Portable Benefits Resource Guide

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TABLE OF CONTENTS

Introduction: A Flexible and Stable Safety Net for a Changing Economy

THE AMERICAN WORKFORCE IS CHANGING. We are seeing a fundamental shift away from the single-employer career of the 1950s toward an economy where workers expect to have multiple jobs over the course of a lifetime. Indeed, some workers have even grown to expect that they will hold multiple jobs simultaneously. Many Americans have embraced this increased flexibility, crafting careers as freelancers and using on-demand work opportunities as a vital tool for supplemental income when needed. However, the social safety net our nation built to help ensure economic security for hard-working Americans — in particular the suite of benefits and protections most workers access through employers, and which we know to be key foundations of individual and household financial stability — have not kept pace with these changes in the economy.

As policymakers across the country grapple with these shifts and major workforce adjustments, the idea of portable benefits — a stable and flexible safety net that better reflects the needs of a modern workforce — has gained traction. While many of the regulations governing workforce rules and related safety net questions are federal, a growing number of state and local policymakers have expressed an interest in developing policy ideas to address some of these challenges. In dozens of conversations with policymakers at the municipal, state, and federal levels, one request was repeated over and over again — a single resource with background on the interwoven issues, highlights of current policy ideas, and suggestions of possible next steps for action, particularly at the state and local level.

This resource guide is intended to be a response to that request. It is not an overall review of the ODE, nor is it an attempt to weigh in on the current questions about whether a worker is an independent contractor or an employee, or in what forms workers should be able to organize. Rather, it is meant to provide a thorough if high-level overview of portable benefits — along with a discussion of the various questions that will confront policymakers at all levels.

It is also important to note that this resource guide recognizes that federal policy would provide the most workable and consistent response, and that a patchwork quilt of different labor and benefits policies around the nation might cause problems for businesses and workers alike. On the other hand, we also know that any federal policy will likely take time to develop and will need evidence and successful models to form the basis for national solutions. This resource guide therefore outlines what could be a beneficial near-term role for local policymaking: experimentation, piloting ideas that could later be broadened to a national scope.

1 The Changing American Workforce and the On-Demand Economy

LONG BEFORE A DRIVER IN SAN FRANCISCO opened an app to pick up a passenger, or the first app-contracted handyman showed up to assemble an Ikea desk in New York City, employees and employers had been going through a long but accelerating divorce.

The number of non-traditional workers[1] is growing. Reasonable people may disagree about the merits or methodology of various studies — in part because the research community is still building muscle around how to ask the right questions. But according to a 2015 GAO study, contingent workers (defined by the GAO broadly to include those in alternative work arrangements as well as standard part-time workers) comprised 35.3% of employed workers in 2006 and 40.4% in 2010.[2] And there has been a significant increase in the total number of 1099-MISC forms issued by the IRS in the last 15 years (approximately 22% since 2000) according to a 2015 Mercatus Center study. During the same period, W2 forms have stagnated, falling by around 3.5%.[3] Finally, according to economists Alan Krueger and Larry Katz in their recent paper on "The Rise and Nature of Alternative Work Arrangements in the United States," between 2005 and 2015, the number of workers in "alternative relationships" increased by more than half, from 10% to 16% of workforce — that's nearly 10 million people.[4] Put another way, new contingent jobs accounted for all the net new job growth during that time period.

Some of this trend has been driven by workers seeking increased flexibility and alternative work relationships — surveys show workers citing flexibility as a primary consideration in where and how they work.[5] This trend has also likely been driven by a range of factors, from downward pressures on payroll at major employers, reduced

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1 For the purpose of this paper, "non-traditional" workers includes contingent workers, workers in alternative work arrangements (including independent contractors, self-employed, on-call, and agency temps), and standard part-time work arrangements. Our intent is to capture broadly a trend in the labor market, while focusing in on work relationships in the on-demand economy, which are most frequently 1099 independent contractor relationships. We appreciate that some of these terms have specific legal definitions, but use them here with their plain English meaning in mind.

2 "Contingent Workforce: Size, Characteristics, Earnings, and Benefits." GAO-15-168R. Government Accountability Office. Washington, DC. 20 April 2015. http://www.gao.gov/assets/670/669766.pdf

3 Dourado, Eli and Koopman, Christopher. "Evaluating the Growth of the 1099 Workforce." Mercatus Center, George Mason University. December 2015. http://mercatus.org/publication/evaluating-growth-1099-workforce

4 Katz, Lawrence F. and Krueger, Alan B. "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015." 29 March 2016. https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf

5 In their recent study "Dispatches from the New Economy: The On-Demand Workforce," Intuit and Emergent Research concluded as one of their key findings that "The primary reasons [on-demand economy providers] work in the on-demand economy is to earn more money and to have greater work flexibility, control and autonomy."
Chriss, Alex. "How The On-Demand Economy is Reshaping the 40 Hour Work Week." LinkedIn Pulse. 29 January 2016.
Intuit, Inc. "Dispatches from the New Economy: The On-Demand Economy and the Future of Work." 28 January 2016. Web. http://www.slideshare.net/IntuitInc/dispatches-from-the-new-economy-the-ondemand-workforce-57613212

enforcement of labor laws, and the increasing ease of tasking work across global markets facilitated by technology. Even as there remains uncertainty about the causes — and whether this trend is reversible or even able to be decelerated — there is broad agreement of one set of implications for workers: in an economy where everything from workplace safety, health care, disability, and retirement (to name a few) has traditionally been provided by and administered through employers, workers are increasingly entering a complex choose-your-own-adventure world for benefits and protections, where out-of-pocket costs are often higher and incentives to enroll in coverage or to save for retirement and your child's education are fewer if not nonexistent.

CONTEXT

THE MODERN EMPLOYER-CENTRIC SAFETY net emerged in mid-century America from an exceptionally tight labor market as a bargain between labor and management. It was later endorsed and codified into federal, state, and local laws and regulations. As Shayna Strom and Mark Schmitt write,[6] this social contract was formed by two key decisions:

> *"First, a recognition by business that the security and well-being of its workers was in its own interest; second, a decision by labor that it was better off obtaining benefits linked to a specific employer than waiting for government to act."*

While this model started with the "Treaty of Detroit" between the Big Three automakers and organized labor, it soon spread throughout the unionized workforce and then became the norm across the economy. But these benefits and protections only apply if one's work relationship is categorized as employment and not as independent contracting — terms of art that have particular legal definitions.[7]

While the number of non-traditional workers has been on the rise, the rapid growth of online platforms — both labor marketplaces such as Lyft, Taskrabbit, and Instacart as well as capital or goods marketplaces such as Airbnb, eBay, and Etsy — have brought a higher profile to this trend, and in some ways provided policymakers with a more intuitive interface through which to approach the issue. Some have criticized the out-

In an economy where everything from workplace safety, health care, disability, and retirement has traditionally been provided by and administered through employers, workers are increasingly entering a complex, choose-your-own-adventure world for benefits and protections.

6 Schmitt, Mark and Strom, Shayna. "Protecting Workers in a Patchwork Economy." Century Foundation and New America. Web. 6 April 2016. https://tcf.org/content/report/protecting-workers-patchwork-economy/.

7 Employee status as outlined in the Fair Labor Standards Act (FLSA), Internal Revenue Code (IRC), common law, and selected other employment laws is largely determined by the likelihood that the employment relationships will continue beyond the completion of a given task, even if only for a specified term, and whether the employer gives the worker instructions about how to do the work. For discussion of legal worker classification specifically relating to the context of on-demand economy work, see the following paper by Alan Krueger and Seth Harris:
Harris, Seth D. and Krueger, Alan B. "A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The 'Independent Worker.'" The Hamilton Project. December 2015.
http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf
For its own determinations of tax liability, the IRS has identified three categories of common law evidence that help determine level of 'control' associated with the business relationship in question. All factors are considered and weighed against one another. One factor looks at whether the relationship includes "employee type benefits," described thusly: "Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance. Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor."
https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee

sized attention — positive and negative — that these platforms have received, especially relative to their size in the economy. But the additional attention also provides an opportunity to address some of the longstanding disadvantages that come with being an independent worker. For policymaking purposes, online platforms are potentially the easiest place to start because they aggregate workers who have an established digital financial relationship with platforms that could facilitate contributions to portable benefits. However, policymakers could certainly work to extend the eligible population to include other types of non-traditional workers.

