

Work Benefits

Ensuring Economic Security
in the 21st Century

Report by
Nell Abernathy
Rebecca Smith

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About the Authors

Nell Abernathy is the Roosevelt Institute’s Vice President for Research and Policy, managing strategy and research priorities for the think tank and working on U.S. economic issues including financial regulation and the gig economy. While at Roosevelt, she has developed and managed projects on inequality, financialization, and the Next American Economy, and coauthored *Rewriting the Rules of the American Economy* with Chief Economist Joseph Stiglitz.

Rebecca Smith is the Deputy Director of the National Employment Law Project, helping to shape its policy agenda to create good jobs, expand access to work, and strengthen protections for low-wage workers and the unemployed. She has written, spoken, litigated, and testified extensively on issues ranging from modernization of state unemployment systems to immigrant workers’ rights, wage theft, and the rights and protections of workers in the “fissured” economy.

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“For centuries, technological advances have helped create new wealth and have increased GDP. But it is policy—rules and regulations—that will determine whether workers have a meaningful opportunity to share in that new wealth.”

— Senator Elizabeth Warren, “Strengthening the Basic Bargain for Workers in the Modern Economy”¹

Executive Summary

The growth of digitally mediated gig or “on-demand” work, such as driving for Uber or shopping for Instacart, has prompted a national conversation about how and when we work, how we are paid, and what obligations businesses and workers have to one another. The questions raised by on-demand work are, in fact, symptoms of much broader negative trends in American employment. The employment model that built economic security for many during the 20th century—often a unionized job that provided a pension, health benefits, Social Security, workers’ compensation, and unemployment insurance—has become increasingly out of reach. This report outlines a set of principles to guide the ongoing debate about how to expand economic security for the many who cannot currently rely on a job-based system of benefits.

We believe the rise of on-demand work has spotlighted challenges faced by a large share of American workers who do not receive job-based benefits and do not have a public safety net on which to rely. As part of this trend, we’ve witnessed increased political support for universalizing benefits once tied to the workplace. Nationally we’ve passed the Affordable Care Act, and state-level campaigns are finding continued success passing new programs to provide paid sick and family leave to all workers. It is now well past time to reimagine

the existing, employment-based social contract and develop new institutions to provide economic security to workers in the 21st century. While many reports on the changing nature of work have provided typologies of models for portable benefits or enhanced economic security, we believe the value of this report is our articulation of a broad principled vision of the future. This agenda has three core components: we must expand the public safety net, support new models of negotiated benefits, and ensure business and public funds supplement the contributions of workers and consumers.

EXPAND THE PUBLIC SAFETY NET

We argue that we should enhance the public safety net by expanding both the types of benefits provided and the categories of workers eligible for these benefits. We support publicly mandated and subsidized paid sick days, paid family leave, health care, and other benefits that historically have been left to the discretion of employers. Further, we argue that we should broaden eligibility for existing social benefits and proposed programs. Regardless of whether they are classified as full-time employees, subcontractors, or independent contractors, all workers should have access to an expansive set of benefits and labor protections, from Social Security and paid family leave to workers’ compensation and minimum wage. To achieve these goals, we argue:

- Policymakers should do away with sector- and job structure-based exclusions from existing social benefits.
- State and local agencies should crack down on

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misclassification of workers as independent contractors.

- To stop the gaming of employment classifications, policymakers should ensure that businesses contribute to social benefits for workers who contribute to their business. Self-employed workers should also have access to social benefits.
- We should build on existing structures to create a broad system of social benefits that is universal, portable, and flexible.

SUPPORT NEW MODELS FOR NEGOTIATED PRIVATE BENEFITS

On top of this safety net, workers and businesses must have mechanisms to negotiate and administer benefits tailored to the specific needs of participants. The dominance of a social safety net administered through and contingent upon a single employer was largely an accident of American history. In the 21st century economy, where even full-time employees often have short job tenure and many workers serve several employers concurrently, these benefits and protections should be overseen by a third party operating on behalf of the beneficiaries.

We describe the model of Taft-Hartley multi-employer plans that has successfully represented worker interests and provided portable benefits to unionized employees for decades. One obstacle to expanding this model, we argue, is that the relevant legal structures were largely written in the early part of the last century to serve a set of workers protected under a National Labor Relations Act-sanctioned collective bargaining agreement. Today, a much smaller share of workers are able to secure such an agreement, and workers who attempt to replicate a multi-benefit fund without one face a web of regulatory and legal hurdles. Nonetheless, several worker organizations have negotiated enhanced benefits and set up funds to administer them outside the Taft-Hartley structure. We propose building on the success of these models. We argue experiments in privately negotiated portable benefits must:

- Include a significant role for workers' organizations to define, negotiate for, monitor, and oversee benefits. These groups could be traditional unions or other worker organizations.
- Include a structure that facilitates workers' ability

to come together and negotiate with business;

- Cover a range of health, welfare, and pension needs that are defined by workers and act as a supplement to an expanded social benefits system;
- Protect funds by incorporating strict fiduciary duties and protections against conflicts of interest;
- Include incentives for businesses to provide benefits, such as favorable tax treatment; and
- Be adequately funded to meet the needs of workers in the sector.

DIVERSIFY FUNDING MODELS

Finally, we tackle the issue of financing worker protections and benefits. Programs for workers whose employers do not offer pension plans, such as California's Secure Choice Act and the federal MyRA, have provided critical infrastructure to facilitate individual savings. Yet, although savings vehicles are useful, they do not provide economic security to low-wage workers, for whom the primary obstacle to saving is insufficient income. Likewise, experimental models that fund benefits through user fees are an effective but limited option.

For these reasons, we argue that a sustainable model must include business contributions and public funds. Many corporations operating in low-wage sectors have significant cash on hand that could enhance worker compensation without significant financial consequences for the firm. Similarly, the tax code offers numerous opportunities for directing the rising share of capital income toward increased labor compensation.

Our key takeaways:

- Funding models cannot rely solely on worker contributions or user fees.
- Further experiments in financing portable benefits should focus on tapping business profits to supplement worker contributions.

Many sectors generate sufficient profits to fund increased benefits for workers without disrupting economic activity. The challenges are less about economics than about market structure and power. Expanded benefits should also tap public revenue streams. We identify \$20 billion to \$1.4 trillion annually

that could fund more than \$6,000 per working age American a year.

While this paper does not seek to provide a definitive framework for establishing a system of enhanced economic security, portable benefits, and improved worker power, we believe it stakes out a clear position on the principles that must guide policymaking in this realm. Experimentation is critical. We must review state and national legislation and regulation with the goal of updating sclerotic institutions so they serve workers in the 21st century economy. However, we need not second-guess the values that have driven economic and social justice reformers since the first experiments with collective benefits in the early 20th century. We are committed to an expanded public safety net as well as the development of new mechanisms for worker bargaining and benefits administration, all funded by a mixture of worker contributions, business contributions, and public money.

Introduction

Work plays a central role in all of our lives. It enables us to support our families and ourselves, give back to our communities and their institutions, and sustain our local economies. At its best, work provides all of us with the economic security we need to provide for today, prepare for tomorrow, balance our working time with leisure and family activities, and engage actively both with other workers and as citizens of our democracy. For many workers, that security comes not just through wages paid for labor, but also through a variety of related benefits connected to the ongoing relationship between those workers and their employers.

For many decades, this employment relationship has been the principal mechanism providing social protections to workers in the United States. In the last century, we built a scaffolding of social insurance and private benefits around the model of a male worker in a long-term employment relationship with a single employer; he might suffer a bout of unemployment in a recession but would return to the same employer in better times. We built our collective bargaining laws on the same model, and many millions of workers were able to further ensure their security through collective bargaining agreements that provided defined benefit

pensions, paid vacations, supplemental health care, and other benefits.

That model and its supports served millions of workers and their families for many decades, but it left out many millions as well, including, at least initially, whole sectors such as agriculture and domestic work—work done almost entirely by women and people of color, many of them immigrant workers—and other workers whose jobs simply didn't fit the male breadwinner model.

Today, many of the assumptions on which this system is based are no longer valid.

THE TRANSFORMATION OF THE TRADITIONAL ECONOMY

Technological change and global competition have transformed the industrial sector on which the safety net was built. Meanwhile, beginning in the 1970s, the rise of trickle-down ideology led policymakers to roll back rules that had ensured economic growth and prosperity was broadly shared. Operating under an assumption that the economy would self-regulate, policymakers allowed the powerful and privileged to write the rules of the 21st century economy.

The roll-back of financial regulations and rise of shareholder activism popularized new business practices that have often prioritized short-term returns to capital and delivery of profits to shareholders over long-term investment. Simultaneously, firms reduced investment in worker training, fringe benefits, and wages. With higher returns available to firms focused on their core competencies, labor-intensive services were increasingly outsourced to firms that reduced wages and benefits while complicating the employer-employee relationship.

Over the same period, national economic policy failed to promote the interests of working people and their families. Monetary policy focused on inflation above full employment. Trade policy failed both to distribute the gains from trade and to compensate the workers who bore the costs. Meanwhile, labor market policy tilted decidedly toward corporate interests, enabling a sustained assault on labor that reduced bargaining

power in sectors that were traditionally unionized and stymied efforts to adapt labor laws to an increasingly disaggregated workforce.

Many of the worker protections and safety net structures that remained in place were not adequately adapted from their New Deal origins. Even as women joined the workforce en masse, the United States remained a global anomaly in our failure to provide paid family and medical leave. Even as the workforce became increasingly disaggregated, the National Labor Relations Act (NLRA) remains designed to protect a model of organizing most relevant to long-term, single-employer jobs. Unemployment insurance continues to support only those who lose formal jobs, not those who lose short-term, non-traditional “gigs,” and largely ignores those who lose jobs for reasons such as lack of child care or unpredictable scheduling.²

Because of these policy choices, changes in the structure and organization of work translated into widespread economic insecurity.

THE RISE OF THE ON-DEMAND ECONOMY

Today, a growing minority of U.S. workers are employed in so-called “alternative” work arrangements: subcontracted work, part-time work, on-call work, work through a temporary staffing agency, or independent contracting. In addition, a growing number of workers in both traditional and alternative work arrangements hold multiple jobs, face varying degrees of income volatility that make it hard to budget for or meet the expenses of daily living, and have limited access to sick leave, family leave, retirement matches, or other

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work-based benefits that support long-term economic security.

The on-demand economy, in which technology is employed to dispatch workers to short-term jobs, is situated within the broader universe of these alternative work arrangements. This technology has created new opportunities for some—for example, by helping to aggregate work in sectors such as caregiving, where workers typically piece together a number of jobs over the course of a week, or even a day. For others, it has transformed full-time, relatively secure jobs—for example, driving taxis—into insecure piecemeal work.

