Women, Retirement, and the Growing Gig Economy Workforce

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WOMEN, RETIREMENT, AND THE GROWING GIG ECONOMY WORKFORCE*

Caroline Lewis Bruckner** & Jonathan Barry Forman***

Copyright © 2021, Caroline Lewis Bruckner & Jonathan Barry Forman. The research reported herein is a much longer version of research performed pursuant to a grant from the TIAA Institute through the Pension Research Council/Boettner Center of the Wharton School of the University of Pennsylvania (PRC). The findings and conclusions expressed are solely those of the Authors and do not represent the views of the PRC or TIAA. See CAROLINE BRUCKNER & JONATHAN BARRY FORMAN, TIAA INST., SHORING UP SHORTFALLS: WOMEN, RETIREMENT AND THE GROWING GIG ECONOMY WORKFORCE (2021), https://www.tiaainstitute.org/sites/default/files/presentations/2021-03/TIAA%20Institute_Shoring%20up%20shortfalls_RD%20177_Bruckner%20Forman_March%202021.pdf. An updated version of this paper has also been recently published in the Journal of Retirement, Caroline Lewis Bruckner & Jonathan Barry Forman, Shoring Up Shortfalls: Women, Retirement, and the Growing Gig Economy, 9 J. RET. 40 (2021).

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ABSTRACT

Gig work—the selling or renting of labor, effort, skills, and time outside of traditional employment—is a long-standing feature of the U.S. economy. Today, millions of “online gig workers” sell goods and services, or rent rooms, houses, vehicles, and other assets using app-online and app-based platforms (for example, Uber, Lyft, Rover, DoorDash, eBay, Etsy, Postmates, VRBO, and Airbnb) to connect with customers. Millions more of “offline gig workers” run errands; walk dogs; care for children and the elderly; do housework, yardwork, and other occasional jobs; rent rooms; and sell goods at outdoor markets and roadside stands—without using online platforms to connect with their customers. This Article focuses on gig work in terms of what it means for women, their work, and their retirement income security. In particular, this Article (1) reviews the existing measures of gig work to determine any relevant data gaps; (2) summarizes the tax and retirement rules for gig workers; (3) considers the major factors that contribute to the gender retirement wealth gap; (4) identifies the challenges for gig workers in saving for retirement, including the extraordinary economic circumstances presented by the COVID-19 pandemic; and (5) discusses some federal tax, retirement, and financial literacy policy proposals that could help gig workers better support themselves in retirement.

Jon Forman died unexpectedly prior to publication of this Article. In the year before his death, he worked relentlessly to finalize it and other works. He was a beloved husband and father, professor, and friend. He is missed by so very many students, colleagues, and friends whose lives and careers he worked tirelessly to improve.
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INTRODUCTION

Gig work—the occasional selling of labor, effort, skills, and time—is a long-standing feature of the U.S. economy. The term’s use to describe occasional paid work originated in the 1920s from the slang that American jazz musicians coined to describe their paid engagements (especially their one-night gigs). Commonly understood to be informal, contingent work arrangements (as opposed to traditional employment), some types of gig work have become more automated and accessible alongside the widespread adoption of internet-enabled smart phones in the early twenty-first century. Today, millions of “online gig workers” sell goods and services, or rent rooms, houses, vehicles, and other assets using app-online and app-based platforms (like Uber, Lyft, Rover, DoorDash, eBay, Etsy, Postmates, VRBO, and Airbnb) to (1) connect with customers and (2) process customer payments. Millions more of “offline gig workers” run errands; walk dogs; care for children and the elderly; do housework, yardwork, and other occasional jobs; rent rooms; and sell goods at outdoor markets and roadside stands—without using online platforms to connect with their customers.

Although working outside of traditional employment (in other words, a full-time job with employee benefits and tax withholding) has long been a source of supplemental income for some workers, the rise of online platforms has generated a new emphasis on these alternative work arrangements by government and academic researchers looking...
at tax compliance, worker protection, and benefits policy. Unlike traditional employees, most workers engaged in gig work are classified as self-employed or independent contractors for tax and labor law purposes. As a result, gig workers are not generally entitled to health insurance or the Fair Labor Standards Act’s minimum wage and overtime protections, and they are pretty much “on their own when it comes to training, retirement savings, and tax planning.”

To date, the burgeoning research on gig workers has focused on the online gig workers who dominate the ridesharing platforms (mostly men), and considerably less research has focused on the women who engage in online and offline gig work as a supplemental source of income. Although some tax researchers have gone so far as to note that “gender differences in alternative work . . . merit further investigation,” relatively little research has specifically focused on women gig workers or on the consequences of that gig work on their retirement income security. The COVID-19 pandemic has accelerated the need for tax compliance, worker protection, and benefits policy.

5. See generally id. (discussing reasons why people participate in alternative work arrangements); Bruckner, supra note 2 (finding tax compliance as one of the main issues for taxpayers in alternative work arrangements and small businesses).


7. Collins et al., supra note 6.

8. See infra Part I.C.

the need for better research on workers outside of traditional employment generally because the pandemic has displaced millions of full-time workers, and Congress has had to cobble together policy responses to aid them.\textsuperscript{10} The COVID-19 pandemic has been especially hard on women workers, in general, and on women gig workers, in particular.\textsuperscript{11} In any event, more research on gig workers is needed as “ample evidence [suggests] that many older adults lack adequate savings for retirement, so that income from continuing to work is important for their financial security.”\textsuperscript{12} Moreover, “there is little specific evidence about the retirement security preparedness of contingent workers,” and even less on the growing category of gig workers.\textsuperscript{13}

This Article focuses on gig work in terms of what it means for women, their work, and their retirement income security. In particular, this Article (1) reviews the existing measures of gig work to determine


10. See, e.g., Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); see also infra Part V.C.


any relevant data gaps; (2) summarizes the tax and retirement rules for
gig workers; (3) considers the major factors that contribute to the
gender retirement wealth gap; (4) identifies the challenges for gig
workers in saving for retirement, including the extraordinary economic
circumstances presented by the COVID-19 pandemic; and (5)
discusses some federal tax, retirement, and financial literacy policy
proposals that could help gig workers better support themselves in
retirement.\textsuperscript{14} Ultimately, this Article concludes the following:

1) Gig work as a supplemental source of income has grown
significantly and is continuing to grow, but existing
administrative tax data have failed to fully capture the growth of
gig workers—both online and offline—in large part because tax
reporting rules enable extensive underreporting of
self-employment income.

2) Comparative review of multiple administrative tax data and
survey sources suggests that more women than men engage in
gig work as a supplemental source of income and finds that
women are driving the growth in gig work.

3) The government policy response to the COVID-19 pandemic
shows the systemic failure of government research to measure
the gig workforce reliably.

4) Gig work triggers a retirement financing gap that
disproportionately impacts women, and notably, women of
color, who have greater challenges saving for retirement than
men.

5) Absent reform, the existing tax and retirement financing rules
will continue to underserve and frustrate the ability of gig
workers to save for retirement in the short-term, and
consequently, result in inadequate retirement incomes when
those workers ultimately do retire.

\textsuperscript{14} While conducting this research, the Authors reviewed the existing research on gig workers. The Authors compared various government and private-sector data sets, research criteria, and findings to identify commonalities and to provide insights as to why estimates of the number of U.S. taxpayers earning income as gig workers are so inconsistent. The Authors also conducted more than 125 interviews, meetings, and conference calls with a variety of gig economy experts (including executives and economists with platform companies, other gig economy stakeholders, and staff working for Congress and for various federal and state government agencies).
Part I of this Article explains the various approaches for measuring the gig workforce using government and private-sector surveys, administrative tax data, and bank account information. Part I also discusses the economic sectors that use gig workers and the demographics and earning profiles of those gig workers, all with a focus on women and on older workers.

Part II then provides an overview of the federal tax system, with an emphasis on the tax rules that govern online and offline gig workers and their rates of tax compliance. Next, Part III provides an overview of the U.S. retirement system, with a focus on the retirement plans most relevant for gig workers: Social Security, employer-sponsored pension plans, individual retirement accounts (IRAs), the new state-sponsored pension plans, and the various retirement plans especially designed for small businesses and self-employed workers.

Part IV takes a closer look at women and retirement, with a focus on the gender retirement wealth gap and the factors that exacerbate the retirement income financing challenges facing women. Part V then explores the problems ahead for gig workers, including the impact of the COVID-19 pandemic.

Part VI then sets forth some policy options that could help women working in the gig economy to shore up their retirement income shortfalls. Specifically, Part VI discusses options that could help (1) comprehensively measure gig work; (2) facilitate tax compliance of gig workers and ensure that gig workers meet their self-employment tax obligations and earn full Social Security benefits; (3) improve Social Security benefits; (4) improve pensions and IRAs; and (5) promote financial literacy.

I. THE GIG ECONOMY WORKFORCE

*It is surprisingly difficult to ascertain the value of the gig economy or the number and characteristics of participating workers. Its measurement is complicated, not the least given that gig work is often a supplemental or secondary income source and is not consistently reported to tax authorities. Although national*
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 statistical offices are starting to develop methodologies to identify
gig workers in labor force surveys, official statistics have only
recently started to become available, and even these are beset by
measurement issues.15

Estimates of how many people are working in the gig economy
today vary widely depending on the definition of gig work and the
research tools used (such as surveys or administrative tax data).16 In
some respects, it is easier to define gig workers by what they are not:
gig workers are generally not workers in traditional
employer-employee relationships earning salaries or wages and
eligible for employer-provided fringe benefits.17 Although such a
broad definition of gig work would include temporary and part-time
workers (for example, substitute teachers, adjunct faculty, and holiday
workers), it would also include all self-employed workers (for
example, all independent contractors).18 Of course, the self-employed
are a very heterogeneous group that includes both high-wage
professionals (for example, doctors, lawyers, and accountants) and

15. Abigail Hunt & Emma Samman, Gender and the Gig Economy: Critical Steps for Evidence-Based
omitted), https://socialprotection-humanrights.org/wp-content/uploads/2019/01/Gender-the-Gig-
Economy.pdf [https://perma.cc/H6BP-UL3R].

16. Id. at 9 box 2; see also ROBLES & McGEE, supra note 4, at 7, 8 (noting that there is simply “no
clear consensus” on how to define gig work, what or who should be included, so “a reevaluation of
methods and research approaches may be required”); Katharine G. Abraham & Susan N. Houseman,
Making Ends Meet: The Role of Informal Work in Supplementing Americans’ Income, 5 RSF 110, 111
(2019) [hereinafter Abraham & Houseman, Making Ends Meet]; Katharine G. Abraham, John C.
Haltiwanger, Kristin Sandusky & James R. Spletzer, Measuring the Gig Economy: Current Knowledge
[https://perma.cc/5PVY-WBH2]; Laura Schultz, Defining and Measuring Gig Work, ROCKEFELLER INST.
Gig-Work.pdf [https://perma.cc/4DK9-UFD7]; Jenny R. Yang, Molly Weston Williamson, Shelly
Steward, K. Steven Brown, Hilary Greenberg & Jessica Shakespere, Reimagining Workplace
Inst. 4 (Dec. 8, 2020), https://www.urban.org/sites/default/files/publication/103331/reimagining-
workplace-protections_1_0.pdf [https://perma.cc/S2RQ-H9FY]. See generally Gig Economy Data Hub,
THE ASPEN INST. FUTURE OF WORK INITIATIVE & CORNELL UNIV. SCH. OF INDUS. & LAB. RELS.,
https://www.gigeconomydata.org/ [https://perma.cc/Z37P-GDQ3].

