

To Interested Parties,

At least 27 million Americans are in business for themselves.¹ These workers are truck drivers, housing contractors, subcontractors, direct sellers, musicians, actors, writers, software designers, physicians, and participants in the app or “gig” economy, among many other professions. The vast majority prefer nontraditional work arrangements to traditional employment, citing flexibility, dependent care obligations, and personal circumstances as key reasons. As part of a significant and growing segment of the workforce, they are poorly served by nearly century-old labor and employment laws that inadvertently prevent them from receiving common workplace benefits.

Policymakers have a responsibility to evaluate the laws governing the workplace and identify where changes might improve workers’ ability to pursue careers of their choice while allowing access to historically employment-based benefits like health care and retirement benefits. As Ranking Member of the Health, Education, Labor, and Pensions Committee, examining whether labor and employment laws fit the modern economy is a key priority. Accordingly, I request feedback on the topics and questions below. Please submit any responses to IndependentWorkforce@help.senate.gov by June 26, 2024.

Shortcomings of the Current Worker Classification Model

- The independent contractor debate has largely focused on the question of who is an employee versus who is an independent contractor. Yet workers have shown preferences for work models outside of traditional employment, opting for flexibility in exchange for the benefits associated with the employee-employer relationship.
 - How should the line between employee and independent contractor be drawn to best serve workers’ interests, as they understand them?
- How does legal uncertainty regarding worker classification undermine workers?
- Downstream of the question of who is an independent contractor is uncertainty about whether companies may contribute to benefits for independent contractors.
 - What are the chief federal legal and regulatory obstacles preventing the provision of benefits to independent contractors?
 - Are there other obstacles to consider that, assuming legal and regulatory obstacles are removed, would prevent firms from providing benefits to independent contractors? If so, what are they?

Exploring Portable Benefits Options for Independent Workers

- Which fringe benefits do independent workers most value?

¹ *SOI Tax Stats - Filing Season Statistics*, Internal Revenue Service (Jan. 23, 2024), <https://www.irs.gov/statistics/filing-season-statistics>.

- Do independent workers value a specific type of benefit or would they rather have access to a general, flexible benefits fund?
- Who should be eligible for portable benefits?
- How may work hours be measured to assign benefits in cases where a worker is arguably performing work for several clients at the same time? (For example, an independent driver may be engaged on multiple app-based platforms simultaneously).
- Much of the recent debate around independent contractors has focused on app economy or “gig” workers. Therefore, some policy solutions have likewise focused on such workers. Should these workers be treated differently than other independent workers in policies establishing the ability to offer portable benefits? If so, why?
- How should a portable benefit system be funded? Should companies, workers, or both contribute?
- What fiduciary duties should portable benefits administrators have, and to whom?
- What are the current barriers that prevent independent workers from banding together to have a larger risk pool that may help make their insurance less expensive?
- What percentage of independent workers are covered by health insurance?
- Would association health plans, HSAs, or contributions to an existing health insurance plan be most valuable for independent workers? How can they be provided to these workers while maintaining worker flexibility?
- Which parts of the existing health care insurance system (if any) can be leveraged to enhance or provide health care insurance to independent workers?
- What sort of retirement benefits do independent workers desire, and how can they be provided to these workers while maintaining flexibility?
- Does the nature of independent work make it challenging for workers to develop consistent retirement savings? Are there solutions for this?
- Which parts of the current retirement infrastructure (if any) can be leveraged to enhance the retirement benefits that independent workers can receive?

- What retirement benefits do independent workers have access to in the traditional retirement system? How do these benefits interact to determine the retirement security of these workers?
- How do independent workers typically receive information on retirement benefits? How do they use these sources to make critical investment decisions?

Encouraging Innovation on Portable Benefits

- Which emerging portable benefit models or policies should Congress consider? Please explain.
- Independent work can be as varied as the individual, being conducted in a variety of industries and ranging from supplemental income to a full-time career. As a result, worker preferences may be varied as well. Is there a way to provide a path for workers to choose their own preferred benefits?
- What lessons can be learned from current state portable benefit experiments?
- What lessons can be learned from current portable benefit experiments by companies?
- What lessons can be learned from previous federal policies, including the 2018 Trump association health plans rule (Definition of “Employer” Under Section 3(5) of ERISA-Association Health Plans)?
- Should Congress consider expanding individual coverage health reimbursement arrangements (ICHRA) to independent workers?
- Are there any lessons that can be learned from the use of association health plans that can be applied to the retirement space?
- What are the legal barriers to providing employee-like retirement benefits to independent workers? Should any of these be removed?
- Are there any nudges or uses of defaults that could be used in order to encourage independent workers to make appropriate investments in their retirement security?