HOW SIGNIFICANT IS THE ON-DEMAND ECONOMY?

SO JUST HOW BIG IS THE ON-DEMAND economy, and what role is it playing in the increased fissuring of the relationship between employees and employers? No comprehensive survey has been completed, but a recent JP Morgan Chase Institute analysis (JPMCI)[8] of account holders gives us a sense for the size and nature of this workforce:

- About 0.5% of adults were observed to earn money from a platform in a given month
- About 4.2% of adults earned money from an online platform during a three-year period from 2012-2015
- Most income earners tend to use the platforms as a secondary source of income: for about one-fourth of active labor platform participants — and about 17% of active capital platforms — income from online platforms accounts for more than 75% of their total income
- Most earn from only one platform (only 14% from two)
- Participation is sporadic — after the initial month of participation, individuals earning income on labor platforms only participate in 56% of subsequent months

In their 2016 paper "The Rise of Alternative Work Arrangements in the United States," Katz and Krueger also look at this question, and come to the conclusion that the size of the "online gig workforce" relative to alternative arrangements that are brokered offline remains quite small — only 0.5% of the entire U.S. labor force indicating they are working through an online intermediary.[9]

Some have criticized the attention that these platforms have received… But the additional attention also provides an opportunity to address some of the longstanding disadvantages that come with being an independent worker.

8 JP Morgan Chase Institute. "Paychecks, Paydays, and the Online Platform Economy: Big Data on Income Volatility." February 2016. https://www.jpmorganchase.com/corporate/institute/report-paychecks-paydays-and-the-online-platform-economy.htm

9 Katz, Lawrence F. and Krueger, Alan B. "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015." 29 March 2016. https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf

But as venture capitalists point out when evaluating new disruptive industries, the absolute numbers of participation aren't as important as the rate of adoption. To that end, the recent JPMCI finding that major U.S. cities have seen 47x growth in the adoption of online/digital platforms alone (not counting the cash and informal transactions of most freelance work) over the last three years should prompt policymakers to start designing for the future. This is especially true as we observe the breadth of work now moving onto platforms, including food and restaurants (EatWith), business consulting (Upwork and HourlyNerd), and even medicine (Doctors on Demand). In a sign of things to come, accounting giant PwC this Winter unveiled its Talent Exchange, a marketplace to connect indpendent workers with PwC project work.

While efforts continue to generate better data — with companies, third-party think tanks, foundations, and the Department of Labor exploring data collaborations — it appears that online platforms may be accelerating an existing trend towards independent workers. The same JPMCI research showed that online labor platforms were the fastest growing section of the labor market, ahead of home care and software — doubling as a percentage of the labor force each year. The quick pace of business growth in the on-demand economy coupled with the dramatic growth of this area of the labor market suggest that both consumers and workers value these online platforms, and they are likely here to stay. While some policymakers are taking a reasonable watch-and-wait approach, others are eager to understand the implications of these workforce changes and consider different strategies to address it.

The quick pace of business growth in the on-demand economy coupled with the dramatic growth of this area of the labor market suggest that both consumers and workers value these online platforms, and they are likely here to stay.

SUGGESTIONS FOR FURTHER READING:

- Schmitt, Mark and Strom, Shayna. "Protecting Workers in a Patchwork Economy." Century Foundation and New America. April 6, 2016. https://tcf.org/content/report/protecting-workers-patchwork-economy/

- Harris, Seth and Kreuger, Alan. "A Proposal for Modernizing Labor Laws for 21st Century Work: The 'Independent Worker.'" The Hamilton Project. December 2015. http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf

- Lehrer, Eli. "The Future of Work." National Affairs. Summer 2016.

- Kennedy, Joe. "Three Paths to Update Labor Law for the Gig Economy." Information Technology and Innovation Foundation. April 2016. https://itif.org/publications/2016/04/18/three-paths-update-labor-law-gig-economy

- Lazar, Richard. "Modernizing Employment Policies To Unleash the New Economy." Techolicy. December 2015. http://www.techolicy.com/modernizing-employment-policies-to-unleash-the-new-economy.html

- Mishel, Larry and Eisenbrey, Ross. "Uber business model does not justify a new 'independent worker' category." Economic Policy Institute. March 17, 2016. http://www.epi.org/publication/uber-business-model-does-not-justify-a-new-independent-worker-category/

SUGGESTIONS FOR FURTHER READING ON FREELANCE/ GIG ECONOMY DATA:

- Krueger, Alan and Katz, Larry. "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015." NBER, March 29, 2016. http://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf

- JP Morgan Chase Institute. "Paychecks, Paydays, and the Online Platform Economy: Big Data on Income Volatility." February 2016. https://www.jpmorganchase.com/corporate/institute/report-paychecks-paydays-and-the-online-platform-economy.htm

- Freelancers Union and Upwork. "Freelancing in America." October 1, 2015. https://www.upwork.com/press/2015/10/01/freelancers-union-and-upwork-release-new-study-revealing-insights-into-the-almost-54-million-people-freelancing-in-america/

- Dourado, Eli and Koopman, Christopher. "Evaluating the Growth of the 1099 Workforce." The Mercatus Center, George Washington University. December 2015. http://mercatus.org/sites/default/files/Evaluating-Growth-1099-Dourado-MOP.pdf

- Lehmann, R.J. "Six Charts That Debunk the Gig Economy." R Street Blog, July 22, 2015. http://www.rstreet.org/policy-study/6-charts-that-debunk-the-gig-economy/

- Lang, Noah. "The Real Reason On-Demand Startups Are Reclassifying Workers." TechCrunch, November 22, 2015. https://techcrunch.com/2015/11/22/the-real-reason-on-demand-startups-are-reclassifying-workers/

2 Growing Momentum for Updating the Safety Net

DEFINING PORTABLE BENEFITS

IN A WORLD WHERE AN INCREASING number of workers are earning income outside of traditional employment relationships, we face an important challenge: modernizing our safety net. We must rethink our policies and programs in areas like retirement and health care to make sure that we deliver on our long-held values. One approach is to make benefits and protections more portable: to decouple them from employment and create new access models that would apply to work and workers that have historically not had the benefit of a safety net.

Here's how Shelby Clark, CEO of Peers, David Rolf, president of SEIU 775 in Washington State, and Corrie Watterson-Bryant, Senior Research Assistant of SEIU 775, define "Portable Benefits":[10]

> *While there are currently more questions than answers regarding the structure of such a system, most envision the system to contain three core tenets:*

PORTABLE

Workers' benefits are not tied to any particular job or company; they own their own benefits. Traditionally, benefits are attached to a specific job. This does not match the reality of work for many in today's economy, who may derive their income from multiple sources simultaneously or who may regularly switch jobs or employers. A worker should be able to select and maintain their benefits from year to year, and their protections should not depend on the app they currently have open.

One approach is to make benefits and protections more portable: to decouple them from employment and create new access models that would apply to the workers and businesses who power the 'patchwork' economy.

10 Rolf, David, Clark, Shelby, and Bryant, Corrie Waterson. "Portable Benefits in the 21st Century: Shaping a New System of Benefits for Independent Workers." Aspen Institute. Web. June 2016. http://www.aspeninstitute.org/sites/default/files/content/upload/Portable_Benefits_final2.pdf

PRO-RATED

Each company contributes to a worker's benefits at a fixed rate depending on how much he or she works, or earns. People are earning income from a variety of sources, so any model of Portable Benefits should support contributions from companies that can be pro-rated by dollars earned, jobs done, or time worked, covering new ways of micro-working across different employers or platforms. For example, if a person works an hour for a delivery platform and an hour for a housecleaning platform, both would contribute an equal amount toward that worker's benefits on a per hour basis, such as $1 for each hour worked.