17. Lauren Wingo, What Is a Gig Worker?, U.S. CHAMBER COM. (Mar. 16, 2021),
https://www.uschamber.com/co/run/human-resources/what-is-a-gig-worker [http://perma.cc/ENH8-
DVLQ].

18. See, e.g., Bernhardt & Thomason, supra note 6.
lower-income workers (for example, rideshare drivers, domestic workers, and caregivers). 19 For some, being an independent contractor is their main job, while others maintain full- or part-time employment and use independent contracting to earn supplemental income. 20 Although definitions of gig work can run the gamut, making a consistent measure of overall populations of gig workers difficult, the research discussed in this Part shows that there are more offline than online gig workers and that there are more women than men doing offline gig work.

A. Traditional and Nontraditional Work Generally

The overwhelming majority of U.S. workers work in standard employment arrangements—they have permanent jobs defined by a traditional employer-employee relationship. 21 The U.S. Department of Labor Bureau of Labor Statistics (Bureau of Labor Statistics) relies on monthly surveys to measure this employment, and those surveys provide information about the age, race, and gender of workers, and about their full- or part-time status. 22

With respect to so-called alternative or contingent workers, however, the Bureau of Labor Statistics has only intermittently measured the millions of workers in nontraditional work arrangements

22. See, e.g., March 2021 Employment Situation, supra note 21, at Technical Note (the U.S. Census Bureau administers a monthly household survey, the Current Population Survey, designed to measure the labor force, employment and unemployment, and the Bureau of Labor Statistics Current Employment Statistics program surveys nonfarm employers to gather information on their employment, hours, and earnings).
(also known as alternative or nonstandard work arrangements), including part-time workers, temporary workers, and contract workers (for example, independent contractors, also known as self-employed workers) that traditional monthly employment surveys may not otherwise capture. In general, estimates on contingent workers vary considerably even though nontraditional and informal paid work activity “have historically been present across all types of occupations, geographies, and industries, [and] not just among [low- and moderate-income] or lower-skilled populations.”

Specifically, estimates of the nontraditional workforce can range from a low of 5% of U.S. workers to more than one-third of the workforce, depending on the data source and its definition of contingent work.

At the outset, Table 1 shows the Bureau of Labor Statistics’ most recent effort to measure contingent and alternative work, the Contingent Worker Supplement (CWS) survey fielded in May 2017 (the 2017 CWS). Table 1 shows that of the 153.3 million U.S. workers in 2017, 125.2 million worked full-time and 28.1 million worked part-time. Table 1 also shows that although 137.9 million workers worked in traditional arrangements, 11.4 million worked in alternative arrangements (in other words, “alternative workers,”

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24. ROBLES & McGEE, supra note 4, at 7.


including 10.6 million independent contractors, 2.6 million on-call workers, and 2.3 million temporary and contract agency workers).

**Table 1. Employed Workers with Alternative and Traditional Work Arrangements, May 2017 (In thousands)**

<table>
<thead>
<tr>
<th>Full- or Part-Time Workers</th>
<th>Total Employed</th>
<th>Workers with Alternative Arrangements</th>
<th>Workers with Traditional Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Independent Contractors</td>
<td>On-call Workers</td>
</tr>
<tr>
<td>Full-time</td>
<td>125,240</td>
<td>7,485</td>
<td>1,428</td>
</tr>
<tr>
<td>Part-time</td>
<td>28,091</td>
<td>3,129</td>
<td>1,151</td>
</tr>
<tr>
<td>Total</td>
<td>153,331</td>
<td>10,614</td>
<td>2,579</td>
</tr>
</tbody>
</table>

In an alternative cut of its 2017 CWS data, the Bureau of Labor Statistics identified an overlapping group of 5.9 million “contingent workers,” which generally included wage and salary workers who did not expect their job to last and self-employed workers and independent contractors that had been self-employed for one year or less or did not expect to be self-employed for another year or more. Of note, just 8.3% to 18.4% of contingent workers participated in employer-sponsored pension plans in 2017 compared to 43.4% of traditional workers.

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27. May 2017 Employment Arrangements, supra note 21, at tbl.5.
28. Id. at 2 tbl.A.
The 2017 CWS also provided information about the occupations and industries of workers with alternative and traditional work arrangements. For example, the survey estimated that, although just 24% of traditional workers worked in education and health services, 35.3% of on-call workers worked in those industries. In terms of demographics, the 2017 CWS estimated that there were more men (81.5 million) than women (71.8 million) in the workforce in 2017 and that more men (6.8 million) than women (3.8 million) worked as independent contractors. The majority of independent contractors were men (64.3%), as were the majority of workers provided by contract firms (67% men). Also, compared with traditional workers, the independent contractors tended to be older, and the temporary help agency workers were more likely to be Black or Hispanic.

The 2017 CWS also identified 1.6 million “electronically-mediated workers”—workers who use apps and websites that both connect workers to customers and arrange for payment. Of these online workers, 870,000 were men and 739,000 were women; 1.2 million were White, 276,000 were Black, 93,000 were Asian, and 265,000 were Hispanic. Also, 1,165,000 worked full-time and 444,000 worked part-time; although most (1,011,000) were wage-earners, 598,000 were self-employed (118,000 incorporated and 480,000 unincorporated).

Surprisingly, the 2017 CWS showed a decline from 2005 in the proportion of workers classified as independent contractors (from

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31. Id. at 19 tbl.8.
32. Id. at 16 tbl.5.
33. Id. at 3 tbl.6.
34. Id.
37. Id. at 20 tbl.3. The Bureau of Labor Statistics also provides detailed information about the occupations and industries of electronically mediated workers. Id. at 20–21 tbl.3. Of note, the Bureau of Labor Statistics concluded that the questions designed to estimate electronically-mediated work did not work as intended and that it would not readminister the questions absent revision. Id. at 1, 25; Bruckner & Hungerford, supra note 9, at 67.
7.4% of the workforce in 2005 to 6.9% in 2017), contingent workers, (from 4.1% to 3.8%), and on-call workers (from 1.8% to 1.7%) with no change in the number of temporary and contract agency workers.\textsuperscript{38} A key explanation for the decline is the fact that the Bureau of Labor Statistics designed the CWS to capture data on nontraditional work that is a worker’s main or sole source of income rather than a supplemental source of income.\textsuperscript{39} Moreover, the 2017 CWS survey only asked respondents to identify work done in the prior week, which “may fail to capture seasonal workers or workers that supplement their income . . . .”\textsuperscript{40} In any event, the 2017 CWS data showing no growth (and an actual decline) in contingent work in recent years is at odds with more recent tax data that shows significant growth in “nonemployee work.”\textsuperscript{41}

The Bureau of Labor Statistics also includes statistics on self-employed workers in its monthly Employment Situation reports.\textsuperscript{42} These reports divide the self-employed into two categories—those who have incorporated their businesses and those who have not.\textsuperscript{43} For

\begin{itemize}
  \item \textsuperscript{38} 2019 CONTINGENT WORKFORCE, supra note 26, at 7, 14 n.b & tbl.2.
  \item \textsuperscript{39} See Bruckner & Hungerford, supra note 9, at 67 (“[The Bureau of Labor Statistics] indicated that the questions used to measure gig workers did not work as intended and that, going forward, ‘BLS should not again attempt to collect data about electronically mediated work using the four new questions fielded in the May 2017 CWS.’” (quoting Electronically Mediated Work, supra note 35, at 14, 24)). See generally Abraham & Houseman, Making Ends Meet, supra note 16.
  \item \textsuperscript{40} 2019 CONTINGENT WORKFORCE, supra note 26, at 3, 16.
  \item \textsuperscript{41} Abraham & Houseman, Making Ends Meet, supra note 16, at 112.
  \item \textsuperscript{43} E.g., March 2021 Employment Situation, supra note 21, at tbls.A-8 & A-9. In addition, the estimates of unincorporated self-employed workers include agricultural workers, unpaid family workers, and private household workers. Id. at Technical Note. As more fully explained in Part II.C infra, that distinction between incorporated and unincorporated workers is also central to income and payroll tax reporting because incorporated self-employed workers should report their wages on their individual income tax return by attaching an IRS Form W-2 from their corporation. See generally About Form W-2, Wage and Tax Statement, IRS [hereinafter About Form W-2], https://www.irs.gov/forms-pubs/about-form-w-2 [https://perma.cc/Z4EX-DDYP] (July 9, 2021). On the other hand, an unincorporated self-employed worker should report their self-employment earnings on their individual income tax return using an IRS Form 1040 Schedule C to report their self-employment income and an IRS Form 1040 Schedule SE to report their self-employment tax. See generally About Form 1040, U.S. Individual Income Tax Return, IRS [hereinafter About Form 1040], https://www.irs.gov/forms-pubs/about-form-1040 [https://perma.cc/356T-9R8A] (Sept. 23, 2021); About Schedule C (Form 1040), Profit or Loss from Business (Sole Proprietorship), IRS [hereinafter About Schedule C (Form 1040)],
\end{itemize}
example, according to the Bureau of Labor Statistics’ March 2021 Employment Situation report, of the 15.7 million people that were self-employed in March of 2021, 9.4 million were unincorporated self-employed workers and 6.3 million were incorporated.44

B. Other Approaches for Measuring Gig Work

Many other government and private-sector researchers have also tried to measure the gig workforce.

1. The U.S. Department of Treasury and the Internal Revenue Service

U.S. Department of Treasury and IRS administrative tax data can also provide information about gig workers.45 For example, the IRS’s

44. March 2021 Employment Situation, supra note 21; see also Steven F. Hipple & Laurel A. Hammond, Self-Employment in the United States, U.S. BUREAU LAB. STAT. 2 (2016), https://www.bls.gov/spotlight/2016/self-employment-in-the-united-states/pdf/self-employment-in-the-united-states.pdf ("[Fifteen] million people were self-employed in 2015," with 9.5 million unincorporated and 5.5 million incorporated.). Hipple and Hammond also found that self-employment rates were higher among older workers than younger workers, higher for men than women, and higher for White workers than for Black or Hispanic workers. Id. at 5, 6, 8.

