

**EXPLORING THE “GIG ECONOMY”
AND THE FUTURE OF
RETIREMENT SAVINGS**

HEARING

BEFORE THE

SUBCOMMITTEE ON PRIMARY HEALTH AND
RETIREMENT SECURITY

OF THE

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

UNITED STATES SENATE

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SECOND SESSION

ON

EXAMINING THE “GIG ECONOMY” AND THE FUTURE OF RETIREMENT
SAVINGS

FEBRUARY 6, 2018

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C O N T E N T S

STATEMENTS

TUESDAY, FEBRUARY 6, 2018

Page

COMMITTEE MEMBERS

Enzi, Hon. Michael B., Chairman of the Subcommittee on Primary Health and Retirement Security, Opening statement	1
Murray, Hon. Patty, a U.S. Senator from the State of Washington, Opening statement	19

WITNESSES

Olson, Camille, Representing the U.S. Chamber of Commerce, Chicago, IL	4
Prepared statement	5
Nunn, Vikki, CPA, Shareholder, Porter, Muirhead, Cornia & Howard, Casper, WY	7
Prepared statement	9
Tisue, Troy, President, TAG Resources, LLC, Knoxville, TN	11
Prepared statement	12
Morrissey, Monique, Economist, Economic Policy Institute, Washington, DC ..	14
Prepared statement	15

ADDITIONAL MATERIAL

Transamerica, Prepared statement	35
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QUESTIONS AND ANSWERS

Response by Camille Olson to Questions from Senator Enzi, and Senator Scott	39
Response by Vikki Nunn to Questions from Senator Enzi, and Senator Scott ..	41

**EXPLORING THE “GIG ECONOMY”
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Tuesday, February 6, 2018

U.S. SENATE,
SUBCOMMITTEE ON PRIMARY HEALTH AND RETIREMENT
SECURITY,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m. in room SD-430, Dirksen Senate Office Building, Hon. Michael Enzi, Chairman of the Subcommittee, presiding.

Present: Senators Enzi [presiding], Young, and Murray.

OPENING STATEMENT OF SENATOR ENZI

The CHAIRMAN. I will go ahead and call to order the HELP Subcommittee on Primary Health and Retirement Security roundtable. I am pleased to be able to open this roundtable and this Subcommittee on Primary Health and Retirement Security.

We have before us today an important issue that is increasingly the focus of the press, policymakers, and the public. We are talking about the rapid growth in what is commonly referred to as the “gig economy”.

This is not short for “gigabyte”, but instead is a reference to the project-based and temporary work arrangements, or “gigs,” that many people are relying on for earnings. It used to be more common in the music communities to do gigs.

It is a development in the workforce that, according to a recent National Public Radio report, could account for half of the American workforce within the decade.

One driver of the prevalence of gigs is the growth in application-based platforms. For instance, a worker can engage in the gig economy through a ridesharing platform that connects them, and their personal vehicle, to a person nearby who needs a ride.

As this is an “Uber” competitive space, I will avoid mentioning brand names so as not to appear to “Lyft” anyone above the other. [Laughter.]

The CHAIRMAN. These platforms have proliferated well beyond the ridesharing to include enabling people with spare bedrooms to rent them out on a short term basis; or connecting people who may not feel comfortable swinging a hammer in their homes to someone with the skills to do so; or, as we have seen recently in the halls of Congress, connecting people willing to pay others to stand in line

to attend a hearing. I am not sure whether that was utilized for today's roundtable or not.

The consistent feature of these platforms is that they efficiently connect people seeking services with those willing to provide them. Payments are processed through the platforms so that exchanges are cashless. In many cases, each party to the transaction is able to rate the other based on their experience creating a system of accountability.

A key characteristic, however, is that the service providers are, just like the customers, users of the platform and not employees. They are independent contractors. They are paid for services rendered, often with a service charge deducted, and they do not receive all the benefits required in traditional employment relationships.

Too often, discussions about the gig economy in Congress begin and end at whether workers should be classified as employees or independent contractors. But for many participants, their freelance or contracting status is an attractive benefit, providing them with far greater flexibility in choosing a project or determining when they will work.

Imposing a traditional employee benefits model on these arrangements would limit flexibility and would limit gig opportunities in general.

The truth is that the nature of this phenomenon is not fully understood. Participants are often said to be engaged in the contingent workforce, or freelancing, or simply independent contracting. The lack of any agreed upon name underscores the lack of consensus that policymakers have.

Regardless of how you view these changes in our economy, they are occurring. These developments in the workforce have been moving fast, so it is important to ensure that, as we consider any Federal actions to address the gig economy, we understand the scope of the gig economy and the motivations of those participating in it.

Today, I have asked our panel to focus specifically on what changes in the labor market mean for retirement security. What retirement savings options are available to those in the gig economy? And, what can be done to increase access to savings options for those individuals?

I suspect today's panel will confirm that retirement savings options for those in the gig economy are quite limited compared to those available to their counterparts in the traditional workforce. And where they do exist, they impose complex burdens on the individual that will ultimately discourage saving.

We often hear that there is a retirement security crisis in the United States, and while the extent of the crisis may be disputed, few dispute that Americans should save more and earlier for retirement.

If it is true that more and more jobs will be gig jobs moving forward, this is a critical and timely discussion.

Before I introduce our panel, I would remind Members of the Committee and our panel that our focus today is on retirement security. The gig economy raises a variety of policy issues, more than can be covered at one roundtable.

I assembled this panel to address retirement security. The roundtable is a great format for this type of discussion and this Subcommittee has a legacy of many fruitful and frank discussions in the past.

I will mention the difference between a hearing and a roundtable. At a hearing, each side picks witnesses. At a roundtable, the witnesses are agreed on by both sides. At a hearing, since the witnesses are chosen by the one side or the other, the Members come to beat-up on the witnesses. I do not do those. I find it to be a lot more fruitful if we have an agreement on the witnesses, and the subject, and we are gathering information.

I remember after the first roundtable that I did, Senator Ted Kennedy came to me and he said, "It is really helpful to learn something about it before we do a bill."

That is what I keep trying to do with the roundtables, and as part of the roundtable process, I will be asking some questions, general questions, to get some additional answers. After I have heard the testimony, there will be others that may want to ask questions as well.

But you may want to comment on something you were not specifically asked about. In a roundtable, what you do if you want to talk to something, you just place your name card up on end, and that way I will know you want to add something to that part of the discussion as well. A lot of times the discussion between panel Members is a lot more valuable than the discussion between Senators.

I thank all of you for coming. We do have an all-star panel of witnesses to help with this discussion.

First, I would like to introduce Vikki Nunn. Vikki is a CPA and a shareholder with Porter, Muirhead, Cornia and Howard in Casper, Wyoming. Her firm has recently established a practice focused on helping sole proprietors and contractors to establish retirement savings plans.

I appreciate you making the trip. I know it is not just a little pop over to Washington from Casper for the afternoon. In fact, you cannot get here in one leg. So thank you for being here.

Next, I want to welcome Troy Tissue of TAG Resources. TAG is a leader in providing fiduciary services for Multiple Employer Plans. He will be discussing their potential application in the gig economy.

Camille Olson is a partner in the law firm of Seyfarth Shaw. She is a litigator with extensive experience within the gig economy and has appeared before Congress previously and often. Today, she is representing the U.S. Chamber of Commerce.

Finally, Monique Morrissey is an economist with the Economic Policy Institute, and as an economist, she has written extensively on a number of topics, including labor policy and retirement security.

Although, I do not expect that we will solve this problem today, I am convinced that we have the right people here to do so, and look forward to the discussion. This is collecting information that will be useful for us when we do write the bill. Hearing your observations, and any recommendations that you might have, will be

very helpful. Even questions that you might have of each other can be very helpful.

We will go left to right on the presentations, then.
Miss Olson.

**STATEMENT OF CAMILLE OLSON, REPRESENTING THE U.S.
CHAMBER OF COMMERCE, CHICAGO, ILLINOIS**

Ms. OLSON. Good afternoon.

Thank you Senator Enzi and other Members of the Subcommittee for the opportunity to participate in today's roundtable.

Chamber members support the entrepreneurial spirit of the gig economy and the creation of opportunities to encourage all workers to save for retirement within the existing private, voluntary system.

Today, 40 million independent workers hold a prominent role in the U.S. economy. Independent workers are a mosaic of consultants, freelancers, and contractors working independently, or with other independents, to build businesses, develop their careers, pursue artistic or occupational passions, or supplement their incomes; either occasionally on a part-time basis or a full-time basis with multiple gig companies, often at the same time.

Some independents have access to retirement benefits through unrelated, preexisting relationships or individual Keogh or IRA accounts, while approximately one-third report a top challenge for them is planning for retirement. These independent workers need financial and retirement education, and access and assistance in creating, funding, and administering efficient retirement vehicle options.

Developing policies and promoting a positive business environment, encouraging innovation, and protecting workers' financial futures, while also preserving flexibility, is an important and challenging balance for this Subcommittee to strike.

A number of structural challenges currently inhibit independent workers from obtaining access to retiree benefits. They cannot be included as participants within ERISA retirement benefit plans. And if gig economy companies offer any type of non-ERISA retirement plan information, or facilitate administratively or financially the retention by independent workers of retirement benefits, that would jeopardize the legal status of their operational models.

Many Federal, state, and local laws regulating the status of the worker relationships effectively prevent all companies from providing independent workers with access to all employee benefits without undermining the legal status of their business models.

The foundation to solving the impediments to a portable retirement benefits system for independents includes consideration of the following:

First, is increasing the availability and access to retirement and financial information regarding existing retirement vehicles.

Second, allowing companies to provide benefit information, assist with the administration and facilitation of direct deposit of funds into retirement vehicles, and contribute to portable retiree benefits for the benefit of independent workers.

Third, is promoting the development of flexible, portable retirement products and services with open platforms that allow for contributions from multiple organizations and participants.

Finally, providing independent workers monetary incentives to save for retirement while ensuring that gig economy companies' facilitation of retiree benefits, and education, administration, and funding of retirement benefits does not negatively impact the legal relationships between the independent workers and the gig companies.

These steps will serve to establish protected retirement sources for independent workers.

On behalf of the United States Chamber of Commerce, I thank you for the opportunity to share some of our insights with you today.

[The prepared statement of Ms. Olson follows:]

PREPARED STATEMENT OF CAMILLE OLSON

Good afternoon. Thank you Senator Enzi, Ranking Member Sanders and other Members of the Subcommittee for the opportunity to participate in today's Roundtable.

I am Camille Olson, a partner in the law firm Seyfarth Shaw LLP.¹ I appear today on behalf of the U.S. Chamber of Commerce; the Chamber represents over three million businesses and organizations. As the gig economy has grown, the Chamber's Employee Benefits Committee and Technology Engagement Center (C—TEC) have been focusing on the issues before us and exploring means to rationalize our regulatory and legal system to lessen the constraints on the growth of this vital new economy.² Chamber members support the entrepreneurial spirit of the gig economy and the creation of opportunities to encourage all workers to save for retirement within the existing private voluntary system. The Chamber encourages Congress to work with this developing economic activity and enhance the flexibility, portability,³ and certainty of the retirement system to allow independents to obtain retirement security. Simply put, there should be a focus on enhancing the ability of the participants in this new economy to benefit from their entrepreneurial activities and establish a foundation for their own secure retirement.

Online platforms facilitate flexible work commitments, creating greater opportunities for the employed and self-employed to increase their earnings potential through a partnership. Gig companies often provide independent workers the opportunity to optimize special skills and talents as well as already-owned assets such as cars, trucks, vans and computers by monetizing these assets so that they can provide independent services.

Today, 40 million independent workers hold a prominent role in the US economy.⁴ Independent workers are a mosaic of consultants, freelancers, and contractors working independently or with other independents to build businesses, develop their careers, pursue artistic or occupational passions, or supplement their incomes (occasional, part time and full time) with multiple gig companies, often at the same

¹ For over two decades, I have provided legal counsel to companies seeking to establish business opportunities in all 50 states with individuals in traditional independent contractor relationships, as well as to companies with independent worker relationships in the gig economy. Seyfarth Shaw LLP attorneys Randel K. Johnson, Richard B. Lapp and Lawrence Z. Lorber assisted in the preparation of this statement, along with case assistant Kali Froh.

² "CTECIntelligence: Sharing Economy," U.S. Chamber of Commerce, <http://ctecintelligence.com/> and <http://ctecintelligence.com/reports/ctec-share-national-report.pdf>.

³ Portability is important for independents so that savings can be accumulated in a consistent and efficient manner. Particularly for a workforce that is highly mobile, the importance of having one account—versus several small accounts that could be lost or diminished by fees—is paramount.

⁴ "The State of Independence In America, Rising Confidence Amid A Maturing Market," 2017 Report MBO Partners, <https://www.mbopartners.com/uploads/files/state-of-independence-reports/StateofIndependence-2017-Final.pdf>.

time.⁵ It is estimated that within the next 5 years a majority of Americans will have worked as an independent worker.⁶

Companies that comprise the gig economy are diverse, with some companies focusing on specific areas and others encompassing a wide range of services.⁷ Independent workers differ greatly in terms of the investments they leverage, the hours they and others work to support their gig engagements, and in their priorities in terms of being compensated in fees and/or some portion of their compensation being provided as retirement or other benefits. Some independents have access to retirement benefits through unrelated pre-existing employment relationships⁸ or individual Keogh or IRA accounts,⁹ while 33 percent of independents report a top challenge is planning for retirement.¹⁰ These independent workers need financial and retirement education,¹¹ and access and assistance in creating, funding, and administering efficient retirement vehicle options. On the latter, Congress can be particularly important in creating retirement savings vehicles and incentives.

