February 6, 2018

Senate Health, Education, Labor & Pensions Subcommittee on Primary Health and Retirement Security: Exploring the 'Gig Economy' and the Future of Retirement Savings

The Senate HELP Subcommittee on Primary Health and Retirement Security met today for a roundtable entitled "Exploring the 'Gig Economy' and the Future of Retirement Savings." Four witnesses provided testimony: Witnesses

1. **Camille Olson**, U.S. Chamber of Commerce
2. **Vikki Nunn, CPA**, Shareholder, Porter, Muirhead, Cornia & Howard
3. **Troy Tisue**, President, TAG Resources, LLC
4. **Monique Morrissey**, Economist, Economic Policy Institute

Chairman Opening Statement

Chairman Michael Enzi (R-WY) stated that the gig economy could account for half of the American workforce by the end of the decade. The prevalence of gigs is driven by the growth of app-based platforms like ride sharing apps. These platforms have expanded to include short-term property rentals, line standing services, and home improvement work. He pointed to payments processing as creating a cashless transaction, and rating services as central to these apps. Another key characteristic is that service providers are, like the customers, users of the platform and not employees. They are independent contractors who are paid for services rendered, often with a service charge deducted, and they do not receive traditional employment benefits. Discussions of the gig economy generally focus on the classification of workers, but for many participants, their freelance status is a benefit that provides flexibility around projects and hours. Imposing a traditional employee model on these workers would limit this flexibility. As we consider federal actions to address the gig economy, we must understand its scope and the motivations of those participating in it. Enzi also discussed the retirement security crisis in the U.S., adding that there is agreement around the need for Americans to save earlier and more.

Witness Statements

Ms. Camille Olson stated that many independent contractors work with multiple gig economy platforms at the same time. Some have access to retirement benefits through previous relationships, while 1/3 of contracts report the need for assistance in retirement options. Developing policies and promoting a positive business environment, encouraging innovation, and protecting workers' financial futures while preserving flexibility is an important and challenging balances. Structural challenges currently inhibit workers from obtaining retiree benefits, including their exclusion from ERISA retirement plans. If gig economy companies offer non-ERISA retirement plan information or facilitate administratively or financially, the legal status of their operational models would be in jeopardy. The foundation to solving the impediments to a portable retirement benefits system includes consideration of how to increase availability and access of financial information, allowing companies to provide benefit information and assist to facilitation of direct deposit, promoting the development of flexible and portable retirement services, and providing independent workers with monetary incentives to save for retirement.

Ms. Vikki Nunn stated her experience working with small businesses as a CPA, in which she helps workers start single participant retirement plans, or Solo (k)s. Her state, Wyoming, has less exposure to the gig economy, but the hit to coal production and decrease in oil prices has seen many mid-level managers laid off only to be brought back on as consultants. This change comes at the height of earning and during critical saving years. A solo (k) is particularly helpful for participants in managing retirement savings, allowing them to put away more during periods of high earning. Most plan providers rely on a web-based application, and share some application wording with ERISA plans. Since the fee potential on these plans is fairly low, plan providers may not showcase these options to the same extent as they do IRAs. Solo (k)s are also used by owners of sole proprietorship businesses. In many cases, participants over 50 with volatile income streams are putting money in Roth solo (k)s, showing that tax deductions are not a driving factor. These are participants who are saving for college and have expenses; if we want to encourage retirement saving, especially for a contingent workforce, significantly raising the catchup limits (or removing them for Roths) can be very effective.

Mr. Troy Tisue offered open multiple employer plans as a flexible model that can assist contingent workers with accumulating retirement savings. His experience has been that 40% of employers coming to these models are startups, meaning that they did not offer a plan before. Pertaining to the gig industry, this model can permit companies contracting with employers to sponsor a plan for those workers without running into taxable ERISA complications. A company could build a gig plan contribution into its contract. Allowing MEPs offered by a wide group of employers would allow workers to change jobs without leaving the plan. He recommended that employers without any common interest be allowed to join together in a MEP, and that employers (including independent workers) be protected from liability or noncompliance of other employers in the MEP.

Ms. Monique Morrissey stated that the narrowly-defined gig economy is very small—just 0.5% of jobs. That said, the nontraditional workforce is much larger, including contingent workers as well. Workers who rely on income for nonstandard work to make ends meet should be the focus. Contingent workers earn 11% less per hour, and 48% less per year than similar workers, and are much more likely to become unemployed. These workers are 2/3 less likely than standard workers to have a work-based retirement plan. Social security's universal coverage and progressive structure partly compensate for contingent workers' lower earnings and lack of access to employer benefits, but nonstandard workers are more likely to be paid under the table or be classified as independent contracts, reducing their benefits. These issues can be extended to the traditional economy as well—by a conservative estimate half of workers will not be able to maintain their standard of living after retirement, with lower-income workers at greatest risk. She recommended expanding social security while cracking down on employee misclassification and tax avoidance, expanding the savers credit, and supporting state and local initiatives to provide low-cost, portable benefits to workers who don't have access to an employer plan. She also supported loosened restrictions on open MEPs. She warned against exacerbating matters by steering contingent workers' savings into high-cost or risky accounts. We should also expand the EITC, she stated.

