

Testimony of  
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on  
“Unlocking Opportunity: Allowing Independent Contractors to Access Benefits”

before the U.S. House Subcommittee on Workforce Protections

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Chairman Kiley, Ranking Member Adams, and members of the Subcommittee, thank you for the opportunity to testify today on behalf of Flex and the U.S. app-based platform industry.

Flex is the voice of the app-based economy, representing America's leading app-based rideshare and delivery platforms—DoorDash, Grubhub, HopSkipDrive, Instacart, Lyft, Shipt, and Uber.

Flex applauds this Subcommittee's efforts to advance U.S. workforce policies that reflect today's economy. The app-based industry believes independent work should be strengthened for the 21st century.

Innovation has created new opportunities for independent work and has made it easier for workers to choose when, where, and how much they work—on app-based platforms and in industries across our economy. Our existing laws, however, create obstacles for the self-employed to access benefits traditionally provided to employees by employers.

When employers provide benefits to traditional employees—such as health insurance, retirement savings, or paid medical or family leave—those benefits are, to one degree or another, funded by and tied to a specific employer. That does not translate well to workers who choose to work outside of the traditional full-time employment model.

Portable benefits, on the other hand, are owned and controlled by the worker. Such benefits may be funded by 1) a worker directly, 2) one or more organizations that have contracted with the worker, or 3) some combination of the two.

For portable benefits to succeed for workers in the app-based economy, they must be:

- Flexible (workers should be able to choose the benefits they want or do not want to fund);
- Portable (benefit contributions should be tied to the worker so benefits can accrue across platforms); and
- Proportional (benefit contributions should be based on earnings).

This morning, I want to highlight three key issues that are fundamental to any discussion of portable benefits:

1. The many ways app-based platforms contribute to our economy, our communities, and those who earn on these platforms—and why flexibility is crucial to those earners;
2. How current laws hinder companies from offering benefits to independent workers; and
3. How portable benefits programs can work and how policymakers can support state-level portable benefits initiatives that are underway across the country.

## **The App-Based Industry's Positive Impacts Across Our Nation**

Every day, our member companies provide access to services that facilitate the movement of riders and delivery of crucial goods safely and efficiently. These companies are scaling

their platforms to help communities increase food access, improve health outcomes, and become more sustainable—while helping small businesses reach new customers and supporting economic growth across the country.

Collectively, these billions of rides and deliveries facilitated by our members contributed \$212 billion to U.S. GDP in 2022 and spurred a \$32 billion revenue boost for local businesses.<sup>1</sup> Consumers appreciate the value in both time saved (over 1 billion hours annually) and consumer surplus (\$11.5 billion), not to mention that app-based platforms are increasingly used to improve access to healthy food and medical appointments.<sup>2</sup>

Studies have also shown that app-based work boosts entrepreneurial activity. Rice University found a 7% to 12% increase in entrepreneurial interest after the arrival of rideshare platforms in a community, attributed to the safety net that app-based work provides while people pursue their goals.<sup>3</sup>

Independent work, like that enabled at scale by app-based platforms, has also helped millions—7.3 million in 2022 alone<sup>4</sup>—earn income on their own terms.

It is important to recognize that most app-based workers use these platforms on a part-time basis to supplement other income. It can also provide temporary or transitional income. One survey found that nearly two-thirds of app-based earners spend 15 or fewer hours/week earning with platforms, and that roughly half of app-based earners make less than 1/4th of their overall income from apps.<sup>5</sup>

### *The Rise in Independent Work.*

Independent work—that is, work outside the context of the traditional employer-employee model—is not new. However, independent workers represent an increasingly large portion of the workforce. Last year, freelance work reached an all-time peak, with an estimated 64 million Americans freelancing.<sup>6</sup> Three factors sparked this increase.

First, the internet has made independent work more available. From app-based platforms like those operated by our members to high-speed broadband and video conferencing, technology and digital connectivity has opened the door to more earning opportunities.