Developing policies that promote a positive business environment, encourage innovation, and protect workers' financial futures while also preserving flexibility is an important and challenging balance for this Subcommittee to strike.

A number of structural challenges currently inhibit gig economy independents from obtaining access to retiree benefits. For example, today independents cannot be offered benefits that are governed by the Employee Retirement Insurance Security Act of 1974 (ERISA), 29 U.S.C. §1001 et seq. As a result, gig economy companies cannot include independents within ERISA plans offered to company employees, or even facilitate transfers into retirement plans for independents.

As important, under the existing law and regulatory framework, gig economy companies cannot even offer non-ERISA information or facilitate administratively or financially the retention by independents of employee retirement benefits without jeopardizing the legal status of their operational models. Many Federal, state and local laws regulating the status of worker relationships effectively prevent those companies that treat workers as independents from providing those workers with access to even non-ERISA employee benefits without undermining the legal status of their business models.¹²

The vast majority of independents do not take advantage of existing self-initiating and self-funded and administered retirement vehicles of Keoghs and IRAs available

⁵ 49 percent of independent workers report also having a full-time, traditional payroll-based job. *Id.* at 7. Likewise, one in five workers with payroll-based jobs engage in other independent work. *Id.*

⁶ *Id.*

⁷ Some gig economy companies focus on specific areas, such as Gigster (software engineering), Airbnb (short term accommodations), and Postmates (delivery service); while other companies encompass a wide range of services, such as Thumbtack (home, business, wellness, creative design), Uber and Lyft (ride sharing, food delivery), and Upwork (accounting, copy editing, personal fitness) as well as companies involved in commercial real estate, healthcare, legal services, customer services, logistics and management consulting.

⁸ Recent research by Prudential found that 16 percent of gig economy independents have access to a retirement savings plan compared to 52 percent of full-time employees. "Gig Workers in America: Profiles, Mindsets and Financial Wellness," Prudential Financial, <http://research.prudential.com/documents/rp/Gig-Economy-Whitepaper.pdf>.

⁹ Some independents prefer to maximize their immediate fees for results provided in lieu of benefits (which they may have access to through other personal or work relationships).

¹⁰ "The State of Independence In America, Rising Confidence Amid A Maturing Market," 2017 Report MBO Partners, <https://www.mbopartners.com/uploads/...reports/StateofIndependence-2017-Final.pdf>.

¹¹ Retirement education should be encouraged and enhanced at the school, gig company and community levels.

¹² The common law principles of agency solely determine, or guide the determination of, employment/independent contractor status under the vast majority of Federal, state and local laws. In *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323-24 (1992) the U.S. Supreme Court adopted the common law test for determining who qualified as an employee under ERISA. The Court concluded that agency law principles and common understanding require the conclusion that "the provision of employee benefits" by a service recipient is a relevant indicia of employment. *Id.* at 324. The Supreme Court's guidance that providing employee benefits to a worker is an indicia of employment has been incorporated into virtually all analyses of the legal status of workers. E.g., "Employer's Supplemental Tax Guide," Department of the Treasury, Internal Revenue Service Publication 15-A (2017), <https://www.irs.gov/pub/irs-pdf/p15a.pdf> at 8 (explaining determination of worker classification considers "[w]hether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay"); "Especially for Texas Employers," Texas Workforce Commission, <http://www.twc.state.tx.us/news/efte/efte.pdf> at 33 ("[A]n employer who provides benefits such as vacation and sick leave, health insurance, bonuses, or severance pay will almost inevitably be considered the employer of the workers.").

to independents due to a lack of knowledge and education. In short, the current legal and regulatory scheme effectively discourages companies who utilize independent workers from offering retirement benefits. Without the availability of this assistance, it is not surprising that many independents have not otherwise obtained access to a vehicle to save for retirement.

The foundation to solving the impediments to a portable retirement benefit system for independents includes consideration of the following: (1) increasing the availability and access to retirement and financial education and information regarding existing retirement vehicles (including Keoghs and IRAs) available to independents; (2) allowing gig economy companies to provide benefit information to independents; (3) allowing gig economy companies to assist with the administration and facilitation of direct deposit of funds into retirement vehicles; (4) allowing gig economy companies to contribute to portable retiree benefits for the benefit of independents;

(5) promoting the development of flexible, portable retirement products and services with open platforms that allow for contributions from multiple organizations and participants; (6) providing independents monetary incentives to save for retirement; and (7) ensuring that gig economy companies' facilitation of retiree benefits education, administration and funding for independents does not negatively impact the independents' legal relationships with the gig companies.¹³ These steps will serve to establish protected retirement sources for independent workers.

By considering flexible approaches to the availability, facilitation, administration and financial support of retiree benefits for independents engaged in the gig economy, we can support the financial future of these Americans, maximize our collective resources and further economic growth. On behalf of the United States Chamber of Commerce, I thank you for the opportunity to share some of our insights with you today.

Chairman ENZI. Thank you for your testimony, and I appreciate those closing numerical suggestions. That will be very helpful.
Ms. Nunn.

STATEMENT OF VIKKI NUNN, CPA, SHAREHOLDER, PORTER, MUIRHEAD, CORNIA, AND HOWARD, CASPER, WYOMING

Ms. NUNN. I would like to thank Chairman Enzi, and Ranking Member Sanders, and the Members of the Committee for the opportunity to participate in today's roundtable discussion on, "Exploring the 'Gig Economy' and the Future of Retirement Savings."

I am Vikki Nunn. I am a CPA and one of the owners of Porter, Muirhead, Cornia, & Howard, a CPA firm in Casper, Wyoming.

As a small business owner and a consultant to small businesses, saving for retirement is an important topic for me. In fact, our firm last month purchased a small wealth management practice for the primary purpose of being able to help our clients start single participant 401(k) plans or Solo(k)'s.

While Wyoming does not have the same exposure to certain elements of the gig economy that other locations may face, we have our own experience of the gig economy.

With the hit to coal production in our state, and the decrease in oil and gas prices, we have witnessed many midlevel managers being laid off, only to be brought back as consultants on a project by project basis.

These individuals, for the most part, are at the height of their earning years and at an age where retirement is no longer a concept for the distant future. Commonly, they have participated in

¹³ For example, California's Labor Code allows certain companies to provide workers' compensation benefits to independents without regard to their worker classification status as an employee or independent contractor, expressly noting that providing such benefits cannot be used as indicia of employment for any purpose. Cal. Lab. Code §4157.

their employer sponsored 401(k) plans and have arrived at a time when catch-up contributions would be allowed, only to find themselves with no access to those plans and with a much more volatile income stream.

For most, a Solo(k) is a great vehicle to help them meet their retirement needs. It is particularly helpful since income may fluctuate a great deal from year to year. With a Solo(k), they can put more away in a high earnings year, and can end up funding more for retirement than their employer and personal contributions were providing before.

We have noticed these very capable people can still find the process of finding a provider, and starting a Solo(k) plan, daunting.

Most providers rely on Web-based applications, and while technically the plans are not subject to Title I of ERISA, much of the same wording is used for the plans and applications. It is common for the application to be 20 pages or more in length, and about the same number of pages explaining the plan, options, and administrative requirements.

In addition, since the fee potential on these plans is fairly low, plan providers may not showcase the Solo(k) option to the same extent that they do other options, like IRA's.

After seeing the growth in our sole proprietor client base, particularly the contingent service providers workforce, our firm decided to purchase a small wealth management business hoping to remove some of the obstacles for our clients by providing a live person onsite to help guide our clients in setting up and maximizing their Solo(k)'s.

Another growing element in our client base, are the number of full-time employed clients that have one or more businesses on the side. They may work all week for the county and operate a food truck on the weekend.

We are actually seeing a strong increase in young people who are using this as a way to grow their business with limited upfront capital. Most of these people can maximize their retirement savings through adding Solo(k)'s to their sole proprietorship type businesses as well.

One unusual circumstance that we have noted is when given the opportunity to put up to \$60,000 into retirement savings, many people over 50, with volatile income streams, will make that choice, or at least they frequently chose to put in more than \$24,000. These are not people who are bringing in gross revenues of over \$250,000; in fact, the norm would be closer to \$150,000.

It is also interesting that they may choose to fund all or part as a Roth Solo(k), so it is not just about tax deductions.

For many, they are at a place where tuition costs for children are over, houses are paid off or close, and medical related costs are still manageable. With a volatile income stream, they also realize that there is no guarantee that they will be able to maximize their contribution or possibly even make a contribution each year.

This has shown me that if we want to encourage savings for retirement, especially for a contingent workforce, significantly raising the catch-up limits, or removing them for Roth contributions, could be very effective.

Solo(k)'s are only one answer and they are, by necessity, limited to businesses with no employees, other than perhaps a spouse. However, those are the businesses that seem to be expanding in our current economy.

Another change that could help many owners of small businesses increase retirement savings would be to remove the top heavy rules for small plans. Our CPA firm has approximately 45 employees and we are committed to being a good employer. We are proud to have 100 percent participation in our 401(k) plan.

As an employer, we make a profit sharing contribution for each participating employee. Last year, that was 3 percent of their wages. We believe this helps some of our lower paid staff to still build retirement savings even at a young age and even if they only contribute \$5 or \$10 a month. Every year, we analyze our business to see if we are able to increase that to 4 percent or 5 percent.

Since we have nine CPAs that own our business, we would all also like to make full contributions for ourselves as well. In many years, like last year, our personal contributions ended up limited to approximately \$12,000 each, well under the maximum individual contributions we would like to make.

While there are safe harbor options available, they limit our ability to be responsive to the needs of our business and our employees, so we have chosen to continue on the path of our current plan, even though our personal contributions end up limited.

As a last point, I would like to ask the Members of this Committee do everything possible to encourage the availability and use of Roth retirement options. As a CPA, I have always been a big proponent of deferring taxes and only recently have started to understand how important Roth retirement options are. My wakeup call on this issue came from working with my parents.

My dad was a full-time draftsman and a part-time preacher, and my mom had seven children, and a small millinery business in California. Neither of them earned enough in their life to receive maximum Social Security benefits. They are very thankful for the benefits that they do receive and their benefits last year were not taxable to them.

However, they worry each year that a distribution from my dad's small 401(k) savings could push their Social Security payments into being taxable; one specific dollar of income that could cost them much more in taxes. If they had been able to put more of their retirement into Roth options, they would certainly have more control over their current financial outcomes.

In conclusion, thank you for the opportunity to make this statement. I look forward to working with this Committee to consider ideas that will encourage further plan sponsorship and participation by small businesses in particular.

Thank you for your consideration of this statement.

[The prepared statement of Ms. Nunn follows:]

PREPARED STATEMENT OF VIKKI NUNN

I would like to thank Chairman Enzi and Ranking Member Sanders, and Members of the Committee for the opportunity to participate in today's roundtable discussion on Exploring the Gig Economy and the Future of Retirement Savings

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sultant to small business owners, saving for retirement is an important topic for me. In fact our firm, last month, purchased a small wealth management practice for the primary purpose of being able to help our clients start single participant 401(k) plans, Solo(k)'s.

While Wyoming does not have the same exposure to certain elements of the gig economy that other locations may face, we have our own experience of the gig economy. With the hit to coal production in our state and the decrease in oil and gas prices, we have witnessed many mid-level managers being laid off only to be brought back as consultants on a project by project basis.

These individuals for the most part, are at the height of their earning years and at an age where retirement is no longer a concept for the distant future. Commonly, they have participated in their employer's sponsored 401(k) plans, and have arrived at a time when catch-up contributions would be allowed only to find themselves with no access to those plans and with a much more volatile income stream. For most, a Solo(k) is a great vehicle to help them meet their retirement needs. It is particularly helpful since income may fluctuate a great deal from year to year. With a Solo(k), they can put more away in a high earnings year and can end up funding more for retirement than their employer and personal contributions were providing before.

We have noticed these very capable people can still find the process of finding a provider and starting a Solo(k) plan daunting. Most providers rely on web based applications, and while technically the plans are not subject to Title 1 of ERISA, much of the same wording is used for the plans and applications. It is common for the application to be 20 pages or more and about the same number of pages explaining the plan, options and administrative requirements. In addition, since the fee potential on these plans is fairly low, plan providers may not showcase the Solo(k) option to the same extent that they do other options, like IRAs. After seeing the growth in our sole proprietor client base, particularly the contingent service providers workforce, our firm decided to purchase a small wealth management business hoping to remove some of the obstacles for our clients by providing a live person onsite to help guide our clients in setting up and maximizing their Solo(k)'s.

Another growing element in our client base, are the number of full-time employed clients that have one or more businesses on the side. They may be work all week for the County and operate a food truck on the weekend. We are actually seeing a strong increase in young people who are using this as a way to grow their business with limited upfront capital. Many of these people can maximize their retirement savings through adding Solo(k)'s to their sole proprietorship type businesses as well.

