sharing economy generated \$15 billion in revenues last year and could exceed \$330 billion in a decade. In my home State of New Jersey, Uber has already signed up 9,000 drivers.

These businesses can offer benefits for both buyers and sellers. Some platforms provide temporary access to goods and services that buyers might not be able to otherwise afford. Consumers enjoy the convenience of being able to summon a ride, request a dry-cleaning pickup, or order groceries from a device in their pocket. Sellers can benefit from a new source of income, sometimes just by renting items sitting unused in their basements or garages.

But the growth of the sharing economy has also raised a number of difficult issues. Many services track their users’ location, potentially putting privacy and safety at risk. To verify users’ identities, some apps store credit card information, home and work addresses, and other personal information. Consumers often have no way of knowing if their information is protected from a data breach or if it will be sold to, or shared with, an unknown third party.

In addition, many apps allow both buyers and sellers to view ratings and reviews of past transactions. These reviews can push bad actors out of the market by making sure users are trustworthy and legitimate. But it can be difficult to tell if these reviews are accurate, and it is unclear whether reviews and rankings alone can protect user safety.

As more Americans seek to provide services in the sharing economy, the question of whether they are employees or independent contractors remains unresolved. Other than the logo on the door, there is little obvious difference between Uber drivers and cab drivers. But for the workers, a lot is riding on the distinctions. Unemployment benefits and overtime pay are just a couple of the workplace protections at stake.

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The sharing economy is about transforming innovative ideas into services we depend on. But that innovation must be coupled with basic protections for all participants, including worker protections, privacy, data security, and safety. I am confident that we can find a balance that protects consumers while preserving innovation and ensuring a level playing field for businesses. I thank the chairman for holding this hearing and look forward to hearing from our witnesses.

Mr. BURGESS. The Chair thanks the gentleman, and the Chair would like to remind members that, pursuant to committee rules, all members’ opening statements will be made part of the record. We conclude, then, our witness testimony, and we thank you for your presence and your testimony today. We will move to the questions part of the hearing. And I will recognize myself for 5 minutes for the purposes of questions.

Mr. Chriss, let me ask you, because the study that we both reference, that estimated that almost 8 million people will be participating in a sharing economy very soon, begs the question, why are so many people showing up to participate in the sharing economy?

Mr. CHRISS. Thank you. I think one of the things that we have seen, as people are coming in, and—we actually refer to this as the on demand economy. On demand refers to not only the ability to push a button, as a consumer, and get a ride, or have someone deliver food to you, but also the idea that workers are able to come in, and push a button, and get a job. I think that is where we are seeing more and more people coming in, when they have the ability to—before, just—literally at the push of a button, find income.

This is changing behavior—just as we see from consumers, this is changing behavior of workers. Right now we are seeing 79 percent—in our research, 79 percent of the workers in on demand are working part time. Many of them are coming from traditional jobs, and adding this to create incremental income as well. And as they test their way in, I think we will see that they continue to evolve. Many of these workers right now, again, with our research, are less than 1 year working in on demand. So while this is wonderful we are having this conversation, it is so early in the game right now. It will be interesting to see how it evolves.

Mr. BURGESS. Ms. Smith, let me ask you kind of the same question. I mean, how did you arrive at the decision that this was something that you wanted to do?

Ms. SMITH. It—it is a great opportunity to make money by one's choice. So—I have worked in traditional jobs before. This opportunity to log in and earn money on any schedule that I chose, for any goal that I had, is just incredible. So that was very attractive to me.

Mr. BURGESS. Mr. Lieber, we will probably disagree about the amount of money available to the Bureau of Labor Statistics, but one of the things they do is provide to Congress, the first Friday of every month, to the Joint Economic Committee—I am no longer on that committee, but I was, so—during the harshest part of the recession it was part of my job to hear their report on the first Friday of every month.

And we all talk about the unemployment rate, and the U-6 numbers, and what the employment rate really is, but it seemed to me, studying for this hearing and understanding better the sharing economy that—I mean, this is a way for some of those people who have been chronically unemployed now, may have left, may even have dropped out of the labor workforce participation. But, again, you can punch an app and earn some money, that is a pretty powerful notion, isn't it?

Mr. LIEBER. Absolutely. And what we find of users of—business users of Thumbtack is many of them are leaving a corporate job, and they are kind of putting their finger in the wind to test out if they can actually cut it as a full time caterer, or a photographer. And by lowering the cost of getting these people into their own business, and by delivering consumers to them, we think that we are creating this opportunity that didn't exist in years past, and making it easier than ever for them to start and go work for themselves.

Mr. BURGESS. And it is certainly not part of this hearing, but having spent time on the Joint Economic Committee, and hearing those figures from the Bureau of Labor Statistics, and the people who were discouraged from ever finding or looking for traditional employment again, I mean, this seems to be a way back into the workforce that, really, probably wasn't even available, or only available on a limited basis, as the years of the Great Recession began to unfold. Would you agree that this is a fifth pathway, if you would, back into employment?

Mr. LIEBER. Absolutely. I think this represents a tremendous opportunity for people. And what is—what is exciting to me is that, for people who have a skill—say you are a locksmith, and you are good at locks, but you, you know, haven't had a chance to build out your customer base yet, this is the opportunity for you to go online, find customers, and get your business started quickly, easily, and start getting customers pushed to you.

And we have heard a lot of stories like that, of people who have been down on their luck, people who just left the military, people who lost their jobs, or people who are looking for what next to do in their lives. And they are able to come to these platforms, come online, and start finding new work.

Mr. BURGESS. Well, I kind of believe we are just beginning to scratch the surface. Mr. Beckerman, let me just ask you, because I remember my predecessor in this office, who at the time was Majority Leader, in the late 1990s described to the Dallas Chamber a situation with—this thing was new, it was e-commerce. He said Congress doesn't understand it, they are very likely to try to regulate it and tax it, and when they do that, they will kill it. Do you think he was correct in that assessment?

Mr. BECKERMAN. I think this is a new area providing incredible opportunity, and Congress need to be a little careful not to put too heavy of a hand on this and regulate it too much. Because, as we are hearing from a number of the witnesses, it is providing opportunities for them that didn't exist before, and it is a great opportunity for our economy, for people to get back to work, and earn extra money for their families.

Mr. BURGESS. Very good. Thank you, and my time has expired. I will recognize the ranking member of the subcommittee, Ms. Schakowsky. Five minutes for questions, please.

Ms. SCHAKOWSKY. Thank you. Mr. Baker, I want to ask some questions, but first I want to read a piece of testimony that I would like to put in the record for—from Indir Pamar, who says he has been a professional driver in New York City for 15 years. He says, I began working for Uber because I thought I could earn more money than I had working for other black car companies. Uber's rates sounded like a good deal. When I first started working with Uber X, the minimum fare would be \$12. Uber would take 10 percent of each fare, and the rest would be mine to keep.

Within just months, though, Uber changed its payment rates, and while the price of gas and my car payment stayed the same, the 10 percent commission I paid to Uber became 20 percent, and the \$12 minimum fare dropped to \$8. And then he also says, the—Uber's business model is flood the streets with cars, regardless of how much work is available for them. In New York City, Uber

added 20,000 new cars to have us compete with 13,600 taxis, and another 40,000 black cars, and car service liveries that were already on the streets. It says that Uber doesn't care—if there are 100,000 trips a day, those trips could be split between 10,000 drivers or 30,000 drivers.

And he—finally he says, Uber says they are not my employer—to the point that you made—even though they direct my every move, and control my income, and can punish me. With Uber we have no voice. I don't get to set the rates. Uber takes away my fare income if a passenger has a dispute with them over the fare they set. And if a passenger complains that I took a long route, Uber takes the money back without giving me a chance to explain myself. Friends of mine have been suspended because their passenger rating was too low, even though they had been accused of doing nothing wrong. What was too low? Less than 4.5 out of 5 stars, a B+.

So I just wanted to talk to—here is somebody who though he was going to make more money, have more control, and finds that, really, Uber, that says they are just a Web site, or just a technological platform, is controlling their life.

Mr. BAKER. Yes, well, I think this is very problematic, and exactly the sort of situation that I think we have to be concerned about. So just to be clear, you know, being able to order a cab over the Internet, wonderful thing. You could be on a smartphone, that is a great thing. But, on the other hand, these people, for practical purposes, are employees while they are on the job.

And, again, we aren't asking a lot if we are to tell Uber that, you know, you have to make sure that your drivers make at least the minimum wage. They have the technology to do that. If they are competent enough, then they should be replaced by a company that is. I mean, that is a very, very simple thing. So extending employee-type relationships, employee-type rights, for example, collective bargaining—again, people may not like it, but that is the law. It doesn't make sense that you have collective bargaining over here, but we are going to call ourselves Uber, and now you don't have collective bargaining. So these are issues that I think are very much a proper concern of Congress, and of State and local governments as well.

Ms. SCHAKOWSKY. Let me just ask you this. So many sharing economy firms have said that they are just an app. They describe themselves not as employers, but rather as technology platforms. So how would you compare the type of work being done by workers who have traditionally been deemed independent contractors, such as electricians, Realtors, or consultants, with those in the sharing economy?

Mr. BAKER. Well, traditional contractors, they control their time, they control their wage rate, they control what they do. I sometimes write a paper, sometimes I will be paid on commission. Well, if someone contacts me, they say, "We need this in two weeks," I am going to decide what it looks like, I will decide the content. That is really not the case with Uber. They specify the rules.

In a lot of ways, that is a good thing. We want to make sure that, when you drive an Uber, the car's safe, other conditions are met, but that is not the situation of an independent contractor.

Mr. BURGESS. Let me—Mr. Lieber, in your testimony you seem to suggest that most sharing companies fall into one of two buckets, that those that have a mostly hands-off approach, perhaps such as Etsy, and eBay, and others that impose certain requirements on the independent contractor, such as Uber. Can you further explain those two types?

Mr. LIEBER. Yes. The distinction there is—we think of there of being—as kind of a marketplace company, which is kind of matching buyers and sellers in a marketplace, giving them information to make informed decisions on their own, and a dispatch company, which is directly pushing a service provider to you. You know, you ask for your groceries delivered, and the groceries then come to you. And I think these are kind of two separate types of technologies that are out there today.

Ms. SCHAKOWSKY. OK. And so, Dr. Baker, do you agree that there are two types of sharing companies, and would the need for more or less regulation depend on which of those buckets a company falls into?

Mr. BAKER. I think that is exactly right. Inevitably there will be some gray areas, but I think Uber's a very clear side of the gray area. This is an employee-type relationship.

Ms. SCHAKOWSKY. Thank you. I yield back.

Mr. BURGESS. The gentlelady yields back. The Chair thanks the gentlelady. The Chair recognizes the gentleman from Texas, Mr. Olson. Five minutes for your questions, please.

Mr. OLSON. I thank the Chair, and welcome to our witnesses. I am excited about the sharing economy, all this new technology, new innovation. But with regards to these changes, I asked myself, how does this impact the market? Is it good, is it bad, and most importantly, is it safe?

My first question is for Mrs. Smith, Mr. Passmore, and Mr. Beckerman. Unfortunately, we don't hear a lot about the good actors. We hear about the bad actors, stories from back home. For example, people who use the sharing economy to do harm. Back home in Houston, Texas, a driver in the shared economy assaulted an intoxicated woman. The background check missed him because he had been in jail for most of that time. My question is, who should be liable for protecting our consumers from bad actors in the shared economy? Mrs. Smith, your thoughts, ma'am?

Ms. SMITH. I believe that is an Uber policy question that I am not comfortable answering.

Mr. OLSON. Thank you, ma'am. Mr. Beckerman?

Mr. BECKERMAN. Thank you. I would add, I think there are a number of safety precautions that are hardwired into the technology that provides accountability that didn't exist prior, and that does not exist on taxi cabs. And no industry is 100 percent safe, or 100 percent perfect.

Mr. OLSON. You bet.

Mr. BECKERMAN. Certainly hotels are not, and taxi cabs are not. But the two-way rating system, having GPS tracking, and the background checks that all the sharing economy platforms do on the ride sharing side are very comprehensive, and they seek to have transparency, accountability, and trust for their users. And I think that goes a long way.

Mr. OLSON. Mr. Passmore, your thoughts, sir?

Mr. PASSMORE. PCI represents auto home and business insurers, so I think the question gets a little bit beyond the scope of what I am prepared to answer for. But, you know, what we have tried to do is clarify the auto insurance issues to make sure that, if you get involved in an accident, there is a clear line of where the injured parties can go to collect for their damaged vehicles, and injuries, and things like that.

Mr. OLSON. And my final question is for the entire panel. Start with you, Mr. Lieber. Sadly, my home of Houston, Texas, is ground zero for human trafficking in America. Interstate 10, according to our FBI, right through Houston, Texas, is the number one highway for human trafficking to come through. Girls, mostly, being sold into slavery right through my hometown.

I have held several roundtables back home with law enforcement officials, local mayors, all these people involved in this. It is a real big problem. But I am concerned that the bad guys can use the shared economy to promote human trafficking. So my questions is, what can this shared economy do to stop human trafficking? Mr. Lieber, your thoughts?

Mr. LIEBER. Just speaking from Thumbtack's perspective, there is—I mean, we don't offer any kind of services that would be appropriate to be abused in that fashion. Trust and safety is the number one important factor for Thumbtack, getting you a trusted professional to do a great job for you, and marketplace integrity is something we take very seriously.

Mr. OLSON. Mr. Chriss, your thoughts, sir?

Mr. CHRISS. Providing financial management software through Intuit, I think this would be beyond my expertise to answer.

Mr. OLSON. OK. Mr. Baker?

Mr. BAKER. I don't know of things sharing economy companies can specifically do, but the one thing I would say is that, insofar as Congress puts—or State Governments, for that matter, put in regulations in place to try to crack down on human traffic, again, the point is it has got to apply to sharing economy companies as well. So if you have regulations that make it more difficult for, say, a traditional cab company to be involved in this in some way, certainly you want that to be applied to your ride sharing services also.

Mr. OLSON. Thank you. Mr. Passmore? Any thoughts about human trafficking, how—I mean, I know you are not quite directly involved, but any thoughts how—

Mr. PASSMORE. Right.

Mr. OLSON [continuing]. You can influence this, make sure we separate the bad guys from the people who are getting abused by these—

Mr. PASSMORE. Again, it is a little outside of our realm of expertise, but I would say that, you know, if you are applying—no, I think—I don't really think I am qualified to answer that question.

Mr. OLSON. Mr. Beckerman?

Mr. BECKERMAN. Safety and security is first and foremost for all of our member companies, and, you know, those kinds of activities I think are outside of the scope of the services that our companies offer. But I think technology certainly can help, and when you look

at all of these platforms, the community that they create, and the trust they create, I think could be helpful in stopping some of this.

Mr. OLSON. And, finally, Ms. Smith?