Second, app-based work has made flexibility more visible and accessible. Individuals have seized these new opportunities to work when, where, and how much they want—to scale

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<sup>1</sup> Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024) (“Public First Report”).

<sup>2</sup> *Id.*

<sup>3</sup> John M. Barrios et al., [Launching with a parachute: The gig economy and new business formation](#), JOURNAL OF FINANCIAL ECONOMICS (April 2022), Volume 144, Issue 1, 2022.

<sup>4</sup> Public First Report.

<sup>5</sup> Flex Association, [Survey Finds App-Based Work Crucial to Mitigate Inflation: Majority Prefer to Remain Independent](#) (May 1, 2023) (“Flex 2023 Survey”). Another poll found that “81% of rideshare and delivery drivers combine app-based work with other income, responsibilities, or are retired.” See Public First Report.

<sup>6</sup> Upwork Research Institute, [Freelance Forward 2023](#).

their income at their own discretion—and have proclaimed its advantages. In fact, 83% of app-based workers would recommend it to friends and family.<sup>7</sup>

As noted above, the majority of app-based workers choose this work to earn additional or supplemental income. For some, app-based work offers transitional income to start their own business. For others, app-based work has helped them deal with inflation; indeed, 85% say that their app-based earnings have helped them deal with rising costs.<sup>8</sup>

Finally, for some, a typical W-2 job doesn't work. Employers across the U.S. have nearly 9 million job openings right now,<sup>9</sup> while the unemployment rate has hovered below 4% for the longest continuous stretch in decades.<sup>10</sup> Such interest in app-based work shows that people choose independent work because it fits well with their preferences and needs—not because traditional employment roles are unavailable.

While technology is fueling more opportunities for flexibility in all types of work, many Americans want or need more control over their time than they can get from traditional employment.

### *The Importance of Flexibility for Independent Workers.*

The flexibility of independent work is particularly important to workers who choose to earn via app-based platforms. According to a recent survey, 90% of app-based workers chose to drive or deliver through rideshare or delivery platforms for the flexibility.<sup>11</sup> Half say they would **not** trade that flexibility for a fixed-schedule job that comes with a 50% pay increase.<sup>12</sup>

For many, the flexibility that app-based work provides is not just desirable, but is a necessity, as health conditions, caregiving responsibilities, and other realities make the rigidity of a traditional W-2 job incompatible with their personal lives.<sup>13</sup>

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<sup>7</sup> Flex, [New Morning Consult Poll Shows 77% of App-Based Workers Prefer to Remain Independent Contractors](#) (Oct. 24, 2022).

<sup>8</sup> Flex 2023 Survey.

<sup>9</sup> Josh Schafer, [Job openings data shows US labor market remains 'quite healthy'](#) Yahoo Finance (April 2, 2024). Just last month, Jared Bernstein, the chair of the White House's Council of Economic Advisers noted, "[W]e are certainly hovering around full employment." Neil Irwin, Courtenay Brown, [Biden economists' glowing message: Full employment and less inflation](#), Axios (March 21, 2024).

<sup>10</sup> Scott Horsley, [U.S. unemployment has been under 4% for the longest streak since the Vietnam War](#), NPR (Jan. 5, 2024).

<sup>11</sup> Public First Report.

<sup>12</sup> "According to our survey, exactly half of driver and delivery partners would rather be able to choose their own hours, than receive a 50% increase in earnings with a fixed schedule." *Id.*

<sup>13</sup> See also, e.g., Chamber of Progress, [The Many Ways Americans Work and The Costs of Treating Independent Contractors as Employees](#) (April 6, 2022) (finding that "[n]early 1.52 million people—46 percent of those reclassified—chose independent contracting because disabilities, chronic illness, or family responsibilities precluded working in traditional jobs. Involuntary reclassification would cost those vulnerable people an average of \$20,759 across full-time and part-time contractors for direct income losses totaling an estimated \$31.4 billion.").