The enormous public attention being paid to the on-demand economy—in particular, the robust discussions being conducted around “portable benefits”—creates an important opportunity to examine how best to provide economic security, via social protections, to Americans in the 21st century.³ The current debate echoes the debates of the early 20th century, when urban and rural populations experienced increased economic insecurity as industrialization disrupted existing institutions. Populist, progressive, and union movements proposed a range of solutions to smooth often volatile incomes and support low-wage workers.

THE STRUCTURE OF THIS PAPER

In this paper, we argue that systems of social protection that are already portable—Social Security, workers’ compensation, and unemployment compensation—should be expanded in a way that clarifies our existing definitions of “employer” and “employee” while also including workers traditionally excluded from social benefits. In addition, we offer a vision of a universal approach to social benefits, not tied to any individual employer. Further, we assert that workers’ organizations must play a role in aggregating interests of workers (whether employees, independent contractors, or others) and bargaining on their behalf. We look at two models for privately negotiated portable benefits, overseen by workers’ organizations: musicians who have long been gig workers, and the Taxi Workers Alliance health and welfare fund.

Finally, we demonstrate that enhanced economic security cannot be funded solely through individual

worker contributions or targeted user fees. Rather, both public and private systems must tap into the growing share of profits accruing to the largest corporations and richest Americans. A rough survey of corporate payouts and federal tax expenditures indicates that funding enhanced economic security for millions of American workers is eminently feasible.

come with work, even as technological advances change how work is assigned and performed, and to spur next steps for learning and policy development.

The paper proceeds as follows:

First, we describe the on-demand economy and the broader universe of alternative work arrangements in which it nests. A large share of workers in these arrangements fall outside of conventional employee benefits arrangements, either because their employers treat them as excluded independent contractors, or because existing employment-based benefits fall short for increasing numbers of employees.

Second, we take a look at our current social insurance schemes, how they function, and where they fall short in meeting existing and emerging needs of workers. We describe how a universal, comprehensive system of social benefits can be built and adapted from existing public programs like Social Security, amplified by the addition of new benefits programs, in order to meet the needs of a changing workforce and aging society.

Third, we discuss existing privately administered workplace benefits as potential models for workers in certain sectors.

Finally, we explore issues related to financing, including who pays and how to do so.

The goal of this paper is not to prescribe a specific portable benefits system that should be put in place. Instead, we aim to elucidate principles that should guide creation of such a system or systems; highlight existing models that can be replicated, built upon, or adapted to meet the needs of workers in a range of employment arrangements; and underscore that as these structures are developed, meeting workers' needs and incorporating workers' voices are indispensable features of design and implementation. Through this discussion, we hope to contribute to and continue the conversation about the rights and benefits that should

1. THE ON-DEMAND ECONOMY IN THE CONTEXT OF INCREASINGLY INSECURE WORK

On-demand economy workers form just a fraction of a much bigger and burgeoning workforce that suffers insecurity in America today. Though experts differ on the size, definition, and growth of so-called “alternative work arrangements,” reliable research and worker surveys indicate:

- A five-fold increase in the percentage of workers hired out through contract companies;
- A sharp increase in the number of workers who say they are working multiple jobs;
- Increasing income volatility, especially among young adults; and
- Decreasing job tenures in key on-demand sectors.

Headlines focus on the challenges and opportunities facing on-demand workers who connect with tasks through digital platforms like Uber, Care.com or TaskRabbit. But this growing population represents a small share of the millions of Americans for whom work does not provide economic security. The on-demand economy’s use of workers who are frequently characterized—and often mischaracterized—as “independent contractors” is one small facet of what David Weil has characterized as the fissured workplace: the proliferation of increasingly complicated and often precarious employment relationships, such as contract employment, franchising, staffing agency work, and other subcontracted as well as part-time work, which has contributed to Americans’ perception that work no longer pays.⁴ The result is that workers face limited access to workplace protections designed around the 20th century model of the employer-employee relationship. Unemployment insurance, for example, is not available to an independent contractor experiencing income volatility due to a reduction in on-demand work, and subcontracted employees face legal battles when attempting to hold employers accountable for workplace violations.

Data on job satisfaction for on-demand workers and other contingent workers is conflicting. A new report from the McKinsey Global Institute finds that the majority of independent workers actively sought out their arrangements and are happy with them, but 30 percent of on-demand economy workers do it out of necessity or because the level of other income leaves them financially strapped.⁵ Surveys also reveal that despite holding multiple jobs, their biggest worry is having enough work and a stable income. A 2015 survey

of on-demand workers revealed that some two-thirds of them can’t see themselves working as independent contractors for the rest of their lives, either at all (32.3 percent) or without a significant earnings increase (31.4 percent). A just-released survey of 4,000 workers found that 67 percent of those who had worked as independent contractors would choose not to work a contract job in the future. Recent data indicate that Uber drivers are making close to or less than minimum wage in particular markets, and that half of online workers for Amazon’s Mechanical Turk are earning less than \$5 per hour.⁶

Below, we explore a variety of factors that contribute to this insecurity.

CONTRACTED WORK— TEMPS, SUBCONTRACTORS, INDEPENDENT CONTRACTORS

Contract employment—when companies either hire workers through intermediaries or deem them “independent contractors” rather than “employees”—

The on-demand economy’s use of workers frequently characterized – and often mischaracterized – as “independent contractors” is one small facet of the fissured workplace.

is on the rise in the United States. The share of the workforce in contract employment—defined as temporary help agency workers, on-call workers, contract workers, and independent contractors or freelancers—rose from 10.1 percent in February 2005 to 15.8 percent in late 2015.⁷ The percentage of workers hired out through contract companies showed the sharpest rise, increasing from 0.6 percent in 2005 to 3.1 percent in 2015.

Among the workers affected, there were notable increases in contract employment for women, college graduates, multiple jobholders, and Latino workers.⁸ Within the universe of contract work, the on-demand sector has grown tremendously over a very short period of time. On-demand workers make up less than one-half of 1 percent of the workforce, but one researcher found that their numbers have grown ten-fold over the last three years.⁹

The sector that includes work outsourced via temporary help agencies and staffing firms grew from 1.5 percent to 2.5 percent of total U.S. employment between 1990 and 2015, where it appears to have stabilized.¹⁰ The industry now encompasses approximately 3.5 million jobs,¹¹ an all-time high.¹²

Many of these trends are expected to continue. While precise numbers are not available, recent estimates indicate that up to 50 percent of the new jobs created through 2020 will be in nonstandard or contingent jobs, making up nearly 35 percent of the workforce.¹³

MISCLASSIFICATION OF WORKERS

It is a sad fact that many businesses illegally misclassify workers as independent contractors. Doing so allows businesses to both avoid taxes and dodge labor and other standards, and it deprives workers of the protections of core labor standards as well as access to unemployment insurance and workers' compensation. Estimates are that 10 to 30 percent of employers misclassify workers.¹⁴ When agencies and courts have stepped in, often only after tenacious workers have undertaken lengthy and costly battles to challenge their misclassification, they have found that home care workers, agricultural workers, cable installers,

construction workers, delivery workers, and janitorial workers (among others) have been misclassified.¹⁵ In the on-demand economy, most workers are classified as independent contractors, though that characterization is being challenged in a number of forums.¹⁶

MULTIPLE JOBS

Both within and beyond these categories of alternative work, more workers are reporting that they hold more than one job at a time. According to Bureau of Labor Statistics surveys, seven million workers have both a full-time and a part-time job.¹⁷ But in a survey that oversampled low-income families, nearly one in four adults told the Federal Reserve that, in addition to their main job, they are either working multiple jobs or picking up informal work, or both, in order to increase their income.¹⁸

The trends for on-demand workers mirror those of the larger workforce. Most on-demand workers—more than 8 in 10—hold multiple jobs, according to a study of account-holders by the JPMorgan Chase & Co Institute.¹⁹ One survey of on-demand workers found that the average on-demand worker relies on three different income streams, while one-third have more than one job in the on-demand economy itself.²⁰ A separate survey of so-called “crowdworkers,” who do online tasks for Amazon’s Mechanical Turk and a similar company called Crowdfunder, found that the primary reason people worked on these platforms was to supplement income from other jobs.²¹ At the same time, there is a segment of on-demand workers for whom this work is a full-time job: 25 percent of Amazon’s Mechanical “Turkers” get all or most of their income from the site.²² According to one academic’s calculations of Uber data, 19 percent of its drivers work full time, and they provide just under half—44 percent—of all rides.²³

INCOME VOLATILITY

The rise of precarious work means that income volatility contributes to insecurity for America’s workers. The JPMorgan study found that 7 in 10 young adults experienced an average 30 percent change in their income from month to month.²⁴ Thirty-two percent of people surveyed by the Federal Reserve

Board reported that their income varies from month to month, and nearly half of these say they struggle to pay their bills because of this volatility.²⁵

SHORT TENURES

Compounding the uncertain economic picture for many workers, job tenures in many low-wage sectors, including those that rely most heavily on app-based job assignments, appear to be getting shorter. Of the JPMorgan Chase account holders, 4 in 10 had a job transition in the past year. In growth occupations in which low wages are the norm, and in the industries where many platforms operate, turnover occurs at an astonishing rate. In low-wage industries such as hospitality, the turnover rate in 2015 rose to 72.1 percent, up from 66.7 percent in 2014, according to a recent Bureau of Labor Statistics report.²⁶ For home care workers, turnover was 60 percent in 2014.²⁷ Eighteen percent of active Uber drivers have been driving for less than two months. About two-thirds have been driving for six months or less.²⁸

In the following section, we explore how the social safety net can be adapted to the exigencies of this emerging economy.

2. EXPANDING THE SOCIAL SAFETY NET FOR THE 21ST CENTURY WORKFORCE

Growing insecurity among America's workers in all job structures suggests that our system of social insurance must be updated and tailored to the needs of a 21st century workforce.

- Policymakers should do away with sector- and job-structure-based exclusions from existing social benefits.
- State and local agencies should crack down on misclassification of workers as independent contractors.
- To stop the gaming of employment classifications, policymakers should ensure that businesses contribute to social benefits for all whose work is integrated into their business. Self-employed workers should also have access to social benefits.
- We should build on existing structures to create a broad system of social benefits that is universal, portable, and flexible.

Some proponents of portable benefits have suggested creating a small, privatized social insurance fund. The mix of job arrangements and declining availability of work-related benefits described above, however, suggests that this solution would be unlikely to generate enough funding to form a robust set of workplace benefits for many workers, and may serve to undermine existing benefit pools.²⁹ For other workers, the short duration of their jobs means they might never qualify for benefits that rely on a sustained tenure at a particular workplace.

We should ensure that the existing social safety net covers all who are intended to be covered, including on-demand workers and many others in insecure work. On top of that, we should build towards a more complete structure of social benefits, not tied to any particular employer, that meets the needs of workers today and into the future. At the same time, we should look to models like the Taft-Hartley plans (described later in this paper) that are not tied to worker tenure, to provide more expansive pooled benefits, overseen either by workers' organizations or jointly by labor and management. In both cases, we should ensure that benefits are available to employees and self-employed workers alike.