UNIVERSAL

Benefits cover independent workers, not just traditional employees. All workers must have universal access to the critical benefits they need. Today, it can be difficult if not impossible for an independent worker to access a critical protection such as disability or workers compensation insurance. Other benefits of employment, such as paid time off and unemployment insurance, simply don't exist for independent workers. Any viable benefits system for the new economy must cover individuals working outside of a traditional employment relationship.

A Portable Benefits system could apply to any type of worker, though it is designed with workers who do not have access to affordable benefits, namely independent contractors and part-time workers. The system should likely provide at least a core of health insurance, retirement, and insurance for injured workers, but could be expanded to cover optional types of insurance (like vision, dental, life, etc.), paid time off, education and training, and potentially even novel products like income-smoothing tools or wage insurance. It could also form the basis of an effective and resourced worker voice organization in an era where traditional collective bargaining is increasingly inaccessible to most private sector workers.

The idea of portable benefits isn't new — construction workers and Hollywood guilds have figured out how to support a flexible and shifting workforce over the last century. The Affordable Care Act further enabled portability for health benefits beyond the employer-employee relationship. Similarly, we've seen significant momentum building for the idea of portable and pro-rated benefits for those who work in the gig economy, due in part to the meteoric rise of the services like Uber, Lyft, and Instacart.

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BROAD APPEAL

THE CONCEPT OF PORTABLE BENEFITS for non-traditional workers appeals to a broad set of interested parties, albeit for different reasons:

WORKERS AND WORKER ADVOCATES:

Individual independent workers find portable benefits and protections appealing for a couple of reasons. First, they appreciate the idea that they could access a safety net in exchange for the value they create for companies and society, even if work is done outside of an employment relationship. Second, portable benefits would offer the flexibility that workers crave without sacrificing the stability associated with traditional employment. Worker advocates — including groups organizing low-skill workers as well as unions — have expressed interest in portable benefits and protections because such a system has the potential to serve groups, such as domestic workers, who have been working without a functional set of protections for many years.

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PLATFORM COMPANIES:

Platforms in the on-demand economy have found portable benefits interesting largely in the context of achieving business model and financial liability certainty in the face of mounting employee misclassification litigation. While many platform companies maintain that their supply-side users (e.g. drivers, cleaners, and caregivers) are independent contractors, several companies have expressed an interest in providing services to their users akin to benefits — worker's compensation, training, and savings programs - in part as an effort to retain their workforce. However, platform companies have steered well clear of providing these benefits in large part because they fear it would impact the legal view of whether these workers are employees or independent contractors. Companies may see an opportunity to trade participation in portable benefits arrangements for certainty on the classification of platform workers as independent contractors.

GOVERNMENT:

Policymakers at the city, state and federal levels have expressed interest in extending worker protections while continuing to support innovation and job creation. Portable benefits strikes that balance. For policymakers,

this solution also addresses long-term economic concerns associated with retirement and health care costs, which, if unmanaged, could have substantial negative impacts on the economy. States and cities want entrepreneurs and businesses to succeed and innovate — portable benefits have the potential to allow businesses to manage their obligations to their workers and while focusing more on their core competencies.

Overall, society stands to gain from a system of portable benefits and protections because this new agreement could forge what may be the future of the social safety net. However, there is not universal agreement on many of the fundamental questions about portable benefits — and some advocates have raised concerns about whether implementing portable benefits would create a second-tier safety net while further incentivizing companies to shift low-income employees to less stable work arrangements. We believe this is a challenge to be addressed in system design, and a core goal of designing policies must be to maintain or expand access to the benefits and protections the middle class has gained in the last 50 years.

MOMENTUM FOR POLICY ACTION

THROUGH 2014 AND 2015, the debate over the on-demand economy had become increasingly polarized, particularly in the media. Is the growing on-demand economy good for workers with its flexibility, or is it ultimately bad for workers in the vulnerability that it imposes? In response to this polarization, many thought leaders began looking for solutions. In the summer of 2015, labor leader David Rolf and activist entrepreneur Nick Hanauer wrote a piece in Democracy Journal calling for "Shared Security Accounts"[11] that was widely circulated, and author Steven Hill called for "Individual Security Accounts"[12] in his recent book. As far back as 2005, U.S. Treasury officials were advocating for a similar idea[13] focused on savings (not benefits) called "Individual Development Accounts."

In mid-2015, a group of worker advocates, on-demand economy platforms, labor unions, VCs, and thought leaders from both sides of the political spectrum came together to look for common ground. Organized by McKinsey Director Emeritus Lenny Men-

States and cities want entrepreneurs and businesses to succeed and innovate – portable benefits have the potential to allow businesses to manage their obligations to their workers and while focusing more on their core competencies.

11 Hanauer, Nick and Rolf, David. "Shared Security, Shared Growth." Democracy Journal. Summer 2015. No. 37. Web. http://democracyjournal.org/magazine/37/shared-security-shared-growth/
12 Hill, Steven. "The Future of Work in the Uber Economy: Creating a Safety Net in a Multi-Employer World." Boston Rview. 22 July 2015. Web. http://bostonreview.net/us/steven-hill-uber-economy-individual-security-accounts
13 Howard, Susan, Frumkin, Samuel, et al. "Individual Development Accounts: An Asset Building Product for Lower Income Consumers." Community Development Insights, Office of the Comptroller of the Currency, U.S. Department of the Treasury. February 2005. http://www.occ.gov/news-issuances/news-releases/2005/nr-occ-2005-25a.pdf

donca and Future of Work Initiative Fellow Natalie Foster, about 40 of these cross-sector leaders signed a public letter on Medium entitled "Common Ground for Independent Workers" with design principles for a new, portable, and pro-rated social safety net for those who work in the gig economy. The letter was reported in the The Wall Street Journal,[14] The Washington Post,[15] and the The San Francisco Chronicle.[16]

In December, the bipartisan Aspen Institute Future of Work Initiative — created and co-chaired by Senator Mark Warner and Purdue University President Mitch Daniels — was the first to host a policy event to discuss the idea of portable benefits and protections[17] for a new kind of work. The event was keynoted by Labor Secretary Tom Perez, and the discussion included Senator Warner, as well as an ideologically diverse panel including New America Foundation President and CEO Anne-Marie Slaughter and American Action Forum President Douglas Holtz-Eakin.

In January of 2016, momentum gathered at the federal level. President Obama highlighted the need for safety net flexibility and portable benefits in his State of the Union Speech[18] saying, "for Americans short of retirement, basic benefits should be just as mobile as everything else is today. That's what the Affordable Care Act is all about." Then in February, the Department of Labor announced they were asking Congress to fund the creation of a $100 million fund[19] for portable benefits demonstration projects. The Federal Mediation and Conciliation Service has since proposed its own pilot fund.[20] Most recently, in April, the Department of Labor hosted a gathering[21] to examine existing models for portable benefits systems as part of their ongoing work to make retirement more portable — many of those models are summarized in the next section of this paper.

Even as we write this primer, we're seeing significant steps forward in the landscape around systems that could provide benefits and protections to those who work in the gig economy. In late April of 2016, Uber entered into a proposed settlement for two misclassification lawsuits[22] in exchange for $84 million and several key changes to its employment practices (the settlement still needs to be approved by the court). Most relevant to this conversation is a change stemming in part from that settlement: the formation of

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14 Silverman, Rachel Emma. "On-Demand Workers Need 'Portable Benefits,' Tech and Labor Leaders Say." The Wall Street Journal. 10 November 2015. Web. http://http://www.wsj.com/articles/on-demand-workers-need-portable-benefits-tech-and-labor-leaders-say-1447199167

15 DePillis, Lydia. "Tech companies, labor advocates, and think tankers of all stripes call for sweeping reforms to the social safety net." The Washington Post. 12 November 2015. Web. https://www.washingtonpost.com/news/wonk/wp/2015/11/12/tech-companies-labor-advocates-and-think-tankers-of-all-stripes-call-for-sweeping-reforms-to-the-social-safety-net/.