One unusual circumstance that we have noted is when given the opportunity to put up to \$60,000 into retirement savings, many people over 50, with volatile income streams, will make that choice, or at least they frequently chose to put in more than \$24,000. These are not people who are bringing in gross revenues of over \$250,000; in fact the norm would be closer to \$150,000. It is also interesting that they may choose to fund all or part as a Roth Solo(k), so it is not just about tax deductions. For many, they are at a place where tuition costs for children are over, houses are paid-off or close, and medical related costs are still manageable. With a volatile income stream, they also realize that there is no guarantee that they will be able to maximize or possibly even make a contribution each year. This has shown me that if we want to encourage savings for retirement, especially for a contingent workforce, significantly raising the catch-up limits or removing them for Roth contributions could be very effective.

Solo(k)'s are only one answer and they are by necessity limited to businesses with no employees, other than perhaps a spouse. However, those are the businesses that seem to be expanding in our current economy.

Another change that could help many owners of small businesses increase retirement savings would be to remove the top heavy rules for small plans. Our CPA firm has approximately 45 employees and we are committed to being a good employer. We are proud to have 100 percent participation in our 401(k) plan. As an employer, we make a profit sharing contribution for each participating employee. Last year that was 3 percent of their wages. We believe this helps some of our lower paid staff to still build retirement savings even at a young age and even if they only contribute five or ten dollars a month. Every year we analyze our business to see if we are able to increase that to 4 percent or 5 percent. Since we have nine CPAs that own our business, we would all like to make full contributions for ourselves as well. In many years, like last year, our personal contributions ended up limited to approximately \$12,000 each, well under the maximum individual contribution we

would like to make. While there are safe harbor options available, they limit our ability to be responsive to the needs of our business and our employees, so we have chosen to continue on the path of our current plan even though our personal contributions end up limited.

As a last point I would like to ask the Members of this Committee do everything possible to encourage the availability and use of Roth retirement options. As a CPA, I have always been a big proponent of deferring taxes and only recently have started to understand how important Roth retirement options are. My wakeup call on this issue came from working with my parents. My dad was a full-time draftsman and a part-time preacher and my mom had seven children and a small millinery business in California. Neither of them earned enough in their life to receive maximum social security benefits. They are very thankful for the benefits they receive and their benefits last year were not taxable to them. However, they worry each year that a distributions from my dad's small 401(k) savings could push their social security payments into being taxable. A specific dollar of income that cost them much more in taxes. If they had been able to put more of their retirement into Roth options, they would certainly have more control over their current financial outcomes.

In conclusion, thank you for the opportunity to make this statement. I look forward to working with this Committee to consider ideas that will encourage further plan sponsorship and participation by small businesses in particular. Thank you for your consideration of this statement.

Chairman ENZI. Thank you.
Mr. TISUE.

**STATEMENT OF TROY TISUE, PRESIDENT, TAG RESOURCES,
LLC, KNOXVILLE, TENNESSEE**

Mr. TISUE. Well, I would like to thank Chairman Enzi and all the Members of this Committee for the opportunity to be here to participate in this discussion today.

My name is Troy Tisue, and I am the President of TAG Resources. We are a retirement service provider out of Knoxville, Tennessee.

My goal here today is to offer some insight, as a provider in the retirement industry, as to how the current structures that are out there can be used to positively impact the retirement accumulation of our rising population in this gig economy.

One way to give this growing segment a chance at retirement is to give them employer-type access to a retirement savings plan. We can do this through Multiple Employer Plans, more specifically through Open Multiple Employer Plans.

Well, TAG Resources, my firm, is uniquely equipped to actually testify on the structure, operation, and uses of the Open MEP, as well as the flexibility of this model to assist the contingent workers to accumulate retirement savings.

TAG has, for many years now, been in the marketplace as the country's leading aggregator of plan services for both closed MEP's and for those employers who otherwise would benefit from a change that would permit Open MEP's.

Let us talk for a second about how an Open MEP works.

The organizer of a MEP stands in the shoes of a traditional employer, though without being the actual employer. That gives small employers professional fiduciary expertise; access to institutional support; a wide range of unrelated, nonproprietary investment fund families; institution's pricing of investments; and all at a cost that is very competitive to much larger employer plans.

It has been our experience—and this is not theoretical—that 40 percent of the employers that come to models like this are startups, meaning, they did not offer a plan before.

Now, how can any Open MEP address specifically the gig industry that we are talking about? It can permit companies contracting with employers to sponsor a plan for those workers without running into tax or ERISA complications.

The company could build a gig plan contribution into its contract with the worker, whether it be part of the contract payment or as an additional company payment, which would act like an additional employer contribution to a plan.

Another option would be organizations that are unrelated to the contracting company, like TAG, anyone in the plan to service the industry. They could establish a plan for those contracting workers to make contributions to an independent Multiple Employer Plan, which is chosen by that independent worker and thereby addressing the portability we talked about.

The tax and legal structure would be the same as that first example I gave, but the MEP would have participants from a wide range of employers and the independent worker would have the opportunity to stay in the same plan that he or she wants regardless of who they are contracting with. It is their plan, but with scale.

These are just two examples.

Now, permitting Open MEP's would enable the innovativeness of this marketplace to design MEP's providing independent workers both with the ERISA protections, as well as the institutional pricing which would not otherwise be available to him or her.

There are really only two essential reforms needed for Open MEP's to come back: employers without any common interest to be able to join together in a MEP, and employers including independent workers in a MEP that should be protected from liability or noncompliance with other employers.

The above reforms have long been advocated by both Republican and Democratic Members in both Houses of Congress. We especially want to thank the Chairman of this Subcommittee for leadership on MEP reform.

Again, thank you for allowing me to be here with you today.

[The prepared statement of Mr. Tisue follows:]

PREPARED STATEMENT OF TROY TISUE

TAG Resources appreciates the opportunity to provide this written testimony in connection with the hearing by the U.S. Senate Committee on Health, Education, Labor and Pensions Subcommittee on Primary Health and Retirement Security exploring "Gig Economy" retirement plan issues. As noted by the Brookings Institution's Retirement Security Project, contingent workers "generally lack access to an employer-sponsored retirement account that makes saving easier through mechanisms such as payroll deduction, employer contributions, automatic enrollment and automatic escalation of contributions. Without this access—or other alternatives—this population may face retirement with little more than Social Security."¹

One mechanism that holds substantial promise to help address this growing problem is to make "employer-type" retirement savings plans available to the contingent

¹ Retirement Plans for Contingent Workers: Issues and Options; William G. Gale, Sarah E. Holmes, and David C. John; September 23, 2016. The Retirement Security Project, The Brookings Institution

workforce through the “open multiple employer retirement plan,” or the “Open MEP.”²

TAG Resources is uniquely positioned to expertly testify on the structure, operations and uses of the Open MEP, and that platform’s flexible ability to be used in a number different ways to assist the contingent workforce in accumulating retirement savings. TAG has for many years been in the marketplace as the country’s leading aggregator of plan services for both closed MEPs and for those employers who would otherwise benefit from changes which would permit Open MEPS.

The Open MEP has a straightforward structure. The organizer of the MEP stands in the shoes of the traditional employer, though without actually being the employer. It accomplishes this through use of traditional fiduciary and contract authority which is assigned to the organizer by each participating employer. The Open MEP leverages the joint resources of unrelated, small employers to provide retirement plan expertise (including professional fiduciary protections); access to institutional support; access to a wide range of unrelated, non-proprietary investment fund families; and institutional pricing of investments; none of which would be otherwise available to them-at virtually any cost. It also does this at a cost which is highly competitive to much larger employer plans. The success of this approach is demonstrated by the fact that 40 percent of the employers that indicated interest in participating in a TAG Open MEP—which unfortunately has not been able to be set up due to the legal constraints—were actually startups.

This Open MEP arrangement can easily be structured to support contingent workers in at least two different ways, bringing the value of their combined resources to those workers in the same way that it works for startup employers. This is because the independent worker is a small business that can make “employer” and “employee” contributions on their own behalf to a retirement plan, whether or not they are actually legally incorporated. In this respect, the Open MEP can treat the independent worker exactly the same as countless other small businesses which could otherwise participate in an Open MEP.

The first way is for the company contracting with independent worker to sponsor a plan for their contingent workers. The company could not allow participation by the independent or contingent workers in the company’s own workplace retirement savings plan, because the company is restricted by law to cover only its own employees. An Open MEP solves for this. It treats each contingent worker as the co-sponsor of the MEP, which can then cover that worker. Operationally, the company could build into the contract it has with the worker a type of “automatic contribution” arrangement where, as a matter of contract, the employer would pay a portion of the contractor’s compensation directly into the plan. (It’s important to note that the Open MEP named fiduciary owes its fiduciary obligations to the independent worker, not to the company that has contracted with the independent worker). The company could also, by contract, provide an additional percentage, such as 3 percent of the fee paid to the independent worker (i.e., \$1,200), and contribute that directly to the worker’s MEP. For tax purposes, the \$1,200 contribution would be treated just like cash compensation from Company X to the worker: deductible as cash compensation for Company X and taxable to the worker. But the worker could then deduct the contribution to the MEP, just as if the worker had made the contribution himself or herself.

The second way is for organizations unrelated to the contracting company to establish the plan, and for those contracting companies to actually contract with the independent worker to make contributions to the independently organized MEP identified by the independent worker. The tax and legal structure would be the same as the first example, but the MEP would have participants from a wide range of employers-and the independent worker would have the opportunity to stay in the same plan it wants, regardless of who he or she is contracting with.

There are a number of other types of designs for under which the Open MEP structure could be used for the gig economy; these are only the most obvious examples. Permitting Open MEPs would enable the innovativeness of the marketplace to design MEPs which could accommodate most any sort of circumstance, while providing the independent worker both ERISA protections as well as institutional pricing which would not otherwise be available to her or him.

There are two essential reforms which are needed to facilitate the use of MEPs as a practical option for independent workers to save for retirement. First, and foremost, employers without any “common interest” should be able to join together in a MEP. Elimination of this common employment interest requirement will increase

² Note that “Open MEP” is a registered trademark of TAG.

the number of small employers that provide a retirement plan for their employees by joining in a MEP, including independent workers.

Second, employers (including independent workers) in a MEP should be protected from liability for the non-compliant acts and omissions of other employers or independent workers which could result in the MEP being disqualified under the Internal Revenue Code (the "One Bad Apple" rule), and tax penalties being imposed on those workers. Typical reasons for noncompliance (jeopardizing the qualified status of the plan) include providing insufficient information for discrimination testing and other compliance purposes. Under existing bi-partisan proposals, the plan fiduciary could expel the non-compliant employer from the MEP and preserve the MEP's qualified status for the remaining employers in the plan.

The above reforms have long been advocated by both Republican and Democrat Members in both Houses of Congress.

We especially thank the Chairman of this Subcommittee for his leadership on MEP reform.

Thank you for your time.

Chairman ENZI. Thank you for the information.
Ms. Morrissey.

**STATEMENT OF MONIQUE MORRISSEY, ECONOMIST,
ECONOMIC POLICY INSTITUTE, WASHINGTON, DC**

Ms. MORRISSEY. Thank you, Senator Enzi, and Senator Murray, and the Members of this Committee for inviting me to participate in this roundtable.

This hearing addresses an important question: how does non-standard work affect retirement security?

Flexible work arrangements can have positive effects throughout the lifecycle providing work opportunities for older workers who lose their jobs or are transitioning to retirement. They can also reduce the need to tap into retirement savings between jobs. But more often than not, these workers have precarious work that is not conducive to saving for retirement.

Narrowly defined, the gig economy is very small, just 0.5 percent of jobs. But the nonstandard workforce is much larger. It includes contingent workers who have little control over their hours and earnings, and highly paid professionals who enjoy the freedom to set their own terms.

Our main concern should be for workers who rely on income from nonstandard work to make ends meet and who face hardship in old age. But even moonlighters, who have access to benefits through their primary jobs, will see a sharper drop in income at retirement if these supplemental earnings are not factored into retirement savings or benefits.

Nonstandard workers are more likely to face financial insecurity throughout their working lives and in retirement. Contingent workers earn 11 percent less per hour and 48 percent less per year than similar workers, and are much more likely to become unemployed or exit the labor force. These workers are two-thirds less likely than standard workers to have a work-based retirement plan.

Social Security's universal coverage and progressive benefit structure partly compensate for contingent workers' lower earnings and lack of access to employer benefits. But nonstandard workers are more likely to be paid under the table, underreport taxable earnings, or be classified as independent contractors reducing their benefits.

While nonstandard workers may be at greater risk of retirement insecurity, they are not alone. By conservative estimates, half of Americans are at risk of being unable to maintain their standard of living in retirement with younger generations and lower income workers at greatest risk.

Most efforts to improve retirement security for all at-risk workers would disproportionately help nonstandard workers. This is especially true for efforts to reduce our reliance on employer plans and address barriers faced by lower income workers.

These efforts include expanding Social Security, while cracking down on employee misclassification and tax avoidance, expanding the Saver's Credit, and supporting state and local initiatives to offer low cost and portable benefits to workers who do not have access to an employer plan. I also support my other co-panelist's desire to loosen restrictions on Open MEP's, on Multiple Employer Plans.

When we look for ways to help nonstandard workers, we should be careful not to make a bad situation worse by steering worker's savings to high cost and risky accounts or weakening labor standards.

We should focus on ways to reduce costs by eliminating conflicts of interest in investment advice, among other things, pool risk, and fix upside down tax incentives.