Ms. SMITH. As a driver, I have never encountered anything remotely connected to human trafficking, and so I don't feel informed enough to give a detailed response on that.

Mr. OLSON. Well, thank you. Thank you for your service, and we can agree, go Air Force, go Navy, beat Army. I yield back.

Mr. BURGESS. The Chair thanks the gentleman. The Chair recognizes the gentleman from New Jersey, Mr. Pallone, the ranking member of the full committee. Five minutes for your questions, please.

Mr. PALLONE. Thank you, Mr. Chairman. In May of this year, Uber updated its privacy policy to allow the company to track users' location whenever its application is open, even if consumers are not actively using the application. In other words, if I take a ride on a Monday, Uber still can be tracking my location the following Thursday. And, of course, Uber is not the only sharing economy firm to track its users. The constant collection of that data does raise privacy concerns. So I wanted to initially ask Mr. Baker, it is my understanding that most consumers do not understand the extent to which mobile applications, such as those created by sharing economy firms, can access and store data about consumers' locations. Do you agree with that statement?

Mr. BAKER. I would be inclined to agree, but I have to say, that is really not based on any data. It is just simply anecdotal. I mean, I do know people, obviously, who will use Uber. I will confess I have never used it myself, but, you know, I do know many people, and they have no idea of what data they collect and what they do with it. And I think it is certainly a proper concern of Congress that there be, at the very least, clear disclosure, if not actual regulation, on what they can do with it, but certainly disclosure of what their practices are.

Mr. PALLONE. Well, from a—I mean, expressing the privacy concerns that I share, but do you see any—well, I mean, what about this idea of storing location data permanently, rather than discarding it after the transaction is completed? Is there some way—I mean, obviously, from a privacy concern, you would rather see it discarded after the transaction is completed. What would be your view on that?

Mr. BAKER. Well, I think it would be totally appropriate to say that, you know, to prohibit those companies from keeping that data, because it is—well, on the face of it, you are contracting with them for a ride, and that seems to me that should be the end of the relationship, unless people consciously decide they want a further relationship with the company. But, again, I think most people are understanding, when they are taking an Uber, they are contracting for a ride, not to give away details of their lift to third parties.

Mr. PALLONE. OK. Now, should sharing economy firms be more up front about when, how, and why they are tracking user locations, in your opinion?

Mr. BAKER. I think absolutely. Again, I think, two separate issues here. One, do you restrict what they can do? Open question, you know, I couldn't give you a well-reasoned——

Mr. PALLONE. OK.

Mr. BAKER [continuing]. Answer on that, but that is one issue. Second one, disclosure of what they are doing, and, to my mind, that has to be a clear responsibility, that there have to be clear roles so that everyone at least can know. I mean, some people may not care, and that is fine, but a lot of people may want to know that if they are taking an Uber, this information is being kept and quite possibly shared with a third party.

Mr. PALLONE. All right. Now, some apps, including Uber, give companies access to other personal information, including users' contacts and address book. It is my understanding that most consumers do not understand the extent to which mobile applications, such as those created by sharing economy firms, can access and store data from consumers' contacts and address books. Do you agree, and you want to talk about the privacy concerns with that?

Mr. BAKER. Well, that is, to my view, you know, I have heard accounts of that. I assume that they are true. But, to my view, that is absolutely amazing. I mean, again, you are contracting with Uber to get from point A to point B. You aren't—at least I think almost no one is knowingly contracting with them to give them access to their address book. So it is very hard to see why they would have a legitimate reason to get access to that sort of information.

Mr. PALLONE. Well, let me go to Ms. Smith. In order to use Uber, a person must download the Uber app, giving permission for Uber to collect that person's address book. Can you explain how that information is used by Uber?

Ms. SMITH. I am not sure how it is used by Uber, but when an individual does download the app, they are given an opportunity to agree to what Uber may do. And, as far as the location, I believe that the information may always be collected only when the app is being used, or never. And so an individual does have an opportunity to decline, if they are not comfortable. And whenever you do download the app, there is an agreement that you must agree to in order to use the app. So everyone who uses the app agrees to the conditions that are in the agreement.

Mr. PALLONE. Well, let me ask Mr. Beckerman to comment on that, and also, since there are only a few minutes—seconds left. We all know the critique, Mr. Beckerman, that privacy policies are too long and full of legalese, especially on a mobile device. But how are your members taking steps to make sure consumers are aware of the extent to which their information is collected, and sometimes is shared or sold? Or if you want to also comment on what Ms. Smith said?

Mr. BECKERMAN. Yes. Thank you for the question. First, on the tracking, if you look at the settings in your phone, it does indicate that the tracking only happens when the app is open, and you are using it. And the ability to look at the map and see where you are going is part of, actually, the safety and security features of the phone. You know, my wife left her purse in an Uber once, and we were able to retrieve it immediately because of some of these fea-

tures. And had she left it in a cab, we probably never would have seen it again.

When it comes to data security and privacy, there are laws on the books from Congress and the FTC that apply to all companies, sharing economy companies, Internet companies, brick and mortar companies, and I don't believe there are any gaps in the coverage of protections that we have.

Mr. PALLONE. All right, thank you. Thank you, Mr. Chairman.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman. The Chair recognizes the gentleman from Illinois, Mr. Kinzinger. Five minutes for questions, please.

Mr. KINZINGER. Well, thank you, Mr. Chairman, and thank you all for being here. It is helpful to us, appreciate it. Chairman, thank you for holding the hearing of—that is the first of what I expect will be a great series of hearings. I think there is a lot to be excited about in the sharing economy, and I appreciate the committee's consideration of the economic benefits, new choices for consumers, and the underlying policy impacts that have come to light.

Last week Business Insider ran an article on the sharing economy that started with “The rise of the sharing economy has fundamentally changed the business landscape, and some companies are going to have to adapt to survive.” And I think that sentence captures some essential characteristics about the sharing economy. It is new, it is changing, and it is adapting to meet market demands. In such a dynamic economic space, I think the committee's approach towards this regulation is pragmatic, and, frankly, the correct course. Sharing platforms have provided two apparent benefits in particular. They have given workers another source of income in addition to traditional work options, and they have also given consumers additional choices.

Ms. Smith—by the way—I am an Air Force pilot, so thank you for your service. And I am still in the Air Guard. I love it, so—but I want to say thank you for your service, and for—I guess your son's as well, so that is fantastic. I appreciate your testimony, and for highlighting that many Uber driver use this service for supplemental income. Do you think this is something you are going to utilize long term?

Ms. SMITH. Yes, absolutely. Yes.

Mr. KINZINGER. And what is it you enjoy about it? What is it that makes you think that this is going to be a long-term process for you?

Ms. SMITH. Just about everyone that I have driven has expressed the joy, really, at having the alternative.

Mr. KINZINGER. Um-hum.

Ms. SMITH. Whether they didn't have a car at all, or they constantly relied on others to take them from place to place, or a bus was not available where they lived, or a taxi was more expensive. Whatever their reason was, they just were so grateful to have the opportunity to have a means of transportation that is affordable and safe.

Mr. KINZINGER. And as a user of it, I can agree. And I will tell you what is neat too is the whole idea of the surge pricing. If you don't have enough drivers, it helps drivers come online, to say that

there is a surge. Consumer makes a decision, the supply makes the decision, and it kind of works out for everybody.

Mr. Beckerman, as sharing platforms proliferate, is there a way to maintain light touch regulations in a way that promotes competition on a level playing field, and can local governments peel back some unnecessary regulations on incumbents to some equilibrium that encompasses sharing platforms to the extent that they directly compete?

Mr. BECKERMAN. Thanks for the question. Yes, I think so. I mean, we have seen two different kinds of regulations in local communities. Some that were maybe written in the '70s and '80s that just couldn't anticipate any kind of Internet platform at all, and those are being peeled back. But we are seeing in some areas new regulations that are put in with the sole purpose of blocking, or discriminating, against these platforms, and those are the ones we are the most concerned about.

Mr. KINZINGER. OK. And, Mr. Passmore, some commenters suggest that the insurance problems are too hard to solve when a sharing platform is involved. How has the insurance company worked to solve the coverage issues in the transportation network company context? Is the insurance industry hopeful that insurance questions raised by other types of sharing platforms can be resolved?

Mr. PASSMORE. Yes. As I mentioned in my testimony, we have—we worked very hard with the sharing economy companies, the TNCs, to develop a solution that would work, and is being implemented in over half the States right now.

As for other sharing economy businesses, I think a lot of them have sort of observed what has happened with the transportation network companies, and sort of been more proactive about making sure that their participants, whoever, whether it is Airbnb hosts, or Thumbtack vendors, or what have you, they are being more proactive and making sure that they are aware of the insurance issues, making it clear what kind of insurance they provide, and what they might have to get on their own. Those kind of developments are very encouraging.

Mr. KINZINGER. And I think every major invention or leap in humanity, or leap in technology, or leap in any way we do business sometimes is met by resistance, and that is natural. People feel uncomfortable, they don't know what the future holds. But the great thing, I think, about a free market, capitalistic economy like ours is we have the ability to adapt. And adapting is what makes us great, and, frankly, why we continue to lead the world.

So, with that, Mr. Chairman, again, thank you for doing this. This is very beneficial, and thank you to the witnesses, and I yield back.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman. The Chair recognizes the gentleman from North Carolina, Mr. Butterfield. Five minutes for questions, please.

Mr. BUTTERFIELD. Thank you very much, Chairman Burgess, and Ms. Schakowsky, and members. Thank you very much for holding this hearing today, Mr. Chairman. I was just looking at the memorandum, and I think it is a very appropriate topic. It is sharing the—"How the sharing economy creates jobs, benefits consumers,

and raises policy questions". A very appropriate topic, and I thank you so very much for it.

As you know, Mr. Chairman, I am now the chair of the Congressional Black Caucus. For several months now we have been examining diversity among the Fortune 500 companies in America, and we realize that taking on 500 companies at one time is a daunting task, and so we have started to target the technology companies in particular. And we have found that African Americans have been largely excluded from all levels of technology. African Americans are a missing link in the tech economy, and until we see full participation in the tech economy, America will never truly unlock its full potential, and that is why I like the topic of this hearing. That is why, as part of my role as the chair of the CBC, I have focused on our efforts of increasing diversity within the technology sector.

In May the CBC launched the CBC Tech 2020, which is an initiative to bring together the best minds in the technology, non-profit, education, and public sectors to chart a path forward to increase minority inclusion at all levels of the technology industry. The goal of CBC Tech 2020 is to achieve full representation of African Americans at every level of the industry in 5 years. Over the past few months I have taken this message across the country, and even to the heart of Silicon Valley. And now I would like to ask just a few questions on a few of these subjects.

Let me start with Mr. Beckerman. Thank you for participating, and thank all six of you for participating today. Mr. Beckerman, as I said, I am interested in the inclusion of African Americans and other minorities in the technology industry, both as owners and employees, as well as vendors. How many companies, if you know, are members of—well, I am sure you know—are members of your association?

Mr. BECKERMAN. Thirty-six.

Mr. BUTTERFIELD. Thirty-six. Let me write that down, 36.

Mr. BECKERMAN. I am glad I got that one.

Mr. BUTTERFIELD. All right. I have got four here, so I don't know how we are going to do on the other ones. Out of your companies, how many have African American CEOs, if you know?

Mr. BECKERMAN. I would be happy to get back to you on that.

Mr. BUTTERFIELD. All right. Question mark. Please get back. How many have an African American on their Board?

Mr. BECKERMAN. I would be happy to get back to you with those numbers.

Mr. BUTTERFIELD. All right. The reason I ask the Board question is because we found, of the top 20 technology companies, collectively they have 189 directors. And of those 189, three are African Americans, so we are particularly interested in that as well. And do you know if any of those companies have released their diversity data? I know they do the EEO-1s, but have any of these made their diversity data reports public?

And now we are seeing the trend in Silicon Valley that companies are now opening up their EEO reports for the world to see, and they are making a commitment to us that they are going to work with us in trying to improve it.

Mr. BECKERMAN. Yes. I just want to say I appreciate what you are doing, and our companies realize there is a lot of work to be

done, and they are making strides to improve, but I do think that these platforms do create a lot of opportunities both for direct employment, and what—the opportunities that we see on the sharing platforms that we are talking about today. But thank you for your work on this, and it is something that I know our companies are striving to do better.

Mr. BUTTERFIELD. I really want you to pay attention to it, and I won't call up the CEO's name that I met with in Silicon, but all of you would recognize the name. He told us that there is a correlation between the bottom line and diversity, that you—that the profits are really related to diversity and inclusion, and if you can get those two in sync, you can really grow the economy, grow the consumer base, and the company can do very well. So I look forward to working with you. And thank you, Mr. Chairman. I yield back.

Mr. BURGESS. The Chair thanks the gentleman. The gentleman yields back. The Chair recognizes the gentleman from Kentucky, Mr. Guthrie. Five minutes for questions, please.

Mr. GUTHRIE. Thank you, Mr. Chairman, I appreciate it. I am also a member of the Education and Workforce Committee, and we were having a meeting downstairs. Sorry I didn't hear all this on a joint employer, and the definition of joint employer. So I say that because I am from the business world as well, and labor issues are something I have worked on and understand, that labor classification issues are at the forefront of this debate.

But in your—so this is to Mr. Beckerman. So in your testimony you urged Congress to consider the real benefits of the sharing economy before moving too quickly into regulations. And what are some of the most critical benefits offered by these platforms that would be affected if service providers on these platforms are classified as something other than independent contractors?

Mr. BECKERMAN. Thank you for the question. I think first and foremost there is incredible flexibility, and we have heard a lot of that today from Ms. Smith and others. On all these platforms it is opt-in, and a majority of the people participating on these services are doing so part time. They are doing it to have new income, not necessarily replacing a full time job that they had before, and the ability to be your own boss. That is compelling to a lot of people, to be able to set your own schedule, and really work for yourself as a small business person, and I think that is probably top of the list.

Mr. GUTHRIE. OK. Again, Mr. Beckerman, when we consider the extent of consumer protection regulations that should exist for sharing platforms, we have heard today that reputation mechanisms, like rating systems, lessen the need for certain consumer protection regulation. What kinds of consumer protection regulation should apply to apps, such as Uber?

Mr. BECKERMAN. There are a few things. When it comes to data security and privacy, I just want to note that there are laws in the books, and regulations, the FTC and other places, that apply to all platforms, online and offline, and I don't think there are gaps in that kind of coverage. But when it comes to rating systems, there is incredible transparency and accountability that really never existed before, being able to rate the driver, and have the driver rate you, and on Airbnb, and other platforms, being able to see peoples'

past experiences. And I think this is a new innovation, and it is important.

Mr. GUTHRIE. And what about apps for TaskRabbit? Same—

Mr. BECKERMAN. Same.