45. See, e.g., Collins et al., supra note 6, at 8. Administrative tax data can also provide some insights into the demographics of these self-employed workers and into how this workforce has changed as well as what those changes mean for tax filing and benefits coverage. Id.
Statistics of Income Division regularly issues reports that show the wages and self-employment earnings of American workers.\(^{46}\)

As more fully explained in Part II.C.1 below, employees typically report their wages on their individual income tax returns by attaching an IRS Form W-2 to their income tax returns, while self-employed workers typically report their self-employment earnings using an IRS Form 1040 Schedule C and an IRS Form 1040 Schedule SE.\(^{47}\) For example, of the 153.8 million individual income tax returns filed for the 2018 tax year, 126.8 million individual income tax returns (82.5%) reported salary or wages, 26.6 million (17.3%) showed business or professional income, and 1.8 million (1.1%) showed farm income.\(^{48}\) Also, 20.1 million of the 2018 individual income tax returns (13.1%) reported self-employment tax payments (for Social Security and Medicare).\(^{49}\) With respect to rental income, 10 million individual income tax returns showed rental income (5 million with net income and 5 million that showed a net loss); another 352,860 returns showed farm rental net income; and another 97,945 returns showed farm rental net losses.\(^{50}\)

A 2017 study by the Treasury Department’s Office of Tax Analysis conducted by Emilie Jackson and others (Jackson and others) looked


\(^{47}\) See infra Part II.C.1.

\(^{48}\) 2018 TAX REPORT, supra note 46, at 6 tbl.A.

\(^{49}\) Id. More specifically, 19.6 million 2018 individual income tax returns showed net business or profession income, while 6.9 million showed net losses. Id. at 54–55 tbl.1.4. Of those taxpayers with net business or profession income, 3.6 million were aged fifty-five through sixty-four, and 2.6 million were aged sixty-five and over. Id. at 127 tbl.1.5. Another study found that for the 2016 tax year, approximately 25.5 million individual income tax returns reported activity from a nonfarm sole proprietorship. Adrian Dungan, Sole Proprietorship Returns, Tax Year 2016, STAT. INCOME BULL., Spring 2019, at 1, 2 fig.A, https://www.irs.gov/pub/irs-preit/p1136—2019.pdf [https://perma.cc/V3ZM-RHD2]. In aggregate, those nonfarm sole proprietors reported business receipts of around $1.4 trillion and claimed business deductions of around $1.1 trillion. Id. Another study showed that 28% of all individual income tax returns for 2017 (42.3 million returns) contained some small business income or losses. IRS, U.S. DEP’T OF THE TREASURY, STATISTICS OF INCOME: INDIVIDUAL INCOME TAX RETURNS WITH SMALL BUSINESS INCOME AND LOSSES, TAX YEARS 2015–2017 (Aug. 2019) [hereinafter 2015–2017 INDIVIDUAL INCOME TAX RETURNS], https://www.irs.gov/pub/irs-soi/2017IndividualReturnsSmallBusinessIncomeandLossesOne sheet.pdf [https://perma.cc/S69H-FMZL].

\(^{50}\) 2018 TAX REPORT, supra note 46, at 56–57 tbl.1.4. Of those individuals with net rental income, 1.3 million were aged fifty-five through sixty-four, and 2.3 million were sixty-five and over. Id. at 128 tbl.1.5 (authors’ totals include both net rent returns and net farm rent returns).
at a sample of individuals that reported self-employment or sole-proprietor income on their 2014 income tax returns (in other words, taxpayers that filed an IRS Form 1040 Schedule SE or Schedule C with their income tax returns).\textsuperscript{51} At the outset, Table 2 shows that of the 145.9 million taxpayers with labor income in 2014, 126.5 million (86.7\%) had wages only, 10.6 million (7.2\%) had self-employment earnings only, and 8.8 million (6.1\%) had both wages and self-employment earnings.\textsuperscript{52}

**Table 2. Source of Earnings of Taxpayers with Earnings, 2014\textsuperscript{53}**

<table>
<thead>
<tr>
<th>Return Type</th>
<th>Total</th>
<th>Percent of Workers (of those with earnings)</th>
</tr>
</thead>
<tbody>
<tr>
<td>With Earnings</td>
<td>145,941,290</td>
<td>100.0%</td>
</tr>
<tr>
<td>Wages Only</td>
<td>126,540,900</td>
<td>86.7%</td>
</tr>
<tr>
<td>Self-employment Income Only</td>
<td>10,564,620</td>
<td>7.2%</td>
</tr>
<tr>
<td>With Wages and Self-employment Income</td>
<td>8,835,770</td>
<td>6.1%</td>
</tr>
</tbody>
</table>

Note: Incorporated self-employed workers are counted as wage earners of their firms (and not as having self-employment income).

Jackson and others also found that the average earnings of wage-only workers in 2014 was $47,000, those with a mix of wage and

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\textsuperscript{51} Emilie Jackson, Adam Looney & Shanthi Ramnath, The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage 9–10 (Off. of Tax Analysis, Working Paper No. 114, 2017), https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-114.pdf [https://perma.cc/4V3K-KVSL]. This study recognized that there is a growing population of workers earning income outside of traditional employment relationships and noted that administrative tax data could show a more “complete picture” of that growth. Id. at 3. Moreover, the study explained that administrative tax data can address “certain shortcomings of survey-based measures, which appear to underestimate self-employment activity,” because such activity is “poorly or incompletely captured by standard survey data.” Id. at 3, 6. At the same time, the study acknowledged the difficulties in using administrative tax data to classify workers and reconciling those worker classifications with administrative tax data and survey data. Id. at 12.

\textsuperscript{52} Id. at 10, 28 tbl.1. Also, of the 19.4 million individuals who filed an IRS Form 1040 Schedule SE, about 16.9 million (87\%) also filed an IRS Form 1040 Schedule C reporting earnings from operating a sole proprietorship. Id. at 10. The individual taxpayers that file an IRS Form 1040 Schedule SE and did not file an IRS Form 1040 Schedule C were mostly partners in partnerships or farmers. Id.

\textsuperscript{53} Id. at 10, 28 tbl.1.
self-employment earnings made an average of $43,000 (of which about $25,000 came from wages), and those who were primarily self-employed made around $28,000.\textsuperscript{54} Importantly, Jackson and others found that the number of sole proprietors grew substantially from 2001 to 2014: specifically, in 2014, 24.9 million filed returns with sole proprietorships, and 16.8 million of them earned a profit from those activities—up 34\% and 32\%, respectively, from 2001.\textsuperscript{55} Increases in sole proprietors who provided labor services (in other words, independent contractors or misclassified workers), rather than small businesses, attributed to virtually all of that growth.\textsuperscript{56}

Jackson and others also tried to measure the number of online gig workers in 2014 and included those tax filers who did the following: (1) identified key terms like “ridesharing”; (2) had worked with one of twenty-five identified online platforms; and (3) received an information return from a platform (for example, an IRS Form 1099-MISC or an IRS Form 1099-K).\textsuperscript{57} Unfortunately, however, that methodology identified a surprisingly small group of just 109,700 online gig workers (about 0.07\% of all filers), and 85\% were male.\textsuperscript{58} Those online gig workers earned an average of about $24,000, but most of their income—around $17,500—came from wages, and only around $6,300 came from self-employment gig earnings.\textsuperscript{59} Of these

\begin{itemize}
\item \textsuperscript{54} Id. at 18–19.
\item \textsuperscript{55} Id. at 3.
\item \textsuperscript{56} Id. at 4.
\item \textsuperscript{57} Jackson et al., supra note 51, at 15. See generally About Form 1099-MISC, Miscellaneous Income, IRS, https://www.irs.gov/forms-pubs/about-form-1099-misc [https://perma.cc/7UBS-597R] (June 7, 2021); About Form 1099-K, Payment Card and Third Party Network Transactions, IRS, https://www.irs.gov/forms-pubs/about-form-1099-k [https://perma.cc/FSB4-AYCH] (Feb. 26, 2021). Researchers were “confident that the data includes the vast majority of filers who received a 1099 from the largest platform providers in sectors like ride sharing, courier or delivery services, local labor services[, and online computing, programming, or consulting services.” Jackson et al., supra note 51, at 15.
\item \textsuperscript{58} Jackson et al., supra note 51, at 16, 18. Jackson and others acknowledged that their overall count of online gig workers was likely the following:
\begin{itemize}
\item [A]n undercount of the true number of individuals that participated in the [online] “gig economy” because some participants may not have filed a return or not filed a Schedule C reporting that income; because some platform firms do not provide 1099s to all of their participants; and also because not all prominent service providers could not be found in the data (perhaps as a result of the prior two causes).
\end{itemize}
\item \textsuperscript{59} Id. at 19, 34 tbl.6.
\end{itemize}
online gig workers, 39% were primarily wage earners, and 19.5% had earnings from both wages and self-employment, but online platform work was the primary source of earnings for 33% of them. Notably, Jackson and others did not include individuals with rental income in their definition of gig workers, an approach that would have captured property owners who rent property on online platforms like Airbnb and who frequently provide at least some incidental housekeeping services in connection with their rentals.

In a 2019 paper, Brett Collins and others studied 2000–2016 tax returns. These authors defined the “tax work force” to include all individuals with income from (1) traditional employment (IRS Form W-2 income); (2) net self-employment income over $400 (IRS Form 1040 Schedule SE income); or (3) non-employee compensation (from an IRS Form 1099-MISC or an IRS Form 1099-K so long as the worker also filed an IRS Form 1040). To avoid including taxpayers who had income from selling goods or renting assets, the authors limited their universe to those workers who had received income from approximately fifty online platforms that coordinate labor services and that reported worker earnings to the IRS on either an IRS Form 1099-MISC or an IRS Form 1099-K. In short, the focus was on “firm-facing” or “firm-mediated” nonemployee compensation for services.

Using this methodology, Collins and others determined that the share of workers who received IRS Form 1099 income increased by 1.9% from 9.9% of the workforce in 2000 to 11.8% in 2016. Workers using online platforms to connect with their customers attributed to

60. Id. at 16.
62. Collins et al., supra note 6.
63. Id. at 10.
64. Id. at 7. Notably, the authors did not include tax data from (1) income from selling goods (for example, eBay or Etsy sellers) or renting assets (for example, Airbnb hosts); (2) “informal” or “occasional” work; or (3) household or consumer-facing activities (for example, selling goods at a farmer’s market or caregiving). See id. at 5, 6.
65. Id. at 5.
66. Id. at 3, 11.
almost all of the “dramatic growth” of this 1099 workforce since 2007. These authors also found that although online labor gig work was “[v]irtually non-existent” prior to 2012, by 2016, at least 1.9 million workers had some online platform earnings. The authors also concluded that this growth was not, in fact, a shift from traditional employment to full-time gig work, but rather an increase in alternative, nonemployee work as a supplemental or secondary source of earnings for most workers. At the same time, the growth was “driven by very small amounts—most less than $2,500 before taking out expenses.”

All in all, Collins and others found that in every year measured, the overwhelming majority of workers in the “tax workforce” were traditional employees, and nonemployee arrangements were only a small fraction of the overall workforce notwithstanding its growth of 1.9 percentage points as a share of the workforce from 2000–2016. Moreover, most of the individuals that engage in these nonemployee arrangements seem to do so to supplement their incomes rather than as a primary source of income because “over time most participants in the 1099 economy have been earning modest amounts, generally less than $7,500 in gross receipts.”