It should come as no surprise, therefore, that surveys repeatedly show that independent workers prefer to retain their independent contractor status. The first national survey specific to app-based workers recently found that 77% preferred that to traditional employment.<sup>14</sup>

In the app-based economy, this bears itself out in the data. For instance, in 2022, roughly 70% of Instacart’s shoppers were women, half of whom are parents.<sup>15</sup> In balancing other responsibilities, full-time employment—or even part-time employment without scheduling flexibility—can be a non-starter for such individuals. As the New York Times noted last year, finding work on app-based platforms “offers something that traditional permanent employment still generally doesn’t: the ability to work when and as much as you want, demand permitting, which is often essential to balance life obligations like school or child or elder care.”<sup>16</sup>

## **Why Independent Work Offers Greater Flexibility than Employment**

So, why is independent work so much more flexible than W-2 employment? Much of it has to do with our employment laws.

Traditional employment laws require companies to track and control hours of most non-salaried workers. Employers who fail to do so face substantial liability. Because of these legal constraints, hourly employees rarely have opportunities to choose when, where, and how much they work, and when they do have such an opportunity, it is limited in scope.

Independent work, on the other hand, provides flexibility and autonomy beyond what is possible in a traditional employer-employee relationship. This ultimate flexibility is particularly true of app-based work. For instance, if you are earning on an app-based platform today, you:

- are not obligated to accept any delivery/ride opportunities—you may choose which offers to accept;
- do not have to log on for any amount of time or at a particular time;
- can “multi-app”—pursue earning opportunities via multiple app platforms—at your complete discretion;
- can change the geographic area where you earn without any prior approval; and
- work as much or as little you want, when you choose.

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<sup>14</sup> See, e.g., Flex, [New Morning Consult Poll Shows 77% of App-Based Workers Prefer to Remain Independent Contractors](#) (Nov. 2, 2022).

<sup>15</sup> Alexandra Sternlicht, [Instacart CEO Fidji Simo says independent contractor gig work helps moms earn money on their own schedules](#), FORTUNE (Oct. 12, 2022).

<sup>16</sup> Lydia DePillis, [If the Job Market Is So Good, Why Is Gig Work Thriving?](#), NEW YORK TIMES (Aug. 15, 2022, updated June 22, 2023).

In simple terms, there are tradeoffs between W-2 employment and independent work. The CEO of Alto, a carshare service that hires drivers as employees and allows riders to call rides using an app, captured these tradeoffs succinctly last year:

“[O]ne big pushback we get is that we’re more expensive, your product serves a different customer base and that is true. . . . *In exchange for that extra cost, what I need is some level of predictability for us, I need to be able to know that people are going to show up for their shift, so that I can count on that and deliver my product to my customer.* I’m willing to find ways to create flexibility within some framework, but it can’t be I wake up this morning and I decide that I’m not going to work for Alto today or I want to work tomorrow but I didn’t tell you about that until this afternoon. There just are trade-offs.”<sup>17</sup> (emphasis added)

This was echoed by an Alto general manager noting the company’s employees are “not gig economy workers that show up whenever they feel . . . they have hours that correlate with the schedule they signed up with.”<sup>18</sup>

## **How Current Laws Discourage Providing Benefits to Independent Workers**

One of the trade-offs facing workers is that full time W-2 employees generally have greater access to benefits, such as healthcare, retirement, and paid leave through the employment relationship.<sup>19</sup> So, why is that?

First, federal and state employment laws play a role. These laws rely on a multi-factor analysis to determine whether a worker is an employee or an independent contractor;<sup>20</sup> and courts may consider the provision of benefits by a company as a factor weighing in favor of employee status. But because misclassifying a worker as an independent contractor—even unintentionally—can trigger liability, a company choosing to provide independent workers with benefits could open itself up to substantial legal risk.

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<sup>17</sup> Aspen Institute Economic Opportunities Program, [Good Work in the Gig Economy: Building a Sustainable App-Based Economy](#) (Aug. 8, 2023).

<sup>18</sup> Decerry Donato, [A Ride Along with the Only Rideshare Company Treating Its Drivers as Employees](#), Dot.LA (Jan. 6, 2023).

