

From the Desk of Liya Palagashvili

June 26, 2024

The Honorable Bill Cassidy
Dirksen Senate Office Building
Washington, DC 20002

Dear Senator Cassidy:

This letter is in response to your request for feedback on ways to modernize federal law to allow independent workers access to portable benefits such as retirement and health care. I am grateful for the opportunity to discuss my research on independent workers and portable benefits in response to this request. I am a labor economist at the Mercatus Center at George Mason University and a member of the Data Users Advisory Committee for the US Bureau of Labor Statistics. I study the independent workforce and the changing nature of work. My research on flexible benefits for independent workers has motivated state legislative reforms over the past year, and I will be sharing those insights.

I begin my letter with a brief overview of the independent workforce and the shortcomings of independent work, then present proposals for reforms in three areas:

1. Reforms to legalize access to benefits for independent workers
Key recommendation: Stipulate that no federal agency can use the presence of benefits to determine whether a worker is an independent contractor or an employee.
2. Reforms to encourage savings for independent workers
Key recommendation: Create tax-advantaged universal savings accounts (USAs) to enable flexible savings options for independent workers.
3. Reforms to enable better access to healthcare benefits for independent workers
Key recommendations:
 - a. *Reform association health plans (AHPs) to allow all self-employed workers to join together under a broadly defined “commonality of interest” for the purposes of buying health insurance.*
 - b. *Improve individual coverage health reimbursement arrangements (ICHRA) to allow for self-employed workers to use pretax dollars to purchase health insurance on the individual market.*
 - c. *Expand health savings accounts (HSAs) to create a more flexible definition for HSA-eligible plans so that self-employed workers could have greater access to tax-advantaged savings options for health expenses.*

Overview of the independent workforce and the shortcomings of independent work

More than one-third of Americans now earn income through some form of independent contracting, freelancing, or “gig” (temporary and on-demand) work. For some individuals, this work provides supplemental income to help meet their financial needs. In other cases, it provides job opportunities for those who might otherwise have remained outside the workforce. Independent workers are diverse: They are found across a wide range of industries, skill levels, and educational attainment—for example,

they can be freelance creatives or knowledge-work professionals, medium-skilled contractors, gig workers, high-skilled consultants, self-employed merchants or sellers, and entrepreneurs.

To better meet the needs of the independent workforce, it is first important to understand the nature of independent work. Below I share some data from my research on independent workers:¹

- The independent workforce is growing, especially in professional, scientific, and technical services and healthcare.
- A significant majority (79 percent) of independent workers prefer nontraditional over traditional work arrangements. Fewer than 1 out of 10 would rather be employees.
- Approximately 73 percent of individuals engaged in independent work do so because of the increased flexibility their work arrangement offers.
 - Workers state that independent work gives them the flexibility to be more available as a caregiver for their family or say it gives them flexibility to address personal mental or physical health needs.
- Women are driving the growth of this workforce, primarily because they require flexible work arrangements when they become mothers and caregivers.
- Some 80 percent of independent workers said that they would like flexible, shared, or portable benefits—benefits that are not tied to a particular employer and can travel with the worker.
- The majority of gig workers on platforms such as Uber, Lyft, DoorDash, and InstaCart are supplementary earners who have full-time employment elsewhere.
- Independent workers turn to nontraditional work to smooth temporary income shocks after they have faced income declines or unemployment.

While most independent workers do not want to become employees, preferring the flexibility their independent work affords, they do want access to flexible or portable benefits that can move with them from one employer to another. However, laws written almost 100 years ago prohibit and discourage common workplace benefits from moving with these workers. Current labor laws and policies are built around two primary paths of work. The first is through traditional employment, which comes with traditional benefits but often without the independence and flexibility that many workers desire or (for personal reasons) require. The second is through independent work, legally classified as independent contracting, which provides flexibility and independence but omits common workplace benefits.