Finally, although Collins and others made a substantial contribution to the literature, their study does have its limitations. For example, with respect to platform companies, their study focused on “a subset of companies that are primarily labor platforms” and did not include any measures of offline gig work. In addition, their study focused on tax filings through 2016, after which some platforms ceased to furnish an IRS Form 1099-K to a service provider unless that worker had reached

67. Id. at 11.
68. Collins et al., supra note 6, at 11.
69. Id. at 13. Specifically, “the only growth in 1099 work since 2007 has been . . . individuals supplementing a primary W2 job.” Id. (emphasis omitted).
70. Id. (emphasis omitted).
71. Id. at 11, 23 tbl.1.
72. Id. at 13; see also supra text accompanying note 59 (noting that although online gig workers earned an average of about $24,000, gig work earnings attributed to only $6,300 of that income, indicating that these workers, too, used gig work as secondary sources of income); 2020 TAXPAYER COMPLIANCE, supra note 6, at 14 (“Available tax data from tax year 2016 suggest that only around 30 percent of platform workers who were known to IRS had gross platform-related earnings higher than $5,000.”).
73. Collins et al., supra note 6.
a minimum threshold of $20,000 in payments and 200 transactions with the platform (the so-called “200/$20K IRS Form 1099-K threshold”).

In a 2019 study, Katherine Lim and others also used tax return data to identify a population of “independent contractors” earning labor income during the 2001–2016 tax years. These authors developed a sample of taxpayers with nonemployee compensation reported to the IRS on IRS Forms 1099-MISC or 1099-K and linked those earnings to the taxpayers’ individual income tax returns. Moreover, these authors also linked those independent contractors with the firms that hired them, and that approach allowed these authors to observe independent contractor trends over time. By eliminating taxpayers that had more than $10,000 in business deductions (excluding travel or car deductions) and businesses with employees, these authors focused on individuals with income from providing labor services—13.8 million independent contractors in 2016. Using that sample, Lim and others found a 22% increase in the share of workers with independent-contractor earnings from 2001 to 2016 (compared to a 1.5% decrease in the share of workers with only IRS Form W-2 earnings over that same period). The majority of that growth (69%) occurred before 2011, prior to the widespread adoption of online platforms by online gig workers. Lim and others also noted that the


76. Id. at 7−14.

77. Id. at 2.

78. See id. at 9−11, 57 tbl.1. The authors also note that their population of “independent contractors” is broader (and narrower, in some instances) than other tax data measures of the self-employed. Id. at 7. For example, Collins and others (2019) found that almost 40% of IRS Form 1099-MISC recipients in 2016 did not file a Schedule SE and that approximately 45% of those with a Schedule SE did not receive an IRS Form 1099-MISC, “meaning that these individuals will be in our sample but not in the ‘self-employed’ population of previous papers.” Id. at 7 n.5.

79. Id. at 14.

80. Id.
fraction of firms that had at least one independent contractor grew by almost 20% from 2001 to 2016 and that firms were increasing the number of their independent contractors relative to the number of their employees.\textsuperscript{81}

Also, although Lim and others found independent-contractor work more common among men than women from 2001 to 2016, an increase in women doing independent-contract work attributed to 55% of the growth in independent-contractor labor from 2001 to 2016.\textsuperscript{82} Overall, the share of women doing independent-contract work rose from 5.4% of the female workforce in 2001 to 7.5% in 2016, while the share of the male independent-contract workforce remained “constant.”\textsuperscript{83}

Lim and others also concluded that “the growth of [independent-contractor] income has also been concentrated among lower-income workers where it represents a significant source of household income . . . . [M]any of these workers do not have wage earnings and are therefore unlikely to receive benefits from another job.”\textsuperscript{84} These authors also suggested that understanding independent-contract work is “particularly important given that [independent-contractors] are increasingly female, in the bottom half of the income distribution, and have [independent-contractor] income as a primary earning source.”\textsuperscript{85}

To reconcile the “conflicting trends” of household survey data finding little evidence of an increase in self-employment and administrative tax data “providing evidence of considerable recent growth,” Katharine G. Abraham and others (2018) analyzed a “newly-created linked data file that contains household survey and administrative . . . tax [data] for the same individuals.”\textsuperscript{86} Their

\begin{itemize}
  \item \textsuperscript{81} Lim et al., supra note 75, at 3.
  \item \textsuperscript{82} Id. at 1, 3, 19. That was a 68% increase in the number of female independent contractors, while the number of male independent contractors increased by just 37%. Id. at 19.
  \item \textsuperscript{83} Id. at 19–20. Women independent contractors were older on average than employees. Id. at 20. Moreover, although many workers use independent-contractor earnings to supplement their wage earnings, “the largest growth in female [independent contractors] was among those whose primary source of labor income is [independent-contractor] earnings.” Id. at 19.
  \item \textsuperscript{84} Id. at 3.
  \item \textsuperscript{85} Id. at 4. The authors also noted that health care, social assistance, and educational services were the fastest growing sectors of independent contract work over this period. Id. at 20.
  \item \textsuperscript{86} Abraham et al., Measuring the Gig Economy, supra note 16, at Abstract, 5.
\end{itemize}
research noted the difficulty and shortcomings of using survey data, which do not show an increase in self-employment, as well as self-reported tax filing data, which do show an increase. They concluded that researchers need to develop a more comprehensive “data infrastructure” to better understand gig work, where it fits into a worker’s career path, and how it relates to household income and health insurance coverage.

2. The Federal Reserve System

Although various surveys by the Federal Reserve System have included questions designed to measure gig work, the most important is the Survey of Household Economics and Decisionmaking (SHED), an annual survey prepared by the Federal Reserve Board’s Division of Consumer and Community Affairs (DCCA) Consumer and Community Research Section. The SHED measures the economic

87. Id. at 15–16.
88. Id. at 34.

well-being of U.S. households and identifies potential risks to their finances. 90

Although the SHEDs have regularly included questions about respondents’ employment status, including specific questions to gauge the prevalence of part-time work, only in the last few years has the SHED asked about online and offline gig work (including childcare, housecleaning, ridesharing, selling goods, and renting out property), and more recently, the impact of the Coronavirus pandemic on gig work. 91 The SHED responses in 2018 and 2019 showed that around 3 out of 10 adults engaged in some form of gig work in the month before

90. The EIWA survey found that the most common informal work activities were housecleaning, painting, yardwork, or other household maintenance (27%); babysitting or child-care services (17%); and providing personal services to individuals, such as picking up their dry cleaning, helping people move, dog walking, running errands, and booking travel (14%). Id. at 14. The EIWA survey found that the most common online activity was selling new or used goods (32%); however, 13% completed tasks for pay, 11% reported renting out property, and 20% reported other online paid activities. Id. at 16. In terms of offline selling, the EIWA survey focused on goods sold at “temporary locations such as flea markets, swap meets, garage sales, mobile vans/trucks, or stalls/kiosks.” Id. at 18. Notably, the EIWA survey found that 65% of survey participants “list(ed) [e]arning [m]oney as their [m]ain [r]eason for [e]ngaging in [i]nformal [w]ork.” Id. at 28. Another important finding from the EIWA survey was that workers engaged in informal work while being employed or assumed non-employment. Id. at 21. In other words, many workers engaged in informal work as a supplemental source of income. Also, the EIWA survey found that more women (56%) than men (44%) participated in informal work activities. Id. at 44. The EIWA survey served as a precursor to the Board of Governors of the Federal Reserve’s ultimate inclusion of specific gig work questions into the SHED in 2017 and since then. BD. OF GOVERNORS OF THE FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017, at 18–20 (2018) [hereinafter 2017 REPORT ON ECONOMIC WELL-BEING], https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf [https://perma.cc/78BA-FGXU].

91. The DCCA, through its relationship with a private consumer research firm, Ipsos, has conducted the SHED every fall since 2013. See, e.g., BD. OF GOVERNORS OF THE FED. RSRV. SYS., ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2020 (2021) [hereinafter 2020 REPORT ON ECONOMIC WELL-BEING], https://www.federalreserve.gov/publications/files/2020-report-economic-well-being-us-households-202105.pdf [https://perma.cc/9ZUG-FUJR] (data and appendices are also available); 2021 Survey of Household Economics, supra note 89; 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89. These annual surveys include modules on a range of topics of current relevance to financial well-being, including credit access and behaviors, savings, retirement, economic fragility, and education and student loans. See, e.g., id. The entirety of the survey is administered online. Id. In 2020, DCCA conducted supplemental SHED surveys in April and July 2020, in addition to the annual November survey, to track the impact of the Coronavirus pandemic on U.S. households’ finances and work. Id.; BD. OF GOVERNORS OF THE FED. RSRV. SYS., UPDATE ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS: JULY 2020 RESULTS (2020) [hereinafter JULY 2020 ECONOMIC REPORT], https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-update-202009.pdf [https://perma.cc/GNR4-YUKM].
those surveys, whereas the 2020 responses showed a decline in individuals engaged in gig work.\textsuperscript{92} Notably, the vast majority of this gig work was offline; for example, in 2019, only 13\% of gig workers responded that they had found customers with a company’s website or online app and received payment through the company.\textsuperscript{93} Table 3 shows the share of adults doing various kinds of gig work in 2019.\textsuperscript{94}

\begin{flushright}
\begin{center}
\textsuperscript{92} 2020 REPORT ON ECONOMIC WELL-BEING, supra note 90, at 32; 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89, at 18. \textbf{BD. OF GOVERNORS OF THE FED.} RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2018, at 18 (2018) [hereinafter 2018 REPORT ON ECONOMIC WELL-BEING], https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf [https://perma.cc/PMT6-XAZC]. In the 2018 SHED, gig work included both services (for example, childcare, dog-walking, housecleaning, and ridesharing) and goods activities (for example, selling goods at a garage sale, consignment store, or online; and renting out property). \textit{Id.} Also, at least one-quarter of survey respondents engaged in gig work back in 2016 and 2017. Abraham \& Houseman, \textit{supra} note 16, reviewed the gig worker data captured in the 2016 and 2017 SHEDs and found that one-quarter of adults 18 and older participated in gig work back then and that the majority (two-thirds) were motivated to earn money, which was a “very or somewhat important source of income . . . .” Abraham \& Houseman, \textit{Making Ends Meet, supra} note 16, at 112. They also noted that the men and women engaged in informal work to similar degrees and were almost equally motivated to do informal work to earn money as either a primary or supplemental source of income. \textit{Id.}


\textsuperscript{94} 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89, at 19 fig.12.
\end{center}
\end{flushright}
Table 3. Share of Adults Performing Gig Activities, 2019

<table>
<thead>
<tr>
<th>Sales Activities</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sold goods online</td>
<td>9</td>
</tr>
<tr>
<td>Sold goods at flea market</td>
<td>5</td>
</tr>
<tr>
<td>Sold goods at consignment shops</td>
<td>3</td>
</tr>
<tr>
<td>Sold goods at planned events</td>
<td>1</td>
</tr>
</tbody>
</table>

**Non-sales Activities**

| Housecleaning, yard work, or property maintenance | 7       |
| Childcare or eldercare services               | 4       |
| Renting out property, such as car or house    | 4       |
| Dog walking, feeding pets, or housesitting    | 3       |
| Driving or ride sharing such as with Uber or Lyft | 3     |
| Paid tasks online                            | 2       |