16 Said, Carolyn. "2 new initiatives call for benefits, safety net for gig workers." SF Gate. 13 November 2015. Web. http://www.sfgate.com/business/article/2-new-initiatives-call-for-benefits-safety-net-6628645.php

17 Aspen Institute. The Next Big Idea: Portable Benefits for Independent Workers. 16 December 2015, Washington, D.C. Web. http://www.aspeninstitute.org/events/2015/12/16/Portable-Benefits-for-Independent-Workers

18 "Remarks of President Barack Obama—State of the Union Address as Delivered." The White House. 13 January 2016. https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address
Foster, Natalie. "The big idea buried in Obama's speech." Medium. 13 January 2016. Web. https://medium.com/ondemand/the-big-idea-buried-in-obama-s-speech-30fe2832c0c#.uirijr2js

19 Department of Labor. "President's 2017 Budget Bolsters Support for Working Families." 9 February 2016. Web. https://www.dol.gov/newsroom/releases/20160209

20 Federal Mediation and Conciliation Service. "Congressional Budget Submission & Annual Performance Plan." Feb 2016. Web. https://www.fmcs.gov/wp-content/uploads/2016/02/2017_Budget_Congressional.pdf

21 Department of Labor. April 2016. See DOL blog:
Block, Sharon and Borzi, Phyllis. "Lunchboxes, Carry-on Bags and Retirement." U.S. Department of Labor Blog. 22 April 2016. https://blog.dol.gov/2016/04/22/lunchboxes-carry-on-bags-and-retirement/

22 Mclean, Robert. "Uber will pay up to $100 million to settle labor suits." CNN. 22 April 2016. Web. http://http://money.cnn.com/2016/04/22/technology/uber-drivers-labor-settlement/

driver associations. In mid-May 2016, Uber recognized a new worker association called the Independent Drivers Guild, recently formed by the International Association of Machinists and Aerospace Workers, the labor union representing black car drivers in New York.[23] This contemporary spin on an 11th century guild structure has the potential to be a critical step toward a 21st century safety net for American workers today, because it could very well lead to a workable model for providing portable benefits to on-demand economy workers. While the guild's leaders are still working out the details, it would have the ability to offer its members a range of benefits and protections, such as access to health insurance, workers' compensation, access to retirement savings, and more.

The conversation has further been driven forward with the release of several thoughtful papers on the topic, and gatherings at think tanks and academic institutions. Momentum is growing among both business owners and worker advocates for an answer to the challenges of 1099 and contingent work. The next step is for policymakers to start crafting those answers.

SUGGESTIONS FOR FUTHER READING:

- *Common Ground for Independant Workers Letter.* November 9, 2015. https://medium.com/the-wtf-economy/common-ground-for-independent-workers-83f3fbcf548f#.150vs3ed0
- Fact Sheet from Department of Labor on Portable Benefits and Retirement. December 9, 2016. https://www.dol.gov/newsroom/releases/20160209
- Strom, Shayna and Schmitt, Mark. "Protecting Workers in a Patchwork Economy." Century Foundation and New America. April 6, 2016. https://tcf.org/content/report/protecting-workers-patchwork-economy/
- Foster, Natalie. "Uber's Major Step Forward for Workers." CNN.com. May 25, 2016. http://www.cnn.com/2016/05/25/opinions/uber-guild-agreement-portable-benefits-natalie-foster/

23 Scheiber, Noam and Isaac, Mike. "Uber Recognizes New York Drivers' Group, Short of a Union." New York Times. 10 May 2016. http://www.nytimes.com/2016/05/11/technology/uber-agrees-to-union-deal-in-new-york.html?_r=0 Foster, Natalie. "Uber's Major Step Forward for Workers." CNN.com. 25 May 2016. Web. http://www.cnn.com/2016/05/25/opinions/uber-guild-agreement-portable-benefits-natalie-foster/

③ Learning from Existing Models

POLICY DESIGN DISCUSSIONS in this area are still nascent, though there are some existing models that provide inspiration. Here are several concepts that many are pointing to as potentially illustrative models:[24]

BLACK CAR FUND

The Black Car Fund was established in the state of New York to provide workers compensation insurance to "Black Car" (for-hire livery) drivers who are independent contractors and would otherwise not have access to traditional workers' compensation insurance. There are more than 33,000 affiliated drivers covered by the Black Car Fund's plan, including drivers for Lyft and Uber. Although the for-hire industry's drivers are independent contractors, for the purposes of the state statute, affiliated drivers are the fund's employees and therefore are able to be afforded workers' compensation coverage if injured while working. By the structure of the statute, the drivers are only employees of the fund for the purposes of workers compensation. The fund derives its income from a 2.5% surcharge on every ride, paid by the passenger and collected by the affiliate's member base and remitted to the fund. (Adapted from Clark/Rolf/Watterson)[25]

FREELANCERS UNION

And other third party benefits administrators

The Freelancers Union, led by Sara Horowitz, has foreseen this era of increased freelancing for nearly two decades and built an organization around supporting those who work outside the traditional social safety net. Currently, individuals opt in to the benefits and protections that the Freelancers Union has negotiated for them, such as medical, disability, and term life insurance. The current model doesn't need a policy change to work, but if a mandate were passed that required pro-rated contributions from platforms to support those who are finding work on the platforms, the Freelancers Union is the

24 Rolf, David, Clark, Shelby, and Bryant, Corrie Waterson. "Portable Benefits in the 21st Century: Shaping a New System of Benefits for Independent Workers." Aspen Institute. Web. June 2016. http://www.aspeninstitute.org/sites/default/files/content/upload/Portable_Benefits_final2.pdf

25 Ibid

type of organization that could scale up to administer those benefits while ensuring a fiduciary responsibility to the workers given its non-profit status. Other such companies that are currently offering benefits for independent contractors include Peers, Stride Health, and Even.

HEALTHY SAN FRANCISCO

A city or state could also create and administer portable benefits accounts. The most commonly cited example of this is the Healthy San Francisco model, a program created in 2006 through approval by the city's Board of Supervisors of the Health Care Security Ordinance. Prior to the enactment of the Affordable Care Act, Healthy SF aimed to provide healthcare coverage to uninsured individuals ages 18-64, regardless of employment status, immigration status, or preexisting health conditions. The program is funded by federal, state, and local health care dollars as well as contributions from employers. Employers are required to make health care expenditures of a certain amount (depending on size) on behalf of all employees who work more than 8 hours. Expenditures can be direct payment toward health insurance or a contribution to the City Pool, which funds both a coordinated health care program and individual medical reimbursement accounts. These individual medical accounts can receive contributions from multiple employers simultaneously or over time. Reimbursement accounts are administered by the San Francisco Health Plan, which is a government entity with an independent governance structure.

MULTIEMPLOYER PLANS

Such as those used by Hollywood guilds and building trades to set up "hour banks."