Expanding Social Security should be our No. 1 priority, but any additional employee contributions will need to be offset for low income workers by expanding the Earned Income Tax Credit or other means.

Thank you very much, and I look forward to your questions.

[The prepared statement of Ms. Morrissey follows:]

PREPARED STATEMENT OF MONIQUE MORRISSEY

This hearing addresses an important concern: how nonstandard work affects retirement security. Flexible work arrangements can have positive and negative effects on income across the lifecycle. They can provide work opportunities for older workers who lose their jobs and are transitioning to retirement or who are taking longer to be re-employed than their younger counterparts. "Gig" jobs may also reduce the need to tap into retirement savings between jobs for workers of all ages.

In practice, however, nonstandard work is often low-paid and precarious work that is not conducive to saving or accruing retirement benefits. The bad news is that this problem is likely to be getting worse. The good news is that efforts to improve retirement security for all workers would disproportionately help nonstandard workers.

Narrowly defined, the "gig economy" is very small and is not growing as fast as people assume. Independent workers employed via online platforms represent some 0.5 percent of jobs.¹ Nevertheless, companies like Uber, Lyft, Etsy, Airbnb, and TaskRabbit loom large in people's imaginations, especially in cities with many young professionals.

The nonstandard workforce is much larger than the "gig economy" and includes both W-2 employees and self-employed workers. The former category may include part-time workers, on-call workers, and temporary workers (direct-hire and agency temps). The latter category may include business owners and full-time independent contractors (including mis-classified employees), occasional contractors, day laborers, and on-demand platform workers.

These broad categories include contingent workers with little control over their hours and earnings as well as highly compensated professionals and people who prefer to work part-time. Though our main concern should be for workers who rely on income from nonstandard work to make ends meet and who face hardship in old

¹ Lawrence F. Katz and Alan B. Krueger, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015," NBER Working Paper No. 22667, September 2016.

age, even moonlighters who receive benefits through a primary job will see a sharper drop in income at retirement if their supplemental earnings are not factored into retirement savings or benefits.

Distinctions between “gig economy” workers employed through online platforms and other contingent or nonstandard workers are often exaggerated. There have always been self-employed musicians, cab drivers, and house cleaners. The broad category of “independent contractor” is much larger than this small group of workers and appears to be growing,² as many workers who in the past would have been W-2 employees are reclassified as independent contractors.

Statistics for nonstandard workers vary, with some sources showing growth and some declines in various subcategories, such as on-call, temporary, or contract firm workers. These differences may be due to different definitions of contingent or nonstandard work; whether the share of jobs, the share of primary jobs, the share of workers, or the share of hours worked is being measured; and problems with survey data, including respondent error, non-representative samples, limited topical questions, and out-of-date surveys. However, most sources agree that independent contractors are the largest category of nonstandard workers, and that this category has continued to grow in the wake of the Great Recession.³

Independent contractors are a heterogeneous group. Workers with college degrees are as likely to be independent contractors as workers with high school degrees. Hispanic and white workers are more likely to be independent contractors than African-American workers.⁴ These patterns may reflect differences in job quality or geographic variation. For example, Hispanic workers may be over-represented among mis-classified workers, while white workers may be more likely to have white-collar occupations that can become self-employment in the transition to retirement. White workers are also more likely to live in sparsely populated states where multiple jobholding is more common.⁵

Another explanation for these patterns is that employment rates tend to be higher among older whites and Hispanics than among older African Americans, and older workers are over-represented among independent contractors. Nearly 16 percent of 55–75-year-old workers are independent contractors.⁶ Older workers are as likely as, or less likely than, prime-age workers to be employed in other types of nonstandard work, such as temporary help service workers and contract firm employees.⁷

In the gig economy, technology helps solve coordination problems, reduces financial transaction costs, and enforces quality standards, among other efficiency gains. For example, in the ride-sharing industry, technology helps connect passengers with nearby drivers, enables surge pricing to increase the supply of drivers as needed, centralizes payments and recordkeeping, and facilitates customer reviews.

What is good for the customer (and perhaps the economy) may sometimes also benefit workers. Flexible scheduling can enable workers to piece together multiple part-time jobs or to moonlight, students to work around class schedules, parents to vary hours based on childcare availability, and seniors to transition into retirement.

However, nonstandard workers are more likely to face financial insecurity, including retirement insecurity.⁸ A report by the U.S. General Accountability Office (GAO) found that contingent workers—the estimated 8 percent of workers in 2010 who lacked job security or had variable or unpredictable work schedules—earned 11 percent less on an hourly basis and 48 percent less on an annual basis than otherwise similar non-contingent workers. These workers, in addition to working reduced and fluctuating hours, were also much more likely to become unemployed or exit the labor force. The GAO report found that these contingent workers were two-thirds less likely than standard workers to have a work-provided retirement plan, a disadvantage that both reflected and compounded their financial insecurity.⁹

² Katz and Krueger (2016).

³ Katherine G. Abraham, “What Do We Know About Nonstandard Work?” National Academy of Social Insurance Conference on Nonstandard Work and Social Insurance, January 30, 2018.

⁴ Minority (both Hispanic and black) workers and less educated workers are more likely to be on-call and temporary help service workers.

⁵ U.S. Bureau of Labor Statistics, “Multiple Jobholding in states in 2015,” *Monthly Labor Review*, February 2017.

⁶ Katz and Krueger (2016).

⁷ Katz and Krueger (2016); U.S. Government Accountability Office (GAO), “Contingent Workforce: Size, Characteristics, Earnings, and Benefits,” April 20, 2015.

⁸ See, for example, Shayna Strom and Mark Schmitt, “Protecting Workers in a Patchwork Economy,” The Century Foundation, April 7, 2016; Nancy K. Cauthen, Annette Case, and Sarah Wilhelm, “Promoting Security in a 21st Century Labor Market; Addressing Intermittent Unemployment in Nonstandard Work,” September 2015.

⁹ GAO (2015).

Shows Modest Improvement in 2016,” Center for Retirement Research at Boston College Issue in Brief Number 18–1, January 2018.

In theory, Social Security’s universal coverage and progressive benefit structure should partly compensate for contingent workers’ lower earnings and lack of access to employer benefits. However, nonstandard workers are more likely to be to be paid under the table or to be classified (or mis-classified) as independent contractors. Self-employed workers have greater incentive to underreport earnings or inflate expenses in tax returns, shrinking the tax base as well as their future Social Security benefits.¹⁰

In his 2014 book, *The Fissured Workplace*, David Weil described how contracting and outsourcing allowed companies to reduce the number of workers who share in employee benefits without running afoul of nondiscrimination rules. By avoiding legal responsibility for these workers, fissuring also encourages contractors, including self-employed workers, to underreport income and avoid contributing toward social insurance benefits as well as evade other worker protections.

While nonstandard workers may be at greater risk of retirement insecurity, they are hardly alone. By one conservative estimate, half of American households are at risk of being unable to maintain their pre-retirement standard of living in retirement, and younger generations and lower-income workers are at greater risk.¹¹ Moreover, retirement wealth has become more insecure and unequal with the shift from traditional defined benefit pensions to 401(k)-style contribution plans.¹²

Because few people save for retirement on their own, lack of access to an employer-based plan is a significant barrier for many Americans, especially lower-income Americans. Retirement plan participation is almost three times as high for individuals with incomes above 300 percent of the poverty line as for those below this threshold, and the biggest factors driving this disparity are lower employment rates and working for an employer that does not offer a plan.¹³ Despite the fact that the cards are stacked against lower-income workers, who have less disposable income and often receive little or no help from their employer or the government in saving for retirement, take-up rates are high (78 percent) for those who have access to a 401(k) plan.¹⁴

Most efforts to improve retirement security for all at-risk workers would disproportionately help nonstandard workers. These include expanding Social Security (and cracking down on tax avoidance), expanding the Saver’s Credit, and supporting state and local initiatives to offer low-cost portable benefits to workers who do not have access to an employer plan.

Another option is eliminating the commonality requirement for employers in multiple-employer plans (MEPS). This is worth pursuing, at least for “open MEPS” sponsored by not-for-profit and government entities acting as fiduciaries. As Michele Varnhagen of AARP has testified before this Subcommittee, Congress would need to set strict standards to ensure that participants benefit from economies of scale and are offered appropriate investments.¹⁵

Just as most efforts to improve retirement security for at-risk workers would disproportionately help nonstandard workers, most efforts to shore up labor standards would improve the retirement security of nonstandard workers. This includes tightening rules and enforcement to prevent the misclassification of workers as independent contractors.

¹⁰ Elliot Schreur, “Social Security’s Disability and Retirement Protections for Independent Contractors,” National Academy of Social Insurance, Conference on Nonstandard Work and Social Insurance, January 30, 2018.

¹¹ Alicia H. Munnell, Wenliang Hou, and Geoffrey T. Sanzenbacher, “National Retirement Risk Index Shows Modest Improvement in 2016,” Center for Retirement Research at Boston College Issue in Brief Number 18-1, January 2018.

¹² Monique Morrissey, “The State of American Retirement: How 401(k)’s Have Failed Most American Workers,” Economic Policy Institute Report, March 3, 2016; Alicia H. Munnell, Wenliang Hou, Anthony Webb, and Yinji Li, “How Has the Shift to 401(K) Plans Affected Retirement Income?,” Center for Retirement Research at Boston College Issue in Brief Number 17–5, March 2017.

¹³ April Yanyuan Wu, Matthew S. Rutledge, and Jacob Penglase, “Why Don’t Lower-Income Individuals Have Pensions?” Center for Retirement Research at Boston College Issue in Brief Number 14–8, April 2014.

¹⁴ Take-up rates are likely to be somewhat lower among workers who currently do not have access to a plan, including many nonstandard workers. These workers are likely to have more barriers to participation, and perhaps less motivation, than workers who currently have access to a plan.

¹⁵ Statement of Michele Varnhagen before the U.S. Senate Committee on Health, Education, Labor and Pensions, Subcommittee on Primary Health and Retirement Security, on Retirement Plan Options For Small Businesses, June 21, 2016.

There are targeted interventions and innovations that might help at the margins, though it would be a mistake to focus narrowly on these. For example, ride-sharing companies Lyft and Uber have partnered with financial technology firms to help their drivers save for retirement. This has received a fair amount of attention because these drivers are already, by definition, “wired.”

However, even if these initiatives are emulated by other companies, this is only likely to help a small share of these workers and an even smaller share of the non-standard workforce.

Other, more ambitious, proposals targeted at nonstandard workers, such as a proposal by William G. Gale, Sarah E. Holmes, and David C. John to create a new type of portable retirement account that could accept both IRA and 401(k) contributions,¹⁶ would require a bigger political lift. While it is worth considering the pros and cons of such an approach for supplemental voluntary savings, we already have an efficient and portable benefit—Social Security—which the authors note shares many features with their proposed accounts.

In contemplating ways to help nonstandard workers, it is important not to fall into the trap of accepting these arrangements as inevitable and innovative when the situation might better be described as a race to the bottom. We should take with a grain of salt companies’ claims that labor standards and other protections are incompatible with new business models. As my colleagues Ross Eisenbrey and Larry Mishel noted, Uber claimed it could not adhere to minimum wage laws even as the company set minimum hourly rates when it suited them.¹⁷ Even when labor standards do clash with new business models, it does not follow that these should be weakened or scrapped, since these companies’ competitive advantage may derive from evading standards and taxes as much as or more so than from socially beneficial innovation.

The gig economy is a microcosm of the American workplace. Nonstandard workers and other low-income, self-employed, and small business workers face greater risk of retirement insecurity. We should look at ways of helping these at-risk workers, but we should be careful to do so without making a bad situation worse. A system that relies on upside-down incentives to encourage voluntary savings by workers in high-cost and risky plans that their employers may not even offer is a system that is not working for most American workers. This is especially true for lower-income workers engaged in nonstandard work who are less likely to have access to a good employer plan and are more likely to tap into savings to smooth income fluctuations before retirement.

Many of us in this room likely agree that we rely too much on single-employer plans and should look to expand more portable accounts or benefits. However, we likely differ on whether to focus on making it easier for workers to participate in IRAs or other voluntary accounts, or to require workers and employers to contribute more to Social Security or other mandatory or quasi-mandatory systems.

It would appear that the risk of the first approach is doing too little and the risk of the second is doing too much. There are limits to what we can do by nudging people to save more on their own. On the other hand, some argue that expanding Social Security can force some people to over-save: low earners who need the money now to support their families or invest in their educations, and high earners who might get a better return on their contributions elsewhere.

I believe the latter concern is largely hypothetical, especially in the wake of 1983 Social Security benefit cuts and the decline of defined benefit pensions. In any case, framing the debate as one between a libertarian approach on one hand and a social insurance approach on the other misses the fact that both systems need to be fixed. It is possible to do harm even in a voluntary (albeit taxpayer-subsidized) system by steering low-income workers’ savings to high-cost and risky accounts, especially if these workers receive little or no government or employer support yet face tax penalties for accessing funds before retirement. We should therefore focus on reducing costs (by eliminating conflicts of interest in investment advice, among other things), exploring ways to pool risks through annuitized benefits and other means, and fixing upside-down tax incentives.