**Other Activities**

| Other paid personal tasks                  | 4       |
| Any other paid activities                  | 5       |

Though there are a variety of reasons for engaging in gig work, in 2019, (1) 51% of gig workers reported that earning additional income was their main reason for doing gig work, and 11% reported gig work as their main source of income; and (2) just 3% of adults in the 2019 SHED relied on gig work as a primary source of income. Further, in 2019, more women (53%) than men (47%) reported their main reason for doing gig work was to earn money in addition to their main source of income. Moreover, more women (55%) than men (45%) reported

95. Id.
96. Id. at 18–19; APPENDIXES TO 2019 REPORT ON ECONOMIC WELL-BEING, supra note 93, at 51 app. B, Q&A GE11.
97. E-mail from Kimberly Kreiss, Analyst, Div. of Consumer & Cmty. Affs., Bd. of Governors of the Fed. Rsv. Sys., to authors attach. (May 22, 2020, 09:46 AM) [hereinafter E-mail from Kimberly Kreiss to authors] (on file with authors) (SHED 2019 Statistics). Similarly, in 2018, 37% of gig workers reported that they were using gig activities to supplement their income, and 18% reported that gig work was their primary source of income. 2018 REPORT ON ECONOMIC WELL-BEING, supra note 92, at 19 fig.9. When asked specifically as to their main reason for doing gig work, 37% of gig workers reported supplementing their main income while 18% reported doing gig work as their main source of income. Id.; see also BETTERMENT, BETTERMENT’S 2018 REPORT: GIG ECONOMY AND THE FUTURE OF RETIREMENT 3 (2018), https://www.betterment.com/uploads/2018/05/The-Gig-Economy-Freelancing-and-Retirement-
their gig work activities as their main source of income, and their main reason for doing gig activities was to earn money.98 One reason that earnings from gig work are relatively low is that workers only engage in gig work sporadically; for example, of the adults that engaged in gig work in the month before the 2019 SHED, two-thirds (67%) spent less than twenty hours in the past month doing gig work.99

3. U.S. Census Bureau

The U.S. Census Bureau publishes annual nonemployer establishment data for businesses that have business receipts of $1,000 or more and no employees.100 For example, the Census Bureau estimated that there were 26.5 million nonemployer businesses in 2018, which increased from 25.7 million in 2017 and 24.8 million in 2016.101 Nonemployer data also showed that there were more than 700,000 self-employed taxi and limousine drivers in 2016, up from just 224,000 in 2013.102
The Census Bureau also administers the Survey of Income and Program Participation (SIPP), a nationally-representative panel survey that collects information on a range of topics relevant for assessing government program benefits distribution and collects detailed information about respondents’ employment and work history.\textsuperscript{103} Caroline Bruckner and Thomas Hungerford used 2014 SIPP data to estimate that approximately 7.1 million U.S. workers in 2014 identified themselves as self-employed workers or business owners working outside of traditional employment relationships (independent contractors).\textsuperscript{104} Of these, 67% were White, 14.6% were Hispanic, 12.4% were Black, and 5.7% were Asian.\textsuperscript{105} An additional 3.1 million workers (on-demand workers) worked for “an employer” or in an “other work arrangement, with no employees, in specified occupations[,] including babysitting and childcare; . . . housesitting; . . . adult or eldercare services; house cleaning; house painting; yard work; property maintenance work; [and] other personal services work[,] such as running errands or helping people move[,] jewelers[,] or driving.”\textsuperscript{106} Like the independent contractor population, on-demand workers were most often White (67%), rather than Hispanic (20.5%), Black (9.7%), or Asian (2.7%).\textsuperscript{107}

Other researchers who looked at SIPP data calculated that, in 2016, more women (19%) than men (11%) worked part-time and that, overall, 64% of all part-time workers that year were women.\textsuperscript{108} Also,
Julia Beckhusen analyzed SIPP respondents from a 2013 panel collection to determine what proportion of men and women held multiple jobs in a year and what types of jobs were held simultaneously.\(^{109}\) The overwhelming number of the 158.1 million workers that year were single job holders (91.7%); however, of the remaining 8.3% of workers that held multiple jobs, women had a higher rate of holding multiple jobs (8.8%) than men (8%).\(^{110}\) The education services, health care, and social assistance industry was home to the largest percentage of both women and men who were multiple job holders: it attracted 40.4% of the women with multiple jobs and 16.7% of the men with multiple jobs.\(^{111}\) Notably, that was also the top industry for single-job holding women.\(^{112}\)

4. The U.S. Small Business Administration

The U.S. Small Business Administration collects data and disseminates statistics and research on small businesses through its Office of Advocacy.\(^{113}\) For example, in 2018, the Office of Advocacy estimated that there were 30.2 million small businesses in the United States in 2015, including 5.3 million with 1–20 employees and 24.3 million firms without paid employees (nonemployer firms).\(^{114}\)

5. The JPMorgan Chase Institute

The private sector has also provided information about gig workers. Most notably, the JPMorgan Chase Institute’s 2018 study of online platform workers (conducted by Diana Farrell and others) is important


\(^{110}\) Id. at 2–3, 2 tbl.1.

\(^{111}\) Id. at 6 fig.4.

\(^{112}\) Id.


because it tracks actual payments flowing into gig worker bank accounts (as opposed to survey responses or tax filings) and because it includes data from 2013 through 2018—a period of extraordinary growth in online gig work.115 Specifically, the study includes earnings and gender data from a sample of 39 million “unique, de-identified” Chase checking accounts on which the primary account holder is at least eighteen years old; and the sample tracked payments from 128 online platforms to 2.3 million families between October 2012 and March 2018.116 The online platforms included in the study (1) connect customers to sellers or service providers, (2) mediate payments, and (3) allow workers to come and go on the platform.117 The study found that as of March 2018, 4.5% of families had participated in online gig work at some point over the prior year and that families typically cycle in and out of online gig work over the course of the year.118 Ultimately, Farrell and others estimated that approximately 2 million households had online gig work earnings in March of 2018 and that approximately 5.5 million households had online gig work earnings sometime during the prior year.119

Farrell and others organized the platform payments tracked into four distinct sectors: (1) transportation (for example, driving goods or

115. Diana Farrell, Fiona Greig & Amar Hamoudi, The Online Platform Economy in 2018: Drivers, Workers, Sellers and Lessors, JPMORGAN CHASE & CO. INST. 2 (Sept. 2018), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-ope-2018.pdf [https://perma.cc/AS5E-WAHM]. To be sure, the study only captures online platform work and that is only a small subset of all gig work. Id. at 7 box 1. The data does, however, reflect paid work that is “not always [captured] in traditional measures of contingent work” and may reflect the migration of existing informal work to online platforms. Id.; see also Abraham & Houseman, Making Ends Meet, supra note 16, at 113 (discussing Farrell et al., supra, and the limitations of its survey data).


117. Farrell et al., supra note 115, at 7 box 1. Admittedly, the sample used in Farrell and others’ reports “overrepresents younger-headed families, male-headed families, and families in the West. It underrepresents older-headed families, female-headed families, and families in the South.” Id. at 25 app. In addition, the Farrell report and other samples did not use an exhaustive list of platforms nor was it able to capture payments by platforms that bypassed checking accounts (for example, payments to debit cards). Abraham & Houseman, Making Ends Meet, supra note 16, at 113.

118. Farrell et al., supra note 115, at 11 exhibit 5.

119. Id. at 23.
people); (2) non-transport work (for example, dog walking, home care, home repair, or telemedicine); (3) selling goods through an online marketplace; and (4) leasing (for example, renting homes, rooms, parking spaces, and other assets). The majority of online platform workers in March of 2018 were in the transportation sector—63% of participants and 58% of total transactions. Interestingly, average earnings for online platform drivers decreased by 53% from 2013 to 2017, while earnings in the property-leasing sector increased by 69% during the same period. In fact, in 2017, the average monthly earnings of leasing-sector online gig workers ($1,736) were more than double the average monthly earnings of each of the remaining online gig sectors: transportation ($783), non-transportation services ($741), and selling online ($608). All in all, the earnings from online gig work are a secondary or supplemental source of income for the majority of online gig workers.

6. MBO Partners

Another private-sector source of information about gig workers over the past ten years is the annual “State of Independence” report prepared by MBO Partners, a private firm that provides back office services for high-wage independent contractors. Using an online survey method, MBO Partners estimated that 38.2 million U.S. workers worked as “independents” in 2020—a definition that includes “consultants, freelancers, contractors, solopreneurs, [and] temporary or on-call.

120. Id. at 2.
121. Id. at 23.
122. Id. at 13.
123. Id. at 14 exhibit 10. Interestingly, Airbnb’s own survey data found that 53% of its 2019 U.S. hosts said that their income from Airbnb “helped them stay in their homes, and about half of hosts surveyed (49%) said they were hosting on Airbnb to help make ends meet.” Memorandum from Airbnb to U.S. Travel & Tourism Policymakers (Mar. 16, 2020), https://news.airbnb.com/wp-content/uploads/sites/4/2020/03/Airbnb-Economics-in-the-US.pdf [https://perma.cc/8QQH-VZYP].
Notably, in 2021, MBO Partners found that “[t]he number of independent workers grew an unprecedented 34% year over year, increasing from 38.2 million in 2020 to 51.1 million in 2021.”

In addition, the “largest surge comes from those working occasionally [regularly, but without set hours per week] as independents . . . [which] grew from 15.8 million in 2020 to 23.9 million in 2021, a 51% increase.”

MBO Partners also indicated that the COVID-19 pandemic played a role in workers looking to supplement income from lost jobs and reduced hours, and that “[n]ew independents [were] . . . increasingly likely to be female.”

7. The ADP Research Institute

The ADP Research Institute, a think tank associated with the payroll processing firm Automatic Data Processing, Inc. (ADP), is another private-sector stakeholder that has measured the gig economy workforce and its growth in recent years. Using payroll data from 75,000 large companies that ADP services and a survey of 16,800 individuals, Ahu Yildermaz and others estimated that one in six of their workers count as gig workers—as opposed to permanent employees. The study classified workers as gig workers if they were either independent contractors (who received an IRS Form 1099-MISC) or short-term employees who worked for companies for just one to six months (and who received an IRS Form W-2). The

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128. Id.

129. Id. at 5, 8.


131. Id. at 3, 6, 8 & chart 2.

132. Id. at 6.
authors found that the share of gig workers in these companies increased from 14.2% of the workforce in 2010 to 16.4% in 2019, but there was a wide variation between industries. In terms of demographics, the independent contractors were older, more educated, and had higher incomes than the short-term employees who were typically seasonal or on-call hires. Of the independent contractors, 60% were men, 73% were over age thirty-five, 40% were married, and 50% had children under age eighteen. On the other hand, around 57% of the short-term W-2 employees were women, and on average, they were ten years younger than the independent contractors; also, they were more likely to be single and less likely to have children. Many of the independent contractors had health insurance through a spouse or partner or through Medicare or Medicaid. Of those gig workers over age fifty-five, most did not have an employer-sponsored retirement plan, and just 37% of the independent contractors and 28% of the short-term employees had a self-funded retirement plan.