With the right set of reforms, policymakers can help address some of the shortcomings and limitations of independent work by allowing independent workers to have access to portable or flexible benefits.

Reforms to legalize access to benefits for independent workers

Key recommendation: Stipulate that no federal agency can use the presence of benefits to determine whether a worker is an independent contractor or an employee.

Our current regulatory framework restricts and thus discourages organizations from providing independent contractors with benefits. When organizations provide benefits other than compensation to their independent contractors, they risk workers being reclassified as employees, which means higher costs, misclassification fees, and additional hurdles for both companies and workers who often *desire* the contracting relationship over an employment one. Therefore, there is no middle-ground option for workers to both be contractors and to also have access to benefits. Legalizing access to benefits by removing these barriers and allowing companies to voluntarily provide a “menu” of

¹ Liya Palagashvili, “Understanding Nontraditional Work Arrangements and the Policy Landscape for Self-Employed and Gig Workers,” American Enterprise Institute, July 2023.

benefits—which would vary, depending on the companies’ resources—would provide independent workers with some access to benefits.

In fact, states are now beginning to experiment with portable benefits models. Last year, Utah passed a bill, inspired by my research study, that removed the presence of benefits as a factor in worker classification tests. This legal change paved the way for Utah’s first voluntary benefits contribution program, created in April 2024, by Stride and Target’s Shipt. The program will allow independent workers to receive health coverage, paid time off, long-term savings, and other benefits typically extended to traditional employees.

The challenge is that despite these state efforts, companies are under the jurisdiction of federal agencies like the Department of Labor (DOL) and Internal Revenue Service (IRS), which still treat the presence of benefits as part of the worker classification test, and thus create a large risk and associated penalties for companies wishing to provide benefits to independent contractors. This past year, I co-lead the Utah Flexible Benefits Working Group under the leadership of Utah State Senator John Johnson. One of the key takeaways from our work was that the biggest barrier to flexible benefits implementation in Utah was fear from the federal level. Companies were discouraged from providing benefits to independent contractors in Utah, regardless of state law, because they could still be penalized by the IRS or the DOL under existing federal regulations. Federal policy can legalize access to benefits for independent contractors by removing these barriers and explicitly stating that no federal agency can use the presence of benefits to determine whether a worker is an independent contractor or employee.

Reforms to encourage savings for independent workers

Key recommendation: Create tax-advantaged universal savings accounts (USAs) to enable flexible savings options for independent workers.

Independent workers have limited access to employer-sponsored retirement benefits and traditional savings platforms. More than half of all independent workers do not have access to an employer-sponsored retirement savings plan.

In a recent nationwide survey, MIT economist Jonathan Gruber found that Uber drivers prefer retirement savings over other forms of benefits.² But the survey also found that there was a wide range of benefits that drivers would like access to, thereby reflecting the diversity of needs among members of Uber’s independent contractor workforce. One of the study’s main findings was that Uber drivers valued flexible benefits accounts, which could be used to fund medical and health insurance expenses, retirement benefits, or other types of benefits.

Flexible savings accounts of this kind are generally referred to as universal savings accounts (USAs). USAs are common in some Western countries, such as the United Kingdom and Canada, and are now gaining attention among US policymakers. USAs are tax-advantaged accounts that allow after-tax contributions up to an annual limit.

Economist Adam Michel describes that the key advantage of USAs is that unlike existing types of retirement accounts, USAs would allow tax-free withdrawals at any time for any purpose, without penalties, and would have no restrictions on how the savings could be used—for retirement, paid-time-off, emergencies, creating a business, or other reasons.³ Withdrawals from the USA would be completely tax-free, since the contributions would have already been taxed. This would avoid the

² Jonathan Gruber, “Designing Benefits for Platform Workers” (NBER Working Paper Series 29746, National Bureau of Economic Research, Cambridge, MA, February 2022).