Mr. GUTHRIE [continuing]. Situation? Well, thanks. I know on Uber you can see the picture of the driver, and understand there have been a couple instances in Chicago where somebody has pulled up, say, you looking for an Uber driver? And they—and it is not an Uber driver. So those protections seem to be in there, if somebody checks their—

Mr. BECKERMAN. I think those protections are working, and what you see with all these platforms you mentioned, TaskRabbit and others, trust is first, but also a community has been created where you want to have a higher level of service for your customers because you know you are being rated on an instant basis, and you are being rated many times throughout the day. And I think that helps what you are asking for.

Mr. GUTHRIE. Yes. I think in the incidents in Chicago people were getting in the car—somebody just pulled up and looked like they were looking for an Uber driver, but if somebody followed what Uber provided, either the picture, or the car, the make, the model, that wouldn't have happened.

Mr. BECKERMAN. If they don't know your name, you know, don't get in the car.

Mr. GUTHRIE. So, Mr. Lieber, I am going to—how much time did a person usually spend trying to track down local professional services before Thumbtack?

Mr. LIEBER. That is a great question, and we don't have a scientific answer for you, but I am sure, from your own experience, you have tried to hire a—somebody for your house, a plumber—and my parents have lived in the same house for 40 years, they still don't know who to go to to find a plumber. So they found Thumbtack is a really useful tool for them to bring somebody to their house who is trusted, and is going to do a great job.

Mr. GUTHRIE. Does Thumbtack reduce the cost of looking for—I guess it is self-evident in your answer here—reduce the cost for looking for the right professional?

Mr. LIEBER. On both sides of the marketplace, we believe Thumbtack dramatically reduces the cost, both search time for the consumers—it is time you could be spent hanging out with your kids, as opposed to calling people and trying to find somebody who is right for you. And on the pro side, finding new business is a really hard thing to do. Finding a new client, you put an ad out in the paper, maybe, you know, the name of our business is Thumbtack because it is named after the pins people used to put on bulletin boards, where they would just put this up on the bulletin board, and hope that somebody called them. And that system is really outdated today, and we think that we are lowering the cost of that, finding them new customers.

Mr. GUTHRIE. Thank you very much. And it is good for our businesses to have that opportunity. I always say—difference in our system in the world and everywhere else is that everybody that becomes a plumber, or skilled trades, eventually usually becomes their own boss, especially in the plumbing business and HVAC

business. You see a lot of people with vans with their name on the side, my name, Inc., and they are driving around. And helping them market is a great opportunity for those who provide it, as well as those who receive it.

Mr. LIEBER. Absolutely. And a lot of these are skilled professionals who are really great plumbers, maybe don't know how to run their own business. And that is where companies like Intuit and Thumbtack come in, to help them market themselves a lot more—in a lot more sophisticated manner.

Mr. GUTHRIE. Because they are very much in demand. Mr. Chriss, you had a comment on that?

Mr. CHRISS. Just to pile onto that, one of the—having served small businesses for a number of years, one of the top challenges that our small businesses face is finding customers, and many of these new platforms are now allowing them to, again, with the push of a button, find that customer, to allow the individual to spend more time actually making money.

Mr. GUTHRIE. It only works because you have customers looking for them. So it is a win-win.

Mr. CHRISS. It is.

Mr. GUTHRIE. Thank you very much, I appreciate that, and I will yield back.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman. The Chair now recognizes the gentlelady from Indiana, Mrs. Brooks. Five minutes for questions, please.

Mrs. BROOKS. Thank you, Mr. Chairman, for holding this fascinating hearing. I co-chair what is called the Women in High Tech Caucus here. It is a bipartisan group that is about promoting women and leadership in the tech companies as well, and—so I talk with a lot of tech companies, particularly in Central Indiana, where I am from, and I can't tell you how excited the sharing economy is to so many people, and whether—particularly when we have hack-a-thons, whether it is for businesses, or whether or not it is for State Governments, or Federal Government, there is so much energy and excitement about the sharing economy, and the platforms that are coming forward. And I—we also have what is called 1150 Academy in my district, which is teaching people how to code, which is so critical to all of this, and all of these new platforms.

But I have to tell you, there are—there is a lot of concern, and—particularly generational, probably more than anything, when it comes to this sharing economy, and the questions about the sharing economy, so I think this type of hearing—and I hope, Mr. Chairman, there are going to be more hearings on this, because I don't think it is really cut and dry on a lot of these issues. There are a lot of questions.

But I do have to ask, Mr. Beckerman, it—and I am a former deputy mayor in Indianapolis, and I know that State and local regulations can really get in the way, and I know that a lot of these platforms, and a lot of these innovations have struggled with State and local regulations. And I know that it often can be used in many ways to block competition, and to block innovation. Can you share a bit more about what we, in looking at what the Federal Government should be doing, what lessons can we be learning about what is happening maybe at State and local issues around the country?

Mr. BECKERMAN. Sure, thank you. Competition obviously is important for consumers in all communities, and our companies have made great strides in working with local mayors and local city governments to make sure their services are allowed to operate in those communities. But I think the leadership of this committee, and of Congress, talking to your local mayors, and even your Governors, and, you know, taxi commissions, as appropriate, that they should allow these services to operate because it is benefitting consumers. It is providing more choice, it is lowering costs, and that is what this is really all about.

Mrs. BROOKS. And so this is an education process you are undertaking at mayor—with individual mayors, or at association meetings, or how are you doing it?

Mr. BECKERMAN. Both. You know, the companies are actually working city by city, town by town, State by State in a lot of places. And you asked for some examples, you know, we have seen areas where they are putting new regulations in place, such as saying for—on the ride sharing side, you have to wait 40 minutes before a car picks you up, which obviously does not have any consumer benefits at all. It is just meant to block competition. Or regulations that say the minimum fare must be \$50, which is 10 times the fare of a taxi, which, again, has no consumer benefits whatsoever. And so those are the things we are trying to get rid of.

Mrs. BROOKS. Thank you. Mr. Chriss, there were conversations and discussions about protecting consumers' financial data, and obviously, in today's day and age, when we rely so heavily on technology for all—so many financial transactions, how is this different, if it even is different? How is the sharing economy any different than the other ways in which we transact business, or is it essentially the same?

Mr. CHRISS. I think in many ways it is still the same. The—all of our partners, including ourselves, need to think of data privacy as chief, and we need to maintain the stewardship that we have of our customers' data. When it comes to consumer protections, again, I think there isn't much difference that we have seen in the number of companies.

I do want to mention, we have talked a lot about Uber as an example here today. It should be said that we have seen over 200 other platforms, sharing economy platforms, coming in that are impacting all sorts of different businesses. And so...

Mrs. BROOKS. Can you give us some examples?

Mr. CHRISS. Absolutely, and these would be ones that might surprise you. So we have talked some about food delivery, and caring for your dog, but there are some that are disrupting industries like the legal industry. So one of our partners, Up Council, has provided an opportunity for lawyers to come in, and, again, find clients that are perfectly matched to them. Or a company called Hourly Nerd, which allows MBAs to be partnered with the right Fortune 500 company as well. So this is very broad, and, again, we are very early in this journey, but with over 200 now, it will be amazing to see how that grows over the next few years as well.

Mrs. BROOKS. I would be curious, Mr. Lieber, with respect—because I think one of the things that we are—we are often concerned about, whether it is with Airbnb, whether it is with Uber, whether

it is with the providers that you are—or the people who are going into the homes, providing services, the safety issues that are discussed, can you talk about that a little bit with respect to Thumbtack, and how you educate your customers, as well as the people who are providing the services? What kind of safety issues are addressed, with respect to—whether it is criminal history background checks, whether it is just educating your customers about what kind of background checks have been done or not been done, and informing them?

Mr. LIEBER. Yes. So we do background checks on every professional who is active on Thumbtack to make sure that we are delivering somebody that we can be proud of to your house. Marketplace integrity is incredibly important to us. We have a large team dedicated to that. We kick off any bad actors who we think have violated our principles of marketplace integrity, and we do everything we can to ensure that we are delivering a trusted professional to your house. Reviews are a part of that. We try to do everything we can to collect and aggregate reviews so you have the most information to make an informed decision, and we police this very, very carefully.

Mrs. BROOKS. Thank you. My time is up. I yield back.

Mr. BURGESS. The gentlelady's time has expired. The Chair thanks the gentlelady. The Chair recognizes the vice chair of the full committee, Mr. Lance of New Jersey. Five minutes for questions.

Mr. LANCE. Thank you, Mr. Chairman. I apologize to the panel for being late. I was in continuing legal education over at the Library of Congress, in the hopes perhaps someday there will be a lawyer app that will employ me.

Mr. Baker, I certainly understand your point. Would it be fair to say that the distinction between independent contractors and employees is an ongoing discussion in our society, and has been for quite some time?

Mr. BAKER. Sure. I mean, the issues certainly pre-date the rise of the sharing economy companies.

Mr. LANCE. For example, I sold real estate. I was not the broker. I was merely an agent, and I was treated as an independent contractor, and I think that is traditional in the real estate industry. Is that your understanding of it, as it—how it works in real life?

Mr. BAKER. To be honest, I couldn't tell you whether most realtors are treated as independent contractors or employees. I—

Mr. LANCE. I believe most salespersons are treated as independent contractors, although there certainly is significant guidance. I was trained as to how to answer the telephone. I was trained how to try to sell real estate, but definitely I was an independent contractor.

You state in your testimony, regarding Uber and Lyft, that there have been several cases brought before the NLRB, and in Federal Court, arguing that those working in these companies are employees. Has either the NLRB or the Federal Courts adjudicated any of those questions yet?

Mr. BAKER. No, there has been no final adjudication on that. Those cases are still pending.

Mr. LANCE. I see. And do you expect that there will be a decision at some point in the near future?

Mr. BAKER. It depends on your definition of near. I suspect we are talking about a couple years before we get anything resembling a final decision.

Mr. LANCE. I see. And anything that is adjudicated by the NLRB then potentially could be appealed, probably to the United States Court of Appeals for the District of Columbia. Is that accurate?

Mr. BAKER. Exactly, yes.

Mr. LANCE. Yes. Thank you. Mr. Beckerman, I also was greatly interested in your testimony, and you point out that this is a growing phenomenon in this country, and that there are internal checks regarding all of this. Could you elaborate a little greater on your point of view in that regard?

Mr. BECKERMAN. Absolutely. There are certain transparency, and accountability, and trust features that are built into the platforms. Again, on the rating system, it is something that doesn't exist in—for many of the incumbents. Being able to track your location, in many cases, does make you safer. Or, if you end up leaving your purse or your bag in the car, that helps you retrieve that. And so there are a lot of things built into technology, and that has worked out very well.

Mr. LANCE. Thank you. I point out particularly of—four points that you articulated. You stated, second, in weighing these clear benefits against perceived harms, lawmakers should consider whether sharing economy services may, in fact, be safer for consumers when compared to their incumbent counterparts. And number four, recognizing that sharing economy platforms already self-regulate through various mechanisms that are hardwired into the technology, such as consumer ratings, payment systems, intense competition, and GPS tracking. I tend to agree with that. This is obviously a growing phenomenon in this country.

And, Mr. Beckerman, you state that in a pre-Internet age the Yellow Pages served as a similar function that Lyft and Uber serve today. Would you explain your point of view regarding that?

Mr. BECKERMAN. Sure. At the basic level, these are technology platforms that are removing friction between the transaction, and they are connecting the supply and the demand. Be it a plumber, or a driver, a home that you are trying to rent—

Mr. LANCE. Um-hum.

Mr. BECKERMAN [continuing]. And having that frictionless transaction, I think, helps the economy—

Mr. LANCE. Um-hum.

Mr. BECKERMAN [continuing]. And it certainly helps the individuals on both sides of the transaction.

Mr. LANCE. Thank you. Finally, in the last 50 seconds, I will relate a story—when I sold real estate, the real estate broker told me that if the property was 20 minutes farther west from where the potential customer wanted to live, I was to create interesting conversation in the automobile and drive as fast as I could. Thank you very much. Mr. Chairman, I yield back 27 seconds.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman. The Chair recognizes the gentleman from Mississippi, Mr. Harper. Five minutes for questions, please.

Mr. HARPER. Thank you, Mr. Chairman. Thanks to each of you for being here today. And, Mr. Chriss, if I could ask you a question? What has been your clients' feedback as they transitioned successfully to sharing platforms as a source of income, and then are they happy with their choice. So looking for what the feedback would be that you are hearing right now.

Mr. CHRISS. Thank you for the question. The feedback we are hearing right now is certainly a happiness factor from being able to be their own boss, and control their own income streams. The shadow to that has been—not sure that they understood they were becoming a small business when they entered into this.

Again, if you think about the—for many of them the feedback was it was so easy to download an application and create income, and then I realized I now have to pay quarterly taxes, I have to track my expenses, I have to track mileage. Many of these folks are working in an app that is on the palm of their hand, and yet when you ask a driver to open up their glove box, it is littered with receipts. And so this change in mindset, of going from, hey, this was very easy to enter into this economy has been a true positive, with the shadow of, I now have a whole bunch of obligations that I wasn't sure I was set up to do.

Mr. HARPER. And has there been a change in the way that is now initiated, so that there is a better understanding from the beginning for these?

Mr. CHRISS. You know, there is, and, I mean, this is why we created the QuickBooks Self-Employed product that we have, and we have seen—certainly we track our customer success metrics as well, and we have seen that with our product we put \$3,800 of tax savings back into our customers' hands.

The difficulty, though, is there are still challenges when—January to April of every year, when an independent contractor receives a 1099, their first call is to their platform, who sent them the 1099, and the response from that platform is, I am sorry, I can't even answer your question, you have to go find a tax professional.

Mr. HARPER. Right.

Mr. CHRISS. So there are still some real challenges in the system that I think we could, again, create some clarity around to make things easier.

Mr. HARPER. You had mentioned in your testimony that people who provide services through sharing platforms would benefit from some guidance from the platforms on how to operate successfully, and I guess that would be the main takeaway, then, on what you are saying, is that training up front, that knowledge up front, would be the biggest benefit for them?

Mr. CHRISS. There are a number of our users that have come in that, again, didn't even know what they were getting into. They are happy to be where they are, but being able to provide some guidance from the platforms, again, not necessarily providing the answer, but at least providing the guidance would certainly be beneficial.

Mr. HARPER. So what they have to do on their income tax, but also the regulatory requirements that may go with that as well, it sometimes—can take some of the joy out of it if they don't know that on the front.

Mr. CHRISS. What we have seen from our customers is, once they know, and once they are able to do the calculations through our product, or through whatever, they are happy to do it.

Mr. HARPER. Good.

Mr. CHRISS. It is the lack of transparency, and the lack of understanding, that is the most difficult.

Mr. HARPER. Mr. Passmore, when we talk about property casualty insurance, and what that entails, what are the incentives for the insurance industry to participate in the sharing economy?