A multiemployer plan is an employee benefit plan shared by two or more employers, who are often in the same geographic area or industry. The benefits provided to workers are based on a negotiated hourly contribution made to the multiemployer plan on behalf of an employee by his or her employer. This provides a useful mechanism to share the costs of benefits when a worker has multiple employers or regularly switches employers, such as actors or construction workers. The terms of the plan are collectively bargained between the employers and a union, or group of unions. As set forth in the Taft-Hartley Act, these plans are governed by a board comprised equally of employer and union representatives, and are only applicable to unionized workforces. (Excerpted from Clark/Rolf/Watterson)[26]

26 Ibid.

THE GHENT SYSTEM

The Ghent system is a publicly subsidized unemployment insurance system commonly administered by trade unions in Nordic countries. It operates in Denmark, Finland, Iceland, and Sweden, where participation is voluntary. Belgium operates a compulsory quasi-Ghent system that incorporates retirement benefits. Membership fees comprise only a small portion of unemployment benefits as employees, employers, and the government (in the form of tax subsidies) contribute to the cost. Those who choose not to participate via a union pay a lower fee and, if they become unemployed, receive a lower-level basic benefit. (Adapted from Clark/Rolf/Watterson)[27]

SUGGESTIONS FOR FURTHER READING ON PORTABLE BENEFITS

- Hill, Steven. "Benefits for the Rest of Us: The Growing Ranks of Contingent Workers Need a New Deal." Washington Monthly. January/February 2016. http://www.washingtonmonthly.com/magazine/januaryfebruary_2016/features/benefits_for_the_rest_of_us059188.php

- Hanauer, Nick and Rolf, David. "Shared Security, Shared Growth." Democracy Journal No. 37 (2015). http://democracyjournal.org/magazine/37/shared-security-shared-growth

- Howard, Susan, Frumkin, Samuel, et al. "Individual Development Accounts: An Asset Building Product for Lower Income Consumers." Community Development Insights, Office of the Comptroller of the Currency, U.S. Department of the Treasury. February 2005. http://www.occ.gov/news-issuances/news-releases/2005/nr-occ-2005-25a.pdf

27 Ibid.

④ Key Design Questions for Policymakers

AS POLICYMAKERS CONSIDER WAYS to support innovation and independent work, here are several questions that policymakers should ask about the potential design of a portable benefits system:

WHAT COULD BE INCLUDED?

Over time, employer-based benefits and protections have evolved to play an important role in supporting stability and productivity in the economy and society more broadly — protecting against risk of injury or illness, protecting against sudden loss of income, and encouraging financial saving and future planning. And while many of these benefits — like health care and retirement savings — are just as relevant for employees as for non-traditional workers, others such as unemployment insurance might make less sense when employment is not a binary status. As policymakers debate what benefits could be included in a portable system, it may also be a good time to rethink expected and necessary benefits for a new work reality. This could involve including new benefits — such as wage fraud protection — that address issues that are more acute for freelancers and independent contractors.

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Below is a partial list of potential benefits that could be included:

HEALTH CARE

Access to health insurance; employer-funded health insurance; pre-tax employee contribution to health care savings

Although the Affordable Care Act improved the portability of health insurance, non-traditional workers could still benefit from contributions or mechanisms to make paying for health costs more manageable and more in line with what full-time employees receive.

RETIREMENT

Access to or automatic enrollment in retirement savings program, employer contributions to retirement savings, employee pre-tax contributions to retirement savings

The effects of the unraveling of the safety net may be most obvious and devastating in the area of retirement security, where a shift away from employer-provided pensions started a trend that has resulted in distressingly low levels of retirement savings. New approaches such as the MyRA and state-run Secure Choice plans are a step in the right direction, but more remains to be done.

WORKERS' COMPENSATION

Workers' compensation is an idea that, to date, has only been applicable in the W2 employment context: employers pay for coverage that applies when a worker is injured on the job in exchange for a shield from legal liability/torts. Since injuries could also occur in the context of non-traditional work, policymakers may wish to explore new ways to ensure that these workers are compensated for costs associated with on-the-job injuries.

DISABILITY INSURANCE

If workers are disabled — at work or otherwise — and rendered unable to work, disability insurance provides payments to ensure that an individual's inability to work doesn't cause financial catastrophe. Because non-traditional workers are more vulnerable in this type of situation, without medical leave or job protection, figuring out how to extend a protection of this type to gig workers may be especially important.

UNEMPLOYMENT INSURANCE

While most elements of the safety net are regulated at the federal level, unemployment insurance is usually regulated and administered at the state level, making this a particularly appealing type of protection for state policymakers to consider. One significant challenge would be determining who is eligible for unemployment insurance if the worker is determining when and how to work, and any policy should strengthen outcomes rather than reduce benefits to unemployed workers. Several startup technology companies are aiming to address this pain point through income smoothing tools, and states are innovating as well.

PAID LEAVE

Sick leave, FMLA, vacation

Solving sick leave for the non-traditional worker would help ensure that nobody works while contagious out of fear of lost income. Non-traditional workers also face difficult choices around caring for loved ones (young, old or in between) for the same reason. Amidst a national conversation about

mandating paid leave, an innovative city or state could include non-traditional workers in a paid leave proposal — at least for specific situations like maternity/paternity leave or family care. Some states — such as New York and Rhode Island — have begun experimenting with including independent contractors in new state-level FMLA laws.

WAGE AND HOUR LAWS

Minimum wage, overtime

Wage and hour protections — such as minimum wage, overtime and family leave — are generally not applied to non-W2, non-traditional workers. These laws are administered at all levels — federal, state, and local. It's unclear how these will apply to a world of flexible work, where workers set their own schedules or where work is paid by the project or task rather than hourly, but there may be a public interest in exploring corollary ideas, for example in the case of drivers working a number of consecutive hours that would be deemed unsafe. Some of these protections could potentially be negotiated directly with guilds or associations alongside portable benefits.

TAXES

Withholding, guidance

Non-traditional workers in contracting relationships often indicate that understanding and meeting their 1099 tax obligations are some of their most significant pain points. A solution to automate withholding could be a benefit of great value to workers and tax collecting entities alike.

LIABILITY INSURANCE

Liability insurance is covered through third-party providers, and can be required in some professions — in particular in transportation and in-home care. Multi-state agreements between insurers and transportation network companies like Lyft and Uber have provided a template for the transportation industry, but similar efforts are still progressing in other industries.

TRAINING AND DEVELOPMENT

Governments, companies, and individuals have a shared interest in ensuring a workforce with relevant, current training. There are significant state and federal workforce dollars available for which independent workers are currently ineligible but which could be unlocked.

◦ EQUIPMENT FINANCING OR LEASING

For ridesharing and other on-demand tasks, access to the necessary tools and equipment is critical — and under independent contractor law likely wouldn't be provided directly by the employer. However a pooled resource for workers could potentially fulfill this need — especially if platforms were able to contribute.

WHO ADMINISTERS?

AS IN THE EXISTING MODELS OUTLINED ABOVE, there are several options for who could be responsible for the task of administering portable benefits — taking in fees and contributions, determining available benefits, governing the terms of eligibility and service provisions, and contracting with specific providers to implement the benefits. While there could be a wide-range of models — and significant overlap — within these categories, all models contemplate either the government or an independent third party administering the benefits.

Benefits and protections for workers could be delivered through a government program at the city, state, or federal level. At the federal level, Social Security is a popular, effective, and universal program. At the city level, an example of this is Healthy San Francisco, profiled above. Among other things, Healthy San Francisco created individual health reimbursement accounts for workers, paid into by employers and accessible by workers even as they transition from job to job, or hold multiple jobs at one time.

There are a wide variety of options for how a third-party administered system could work, and a wide range of opinions on what would be best for workers and business. Advocates such as Sara Horowitz at the Freelancers Union argue for a non-profit third party administrator of benefits and protections.[28] She suggests benefits and protections should be "administered by unions, nonprofits, faith-based groups and other community organizations that would collect payments and distribute benefits when freelancers needed them." Horowitz also makes the case that there should be a strong preference for groups who are most effective in serving

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28 Horowitz, Sara. "Help for the Way We Work Now." The New York Times. 7 September 2015. Web. http://www.nytimes.com/2015/09/07/opinion/help-for-the-way-we-work-now.html?_r=0

the diverse, disaggregated, and hard-to-reach populations of non-traditional workers: "positioning unions and worker groups to administer benefits will enable these groups to work closely with the workers they represent, implementing structures aligned with their top needs, and aggregating market power for workers to negotiate the best possible access to benefits and supports."