Expanding Social Security would address these problems. However, this requires additional revenue, and any additional employee contributions would need to be offset for low-income workers by expanding the Earned Income Tax Credit or other means. We also need to address tax avoidance by independent contractors and other

¹⁶ William G. Gale, Sarah E. Holmes, and David C. John, “Retirement Plans for Contingent Workers: Issues and Options,” Brookings Institution Retirement Security Project, September 23, 2016.

¹⁷ Ross Eisenbrey and Lawrence Mishel, “Uber business model does not justify a new ‘independent worker’ category,” Economic Policy Institute Report, March 17, 2016.

self-employed workers, which robs our public services as well as workers' retirement futures.

There are no easy answers—and we need to be careful to “first, do no harm.” But the problem is serious and urgent and I believe there are areas of common ground.

Chairman ENZI. Thank you.

Next, we will have an opening statement by Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Mr. Chairman, for organizing this really important discussion.

Thank you to all of our witnesses. We are really grateful to have your insight on the challenges that are facing workers and retirees.

The hype of the gig economy has put a new face on the damaging trend of erosion in workers' protections and benefits. It is actually a trend that has been occurring for decades. We may be discussing new technology using new lingo, but the challenges are not new.

How do we make sure all workers are well protected and fairly compensated?

How do we make sure all workers have their rights and protections we have fought for since the New Deal?

In a changing world, how do we address the new threats and provide new protections to ensure workers' safety, economic security, and voice?

I am optimistic that we can look for bipartisan answers to these questions and work together toward solutions. Of course, even as we fight for workers' protections today, we have to also fight to secure the financial stability they will depend on tomorrow.

Retirement often seems years away to people, but the challenges we face are urgent. We need to expand access to plans as almost half of the families in this country do not have a retirement account. In fact, one-third of private industry workers do not even have access to a retirement plan through their employer. Many employers, who offer retirement plans, still do not offer part-time workers the opportunity to participate in them.

We also need to provide better portability in retirement plans since the average worker today will change jobs ten times before the age of 40.

We need to provide security for the many workers who are concerned about the pension crisis and whether they can expect the promised benefits that they earned.

We need to address the concerns of a generation uncertain about whether Social Security will still be there for them in retirement.

We need to address the unfair disadvantages facing women as they plan for their future by making sure they earn equal pay for equal work and are not penalized in retirement for time they devoted to family care.

Ultimately, we need to look at new solutions and protections to guarantee the promise of retirement for hardworking families, which is why I am working on legislation like the Women's Pension Protection Act, which would provide access to retirement plans for many low wage and part-time workers.

That is why I am working on legislation to modernize, enhance, and protect Social Security and ensure we do have a strong safety

net for our families, and it is why I am looking for new solutions too.

One approach that I have been working on is to make the small business retirement marketplace that is being pioneered in my home State of Washington, and scale it up to a Federal level, and expand the offerings to marry existing and underutilized plan options to those who want to save for retirement.

Washington State's online retirement marketplace has provided a new resource to make it easier for small business owners and sole proprietors to offer employees voluntary, privately managed, Individual Retirement Accounts, or IRA's. That is certainly something we want to do on a bigger scale to address some of the issues we are talking about today.

As today's discussion continues, I am going to continue highlighting the lessons we learned from my home State of Washington, and their leadership, to address this retirement crisis, and continue refocusing the spotlight of the gig economy on the broader ongoing challenges of reversing the erosion of workers' protections and benefits.

I will continue fighting to give more workers, more seniors, and more families the certainty of a secure financial future.

Senator Enzi, I am grateful to you for doing this today and bringing this discussion along, and I hope we can continue to work in a bipartisan way to address these challenges.

The CHAIRMAN. Well, thank you. Thank you for your comments and I will be real anxious to see some more details on the small business pension plan—

Senator MURRAY. Yes.

The CHAIRMAN —that the Washington laboratory and state is working on.

Senator MURRAY. The laboratory, yes.

The CHAIRMAN. I will defer to Senator Young who, I know, has to be at another hearing.

Senator YOUNG. Well, thank you, Chairman and Ranking Member for holding this roundtable.

I thank all of our panelists for being here today.

I am especially appreciative of the specific solutions you put forward about how we might improve retirement security for those who move from job to job, or are seeking flexible employment arrangements, or offer those arrangements.

Ms. Olson, I will just dive-in. You offered, I think, seven separate concrete ideas of things that we might consider as a Congress to improve on this retirement situation for gig workers, as it were.

No. 5 related to open platform, portable retirement products.

Can you point to an example, either domestically or internationally, where someone has effectively implemented this open platform, portable retirement system?

Ms. OLSON. It is a very good question and thanks very much.

I do not have a specific product to provide you in response to the question, but the different alternatives that a number of our other panelists have described in terms of Open MEP's are, obviously, an example of that.

Again, as we look at those, I think the attributes that we are looking for in terms of developing one is one that would be flexible.

One that would not be mandatory in terms of what we are talking about in terms of the aspects of it.

One that a gig economy company—or any company that provides opportunities to independent workers—would be able to provide information about, would be able to, perhaps, transfer funds to these platforms on behalf of the workers without a negative impact as would currently be placed under today's laws.

Senator YOUNG. Thank you, Ms. Olson.

Mr. Tisue, Ms. Olson cited the MEP as an example of one of these open platforms and there are, no doubt, other variants out there. You have laid out a couple of things that would need to be done to facilitate, or that might be done, to facilitate these MEP's.

This is the playbook, these two steps. Tell me what sort of resistance you have met with, if any, as you have shared with people your vision for expanding the use of MEP's in this country.

Mr. TISUE. Well, thank you for the question, Senator.

Actually, I do not believe there is a whole lot of resistance right now. I think we have bipartisan support. I think it is just at the step where we need to take action and make this happen.

The commonality is one of the obstacles we have to go over, and that is more of an interpretation than a rule. Thereby, there has to be some kind of pre-existing reason for these groups to be together.

If we could get rid of that, you can have the aggregation and the scalability.

Senator YOUNG. Let me explore that issue more, because I admit to being new to this issue. Sometimes, that is an advantage.

If we start drafting legislation in our office, working with the Chairman, or whoever would like to be involved in this, and we make that well known, we will have hoards of individuals visiting our office saying, "Do not touch the commonality standard."

Mr. TISUE. I do not believe so, no.

Senator YOUNG. Okay. I just want to make sure this is not one of these things I need to penetrate before embarking on that journey.

Ms. TISUE. Yes, so many of the things that you have mentioned are existing today where the scalability happens in Multiple Employer Plans. So you can get populations of people, even on the Solo(k) level.

We do these today for realtors, for jockeys, for physicians who are 1099.

Senator YOUNG. Okay.

Mr. TISUE. I mean, they are able to tie together to act almost like one plan for the purposes of greater assets, which gets greater pricing for them, more services tied to the model. All this is opening that up.

Senator YOUNG. We need some legislative clarification or adaptation of the commonality rule.

Mr. TISUE. Correct.

Senator YOUNG. They can get economy. Okay.

Ms. Olson, back to you. No. 6 on your list was providing independence, monetary incentives to save for retirement. I will ask you the same question.

Are there models out there, either in the states or internationally, where we have seen this happen, and happen in a way that you think merits our attention, positively or negatively?

Ms. OLSON. I mean, I think we have a lot of models currently that we have a lot of experience with in terms of employee models.

Really, the issue is to allow individuals to contribute to these various vehicles on a tax deferred basis and to allow them to actually accumulate interest and other proceeds during the term of the life of the vehicle on a tax deferred basis. I mean, that is what we are really looking at and right now, that is critical.

You cannot leave the issue of education and information out of the equation, though, because right now, many of these workers do not have the same access to that kind of information that would be readily available, perhaps, to employees in a workplace where it is handed out to them as part of their relationship.

Senator YOUNG. Do you have any recommendations, Ms. Olson? I will be asking you, Ms. Nunn, as well because I think this applies to your Solo(k) model.

Any recommendations about how we might heighten awareness through the employer or otherwise?

Ms. OLSON. Absolutely. I believe companies, I believe the Federal Government could heighten awareness by campaigns and information regarding the existing vehicles that are available, and any new vehicles that become available as a result of various legislation.

But even the existing ones, the information is not out there as to who current independents could go to, to get the benefits for them.

Then, the real critical issue is if you just think of employees, most employees are not going to go out and devote and contribute money to a retirement program if they do not have that ease of an automatic transfer of the money. Right?

Senator YOUNG. Yes.

Ms. OLSON. It is that automatic transfer that really is such a boost to making that happen.

Here if gig economy companies, or any company, were to do that for these workers that would be a strong condition of employment. So we have to remove that barrier so that they have the ability to do that.

Senator YOUNG. Maybe slightly more controversially, auto enrollment, is that something?

Ms. OLSON. Auto enrollment, I am not in favor of that for the following reason. Gig economy workers are very, very different. There is no one-size-fits-all.

Many of these folks already have retirement programs through their full-time employment. Some of them are retirees themselves who are not interested in saving.

Senator YOUNG. Right.

Ms. OLSON. Also, and want the immediate maximum amount of cash they can receive; so flexibility and opportunity, as opposed to the mandatory nature, which is not even mandatory today for employees in America.

Senator YOUNG. Makes a lot of sense.

Ms. Nunn, I will give you the final words.

Do you have anything to add? You gave a great presentation on the Solo(k) and experiences your CPA firm has had in servicing clients in that area.

How might we heighten awareness of, or streamline the process to establish a Solo(k) or other retirement vehicles?

Ms. NUNN. Thank you very much.

I think that the barriers are information, education, and then just the administrative burden that exists when you leave this to an individual to wade through.

Many people are not experts in wading through paperwork that has been written based on Internal Revenue Code, and that can be tricky.

I think that the point that Ms. Olson was making is also extremely important. Employers worry about crossing the boundary that would change someone that rightfully is considered contract labor back into an employee. They worry about that because there are all kinds of payroll taxes, and penalties, and liabilities that impact them the second they cross that line.

Making the employer or the company relationship to their contract labor, truthfully, contract labor employees safer for the company is critically important for there to be changes in how we interact with those workers.

If they were to come to our CPA firm and say, "Do I have contract labor or do I have an employee?" Many times we would say, "By all reasonable tests, you have someone who is a contract labor person. However, we have to let you know that on investigation, like a Social Security Administration or by an IRS audit, they may or may not uphold that because their perspective can be different."

Senator YOUNG. Sure.

Thank you all.

The CHAIRMAN. Thank you. Appreciate your comments.

I am going to build on something that Senator Murray said here. This is a Subcommittee of the Health, Education, Labor, and Pensions Committee, which is a very big bite of the apple. She mentioned that people in the future will be changing jobs ten times before they are 40.

There is another little part to that statistic, and that is that we are not just talking about different employers. We are talking about different jobs.

Another part of the statistic is out of those ten different jobs, seven of them have not even been invented yet. So I think that some of the things with these drivers is kind of a new invention.

I want to remind you that if you want to comment on anything, any of the questions, or something that somebody else says, just tip your card up and we can do that because your comments are what we are here for.

I thought that might be the case.

[Laughter.]

The CHAIRMAN. Ms. Morrissey.

Ms. MORRISSEY. I realize that this is a roundtable and we are trying to be friendly, but I do want to say that I do disagree with some co-members of the panel here about the need to loosen standards on who collects and also the need to, for example, lift the caps

on contributions to various kinds of tax exempt or tax deferred savings.

The kinds of workers that we have been talking about on this panel disproportionately are actually not the workers we should be worried about. We already have an upside down system of tax incentives.

People here may not be aware of the fact that the tax incentive that you get to contribute to these plans is based on the taxes you would otherwise owe on the investment earnings, and these disproportionately accrue to higher income workers.

We also know that these tax incentives do not really help people save more. They disproportionately just cause people to shift money that they already have into tax-deferred savings.

You could always point to somebody here or there who needs to catch up, but when we look at the statistics about what people are actually relying on in retirement and what people are spending on in retirement, we find that a lot of the money that is in these accounts is not even being spent. It is being deferred, and deferred, and deferred. These function more like tax shelters than incentives to save.

I think before we talk about expanding these things under the guise of modernizing things, we should make sure and fix the problem we already have, which is that these things are upside down.

The CHAIRMAN. Mr. Tissue.

Mr. TISUE. Thank you.

I just wanted to touch on a couple of points. It is important, I think Ms. Olson said this, that access is a very, very important component because you do not have engagement without the awareness and that all starts where you get access points.

One of the things that we can do is giving that employer look and feel by tying contributions to looking like matching scenarios in a typical, traditional workplace setting, and that does encourage action. That does have a pretty significant take, much like auto-enrollment, but without forcing it.

Another would be what Ms. Nunn talked about, which is the administrative burden is quite heavy for people who do not do this for a living. When you get a 20 page document, it is more than a little bit daunting and that kind of puts things off until that day you do understand it, which might never come around. And so programs like we are describing now take away a lot of that day to day burden.

Last, I just wanted to touch on a point that the Senator made about what kind of resistance there might be in that both the proposals I made about commonality and removing the bad apple requirement were in recess, which was passed by the finance in twenty, twenty-six zero. So I do not think there would be any resistance to this.

The CHAIRMAN. Okay.

Mr. TISUE. Thank you.

The CHAIRMAN. Thanks.

I will have a few questions too and I will begin with Ms. Nunn. Again, appreciating the difficulty of getting clear out here to present, appreciate the document that has been put into the record now. I know that your firm does a lot with people that do not want

to work with all the regulations, or the paperwork, or the transfer of money. So I appreciate that you do that.

