



June 26, 2024

The Honorable Bill Cassidy
Senator
455 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Request for Information on Portable Benefits for Independent Workers

Dear Senator Cassidy:

On behalf of Chamber of Progress – a tech industry coalition promoting technology’s progressive future – I write in response to your request for information on portable benefits for independent workers. We are strong supporters of policies that protect opportunities for the millions of app-based gig workers around the country.

New ways of working require new ways of thinking about benefits. The increasing popularity of app-based work, freelance work, and other forms of non-traditional employment also means that traditional benefits systems, like employer-sponsored insurance and retirement plans, may no longer serve the needs of workers. In order to meet the needs of an evolving workforce, companies and governments should be empowered to explore portable benefits programs. For app-based workers, who value the flexibility afforded by gig work, effective portable benefits programs would allow them to accrue benefits while working across multiple platforms or balancing multiple forms of employment and preserve their ability to work when and where they choose.

While our comments focus on app-based gig workers, app-based work represents only a subset of independent jobs available. Entrepreneurs, freelancers, and workers in other non-traditional jobs would all benefit from access to portable benefits. Further, many app-based workers do not exclusively work on app platforms—many also work traditional W-2 jobs, run their own businesses, or take on other, non-app-based gig work. To be effective, portable

benefits programs should be available to all independent workers irrespective of the industry or platform they work on.

I. Independent contractor status reflects the desires of workers and provides benefits that are not compatible with employee status

App-based gig workers have consistently reported that they want to remain independent. In a 2022 poll, 77% of app-based workers supported maintaining their status as independent contractors.¹ Nationwide, 36% of app-based workers work full time (more than 30 hours per week) in addition to their gig work, and 20% are balancing unpaid caregiver responsibilities.² App-based workers also consistently report that the ability to set their own hours, work across multiple platforms, and work when and where they want are the benefits they value most.³ These benefits would be threatened or eliminated if app-based workers were reclassified as employees.

Fortunately, recently enacted statewide laws suggest that the debate has moved on from whether gig workers should be reclassified as employees. Instead, policymakers have shifted to exploring ways to improve wages and extend benefits to gig workers while protecting their independent status. California, Washington, and New York have adopted legislation extending benefits like sick leave, health insurance stipends, and workers' compensation for different groups of app-based workers. Each of these policies also confirmed that app-based workers who received these benefits would still be considered independent contractors. These compromise approaches reflect the desires of gig workers—not to eliminate gig work, but to make it better.

II. Portable benefits can improve gig work without sacrificing the other benefits workers value

Portable benefits programs are another alternative for states and companies to improve gig work without eliminating other benefits workers value. While state laws extending benefits to certain categories of app-based workers have been beneficial, their effects are often limited to app-based workers who consistently work in one industry. Further, one of the benefits of app-based work is the geographic flexibility—workers can choose to work wherever the app is available.

¹ <https://www.flexassociation.org/post/mcworkersurvey>

² <https://www.flexassociation.org/wp-content/uploads/2024/03/Flex-Economic-Impact-Report-2024.pdf>

³ <https://www.flexassociation.org/wp-content/uploads/2024/03/Flex-Economic-Impact-Report-2024.pdf>

In many areas, delivery or rideshare drivers might cross state lines multiple times to complete a job, making it difficult to accrue state-specific benefits.

Portable benefits accounts would provide app-based and other self-employed workers the ability to accrue benefits without sacrificing the flexibility and autonomy they value. For app-based workers in particular, who often work across multiple platforms, industries, and states, portable benefits programs could create more opportunities to accrue and apply benefits. In fact, survey results show that approximately 80% of self-employed workers would support voluntary portable benefits programs.⁴

III. States and companies have started experimenting with portable benefits models and should be encouraged to continue to do so

While laws in California and Washington enabled some categories of gig workers to receive stipends for portable health plans, Utah was the first state to implement a statewide benefits program. Since 2018, lawmakers in at least nine more states – Alabama, California, Connecticut, Georgia, Massachusetts, New Jersey, New York, Washington, and Vermont – have introduced legislation to establish portable benefits programs for gig workers, create funds for innovation, or study related issues.⁵ These bills also address workers' compensation, health insurance, paid time off, and retirement benefits. States and localities are exploring various portable benefits models to ensure that workers are not limited to choosing between structured employment with benefits and flexible work without benefits.

After passing SB 233 last year,⁶ Utah became the first state to implement a statewide portable benefits program through a partnership with Stride, a benefits provider and official partner of Healthcare.gov.⁷ Stride is partnered with over 100 companies, including Uber, Amazon, DoorDash, Instacart, Grubhub, Patreon, Care.com, Gusto, Gopuff, TaskRabbit, Recording Academy, Shipt, and ShiftKey, working to provide gig workers with benefits.

Utah's first-of-its-kind public-private model allows Utah gig workers to receive health coverage, paid time off, long-term savings, and other benefits through a

⁴ <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.34.1.170>

⁵ <https://www.ncsl.org/labor-and-employment/portable-benefits-for-gig-workers>

⁶ <https://le.utah.gov/~2023/bills/static/SB0233.html>

⁷ <https://www.prnewswire.com/news-releases/stride-launches-first-ever-independent-worker-contributions-program-for-portable-benefits-302106507.html>

portable benefits savings account without stripping them of their independent contractor employment status. Utah Governor Spencer Cox praised the program, noting that “from gig employees to traditional entrepreneurs, Utah workers and companies will have newfound flexibility with this portable benefits tool.”⁸ Additionally, in Utah’s most recent legislative session, legislators introduced S.B. 238 to establish an “independent contractor benefits tax credit” as an additional way to obtain portable benefits.⁹

Also this year, DoorDash teamed up with Stride to introduce a portable benefits savings pilot program, Stride Contributions, in Pennsylvania.¹⁰ This inaugural program allows companies employing independent workers to deposit funds into individual customizable portable benefits savings accounts. Workers can use these funds for health insurance, other insurance coverage, and financial benefits such as emergency savings, time-off, sick leave, and long-term savings.