SEIU International Vice President David Rolf — whose 2015 op-ed with venture capitalist Nick Hanauer proposed a version of portable benefits calls "Shared Security Accounts" (referenced earlier in this paper) — has expressed similar views.[29] Rolf argues that if the government mandates participation in a portable benefits system, the workers must have ownership of and accountability from the organizations that provide these benefits. At a minimum, Rolf argues for requiring qualified providers to be non-profit, have a fiduciary duty, maintain strong conflict of interest policies, and have a board consisting of at least 50% worker representatives.

From a more right of center perspective, in a recent article for National Affairs Eli Lehrer, President of R Street Institute, is calling for a new type of benefits exchange, which translates the portable benefits concept to a framework similar to other healthcare and retirement markets with worker choice presented in the form of consumer choice:

> *In particular, a "safety net" for gig economy workers should consist of new structures called "worker-controlled benefits exchanges" (WCBEs) that combine some of the features of a SEP IRA (the most versatile retirement savings vehicle for the self-employed) and a broker for job-related benefits. These WCBEs would be funded through mandatory contributions from platforms that opt-into the flexible worker classification and would be made on behalf of flexible workers. Mandatory minimum levels of these contributions would be set according to worker earnings (perhaps with a certain maximum) and flexible workers and the self-employed also could make their own pretax voluntary contributions.*

Interestingly, one of the first third-party administrator frameworks we have seen emerge in the on-demand space is the Independent Drivers Guild announced in mid-May 2016, discussed at the end of section two above. While details are still being worked out, and this model relies on a state-level tax change in revenue, here is the rough plan as announced:

- A uniform surcharge is applied to all hired car fees (the tax currently differs between taxi, livery, on-demand)

29 Hanauer, Nick and Rolf, David. "Shared Security, Shared Growth." Democracy Journal. Summer 2015. No. 37. Web. http://democracyjournal.org/magazine/37/shared-security-shared-growth/

- The funds resulting from that charge or tax go to a third-party administrator, the Independent Drivers Guild (IDG)
- The IDG provides benefits and protections to drivers who are members, and also represents the drivers in conversations between the IDG and Uber's management
- The guild is a separate non-profit, rather than a union, but it is affiliated with District 15 of the Machinists Union, which represents black car drivers in New York City

Ultimately, policymakers will determine what guard rails to put on what such an independent third-party administrator might be. For example, should such a body be a non-profit that administers the benefits and protections, to ensure that the contributed capital stays focused on the worker instead of maximizing the administrator's profit? Or, in jurisdictions that have a strong union presence, should unions be involved in creating these new vehicles so that they also serve as early examples of worker voice for this disaggregated workforce? What role should existing for-profit and non-profit intermediaries like TIAA play? And how should we include tech start-ups who are working to solve problems for independent workers, including Stride Health and Peers, or larger companies like Intuit? One could see policymakers creating the rules and allowing versions of the different entities above to compete.

WHO PAYS?

ONE OF THE MOST IMPORTANT QUESTIONS is who should pay for the benefits and protections of the independent worker. Should all contributions come from a single type of entity, or should there be multiple types of contributors? We see four possible contributors to funding benefits and protections — and any solution could ultimately include a mix of some or all of these options:

COMPANIES

Platforms such as Lyft, Instacart, and Handy could be responsible for paying into these portable benefits accounts based upon the work done on the platform. If mandated by law, this should not affect the employment classification of the workers. Many are calling for any policy developing portable benefits to broaden participation beyond the on-demand economy, which is itself still a relatively small though growing portion of the American economy. For example, a law could mandate that for every 1099

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dollar paid to a worker, a defined percentage is paid into a benefits and protection fund. This could also be done on the basis of time worked, or by some other pro rata measure. If such a system were optional rather than mandatory, then the question of how participation would affect employment classification would likely be a disincentive for many companies to opt-in. Therefore as a possible incentive to encourage the companies to participate in an optional system, some have suggested platform companies could be guaranteed that funding portable worker benefits under such a model would be exempt as a factor in employment classification rulings. Taking this concept to its logical extreme, some have even called for doing away with the employer-based system entirely and establishing individual accounts that are paid into by income providers and workers equally, much like Social Security.

CONSUMERS

There's some reason to believe that consumers of the on-demand economy would be willing to pay to support the wellbeing of the providers. In Summer 2015, Peers asked 100 recent ridesharing customers if they would voluntarily contribute $1.00 per ride to their driver's benefits. Fifty-five percent of respondents said yes. Assuming 2.5 rides per hour, that could lead to a monthly contribution of about $220 for a "full-time" driver who drives 40 hours per week. As a point of reference, this contribution would exceed the cost of the healthcare requirement for many under the ACA, as employers are required to cover the costs of at least 60% of a bronze health care plan, which averages roughly $250 per month nationally. Opinion research has also shown political support for portable benefits. A poll commissioned by on-demand firm Handy[30] found 72% of New York voters would support "changing the law to enable independent contractors to have access to benefits like workers' compensation, disability and health insurance." In some ways the Black Car Fund is also set up this way, as riders are charged 2.5% of every ride — although it is a direct fee and not a voluntary contribution.

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WORKERS

In a traditional employee-employer relationship, workers contribute to their own benefits at varying levels — primarily retirement and health care. In a W-2 environment, many of these contributions can be made pre-tax or as tax advantaged. For on-demand economy workers, while some kinds of benefits (health care and disability insurance) can be tax deductible, independently

30 Handy. "New Yorkers Say: Flexible Economy Companies Empower Workers." 21 April 2016. Web. http://blog.handy.com/nypoll-2/

purchasing benefits can be prohibitively expensive. Some portable benefits models include a worker contribution — either partial or full.

TAXPAYERS / GOVERNMENT THROUGH A NEW MANDATORY FEE

Revenue to support a portable benefits model could also be generated through taxpayers through a new generalized fee, similar to what Healthy San Francisco created. The fee could be only added to certain kinds of products and services (only online on-demand platforms) or across the board (an incremental increase in the sales tax). This option is quite similar to the Black Car Fund, although the fee could be applied more broadly — a slight increase in sales tax rather than a per-use fee on ridesharing, for example.

IS IT MANDATORY?

THIS IS AN IMPORTANT QUESTION IN THE DEBATE, and one that has big implications on the risk pools and the level playing field for businesses. There are two sides to this question: first, would contributions be mandatory for companies (or other third-party contributors), and second, would participation be mandatory for workers? And could a hybrid system work, where contributions are mandatory from companies and optional for workers depending on a range of factors, such as whether they have access to benefits (like health care) through a spouse or other source of employment?

As mentioned elsewhere, some argue for a system that would allow companies or other third-party contributors to opt into an arrangement where they are providing payments toward portable benefits in exchange for certainty in their employment classification. This approach has the advantage of allowing for market experimentation without creating undue burden for contributors. Others argue that it makes far more sense to mandate company or other third-party contribution so as to level the playing field for companies experimenting with new business models by subjecting them all to the same set of expectations. Either approach — mandatory or opt-in — would require new legislation.

With respect to the nature of worker participation, the status quo is that the individual worker opts in and bears all the costs, as with the Freelancers Union model, or the Stride Health or Peers model. Policy is not needed for this, but extra income is, and that's why many argue that a system where individual workers opt in and also cover the costs would not likely work — or would at least not solve the challenges that exist today. Furthermore, an opt-in only system could result in adverse risk selection resulting in higher prices and fewer likely participants.

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WHO IS ELIGIBLE?