The United States has an existing set of publicly administered benefits and workplace protections that should serve as a foundation on which to build expanded economic security. First, agencies should enforce existing laws with respect to employers who

are breaking the law. Second, lawmakers should rewrite the rules of coverage to extend existing benefits to those sectors and structures currently excluded from parts of the safety net. These systems should include an expansive definition of who is a covered employee, eliminate exclusions that currently apply to workers in certain sectors, and ensure that workers rightly considered self-employed are also able to participate in the same social benefits systems.

Further, we should extend the suite of publicly provided benefits and protections. The United States should first undertake a comprehensive analysis of the benefits that it offers to workers and their families, with an eye towards expanding Social Security, universalizing health care, establishing strong federal standards for unemployment insurance and workers' compensation, and including social benefits that are common in other countries, such as paid family and medical leave and long-term care insurance.

ENSURE THAT ALL WORKERS HAVE ACCESS TO SOCIAL BENEFITS

Like most countries, the United States has, since at least the 1930s, insured most workers against income losses associated with a number of life events, both catastrophic and expected: old age and retirement, work-related accidents and illnesses, and unemployment. These form the core of our

national social insurance. In addition, five states and one territory use temporary disability insurance to protect workers against illness and injury outside the workplace, and four states have added family caregiving protection to that coverage.³⁰ Social insurance has the advantage of spreading costs broadly across a wide and deep universe of participants, representing differing local economies, high- and low-wage jobs, families and individuals, and the young and healthy as well as the older and not so healthy. It also has low administrative costs: lean administration of the Social Security system, whose administrative costs totaled 0.6 percent in 2008,³¹ is one key to broad public support for the program.

Our social safety net has provided a backstop to many millions of America's workers and their families since its inception. For example, 39.5 million retired workers and another nine million disabled workers received Social Security benefits in 2015.³² More than 129 million workers in the country are covered by workers' compensation.³³ Our federal-state unemployment insurance systems kept five million people out of poverty in 2009 alone, and prevented 1.4 million foreclosures from 2008 to 2012.³⁴

However, the current social safety net, primarily designed in the 1930s, excludes a share of American workers. The New Deal institutionalized racial exclusion from the safety net by making sectors in which African American workers predominated exempt from protections. Domestic and agricultural workers were initially left out of the Social Security Act and were not included until the 1950s.³⁵ Unauthorized immigrant workers continue to be excluded, even though many of these workers and their employers pay Social Security taxes.³⁶ Both state unemployment insurance and workers' compensation programs frequently limit or deny access to these same three groups of workers.

Further, many part-time and temporary workers face exclusions and barriers in accessing the unemployment insurance system. And those who work as independent contractors are either disadvantaged or outright excluded from each of these laws. Examples include the following:

The Social Security Act levies a tax of 15.3 percent on the self-employed to cover both the employer and employee

side of FICA taxes. For an Uber driver in Detroit, who takes home \$8.77 an hour without accounting for the tax, this represents a tremendous hit. While drivers can frequently get some or all of their employer contributions returned as a credit when they file their tax returns, Uber itself pays no payroll taxes.³⁷ Although taxi drivers and chauffeurs are killed on the job at five times the average rate for all workers, most are excluded from workers' compensation, including death benefits that would be paid to their dependents, because they are classified as independent contractors.³⁸

Many state unemployment programs impose participation barriers for workers hired through staffing agencies, caregivers, workers with volatile work schedules, and part-time workers.³⁹

The solution is to enforce the broad definitions in existing laws, clarify and expand them to ensure all workers are eligible, erase exclusions based on sector or structure of work, and move towards a comprehensive system of social benefits that is not tied to any one employer and is available to the self-employed.

BROADLY DEFINE EMPLOYEES WHO ARE ELIGIBLE FOR BENEFITS

Three steps can ensure universal access to portable social benefits. First, state and federal labor agencies can and should collect payroll taxes and pay worker benefits based on the broad definitions of employer and employee in most laws. A number of agencies in California, Oregon, Alaska, and New York have already found Uber drivers to be employees.⁴⁰

Second, policymakers can clarify who is an employer, and thus who must pay into social insurance funds, in order to stop the gaming that occurs under current law. Existing laws that broadly define employer and employee can be changed to more clearly state that workers whose work is in furtherance of a company's business—janitors who work for a janitorial company, delivery workers who work for a delivery company, caregivers who work for care companies—especially when those workers have no ability to set their own wage, are employees, regardless of whether they are dispatched via platform or by other means.⁴¹ A number of state laws already contain a concept that

when workers do the business of the company, they are its employees.⁴² A majority of state unemployment insurance laws create a presumption that a worker is an employee; more states could enact those laws.⁴³

A more definitive approach is to simply declare affirmatively that certain workers, be they “contractors” or employees, are entitled to critical social insurance protections. This approach is modeled on a provision in the Social Security Act that requires businesses—no matter how they label certain workers, including some delivery workers, insurance sales agents, homeworkers, and traveling salespeople—to make payroll tax contributions for those workers.⁴⁴ Additionally, a number of state workers’ compensation systems create automatic coverage for certain workers, including taxi drivers and construction workers.⁴⁵

Third, self-employed workers should be able to contribute to and participate in existing public systems and those we create in the future. For unemployment insurance and workers’ compensation, self-employed workers should be able to contribute to the public program, creating more protection for themselves and a bigger pool for the rest of us. Models exist in current workers’ compensation laws in some states.⁴⁶

UPDATE WORKERS’ COMPENSATION AND UNEMPLOYMENT INSURANCE PROGRAMS

In addition to clarifying definitions, we should adapt current workers’ compensation and unemployment insurance (UI) programs to the needs of workers in precarious employment situations.

A more definitive approach is to simply declare affirmatively that certain workers, be they “contractors” or employees, are entitled to critical social insurance protections.

Unemployment Insurance. Currently, only one in four unemployed workers receives unemployment insurance after losing a job.⁴⁷ Bowing to sustained business pressures, a number of states have cut back on access to UI, and the program as a whole has failed to keep up with the changing nature of work. Stronger federal standards overall would expand coverage for all workers.

In addition, new mechanisms are necessary to better respond to the needs of workers whose work is insecure.

Self-employed workers should be able to contribute to and participate in existing public systems and those we create in the future.

A new proposal from the Center for American Progress, the Georgetown Center on Poverty and Inequality, and the National Employment Law Project would establish stronger federal standards for unemployment insurance.⁴⁸ Such standards would eliminate barriers to eligibility for part-time and temporary agency workers, expand access to UI if a worker has a history of low or sporadic wages, and establish a new Jobseeker’s Allowance that would provide modest weekly cash payments and intensive employment services for ineligible workers, including independent contractors and workers with limited recent job histories. This concept can be adapted to create income-smoothing for workers with volatile earnings who are searching for more secure work. Another recent paper proposes a pilot incorporating self-employed workers into unemployment insurance systems.

Workers’ compensation. In 1972, the National Commission on Workmen’s Compensation concluded that workers’ comp systems on the whole provided “inadequate and inequitable” protections for injured workers. But minimum federal standards were never implemented, and today, a sizable proportion of eligible workers never collect workers’ compensation insurance benefits. Indeed, a survey of 4,000 low-

wage workers in three major cities found that only one in eight injured workers applied for workers' compensation.⁴⁹ Injured and ill workers are forced to assume a staggering 50 percent of the costs of their own injuries.⁵⁰ Like unemployment compensation, workers' compensation has faced an all-out attack by business that has weakened its protections. And like unemployment insurance, workers' compensation should include federal standards that create a baseline and stop the race to the bottom that the current state-only arrangement engenders. These standards should include, among other provisions, universal and mandatory coverage,⁵¹ and should ensure that the self-employed can contribute to and participate in the program. Additionally, they should ensure that businesses that use temporary and staffing agencies are held liable for those agencies' failures to carry workers' compensation policies.⁵² Finally, the Department of Labor must reinstate the federal workers' compensation monitoring program it cancelled in 2003.⁵³ This program collected critical data on the adequacy of each state program.

EXPAND THE UNIVERSE OF BENEFITS AVAILABLE VIA SOCIAL INSURANCE

The on-demand economy has given us an opportunity not only to expand definitions and update existing programs, but to address the yawning gaps in the social compact for one segment of worker. But we should aim even higher, to ensure that all working people, whether full-time, part-time, short-term, or long-term—regardless of the labels businesses choose to place on them—can benefit from an expansive social safety net.

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The range of work-related benefits in the United States—either required by law or provided voluntarily by employers—is not particularly generous when compared with much of the world. For example, the United States is one of only a handful of countries worldwide that provides no paid leave to its working families.⁵⁴ And though Social Security was never meant to be workers' sole means of support in old age, half of American families nearing retirement have no savings at all.⁵⁵

Workers in part-time employment are particularly disadvantaged for purposes of workplace benefits. Nearly a third of employees, including more than two-thirds of part-time workers, have no access to paid sick days.⁵⁶ Only 13 percent of all civilian workers have access to paid family leave through their employers, and only 5 percent of part-time workers have paid family leave benefits as of 2016.⁵⁷

Despite the successes of the Affordable Care Act, under which 20 million more people have health insurance, our country still spends an outsized amount of GDP on health care, and 10.5 percent of Americans (28.5 million) still don't have health insurance at all, according to 2016 data.⁵⁸ While the majority of nonelderly individuals in the United States are covered by an employer plan, be it their own or that of a family member, not all workers receive an offer of coverage through their job, and many who do are unable to afford their share of the cost.⁵⁹

Paid family and medical leave. As noted, few full-time workers and even fewer part-time workers have access to family leave, but a handful of states have adopted temporary disability and paid family leave laws based on a social insurance model. In addition, the federal Family and Medical Insurance Leave (FAMILY) Act, a nationwide proposal pending in Congress for paid family and medical leave for America's working families, would expand leave to most workers, including the self-employed.⁶⁰ The FAMILY Act's provisions are based on the best features of the existing state programs and can serve as a model to build additional social protections for America's workers.