Pennsylvania Dashers earning at least \$1,000 in the second quarter of the year on the platform, excluding tips, are also eligible to open a Stride Save account in which they receive deposits equal to 4% of their pre-tip earnings and can contribute personal funds. DoorDash is the first company to use Stride Contributions, which are tailored for those who work across multiple platforms. Governor Josh Shapiro praised this pilot program as a “positive step forward,” providing workers “greater access to benefits.”¹¹

Similar proposals have floated around in other states including Massachusetts, Minnesota, New Jersey, Virginia, West Virginia, and Wisconsin.¹² In 2022, New Jersey lawmakers introduced A. 789/S. 328 to establish a system of “portable benefits for workers who provide services to consumers through contracting agents.”¹³ Massachusetts legislators are currently considering H.B. 961, which would establish “portable benefit accounts for app-based-delivery drivers.”¹⁴

The increasing momentum behind portable benefits initiatives across many states reflects the need to address the evolving needs of workers in a changing

⁸ <https://senate.utah.gov/utahs-innovative-portable-benefits-legislation-paves-the-way-for-strides-launch-of-first-ever-portable-benefits-contributions-program/#:~:text=%E2%80%9CFrom%20gig%20employees%20to%20traditional,legislative%20approach%20to%20employee%20benefits.%E2%80%9D>

⁹ <https://le.utah.gov/~2024/bills/static/SB0238.html>

¹⁰ <https://www.prnewswire.com/news-releases/stride-launches-first-ever-independent-worker-contributions-program-for-portable-benefits-302106507.html>

¹¹ <https://about.doordash.com/en-us/news/pa-portable-benefits-pilot>

¹² <https://www.iwf.org/2024/04/15/pa-doordash-drivers-portable-benefits/>

¹³ <https://www.njleg.state.nj.us/bill-search/2022/A789>

¹⁴ <https://malegislature.gov/Bills/193/HD3456>

employment landscape. Moving forward, continued support and encouragement of portable benefits initiatives and models are crucial to ensure that all workers, regardless of their employment status, can access essential protections and opportunities for a more sustainable and equitable workforce.

IV. The federal government can support experimentation with portable benefits programs

As states and the private sector continue to explore different portable benefits models that best serve the interests of workers, the federal government should support experimentation and eliminate rules that disincentivize companies from participating in benefits programs for independent contractors.

There is a bipartisan, bicameral effort to provide federal funding to study the efficacy and implementation of portable benefits programs. The *Portable Benefits for Independent Contractors Pilot Program Act* (S. 1696/H.R. 3482), sponsored by Senators Warner and Young and Representative DelBene, would establish a grant fund for the Department of Labor to disperse to portable benefit pilot programs.¹⁵ The grants would support states, local governments, and non-profits looking to design, implement, and evaluate new or existing programs for independent workers. This flexible model would allow interested entities to explore and perfect portable benefits programs.

The federal government should also clarify rules that disincentivize companies from participating in benefits programs. Courts can apply a number of multi-factor tests in order to determine whether a worker has been appropriately classified as an independent contractor. In some cases, that multi-factor test includes whether the worker receives certain benefits, including leave and retirement benefits.¹⁶ This test discourages companies from providing benefits to independent contractors, even when they are properly classified, in order to avoid liability for misclassifying workers.

The federal government can correct this disincentive. Congress can and should take action to clarify that participation in portable benefits programs should not be a factor when evaluating workers' employment status. Further, Congress should explore methods to incentivize companies to contribute to portable

¹⁵ <https://www.congress.gov/bill/118th-congress/house-bill/3482?q=%7B%22search%22%3A%22The+Portable+Benefits+for+Independent+Workers+Pilot+Program+Act%22%7D&s=2&r=1>

¹⁶ <https://www.gao.gov/assets/gao-07-859t.pdf>

benefits accounts, including by affirming workers' independent status. Incentivizing corporate contributions to portable benefits accounts would allow workers to accrue meaningful benefits and ensure their accounts remained solvent. Eliminating liability risk for companies looking to make benefits contributions would also discourage a race-to-the-bottom approach to the treatment of independent contractors and encourage competition, to the benefit of workers.

V. Conclusion

As the nature of work evolves and more Americans turn to self-employment and gig work, workplace benefits should also evolve. App-based gig work and other forms of non-traditional work can give people more freedom and autonomy over their time and income. While these non-traditional work arrangements remain popular, the federal government can take action to make them even better by promoting the use of portable benefits programs.

States, local governments, and companies have already begun experimenting with different program models that respond to the needs of workers without sacrificing other benefits they value. In order to support this experimentation and reward companies looking to increase benefit options, Congress should move forward with the *Portable Benefits for Independent Contractors Pilot Program Act*. Congress should also work to eliminate rules that disincentivize the provision of benefits and explore ways to provide affirmative incentives for companies to contribute to portable benefits programs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth Whittaker', with a stylized, cursive script.

Ruth Whittaker
Director of Civic Innovation Policy