WHILE IT'S THE ON-DEMAND ECONOMY that's capturing the headlines right now, it's the broader "patchwork economy"[31] or the "freelance economy" that has worked outside of traditional employment, and the related benefits and protections, for decades. Here's the pyramid of eligibility policymakers could consider when thinking about portable benefits policy:

WORKERS THROUGH AN INDIVIDUAL PLATFORM

In this model, workers who meet a minimum criteria on an individual platform (for example, all Uber drivers who drive more than 5 hours per week) could be eligible for contributions to support benefits and protections for workers.

SPECIFIC INDUSTRY

One could legislate for all workers across a particular industry – such as all ride-share drivers, all building contractors, or all homecare workers – in a manner similar to the Black Car Fund approach.

PLATFORMS

Broadening further, legislation could encompass all workers who earn income through online platforms, essentially creating policy clarity on what constitutes an online platform (for example, a platform for the purpose of a policy of this type could be one that collects fees as part of a peer-to-peer transaction, such as Instacart or Lyft; policy could explicitly exclude matching services like Thumbtack or Craigslist where the platform's business model does not entail intervening in the financial transaction between two parties).

ALL NON-TRADITIONAL WORKERS

Casting the net even wider, legislation could encompass all non-traditional work done, from care giving to freelance writing to plumbing, and regardless of whether the work was sourced online or offline. Technology would need to make it very easy for individuals who hire other individuals to pay into the portable benefits accounts for their service providers, but given the advances in payment processing, this seems solvable.

31 Mark Schmitt and Shayna Strom define the "patchwork economy" as "a patchwork of jobs and a patchwork of protections—encompassing gig workers and non-gig workers alike, all of whom struggle with gaps in the safety net in various ways."
Schmitt, Mark and Strom, Shayna. "Protecting Workers in a Patchwork Economy." Century Foundation and New America. 6 April 2016. https://tcf.org/content/report/protecting-workers-patchwork-economy/

ALL WORK

Broadening out the furthest would be to establish a new system that has all employers, regardless of employee classification, pay into the accounts of those who work based on a pre-determined percentage.

Other eligibility considerations could include:

- Hours worked per week
- Income strata
- Geographic boundaries — where worker resides vs. where service delivery takes place, with a solution for work initiating in one geography and concluding in another

PORTABLE BENEFITS CHECKLIST

Adapted from Strom/Schmitt [32]

KEY DESIGN QUESTIONS	DESIGN OPTIONS
What benefits or protections are encompassed?	Examples: health care, retirement, unemployment insurance, workers' compensation, paid leave, overtime, tax withholding, liability insurance, disability insurance, paid sick days or vacation days, skills training, etc.
Who will fund the benefits?	• Employers/companies/other wage providers • Government / taxpayers • Workers • External parties (for example, foundations or worker organizations) • Customers (for example, Uber passengers)
How will the funding be structured?	• Mandatory • Default opt-out, optional opt-in • Default opt-in, optional opt-out
Who will administer the benefits?	• Private sector third party (for example, insurance company) • Nonprofit third party (for example, Freelancers Union, insurance co-ops or fraternal organization) • Worker organization (for example, union or worker center) • Government
Who would be eligible for portable benefits?	• All workers (universal) • All contingent workers including standard part-time • All 1099 workers • Only a subsection of 1099 workers (for example, those in a particular field or those who connect with work through an online platform/app)
Who will receive the benefits?	• All eligible workers • Only those who opt-in or choose not to opt-out
At what level of government will benefits be mandated and/or regulated?	• Federal • State • Local

32 bid.

⑤ How Do We Start Making Progress?

WHAT ARE THE OPTIONS for developing and implementing a portable benefits model — and how would a policymaker or coalition get started?

FEDERAL SOCIAL SAFETY NET REFORM LEGISLATION

FROM A POLICY PERSPECTIVE, there is a clear preference among most of the parties involved for resolution at the federal level — and most likely through Congressional action. Given the number of statutes, rules, and agencies with overlapping jurisdictions, even a statewide answer would still leave unanswered questions with the IRS, Department of Labor, and other federal stakeholders. However, federal legislation to reimagine or reform the social safety net would be extremely difficult in today's political climate — and the ongoing controversies with on-demand companies at the local level only makes federal resolve to tackle this important issue all the more unlikely in the near-term. Therefore, we believe that cities or states should work to adopt new policy that will creatively inform a future federal change. Cities and states are certainly the laboratory of democracy, and that is particularly true as it pertains to building a new social safety net.

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CITY OR STATE PILOT PROJECTS (BENEFIT INNOVATION ZONES)

AS NOTED ABOVE, there are many questions to resolve about how to best design a portable benefits program. With federal action likely years away - yet the acute needs of non-traditional workers here today - piloting new ideas at the state or local level may be the best route to better understanding the policy challenges and market impacts. If companies are willing to support a system that provides benefits and protections,

we should make it easier for them to do so. Pilot programs will help policymakers see what might work, what workers need, what companies are willing to provide, and what other intermediaries might need to be formed to support and administer the benefits.

One idea is to create and pilot "Benefit Innovation Zones" that would allow for experimentation with different benefit and protection models. A local jurisdiction would need to legislate and allow on-demand economy companies (and potentially other non-platform employers of non-traditional workers) to experiment with providing or paying into benefit packages, training, and/or other workplace protections to their workers in pilot cities or states — "innovation zones" — without affecting the employment classification of those workers. Such a policy would not seek to shield companies from federal litigation and regulatory risk associated with all W-2 / 1099 classification issues, but would rather seek to reduce or remove the risk associated with provision of benefits specifically. Without a mandate, it may be challenging to convince companies to fully participate if the litigation risk remains significant.

Employment law exists at the Federal, state, and local levels, and is administered and regulated differently across the country. While only a federal law that pre-empts state and local rules would provide a perfect consistency and clarity of rules, it is possible that a combination of local legislation — whether they be city statutes in home rule states, state laws in non-home rule states, or some combination — and federal administrative guidance could lower risk enough to encourage companies to engage in experimentation. Further, the vast majority of litigation against companies is happening at the state level and relates to state wage and hour laws, so while reprieve at the state level would not eliminate all employment classification issues for companies, it would significantly reduce concerns. However, it is crucial that 'benefit innovation zones' do not undermine federal, state or local employment laws, nor force workers to trade employment protections for social protections. A number of key questions would need to be considered in addition to the checklist articulated above:

- Time limited? (perhaps 36-48 months)
- Regionally limited? (city, county, or state level — with care taken to consider issues of metropolitan areas that cross jurisdictional boundaries)
- What metrics will the pilot be judged by? (number of enrollees, utilization of benefits, randomized control trials, etc.)

CREATING A PORTABLE BENEFITS INNOVATION CHALLENGE

MOST SUPPORTERS OF PORTABLE BENEFITS agree that change is unlikely to happen quickly at the federal level, but that local action can seed innovation and help create workable solutions. But getting started in any individual jurisdiction can be daunting and challenging. Building on the Department of Labor's $100 million proposal to fund state-level pilots in portable benefits, we believe a Future of Work Community Challenge could be an important catalyst for creating the next social safety net ideas from the bottom up.

The Challenge would be designed for cities, counties, or states to build multi-sector teams to propose and — if chosen — develop a unique solution that would provide a safety net for non-traditional workers, one that maintains flexibility with stability and enables multiple income streams and portability between jobs. These criteria originate from a set of principles outlined in a November 2015 letter from 40 leaders called the "Common Ground For Independent Workers" letter[33] mentioned earlier in this paper. With $3-5 million in philanthropic support, we believe the Challenge could support 5 cities or states with developing and implementing their innovative ideas to pilot a new social safety net. Depending on the resources and the ambition, the Challenge could include:

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◦ FUNDING IDEA GENERATION AND POLITICAL SUPPORT

In this scenario, the grants would include enough resources to do everything up until implementation: planning, building local stakeholders network, economic analysis on model, and preparation for launch.