Mr. PASSMORE. Opportunity. Insurers like to sell insurance, and—

Mr. HARPER. Sure.

Mr. PASSMORE [continuing]. They are—these businesses certainly represent opportunities to do that by developing new products. A good example is the transportation network companies, particularly in the States where they put in place the clear insurance rules, so the rules of the road are established, and certainty is established. We have seen companies introduce a lot of different products.

One—a PCI member company, Erie Insurance, was one of the first to introduce an endorsement that you could buy for your personal auto policy to provide coverage for transportation network drivers. And other companies, such as Geico, and Progressive, and MetLife and Home, have all introduced products. Some have had—some have introduced even separate policies just for TNC drivers. Some have had partnerships with some of the TNCs to develop products just for their drivers.

Mr. HARPER. So do you see the future—how would you describe the future for property casualty insurance in this economy?

Mr. PASSMORE. Well, I think it is a great opportunity for insurers, as long as there are clear rules of the road, and certainty has been established. You know, with the TNCs, we have had—we had a little bit of a bumpy road, but we got there in the end, and we are making excellent progress on it now. We may not need that kind of clarification in every other kind of sharing economy model, but there may be some needs for that. So the ability to develop that certainty, so the insurance industry can grow along with the sharing economy, is going to be very important.

Mr. HARPER. And with that, I yield back, Mr. Chairman.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman, and the Chair wants to thank all the members, and the witnesses, for being here today. Seeing that there are no further members wishing to ask questions, I do want to thank each of you for participating in today's hearing. Before we conclude, I will yield to Ms. Schakowsky for a unanimous consent request.

Ms. SCHAKOWSKY. Yes. I would like to add a statement of Vaughn Armour from the New York Committee for Change into the record, testimony that I referred to earlier of Indir Pamar, a New York taxi worker, and, let us see—Uber worker, actually—testimony from the Taxicab, Limousine, and Paratransit Association, and testimony from Working Partnership U.S.A., San Jose, California, into the record.

Mr. BURGESS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. I also want to include the following documents to be submitted for the record by unanimous consent: a statement for the record from the American Hotel and Lodging Association, a statement for the record from the Hotel Association of New York City, a statement for the record from the Texas Hotel and Lodging Association. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I remind members they have 10 business days to submit additional questions for the record. And I would ask our witnesses to submit their responses to those questions within 10 business days upon receipt of the questions.

So, again, thanks all to everyone here. Without objection, the subcommittee is adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF VAUGHN ARMOUR

I would like to first thank the committee for the opportunity to submit testimony on an issue that is greatly affecting my neighborhood.

My name is Vaughn Armour, and I am a tenant in the Crown Heights neighborhood of Brooklyn NY. In the past few years, we have increasingly seen new, wealthier people move into our neighborhoods, displacing longtime working class residents. Landlords often use illegal tactics of harassment to displace tenants whose rents have been protected through New York's rent stabilization system. They then bring in new tenants and charge them much higher rents, which most people who have been living in the neighborhood for decades can't afford.

Making matters worse, many of these apartments aren't even being used to rent out to new tenants. Instead, landlords are using multi-billion dollar corporations like Airbnb to convert these apartments into illegal hotel rooms. Not only is this severely depleting the desperately needed affordable housing stock in my neighborhood, the tenants that are still here are faced with undesirable living conditions. We don't know our neighbors because they are no longer our neighbors: They are tourists who are staying for a couple days or a week at a time, and they are more concerned with partying than with building a community.

Recently, an organization that I am a member of, New York Communities for Change, released a study showing how Airbnb and other illegal hotels are affecting the rental market in New York. We found that in some neighborhoods Airbnb has listed as many as one out of every five vacant apartments as an illegal hotel room. In neighborhoods where Airbnb use is prevalent, the rents rise faster than other neighborhoods in New York City. A full copy of this report can be found at nycommunities.org.

We have an affordable housing crisis in New York City. Not only are we seeing massive displacement that disproportionately affects low-income people of color, but we are also experiencing an epidemic of homelessness. Earlier this year, more than 60,000 people were in our city's homeless shelters. While that number has marginally decreased in the past few months, the recent visit of the Pope has reminded all of us that this is a shameful situation. Airbnb and others that facilitate the operation of illegal hotels is only making the situation worse, and not better.

The entire country needs to stand up and take notice. Rents have been rising faster than incomes, and the new sharing economy isn't helping the vast majority of Americans who struggle to pay their bills each month. Instead, it helps their very wealthy owners and investors, who don't care that they are forcing us from our neighborhoods as long as they stand to profit. We need to start reigning in the sharing economy before the only thing that's left to share are the crumbs.

Testimony of Inder Parmar, New York Taxi Workers Alliance, September 29, 2015

Good morning Chairman Burgess and members of the House Subcommittee on Commerce, Manufacturing and Trade. My name is Inder Parmar, I have been a professional driver in New York City for 15 years. For five years I drove a yellow taxi, for nine years I drove a black car and limousine, and since 2013, I have been an Uber employee. I am also a member of the New York Taxi Workers Alliance, the union for the City's taxi and for-hire vehicle drivers.

I began working for Uber because I thought I could earn more than I had working for other black car companies. Uber's rates sounded like a good deal: When I first started with UberX, the minimum fare would be \$12, Uber would take 10% of each fare and the rest would be mine to keep.

Within just months, though, Uber changed its payment rates, and while the price of gas and my car payments stayed the same, the 10% commission I paid to Uber became 20% and the \$12 minimum fare amount dropped to \$8. And even though Uber signed up more customers, it kept adding so many thousands of drivers to the roads that no matter how long I work, I cannot keep up and make a full-time living.

Meanwhile, friends of mine who were driving UberBlack, the limousine black car service, were being forced to accept lower-fare UberX trips. So they had spent \$60,000 on a nice car like an Escalade and would get \$8 jobs. As an UberX driver, I was leasing a Toyota Camry for \$400 a week. An UberX driver who leases a Camry for three years from one of Uber's sub-contractors ends up paying \$62,400 for a car valued at less than \$25,000. And the driver is still paying maintenance.

The expenses for Uber drivers in NYC are: the vehicle (financing, insurance, registration we call a Diamond Sticker, and maintenance and repairs), gasoline, Uber commission, sales tax, and Black Car Assistance Fund fee and tolls. Uber takes a commission on the fare and even on the sales tax and the Black Car Assistance Fund.

Throughout my time working for Uber, I put in 10-12 hour shifts six or seven days a week. When I started with UberX, I could get around 13-15 trips a day and earn \$2,000 a week before expenses. I now work the same schedule but only get about eight trips a day, and have recently gone home with around \$900 after Uber's commission, the sales tax and the Black Car Assistance Fund fee. I still had to pay for the car expenses and gasoline and tolls from this money. In other words, after working 60-plus hours, I was taking home \$450 for my family.

Uber's business model is to flood the streets with cars, regardless of how much work is available for them. In NYC, Uber added 20,000 new cars to have us compete with 13,600 taxis and another 40,000 black cars and car service liveries that were already on the streets. Uber drivers have enough competition with other cars, and we are being saturated with competition from each other for Uber fares. Because Uber spends nothing to buy or maintain these cars, they don't care if, when they have 100,000 trips a day, those trips are split between 10,000 drivers or 30,000 drivers. The more cars on the street means the more trips Uber can take, and they'll take their cut no matter what. It's the drivers who lose. And even the public loses because of the congestion and pollution.

Uber tries to attract more drivers by claiming to offer independence, but the job is just a taxi with a meter in my iPhone, without the rights I would have driving a yellow taxi or for another car service. In NYC, black car fares are higher because we have less volume and we are mostly serving corporate or higher-end

clients. Even though Uber still doesn't have the volume in fares, they keep lowering the rate and they keep adding the cars. It is a deadly combination for any driver. Because black car companies are mostly employers or driver co-ops, we also have a tradition to handle complaints and grievances by a committee. At Uber, the punishment is automatic. Still, Uber says they are not my employer, even though they direct my every move and control my income and can punish me. With Uber, we have no voice. I don't get to set the rates I charge, Uber takes away my fare income if a passenger has a dispute with them over the fare they set, and if a passenger complains that I took a long route, Uber takes the money back without giving me a chance to explain myself. Friends of mine have been suspended because their passenger rating was too low, even though they hadn't been accused of doing anything wrong. What was too low? Less than 4.5 out of 5 stars—a B+.

When we signed up, they told us we'd make more money than driving for other companies. When our income dropped, they started telling us that we still have flexibility. Professional drivers in New York have always had flexibility, though, which allowed us to take longer vacations in the slow seasons, in exchange for six day weeks and 12-hour shifts when we were working. But what "flexibility" really means is that Uber doesn't have enough work for us throughout the day, so we have to work odd hours: work the morning rush, go home for five hours, and then come back and work the evening rush and the nightlife crowd until midnight.

My Uber income is not my extra income, it's my only income. Driving is my full-time job. What will happen to people like me and my friends if nobody can make a full-time living from this profession anymore? Uber wants to make a monopoly, so that means also destroying the taxi industry where most drivers go to for full-time jobs. And how long before they then use the money we make for them to put out the driverless car and kick us all out? Full-time or extra income, whatever you start to depend on, what will happen when everyday they are working to take it away from us? Most companies think about creating new jobs, not take them away permanently.

Uber has to be stopped before they keep growing with no responsibility or accountability. In San Francisco, they have over 25,000 cars. And then there are the cars from Lyft and other companies. All of them are dispatching to private drivers with personal cars. How come a city with less than 2,000 taxis now needs over 30,000 cars driving around, cruising for fares? Uber only cares about Uber.

As a driver, I think Uber is exploiting the labor. Sometimes we make even less than the Minimum Wage. We are asking you, honorable Congressmen and Congresswomen, to care about the people.

Thank you.

Respectfully Submitted:



Inder Parmar



**TAXICAB, LIMOUSINE &
PARATRANSIT ASSOCIATION**

Testimony Submitted to the House Energy and Commerce

Subcommittee on Commerce, Manufacturing & Trade

Submitted by

**Mike Fogarty, President of the
Taxicab, Limousine & Paratransit Association**

September 29, 2015

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Chairman Burgess, Ranking Member Schakowsky, and members of the Subcommittee, thank you for the opportunity to provide testimony today during your hearing on *How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises Policy Questions*.

My name is Mike Fogarty and I am President and CEO of American operations for limousine company Tristar Worldwide Chauffeur Services, as well as the current President of the Taxicab, Limousine & Paratransit Association. Our nearly 100-year-old nonprofit trade group represents 1,100 for-hire vehicle transportation fleets and vendors throughout the United States and internationally. At any given moment, TLPA's licensed and locally owned and operated fleets have an estimated 100,000 vehicles on the road. In the United States alone, our entire industry provides two billion passenger rides each year.

As this Committee begins to examine what has been alternately called the "sharing economy," the "gig economy," or the "disruptor economy," I hope it will begin today by taking a step back and examining what is truly happening in the local for-hire passenger transportation industry. This economy is being defined by the media and by catch phrases—not by what is actually transpiring in the marketplace.

Specifically, the local for-hire passenger transportation industry is changing and evolving due to technological advancement, consumer demand and ongoing state and local regulatory progression. The changes occurring in our industry should be viewed positively—as long as the playing field is truly level and no special legislative carve-outs or exemptions are provided to new players in our industry. It is our hope that Congress will support a truly level playing field in our industry where the rules and regulations apply to *all* participants. We hope this hearing is not the beginning of a process by which Congress picks small business versus multibillion dollar multinational corporate winners and losers—this is the purview of the marketplace.

Historically, technology has always played a key role in our industry. For-hire transportation progressed from consumers walking to cab stands to using landline phones to arrange rides and then using bulky computers and the Internet to do so. Today these methods and technologies are still used by the majority of our passengers, but there is a growing trend for consumers to arrange for rides using app technology on their smartphones.

Is this progress? Yes. Does this progress represent a wholly new industry? No. This has been the natural evolution of our industry. Uber and Lyft were **not** the first to market with an app for smartphone users in our industry, but they did build a better app and now much of our industry uses very similar apps. In fact, almost all larger for-hire transportation companies are using apps and many smaller fleets use apps, too. Some of the more prominent national apps now competing directly with Uber and Lyft include: Curb, Flywheel, MTData, TaxiHail, IT Curves and zTrip. The federal government even offers app-based transportation called SaferRide, where consumers can hail a taxi, contact a friend, or simply determine where they are physically located.

Despite the fact that the federal government provides consumers with an app to get them home safely, it wouldn't be classified as a technology company.

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An App Doesn't Make You a Tech Company

The utilization of apps in the for-hire transportation industry is simply the next development in a long line of technological updates. Inevitably, the for-hire transportation industry will in the future move to some new platform as new technology develops to help companies communicate with consumers.

We urge the Committee to view this issue with perspective. Rather than seeing this as some new type of economy, this is the passenger transportation industry evolving. Simply put: This is about competition.

Look around the country and you'll see industries everywhere transforming. Businesses of all sizes are using the latest technologies available in their industries to help them remain competitive. Our industry is no different. Using these technologies does not change who or what we are. We are still for-hire transportation companies. Quite simply, it doesn't matter if a transportation business has been around 50 years or five years, the task is still picking up passengers and transporting them to a destination for a fee. This isn't what a technology company does—this is what a local for-hire passenger transportation company does.

Does the fact that Pepsi, Coke, Domino's Pizza, Jiffy Lube, or Walmart use apps make *them* tech companies? I don't believe they would consider themselves tech companies or that this Committee would view them in this way. We're concerned that fascination with terms such as "disruption" are causing Congress view new entrants into our industry as something other than what they truly are: for-hire transportation companies.

Uber is a Taxicab Company

Allow me to use Uber as an example. In November, 2008 Uber filed its Articles of Organization in California as "UberCab, LLC." It wasn't until UberCab, LLC received a Cease and Desist Notice from the State of California in October 2010 stating the company was operating illegally that Uber changed its name to "Uber Technologies, LLC." This name change wasn't the result of Uber somehow altering its business model. This was a business move to circumvent local rules and regulations. Uber hoped this move would allow it to enter transportation markets without having to comply with local or state laws.

Uber's so called "disruption" isn't about an innovative company being kept out of a marketplace, it's about a company trying to use smoke and mirrors to define itself.

Uber hires drivers. Uber dispatches its drivers to pick up Uber's customers. Customers pay Uber (not the driver) for each ride. Uber drivers and passengers rate each other. Uber uses the driver ratings to enforce behavioral control by firing low-rated drivers. Uber drivers are compensated by Uber based on the number of passengers and the amount of fares the Uber driver serviced. This is not a technology company, this is a local for-hire passenger transportation company.

We hope the Committee won't start down a road of creating new categories for new entrants into a market simply because their model may be a little different or they are using the latest technology. Uber uses an app, so do our members. Either both should be considered technology

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companies or both considered for-hire transportation companies. There should be no gray area on this issue and we hope the Committee will agree.