In your testimony, you discussed your work with clients, assisting them as they established the Solo 401(k)'s.

Can you summarize what these plans are? What makes them so complicated to maintain and also any suggestions you might have for making it work better?

Ms. NUNN. Yes, thank you very much, Senator.

It is not that they are necessarily difficult to maintain once they have been started. There are people who can be worried about starting one from the standpoint once it reaches a certain dollar amount, you have to file a tax form, and that can be daunting to people as well.

It is the 5500-EZ that has to be filed once the balance in the 401(k) plan reaches \$250,000. But, as you can imagine, many, many plans would not have to do that.

I think the biggest issue is that people many times are not aware of them. We started holding trainings and sessions at our local community college so that we can start letting people know that this was available there.

The bigger issue is that even though these plans are correctly exempt from Title I of ERISA, correctly exempt because the only retirement money going into the plan is your own personal money. There is not a fiduciary responsibility to other people.

The wording and the process is being delivered to people as if they are signing up for a regular 401(k) plan where you would have a great deal of fiduciary responsibility for other peoples' money.

Because it is based on that same platform, it makes it a lot more complicated than it would need to be, and I think that is just a fault of the industry. That part of it is not necessarily tied to legislation or even IRS Code.

However, anything that can be done to simplify normal Americans, working Americans at any level of economic success or hardship to be able to be more self-reliant in their old age, I think, is appropriate.

Our other panelist saying that it is not important and all we are doing is shifting money to tax deferred savings, I just want to say, yes. That is the point. Do not spend it today. Shift some money to tax deferred savings. That is what we are saying or even a Roth option, which has no tax deferral inherent in it, but allows it to grow tax free and be pulled out when you need it.

Yes, we do see people that put money into these plans and they are conservative about pulling money back out, but that is because growing old has risks.

You cannot just sit down and budget how it is going to be and what you are going to live on when you retire. You have to leave the money there in case, heaven forbid, something goes wrong. Your returns are not as high as you thought, or you have medical issues, or you have some other issue that changes what your plan would be.

Of course, we are not going to see people put the money in and pull it back out on a rapid methodology. There are risks involved with growing old. And if we are going to be self-sufficient during

those years, we have to have the ability to put the money in and manage it well for our purposes.

The CHAIRMAN. Thanks.

Ms. NUNN. Thank you, Senator.

The CHAIRMAN. I appreciate your differentiating between the 401(k)'s and the Roth IRA's.

Ms. NUNN. Yes, Roth 401(k)'s.

The CHAIRMAN. Yes, there is a difference there.

We do talk about preventing leakage a lot in this Committee from all of the different kinds of retirement savings, which is a problem. Leakage, of course, is them taking it out beforehand for other purposes other than the retirement.

Mr. Tisue, as you might be aware, this Committee has had several hearings on the expansion of the Open MEP's plans. In your prepared testimony, you referred to a number of options for designing such Open MEP's plans, specifically for workers in the gig economy.

Can you tell me how much financial sophistication would generally be needed on the part of the worker?

Between the two options you specifically laid out, it sounds as though one might maximize simplicity by building a plan into a contract. The second would maximize portability by allowing organizations, such as yours, to establish the plan for workers to enroll themselves.

Is there an implied tradeoff between the simplicity and the portability?

That is a whole bunch of questions, and anybody can chime in too. Mr. Tisue.

Mr. TISUE. Well, thank you, Senator, for the softball question. That is a good one for me.

[Laughter.]

Mr. TISUE. Yes. The inherent simplicity—

The CHAIRMAN. Assume we do not know anything.

Mr. TISUE. No problem.

Multiple Employer Plans that we are describing here that could satisfy the need for these gig workers, when a Solo(k), just by its very definition like Ms. Nunn said, is very complicated. It is a 20 page document, at least.

The way that we do them today on our own, it is about 2 pages and the second half of that document is a beneficiary form. So it does not get any easier than that. It looks very similar to an enrollment form on any retirement plan that is offered through an employer. So again, it is very, very simple and that is just the nature of what the Multiple Employer Plans can afford.

Everything is already built, so you are not making a whole lot of decisions about the structure. The structure already exists, it is just telling you what it is and whether you want to join or not.

From a consumer standpoint, it obviously has all the protections you would want in there from ERISA, but it is very, very easy to understand.

I would be happy to supply supplemental documentation that you can review to show that.

But that is the least of their worries. It is very, very easy to understand and that is why I think the "take rate" is so high.

The CHAIRMAN. If you are able to reduce the 20 page form down to 2 pages, would you share the two pages with us?

Mr. TISUE. Absolutely.

The CHAIRMAN. Okay.

Ms. Nunn, do you have a comment?

Ms. NUNN. Yes, thank you, Senator.

Mr. Tisue, for the reduction to two pages, though, the participant—if it was a sole proprietor, a person who files a Schedule C—for them to participate in an Open MEP, would it be unusual for them to be able to put as much money into a retirement plan as they would be allowed by current law to put into a Solo(k)?

Mr. TISUE. Well, it is actually the same set up. Really, the only difference is how it is communicated to them. So all the benefits of the Solo(k) are still there.

Ms. NUNN. I know nothing, really, about Open MEP's, so I want to find this out.

You would have multiple employers who would concur to fully fund the maximum, the employer type portion.

Mr. TISUE. It is actually a little bit simpler than that.

Ms. NUNN. Okay.

Mr. TISUE. Let us say the four of us here decide that we are individual workers in this contingent workforce.

Ms. NUNN. Yes.

Mr. TISUE. I want to do a Solo(k). You all want to do a Solo(k). The things that are locked down that make this very simple, would be, for instance, an investment menu.

There would be a core family, let us say, of 25 mutual funds that are represented by a whole contingent of different mutual fund families, all at institutional pricing, as opposed to a Solo(k). As we know, typically, they are one provider. You are going to have access to, say, Fidelity or Vanguard, for pricing purposes. So we would have that.

Then I can do what I want in terms of my contribution amounts. You could do what you want. She could do what she wants. So it is really your own plan. We just all have the same structure that we join, which makes it more efficient.

Ms. NUNN. Yes, I think that sounds perfect. You should, really, quickly get going on that.

[Laughter.]

The CHAIRMAN. I think that was helpful.

Is there a top heavy requirement, then, if there are four people like that working together?

Mr. TISUE. No, because we are individuals; individuals in our own plan. We are just joined together for purposes of pricing, so to speak.

The CHAIRMAN. Good, thanks.

Ms. Olson, as an attorney with significant experience in the gig economy, what are the features that the gig economy companies are looking for in their retirement savings options that they can offer to their participants? Is there any assistance from the gig economy companies currently able to offer their participants without creating labor classification concerns?

Ms. OLSON. Thanks very much for your question.

It is not an issue of loosening the standards on workers. I mentioned it in my testimony or my statement, but the U.S. Supreme Court has said, with respect to the receipt of employee benefits by any worker, that is an indicia of employment. That is the Darden Case [*"Nationwide Mutual Insurance v. Darden"*].

That definition by our U.S. Supreme Court has gone through all the state and local statutes—whether it is unemployment compensation, workers' compensation, whether it is ERISA or really any of the issues, the Internal Revenue Code—that relate to the status of the worker.

One of the biggest prohibitions and impediments to gig companies and any company wanting to provide information, facilitation of the transfer of funds, or even a co-payment with respect to monies into a retirement fund for these workers is if they do that, the Supreme Court has said, "That is a strong indicia, they are your employee."

Without loosening the standards of who is an employer, who is an independent contractor, what California did, and we can look to a state that has looked at this issue, who wanted to cover non-employee workers of certain industries under its workers' compensation laws without hurting their status.

What California said is, "We are going to allow companies that use certain independent contractors to treat them as employees for workers' compensation purposes, to provide them workers' compensation benefits without allowing that fact to be relevant to their classification as an employee or an independent contractor." Take it out of the equation, but let the companies provide those workers with that benefit.

If you say to me, "What is the biggest impediment?" It is the companies that have the resources, that have the ability because of the administration of the fees to these workers, to probably be in the best situation to provide information, administration of benefits, transfer of funds even if they desire, like some employers do, a co-pay, if it did not hurt the legal status for all other purposes, if it was just neutral.

Let the companies do that and support a retirement system for these workers with it being a neutral factor for everything else. Not positive or negative, just take it out of the equation. That would be unbelievably helpful.

The CHAIRMAN. Thanks.

Ms. Morrissey, I think you had a comment.

Ms. MORRISSEY. I do realize that we could have the entire panel just be discussing this issue of worker classification or employee classification, but since it was raised by other panelists, I would like to just take the minority view on this panel.

We need to strengthen, and not loosen, distinctions between employees and independent contractors, and raise more of those misclassified independent contractors to be employees.

The fact that providing benefits to them will endanger their classification as independent contractors, to me says that they should be employees in the first place. If you want to provide employee benefits to workers, they should be employees.

I do not have any sympathy for companies that want to have it both ways. That wants to have somebody that looks, and feels, and sounds in every other way like an employee.

I also want to state that when I was researching for today, EPI, the Economic Policy Institute, my employer, has been doing this work for 20 years. There was a book about misclassification of workers. I could not actually find it on my shelf because it was so long ago.

I think that sometimes this gets forgotten because of the focus on the gig employee, the gig economy, and some modern tweaks to it, but this has always been an issue about maintaining standards of who is an employee and who is not. I think we do not want to go down that road.

I think the first rule of trying to provide better benefits for non-standard workers is to first do no harm. I think something like that could definitely do some harm.

The CHAIRMAN. Do you think that would depend on the size of the business, though? We are talking a lot about these just being one individual with their own business.

Ms. MORRISSEY. Well, if they are truly a self-employed worker and participating in something like Mr. Tisue was talking about.

I actually see Michelle Varnhagen in the audience here today, and I know she has testified before this Subcommittee, I know a lot of that is the “devil is in the details” there. If we have enough protection, I am all in favor of that. I think it is great. I do not think things need to be attached to particular employers.

I think it is true that we need to have more portable benefits and we need to provide different options.

But when people are supposedly independent contractors, often we look at them, and they work at one employer who sets every standard, who controls every aspect of their working life.

You might think something like a driver for Uber or Lyft is a modern day invention. Yes, they are working through an online application, but there have always been cab drivers who are self-employed.

In fact, this very morning, I took the train, and to get to the train, I took a car share service, not a car share service. In New York City, that has been around forever. It is decades old.

These are not as new as people think and I do not think that there is any reason, there was not any reason 20 years ago and there is no reason now to reclassify them.

That said, I do sympathize with the workers that you are both talking about in that, I think, are very common in the states, in Wyoming and other sparsely populated states where there are people who have multiple jobs and they need a convenient way to save.

I am all in favor of exploring new ways to do that, but not by muddying the distinction between employees and independent contractors.

The CHAIRMAN. Of course, one of the things we are trying to do is figure out a way to get more people to have retirement savings. This new economy has stifled, in one way, that if they have to provide all of the services of a normal business, which everybody used to do.

When I was in the shoe business, we had to do our accounting and all sorts of things. I am an accountant, so that was not a big deal, but some people do not go into business because they do not have the kind of support on the other things that they might need.

But they can have a retirement plan if they can contract for all of the services that it takes for that. I used to have to help some clients with doing some of the reporting that they had to do and that is particularly the top heavy rules that they had, which do not really apply if there is just one person. Yes, it is top heavy. It is the only "heavy".

I am just trying to figure out how to make it possible for these people to do the kind of a business they want and to be able to contract for services so that they can have a pension.

I think we still have an issue, and I will ask people to comment on this too, and that is how do we advertize these options more?

I will go ahead and let you respond first and then I will throw it out for that more general question.

Ms. MORRISSEY. I do not want to take up too much time, but I think one of the things that has been lost in this discussion too is that we need to do a better job of making the plans that we already have better.

I think it is often said that the assumption is that people do not have access to plans, that they are ill informed, and we just need to provide better information and easier access.

But I think more often than not people have rational reasons to be nervous about what they do have access to. There are some problems with 401(k)'s. There are big problems with a lot of IRA's. I think we need to make those plans more secure and lower cost, more appealing. There is also broader economic things that we need to do that I know are beyond the discussion here.

But it is asking a lot of workers who have seen their wages stagnate and have very volatile earnings to set aside money on their own and have to make all these retirement decisions.

I am all in favor of making things simple, but there should be standards about costs, and about risks, and about investments that we all agree on that are better than the standards that we have now. Otherwise, I would really worry about funneling more funds into ill-suited investments, expensive and risky investments. I do not think that is the solution.

I think we need to fix the accounts that we have now and at the same time, also make it easier, through behavioral and other ways, to encourage people to save.

I think, also, the emphasis on convenience is very important because we did mention tax incentives. But what people have found—and in general economists have spent a lot of time talking about—is that convenience and simplicity matter more, really, than tax incentives.

I agree to making things simple, but we need standards at the same time.

The CHAIRMAN. Thank you.

Does anyone have any comments on how we can get more people to participate in either the Solo or the MEP's that exist at the present time?

You do not have door to door salesmen going around on these things.

Mr. TISUE. There are certainly a lot of ways to create the awareness, not the least of which is you go straight to the source on where the folks are being contracted. That is one easy way.

You take an example of some of the cable companies. The installers are out there all day long and all of us have waited on them.