Paid sick days. Thirty-eight jurisdictions in the United States have already adopted paid sick days laws, and a federal proposal, the Healthy Families Act, is under consideration in Congress.⁶¹ These laws, and

similar legislation proposed throughout the country, apply to most workers and typically allow them to accrue paid sick time after the relatively short period of 90 days of employment. But they are not portable and pose challenges for workers who patch together jobs from multiple employers. Ultimately, the United States should explore ways that all workers can earn paid sick days, including administering paid sick days as a social insurance program. In France, Italy, and Ireland, sick days are delivered in this manner.⁶²

Long-term care insurance. The aging of the U.S. population and potentially explosive growth in need for long-term care and assistance evidences the importance and desirability of broad-based social insurance systems to meet major societal needs, rather than attempting to do so through piecemeal and likely inadequate private insurance coverage. According to the Department of Health and Human Services, it is estimated that about half (52 percent) of Americans turning 65 today will require long-term services and support (LTSS).⁶³ With only 10 to 20 percent of older adults able to afford private long-term care insurance, particularly for those who wait to purchase it later in life, creating and sustaining a system that recognizes the rights and values of our nation’s seniors and people with disabilities to remain independent at home will be critical.⁶⁴ With an unprecedented number of older adults needing LTSS, a social insurance program can fund less costly care at home and help families avoid catastrophic costs. Such a program is not only the morally right thing to do; through investments in the program, home care jobs can be elevated to good paying, family-sustaining, jobs with benefits that can support a strong economy.⁶⁵

Health insurance. The Affordable Care Act has made a huge difference in the ability of 20 million American workers to get health care, but more must be done. The debate around a public option is gaining traction, especially as premiums continue to rise and a unified Republican government threatens to repeal the current reform law, and ultimately a single-payer health care system is likely the optimal approach to ensuring universal coverage. In the shorter term, there are changes to the current employment-based system that can provide access to those workers who still either have no access to health insurance at work or find it unaffordable. More than half of the working uninsured

are either self-employed or work in firms with fewer than 50 employees. A “pay or play” system that required businesses that do not provide coverage to contribute to costs based on payroll would better align with firms’ ability to pay for insurance while creating a financing mechanism to provide coverage to more workers.⁶⁶ The same technique could be used to provide more coverage to part-time workers, for whom there is no employer responsibility under the ACA.

In the next two sections, we address the role of worker organizations in bargaining for and administering private, portable benefits adapted to the needs of workers in particular sectors.

3. MODELS FOR PRIVATELY ESTABLISHED PORTABLE BENEFITS

While expanded universal benefits will ease the volatility facing workers moving from job to job or gig to gig, this solution alone is unlikely to provide long-term security for workers.

An optimal 21st century social contract must include mechanisms for America's workers to collectively advocate for their own interests and to construct the safety net most appropriate to their needs. We argue that new models of privately provided benefits should be portable and adaptable to workers with multiple employers or to all the workers within a sector. In addition, these models should:

- Include a significant role for workers' organizations to define, negotiate for, monitor, and oversee benefits. These groups could

be traditional unions, workers organization, or even affinity groups unrelated to work or geography;

- Include a structure that facilitates workers' ability to come together and negotiate with businesses for which they perform work;
- Cover a range of health, welfare, and pension needs defined by workers, and that act as a supplement to an expanded social benefits system;
- Protect funds by incorporating strict fiduciary duties and protections against conflicts of interest;
- Include incentives for business to provide benefits, such as favorable tax treatment; and
- Be adequately funded to meet the needs of workers in the sector.

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- Be adequately funded to meet the needs of workers in the sector.

An existing constellation of federal laws allows portable benefits that meet these principles to be created, but is limited to employees. Under current law, in order for workers to have access to these protections and benefits, workers' organizations and businesses are allowed to agree that workers be treated as employees.

States might adopt a similar structure for workers outside of the employment relationship to meet these principles. Such a structure would need to be coupled with processes and protections for worker organizing, and, for low-wage workers, might most fruitfully be focused on benefits other than pensions.

It is necessary to review and likely to expand federal laws and, for state-level reforms, engage in deep legal analysis of anti-trust and preemption laws. That sort of legal analysis is beyond the scope of this short paper. Instead, we will review two models of portable

benefits for on-demand or gig workers in which worker organizations play a critical role in identifying worker needs, advocating for these needs, and overseeing the delivery of benefits. The first is a legal scheme in use by a variety of unionized gig workers, including the construction trades, confection, garment, grocery, and trucking industries. The second model could serve as a starting point for workers in alternative employment relationships who seek to negotiate and administer portable benefits.

HISTORIC AND CURRENT ROLE OF WORKER ORGANIZATIONS

Privately administered portable benefits—that is, benefits secured through employment arrangements rather than force of law—developed concurrently with our social insurance programs, and have continued in the form of benefits negotiated by unions with employers. In the early 20th century, the growing population of Americans dependent on labor income for their livelihoods faced an array of challenges. In addition to dangerous working conditions, limited pay, and no workers’ compensation, workers were frequently unemployed and sought insurance for income volatility due to sickness, injury, or job loss.⁶⁷ In the face of federal inaction, community groups, unions, states, and businesses adapted to fill the security gap. Workers established mutual aid societies, and fraternal orders arose to provide benefits in the form of funeral expenses, income insurance, and medical services.⁶⁸ Some unions offered similar services to their members—the Granite Cutters Union established the first national program to provide income insurance for sick workers in 1877. The Ladies Garment Union established medical benefits for members in 1913, and by 1940 began the first multi-employer benefits fund.⁶⁹ Whether to counteract unionism or bind critical workers more closely to employers, companies increasingly offered non-cash benefits ranging from housing subsidies to doctors’ visits.⁷⁰ States also took action, leading national policymakers in the passage of worker protections. By the early 1920s, 25 states had established some form of workers’ compensation for injury on the job.⁷¹

Today, worker-led organizations, from unions to worker centers to online networks, again provide models for negotiating for and distributing benefits to those

working in non-traditional employment relationships, whether through public policy advocacy or direct bargaining. They are key to any private system of portable benefits for a number of reasons, including accountability: a recent survey shows that only 3 in 10 Americans believe that business can be trusted to treat workers fairly.⁷² A membership organization is needed to serve as a counterweight to management, as well as government, shareholders, and other interests.

Benefits that are negotiated between business and workers can be tailored to the needs of workers in a sector or within a city or state, and a workers’ organization is in the best position to both identify those needs and ensure that priorities are

Today, worker-led organizations, from unions to worker centers to online networks, again provide models for negotiating for and distributing benefits to those working in non-traditional employment relationships, whether through public policy advocacy or direct bargaining.

democratically established. Democratically-run workers’ organizations, in which officers are elected and collective bargaining agreements are approved by vote of members, can best track the evolving needs of their members and address them through private negotiations or public policy changes. For example, some groups may prioritize paid leave over retirement savings. Some workers may have unique needs—for example, over 90 percent of taxi drivers in New York City are immigrants who speak some 60 languages. Their needs include an organization where a variety of languages is spoken.⁷³ And workers’ organizations can relieve employers of the burden of shopping for plans to meet those needs and of directly administering the agreed-upon benefits. Ultimately, consistent with the purpose of the NLRA, public policy must continue

to support workers' ability to advocate in their own interests, whether to bargain over wages and benefits, oversee their delivery, or identify needed changes in policies that affect them.

The U.S. Department of Labor recently announced grants to workers' organizations to explore portable retirement options for low-wage workers, underscoring what we argue here is the important role of such organizations. The current grants will go to the following organizations:

The Brazilian Worker Center, Inc. in Allston, Massachusetts, affiliated with the National Domestic Worker Alliance, will conduct research to inform the development of a prototype mobile platform to facilitate the provision of benefits, including retirement benefits, to predominantly low-wage, non-benefited domestic- and direct-care workers.

The Heartland Alliance for Human Needs and Human Rights in Chicago will conduct a needs assessment of Illinois' economically vulnerable, low-wage, and underserved workers who lack access to an employer-provided retirement savings plan. The organization will also conduct research to identify barriers to participation in the Illinois Secure Choice Savings Program faced by low-wage workers and underserved workers.

The Fair Work Center in Seattle will also conduct a needs assessment among low-wage workers, employers, and benefits providers to understand the challenges and barriers low-wage workers currently face in saving for retirement.⁷⁴

TAFT-HARTLEY MULTI-EMPLOYER PLANS

An existing legal structure covers benefits negotiated by employees organized under a collective bargaining agreement in a multi-employer setting: health, retirement, and other benefits are governed by the Taft-Hartley Act, Employee Retirement Income Security Act, and federal tax and other laws.⁷⁵ This legal structure reflects the principles outlined above. In addition to allowing multiple employer plans and providing portability to workers, it incorporates a strong role for workers' organizations, covers a range of

benefits, safeguards funds against conflicts of interest and misuse, and provides incentives in the form of tax benefits for both employers and employees.

Significant role for workers' organizations.

In addition to imposing an exacting set of rules on labor organizations, the Labor-Management Relations Act of 1947, also called the Taft-Hartley Act, provides a legal structure for establishing trusts for the benefit of union members who are classified as employees.⁷⁶ Taft-Hartley plans, by definition, require a role for workers' organizations, as they apply only to unionized employees who have secured a collective bargaining agreement. This structure further requires that benefits be governed by a joint labor-management board of trustees.

Taft-Hartley plans are built on the assumption that the workers in those plans have secured representation through the NLRA. The NLRA provides a process for employees to form and join unions, hold elections, and engage in collective bargaining with their employers over issues such as pay, health care, pensions, scheduling, sick days, and training opportunities.⁷⁷ It also protects workers who do so from unfair labor practices committed by employers during that process. Because the workers are employees, their coming together to bargain with business is not a "combination in restraint of trade" under anti-trust laws.⁷⁸ By contrast, independent contractors are exempt from the NLRA,⁷⁹ and an agreement between independent contractors and a business to set wages may implicate federal anti-trust laws.⁸⁰ Additionally, employees who have not secured a collective bargaining agreement, like the fast-food workers striking in the Fight for \$15, would not be eligible for a Taft-Hartley plan.

A broad range of benefits. Taft-Hartley trusts can cover a broad range of benefits, including apprenticeship and training programs, child care centers, scholarships, legal and financial assistance, medical benefits, life and disability insurance, pensions, supplemental unemployment, vacation and severance benefits.⁸¹ No such structure exists for independent contractors.⁸²

Protection of funds. Taft-Hartley pensions are set up under the Internal Revenue Code, with a related structure that allows for similar safeguards for plans

covering health and other benefits.⁸³ Taft-Hartley requires that a fund be an independent structure and that money be used solely for providing benefits.⁸⁴ The joint labor-management board acts as the sponsor and the named fiduciary of the plan. The plan usually relies on services of professionals such as attorneys, actuaries, accountants, consultants, and investment managers to handle setup and operation. Taft-Hartley plans are administered either by third-party administrators or, in the case of larger plans, in-house plan administrators.

Benefits provided by employers are also subject to the Employee Retirement Income Security Act (ERISA), which provides minimum standards for benefit plans sponsored by employers or employee organizations and preempts local regulation in the area. However, ERISA would not cover benefit plans negotiated by independent contractors, nor would its protections for pension or health and welfare funds extend to independent contractors without additional legislation.⁸⁵

Incentives for employers to take part.

Employer contributions to pension plans are tax-deductible expenses.⁸⁶ Contributions to so-called “health and welfare” trusts are similarly deductible, subject to certain limitations.⁸⁷ Individuals are subject to taxes on pensions and other benefits funded through these trusts in the same manner as they would be taxed on the underlying benefits, e.g., vacation pay in a trust is treated the same as vacation pay outside of a trust.