We hope the Committee will use this series of hearings as an educational opportunity and not as the beginning of a process which looks to legislate how evolving industries are able to operate. The for-hire transportation industry is currently not regulated at the federal level. Nor do we think there should be a move by Congress to strip these rights and this purview away from localities and states. Cities and towns across the United States have a strong tradition of regulating their own streets. Different cities apply different standards. This is because, for example, what works in the congested confines of New York City will not work in a small city such as Portland, Oregon or a mid-sized city in Ohio. Locally generated rules governed by local control have been, and remain, the most sensible practice in the local for-hire passenger transportation industry. We believe localities—*not* the federal government—are best positioned to create public safety rules and regulations around for-hire passenger transportation services. We would urge the Committee not to usurp local control—to support less federal government intervention, not more.

When Uber began, it used commercially licensed limousine drivers to deliver its service and it was successful with rave reviews. When Uber followed Lyft into using drivers with no commercial driver's license or insurance, its service and problems grew quickly. Uber customers now make the same common industry complaints against Uber. This is certain to happen in every industry. When a company grows as fast as Uber it will encounter the same problems as the remainder of the industry. This is another reason why any effort to create special exemptions or to classify Uber and Lyft as something other than a for-hire passenger transportation companies is premature and unconstructive. It is our hope that these hearings will be held for educational and not legislative purposes. The problems within our industry can best be resolved by local and state government, not the federal government.

Fingerprints Don't Lie

The TLPA supports an industry standard of fingerprint-based criminal background checks for all commercial drivers in the local for-hire passenger transportation industry. One might believe that this commonsense practice would have the support of all participants, but I am here today to tell you it does not. Uber and Lyft have staunchly opposed their drivers undergoing fingerprint-based criminal background checks conducted by law enforcement. Instead, these companies use third party background checks, which a recent study, *One Standard For All: Criminal Background Checks For Taxicabs, For-Hire, And Transportation Network Company Drivers* points out are 43% less effective than fingerprint-based criminal background checks conducted by the FBI.

The terrible result is one cannot go a week without reading a news article about another woman passenger sexually assaulted by an Uber driver. During the month of August, 2015 five Uber passengers were sexually assaulted by drivers. The sexual and physical assaults committed by Uber drivers have become so notorious the passenger public is becoming fearful of using any for-hire transportation services. Even worse, we are beginning to see children assaulted. The family of a 13-year-old girl in Virginia Beach, Virginia has alleged their child was sexually assaulted by her Uber driver. Reportedly, the family complained on more than one occasion to

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Uber about inappropriate behavior by the driver but nothing was done to remove him from the platform, according to the police report. Safety has to be a top priority for all of us in this industry, not just some of us. We would urge all for-hire companies in our industry, including Uber and Lyft to support an industry standard and move immediately to using fingerprint-based criminal background checks.

Uber's Lies and False Advertising

During your educational process, it is our hope the Committee will also look at what I would call truth in advertising. Uber makes greatly exaggerated claims about safety, insurance for drivers and consumers, surge pricing, and privacy and data protections. It is one thing to promote your business to compete in the marketplace, but it is something totally different when you are making claims localities, states, District Attorneys and even the courts are saying are false and misleading. If we are going to have an industry where passengers can feel safe and protected, then the playing field has to be level, where today it is not. In many communities there exists a set of tough and strict rules and regulations for our members and no set of standards or rules for Uber and Lyft. This is not only an anti-competitive issue for our industry, but a huge safety issue for the general public. Industry standards do matter. Uber's Wild West attitude will only continue to increase the number of assaults and abuses we are already witnessing. These assaults are the direct result of the lack of a level playing field.

How can passengers feel safe and protected when a company is using their data to pinpoint the best places in New York City to "hook up?" How can consumers feel safe when their data is being used by senior executives at Uber to track their location? And, how can consumers feel safe when an individual interviewing for a job with Uber was reportedly allowed to play around in its database and used this access to track prominent politicians? The answer is: We can't.

Price Gouging

Uber and Lyft are also actively engaged in price-gouging, contrary to laws in much of our country that prevent such a practice. On any given day, these companies will increase their rates by two to 10 times a normal fare based on traffic or weather. Uber calls this, "surge-pricing," something that routinely angers passengers who only see their final bill after it is emailed to them after the ride is over. Uber was even forced to apologize after it enacted surge pricing during a terrorist siege in Australia.

Bad Deal for Drivers

Meanwhile, the drivers lose out. Drivers for the higher-priced UberBLACK and UberSUV services have been forced into accepting the cheaper fares of uberX. Drivers for uberX—that is, people who use their own personal cars to drive for Uber—are subjected to hourly earnings that are at or below minimum wage. Los Angeles Times columnist Steve Lopez profiled one uberX driver who put 50,000 miles on his brand-new Prius in a little over one year. That driver said he earned between \$6 and \$11 an hour, after expenses such as gas and vehicle wear-and-tear.

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Insurance Problems

There is also a massive insurance problem with uberX. Because personal car insurance policies include “livery exclusions” (i.e., turning one’s personal car into a passenger transportation for-hire) uberX drivers routinely fail to disclose they are working for Uber.

There is a reason 30 states have issued insurance warnings to the public about driving for Uber or Lyft. Insurance is one of the grayest areas of the entire service. The company accepts responsibility only during certain times of the trip, and sometimes not at all. Such was the case with the family of Sophia Liu, a six-year-old girl who was killed in a crosswalk Dec. 31, 2013, by an Uber driver as she walked with her mother in San Francisco. Uber finally settled the case this year for an undisclosed sum after fighting the family in court for an accident caused by a driver who said he was on his way to take advantage of surge-pricing in a certain area of the city.

Self-regulation of these services simply has not worked. The public demands to be protected, and those protections must include adequate insurance, proper driver background checks that don’t miss criminals, and fares that don’t price-gouge. The only way to ensure these protections is for states and cities to be allowed to regulate these services.

The absence of city-led regulation has created an unlevel playing field the likes of which have never been seen before. Taxicab companies, for example typically have their fares set by the city. Their vehicles are typically inspected for safety twice a year. Their drivers typically have to pass physical checks, including random drug screenings. New drivers typically receive orientation that can last days and even weeks, and includes information on complying with the Americans with Disabilities Act.

Drivers for uberX watch a 13-minute online training video. Lyft’s so-called training is similarly short.

It is simply unjust for government to have one set of weak and inexpensive standards for one portion of the local for-hire passenger transportation service versus all others. The government should not be in the business of picking winners and losers. Rather, it should establish the framework that provides for public safety and then let consumers select their carrier of choice.

Some states, such as California and Virginia, have already declared Uber and Lyft to be part of the transportation industry, albeit under the new name of Transportation Network Companies (TNCs). While our industry does not believe that a different set of regulations are needed, we will comply and compete in this evolving market. Already, where TNCs are legal, taxicab companies have started their own TNC companies to benefit from lower costs brought on by less strenuous public safety requirements. Such weakened regulations include quicker but less exhaustive driver background checks, part-time commercial insurance rather than primary commercial automobile liability insurance that offers coverage 24/7/365, and no rigorous vehicle inspections.

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The time and money saved by transportation companies and drivers is significant, though the cost of the reduced public safety requirements and oversight is a public at much greater risk.

It is for these and many more reasons that Congress should use this opportunity to truly educate its members on the full picture, not just all the positives promoted by advocates. This is why, it is my hope that going forward, the Committee will have a more balanced discussion on these issues by including not just the new players. The Committee needs to consider hearing from others if it is going to truly understand how industries are evolving and changing.

Federal Intervention Not Necessary

Even with the concerns I have raised above, we do not advocate for federal intervention. Our position continues to be that we support letting consumers and the market pick winners and losers. We don't believe that the federal government should be in the business of choosing which companies make it or fail – this is the role for consumers and the market. Let me add a caveat here. This only works when there is true competition and the playing field is the same for all businesses in an industry. We cannot create one standard for Uber and another standard for so-called traditional taxi companies. The rules have to be the same across the board and then let competition decide who wins and who loses. If the playing field is level, I am confident that some of the problems and concerns I've discussed here will work themselves out and we will have a safer industry. Anything other than this will be the Federal Government deciding which companies succeed or fail in business.

In conclusion, our industry believes that no action is required from this Subcommittee when it comes to so-called "ride-sharing" companies such as Uber and Lyft, for three reasons:

- 1) First, Uber and Lyft are local for-hire passenger transportation companies, not technology companies. They are engaged in the local transportation of passengers along public roadways in exchange for payment.
- 2) Second, so-called ride-sharing services (uberX and Lyft) are not part of the sharing economy. They are for-hire vehicle transportation companies. Specifically, they are taxicabs, since they only provide local immediate response for-hire transportation service with the fare based on time and distance traveled.
- 3) Third, federal transportation law specifically exempts taxicab service from federal regulation, since such companies generally do not operate across state lines or beyond the community's commercial zone. For example, the Federal Motor Carrier Safety Act specifically exempts taxicab companies from its federal jurisdiction.

Conclusion

Mr. Chairman, Ranking Member and members of the Subcommittee, our industry is decidedly pro-technology. We have consistently been at the forefront of using technology to better improve service. From computerized dispatching, to GPS "closest cab" technology that finds cars faster for customers, to in-vehicle video cameras for enhanced safety, to credit card payment machines in the backs of taxicabs, our industry is intensely focused on finding the best use of innovation to provide the safest, most reliable and most efficient transportation possible.

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Yet with none of these advances would our industry ever claim that we are solely technology companies. We are transportation companies that utilize technology. Uber and Lyft are as well. The only difference is that Uber and Lyft have been allowed to flagrantly thumb their noses at local transportation regulations in their pursuit of profit. While some may call this the “disruption” of a market, we call it exactly what it is: breaking the law.

The sharing economy brings with it a number of challenges and opportunities for our country. Uber and Lyft, however, aren’t part of it. They are a part of the local for-hire passenger transportation industry and should be regulated as such: at the local level, by the communities they serve, and with the same rules that apply to any and all other such services.

It is my distinct honor and privilege to provide you with the perspective of the licensed and regulated for-hire vehicle transportation industry. Please feel free to contact me with any questions.

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Testimony from:
Working Partnerships USA
San Jose, CA

As a community-based organization advocating for economic justice in Silicon Valley, we have become increasingly concerned about the impacts of “on-demand” industries both on workers and on neighborhoods.

The prevalent model in the on-demand industry is that of a labor broker which recruits, screens, trains and often dispatches workers on a per-task or just-in-time basis, with zero workplace or schedule stability and often at rates that equate to less than the legal minimum wage.

Far from being a new concept, when the technological bells and whistles are stripped away, this model bears a striking similarity to an exploitative process that was common in last century and which human rights advocates are still working to eradicate in many parts of the world: piecework.

The on-demand industry is not only affecting employment and workers, but also consumers and communities. One particular segment of the on-demand industry, short-term rentals of homes as hotel rooms (via businesses such as Airbnb, HomeAway, FlipKey and a number of others), is already having significant negative impacts on cities and neighborhoods.

The San Francisco Bay Area is facing a profound housing crisis marked by rapidly rising housing costs and a severe shortage of homes, apartments or even single-room rentals that are affordable to the typical worker outside of the high-tech sector. Short-term rentals worsen this crisis by taking land that was planned, zoned and developed as housing and converting it in part or in whole to a hotel. Every unit put up as a short-term rental is one less home.

In Silicon Valley, where entire families live in rented garages and renting out a room in someone’s house is the norm for young college-graduate workers, short-term rental even of a single room in someone’s house has an impact on housing. The larger impact, however, comes from “unhosted” rentals in which an entire house or apartment building is turned into short-term rentals. Speculative buyers or absentee landlords may buy apartment buildings or multiple homes and convert them wholesale into short-term rentals, taking dozens or hundreds of rental units off the market.

Neighborhood stability and public safety may also be imperiled by short-term rentals, particularly those that are unhosted – meaning there is no permanent resident living in the home, but only a succession of out-of-town visitors. This means that a family who bought their home in a residential neighborhood can suddenly find themselves living next door to an unregulated motel. If the owner is an out-of-town investor, they are unlikely to be responsive to community concerns about neighborhood safety or quality of life. This may also translate to increased calls to police or code enforcement with concomitant increased costs to the local jurisdiction.

It is important to note that in most cities in California (and likely in most other states), commercial short-term rentals of residential property are illegal unless specific legislation has been enacted to allow them. Like many other businesses in the on-demand industry, short-term rental companies have for the most part moved forward in flagrant violation of local laws and standards.

Working Partnerships USA has worked with our community supporters, neighborhood residents and labor advocates to address the issue of proliferating illegal short-term rentals in Sunnyvale, Silicon Valley's second largest city. On Sept. 15, 2015, Sunnyvale adopted an ordinance that allows and regulates short-term rentals of residential property. The new ordinance allows hosted-only short-term rentals, requires a permit from the City, and does not extend the policy to mobile home parks. It also regulates a maximum of 4 lodgers per night at any given single-family dwelling. Finally, the Council emphasized the importance of monitoring the growth of short-term rentals in their community and any potential impacts to the local affordable housing stock.

We believe that Sunnyvale's ordinance is a strong step in the right direction. As other cities and perhaps the state or federal government move forward on this issue, there is room for improvement and learning. In addition to the provisions included in the Sunnyvale law, we recommend the following:

- Include a permanent residency requirement. This would on the one hand allow local residents to rent rooms in their own homes for short-term use, but on the other hand would close the loophole in the current "hosted" requirement whereby an investor can turn an entire multi-family apartment complex into short-term rentals and remain within the law by virtue of having a single paid property manager on site.
- Include a cap on the total number of days a property can be short-term rented per year. This helps to maintain neighborhood character and to ensure that residential space is not converted into perpetual short-term rentals which remove housing from the market.

Finally, we are extremely concerned at the extent to which on-demand industries are pouring huge amounts of money into lobbyists, government relations and political campaigns in an attempt to evade or rewrite the rules to favor their own businesses over competitors, as well as to directly benefit from taxpayer dollars through public purchasing of their services.

While we strongly support genuine innovation, we do not believe there is any value in "innovation" that consists of finding new ways to push the costs of doing business onto workers, communities and taxpayers. We urge the Congressional hearing to investigate these practices with an eye toward defending workers' rights, safeguarding both consumers and communities, and ensuring a fair and a level playing field for all businesses. Thank you for your attention to this emerging issue.