◦ FUNDING INITIAL PILOT BENEFITS AND PROTECTIONS

In this scenario, communities would need to fund startup costs themselves (build the coalition and the model) and be ready to launch — the grants would provide launch and early expansion capital.

33 "Common ground for independent workers: Principles for delivering a stable and flexible safety net for all types of work." Medium. 10 November 2015. Web. https://medium.com/the-wtf-economy/common-ground-for-independent-workers-83f3fbcf548f#.vydh2a12i

FUND TECH AND INFRASTRUCTURE

All of the future portable benefits models share a common reliance on developing a technology platform that mediates the relationship between customer (non-traditional workers), funder (worker, employer, etc.), and the benefits administrator (insurance company, etc.). Rather than have each pilot community separately develop a platform, the Challenge awards could fund a shared set of technology infrastructure.

PUBLIC-PRIVATE PARTNERSHIP WITH AN EXISTING PROVIDER

SEVERAL FOR-PROFIT VENTURES are moving more directly into the portable benefits market, and could present an interesting opportunity for partnership with state or local jurisdictions. Peers, Stride Health, and Freelancers Union each offer an entry point for non-traditional workers to access health care and increasingly retirement and other benefits — although it remains a narrow set of benefits when compared to traditional employer-employee benefits and remains self-funded by the non-traditional worker. Rather than creating a separate benefits organization — especially for a pilot project — it may be feasible to work with the Freelancers Union, Peers, Stride Health, or another organization to manage the accounts and administration of a pilot. Another option could be to work with an existing worker organization — such as a labor union — that already has experience administering benefits for a worker population. The biggest challenge here is likely scale — would a pilot include enough potential account holders to make it financially feasible for a partnership?

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MORE INFORMATION AND MORE INPUT: INITIAL STEPS SHORT OF A PILOT

OVER THE PAST SEVERAL YEARS, policymakers and thought leaders at the city and state

level have been engaging with on-demand companies and non-traditional workers on questions around regulatory permission, employment status, and benefits. While we believe pilot projects will provide the best opportunity to develop, test, and model solutions, there are a number of additional productive ideas for how cities and states can begin to engage on these issues and their own markets:

DATA ANALYSIS AND UNDERSTANDING THE MARKET

Initial data work from sources such as JPMCI show that there are some variations in how independent work and freelancers are incorporated into each regional economy, and that the on-demand sector is growing at different rates and in different ways in different cities.[34] That said, the data on any particular city or region remains scarce and the best data is often held by the on-demand companies themselves. An important first step could be to initiate a local data process. The Chief Economist for the City of San Francisco, for example, has been tasked by a member of his city council to review the data particular to San Francisco.

ADVISORY COUNCIL

A successful pilot project will require a robust discussion with key stakeholders within that community. One option for initiating this discussion is to create an "Independent Work Advisory Council" that would include a broad range of stakeholders from labor, workers, worker advocates, companies, and other policymakers. The National League of Cities created a "Sharing Economy Advisory Board" in 2014 that helped develop a guide for cities called "Cities, the Sharing Economy, and What's Next."[35]

INDEPENDENT WORK OMBUDSMAN

One step beyond the Advisory Council would be to create a position - part time or full time — that is focused on how to support non-traditional workers in a particular jurisdiction. The UK established an "ambassador for the self-employed" [36] and named David Morris to the position in 2014.

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34 JP Morgan Chase Institute. "The Online Platform Economy: Who Earns the Most?" Insights, Web. https://www.jpmorganchase.com/corporate/institute/institute-insights.htm#ope-most

35 Hirshon, Lauren, et al. "Cities, the Sharing Economy, and What's Next." Center for City Solutions and Applied Research at the National League of Cities. Nd. Web. http://www.nlc.org/find-city-solutions/city-solutions-and-applied-research/sharing-economy

36 Mail on Sunday, "David Morris MP becomes the first ever tsar for freelancers to be appointed." 22 November 2014. Web. http://www.thisismoney.co.uk/money/smallbusiness/article-2845393/David-Morris-MP-tsar-freelancers-appointed.html

ADVOCACY TO SUPPORT PUBLIC EFFORTS FOR PILOTS AND MORE EXPERIMENTS

THE LARGEST BUCKETS of resources to support possible pilot projects have been proposed through the President's budget request for the 2017 fiscal year — a $100 million grant fund from the Department of Labor and a $5 million grant fund from the Federal Conciliation and Mediation Services to fund state-level pilot projects for portable benefits. These funds would likely create significant momentum toward pilots on the ground, and serve as catalysts for local action. Absent support from a diverse group of stakeholders, these resources may not survive the Congressional budget process — but bipartisan support from Governors, Mayors, and other policymakers and stakeholders could help ensure at least some of these resources are dedicated to supporting pilots.

DESIGN POLICY BASED ON EARLY MODELS / SETTLEMENTS (IN PARTICULAR WITH UBER IN NEW YORK, CALIFORNIA AND MASSACHUSETTS)

WHILE NON-TRADITIONAL WORK is a long-standing trend, on-demand platforms are accelerating the rate of change and the rate of policy response. In April and May 2016, Uber tentatively settled class action lawsuits in California and Massachusetts agreeing to create a "Driver's Association" in each state, and separately announced a deal with the Machinists Union in New York to create an "Independent Drivers Guild" that will represent Uber drivers. While these are preliminary steps, they will likely be a framework for other cities to enable the creation of an independent association that could provide benefits and protections to specific classes of non-traditional workers. The challenge ahead will be to expand these guilds and associations to include not just multiple companies (e.g. Lyft as well as Uber) and multiple on-demand platforms (e.g. Lyft, Uber, Handy, and Instacart), but additional categories of contingent workers beyond the on-demand economy.

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⑥ Conclusion

WE HOPE THIS BRIEF HISTORY AND OVERVIEW of the questions policymakers must grapple with when considering portable benefits is helpful. The Aspen Institute Future of Work Initiative will gladly work with any city, state, or federal entity that is interested in experimenting with these models.

The future of work is coming fast, and it's more imperative than ever to think about social policy that protects workers and society as employment changes. Just as we as a nation created new standards of work when we moved from the fields into the factory, so must we prepare for a future with a new kind of work that isn't built around factories — or even traditional companies as we know it. The political will is growing, and a cross-sector constituency is prepared to work with these forward thinking policymakers to take us into the 21st century.

About the Authors

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Greg spent six years at the Obama White House as a senior leader in the economic policy, clean energy, technology, and strategic partnerships teams. During his tenure at the White House, Greg's policy portfolio included international trade, economic policy, and US participation in the G7 and G20, infrastructure, technology policy, clean energy, entrepreneurship, and startups. Greg was also the chief of staff at the National Economic Council for director Gene Sperling, and the deputy director of the White House Office of Public Engagement focused on public-private partnerships, including as deputy director of the President's Council on Jobs and Competitiveness. Prior to the White House, Greg helped build and sell a technology company, developed startups in energy and biomaterials, and consulted for businesses, nonprofits, and foundations. He holds a BA in political science and history from Yale University.

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For the past 15 years, Libby has worked across sectors to drive progress through multi-stakeholder collaboration. Currently an independent consultant, Libby advises a range of clients on strategy, marketing/communications and partnership development with a focus on the sharing/on-demand economy. Clients have included Peers.org, Crowd Companies, Institute for the Future and Yerdle.

Libby worked for eight years in leadership roles in Corporate Responsibility, Sustainability and Corporate Reputation at eBay Inc. and Visa Inc. In her first career chapter,

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Natalie co-founded and launched Peers.org to support people who work in the sharing and on-demand economy. Prior to Peers, she was the CEO and co-founder of Rebuild the Dream, a platform for people–driven economic change, with Van Jones.

Previously, Natalie served as digital director for President Obama's Organizing for America (OFA) and the Democratic National Committee. She built and directed the team responsible for the president's message and fundraising through social, mobile, and email communication with the President's millions of supporters.

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