Adequate level of benefits. Benefits that are negotiated between workers and their employers sit atop a social benefits structure that must be expanded, as outlined in Part 2 above. Multiemployer Taft-Hartley plans can accommodate workers who have short tenures at particular jobs or sporadic work, but their adequacy for particular workers depends on the benefit offered and a minimum tenure in the job. Pension plans can be adapted for short-tenure workers, including the ability to bank hours and to maintain coverage while working for another employer in a different plan.

Various parts of this structure have been subject to criticism and calls for reform, but it generally meets the principles that we outline for workers considered employees of a business.

TAFT-HARTLEY FUNDS IN PRACTICE -- AMERICAN FEDERATION OF MUSICIANS PENSION FUND⁸⁸

The American Federation of Musicians secured benefits decades ago and operates under collective bargaining agreements subject to the legal structure and protections described above. These protections are available to workers who are characterized as employees. But musicians are the original gig workers, and the American Federation of Musicians understood early on that a pension fund for musicians—many of whom are casually employed by many different employers over the course of a year, a month, or even a week—would have to address the issue of portability. Through their union, musicians are able to negotiate benefit contributions from different employers and entrust them to the AFM-EP, overseen by the fund’s board of directors. Worker organization was critical to allowing the musicians to be defined as employees.

The Musicians’ pension and health funds are the result of negotiated agreements between the union and employers regarding wages and contributions, including contributions to the fund. Employers include producers, orchestras, incorporated band leaders, record companies, clubs and club managers. Musicians in very short-term gigs are also included as long as the entity with whom they are contracting agrees to be considered an employer. For example, a wedding band might be covered when the father of the bride agrees to be an employer. In addition, the pension fund has a base of Broadway and symphony musicians with much longer-term jobs. Organization has been critical to musicians gaining the bargaining power to negotiate employee status and associated contributions.

Pension payments as a percentage of salary are negotiated by the union and employers, and vary from contract to contract, from as little as 4 percent of wages up to 22 percent for larger productions such as Broadway shows. Health contributions are based on a per engagement payment to the fund.

Under ERISA, defined benefit pensions have maximum vesting periods, either a five-year period or a graduated period that caps at seven years. The Musicians’ contracts use a five-year period.⁸⁹ Because

some musicians have sporadic work, entitlement to pension funds can accrue over quarter-year periods. Nonetheless, prorated contributions to some musicians are very small, and some workers do not ever qualify for a pension, a concept is known as “breakage.”

The Musicians’ pension fund (as well as the parallel health and welfare fund) is a model that could be replicated for gig workers who are voluntarily recognized by a business as its employees and have a collective bargaining agreement. However, it would work best for sectors in which workers have a long-term commitment to an industry, as administrative costs could outweigh the benefits in a pool largely made up of shorter-term employees. Adapting this model for on-demand workers considered independent contractors would require changes to federal law.

MODEL FOR A STATE-LEVEL PORTABLE BENEFITS PLAN FOR INDEPENDENT CONTRACTORS

While a well-established system exists for portable benefits for employees and encompasses the principles we have identified, no such structure exists for independent contractors. However, a provision of the federal tax code could serve as a model for states or localities that wish to make portable benefits a reality for independent contractors.

Voluntary Employee Benefits Associations (VEBA) are governed by an Internal Revenue structure intended for associations of employees, and are, in fact, frequently used for a union health and welfare plan. Ten percent of membership can be non-employees who share a common bond with employees, and agreements between workers and business can deem workers employees for purposes of collective bargaining, thereby implicating Taft-Hartley and ERISA as well.⁹⁰ However, VEBAs could be adapted at a state or local level to cover a broader group of workers than those considered employees under federal law. In the following, we will measure VEBAs against our principles and compare the structure to the Taft-Hartley structure. We will suggest ways in which a VEBA-like model might be recreated and expanded under state or local law. We will close with an innovative model put forth by the New York Taxi Workers Alliance in a proposed taxi workers fund covering health and other benefits.

Significant role for workers’ organization.

Like Taft-Hartley trusts, VEBAs must be controlled by members or by an independent trustee or trustees designated by the members.⁹¹ A state law could establish a similar role for an independent organization affiliated with a workers’ organization.

VEBAs do not create a process for protecting workers’ right to negotiate with their employers over wages and benefits. However, at a state or local level, this structure could be combined with other strategies, such as wage boards or works councils, to set minimum standards in an industry.⁹² In some cases, it could also be combined with state or local collective bargaining laws, such as those that designate states as employers of home care workers for collective bargaining purposes,⁹³ or the model recently adopted in Seattle for transportation network companies.⁹⁴ This approach carries some risks: while no court has ever found that the NLRA preempts local or state law with respect to independent contractors, the Seattle ordinance has been challenged under both NLRA and anti-trust laws.⁹⁵

Encompass a broad range of benefits. At the federal level, VEBAs may include health benefits, life insurance, disability insurance, accident insurance, vacation and like benefits, including sick leave.⁹⁶ A state adaptation could consider adding additional benefits such as pensions, but “breakage” issues like those raised in the Musicians’ pension fund could also be an issue for sporadically employed workers. A better option for pensions might be for businesses to contribute to low-wage workers’ MyRA or to Secure Choice retirement programs, since business contributions to retirement accounts for independent contractors raise no ERISA issues.

Protection of funds. VEBA rules include requirements relating to fiduciary duties, prohibiting either employers or workers from generating income from the fund, and require that the fund have an existence separate from the workers’ organization.⁹⁷ This would need to be a feature of a state program.

Incentives for employers to take part.

Funds in the possession of the VEBA are not taxable, nor is interest earned on those funds usually taxable.⁹⁸ A state law using a VEBA-like structure could exempt

contributions from state taxation in order to encourage participation by businesses using independent contractors.

Adequate level of benefits. VEBAs are no substitute for an expanded social insurance system, as outlined in Part 2 above. But, as demonstrated below, a state corollary could provide a suite of portable benefits, negotiated and overseen by a workers' organization, to independent contractors.

THE NEW YORK TAXI WORKERS HEALTH AND WELFARE FUND

Our second model is an innovative fund pioneered by the New York Taxi Workers Alliance that would provide health and other benefits for independent contractor taxi drivers in New York. The Taxi Workers Alliance cannot negotiate Taft-Hartley plans under federal law because its members are, by law, independent contractors.⁹⁹ Funds for these workers are not subject to ERISA preemption, nor do independent contractors have the protections of ERISA. Agreements by independent contractors and the business that works with them also may implicate anti-trust liability; however, concerted activities in the policy realm, like those undertaken by the Taxi Workers to secure their fund, are exempt from anti-trust liability.¹⁰⁰

The New York Taxi Workers Alliance (NYTWA) represents some 19,000 taxi and Uber drivers in New York City, and is the central organization of a National Taxi Workers Alliance. The workers' organization first gained national attention in 1998, when 25,000 cabdrivers went on strike to protest new rules imposed by then-Mayor Rudolph Giuliani. The central role that it played in establishing a health and benefits fund for its members is a model for other organizations of independent contractors. The plan was struck down as beyond the power of the Taxi and Limousine Commission, but has just been reintroduced under the authority of the New York City Council.¹⁰¹ Their Fund provides a good model, in the context of self-employed workers, for a sector-based portable benefits system, prorated to match the earnings of particular workers, and administered by an entity formed by the workers' organization.

While not defined as a labor union or governed under the NLRA, the Taxi Workers Alliance has been critical to identifying the needs of drivers and mobilizing workers to secure these benefits. In 2012, after a Taxi Workers campaign, the New York Taxi and Limousine Commission amended its rules governing taxi fares. The amendment increased the fares by 17 percent and authorized a deduction of six cents per fare to be dedicated to healthcare services and disability coverage for drivers.¹⁰² It further authorized medallion owners to disburse the revenue on a quarterly basis to the Taxi and Limousine Commission, which in turn would reimburse the fund administrator.¹⁰³

The fund was to be managed by an outside entity that would help drivers seeking health insurance to navigate the New York State health exchange. Because the fund was set up by regulation rather than private agreement and did not rely on contributions by business, it did not implicate anti-trust concerns.

The TLC issued a request for proposals for provision of the services contemplated under the new rule and the Taxi Workers Alliance won that contract. As a longstanding membership organization for largely-immigrant taxi drivers, it was key to the operation of the fund. The Taxi Workers had engaged in health surveys and ergonomics assessments, as well as studies on exercise habits and restroom access of its members, and was keenly aware of the issues that drivers confront.

With its partners, it proposed to create a driver-tailored basic health plan, including afterhours staffing, diabetes prevention, and preventative durable medical equipment. The plan would also address work injuries specific to the group, like traumatic assaults. In addition, the fund would provide optical and dental services to an estimated 30,000 drivers and make available Affordable Care Act navigation services, financial empowerment services, social services, and computer training to 50,000 drivers, including both members and non-members of the Taxi Workers Alliance.¹⁰⁴

The Taxi Workers Fund was to be set up as an independent legal entity, with an office separate from NYTWA. Governance structure would include NYTWA, the Fund Administrator, five active drivers, and a TLC representative.¹⁰⁵ The governance committee would be tasked with reviewing financial soundness, benefit

programs, personnel, performance data, health needs assessments, overseeing contracts, and overseeing fundraising.¹⁰⁶

LOOKING FORWARD

To support membership organizations in the negotiation and administration of benefits over the long term, we must first enforce existing laws and strengthen structures already in place to provide a voice for workers and to govern worker benefit funds. We must also consider what changes must be made to meet the principles we outline here for workers whose work is integral to a company's success, regardless of whether they are labeled employees under existing law.

At the federal level, further consideration must be given to the ways in which the law defines and restricts the employees who can take advantage of the NLRA, the VEBA and Taft-Hartley structures, and the protections of ERISA. Much has been written about the parallel reforms that must be made to the NLRA. In the shorter term, current charges pending before the Board could clarify which companies in the gig economy should already be considered employers under federal law.

To support membership organizations in the negotiation and administration of benefits over the long term, we must first enforce existing laws and strengthen structures already in place to provide a voice for workers and to govern worker benefit funds.

At the state or local level, policymakers could use the VEBA structure, coupled with other standard-setting mechanisms like wage boards and local collective bargaining policies, to both facilitate the exercise of worker power and allow for negotiation for and oversight of worker benefits.

4. FINANCING PORTABLE BENEFITS

Whether administered by the government or by a workers' organization, proposals for benefits or worker protections can be funded from a limited number of sources: worker contributions, user fees, business contributions, or public funds. To date, experiments to provide portable benefits to workers have largely relied on worker contributions or user fees. For example, state-run "Secure Choice" programs, pioneered by California, provide infrastructure for employees and independent contractors to save for retirement. Care.com's recent proposal to fund worker savings accounts augments worker savings with a fee from platform users.