<sup>19</sup> Of civilian full-time workers, 82% get access to retirement benefits, 89% get access to medical care benefits, 74% get access to life insurance, and 89% get access to paid leave. Of civilian part-time workers, 44% get access to retirement, 25% get access to medical care benefits, 16% get access to life insurance, and 51% get access to paid leave. Bureau of Labor Statistics, [Employee Benefits in the United States – March 2023](#) (September 21, 2023).

<sup>20</sup> For example, most courts and regulators use the economic realities test to determine employee status for purposes of the Fair Labor Standards Act—an analysis that considers the circumstances of a working relationship across six factors. However, as the GAO has noted, “No definitive test exists to distinguish whether a worker is an employee or an independent contractor. The tests used to determine whether a worker is an independent contractor or an employee are complex, subjective, and differ from law to law. For example, the National Labor Relations Act, the Civil Rights Act, the Fair Labor Standards Act, and the Employee Retirement Income Security Act each use a different definition of an employee and various tests, or criteria, to distinguish independent contractors from employees.” U.S. Government Accountability Office, [Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification](#) (May 8, 2007).

Many—including app-based platforms<sup>21</sup>—have expressed concern that this current legal rubric means that individuals working as independent contractors will have less access to benefits like those commonly provided to employees.

A second hurdle is that conventional benefits are tied to the employer rather than the employee. This model simply does not work for independent workers.

Individuals working as employees who are offered access to healthcare, retirement, and other benefits during the tenure of their employment with a given employer must access those benefits through that employer. In other words, if an individual leaves employer A to work for employer B, they no longer have access to the benefits employer A had provided—such as coverage under their healthcare plan or receipt of 401(K) contributions—and may only access the benefits provided by employer B.

This model is inconsistent with the nature of independent work because individuals earning income as independent contractors are free to engage in any number of working relationships at any given time, with any number of entities, and at the duration of their choosing.<sup>22</sup> Therefore, a benefits framework for independent workers inherently must be attached to and follow the worker across their working arrangements.

Furthermore, a portable benefits model must be constructed upon a mechanism that allows a worker to accumulate benefits with any number of entities with which they engage and tied to some measurable value of output per platform. For example, in the case of an app-based worker, benefit contributions could be tied to a specified amount of earnings per platform.

Finally, a portable benefits model must preserve the flexibility of independent work. As previously discussed, employer-provided benefits are governed by a legal framework that discourages businesses from providing non-employees with workplace benefits.

Portable benefits proposals must be designed in a way that removes this potential liability and allows the unprecedented flexibility of independent work to continue. And here is where we will need Congress' help.

## **Policy Considerations: Increasing Access to Benefits for Independent Workers**

We believe the first step towards a remedy is recognizing the value of independent work and the importance of access to such opportunities for individuals across the country.

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<sup>21</sup> See, e.g., Jeremy Bird, Lyft Chief Policy Officer, [Independence and benefits for app workers? We just did in Washington state](#), The Hill (May 24, 2023); Shipt, [Flexible schedules and flexible benefits: A New model would boost financial security for shoppers while preserving independence](#) (Oct. 12, 2023); Dara Khosrowshahi, [I Am the C.E.O. of Uber. Gig Workers Deserve Better](#), N.Y. Times (Aug. 10, 2020).

<sup>22</sup> Many workers earning income on platforms do so across more than one app. On major app-based rideshare and delivery platforms, for instance, individuals “multi-app” or drive/deliver for an average of 1.9 platforms. Public First Report.

The second step is considering how best to increase independent earners' access to benefits while preserving the autonomy and flexibility of independent work—including clearing the way for more state-level portable benefit initiatives and pilot programs.

From the bipartisan and bicameral bill from Sens. Mark Warner and Todd Young and Rep. Suzan DelBene to test portable benefits programs to the similarly bipartisan and bicameral Retirement Savings for Americans Act, there is increasing recognition that we should pursue policies that increase access to benefits for individuals working as independent contractors.