Working Partnerships USA

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Statement for the Record

Submitted by the American Hotel & Lodging Association and the Illinois Hotel & Lodging Association

to the

United States House of Representatives Energy & Commerce Committee, Subcommittee on Commerce, Manufacturing, and Trade

for the hearing entitled:

“The Disrupter Series: How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises Policy Questions”

September 29, 2015



On behalf of the 1.8 million employee U.S. hotel industry, the American Hotel & Lodging Association (AH&LA) applauds Chairman Burgess and Ranking Member Schakowsky for holding a hearing today on the “sharing economy.” Today’s discussion is an important one to explore the impact these new online platforms have on consumers, businesses, and our economy. Earlier this summer, in June, AH&LA also participated in the first federal discussion regarding the “sharing economy” as part of the Federal Trade Commission’s (FTC’s) workshop on this topic. We look forward to working with the Committee as it considers these issues and the appropriate role for the federal government.

Competition is a hallmark of the lodging industry. It creates new ways to improve the guest experience while creating a better and stronger business model, driving growth, more jobs, and innovation. Our members embrace and have thrived in a highly competitive business where everyone plays by the same rules. However, there is now an un-level playing field involving some newer market players in the short-term online arena that are compromising consumer safety, endangering the character and security of residential neighborhoods, and avoiding their regulatory and tax obligations.

We believe short-term online rental companies have obligations to uphold, including taking reasonable steps to facilitate compliance with commonsense safety, security, health, and fire standards and paying their fair share of taxes. We also believe that significant commercial enterprises – indeed, illegal hotels and inns – need to be reined in.

As multiple reports have revealed, some “hosts” are using these platforms to rent out multiple units, essentially operating them as illegal hotels. For example, the New York State Attorney General found that just 6% of hosts renting out properties on Airbnb in New York City collected 37% of the total revenue for the company in New York City, leading to the conclusion that these hosts were offering multiple units and running commercial lodging businesses. Further, a study by the San Francisco Chronicle found that 60 percent of Airbnb’s local listings are entire homes, undercutting the notion that guests and hosts are simply “sharing” spaces. The Chronicle also found that 205 “super hosts” existed who controlled 3 or more listings. Finally, in Los Angeles, the Los Angeles Alliance for a New Economy found that hosts renting out two or more entire homes were responsible for 35 percent of Airbnb’s revenue.

In some jurisdictions these short-term rentals are clearly illegal, while in others they may violate existing zoning, licensing, or other laws in place to protect consumers and the safety and integrity of communities. For example, the New York State Attorney General found at least 72% of Airbnb listings in New York City are illegal under city and state law, and legal action has been



taken against property owners in a number of cities for operating short-term rentals. Online platforms, such as Airbnb, should not be enabling or encouraging illegal actions.

We appreciate Congress and other federal agencies such as the FTC beginning to explore the appropriate federal role regarding regulation and oversight for the “sharing economy.” That said, many issues surrounding the emergence of short-term rentals are being decided at the state and local level. To that end, we believe state and local jurisdictions should ensure that:

- Hosts register and obtain a business license and other applicable transient occupancy or vacation rental permits.
- Short-term online companies are not enabling or encouraging illegal activity.
- Basic health, safety and cleanliness standards are met.
- All taxes and fees are paid.
- Zoning laws are followed.
- Appropriate levels of insurance are in place to protect homeowners, guests and communities.

The hotel industry looks forward to working with Congress, the Administration, and city and state governments to promote these goals and develop policies to ensure that short-term rental platforms, and their users who are engaged in commercial transactions, respect the rules of the road and protect the safety and security of guests and surrounding communities.



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September 28, 2015

Chairman Michael C. Burgess, MD
Ranking Member Jan Schakowsky
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Congressional Hearing on Sharing Economy

Dear Chairman Burgess and Congresswoman Schakowsky:

The Hotel Association of New York City ("HANYC") respectfully submits these comments to the Committee on Energy and Commerce with respect to Airbnb, Inc. and other companies, such as HomeAway, that are in the business of listing residential properties in New York City for rent for transient lodging purposes. These companies have used their booking platforms to create massive virtual hotels that violate Federal, New York State, and New York City laws.

As we explain below, these companies are, at the very least, aiding and abetting violations of the law in New York City, tortiously interfering with contracts between lessees and their landlords, and creating situations that endanger not only the Airbnb guests, but, more critically, the other long-term residents in the apartment buildings who have no say in and thus no control over the flood of transient guests in the hallways of their homes. These virtual hotels control thousands of rooms located throughout the City, without any of the safeguards that hotels are required to put into place to protect guests and the community, and without obeying the numerous laws applicable to hotels that address everything from consumer protection to fire safety. These massive virtual hotels comply with none of the construction or fire standards that are dictated for hotels in order to ensure guest safety. As a practical matter, they operate outside the purview of the federal or state laws banning unlawful discrimination and in particular, discrimination against the disabled and their rights to transient lodging. If these virtual hotels pay any transient hotel related taxes at all, they do not pay the same taxes paid by hotels, most notably real estate tax. In short, these companies are operating illegally, putting at risk those who list on their sites, those who book on their sites, and the residents of the buildings who live in the apartment buildings in which they do business.

This pattern of illegal and anti-social behavior has allowed Airbnb and its ilk to operate at a competitive advantage over those legitimate businesses, such as our member hotels, who do obey the law. They are flooding the hotel market in New York City based on a model that drastically lowers their cost in comparison to true hotels. Yet, that cost differential is not being passed on to the consumer. One need only compare prices on Airbnb with rooms available in the hotel market to verify that fact. That cost differential created by not complying with the law creates a wide profit margin. That profit is going into Airbnb's pocket to the tune of \$61 million in less than 5

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years in New York alone, and the pockets of its commercial users (“hosts” that ran large-scale operations on Airbnb), which collected over a third of the total revenue generated – or \$168 million in New York alone. That profit margin represents the difference between being a safe hotel and an unsafe one and the difference between being a socially responsible hotel and a socially irresponsible one.

ABOUT HANYC

The Hotel Association of New York City, Inc. was founded in 1878 and is one of the oldest professional trade associations in the nation. Its membership includes more than 270 hotels in New York City, representing more than 75,000 rooms and approximately 50,000 employees. HANYC is an internationally recognized leader in New York City’s \$5 billion tourism industry. It provides advocacy services, educational services, and labor representation for its members. It is active in NYC & Company (the destination marketing association for the City), the management of the Jacob Javits Convention Center, and in numerous of New York City’s business and charitable organizations. It played an active role in the charitable and other recovery activities necessitated by the attack of September 11. It works closely with the New York City Police Department on all security matters, including the Joint Terrorism Task Force, and with the New York City Fire Department. Its Chief Executive Officer was the Commissioner of the New York Fire Department under The Honorable Mayor Edward I. Koch.

I. **THE NEW YORK STATE ATTORNEY GENERAL’S INVESTIGATION FOUND WIDESPREAD ILLEGALITY IN AIRBNB’S NEW YORK CITY LISTINGS AND THAT THE MAJORITY OF AIRBNB’S NEW YORK CITY “HOSTS” ARE LARGE-SCALE COMMERCIAL ENTERPRISES**

In October 2014, the New York State Attorney General Eric Schneiderman issued an extensive report that concluded that as much as 72% of Airbnb reservations violated New York law and that the majority of Airbnb’s “hosts” were commercial users operating multimillion-dollar businesses. See <http://www.ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf>. The report was based on data for bookings between January 1, 2010 and June 2, 2014 obtained directly from Airbnb by the Attorney General’s Office.

The key findings from the New York Attorney General’s report include:

- **More than 72% of Airbnb listings are illegal:** Of the 35,354 private, short-term listings, data suggest that 25,532 of them violated either New York State’s Multiple Dwelling Law and/or New York City’s Administrative Code (zoning laws). Hosts generated approximately \$304 million in revenue from these listings alone and, Airbnb itself earned almost \$40 million from these transactions. Additionally, these figures are likely significantly understated as they do not account for those listings in which the permanent resident was not present (*i.e.*, “private rooms”), which is in and of itself illegal in New York City.

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- **Commercial users accounted for the majority of Airbnb listings to run multimillion-dollar businesses:** Over 100 users controlled more than 10 different apartments that were rented out regularly through Airbnb. Together, these hosts booked 47,103 reservations and earned \$59.4 million in revenue. The most prolific user administered 272 unique listings, booked 3,024 reservations and made \$6.8 million in revenue. Additionally, while only 6% of hosts ran large-scale operations on Airbnb, that same group dominated the platform, generating 36% of all rental transactions and collecting 37% of total revenue – or \$168 million.
- **Numerous units appear to serve as illegal hostels:** New York law prohibits commercial enterprises from operating hostels. In 2013, approximately 200 units were booked through Airbnb for more than 365 nights during the year, indicating that multiple, unrelated guests shared the same unit on the same night, as they would in a hostel. The 10 most-rented units were booked for an average of 1,900 nights in 2013, with one top listing average 13 reservations per unit per night.
- **Gentrified neighborhoods account for vast majority of Airbnb revenue:** Bookings in just three Manhattan neighborhoods – Greenwich Village/SoHo, Chelsea/Hell’s Kitchen and Lower East Side/Chinatown – accounted for more than 40% of hosts’ revenue, or about \$187 million. By contrast, all reservations in Queens, the Bronx and Staten Island combined brought in \$12 million, less than 3% of the New York City total.
- **Short-term rentals are displacing long-term housing options:** In 2013, more than 4,600 units were booked for at least three months of the year. Of these, nearly 2,000 were booked for a cumulative total of six months or more, rendering them largely unavailable for use by long-term residents. Notably, the share of host revenue from units booked as short-term rentals for more than half the year increased steadily, accounting for 38% of the site’s revenue by 2013.

Airbnb is now circulating a feel-good advocacy piece in the form of a “study” that ignores the Report from the New York Attorney General. See <https://www.airbnbny.com/economic-impact>. In addition, at the Federal Trade Commission’s June 9, 2015 workshop on the sharing economy, Airbnb’s spokesperson said that he believed that Airbnb had correct data as to the make-up of its constituency in New York City (and other cities) and repeatedly stated that such data proved that the majority of hosts were simply “sharing” their homes to help them make “ends meet.” For example, Airbnb’s spokesperson stated that:

I do agree that we should be sharing more anonymized data. We should be proud of the data we have, and we should share it, because numbers that are thrown around like this, the 6%, the 40%, the 72% illegal, they're all wrong. But we can't prove it unless we share our data. . . . There is a balance to be struck here to differentiate between businesses and individuals. People doing something once in while with their own property to make ends meet is something very different than someone doing it full-time as a business

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(See Workshop Transcript at 144,
https://www.ftc.gov/system/files/documents/public_events/636241/sharing_economy_workshop_transcript.pdf) (emphasis added).

Based on such statements, Airbnb's spokesperson asked the hotel industry and the FTC to sympathize with those citizens enduring the high cost of living in New York City and allow them to earn a little extra money when they are not at home or even when they are at home. He then intimated that Airbnb would release the data so that the world could see what was really going on.

We would think Airbnb would be anxious to release that data. Indeed, if such data exists, it would affirmatively disprove the findings of the New York State Attorney General, who found that more than 72% of Airbnb listings are illegal and that commercial users dominated the Airbnb platform, generating 36% of all rental transactions and collecting 37% of total revenue – or \$168 million.

The fact is that Airbnb has not released any of its data. In the meantime, there are continued and repeated reports of owners of multiple apartments using those apartments solely for transient use through Airbnb and other such services. Only Airbnb can track who those people are and only Airbnb can cease doing business with them. If Airbnb was following its dream of the sharing economy – instead of its real dream of more billions – it would be releasing reports on a daily basis of how it was shutting down its conspiracy with those who are obviously violating the laws of New York State by creating businesses that house transient guests in residential buildings.

As between findings by the New York Attorney General and Airbnb's "study" and its failure to release data that it claims to show otherwise, we suggest that the former has much more credibility.

II. AIRBNB AND OTHER VIRTUAL HOTELS ARE VIOLATING NEW YORK LAW

A. New York City Laws Governing Hotels Protect Tourists and the Public

New York City is one of the largest hotel and tourist markets in the world. For the safety of those tourists, New York City hotels are subject to more burdensome regulations than apartment buildings. This is because tourist use is distinctly different from long-term residential use.

As a generalization, hotels are required to be "safer" than apartment buildings because tourists are much less likely to understand the building they are staying in than long-term residents of an apartment building. We have not done an empirical study, but we believe this is true for every major tourist destination in the world.

Specifically, New York City hotels are particularly heavily regulated to be much more fire safe, by the building code and the fire code, than apartment buildings. For example, hotels are required to have sprinkler systems, and detailed systems to let guests know of a fire emergency

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as well as detailed evacuation plans and the staff must ensure that those systems and plans work. Hotels are also required to adhere to detailed construction standards to prevent the spread of fire through the building. These same standards do not apply to apartment buildings.

The virtual hotels also claim that they are not subject to these building and fire codes and they certainly are not obeying them. See <http://www.sharebetter.org/story/after-major-fires-at-illegal-hotel-buildings-nyc-official-calls-for-increased-fire-safety-inspections/>. Before the virtual hotels were created, it was unthinkable that there could be a fire in an apartment building as a group of transient tourists, unfamiliar with the building, wandered the hallways trying to find a staircase with no staff or PA system to tell them whether to go up or down to avoid suffocation. Now, it is a clear and present danger.

In addition to the building and fire codes, New York City law contains specific provisions governing the operation of a hotel to further protect guests and the public. For example, hotels are required to: (1) maintain a register of hotel guests, a requirement that helps ensure that undesirables, or those with whom US citizens cannot do business, can be easily found by law enforcement if necessary; (2) the posting of rates to ensure that a person staying in the room is being charged a reasonable rate for it; and (3) the necessity of latching chains on hotel room doors. See <http://codes.lp.findlaw.com/nycode/GBS/12>.

B. New York Laws Are Intended to Benefit the Citizens of New York City and Protect the Character of the City

For decades, large areas of New York City, as a matter of zoning law, have not permitted transient occupancy, such as tourist occupancy, and thus do not allow hotels in such zones. The purpose of these zoning laws is to maintain those areas of New York City as long-term residential communities, necessary to maintain the neighborhood nature of the City. See, generally, <http://www.nyc.gov/html/dcp/html/zone/zonehis.shtml>. These zoning regulations effectively prevent the transient use of apartments within such zones.

At the time that the laws preventing transient use in certain portions of New York City went into effect over fifty years ago in 1961, two types of hotels were operating throughout the City – transient hotels and apartment hotels. See <http://www.andersonkill.com/webpdfext/RealEstateWeekly-Dec2008.pdf>. Transient hotels were hotels that typically had a high number of guests that stayed for less than 30 days. By contrast, apartment hotels were buildings that were constructed for long-term use (including amenities such as, for example, some method of cooking) and generally had guests who stayed longer than 30 days.

The zoning law grandfathered in then existing transient hotels. As a result, if a transient hotel was previously operating in a district that disallowed transient use after the zoning law, that hotel could continue to do so. But no other transient hotels could be built in such a district. Similarly, the zoning law also prevented apartment hotels from being converted into transient hotels and required them to remain long-term use hotels.