These models both provide valuable services that can support increased economic security for the range of workers excluded from a private work-based safety net. However, individual contributions and user fees will never generate revenue sufficient to provide the expansive set of portable benefits required to provide real security to low-wage workers. Rather, new benefit models

must also tap business profits and public funds. In this section, we outline the potential sources for financing an expanded set of benefits. We focus mostly on potential revenue each funding stream could raise, and the behavioral or economic effects of tapping these sources. We argue:

- Funding models cannot rely solely on worker contributions or user fees.
- Further experiments in financing portable benefits should focus on tapping business profits to supplement worker contributions.
- Many sectors generate sufficient profits to fund increased benefits for workers without disrupting economic activity. The challenges are less about economics than about market structure and the power.
- Expanded benefits should also tap public revenue streams. We identify \$20 billion to \$1.4 trillion annually that could fund more than \$6,000 of benefits per working-age American a year.

Throughout this section, we tackle the question of who really pays additional labor costs: the employer in the form of reduced profits, the employee in the form of reduced wages, or the consumer in the form of higher prices? We do not suggest successful efforts to increase worker savings or include additional fees for benefits should be abandoned; workers and users will have a role in building the next-generation safety net. But they cannot bear these costs alone.

WORKER CONTRIBUTIONS

A number of models for expanded social insurance or fringe benefits rely on worker contributions to fund the relevant account. By laying the infrastructure for pooling and administering savings, these models provide a useful starting point for expansion. Participants—either employees or individual contractors—benefit from pooled risk, reduced administrative fees, and in some cases, tax deductions. However, if the goal of expanding benefits is to expand

economic security, models funded solely through the contributions of workers—often low-wage workers—will be insufficient. For the majority of American workers with limited employer-funded benefits, the key obstacle to economic security is not just the limited opportunities to purchase insurance or long-term retirement savings, but rather, the limited funds with which to do so. In short, they simply don't make enough money to pay for additional benefits.

Several private and public models have created programs that allow workers (employees or independent contractors) to self-fund fringe benefits. Following California's lead, several states have passed or are considering "Secure Choice" retirement savings programs, which require certain employers that do not offer retirement vehicles to automatically transfer 3 percent of income to a state-administered retirement account. Contributions are not tax deductible, but post-retirement distributions are tax free. While employees can opt out, the "nudge" of automatic

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enrollment is expected to increase participation. Independent contractors can opt into the system. The federally-run myRA.com provides a no-fee, portable option for workers to contribute their earnings to a Roth IRA account. The New York-based Freelancers Union, a privately administered model, operated much like the mutual aid societies of the early 20th century and reduced both economic costs and administrative barriers to allow freelance workers to self-fund health insurance before the passage of Affordable Care Act.

First, these models provide critical tools for workers who can't access lower-cost group benefits through employers. By pooling individual funds, administrative and investment fees can be drastically reduced. California's and Illinois' retirement programs commit to fees of less than 1 percent, and myRA has no cost to the individual.

Second, these plans reduce the individual burden of researching and selecting retirement plans. What's more, a growing body of work in behavioral science shows that nudges can incentivize positive individual behavior.¹⁰⁷ Auto-enrollment, utilized in California and Illinois plans, does indeed increase individual participation rates, according to a large number of studies.¹⁰⁸ While independent contractors must currently opt in, one could imagine expanding auto-enrollment such that a percentage of worker pay (for both employees and independent contractors) was automatically funneled into a publicly or third-party-administered fund unless the individual opted out.

Third, providing a fund through which future distributions are tax deductible increases incentives to save and provides workers with a benefit too often limited to higher-income employees with access to

employer-sponsored plans.

While the programs described above address significant challenges facing individual workers trying to self-fund retirement, health care, or other fringe benefits, none solve the fundamental challenge of simply not having enough money to save. Studies consistently show that lower incomes translate into lower savings rates. As a group, households in the bottom 90 percent of the wealth distribution are accumulating debt instead of savings.¹⁰⁹ Neoclassical economists suggest saving and dissaving are driven by the economic life cycle: the lower-income earners saving less (or dis-saving) will repay their debt when they earn more later in life. However, significant real-world evidence indicates that an individual's rank in the wealth distribution is highly stable over their lifetime and even, or perhaps especially, across generations: the low-income debtors and high-income savers of today are often the same low-income debtors and high-income savers of tomorrow—and so are their children.¹¹⁰

Further, evidence suggests incentives to increase savings are less effective among low-income earners. While auto-enrollment may increase individual participation rates, given the low rate to which most auto-enrollment plans default, the nudge does not necessarily increase overall savings.¹¹¹ While tax incentives change the trade-off between current cash and future income, they disproportionately benefit high income earners.¹¹² The Saver's Credit reduces the federal tax liability for low- and medium-income earners who save for retirement. However, because the credit is not refundable, its benefits are limited for those paying minimal taxes due to low incomes.¹¹³ A pilot program in Appalachia successfully increased savings rates by matching individual funds—in effect making the credit refundable.¹¹⁴

Ultimately, a safety net built only on workers' savings will be limited. In a 2016 experiment designed to increase savings rates among low-income individuals, researchers tested nudges and matches from \$1 to \$8 for each dollar contributed by a worker. No policy significantly altered savings rates for a large percentage of low-income workers.¹¹⁵ Researchers concluded, "Our study families are very likely living on the margin of their budget constraints. If liquidity constraints, rather than cognitive biases, are their primary impediment

to saving, then it may not be surprising that our interventions were unsuccessful.” In plain English: if people don’t have enough money to save, there is not much program design can do to improve savings.

USER FEES

Several existing and emerging models fund worker benefits or insurance through fees levied on consumers. Like the examples mentioned above, these models establish valuable infrastructure that aggregates workers and distributes benefits according to a pro-rated formula. Further, in cases where the fee is mandated across an industry, the option serves to raise funds without penalizing individual workers or employers. Ultimately, however, the funds available through peer-to-peer transactions in low margin exchanges will be limited.

The New York–based Black Car Fund finances workers’ compensation for upwards of 33,000 drivers through a 2.5 percent surcharge on each ride. The fund created by the Taxi Workers Alliance, highlighted above, would have deducted six cents from each trip to fund weekly payouts to sick or injured workers. The home care platform Care.com announced in September a plan to help workers save up to \$500 annually to fund health care, transportation or savings, funded through a fee on each service purchased through Care.com’s payroll system.¹¹⁶

Critics might argue a fee would ultimately hurt the worker by either reducing demand, reducing cash compensation, or raising prices on users who may also be low-wage workers. But this is unlikely to be the case in the aforementioned models. Rather, the degree to which workers are better off will be driven by the structure of the market. Key factors include the willingness of the consumers to pay higher fees, the power of workers in the labor market, and the competitiveness of the market. In the case of both taxi workers and the Black Car Fund, the fee is mandated across the market to limit the potential for regulatory arbitrage to undermine the policy. Further, the fees—of six cents per ride and 2.5 percent of fare, respectively—seem minimally disruptive to the market, given estimates that demand in the market for on-demand car trips is highly inelastic.¹¹⁷

The potential limit of user fees is related to the question

of who actually bears the cost and how high a cost those markets can bear. Like sales taxes, user fees are likely to be regressive insofar as they raise the price of services for consumers. A six-cent increase may not meaningfully reduce demand in the market for taxis, but it cannot replace the social insurance benefits that workers would receive as employees and doesn’t approach funding the panoply of benefits and insurance programs that create real economic security for workers. Consumer fees would have to be closer to 15 percent¹¹⁸ than 2.5 percent to realistically fund a private retirement account along with paid leave or health care, not including administrative fees charged by the private administrator. In services that are extremely price sensitive, the added fee could operate against the interests of workers.

A promising funding model would replicate the success of previous eras by tapping firm-level profits to increase worker compensation. At its best, the 20th century employment relationship not only provided stability for workers but also gave employees a share of the firms’ profits. Through union negotiations and contracts, workers succeeded when firms succeeded.

BUSINESS CONTRIBUTIONS

A promising funding model would replicate the success of previous eras by tapping firm-level profits to increase worker compensation. At its best, the 20th century employment relationship not only provided stability for workers but also gave employees a share of the firms’ profits. Through union negotiations and contracts, workers succeeded when firms succeeded.

The decline in traditional employment relationships may have disrupted the models for distributing private

Cost of Providing Benefits for Insecure Work

	Retail	Uber	Caregivers	Graphic Designer
Status	Employee	Independent Contractor	Independent Contractor	Independent Contractor
Number of Workers	4859600	160,000	913,500	204850
Hourly Rate	\$10.60	\$19.19	\$10.00	\$22.55
Annual Rate	\$22,040	\$29,448	\$22,500	\$46,900
Cost of SS (6.20%)	\$1,366.48	\$1,825.75	\$1,395.00	\$2,907.80
Cost of Medicare (1.45%)	\$319.58	\$426.99	\$326.25	\$680.05
Cost of Family Leave (0.20%)	\$44.08	\$58.90	\$45.00	\$93.80
Cost of Unemployment Insurance	\$420.00	\$420.00	\$420.00	\$420.00
Cost of Healthcare (9.50%)	\$2,093.80	\$2,797.52	\$2,137.50	\$4,455.50
Cost of Retirement Contribution (5.00%)	\$1,102.00	\$1,472.38	\$1,125.00	\$2,345.00
Cost of 1 Week Sick Leave (1.90%)	\$418.76	\$559.50	\$427.50	\$891.10
Total Percentage of Wage	26.2%	25.7%	26.1%	25.1%
Total Amount per Worker	\$5,764.70	\$7,561.04	\$5,876.25	\$11,793.25
Cost of Benefits for All Workers	\$28,014,136,120	\$1,209,766,880	\$5,367,954,375	\$2,415,847,263

Source: Roosevelt analysis of Bureau of Labor Statistics Occupational Outlook Handbook data (2015), Glassdoor.com Graphic Designer Salary data (2016), Linda Burnham and Nik Theodore, Home Economics: the Invisible and Unregulated World of Domestic Work, National Domestic Workers Alliance (2012), Hall and Krueger's analysis of Uber data (2012).

Corporate Buybacks and Dividends

		Number of Shares Repurchased, in Millions	Total Cost of Buybacks in Billions	Cost of Dividends in Billions	Total Returned to Shareholders in Billions	Annual Cost of Benefits to Workers in the Sector in Billions
Retailer Sector	Walmart	112	\$7.30	\$6.30	\$13.60	
	CVS	57	\$5.40	\$1.80	\$7.20	
	Home Depot	49	\$5.80	\$3.40	\$9.20	
	Best Buy	31	\$0.99	\$0.40	\$1.39	
	Total Top 4 retailers				\$31.39	\$28.00
Home Health Sector	Anthem	6	\$0.84	\$0.70	\$1.54	
	United Healthcare	0	\$0.00	\$2.10	\$2.10	
	Total				\$3.64	\$5.37

Sources: Roosevelt Institute analysis of publicly available data

profits, but that does not mean there are insufficient funds to provide increased compensation or benefits. Rather, many of the trends driving increasingly diffuse employment relationships, a smaller worker share of profits, and reduced worker compensation in both income and benefits have simultaneously been driving large returns to business owners and shareholders.¹¹⁹

The arguments against requiring more businesses to fund increased compensation—in the form of either wages, cash-equivalent benefits or social insurance—have been manifold. First, critics suggest that in an era of globalization and in an economy dominated by service-sector jobs, businesses cannot afford the cost of increased compensation. Second, critics argue that the cost of benefits will, in fact, be passed on to either consumers or workers. Third, critics suggest that due to increasingly disaggregated work, there is no obvious infrastructure for distributing funds. Finally, critics argue requiring employers to contribute more to employee compensation (cash or non-cash) will only further exacerbate the trend toward independent contracting or other alternative work arrangements. We respond to these critiques below.