But it is just a matter of finding places like that where you know there is going to be an excess of a lot of people working through that. They all get paychecks and there is a lot of easy ways to communicate through that. Making them aware is the first step.

If we could tie that to some level—it is not employer contribution because they are not employers—but that kind of feel of what they are used to from a traditional setting where if there is a way to incent them with the paycheck for their service, to give some kind of incentive that could be used by that contract worker to fund even more into their own retirement account.

There are a lot of ways we can create awareness. That is one.

The CHAIRMAN. Ms. Morrissey, did you want to comment on that? You had your card up.

Ms. MORRISSEY. That was up from before. Thank you.

Ms. OLSON. Senator Enzi, if I could just comment.

The CHAIRMAN. Yes.

Ms. OLSON. What I would say is it would not be a bad idea to have more general information about the opportunities that are available with respect to the existing retirement vehicle options and to have those available.

Not necessarily tied to any particular company that might be offering a particular benefit, but might just be general information regarding these being available on government Websites.

Also available, so that they could even be handed out, not as a document that anybody who hands out is endorsing, but just generic government information regarding, “This is a lot of information for independent contractors relating to information that you can use in terms of the structure of your business.”

It does not impinge on, one way or another, if they are an employer or an independent contractor. It is just the information that the individual could have. That would be very helpful.

The CHAIRMAN. We have talked a lot about making the plans a little bit simpler, and we had some suggestions in your testimony for that.

Does anybody want to expound on those a little bit more, how we can make it simpler? One way is to go from 20 pages down to two, and I am looking forward to seeing that document.

Ms. OLSON. The one comment I would make is the real ease of use is the automatic transfer of the money. That is what really makes it happen.

Without getting into the issues, removing impediments to allowing that to happen for a gig economy, and other non-employee workers, really will make those investments in retirement vehicles work, if we can eliminate the legal impediments to that.

The CHAIRMAN. Ms. Morrissey.

Ms. MORRISSEY. Well, there has been a lot of research done on how people are intimidated by having to make investment deci-

sions that choose between multiple mutual funds, and also how a lot of the mutual funds on offer are of a higher cost than others that they could have. The more funds that you are offered, the worse it is.

I think the states are actually providing some limited model for how to reduce options and make them better. Now, it depends on the state and it depends on what they are doing. The defaults that some of the states are looking at are more appropriate investment vehicles for many savers. I think that matters a lot.

I also just want to make the point that the simplest and most obvious way to save for retirement is through Social Security. And so, it is important that workers are fully paying into Social Security, that they are not underreporting their taxable earnings. Also, I am obviously strongly in favor of expanding Social Security.

Social Security takes all of those decisions out. You do not have to make those decisions. You have a secure benefit. You do not have to think about it.

Even if we do not go with expanding Social Security, I would also like to point out that, and again I do not think this is going to be that popular on the panel, but with the ACA there was some standardization of benefits.

I think that we need to always keep in mind that people, if they need professional expertise, it is because they do not have it themselves. They are not a good judge of it. They are not a good judge of the financial advice they are receiving.

We need fiduciary standards. We need to really look at the investment options that people are being offered. We need to make sure that they are low risk, appropriate, and that they are low cost.

I think that the states are experimenting with some ways of defaulting or limiting options to make sure that these are appropriate.

The CHAIRMAN. Ms. Nunn.

Ms. NUNN. Well, I realize this may not be specifically on topic, but my real job, besides running our company, is that I am an auditor and I audit employee benefit plans, 401(k) plans.

I just wanted to say within the last 5 years, the Department of Labor has made it very clear to auditors that we are to be reviewing the activities of the trustees of these 401(k) plans inclusive of their quarterly meetings to review the costs of the different investment options, the performance of the different investment options, the availability to participants of advice on investments.

I think our world is moving back in that direction and that has to be documented and all communicated for them to pass their audit.

While I would say pension plans, the example of a union pension plan, might have been more closed, perhaps the current 401(k) environment or 403(b) environment is subject to much oversight on the fiduciary activities of the trustees of those plans. I think people take it seriously in general.

The CHAIRMAN. Our Committee has spent a lot of time on fiduciary responsibility and I have quite a bit of difficulty with that because I am from a very rural state.

I am the least populated state in the Nation and all of the services that might be available in Washington, DC. or even Denver are not available in most of the towns in Wyoming.

When we start limiting the ways that people can get advice or give advice, it becomes very difficult for people in my state to get any advice. So there is always a conflict with that at the same time.

Another question for Ms. Olson or anybody else on the panel.

Some professions, such as teaching, offer full time with benefits but allow for extended time off.

How might a one-size-fits-all policy of requiring traditional employer provided benefits discourage participation in the gig economy with these teachers?

Ms. OLSON. Thanks for your question, Senator Enzi.

It is true that it is not unusual in multiple months that teachers have off that they actually use some or all of that time to make additional moneys.

If, in fact, participation in retirement plans that would use a portion of the otherwise compensation they would receive in terms of direct, immediate pay for the service they provide, but part of that would be drained or moved over to another type of benefit. That would, in the economic model, reduce the interest of those individuals in becoming gig economy workers.

It is not just the teacher example. The teacher example is a very good one.

It is not uncommon that individuals that do have time off during certain periods—whether it is the weekends, whether it is a certain time of year, like teachers during the summer, or whether it is for a short, defined period of time where somebody wants to save for a particular activity, for a vacation, or event that requiring those workers to not receive the full maximum amount of immediate pay that they have for those—where they have retirement benefits, perhaps, covered by other full-time, part-time, or other employment would be a negative because it does take away from them the maximum amount that they can earn. It may also be a resource that they just do not need because of other available resources.

That is why I have described the issue of flexibility and voluntariness in terms of these plans as being important. So that actually the gig economy workers who are more entrepreneurial—and just about any worker that we see in terms of the economy, whether gig economy, contractors, where they are independent contractors even in other fields—the issue is these are workers who are choosing to pursue a specific addition usually or very unique business opportunity. One that they may grow in significant ways into something that is beyond them or as just relates to their own resources and assets in terms of their time as well as their own assets.

But it is critical that we give them flexibility to get the benefit from that particular work that they are looking for to ensure that we have this opportunity available for them. And to ensure that we are able to grow this economy in the way that we see the consumer demand exists for.

The CHAIRMAN. Thank you.

A final question here for my practitioners, Mr. Tisue and Ms. Nunn.

If the people wanting to do this decide that they would like to do a Solo(k) or an Open MEP's, how much time would it take to set up the plan and what kind of compliance would they have during the year?

Mr. TISUE. What time is it today? We could have it set up in about 10 minutes. It really would not take any time at all if the Open MEP were able to be used today.

For those that are inside of a nexus that would allow that to happen, we sign those up right now. So the structure is alive and well.

One thing Ms. Morrissey touched on, and I wanted to add is she is absolutely right. In a standard Solo(k), the application might include 75 mutual funds from a given family that someone has to go through and choose.

There is something called choice fatigue that exists in this industry where every fund after ten, your brain just shuts down, and you ultimately either make the wrong choice or you do not make one at all.

One of the things that Multiple Employer Plans, especially ones like ours, we have an investment manager, a fiduciary, on those plans that pare down those menus to address that.

Where you might see some retirement plans out there that might have as many as 50 to 60 funds, ours typically have around 20 that include the target dates that span. That probably might be ten funds.

It is important to do that. But they are ready now.

The CHAIRMAN. Okay. And during that first year, what kind of reporting do they have to make? Do you handle all of that?

Mr. TISUE. We handle that for them.

The CHAIRMAN. Yes, I thought so.

Ms. Nunn.

Ms. NUNN. I would agree. It takes about 10 minutes for someone who knows what they are doing to set up a Solo(k). If Open MEP's were available, I think we would also encourage people to look at that, it is just they are not available today.

But for the Solo(k)'s, we help them get set up. We have a money manager in place so they have about 10 to 15 choices, and we encourage them to rebalance, so that they stay with their given risk. They can choose that or not. But that they stay with their given risk profile.

All of that eliminates some of the fatigue that can happen when you are presented with just too many choices.

In addition, once they need any type of tax filing, we do that for them as well, since we have found that to be an obstacle.

The CHAIRMAN. Thank you.

Do any of you have questions for anybody on the panel?

I want to thank you for your participation, and the great answers, and I will see that this all gets reported to the other Senators, probably in the form of some legislation which then, you can all comment on too.

I appreciate you traveling here and being willing to participate in this. I do think it has been productive. I do think it needs far more investigation yet and discussion.

There is going to be a publication coming out from the Bureau of Labor Statistics, "Contingent Worker Supplement," that is a report that has not been compiled since 2005. There have been a lot of requests by Senators for that to be updated. I am sure that this debate will fall on familiar, philosophical lines.

But it does have to take into account the desires of participants in this new segment of the economy which, I do not think, has even touched on its inventiveness yet. I think it is going to be a big area for the seven that have not been invented yet to come up.

Uber is new to Wyoming right now even though it has been around other places for a while, but these things catch on pretty fast because of the kind of communication that we have these days.

I will ask that the hearing record stay open for 10 days to accommodate additional questions that other Senators might have for the witnesses.

If there is no further business to come before the Subcommittee, it is adjourned.

ADDITIONAL MATERIAL

TRANSAMERICA

February 6, 2016

Transamerica appreciates the opportunity to provide this written testimony in connection with the hearing by the U.S. Senate Committee on Health, Education, Labor, and Pensions Subcommittee on Primary Health and Retirement Security exploring "Gig Economy" retirement plan issues.

Transamerica is focused on helping customers achieve a lifetime of financial security. Transamerica products and services help people protect against financial risk, build financial security and create successful retirements. Transamerica designs customized retirement plan solutions for both for profit and non-profit businesses nationwide. Transamerica provides services for over 29,000 plans that collectively include over 7 million participants and represent over \$476 billion in plan assets as of December 31, 2017. Multiple employer plans comprise 306 of these plans adopted by over 12,400 employers with 770,000 participants and \$21.9 billion in assets as of December 31, 2016.

Executive Summary

The independent workforce has grown significantly in the last few decades. While there are many positive reasons associated with being an independent worker, a glaring downside is lack of access to workplace benefits, including the ability to save by payroll deduction into an employer sponsored retirement plan. Multiple employer plans ("MEPs") provide an opportunity for expanding retirement plan coverage among independent workers.

Multiple employer plans ("MEPs") are a recognized cost-effective retirement plan solution for small businesses. MEPs provide a way for small businesses with a common interest to achieve economies of scale by joining together in a retirement savings plan structure in which the administrative burden and liability of operating the plan are delegated to plan services professionals.

Once reform of MEPs to remove the “common interest” requirement for employers to join in a MEP (“open MEPs”) is enacted, employers, including sole proprietors, from various industry and trades can efficiently save for retirement by joining in an “open MEP.” Sole proprietors include independent workers, who by choice or circumstance, are not tied to a traditional employment arrangement, and who may earn their income from multiple sources.

The Increase in Alternative or Independent Work Arrangements

Anyone who engages in social media, reads the news or participates in a ride sharing service has recognized the rise of workers in the nontraditional workforce. They are sometimes referred to self-employed, free-lancers, independent contractors or workers in the shared, on-demand or gig economy (collectively referred to as “independent workers.”) According to one study, independent workers have risen by 9.4 million over the last decade.¹ These workers include not only recent graduates but also workers displaced by unemployment and workers who have retired from traditional employment. According to the Aegon Retirement Readiness Survey 2016: Retirement Preparations in a New Age of Self-Employment, 94 percent of those surveyed cite positive reasons for becoming self-employed.²

Independent workers are effectively a small business, e.g., a sole proprietorship with no workers aside from the “owner.” According to the U.S. Small Business Administration, the number of small businesses in the United States has increased 49 percent since 1982. Since 1990, as big business eliminated 4 million jobs, small businesses added 8 million new jobs. Small businesses (fewer than 500 employees) represent 99.9 percent of the total firms and 48 percent of the private sector workforce in the United States.³

Expanding retirement plan coverage among independent workers and other small businesses is critical to enhancing Americans’ retirement security.

Need for Benefits

The rise in the number of independent workers has begged the question of how these workers can efficiently access benefits traditionally provided in the workplace or through membership in a union or trade guild. Benefits most commonly offered in the workplace include retirement, life insurance, disability and healthcare. These benefits are often pre-selected by the employer and offered on a group basis, with group (or discounted) pricing.

The workplace retirement savings system has succeeded in serving as the preferred method of saving for retirement for millions of workers. With the benefits of saving in an employer-sponsored plan governed by the Employee Retirement Income Security Act, as

¹ Katz, Lawrence F., and Alan B. Kreger. *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015*. Rep. Princeton University, 29 Mar. 2016. Web.

² The Aegon Retirement Readiness Survey 2016: Retirement Preparations in a New Age of Self-Employment <https://www.aegon.com/contentassets/989fa61f841d42b6957e39cf3183dba3/united-states-self-employed-retirement.pdf> also notes 56 percent of self-employed workers surveyed in the U.S. indicate that they expect to retire after age 65 or never, and have a median personal income of \$46,000.