³ Adam N. Michel, “Universal Savings Accounts: A Flexible Financial Tool to Support the Gig Economy,” The Center for Growth and Opportunity, Policy Paper 2020.007, July 2020.

double taxation that normal taxable investment accounts face: first paying income tax on the contributed dollars and then paying capital gains and/or dividend taxes on any investment earnings.⁴

While USAs would benefit all workers, they would be especially valuable to independent workers for the following reasons:

- No tie to an employer is required, which suits the nature of independent contractors who often work with many different clients and companies at a time.
- Independent work often involves fluctuating pay and income instability, and independent workers may need access to savings during periods of low income. Existing retirement accounts penalize early withdrawals before retirement age. The ability to withdraw from USAs penalty-free makes the USA attractive for volatile income situations.
- USAs are flexible; the funds can be used for paid time off, health insurance premiums, or other needs, depending on the individual worker.

Organizations that hire independent workers could make contributions to USAs provided a stipulation prevents contributions from being used as a factor in worker classification tests. Ultimately, USAs would aim to provide a better savings vehicle for independent workforce.

Reforms to enable better access to healthcare benefits for independent workers

Key recommendation #1: Reform association health plans (AHPs) to allow all self-employed workers to join together under a broadly defined “commonality of interest” for the purposes of buying health insurance.

Key recommendation #2: Improve individual coverage health reimbursement arrangements (ICHRA) to allow for self-employed workers to use pretax dollars to purchase health insurance on the individual market.

Key recommendation #3: Expand health savings accounts (HSAs) to create a more flexible definition for HSA-eligible plans so that self-employed workers could have greater access to tax-advantaged savings options for health expenses.

Health insurance coverage for independent contractors is often a legitimate concern. Some independent contractors are supplemental earners and have access to health insurance through their full-time job; others may have health insurance from other means, such as through a spouse or Medicare. Generally, however, self-employed workers are more likely to be uninsured than employees of companies. Jonathan Gruber’s survey found that 77 percent of Uber drivers have health insurance (compared to 89 percent for workers nationally), and among that group, 52 percent receive their insurance either through their primary employer or through a family member’s employer.⁵

Reforms to healthcare benefits should focus on making it easier and less costly for independent workers to purchase and access healthcare benefits. Following are proposals highlighted by the Paragon Institute for three types of health care benefits reforms, which I believe could be valuable for independent workers.⁶

1. Reform association health plans (AHPs) to enable small businesses and self-employed workers (without their own employees) to join together under a “commonality of interest,” including any broadly defined common geography. In 2018, the DOL issued a rule that expanded the definition of “employer” for the purposes of AHPs to include self-employed individuals,

⁴ Adam N. Michel, “Less Government, More Savings,” Testimony, Committee on Finance, United States Senate, May 21, 2024.

⁵ Jonathan Gruber, “Designing Benefits for Platform Workers” (NBER Working Paper Series 29746, National Bureau of Economic Research, Cambridge, MA, February 2022).

⁶ These recommendations come from Merkel, Theo, and Brian Blase. “Follow the Money: How Tax Policy Shapes Health Care.” Paragon Health Institute, May 2024. Available at: [Paragon Health Institute](https://paragonhealthinstitute.org/).

independent contractors, freelancers, and gig workers. The DOL stated that “Association Health Plans work by allowing small businesses, including self-employed workers, to band together by geography or industry to obtain healthcare coverage as if they were a single large employer.”⁷ However, a federal court voided this rule after years of legal challenges, so reform in this area would likely need to come from Congress, rather than as a regulatory rule change from federal agencies.