Can business afford to pay more? First, in certain cases, the concerns of global competition or low-margin profits may serve as a barrier to enhanced worker compensation. Rather than attempting to debate the economic theory or to make broad generalizations, we simply provide a snapshot of various industries and ask whether certain firms could bear increased labor costs. We find many industries could bear these costs.

Retail workers, for example, rarely receive retirement matches, paid sick days, or health insurance. We estimate the cost of providing those benefits to all retail workers in the United States at about \$17.8 billion annually—about 17 percent of all pre-tax worker earnings.¹²⁰ For contrast, the top four largest retailers—Walmart, CVS, Home Depot, and Best Buy—spent nearly \$20 billion in cash on stock buybacks and paid out around \$12 billion in dividends in the past year (June 2015 to June 2016),¹²¹ suggesting surplus cash was available for increased labor costs. Hardly a one-time distribution, the buybacks and dividends were consistent with levels over the last several years and plans announced for coming years.

Home care workers classified as independent contractors are often held as an example of providers in a peer-to-peer industry where low margins limit benefits. However, the broader network of managed care providers that contract with home care workers maintain large profits. The 2015 Private Duty Benchmarking Study shows that surveyed home care employers paid workers just over 50 percent of their annual revenues, and had gross profit margins of nearly 40 percent.¹²² The industry's largest managed care firm, Unitedhealth Group,¹²³ spent about \$2 billion on dividends in the last year (June 2015 to June 2016).¹²⁴ Competitor Anthem was able to devote almost \$900 million to share buybacks and about \$700 million to dividends during that same period.¹²⁵

There are indeed some industries, particularly in true peer-to-peer services, where increased labor costs cannot reasonably be passed along to the capital owners. A middle-class family employing a child care provider may be unable to continue employment if an additional 14 percent were added to the bill. A plumber may not be able to sell his services for that kind of mark-up. Increased security for these workers or sole proprietors may depend on enhanced public funding—a topic to which we will turn in the following section.

Do firms pass costs on to consumers and workers? The second argument against requiring increased compensation from businesses is the theory that firms will simply pass on the added cost, either to either consumers in the form of higher prices or to workers in the form of fewer jobs or decreased wages. Another version of this argument holds that firms will manage some form of regulatory arbitrage—for example, replacing employees with independent contractors—to avoid incurring costs. We describe the economics of such arguments below. However, the resounding theme is that these are as much questions of market structure or power as of economics. The degree to which a firm passes costs to workers or performs regulatory arbitrage has as much to do with the ability of countervailing forces to exert pressure on the firm as with the firm's profit margin.

A body of research has failed to identify the predicted one-to-one pass-through of increased labor costs to workers or consumers.¹²⁶ Empirical evidence suggests that while some share of non-wage compensation will

reduce wage compensation, the overall compensation package will increase. Moreover, low-wage workers are likely to bear a smaller share of the cost of additional compensation than are high-wage workers. One recent study found that while a one-dollar increase in employer contributions to tax-free retirement plans might replace 90 cents of wages for a high-income male worker, the same increase would replace just 29 cents in wages for a low-income male worker.¹²⁷

The question of who bears the costs is ultimately a product of market structure, as discussed in the section on user fees. Key factors include the elasticity of market demand, the competitiveness of the market, the comparative size of the cost, and the bargaining power of labor. As with consumer fees, in low-margin industries, increased labor costs may reduce demand for labor. But, as the high rate of some corporate profits shows, it cannot be assumed that the service sector is inherently low margin. Where surplus profits currently accrue primarily to capital owners, increased bargaining power on the part of workers—either through government mandate or collective action—could ensure the costs fall more on owners and less on workers or consumers. Indeed, a significant amount of literature attributes the rise of employer-provided fringe benefits to increased collective bargaining, along with rising incomes and changes in tax law.¹²⁸

Neo-classical economic theory suggests that if labor costs do in fact reduce returns to capital, it will penalize workers in the form of slower growth and decreased labor demand. Proponents of such views argue that even if repurchases and dividends divest money from a specific firm, shareholders will reinvest these profits in more productive enterprises, ultimately boosting labor demand and compensation. However, there is no empirical evidence to indicate shareholder payouts are, in fact, being reinvested in new enterprises or more productive firms.¹²⁹

Perhaps the greatest challenge with funding social insurance and fringe benefits through business contributions is defining who is the employer in an era of strategically outsourced jobs and independent contractors. Increasingly complicated employment relationships obscure the link between workers and generated profits.¹³⁰ A government mandate that requires increased compensation for one set of workers may incentivize firms to reclassify workers to avoid the

additional costs. Indeed, investigations of the causes for the rise in alternative work arrangements place great weight on the incentive to get out from under statutory employer mandates for fringe benefits. This challenge is addressed, in part, with the clarifying definitions that we propose in Section 2 of this paper, and by applying standard principles already used to allocate responsibility for payment of payroll taxes between user firms and labor intermediaries. However, if we seek to add mandates to certain categories of independent contractors, we open a web of opportunities for additional misclassification. To prevent regulatory arbitrage, a countervailing force in the form of workers' organizations that include both employees and independent contractors is as critical as a regulatory solution.¹³¹

Similarly, financial regulation or tax policy may be used to incentivize firms to reinvest profits in the supply chain as opposed to distributing payouts. However, not all businesses can bear increases in labor costs on their own. Small businesses, already at a disadvantage after decades of corporate consolidation, are unlikely to have the profit margins described above. And individual employers—for example families paying for childcare—may already be struggling to meet cost. These real challenges require the state to bear some of the economic burden of enhancing security through a social safety net.

PUBLIC FUNDS

The fourth option for financing increased worker compensation is through public funds. Public funds are perhaps the most straightforward funding option, as policy can simply mandate redistribution and accomplish it. In addition to raising revenue from traditional sources, the changing economy offers new revenue streams. A publicly funded model removes the incentives for employers to arbitrage labor law and could potentially reduce labor costs for smaller businesses. While certainly not all businesses will be able to finance the benefits that we describe in this paper, the key—and a subject for further study—is ensuring that a public safety net does not inadvertently subsidize large profitable firms.

A range of government programs funded from general taxes already serve as a sort of supplemental and portable safety net for low-wage workers unable to

A publicly funded model removes the incentives for employers to arbitrage labor law and could potentially reduce labor costs for smaller businesses.

access benefits at their place of work. The earned income tax credit increases cash compensation for low-wage workers, augmenting hourly earnings for single heads of households with no children earning \$14,820 or less and for single heads of household with two children earning \$44,454 or less. Medicaid, food stamps, and new subsidies from the Affordable Care Act divorce health care and food access from work and provide benefits based on income. Access to these benefits is completely divorced from employment status.

The upward redistribution of wealth that is a hallmark of our public policy indicates a range of revenue streams that could be tapped as public wealth. Looking at traditional tax streams—namely income tax—even moderate tax reform could generate significant funds. Further, novel tax proposals like a financial transaction tax or a carbon tax could fund a broadly expanded safety net. We provide some back-of-the-envelope calculations below to estimate the degree to which different revenue sources could fund an expanded safety net. We calculate revenues from three potential scenarios: moderate tax reform, curbing all tax expenditures, or tapping new revenue sources. Given each revenue source, we show the potential for an expanded safety net in three different scenarios: funding a universal safety net available to every American, funding an enhanced safety net for every working-age American, and funding an enhanced safety net targeted to working Americans earning less than the median wage. Obviously, an expanded benefit program would be less bluntly administered.

Moderate tax reform. When scored by the Tax Policy Center, progressive yet hardly radical income tax proposals proposed during Hillary Clinton’s campaign for president would have raised approximately \$73.5 billion annually, with capping tax expenditures, increasing rates on the highest-income earners, and a

30 percent minimum tax rate for the top serving as the chief revenue raisers. If redistributed to all working-age Americans, this modest policy change could deliver an income supplement or cash equivalent of \$345, or 32 hours of paid sick leave for a retail worker; the equivalent of an employer Medicare contribution for an Uber driver; or more than seven times the price of family leave insurance for a nanny. If the funds were distributed only to members of the working-age population earning less than the median, each would receive about \$691 annually, or 66 hours of paid sick leave for a retail worker.

Curbing existing tax expenditures. A more radical tax proposal could simply curb all current tax expenditures. The benefits from tax expenditures—government spending through the tax code like the mortgage tax deduction, which reduces public revenues and returns money to individual pockets—are slanted in favor of upper-income earners or workers receiving benefits from employers. More than half of the \$1.4 trillion¹³² in tax expenditures accrues to the top quintile of income earners, and fully 16 percent accrues to the top 1 percent. The costliest expenditures include the mortgage deduction and capital gains deductions, which disproportionately benefit the wealthy as opposed to those struggling with income insecurity. The two other largest tax expenditures include deductions for employer-provided health care and employer-based retirement funds, which would be rendered unnecessary by a broader government-funded system of fringe benefits. The funds available by curtailing deductions—\$4,347 annually for every American—would subsidize healthcare, a week of paid leave, and a 5 percent retirement contribution for a retail worker or a nanny and more than a week of sick leave and 5 percent retirement contributions for an Uber driver or freelance graphic designer. Focusing the funds on working-age Americans or lower-income Americans would increase the potential cash or cash equivalents even more.