8. Upwork

According to a 2020 report on freelancing in America from Upwork and the Freelancers Union, around 57 million American workers (35%) freelanced in 2019 and were defined as having “engaged in supplemental, temporary, project- or contract-based work, within the past 12 months,” and 28% of them freelanced full-time that year. Some 45% of freelancers identified in the 2019 report provided skilled services (for example, computer programming, writing, design, IT, marketing, and business consulting), 30% provided unskilled services (for example, dog walking, cleaning, and ridesharing), 26% sold goods or rented rooms (through, for example, consignment shops, eBay, or

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133. Id. at 3.
134. Id.
135. Id. at 12.
136. YILDIRMAZ ET AL., supra note 130, at 12 chart 14.
137. Id. at 14 (32% through Medicare or Medicaid; 21% through partner or spouse).
138. Id. at 14 chart 20.
Airbnb), and 29% were engaged in other uncategorized activities.140 All in all, those freelancers contributed almost $1 trillion to the economy (almost 5% of gross domestic product).141 Also, 62% of the freelancers were White, 16% were Hispanic, 12% were Black, 5% were Asian-American, and 4% were all others; 59% were male; and 20% were over age fifty-five.142

9. Other Estimates

In a 2019 report, the Life Insurance Marketing and Research Association (LIMRA) estimated that 26% of all U.S. workers participated in the gig economy either as their primary job or as a secondary source of income.143 In a 2018 study, Gallup estimated that 36% of American workers participated in the gig economy as independent contractors, online platform workers, contract firm workers, on-call workers, or temporary workers; also, 29% of all workers worked in one of these alternative work arrangements as their primary job.144 Those alternative workers were less likely to work full-time than traditional workers, but many were not looking to work more hours.145 In a 2016 study, the McKinsey Global Institute estimated that between 22% to 27% of U.S. workers (up to 68 million individuals) engaged in what it called “independent work.”146 Also,
noted economists Lawrence F. Katz and Alan B. Krueger conducted a study that found that the percentage of workers engaged in alternative work arrangements grew from 10.7% in 2005 to as high as 15.8% in 2015.147

Another promising approach for defining gig workers would be to use one of the two alternative definitions of nontraditional work that Alicia H. Munnell and her colleagues at the Boston College Center for Retirement Research developed.148 Their 2019 study used the 1992–2016 waves of the University of Michigan’s Health and Retirement Study (HRS) to explore how older workers use nontraditional jobs.149 That study’s broad definition of nontraditional work included “any job [that] lack[ed] both health insurance and retirement benefits[,]” while the study’s narrower definition included any “job without [those] benefits that also [had] some measure of job instability” (in other words, employment that had variable hours or self-employment where the worker had no benefits and no employees).150 Under the broad definition, around 16.9% of workers aged fifty to sixty-two in 2016 were in nontraditional jobs, while under the narrower definition, just 7.6% had nontraditional jobs.151

Finally, since 2018, the Aspen Institute’s Future of Work Initiative and Cornell University’s School of Industrial and Labor Relations (ILR) have collaborated on maintaining the Gig Economy Data Hub,
an online, interactive catalogue of government, private-sector, and academic resources on nontraditional and gig-economy work.\textsuperscript{152}

C. More Detail on Gig Worker Demographics

1. Gender and the Gig Economy

The relationship between gender and gig work is complex and varies significantly depending on how gig work is defined and measured. Surveys that measure both offline and online gig work have found that more women than men do informal work.\textsuperscript{153} For example, the Federal Reserve Board’s 2015 Enterprising and Informal Work Activities (EIWA) survey found that more women (56\%) than men (44\%) engaged in “informal work,” and the percentage differential increased when the comparison was between lower-income women (62\%) and men (38\%).\textsuperscript{154} Also, Bruckner and Hungerford reviewed data from the 2014 SIPP, and they found significantly more women (56\%) than men (44\%) were among the 7.1 million workers identified as independent contractors, and slightly more women (52\%) than men (48\%) were among the 3.1 million identified as on-demand workers.\textsuperscript{155}

Also, the 2019 SHED found that more women (52\%) than men (48\%) spent at least twenty hours a month doing gig work.\textsuperscript{156}

\textsuperscript{152} Gig Economy Data Hub, supra note 16. The Gig Economy Data Hub includes both descriptions of and access to more than a dozen datasets intended to provide easily accessible data analysis for policymakers, academics, the media, and the public on nontraditional and gig economy work. For each source, the site includes how the dataset defines gig work, the methodology, major findings, and outstanding issues as well as links to the raw data and reports where possible. See id.; see also Ben Gitis, Douglas Holtz-Eakin & Will Rinehart, The Gig Economy: Research and Policy Implications of Regional, Economic, and Demographic Trends, AM. ACTION F. 2–3 (Jan. 10, 2017), https://www.americanactionforum.org/wp-content/uploads/2017/01/Regional-and-Industry-Gig-Trends-2017.pdf [https://perma.cc/PNC5-KR8L] (discussing methodology for findings).

\textsuperscript{153} E.g., Bruckner & Hungerford, supra note 9, at 81 fig.2; ROBLES & McGEE, supra note 4, at 12, 21.

\textsuperscript{154} ROBLES & McGEE, supra note 4, at 12.

\textsuperscript{155} Bruckner & Hungerford, supra note 9, at 81 fig.2, 82 fig.5. They also found that, although most workers in both the independent-contractor and on-demand-worker populations were White (67\%), baby boomers (age 55+) comprised the majority of independent contractors (51\%) with workers aged thirty-five to fifty-four being the majority of on-demand workers (45\%). Id. at 81 fig.1, 82 figs.3 & 4, 83 fig.6.

\textsuperscript{156} Email from Kimberly Kreiss to authors, supra note 97(SHED 2019 Statistics). Similarly, an analysis of the 2016 and 2017 SHEDs found that, although the “incidence of informal work varies little by gender,” slightly more women than men engaged in informal work. Abraham & Houseman, Making Ends Meet, supra note 16, at 117 tbl.1, 119.
of the kinds of gig work that women and men engage in, Table 4 shows that significantly more women than men engage in paid caregiving (72% done by women); dog walking, pet care, and house sitting (61% done by women); selling goods at flea markets or garage sales (56% done by women); selling goods consignment shops or thrift stores (70% done by women); and selling goods at planned events (73% done by women).

Table 4. Share of Adults Performing Gig Activities, 2019

<table>
<thead>
<tr>
<th>Have Been Paid For Activities in the Past Month (services)</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child or elder care services</td>
<td>72</td>
<td>28</td>
</tr>
<tr>
<td>Dog walking, feeding pets or house sitting</td>
<td>61</td>
<td>39</td>
</tr>
<tr>
<td>Housecleaning, yard work, or other property maintenance work</td>
<td>46</td>
<td>54</td>
</tr>
<tr>
<td>Driving or ridesharing such as Uber or Lyft</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Paid tasks online</td>
<td>51</td>
<td>49</td>
</tr>
<tr>
<td>Other personal tasks such as deliveries or running errands</td>
<td>47</td>
<td>53</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Have Been Paid For Activities in the Past Month (assets)</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling goods yourself at flea markets or garage sales</td>
<td>56</td>
<td>44</td>
</tr>
<tr>
<td>Selling goods at consignment shops or thrift stores</td>
<td>70</td>
<td>30</td>
</tr>
<tr>
<td>Selling goods online</td>
<td>51</td>
<td>49</td>
</tr>
<tr>
<td>Selling goods at a party you plan, such as an Avon party</td>
<td>73</td>
<td>27</td>
</tr>
<tr>
<td>Any other paid activities not already mentioned</td>
<td>50</td>
<td>50</td>
</tr>
</tbody>
</table>

On the other hand, Jackson and others, which used a comparatively limited definition of online gig work to analyze administrative tax data, found the “vast majority” (85%) of online gig workers were men. That study did, however, find that self-employed workers with less than $5,000 of business expenses were “predominately female, less

157. 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89; Email from Kimberly Kreiss to authors, supra note 97.
158. 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89; Email from Kimberly Kreiss to authors, supra note 97.
159. Jackson et al., supra note 51, at 18.
likely to be married, and somewhat more likely to have children,” strongly indicating that more women than men do offline gig work.\textsuperscript{160} Collins and others also found that the online gig workers reflected in its 2001–2016 administrative tax data were more than 70% male, while traditional, wage-only workers were more evenly split between male (50.5%) and female (49.5%).\textsuperscript{161} Notably, however, Collins and others found that participation in the “1099 economy” grew more significantly overall among women than men from 2000 to 2016.\textsuperscript{162} More recently, Lim and others found that, from 2001 to 2016, women drove 55% of growth in the universe of independent contractors, “especially women who are the primary earners in their households.”\textsuperscript{163} Farrell and others also found that more men than women participate in online gig work.\textsuperscript{164} The majority of the online gig workforce were drivers for ridesharing platforms, and most of them were men.\textsuperscript{165} Yet male dominance in online gig work was limited to the transportation sector, as women were actually more likely than men to participate in the other three sectors (selling goods, leasing assets, or performing

\textsuperscript{160} Id.
\textsuperscript{161} Collins et al., supra note 6, at 15–16.
\textsuperscript{162} Id. at 17.
\textsuperscript{163} Lim et al., supra note 75, at 3.
\textsuperscript{164} Farrell et al., supra note 115, at 22 exhibit 25.
\textsuperscript{165} Id. at 16 exhibit 13, 22 exhibit 26. Another study showing male dominance in the ridesharing industry of 1.87 million Uber drivers, from January 2015 through March 2017, found that just 512,000 of those Uber drivers were women (27.3%), and it also identified a 7% gender earnings gap among drivers. Cody Cook, Rebecca Diamond, Jonathan V. Hall, John A. List & Paul Oyer, The Gender Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers, REV. ECON. STUD. 1, 8 (Nov. 27, 2020), https://doi.org/10.1093/restud/rraa081 [https://perma.cc/L8A3-2JQP]. The authors attributed the gap to three primary factors. Id. at 2–3. First, male drivers “tend to drive in more lucrative locations” and are compensated “for their willingness to drive in areas with higher crime and more drinking establishments.” Id. at 2–3. Second, men have more experience using the platform, which translates to higher earnings because they learn “to strategically cancel and accept trips.” Id. at 3. Third, men tend to drive faster and benefit from more experience using the platform (in other words, they learn more efficient routes). Id. at 2–3. At the same time, women had an attrition rate of 76.5% within six months (11.5% higher than men). Id. at 8 tbl.1; see also Avigail Wittenberg-Cox, Uber’s Gender Pay Gap Study May Show the Opposite of What Researchers Were Trying to Prove, FORBES (Sept. 23, 2018, 10:25 AM), https://www.forbes.com/sites/avigailwittenbergcox/2018/09/23/gender-paygap-uber-case-study/#76790595b555 [https://perma.cc/84BK-UBUV].