2. Improve individual coverage health reimbursement arrangements (ICHRA) to allow for self-employed individuals to use pretax dollars to purchase health insurance on the individual market. ICHRAs are a type of health benefit plan that allows employers to reimburse employees for medical expenses, including premiums for individual health insurance policies, on a tax-free basis. ICHRAs offer a flexible alternative to traditional group health insurance plans, providing employees with more choice in selecting health insurance that best fits their needs.
 - a. Current laws define ICHRAs as an employer-provided benefit, which inherently excludes self-employed individuals since they are not considered employees. Amend the Internal Revenue Code and the Employee Retirement Income Security Act (ERISA) to include self-employed individuals as eligible participants in ICHRAs.
 - b. Amend the tax codes to allow self-employed individuals to receive and deduct contributions to ICHRAs in the same manner as traditional employees. This would include modifying sections of the Internal Revenue Code that pertain to health reimbursement arrangements.
 - c. The IRS would need to issue updated guidance to explicitly allow self-employed individuals to participate in ICHRAs. This would include clarifying eligibility requirements and the tax treatment of contributions and reimbursements for self-employed workers.
 - d. Adjust the application of the self-employed health insurance deduction to include ICHRA contributions. Currently, self-employed individuals can deduct health insurance premiums on their income taxes, but this does not include self-employment taxes. Regulations should be updated to ensure that ICHRA contributions are deductible from both income and self-employment taxes.
3. Expand health savings accounts (HSAs) to create a more flexible definition for HSA-eligible plans so that self-employed workers could have greater access to tax-advantaged savings options for health expenses.
 - a. Currently, HSAs are tied to high-deductible health plans (HDHPs) with strict deductible requirements. Introducing eligibility based on actuarial value would provide more flexibility, allowing plans with varying deductibles and benefit designs to qualify as HSA-compatible. This would particularly benefit self-employed workers who might prefer plans with different cost-sharing structures.
 - b. Allowing catastrophic, bronze (60 percent actuarial value), and silver (70 percent actuarial value) plans to be HSA-eligible would provide more options for self-employed individuals. These plans typically have lower premiums and could be more affordable while still providing the benefits of HSA contributions.
 - c. Raising the contribution limits for HSAs would allow self-employed individuals to save more pretax dollars for medical expenses.

⁷ Department of Labor, Employee Benefits Security Administration, Definition of “Employer” Under Section 3(5) of ERISA— Association Health Plans, 29 C.F.R. Part 2510 (2018), <https://www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-12992.pdf>.

- d. Currently, HSA funds cannot be used to pay health insurance premiums except under specific conditions like unemployment. Allowing premium payments under a wider range of conditions would provide significant financial relief to self-employed individuals who must pay their health insurance premiums out-of-pocket.
- e. Ensure that HSA contributions can reduce both income and self-employment taxes. This change would align the tax benefits of HSA contributions with the broader tax treatment that traditionally employed workers receive, making it more equitable for self-employed individuals.

Finally, as discussed earlier, it should be clarified and stipulated that if hiring parties provide benefits to independent contractors (for example, by making contributions to their HSAs), these benefits cannot be used as a factor in worker classification determinations.

Conclusion

Independent work can be beneficial and desirable for many working Americans. We should embrace and welcome the new reality that many Americans choose this type of work. At the same time, we must aim to fix the shortcomings that exist—mainly, that workers do not have access to the same benefits afforded to traditional employees.

These limitations have led to policy battles across states and on the federal level because our current system continues to prioritize the immobility of benefits (e.g., healthcare is tied to one employer) in a world where worker preferences have shifted toward more choice and portability. Indeed, a survey found that 80 percent of self-employed respondents would like access to flexible or portable benefits not tied to a particular job or employer.

To better meet the needs of the growing independent workforce, federal policymakers could legalize access to benefits for independent workers by removing the presence of benefits as a factor in worker classification determinations. Policymakers could also allow for the creation of flexible or universal savings accounts to encourage greater savings among independent workers. Finally, policymakers can make reforms to AHPs, ICHRAs, and HSAs to enable better access to health care benefits for independent contractors. Embracing innovative policy reforms will create a fairer system for all workers, both traditional employees and self-employed workers. Such reforms would not harm existing employees but only enhance the livelihoods of independent contractors.

Sincerely,

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