New revenue sources. In addition to a more progressive income tax regime, funds could be raised by tapping new revenue streams, namely what Peter Barnes terms our “common wealth.” In his 2014 book *Liberty and Dividends for All*,¹³³ Barnes argues that in an era with declining returns to labor, one option is to give all Americans a claim to public wealth. He cites the atmosphere and the financial system as two examples of

Potential Revenue Streams

Revenue Stream	Annual Revenue in Billions	US Population in Billions	Working Age Population in Billions	Bottom 50% of Working in Billions	Annual Dividend if Distributed to all Americans	Annual Dividend if Distributed to all Working Age Americans	Annual Dividend if Distributed to Bottom Half of Income Earners
Proposed Tax Reform	73.5	0.322	0.21	0.11	\$228.26	\$345.85	\$691.70
Capital Gains Reform	\$8.40	0.32	0.21	0.11	\$26.09	\$39.53	\$79.05
Cap Expenditures	\$40.60	0.32	0.21	0.11	\$126.09	\$191.04	\$382.08
4% Surcharge on incomes Over	\$12.60	0.32	0.21	0.11	\$39.13	\$59.29	\$118.58
30% Minimum Tax	\$11.90	0.32	0.21	0.11	\$36.96	\$55.99	\$111.99
Close All Expenditures	\$1,400	0.32	0.21	0.11	\$4,347.83	\$6,587.62	\$13,175.23
Carbon Tax - Low	\$160	0.32	0.21	0.11	\$496.89	\$752.87	\$1,505.74
Carbon Tax - High	\$360	0.32	0.21	0.11	\$1,118.01	\$1,693.96	\$3,387.92
Financial Transaction Tax - Low	\$23	0.32	0.21	0.11	\$71.43	\$108.23	\$216.45
Financial Transaction Tax - Medium	\$94	0.32	0.21	0.11	\$291.93	\$442.31	\$884.62
Financial Transaction Tax - High	\$300	0.32	0.21	0.11	\$931.68	\$1,411.63	\$2,823.26

Sources: Analysis of moderate tax reform from the Tax Policy Center (2016), analysis of closing expenditures from the GAO (2015), Carbon tax estimates from Jared Carbone et al. (2014), Lower estimates of FTT from Joint Committee on Taxes (2016), Higher FTT estimates from Pollin et al. (2016).

this public wealth, which could be monetized through a carbon tax or a financial transaction tax.

Depending on pricing, we can estimate a carbon tax would raise \$160 billion to \$360 billion annually.¹³⁴ According to Congress's Joint Committee on Taxation, a proposed financial transaction tax would raise an average of \$23 billion annually for a one-basis-point tax on securities transactions to \$94 billion annually for a 10-basis-point tax.¹³⁵ PERI estimates the potential to raise up to \$340 billion from a 0.5 percent tax on equity trades and 0.1 percent tax on bonds, and a 0.005 percent

tax on derivatives.¹³⁶

The risk of an entirely publicly funded safety net is that certain actors will benefit from a free ride—failing to pay taxes or provide employee benefits and instead relying on public subsidies to provide for workers. Such a program would, in part, require the public to bear labor costs, but allow the private sector to reap rewards from labor. This reality is already observable in the oft-criticized retail industry where workers already rely on government assistance even while employed full time. Walmart stoked outrage in 2014 when an Oklahoma

City store ran a food drive for employees, raising the question of why workers at a firm that earned nearly \$130 billion in profits were going hungry. The previous year, Americans for Tax Fairness estimated that Walmart workers required \$6.2 billion in food stamps, Medicaid, and other public assistance programs.¹³⁷ Studies have found that the 52 percent of frontline fast-food workers rely on public assistance with a cost to the public of \$7 billion annually.¹³⁸

The concerns raised by this accidental subsidy could be partially allayed by a more progressive tax system that secured a portion of returns to capital as financing for the expanded safety net. Both increased capital gains taxes and a financial transaction tax could achieve these goals. Further, increased taxes on top income rates have been shown to rein in salaries for top management, thus reducing the possibility of a public subsidy for sky-high CEO pay.

LOOKING FORWARD

An expanded, portable, and universal set of worker benefits and protections will require multiple sources. These funding streams can be mixed and matched depending on the benefit or protection funded or the body administering it. But business contributions and public funds must be part of the equation. Divorcing the administration of benefits from the workplace cannot be a path toward reducing workers' claim on a share of business profits, nor can innovative models of social insurance remove the role of public funds in financing a safety net.

In the short term, policymakers and activists should consider ways to build on current experiments with more portable and universal benefits by augmenting worker or user funding. For example, California groups are considering mechanisms that would mandate business contributions to the Secure Choice Act. There are obstacles to such a step—for example, the state would require an ERISA exemption and the structure could not increase incentives for further misclassification—but the potential of such a shift demands serious consideration.

Conclusion

On August 14, 1935, President Franklin D. Roosevelt signed the Social Security Act, saying, “This law represents a cornerstone in a structure which is being built but is by no means completed.”

FDR's words are highly relevant today, when large numbers of American workers have insecure work, extending to many sectors, many work structures, and many work arrangements. The breadth of the challenge facing us suggests that we should not rely solely on a private system of social benefits that would apply to a tiny segment of the workforce in the on-demand economy, especially one that depends on low-wage workers who work in more than one job, in more than one structure, and who frequently see—rightly or wrongly—on-demand work as a waystation on the road to economic security. Instead, our system of social benefits must be universal, portable, and inclusive, expressly designed to meet the needs of workers at the lower end of the economic spectrum, and to meet the needs of a 21st century labor force.

We should enforce the critical definitions of “employee” under current law and expand them to make clear that work in furtherance of a business is employment and brings with it responsibilities to our current system of social insurance. We should also do away with sectoral and structure-based limitations, including those related to the self-employed, part-time workers and workers supplied by staffing companies. Finally, we should expand our current system of social protections to include family leave and other benefits, and allow ourselves to imagine a comprehensive system of social benefits that addresses the needs of workers across the course of their careers and into retirement.

Workers' organizations have long played critical roles in identifying the needs of members and addressing them through public policy and private negotiations. That central role must be supported, its flaws corrected, and its coverage expanded to meet the demands of a 21st century workforce. While much must be done at the federal level, states and localities can and should operate as laboratories, within legal limits. And, in the context of yawning gaps between elites and everyday working people, it is clear that businesses must do their

part to finance public and privately negotiated benefits.

More research is necessary to clearly define the parameters of new work structures, investigate the needs of workers in certain sectors, and address the legal challenges of a federal system that preempts state action in some instances. In the longer run, we will need an exhaustive study of the costs, benefits, eligibility, and administration of a comprehensive social benefits system. At least one model for such a study exists: in 2010, a group of academics from Georgetown University Law Center and Berkeley Center on Health, Economic and Family Security at the UC Berkeley School of Law proposed a Family Security Insurance plan that would encompass temporary disability insurance, parental care for a new child, and caregiving insurance.¹³⁹ They outlined eligibility criteria, benefit amounts, and financing for each component of their proposal. Their work provides a roadmap for research that aims to broaden the suite of benefits available to workers and their families, estimate costs and cost-savings, and devise administration and financing for a better, completely portable social insurance plan for the United States.

Appendix

	Who is a covered “employee?”	Are independent contractors covered?	How are other groups of nonstandard workers treated?				What are the major sectoral exclusions?			How does immigration status affect eligibility?
MANDATED FEDERAL BENEFITS										
			Part-time w-2 employees	W-2 workers hired through a staffing agency or a subcontractor	Short term w-2 employees	Multiple W-2 workers	Domestic workers	Farmworkers	Taxi workers	Undocumented workers
Social Security	Common law definition of “employee”	Included, but pays both employer and employee taxes up front	Part-time w-2 employees	W-2 workers hired through a staffing agency or a subcontractor	Short term w-2 employees	Multiple W-2 workers	Domestic workers	Farmworkers	Taxi workers	Undocumented workers
FMLA	Broad “suffer or permit” definition	Excluded	Included	Included. Both firms are potentially liable	Must have 1250 hours and one year employment	Each w-2 employer included	No sectoral exclusion	No sectoral exclusion	Same as above	Included

Tests for “employee” and “independent contractor” statuses

The “Suffer or Permit to Work” Test: The Fair Labor Standards Act, the Equal Pay Act, the Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Family and Medical Leave Act cover workers whom an employer “suffers or permits” to work for it.⁷⁵ Of the three tests, the “suffer or permit” test has the broadest definition of an employee. Under it, a worker is an employee if the business has allowed the work to be performed in its business for its benefit, even though another party has hired, paid, or supervised the worker.

The “ABC” Test: This test is used to determine coverage under most state unemployment insurance and some workers’ compensation statutes. It establishes a presumption of employee status unless it can be shown that (a) the worker has been, and will continue to be, free from control by the employer over the performance of the work; (b) the service performed by the worker is outside the usual course of services performed by the putative employer; and (c) the worker is engaged in an independently established trade, occupation, profession, or business.

The “Right to Control” Test: This test determines employee status under laws such as the Internal Revenue Code, Federal Insurance Contributions Act, Federal Unemployment Tax Act, Employee Retirement Income Security Act, the National Labor Relations Act, and the Americans with Disabilities Act. The version of this test currently used by the IRS draws on facts in three areas to determine whether the business controls the worker enough to form an employer/ employee relationship. Those three areas are behavioral controls, financial controls, and the type of relationship between the business and the worker.⁷⁶

Appendix

	Who is a covered	Are independent contractors covered?	How are other groups of nonstandard workers treated?				What are the major sectoral exclusions?			How does immigration status affect eligibility?
			Part-time w-2 employees	W-2 workers hired through a staffing agency or a subcontractor	Short term w-2 employees	Multiple W-2 workers	Domestic workers	Farmworkers	Taxi workers	
LABOR STANDARDS										
FLSA	Broad "suffer or permit" definition of "employee"	Excluded	Included	Included. Both firms are potentially liable	Included	Each w-2 employer included	Certain "companions" excluded	Excluded from overtime pay	Same as above	Included
NLRA	Common law definition of "employee"	Excluded, but question whether states and cities can act	Part-time w-2	Workers can bargain with both entities if there is a "community of interest"		Each job treated separately. Bargaining unit may include separately.	Excluded	Excluded	Same as above	Included, but not entitled to back pay
Title VII	Common law definition of "employee"	Excluded	Included	Included. Both firms are potentially liable	Included	Each w-2 employer included	No sectoral exclusion	No sectoral exclusion	Same as above	Included, but question of entitlement to back pay not fully resolved
OSHA	Common law definition of "employee"	Excluded	Included	Included. Both firms are potentially liable	No	Each w-2 employer included	No sectoral exclusion	No sectoral exclusion	Same as above	Included
MANDATED FEDERAL BENEFITS										
Unemployment Insurance	Generally "ABC" test for employee status	Excluded	Frequently exclude if not searching for full time work	At least 18 states have restrictions on eligibility for workers employed by staffing agencies.	May have difficulty	May have difficulty if loses one of several jobs	Some exclusion or limitation in some states	Some small farm exclusions in some states	Usually no explicit	Excluded
Worker's Compensation	Frequently broad, "every person in the service of another under any contract of hire."	In some states, sole proprietors can purchase	Included	Included, but sometimes confusion over who is liable for premiums, some states require entities to pay if subcontractor does not.	Included	Included, most states allow full lost benefits from all jobs	Some limitation in some states	Some limitation in some states	Generally included	Included, but may not be entitled to all benefits

Endnotes

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85 29 U.S.C. § 18. ERISA covers “employee welfare benefit plans” including any plans established or maintained by an employer or an employee organization, if it is established or maintained to provide benefits such as medical, sickness, accident, disability, death, unemployment, vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services. 29 U.S.C. § 1002(f).

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