Research done by the Overseas Development Institute on gender and online labor platforms around the world also found that (1) women earn less than men doing online labor gig work; (2) fewer women than men participated in online labor gig work and were more likely to exit; and (3) overall, women were “much less likely” to do online gig work regularly. Hunt & Samman, supra note 15, at 12.
other services). In short, as Farrell and others concluded, “different gender patterns by platform sector may help explain why some studies have found people active in the gig economy to be disproportionately men, while others have found them more likely to be women.”

For example, Airbnb recently released data showing that, in 2019, 58% of its hosts for its 1.1 million active listings in the United States were women. Earlier Airbnb research noted that older women hosts were propelling the overall growth of seniors as hosts on the platform and that “[t]he majority of senior women hosts are empty nesters who host to make ends meet.”

2. Older Workers

A survey of the relevant literature finds that “partial retirement” or “bridge jobs” are common for older adults transitioning from full-time work to part-time work before retirement. Moreover, a “significant share” of retired workers re-enter the workforce, often taking part-time, as opposed to full-time, jobs. In that regard, a recent Government Accountability Office report found that the labor force participation rate for Americans aged fifty-five or older increased from 30% in 1989 to 40% in 2018, and a recent Bureau of Labor Statistics report noted that the labor force participation rate of women aged fifty-five or older increased from 12.6% in 2000 to 22.2% in 2015.

166. Farrell et al., supra note 115, at 8–11, 22 exhibit 26.
167. Id. at 22.
170. Abraham et al., supra note 12.
171. Id.
Indeed, some 2 million women aged seventy or older were in the workforce in 2019. The 2019 SHED found that, of those gig workers who spent at least twenty hours doing gig work in the previous month, 18% were sixty or older, and the 2018 SHED found that 21% of adults sixty or older engaged in a gig activity.

Regarding online gig work, Abraham and others (2020) found that older Americans are not as likely to participate as younger workers. But similar to gender data in online gig work, it could be that older workers do not engage in rideshare driving or other services to the same degree as they do in other types of platform work and that the Abraham and others (2020) study did not expressly probe respondents’ online platform work related to property rental (such as hosting for Airbnb). For example, a Gallup survey conducted during 2018–2019 found that self-employment among Americans is “more prevalent at older ages than suggested by existing data.” In fact, that data showed that, conditional on working, the percentage of workers who are self-employed as their main job “rises sharply” with age.

Using JPMorgan Chase bank-account data, Farrell and others found that older workers do participate in some forms of online gig work, with age gradients being “steepest in the transportation and selling sectors[.]” When it comes to the leasing sector, “older people may

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174. APPENDIXES TO 2019 REPORT ON ECONOMIC WELL-BEING, supra note 93, at 51 app.B, Q&A GE20; 2018 REPORT ON ECONOMIC WELL-BEING, supra note 92.

175. Abraham et al., supra note 12, at 429. Contract work is also “counter-cyclical”; when the labor market is weak—like it has been during the Covid-19 pandemic—relatively more workers do independent contractor work. Id. at 427; MBO PARTNERS, supra note 125, at 8.

176. See generally Abraham et al., supra note 12.

177. Id. at 426.

178. Id. at 431. On the other hand, using administrative tax data from 2000 to 2016, Collins and others found low levels of growth in gig work as workers approached retirement age; however, that research did not include online sellers or property renters nor did it measure occasional or informal work that was not firm-facing or firm-mediated work. Collins et al., supra note 6, at 17–18.

179. Farrell et al., supra note 115, at 22 exhibit 24.
face lower barriers to entry than younger people, likely because they are more likely to already own assets which they can lease out.  As of 2016, older Americans were “embracing home sharing at record rates”; and a majority (58%) reported that home sharing helped them stay in their homes and more than one-third reported that hosting helped them stave off eviction. Other recent survey research indicates that older Americans are increasingly interested in earning income by engaging in online gig work.

Eileen Appelbaum and others used Bureau of Labor Statistics data for 2017 to explore the nonstandard work arrangements of older workers, and their study found that independent contractors aged fifty-five to sixty-four were most likely to be in the construction industry and next most likely to be in real estate industry. Independent contractors aged sixty-five and older were most likely to be in the construction industry and next most likely to be in management, scientific, and technical consulting services. Older on-call and contingent workers were most likely to work in elementary and secondary schools (mainly as substitute teachers). The construction industry was the next most likely industry to employ on-call workers aged fifty-five to sixty-four, while the second most common industry for contingent workers aged sixty-five plus was colleges, universities, and professional schools.

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180. Id. at 21. Airbnb’s own internal data shows that in the United States, one of its “largest cohorts” of U.S. hosts for its 1.1 million active listings are “Americans aged 60 and older, many of whom live on fixed incomes . . . .” Memorandum from Airbnb to U.S. Travel & Tourism Policymakers, supra note 123. This has been a consistent trend since Airbnb’s founding during the Great Recession, and notably, in 2016, Airbnb concluded that seniors were the “fastest-growing age demographic of hosts joining the Airbnb community” and also noted that “nearly two-thirds [(64%)] of all senior hosts are women.” AIRBNB’S GROWING COMMUNITY, supra note 169, at 2, 3


183. Appelbaum et al., supra note 29, at 16.

184. Id.

185. Id.

186. Id. Pertinent here, a recent report from the U.S. Government Accountability Office showed that
II. AN OVERVIEW OF THE FEDERAL TAX SYSTEM

How (and whether) gig workers properly report their income for federal income and payroll tax purposes can have major implications for workers trying to shore up their retirement income shortfalls.\textsuperscript{187} Different sets of tax reporting and tax administration rules can apply to individuals performing the same kinds of services depending on whether the worker is classified as an employee or an independent contractor and also on whether the worker participates in an online platform.\textsuperscript{188} Different tax rules also apply to the casual sellers of goods and the renters of property.\textsuperscript{189} These complicated rules present some very real tax compliance challenges, and there is a good deal of evidence that gig workers, most of whom piece together income from selling goods and services in addition to working in traditional jobs, consistently underreport their gig earnings.\textsuperscript{190} This Part explains (1)

\textsuperscript{187} See, e.g., Bruckner & Hungerford, supra note 9, at 56.

\textsuperscript{188} See, e.g., Gig Economy Tax Center, IRS, https://www.irs.gov/businesses/gig-economy-tax-center [https://perma.cc/F8HN-6E9C] (Aug. 3, 2021); 2020 TAXPAYER COMPLIANCE, supra note 6, at 8 fig.2; see also infra Part II.C.

\textsuperscript{189} See infra Part II.C.3.

\textsuperscript{190} See, e.g., Bruckner & Hungerford, supra note 9, at 75; Caroline Bruckner & Annette Nellen, Failure to Innovate: Tax Compliance and the Gig Economy Workforce, 92 ST. TAX NOTES 485 (May 6, 2019); Bruckner, supra note 2, at 15; TREASURY INSPECTOR GEN. FOR TAX ADMIN., U.S. DEP’T OF THE TREASURY, REFERENCE NO. 2019-30-016, EXPANSION OF THE GIG ECONOMY WARRANTS FOCUS ON IMPROVING SELF-EMPLOYMENT TAX COMPLIANCE 1 (2019) [hereinafter EXPANSION WARRANTS FOCUS ON COMPLIANCE], https://www.treasury.gov/tigta/audittreps/2019/reports/201930016fr.pdf [https://perma.cc/UM5T-5TJJ]; Stacy Cowley, For Gig Workers and Business Owners, Taxes Are Even Trickier Now, N.Y. TIMES (Mar. 12, 2021),
how the federal income, payroll, and self-employment tax payment and reporting rules work; and (2) the corresponding tax compliance issues that involve gig workers, which ultimately have implications for retirement financing.

A. The Federal Income Tax

The U.S. tax system is a pay-as-you-go system of tax collection, and the largest of the federal taxes is the income tax imposed on individuals. Taxpayers file returns as unmarried individuals, heads of household (in other words, an unmarried individual with a dependent), married couples filing joint returns, or married couples filing separate returns. As a starting point, taxpayers first determine the amount of their gross income. From gross income, taxpayers subtract certain deductions to get to adjusted gross income and then to taxable income. Most taxpayers simply claim a standard deduction, but some taxpayers can claim certain itemized deductions in lieu of the standard deduction. The marginal income tax brackets (10%, 12%, 22%, 24%, 32%, 35%, and 37% in 2021) progressively tax income, but most Americans are subject to marginal tax rates of 10% to 22%.


192. I.R.C. §§ 1, 2, 7703.

193. I.R.C. § 61(a). Gross income includes all income “from whatever source derived,” including, but not limited to, the wages, salary, tips, gains, dividends, interest, rents, and royalties received by taxpayers during the taxable year. Id. Unemployment benefits and some Social Security benefits are also included in gross income. I.R.C. §§ 85, 86. Up to $10,200 of unemployment compensation paid in 2020 is excluded from income. I.R.C. § 85(c) (West) (added by the American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9042, 135 Stat. 4, 122).


195. I.R.C. § 63; 2021 OVERVIEW OF THE FEDERAL TAX SYSTEM, supra note 191, at 4 (estimating that 138.3 million taxpayers will claim the standard deduction for the 2021 tax year while 19.1 million taxpayers will elect to itemize their deductions).


See generally MARGOT L. CRANDALL-HOLICK, CONG. RSCH. SERV.,

https://perma.cc/9Q5T-RV7U.
Individuals can also reduce their income tax liability with certain tax credits. For example, in 2021, many taxpayers can claim child tax credits of up to $3,600 for each qualifying child under the age of seventeen, and many taxpayers can claim a child and dependent care tax credit for certain employment-related care expenses. Many low-income workers also qualify for the refundable earned income tax credit of up to $6,728 for low-income families or $1,502 for low-income taxpayers without qualifying children (in 2021). Certain low- and moderate-income individuals can also claim a nonrefundable retirement saver’s tax credit of up to $1,000 for certain qualified retirement savings contributions.

In response to the
economic fallout from COVID-19, in April and December of 2020 and March of 2021, Congress created new refundable and advanceable recovery rebate tax credits.\textsuperscript{202}

For those individuals who have investment income and modified adjusted gross income more than certain threshold amounts (for example, $250,000 for married couples and $200,000 for singles and heads of household), an additional 3.8% net investment income tax is due on income from interest, dividends, capital gains, rents and royalties, non-qualified annuities, income from businesses involved in trading of financial instruments or commodities, and businesses that are passive activities.\textsuperscript{203}

B. Payroll and Self-Employment Taxes

In addition to income taxes, workers are subject to various Social Security and Medicare payroll taxes.\textsuperscript{204} These payroll taxes are levied on earnings from employment and are the primary financing mechanism for Social Security and Medicare benefits.\textsuperscript{205} For 2021, employees and employers each pay a Social Security payroll tax of 6.2% on up to $142,800 of wages for a combined Old-Age and Survivors and Disability Insurance (OASDI) rate of 12.4%, and for the
Medicare Hospital Insurance (HI) portion, employers and employees each pay an additional 1.45% on all wages for a combined 2.9%. Self-employed workers are required to remit the equivalent 15.3% of payroll taxes for Social Security and Medicare taxes on their self-employment earnings of $400 and above pursuant to the Self-Employment Contributions Act (SECA). Workers (but not employers) are liable for an additional 0.9% Medicare tax for wages, compensation, or self-employment income in excess of certain threshold amounts (for example, $200,000 for single filers and $250,000 for married filers).