There are a number of policy rationales for doing so—including boosting economic mobility and supporting the diverse set of individuals who have chosen independent work because it offers them a way to come off of the economic sidelines on their terms. Most importantly, doing so reflects worker preferences and marketplace dynamics, where workers have stated a strong preference to retain the flexibility of independent work.

The concept of portable benefits has drawn support from a remarkably diverse set of stakeholders. For instance, a group ranging from SEIU Local 2015 President (and now U.S. Senator) Laphonza Butler to the CEO of New America to the President of American Action Forum were signatories in 2015 to a set of principles for portable benefits.<sup>23</sup> Last year, Flex announced principles for federal legislation to provide portable benefits, marking the first time the app-based industry has reached consensus on a national approach to provide app-based workers with benefits.<sup>24</sup>

*Overview of Portable Benefits.* While differences may exist between specific models, all portable benefits concepts generally share certain characteristics. These include:

- Flexible (workers should be able to choose the benefits they want or do not want);
- Portable (benefit contributions should be tied to the worker so benefits can accrue across platforms); and
- Proportional (benefit contributions should be based on earnings).

These principles distinguish portable benefits from traditional employee benefits where set benefits are tied to and offered by an employer as part of an employment relationship. Fundamentally, a portable benefits model must preserve the flexibility of independent work. Because, as previously discussed, employer-provided benefits are governed by a legal framework that discourages businesses from providing non-employees with benefits and are in practice generally incompatible with the nature of independent work.

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<sup>23</sup> See, e.g., Portable Benefits, [Common Ground for Independent Workers](#), Medium (Nov. 10, 2015). See also New York City Public Advocate Jumaane D. Williams, [A White Paper on Protecting Workers Classified as Independent Contractors](#) (May 2022) (calling on New York State to “create a portable benefits program that would extend key benefits to those who would retain contractor status following the implementation of said standards.”).

<sup>24</sup> Flex, [Flex Announces Principles for Federal Legislation to Provide Portable Benefits for App-Based Workers](#) (June 28, 2023).



*Supporting State Level Portable Benefits Initiatives.* We recognize that a federal portable benefits framework will take time and close examination of the issues. In the meantime, Congress can act to facilitate state experiments with portable benefit frameworks.<sup>25</sup>

App-based companies are also actively experimenting with portable benefits initiatives at the state level as a proof of concept. Just last week, for instance, DoorDash launched a new portable benefits savings pilot program in partnership with Pennsylvania Governor Josh Shapiro that will demonstrate how Dashers could accrue funds to support expenses related to health insurance, retirement, and paid time off.<sup>26</sup> In launching this program, the company noted that its partnership with the Shapiro administration is focused on finding solutions “that don’t force workers to choose between structured employment with benefits or flexible work without.”

And there is more to do with your help. Congress can support these state efforts by clarifying that a company’s contributions to a portable benefit program authorized by state law may not be used as a factor in determining whether a worker is an independent contractor or employee.

This would not protect companies from liability if they are found to have misclassified employees as independent contractors for other reasons, it would simply mean that a company’s participation in a portable benefits program may not be used in misclassification determinations. Companies looking to improve on the status quo and enhance independent work should not be penalized.

Your continued leadership is needed now more than ever to support these efforts that help all workers access the benefits they may want while preserving the value and freedom of independent work.

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Thank you again for the opportunity to testify today. Flex looks forward to working with you to support all workers in our 21<sup>st</sup> century economy. Our industry is committed to meeting the needs of today’s workforce, especially as the future of work continues to evolve.

With portable benefits, millions could gain access to a new benefits framework while maintaining the flexibility they want from independent work—like those opportunities enabled by app-based work.

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<sup>25</sup> Several states are working on portable benefit programs, including Kentucky (H.B. 465), Massachusetts (H.B. 1848 and H.B. 961), Minnesota (HF 4447), Pennsylvania (S.B. 967), Utah (SB233), Washington (H.B. 2076), and Wisconsin (S.B. 559).

<sup>26</sup> DoorDash, [DoorDash Announces Portable Benefits Savings Program for Dashers in Pennsylvania](#) (April 3, 2024).