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Among apartment hotels were “single room occupancy” (SRO) hotels. SRO hotels provided affordable housing for low income individuals. See http://en.wikipedia.org/wiki/Single_room_occupancy. In or about 2009, the City of New York became concerned that owners of SROs were illegally renting out rooms for transient use in order to increase their income stream. These rentals both violated the zoning law and, at the same time, deprived the city of much-needed affordable housing. In a lawsuit by the City against an owner of an SRO, the New York State court held that in order to get an injunction prohibiting further transient use, the City would have to prove that the transient use was not incidental because the statute at that time permitted incidental transient use.

C. New York City Affirms the Prohibition Against The Renting Of Apartments As Hotel Rooms

In 2010, the City succeeded in having the State Legislature clarify the zoning law by adopting what it believed to be the then standing interpretation of incidental transient use. See <http://www.nysenate.gov/press-release/illegal-hotels-bill-passes-legislature-bill-protect-residents-increase-apartment-avail>. HANYC was asked by the City to support the legislation. HANYC did so as an accommodation to the City and only after satisfying itself that the concern of the City was substantial and legitimate. That 2010 legislation had nothing to do with Airbnb and, at that time, the issues raised by Airbnb had yet to bubble to the surface.

While the 2010 legislation is widely referred to as the “illegal hotel” law, in fact, all it did was define certain terms in a law that had already been on the books for decades. The fact is that the prohibition against renting residential apartments as *any* type of transient hotel room arises from the New York City building and fire codes and from a decades-old zoning prohibition designed to protect the character of the City.

D. Airbnb’s New York City Listings Deliberately Violate New York City and New York State Laws That Are Intended to Safeguard Tourists and Protect the Character of the City

It is common knowledge that Airbnb’s New York City listings are nearly exclusively in apartment buildings. These rentals of apartments by tourists for short-term stays are illegal, *regardless of where they occur in the City*, because, as explained above, apartment buildings cannot be used for transient purposes. If the rentals are also in a “non-transient zone”, then the illegality is compounded. Not only are they forbidden by the building and fire code, they are also operating to defeat the zoning purpose to maintain the character of the City. For Airbnb to claim it does not understand (nor is it required to understand) these laws is not believable. The fight over this issue has been going on for some years now. Airbnb has lawyers and it has lobbyists. It is deliberately acting to facilitate and in concert with the “hosts” who are violating the laws of New York City and it knows that it is.

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III. VIRTUAL HOTELS ARE TORTIOUSLY INTERFERING WITH CONTRACTS

It is well known throughout the New York City real estate market (and, we submit, in virtually every major real estate market) that residential leases include a standard “no sublet” clause that flatly prevent tenants from subleasing to any other party without the express written permission of the landlord. A breach of that provision, including a sublet through Airbnb, is a violation of the contract and is grounds for eviction. See <http://nypost.com/2015/02/21/landlords-planning-more-evictions-after-airbnb-ruling/>.

The standard “no sublet” clause is hardly a surprise to a company such as Airbnb and its ilk. They did not fall off of the turnip truck yesterday. For example, Airbnb is capitalized in the multiple billions of dollars, and has hundreds of thousands of listings on its website. See http://dealbook.nytimes.com/2014/03/20/airbnb-said-to-pursue-valuation-of-over-10-billion-in-new-fund-raising-round/?_r=0). It is with knowledge of such clauses that Airbnb openly solicits, encourages and accepts listings in apartment buildings in New York City, and then uses its multimillion dollar advertising campaigns to induce travelers to contract with the tenants of those apartments in violation of the leases, and in derogation of the landlord’s rights. A systematic effort to induce hundreds of thousands of breaches of contract within the borders of New York City is, we believe, the most monumental case of tortious interference with contract in the history of the law.

IV. VIRTUAL HOTELS AND THE UNLAWFUL DISCRIMINATION PROBLEM

Hotels have for centuries been under the duty to accept all those who may seek a room, if rooms are available. It is one the primary duties of a hotel. The exceptions to this rule are extremely narrow – as a general rule, a hotel can only refuse a guest who has a communicable disease, who is known to be potentially dangerous to other guests, or who is unable to pay. See Jefferies & Brown, *Understanding Hospitality Law*, Chapter 4 (5th Ed. AHLEI). Federal and state laws reiterate a large part of this common law this duty in the form of preventing unlawful discrimination. These laws prevent discrimination based on characteristics, such as race, color, and gender, and on the basis of religious belief, but also of particular importance, on the basis of disability. The Americans With Disabilities Act (ADA), was enacted with the hotel industry’s support, **specifically to assure that public accommodations, and in particular accommodations for transient guests – the millions of guests that these virtual hotels target, market to and facilitate the transactions of –** were available to and usable by, the disabled. See <http://www.ada.gov/hsurvey.htm>. Under the ADA, a hotel must make available specified numbers of ADA compliant rooms and make certain that all of its rooms are compliant to myriad standard applicable to all rooms and the hotel itself.

We are aware of the types of legal arguments that Airbnb and other virtual hotel companies might make to escape a conclusion that their operations must also obey these laws. The argument goes like this: *As virtual hotels we do not own or manage any property, and therefore we are not bound by the ADA. Nor do we, or can we, have a duty to police those who list on our sites and who might be discriminating in their choice of guests based on other impermissible criteria. The only exception, so goes the argument, is that the Fair Housing Act might apply to those who are*

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listing on our site, but that's not our responsibility either. Presto – no discrimination laws apply to our rental business.

See <https://www.airbnb.com/support/article/898>.

This type of logic gives the term “loophole” a bad name. Whatever its surface appeal, it overlooks reality of discrimination with respect to the disabled, at the very least. See <http://nypost.com/2014/11/03/airbnb-spots-dupe-the-disabled-on-accessibility-advocates/>; <http://www.bkmag.com/2014/11/03/airbnb-in-new-york-is-terrible-for-the-disabled/>.

Contrast the virtual hotels’ “business model” to the online travel agencies and companies, such as Orbitz. The type of argument that the virtual hotels make might fly for Orbitz because Orbitz is marketing rooms found in hotels that *are* required to comply with the law. Contrast virtual hotels to a hotel franchise arrangement where the franchisees are hotels that *are* required to obey the ADA, and where some courts have found, in decisions we disagree with, that the franchisor in certain situations may also be subject to the ADA. See http://www.americanbar.org/publications/franchise_lawyer/2013/fall_2013/how_does_americans_with_disabilities_act_affect_franchising1.html. Contrast it also to real estate listings for rentals where the real estate agents *are* subject to the Fair Housing Act, as are those individuals who are listing with those agencies. The real estate agents provide a mechanism to detect an individual who is trying to rent his apartment in a way that discriminates on an impermissible basis. Contrast it also to a newspaper that does nothing but accept advertisements. The newspaper may have no duty with respect to any discrimination in a transaction resulting from such an advertisement because it has no part in the transaction between the advertiser and those who are answering the ad, unlike Airbnb and its ilk who participate not only in the listing, but in the transaction itself, by putting the transaction together in order to generate the massive revenues that will support billions of dollars in capitalization.

The point is that Congress has mandated that the transient occupancy trade be made accessible to the disabled. Yet Airbnb and its ilk have, so they claim, managed to create a massive market of transient trade that does not have to, and does not, obey the policy of that law. Indeed they apparently believe that they have designed a structure where neither they nor their “hosts” can be adequately policed or “blamed” for discrimination of any sort under the fiction that all they are doing is putting together two willing parties in the sharing economy. Such a claim rings as hollow as every other excuse for unlawful discrimination. It is the same old story dressed up in new catch words and slogans. Even if the massive loophole they rely upon does in fact exist as a technical matter of law, it is a business model that the virtual hotels should be ashamed of and that the FTC should soundly condemn.

V. AIRBNB DOES NOT ENSURE THE SAFETY OF GUESTS OR APARTMENT BUILDING RESIDENTS

A primary duty of a hotel is to protect its guests. See Jefferies & Brown, Understanding Hospitality Law, Chapter 10 (5th Ed. AHLEI). See also http://hotelexecutive.com/business_review/347/common-legal-issues-that-confront-hotel-operators.

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In order to fulfill this duty, hotels employ security directors, security officers, and train their employees on guest security and potential guest issues. Hotels have specific lockdown procedures in the event of emergencies and protocols to respond to suspected infectious or contagious diseases on the premises, terrorist attacks, unauthorized persons on the premises, including human traffickers, and for reports of theft or other illegal activity on the premises. Hotels also provide safes for valuables, doormen to assist in transportation, and 24-hour staff to respond to guest concerns, including providing for disabled individuals so that they can use the facilities and so that they can be safely evacuated in the case of emergency. Each hotel has detailed fire plans that are filed with the New York City Fire Department and are required to have fire safety directors present 24 hours a day. See http://www.nyc.gov/html/fdny/pdf/cof_study_material/fsd_hotel_study_guide.pdf.

Hotels also regularly assist law enforcement on a wide-range of issues, varying from petty theft to trafficking to terrorism. Every member of the staff of a hotel operates as a safety officer in this sense: inactivity in a room and refusal of maid service for more than one or two days is usually reported to hotel management in case there is something wrong with the guest; the manager of the hotel, as well as the room staff are charged with surveying the premises to use reasonable care that the premises are in order and create no danger; operators or desk clerks are available 24 hours a day in case any guest has a problem, or an illness, or an accident; special fire safety directors are on duty 24 hours a day; and, in many cases, room furnishings are standardized because they have been tested to be reasonably safe for guest use.

Airbnb and other virtual hotels do none of this.

Rather, Airbnb and other virtual hotels facilitate the booking of any apartment in any apartment building that a “host” wishes to list, safe or not. **And anybody – literally anybody – can rent those apartments.**

Imagine the following scenario. A married couple with two young children lives in a rental building in New York City. The building is home to many other similarly situated couples, also with young children. In fact, on any given day, children play in the hallways or in the front of the building. The building has no doorman and no other security personnel. Their neighbor, looking to make a quick buck while away, decides to sublet his apartment and lists on Airbnb. One only has to imagine the parade of horrors – all of which are realities in New York City – that could happen next. The “guest” that “checks in” could be a child molester, a rapist, a prostitute, a thief, a terrorist, or a human trafficker. This gives a whole new meaning to the phrase “case a joint.” It provides a new platform for criminals to use at their leisure.

Airbnb and other virtual hotels provide no security in case such a person wishes to check in and roam the hallways to the detriment of those who rent or buy apartments in New York City in hopes of having a stable environment in which to live, a place that does not require the type of security which hotels have and provide as a matter of law and which is necessary when dealing with heavy transient traffic.

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During the workshop, Airbnb's spokesperson attempted to make the point that Airbnb had adequate safety and security measures in place.

We and the hotel industry are both growing tourism. We care an enormous amount about safety, to your point. Obviously, companies can't function if things are unsafe. No hotel could function if people were getting into trouble in that hotel, nor could the sharing economy work if these, sort of, mechanisms of trust weren't engaged.

So we have a verified ID system, where hosts and guests can connect and verify who they are, based on their offline identity, which is, like, a driver's license or a passport, and their online identity, like Facebook or LinkedIn, just to make sure you know you're dealing with. We have a team of a few hundred fraud, and prevention, and safety experts who constantly monitor the site to make sure that people are cheating each other. We do hold the payment when a guest books. The guest gives us the money, we hold the payment until about a day into the stay to make sure that person actually showed up and turned over the key, that there wasn't any funny business, and then we turn over the money. We obviously know who people are, and so there's a big trust there.

But the most important thing is not something we do. It's simply the tool we offer, like eBay, which is the rating system. Every guest and every host rates each other on a five star scale, not just on overall stay, but also on cleanliness, and accuracy, on location, price, to get us that communication just so that when I want to stay with someone or I want to host someone, I can understand, sort of, who they are. There's also a period where you can ask questions of each other.

(See Workshop Transcript at 117-18.)

These are not safety or security measures at all; they are perhaps basic measures to protect the host and the guest from fraud. However, Airbnb's stated "safety measures" do not protect anyone – guests, hosts, or other apartment building residents – from any other harms, such as serious crimes or health hazards or fire. The problem is that Airbnb's platform creates a high risk that anyone – from child molesters to sex traffickers to prostitutes and their customers and drug dealers and their customers – can and will freely roam the hallways of other people's homes, with a mere doorway stopping them from entering any one of those homes. There are no adequate safety mechanisms in residential buildings to make certain that those who are renting from Airbnb, and their guests or clientele, are not roaming the hallways. There are no safety mechanisms in such buildings to detect active prostitution or drug dealing or other crimes. There is no evacuation protocol or other fire safety standards that protect a guest staying in an Airbnb rental if there is a major fire in the residential building. Contrast this to a hotel, which has an active safety staff, not only in the lobby, but in the person of every employee, each of whom is trained to spot suspicious or dangerous characters and activity, and to report such signs to safety officers and fire safety directors who are on-duty 24-7 and who have close contacts with local police and fire departments.

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Moreover, hotel guests are specifically warned not to open their doors unless they are certain that someone they know or a hotel employee is knocking. If they are unsure, they can call the front desk and find out. No such safe guards exist in a residential building. Airbnb has no basis to claim that the meager “safety” system that they have established even comes close to preventing crime or protecting guests, hosts, and residents. To the extent Airbnb’s spokesperson believes, as he said, “over time we will realize we are on the same side,” the hotel industry will never be on the same side as any company that creates any unsafe condition for the residents or the transient guests of the City of New York.

VI. AIRBNB’S WEBSITE IS MATERIALLY MISLEADING

Airbnb’s website contains some information for what it calls “Responsible Hosting”. It then lists the cities that it operates in. When one clicks on New York, one finds the following (see <https://www.airbnb.com/support/article/868>):

When deciding whether to become an Airbnb host, it's important for you to understand the laws in your city. As a platform and marketplace we do not provide legal advice, but we want to provide some useful links that may help you better understand laws and regulations in New York. This list is not exhaustive, but it should give you a good start in understanding your local laws. If you have questions, contact the [Department of Buildings](#), [Department of Finance](#) or other city agencies directly, or consult a local lawyer or tax professional.