³ U.S. Small Business Administration. *Frequently Asked Questions*, June 2016 <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016-WEB.pdf>

amended (“ERISA”) (e.g., investment education, the potential for employer contributions, and fiduciary oversight), combined with the convenience of automatic payroll deduction, Americans are far more likely to save for retirement through participating in a workplace-sponsored retirement plan than through alternate savings structures. According to research from nonprofit Transamerica Center for Retirement Studies (TCRS), 89 percent of workers who are offered a 401(k) or similar plan are saving for retirement, either through the plan and/or outside of work, compared to just 49 percent of workers are not offered such a plan.⁴

Policymakers, academics and business have increasingly studied not only the independent worker, but also the impact of the rise of an independent workforce lacking efficient access to retirement savings plans on government programs and the economy.⁵

Open MEPs: a Solution to Providing Retirement Benefits to Independent Workers

Open MEPs can provide the benefits of workplace retirement plans to the independent worker.

While the rapid increase in the independent workforce is new, the legal structure is not. Independent workers are generally sole proprietors or unincorporated entities.⁶ A sole proprietor, as well as any independent worker who has structured his or her business as a partnership, limited liability company or corporation, can set up a qualified retirement savings plans through which he or she can save for retirement on a pre-tax basis.

Independent workers, however, are not likely to establish a retirement plan for themselves as they generally lack the expertise and funds to establish a plan and do not want to assume the administrative burden or fiduciary liability of operating the plan.

Under an open MEP many independent workers across various industries and work arrangements can simply join the MEP and thereby establish a workplace retirement savings arrangement for themselves, and join their arrangement with others in a single plan to achieve economies of scale and avoid the administrative burden and liability in running the plan. Under a MEP, a named plan fiduciary assumes responsibility for operating the MEP in compliance with ERISA, including selecting the investment funds for the plan, and a common record keeper and plan administrator manage the contributions from various sources within the MEP. The result

⁴ Transamerica Center for Retirement Studies (“TCRS”), 18th Annual Retirement Survey of American workers, 2017. TCRS is a division of Transamerica Institute (“The Institute”) a non-profit, private foundation. The Institute is funded by contributions from Transamerica Life Insurance Company and its affiliates may receive funds from unaffiliated third parties. For full survey methodologies, see www.transamericacenter.org

⁵ See The Aspen Institute Future of Work Initiative: Portable Benefits in the 21st Century—Shaping a New System of Benefits for Independent Workers by David Rolf, Shelby Clard, and Corrie Watterson Byrant (2016) Also, see S. 1251/ H.R. Senator Warner (D-VA) in the Senate and by Rep. DelBene (D-WA) in the House that would provide a \$20M fund for the Dept. of Labor to use for grants to states and localities that develop workable programs providing portable benefits to gig economy workers. Following is a link to Warner’s press release: <https://www.warner.senate.gov/public/index.cfm/pressreleases/ID=73DA2EF1-FD4E-4397-9B7C-D24B1843A29A> and to the bill (S. 1251/ H.R. 2685): <https://www.Congress.gov/115/bills/s1251/BILLS-115s1251is.pdf>

⁶ <https://www.irs.gov/businesses/small-businesses/small-businesses-self-employed/sole-proprietorships>

is an effectively managed plan, the costs of which are shared by the various employers participating in the MEP.

Mechanics of Covering Independent Workers In a MEP

Independent workers can participate in a MEP in two different ways. First, they can participate the same way that any small business participates. As noted, the independent worker is effectively a small business that can make “employer” contributions on behalf of the independent worker. And the MEP can allow the worker himself or herself to make his or her own contributions to the MEP, such as 401(k) contributions. In the case of an independent worker, employer contributions and employee contributions effectively come from the same source—the independent worker—so the only difference is how the contributions are designated. In this respect, however, the independent worker is treated exactly the same as countless other small businesses across the country.

The second way that independent workers can participate in a MEP is through the facilitation of a business that engages their services. Assume, for example, that Company X engages the services of an independent worker on an ongoing basis. Company X cannot cover the worker under its own retirement plan because the worker is not an employee of Company X. However, Company X could “make contributions” to the MEP on behalf of the worker in the following manner. For example, assume that the worker earns \$40,000 in a year from Company X. Company X could do one of two things.

- First, Company X could provide an additional percentage, such as 3 percent (i.e., \$1,200), and, with the worker’s consent, contribute that directly to the worker’s MEP. For tax purposes, the \$1,200 contribution would be treated just like cash compensation from Company X to the worker: deductible as cash compensation for Company X and taxable to the worker. But the worker could then deduct the contribution to the MEP, just as if the worker had made the contribution himself.
- Second, if Company X wants to encourage workers to also contribute for themselves, Company X could base the amount of its contribution to the MEP on the amount the worker contributed for himself through “payroll deduction” from the amount due to the worker from Company X. In this case, Company X’s contribution would be just like a matching contribution. So Company X could, for example, say that it will match 50 percent of all contributions made by the worker to the MEP, up to 6 percent of the worker’s compensation from Company X. So in the above example, if the worker contributes \$2,400, Company X will kick in \$1,200. Or if the worker contributes \$1,000, Company X will contribute \$500.

The structures described above can be designed to function in a manner that is exactly the same as any retirement plan maintained by a small business. Thus, with or without the assistance of the entity hiring the worker, a MEP can provide a simple and

efficient means for independent workers to accumulate retirement savings.

Reforms Needed to Facilitate the Ability of Independent Workers to Join a MEP

Two essential and widely supported reforms are needed to facilitate the adoption of MEPs. First, compliant employers in a MEP should be protected from liability for the non-compliant acts and omissions of other employers in the MEP and the resulting disqualification of the entire plan under the Internal Revenue Code (the “One Bad Apple” rule). Typical reasons for non-compliance (jeopardizing the qualified status of the plan) include providing insufficient information for discrimination testing and other compliance purposes. Under existing bi-partisan proposals, the plan fiduciary could expel the non-compliant employer from the MEP and preserve the MEP’s qualified status for the remaining employers in the plan.

Second, employers without any “common interest” should be able to join together in a MEP (an “Open MEP”). Current law requires a “common interest” or a nexus among employers (e.g., working together on other business endeavors) to join in a MEP. Elimination of the common interest requirement will increase the number of small employers that provide a retirement plan for their employees by joining in a MEP, including independent workers.

Transamerica thanks the Chairman of this Subcommittee for his continued leadership on reforms to drive coverage, including open MEPs. The MEP reforms noted above have long been advocated by both Republican and Democrat Members in both Houses of Congress. In the 114th Congress, the Senate Finance Committee approved in a 26–0 vote the Retirement Enhancement Savings Act (“RESA”) containing provisions to permit open MEPs and to address the one bad apple rule. It is time to enact these MEP reforms, as well as the other provisions of RESA.

Conclusion

Transamerica commends Chairman Enzi and other Members of this Subcommittee for their consideration of gig economy workers and future of retirement savings. We appreciate the opportunity to present our views on the particular challenges faced by independent workers in saving for retirement, and the open MEP solution.

QUESTIONS AND ANSWERS

RESPONSE BY CAMILLE OLSON TO QUESTIONS FROM CHAIRMAN ENZI AND SENATOR SCOTT

Question 1. As a former financial advisor, I know how important portability is in the retirement savings conversation—especially as the “gig economy” expands. Roth IRA and solo 401(k)’s are a great fit for those workers. That said, there’s an information gap that we need to bridge. A recent Intuit report found 44 percent of independent contractors aren’t saving for retirement at all right now. That’s a disaster waiting to happen. What can we do to ensure

more “gig economy” workers know about the retirement savings options already available to them?

Answer 1. We believe that providing straightforward information and easy access to that information could effectively address this issue. The Federal Government can become a valuable resource to workers taking advantage of the entrepreneurial opportunities and flexibility of the gig economy but who are left to solely navigate their own personal financial affairs, including saving for retirement, without the assistance of a third party such as a full-time employer. We recommend that you consider a government-sponsored website that provides American workers—not only those in the gig economy, but all workers who, for various reasons, want to educate themselves on retirement planning—with information regarding available vehicles and products for retirement savings, particularly those portable options you mention. The information provided should be available electronically and should be in layman’s terms so that it is easy for a worker without a financial services or similar background (or without the assistance of an employer’s human resource department) to understand.

Separately, the Federal Government could publish a short, one-page form, containing important information for independent workers, including a link to the above-mentioned website regarding retirement savings, short summaries of each of the options, and lists of other resources for obtaining additional information. Another possibility is to include a link to the webpage on IRS Form W-9, which is the form independent workers use to provide their taxpayer identification number to the businesses with which they contract.

In addition, the companies who contract with these workers should be provided the freedom to provide information and assistance with respect to retirement savings and planning without jeopardizing their operational models. Today those companies cannot do so without risk of being found to have misclassified these workers because courts and regulators may view this conduct as evidence of control and employment status. Legislation that removes those barriers—specifically, that allows companies to assist in the education, facilitation, and administration of retirement savings options for their non-employee workers without that assistance being held against them as an indicia of employment for any Federal, state or local purpose—could pave the way for businesses with the resources to provide the information and assistance without penalty.

We agree that there is an information gap and believe that simplifying the information and making it available to workers in a variety of places will improve the retirement savings rates for all independent workers in the new economy.

Question 2. The private sector is coming to the table with solutions. Uber, for example, allows drivers to open IRA or Roth IRA accounts for free through the Uber app itself. That’s encouraging at a time when the average South Carolinian only has 1 year’s salary saved for his or her retirement. How can policymakers encourage these kinds of innovations in the market—or at the very least not stand in the way?

Answer 2. The companies that contract with independent workers have opportunities to provide information, ready access, and additional assistance to help these workers save for retirement. The companies have the opportunity to provide information directly to these workers, facilitate direct transfer of earned fees to retirement vehicles, and may have opportunities to facilitate access to this information and these services via the apps they already use via their provision of services or results to the gig company. However, as mentioned above, what could be construed as the facilitation or provision of retirement benefits to a worker and therefore an indicia of an employer-employee relationship under existing law is a major impediment to a company's ability to provide retirement information or services to independent workers.

Legislation that removes the legal barriers—i.e., allows companies to assist non-employee workers with saving for retirement without creating an adverse inference of employment—is key to supporting companies' efforts to make it easier for workers to save for retirement. As an example, see the California Labor Code's Workers' Compensation and Insurance section, which allows companies in certain industries to include certain independent contractors in their Workers' Compensation program without it otherwise being an indicia of an employment relationship:

Where any employer has made an election pursuant to this chapter to include under the compensation provisions of this division an independent contractor engaged in vending, selling, offering for sale, or delivering directly to the public any newspaper, magazine, or periodical, the status of such person as an independent contractor for all other purposes shall not be affected by such election.¹

This language could be instructive to Federal policymakers when drafting legislation that provides a similar solution for gig economy companies that wish to provide retirement savings education and related services to their non-employee workers.

RESPONSE BY VIKKI NUNN TO QUESTIONS FROM CHAIRMAN ENZI,
AND SENATOR TOM SCOTT

Question 1. What can we do to ensure more “gig economy” workers know about the retirement savings options already available to them?

Answer 1. Getting the word out just on the necessity for retirement savings would be the first challenge. Saving money can be seen as a luxury or an impossibility by many. In addition, as our economy is changing, so are the entertainment habits of most Americans. Where radio Public Service Announcements or even television ads for different brokerage firms may have delivered the message about financial responsibility and saving for retirement in the past, the decrease in radio and network television audiences make it much harder to reach large audiences with one message.

While this message is most important for young workers since nothing replaces the time for building retirement savings, saving in

¹ Cal. Lab. Code §4157.

general is not seen as cool. In the long-term, encouraging classes in personal finance and even basic economics as part of required curriculum could help. In addition, the Federal programs used by states to fund business development loans and grants could include a compliance requirement mandating recipients complete course work on the importance of retirement savings. The SBA could have something similar and completion of the course might improve application standing.

Out of the current tools available to get the message out, the most effective way is to continue to use tax provisions that help encourage people to save as they can. This may mean lifting the limits on Roth contributions. With gig workers having volatile income streams it would also help to raise limits in any given year for deferred tax savings. Unfortunately for most workers, saving for retirement does not become a high priority until later in their work lives. Expanding the catch-up provisions to allow for more funds to be saved as earnings are higher would also help. Any change or even discussion of changes to the tax provisions also provides an army of analysts, pundits, reporters and tax preparers that can provide news and information on the different strategies available. Legislative focus does give the issue more presence in our society in general.

Question 2. How can policymakers encourage these kinds of innovations in the market—or at the very least not stand in the way?

Answer 2. The innovation you describe with the Uber app is being provided in a way that does not trigger a reclassification of the contract workers to employee status. While traditional employees have the benefits of mandated enrollment meetings and automatic payroll deductions, organizations with gig workers have to be very careful to not take an action that reclassifies a contract worker into an employee. This worry limits communication on many levels. Since Uber has a model that is reliant on contract workers, they have more formalized orientation and support communication for their workers. They are also large enough to litigate if an examiner determined that their workers should be reclassified. Clarifying and reexamining the employee/contract worker guidance would help lessen the risk for employers in providing overt recommendations and support to their contract workers. Adding the ability for organizations to withhold contractor designated retirement contributions from the payments made to the contract workers, without that incurring a risk that the worker would be reclassified to an employee, would certainly help.

In addition, continuing to encourage free competitive market places where organizations can provide options to workers that set them apart from other organizations has to help. Employers and organizations relying on gig workers are competing for the energy of one workforce. Helping members of that workforce understand their options and supporting their efforts to provide for their futures has to be a competitive advantage.

[Whereupon, at 3:50 p.m., the hearing was adjourned.]