General Questions

Before the question period began, **Senator Patty Murray (D-WA)** offered an opening statement, stating that the hype of the gig economy has put a new face on the damaging trend of erosion of workers' protections and benefits. Though there is new technology and lingo, the challenges of protecting and fairly compensating workers are not new. Retirement often seems years away, but the challenges remain urgent. We must expand access to plans, as nearly half of families do not have a retirement account. 1/3 of private industry workers do not have access to plans through their employer; those employers that do provide such access often limit it to full-time employees only. We also need to provide portability, given that the average worker will change jobs 10 times before age 40. We must address concerns younger generations have about whether social security will still exist when they reach retirement, as well as the concerns of women around equal pay and ensuring they are not penalized in retirement for time spent on childcare. Murray stated that she is working on legislation like the Women's Pension Protection Act, which would provide access to retirement plans for many low-wage and part-time workers. She is also working on social security modernization legislation as well, and is looking at ways to mirror Washington State's small business pension plan and online retirement market at a federal level.

Senator Todd Young (R-IN) stated appreciation for the specific solutions panelists put forward in their testimony. He asked about open platform retirement products, and asked Ms. Olson to point to a domestic or international example of effective implementation. Olson stated while she does not have an existing model, open MEPs are an example and the attributes we would look for in a platform would include flexibility, optionality for participants, and the ability for companies to provide information and transfer funds on behalf of workers without a negative impact. Young then asked what sort of resistance witnesses have faced as they shared their vision of expanding the use of MEPs. Mr. Tisue believes there is little resistance at this point; taking initiative is what we need to do. Referring to Ms. Olson's suggestion to provide monetary incentives for independent workers to save, Young asked if there are existing models in the states. Olson stated that the employee model allows for saving on a tax-deferred basis, and this is a critical. That said, information and education cannot be left out of the equation, as this is given to traditional employees in the workplace. Asked about auto-enrollment, Olson stated that she does not advocate this for the gig economy because the workers vary so widely in their goals. Some workers may want cash immediately, and may value flexibility and opportunity. Ms. Nunn spoke about the difficult workers feel when the burden of researching retirement savings options is placed squarely on the worker. We also must make contract labor safer for the company to truly allow them to assist workers in retirement savings.

Chairman Michael Enzi (R-WY) echoed Senator Murray's statistic that workers will change jobs 10 times before age 40, adding that of those 10 jobs, 7 have not yet been invented. Ms. Morrissey disagreed with other panelists about the need to loosen standards around who qualifies as an independent worker, as well as the need to raise contribution caps for tax-exempt accounts. She recommended fixing upside-down tax structures that encourage deferment rather than saving. Mr. Tisue added that access points to retirement savings are critically important. Enzi asked Ms. Nunn to summarize the complications around maintaining the Solo 401(k) and how to simplify them. Ms. Nunn stated that they are not difficult to maintain, but savers sometimes have concerns around starting them because once they reach a certain balance, a tax form must be filed. The biggest issue is that people are frequently unaware about Solo 401(k)s as an option. She also criticized basing the Solo 401(k) on the ERISA platform, which unnecessary complicates the structure.

Discussing the open MEPs, Enzi asked whether there is a tradeoff between simplicity of plans and portability. Mr. Tisue stated that from a consumer standpoint, these plans are very easy to understand. Ms. Nunn stated asked whether participants in MEPs would generally be allowed to contribute as much to a retirement plan as they would to a Solo (k). Mr. Tisue clarified that the setup is the same, with all the benefits of a Solo (k). Enzi asked what feature gig economy companies are looking for in retirement savings options that they can offer their participants, and whether they are looking for ways to offer savings options without worker classification concerns. Olson stated that it is not an issue of loosening standards on workers, but cited Supreme Court doctrine as tying worker benefits to employers. One of the biggest impediments to gig companies providing information, facilitation of fund transfer, or even copayments is the legal status of workers. Ms. Morrissey disagreed, stating that we need to strengthen distinctions between employees and independent contractors, and raise more of those misclassified contractors to employee status. If offering contractors benefits will endanger their status as contractors, this is an indicator that they should be employees.

Enzi then asked panelists how to advertise more options. Ms. Morrissey highlighted the need to improve current plans. While the assumption can be that people don't have access or are ill-informed, the case is frequently that people have rational reasons to be nervous about current options. We need to make existing 401(k)s and IRS more secure and lower-cost. There should be standards about cost and risk that are better than what we have now. Enzi asked how to increase participation in the existing Solo 401(k)s or MEPs. Mr. Tisue pointed to the need to raise awareness; Ms. Olson agreed with the need for more general information available about existing retirement options. This information should be available on government websites, rather than tied to a specific company.

Chairman Enzi then inquired as to how to make retirement options simpler. Olson emphasized automatic transfer of money as central. Removing legal impediments to this for gig economy workers will make investments in retirement vehicles work much better. Ms. Morrissey noted the need for workers to be fully paying into Social Security and not underreporting their earnings. She advocated expanding Social Security, and lauded the ACA for its standardization of benefit, noting that we need similar fiduciary standards to help savers into appropriate options. Enzi asked how long it takes to set up a Solo (k). Panelists agreed that the process takes just minutes to set up; Ms. Nunn stated that her firm would manage any tax filing to relieve customer burden.

Chairman Mike Enzi (R-WY) thanked the witnesses for their participation and adjourned the hearing.