- **Business Licensing.** *The [New York City Administrative Code \(ADC\)](#) requires certain businesses to obtain a license. You should consult these requirements to determine if your activity must be licensed. For more information, paste the following URL into your browser: <https://www1.nyc.gov/nycbusiness/startabusiness/>.*
- **Multiple Dwelling Law.** *The [New York State Multiple Dwelling Law](#) restricts renting out a Class A multiple dwelling for periods of fewer than 30 days. The definitions of “Class A” and “multiple dwelling” can be found in Sections 4-7 and 4-8 (Article 1 of “MDW” under “Laws.”). The law exempts rentals to a “boarder, roomer or lodger,” which has been interpreted to mean that, in general, if a guest shares the apartment with a permanent resident who is present for the duration of the rental (i.e., a “shared space” rental), it is permissible under the Multiple Dwelling Law.*
- **New York City Zoning Code.** *The [New York City Zoning Code](#) sets out the city regulations on zoning, which may apply to your listing. Chapter 2 contains definitions of things like “hotels” that could apply to you.*
- **Rent Control.** *The Administrative Code (ADC) sets out rules for [rent stabilized](#) and [rent control](#) properties. If you live in a property subject to rent stabilization or rent control, you should review these rules carefully.*
- **Taxes.** *New York City and New York State impose multiple taxes that may apply to transient occupancy or tourist use, subject to certain exemptions. Examples of taxes that could apply to your listing are State sales and use tax, City hotel room occupancy tax, and State and City nightly room fees. Additional information about hotel sales taxes [is available here](#). Additional information about NYC hotel occupancy taxes [is available here](#). (The word “hotel” has a broad definition that could apply to you.)*

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- **Other Rules.** *It's also important to understand and abide by other contracts or rules that bind you, such as leases, condo board or co-op rules, HOA rules, or rules established by tenant organizations. Please read your lease agreement and check with your landlord if applicable.*

We're committed to working with local officials to help them understand how Airbnb benefits our community. Where needed, we will continue to advocate for changes that will allow regular people to rent out their own homes.

Last updated: August 19, 2015

If there has ever been an example of a “disclosure” hiding the truth, this is it. **It fails to mention that there is a law that prohibits the rental of apartments in New York City for transient use.** Instead, it tells the prospective host to call all over New York to learn that simple, indisputable fact.

To make it even worse, by a simple internet search, Airbnb can determine if a short term transient listing in New York City violates the law. The Certificates of Occupancy for every address in New York City are on line. See <http://www.nyc.gov/html/dob/html/bis/bis.shtml>. If the Certificate of Occupancy indicates it is in a permanent residential building (condo, co-op, or residential apartment building), the answer is “Yes, it violates the law”.

That is specific for New York. For New York and the rest of the country, the “disclosure” also fails to mention to hosts that: You could be liable if someone is injured in your apartment. You are liable if someone in your building is injured by someone who rents from you. You could be subject to penalties and in some cases indictment for trading with the enemy if you rent your apartment to someone listed on OFAC's Specially Designated Nationals list. See <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

VII. THE STATE AND CITY OF NEW YORK WOULD GLADLY ACCEPT A \$65 MILLION TAX PAYMENT FROM AIRBNB AND THE HOTEL INDUSTRY COULD NOT STOP AIRBNB FROM SENDING IN SUCH A CHECK

During his remarks, Airbnb's spokesperson at the FTC hearing repeatedly stated that Airbnb had tried to pay taxes but it was not being “allowed” to. For example, he stated:

And we keep trying, and we keep failing, and I get there's some competitive pressure here. Look, in New York, for three years, the hotel industry, the lobbyists said, it's not fair because they're not paying taxes, it's not fair because they're not paying taxes. So we said, fine, we'll pay taxes. And they said, don't let them pay taxes. . . . So we're in this weird world of a company that wants to collect and remit more tax. In New York, it would be about \$65 million a year right now. We can't figure out how to do it, but I think we'll get there. It's hard to see how governments will continue to say, we don't want this money.

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(See Workshop Transcript at 135-36) (emphasis added.) It is a virtual certainty that if Airbnb cared to send \$65 million in tax payments to the coffers of the City or State of New York, those jurisdictions would happily accept those donations.

But, Airbnb is not trying to pay taxes; rather, it is trying to get the legislature to legalize its extensive illegal operations in New York in exchange for its payment of some of the taxes that hotels are subject to. See <http://www.cnet.com/news/airbnb-let-us-pay-hotel-taxes-in-new-york/>; http://www.slate.com/articles/business/moneybox/2015/02/airbnb_hotel_taxes_why_does_the_sharing_economy_startup_want_to_pay_them.html; <http://www.nydailynews.com/new-york/airbnb-bids-pay-taxes-faces-opposition-article-1.1763073>. As Al Capone found out, tax evasion makes no distinction between illegal operations and legal companies.

There is no question that Airbnb's operations are illegal in New York City and there is no question that Airbnb knows that its operations are illegal in New York City. There is also no question that Airbnb is not paying taxes for occupancy of transient guests, thus making Airbnb a tax evader as well. To try to broker a deal where Airbnb says it will cease to be a tax evader if the State and City of New York makes its operations legal is not "trying and trying and trying" to pay taxes. To characterize it as such is simply misleading.


Moreover, from what we can tell, Airbnb is only "trying to pay" occupancy taxes. While Airbnb admits this figure would be roughly \$65 million, given the large scale of Airbnb's illegal operations in New York City, that figure is neither the only nor even the major part of the taxes Airbnb owes. Rather, the major part of taxes Airbnb owes is real estate taxes. Hotels and other commercial businesses in New York City pay real estate taxes at significantly higher rates than do residential buildings. Yet, only Airbnb knows how many apartments are in which buildings and how much the proportionate additional real estate tax would be for use of those apartments for transient occupancy.


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CONCLUSION

Airbnb is not part of a sharing economy. It is part of the taking economy. It is worried about its own capitalization. It is worried about its public offering. It is pretending that it does not violate the law in New York City. It is ignoring the safety of the guests that it invites to its website. It is ignoring the safety of the people living in the buildings that it is preying upon in New York City. Its website is misleading. We submit that the FTC will recognize this for what it is: virtual hotels trying to cover-up illegality and profiting with the pretense of being part of a "sharing" economy and will condemn the true nature of these companies.

Respectfully submitted,


Joseph E. Spinnato, Esq., CAE
President, HANYC


Vijay Dandapani
Chairman of the Board, HANYC



Statement for the Record
Submitted by the Texas Hotel & Lodging Association
to the
U.S. House of Representatives Energy & Commerce Committee
for a hearing entitled:

"The Disrupter Series: How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises Policy Questions"

September 29, 2015

Texas Hotel & Lodging Association thanks Chairman Burgess and Ranking Member Schakowsky for holding a hearing on the "sharing economy." Our industry recognizes the growth in popularity of new business models spurred by new technology and innovation, and fueled in part by increased consumer demand. At the same time, it is important for communities and governmental actors to recognize that growth in fields such as residential short-term rentals also comes with complicated issues.

Residential property owners are increasingly entering into the lodging business by operating unregulated, "virtual hotels" through online short term rental (STR) listing services. As STRs continue to grow in popularity, an un-level regulatory playing field has emerged for traditional lodging properties. Often, STRs are not regulated as to the same important health and safety protections applicable to a standard hotel.

Additionally, STRs are subject to the same taxes as traditional hotels, but these taxes often go unpaid by STR operators, and taxing jurisdictions are struggling to keep up with enforcement efforts. STR listing website companies claim no responsibility for unpaid taxes or other issues, and the companies do little-to-nothing to ensure listed properties comply with the law.

Competition is a hallmark of the lodging industry. It creates new ways to improve the guest experience while creating a better and stronger business model, driving growth, more jobs, and innovation. Our members embrace and have thrived in a highly competitive business where everyone plays by the same rules. However, there is now an un-level playing field involving some newer market players in the short-term online arena that are avoiding their tax and regulatory obligations and endangering the character and security of residential neighborhoods.

In some jurisdictions these short-term rentals are clearly illegal, while in others they may violate existing zoning, licensing, or other laws in place to protect consumers and the safety and integrity of communities.

Our industry has flourished operating within the boundaries of the law and we believe that as new industry players emerge, they too must respect the rules of the road. Although it is certainly appropriate for Congress to examine this growing segment of the economy the vast majority of issues

related to the sharing economy will be decided at the state and local level. To that end, we believe state and local jurisdictions should ensure that:

- Hosts register and obtain a business license and other applicable transient occupancy or vacation rental permits.
- Short-term online companies are not enabling or encouraging illegal activity that violates state and local laws, lease provisions, and homeowner association covenants.
- Basic health, safety and cleanliness standards are met.
- All taxes and fees are paid.
- Appropriate levels of insurance are in place to protect homeowners, guests and communities.

The hotel industry is eager to work with Congress, the Administration, and city and state governments to promote these goals and develop policies to address all other questions and concerns implicated by short-term online rentals.

Texas Hotel & Lodging Association (THLA) is based in Austin, Texas, and represents all segments of the Texas lodging industry.

Testimony of
Gary Buffo
President
National Limousine Association



on
**How the Sharing Economy Creates Jobs, Benefits
Consumers, and Raises Policy Questions**

Before the
Committee on Energy & Commerce Committee
Subcommittee on Commerce, Manufacturing, and
Trade

September 29, 2015

Mr. Chairman, Members of the Subcommittee, I am Gary Buffo, President of the National Limousine Association (“NLA”), and on behalf of the NLA and all of its members, I appreciate the opportunity to provide the following testimony for the Subcommittee’s consideration. The NLA is the trade association dedicated to representing and furthering the worldwide, national, state and local interests of the prearranged ground transportation industry. Our membership includes owners and operators of shuttles, sedans, buses, and limousines as well as the associated suppliers, manufacturers, and regional and state associations. NLA owners are primarily small businesses - 69% operate 1-10 vehicles and 96% operate fewer than 50 vehicles. Working together, NLA members continue to redefine and improve the industry every day.

As small business owners, we applaud the Subcommittee’s desire to help create jobs, spur growth and benefit consumers. The sharing economy accomplishes a lot of that. It provides an opportunity for greater worker flexibility and different approaches to rote tasks that allow individuals to be more productive. These are net positives for the American economy. Along with the positives of flexibility and new opportunities, unfortunately these fast growing business models are also ushering in an era of gross misclassification of employees as independent contractors, conveniently absolving themselves of benefits requirements that other identical longstanding businesses are required to pay. Independent contractor status denies the worker the employer’s portion of social security, overtime pay as required under federal law, state worker’s compensation insurance, unemployment insurance and other benefits that they are rightfully entitled to. Innovation is great and should be encouraged, but smartphone dispatch of transportation services should not be allowed to ignore longstanding rules that every employer in America has to abide by. The Fair Labor Standards Act and current regulations in the pre-arranged ground transportation industry exist to benefit both the American worker and consumer. App-based services like Uber, while claiming to be technology companies, provide the same services as existing companies and should be treated as such. It is shameful that Uber in particular claims not to be a for-hire transportation company, while performing exactly the same transportation service that NLA members do thousands of times day – namely drive passengers from point A to point B for pay. We welcome competition as long as there is a level playing field under the law for the equal service provided and the American worker is not put in harm’s way. We want the gig economy to prosper, but there has to be equal enforcement of state, local,

and federal laws. I submit as part of the record, an article that appeared recently in Fortune Magazine that details the significant cost advantage Uber has over its traditional rivals. It is no wonder that the company has gone from zero drivers in 2012 to having more drivers and more vehicles than the all the for hire transportation companies in America. We estimate our cost of all the above benefits as about 40% of our cost of doing business.

The recent Department of Labor's Administrator's Interpretation on the Fair Labor Standards Act's "Suffer or Permit to work" standard in regards to the misclassification of independent contractors was an acknowledgement of the shifting nature of the American workforce, and it seems to address current misclassifications by TNC companies like Uber, as compared to other ground transportation companies.¹ Transportation network companies are probably the most visible example of the use of the independent contractor model in the sharing economy. Without DOL enforcement of independent contractor laws, we fear that both American companies and their workers will suffer if there are differing legal standards between TNC operators and very similar for hire transportation providers.

As was succinctly stated in the conclusion of the DOL interpretation, "the correct classification of workers as employees or independent contractors has critical implications for the legal protections that workers receive," and currently "most workers are employees under the FLSA's broad definitions."² Given the work that the Department of Labor has completed, it is clear that the Fair Labor Standards Act needs to be applied evenly to those TNC companies that are currently misclassifying their workers. Generally it is well established that providers of ground transportation are legally obligated to provide critical benefits and protections to employees – such as state workers compensation insurance, family and medical leave, overtime pay, minimum wage, and unemployment insurance – and given the clear conclusion in the interpretation, it seems obvious that this practice should extend to TNCs. If workers don't have access to employer benefits and are not paying into the safety net programs, they are vulnerable to economic downturn.

¹ Department of Labor, "Administrator's Interpretation No. 2015-1: The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors" (July 15, 2015), available at: http://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm.

² *Id.* pg. 15.

Such a system also creates an unfair advantage for other competitors in the marketplace. Uber alone enjoys a significant cost advantage (roughly \$4.1 billion according to the Fortune article) by classifying its workers as independent contractors and not employees.³ This so called innovation economy or gig economy is creating a rapidly growing workforce of employees with no benefits. As small business owners, NLA members struggle to compete when there is a double-standard in the marketplace for providing the same service: prearranged ground transportation. Additionally, misclassification generates substantial losses to the Treasury as well as Social Security and Medicare funds, not to mention state unemployment insurance and workers compensation funds.

Further troubling is the lack of clarity and lower threshold regarding insurance for TNCs given that bona fide passenger carriers are required to carry appropriate commercial liability insurance for the protection of passengers and third parties. For TNCs and their app on/app off insurance, the ambiguity of insurance coverage when a ridesharing app is on but no passenger is in the car ultimately means that coverage may not be appropriate for the service provided. This kind of coverage is certainly not allowed in the bona fide transportation sector. There is substantial risk that, in an event that leads to a claim, an insurance carrier could deny coverage on a driver's personal insurance policy. ALL for-hire ground transportation providers should be required to carry commercial insurance as required by state law. It would not be appropriate to allow ambiguous insurance for some yet require commercial insurance for others when there is no discernable difference in the two.

Lastly, establishing and maintaining equal standards ensures that consumers are safe and can expect the same quality of service throughout the industry. To this end the NLA has developed a Passenger's Bill of Rights and Driver Duty of Care, which should apply to all for-hire passenger ground transportation providers.⁴ Adhering to these standards would protect drivers, passengers and the public.

Drivers should be properly screened, licensed and trained, which includes the following:

³ Stephen Gandel, "Uber-nomics: Here's what it would cost Uber to pay its drivers as employees," Fortune Magazine (September 17, 2015), available at: <http://fortune.com/2015/09/17/ubernomics/>.

⁴ Available at: <http://www.rideresponsibly.org/>.

- Criminal background including fingerprinting and security check by a certified agency
- Pre-hire drug testing and random testing program, when required by USDOT
- Driver training program that includes driver duties, customer service, safety and defensive driving
- Certified medical examination, as required by local, state and federal regulations

Ground transportation vehicles should also be properly licensed, safe, and commercially insured which includes the following:

- Commercial insurance with liability coverage, as required by local, state and federal regulations
- Proper licensing permits

The NLA applauds technological innovation. It should be welcomed. But our 2000 operators are your constituents, and your neighbors in the local community. We pay taxes and provide benefits to our workers. Uber and the TNC companies must comply with common sense regulation equally across the whole transportation industry or Congress should remove those layers of regulation from everybody.