Workers performing services outside of traditional employment relationships (for example, independent contractors and many occasional workers) are typically treated as self-employed for federal tax purposes. Accordingly, the businesses that hire self-employed workers are generally not required to withhold or pay any payroll taxes on those workers; instead, the self-employed workers, themselves, are responsible for remitting the full amount of their self-employment taxes.

Traditional employers (but not self-employed workers) are also subject to a 6% unemployment insurance payroll tax on the first $7,000 in wages paid to each covered employee.
C. Tax Payment and Reporting Rules

1. Employees

Employers that pay wages or compensation to workers classified as employees are generally required to report those wages to the IRS for federal income and payroll tax purposes, to withhold income and payroll taxes from those wages, and to deposit those withheld funds with the federal government.212 Employers report these withheld amounts on an IRS Form W-2 and provide each employee with a copy of their IRS Form W-2 at the beginning of the subsequent income-tax-return filing season.213 Employees are required to attach their copy of the IRS Form W-2 to their annual income tax returns.214

When calculating federal income tax liability, employees (but not independent contractors) are allowed to exclude a variety of employer-provided fringe benefits from gross income—such as employer-provided health care benefits, child care benefits, and free parking; also, employees can participate in employer-provided retirement plans and exclude contributions to those plans from their income.215 On the other hand, although taxpayers are generally allowed to claim a deduction for their ordinary and necessary business expenses, employees can no longer deduct their unreimbursed employee business expenses.216
2. Self-employed Workers

Businesses that hire independent contractors are not required to withhold and remit income and payroll taxes for those workers. Instead, those workers are self-employed for federal tax purposes, and the workers themselves are responsible for calculating and remitting their own income and self-employment tax amounts. Consequently, businesses often have a financial incentive to misclassify employees as independent contractors. For example, Table 5 shows that businesses can save thousands of dollars in taxes when they misclassify workers as independent contractors.

expenses) during the period from 2018 through 2025. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11045(a), 131 Stat. 2054, 2088 (codified at I.R.C. § 67(g)).
218. Id.
220. Table 5 follows 2013 EMPLOYERS DO NOT ALWAYS FOLLOW IRS, supra note 219, at 3 fig.1. $4,245 = $3,100 + $725 + $420; $3,100 = 6.2% × $50,000; $725 = 1.45% × $50,000; $420 = 6% × $7,000. The comparison in Table 5 is probably not quite fair. If a business is willing to spend $54,450 for an employee’s services ($50,000 in wages plus $4,245 in employer taxes), then in an economically competitive market, the business should be willing to pay $54,245 for those same services if they are instead provided by an independent contractor. To be sure, workers, in general, and independent contractors, in particular, are often in uncompetitive labor markets and do not have much bargaining power. See, e.g., Justin Azar, Portable Benefits in the Gig Economy: Understanding the Nuances of the Gig Economy, 27 GEO. J. ON POVERTY L. & POL’Y 409, 413 (2020); Lawrence Mishel & Celine McNicholas, Uber Drivers Are Not Entrepreneurs: NLRB General Counsel Ignores the Realities of Driving for Uber, ECON. POL’Y INST. (Sept. 20, 2019), https://www.epi.org/files/pdf/176202.pdf [https://perma.cc/9CTS-K59U]; HANNAH JOHNSTON & CHRIS LAND-KAZLAUSKAS, INT’L LABOUR OFF., ORGANIZING ON-DEMAND: REPRESENTATION, VOICE, AND COLLECTIVE BARGAINING IN THE GIG ECONOMY (2018), https://ilo.userservices.exlibrisgroup.com/discovery/delivery/41ILO_INST:41ILO_V2/1251469990002676?lang=en&viewerServiceCode=AlmaViewer [https://perma.cc/ZWX9-DTZC]. Accordingly, the Authors believe that, at best, most independent contractors can share in only a small portion of the service-recipient business’s employment tax savings.
Table 5. Employment Taxes Employers Pay if the Worker is Misclassified as an Independent Contractor, Calendar Year 2020  
(Analysis based on a worker with $50,000 of income)\(^{221}\)

<table>
<thead>
<tr>
<th>Tax</th>
<th>Employer’s Portion of Tax if Worker Is Properly Classified as an Employee</th>
<th>Employer’s Portion of Tax if Worker Is Misclassified as an Independent Contractor</th>
<th>Dollar Advantage per Worker for Employers to Misclassify Employees as Independent Contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security</td>
<td>$3,100</td>
<td>$0</td>
<td>$3,100</td>
</tr>
<tr>
<td>Medicare</td>
<td>$725</td>
<td>$0</td>
<td>$725</td>
</tr>
<tr>
<td>Federal Unemployment</td>
<td>$420</td>
<td>$0</td>
<td>$420</td>
</tr>
<tr>
<td>Total</td>
<td>$4,245</td>
<td>$0</td>
<td>$4,245</td>
</tr>
</tbody>
</table>

Self-employed workers with compensation for services income typically use an IRS Form 1040 Schedule C to report their self-employment income and their income tax.\(^{222}\) Self-employed workers also pay the 15.3% self-employment tax on an IRS Form 1040 Schedule SE.\(^{223}\) Importantly, if a taxpayer has self-employment earnings and will owe at least $1,000 in income tax or self-employment tax on amounts not subject to withholding, the taxpayer is required to make advance quarterly estimated tax payments (on April 15, June 15, September 15, and January 15), and failure to make those payments can result in penalties.\(^{224}\)

Self-employed workers are generally allowed to deduct their ordinary and necessary business expenses, and self-employed workers

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\(^{221}\) Table 5 follows 2013 EMPLOYERS DO NOT ALWAYS FOLLOW IRS, supra note 219, at 3 fig.1.


\(^{223}\) See, e.g., SMALL BUSINESS TAX GUIDE, supra note 217, at 9, 10 tbl.1-2.

are also permitted to deduct their health insurance premiums.\textsuperscript{225} In addition to deducting their business expenses, self-employed workers—but not employees—may be eligible to claim the I.R.C. § 199A qualified business income deduction of up to 20\% of their qualified business income from domestic sources.\textsuperscript{226} In effect, the qualified business income deduction reduces the effective income tax rate applicable to qualifying self-employed workers.\textsuperscript{227} In that regard, some analysts have expressed concern that the I.R.C. § 199A deduction might lead some individual employees to give up their employee status to be able to claim the 20\% deduction.\textsuperscript{228}

\begin{itemize}
\item \textsuperscript{225} I.R.C. § 162(a), (l). Of course, they must be engaged in the activity for profit, rather than as a hobby to deduct expenses in excess of any income generated. I.R.C. § 183(a); Annette Nellen, Caroline Bruckner & Jennifer Brown, Taxes and the Growing Gig Workforce: What to Know, J. TAX'N, June 2018, at 6, 12. Among other things, an activity may be treated as a hobby—rather than a business—if a worker fails to (1) keep separate business records; (2) have knowledge about the nature of the business, relevant laws, and competition; (3) develop a business plan; and (4) regularly engage in the activity. Treas. Reg. § 1.183-2 (2020). If the activity is a hobby, a taxpayer may owe income tax, but not self-employment tax. Nellen et al., supra, at 11–12.
\item \textsuperscript{227} For example, a qualifying taxpayer facing the top marginal income tax of 37\% in 2021, would instead face an effective tax rate of just 29.6\% (29.6\% = 37\% × 80\%). To be sure, there are a number of complicated limitations on the availability of the 199A deduction. See generally Bruckner & Nellen, supra note 190; Shu-Yi Oei & Diane M. Ring, Tax Law’s Workplace Shift, 100 B.U. L. REV. 651, 658–63, 690–94 (2020). For example, certain income limitations apply to limit and eliminate the deduction altogether for taxpayers with certain types of income from services and with adjusted gross income more than certain amounts. Nellen et al., supra note 225, at 13. For example, in 2021, the income thresholds are $329,800 for married couples and $164,925 for single taxpayers. Rev. Proc. 2020-45, 2020-46 I.R.B. 1016, superseded by Rev. Proc. 2021-23, 2021-19 I.R.B. 1153. As a result, the deduction is generally not available to high-income doctors, lawyers, accountants, actuaries, and brokers (I.R.C. § 199A(d)); but given the comparatively low earnings generated by gig workers selling services, most gig workers selling services are likely eligible for the 199A deduction. See Oei & Ring, supra, at 661.
\item \textsuperscript{228} See, e.g., David Kamin, David Gamage, Ari Glogower, Rebecca Kysar, Darien Shanske, Reuven Avi-Yonah, Lily Batchelder, J. Clifton Fleming et al., The Games They Will Play: Tax Games, Roadblocks, and Glitches Under the 2017 Tax Legislation, 103 MINN. L. REV. 1439, 1463–64 (2018); Russell A. Hollrah & Patrick A. Hollrah, New Passthrough Deduction Creates Tax Benefit for Self-Employed, 158 TAX NOTES 1051 (Feb. 19, 2018); Oei & Ring, supra note 227, at 654–57. Indeed, that switch may already be happening, as recent IRS data shows that more taxpayers claimed the 199A deduction than the IRS originally expected; 18.7 million taxpayers claimed the deduction on their 2018 individual income tax returns when the IRS originally only expected around 10 million taxpayers would claim the deduction. Martin Sullivan, Economic Analysis: 19 Million Taxpayers Tax the Pass-Through Deduction, 168 TAX NOTES FED. 1949, 1949 (Sept. 14, 2020); 2018 TAX REPORT, supra
The federal tax rules for self-employed gig workers present some unique challenges for ensuring tax compliance. For example, problems result from the complexity and administration of the current IRS information reporting rules because these rules depend on how a payor pays a gig worker for services or goods. Businesses that make payments to independent contractors of $600 or more for services (per year) that constitute non-employee compensation are generally required to report those payments to the IRS and to those workers on the recently-created IRS Form 1099-NEC (Nonemployee Compensation). Before 2020 (and by mistake thereafter), payments for $600 or more in nonemployee compensation were reported on an IRS Form 1099-MISC. For self-employed workers, that $600 amount is often referred to as the IRS Form 1099-NEC (previously 1099-MISC) threshold. If a customer is not a business and makes a personal payment to a gig worker directly for services (for example, when a homeowner pays a lawn care service or a roofer), the customer is generally not required to report the payment or send an IRS Form 1099 to the payee or the IRS. A different IRS Form 1099 is required when an online platform (for example, Uber, Lyft, eBay, Airbnb) facilitates and processes electronic payments for transactions between customers and service providers or sellers. In those instances, the IRS treats the online platform as a

Note 46, at 127 tbl.1.5; Internal Revenue Service, Qualified Business Income Deduction, 84 Fed. Reg. 2952 (Feb. 8, 2019) (codified at Treas. Reg. pt. 1), https://www.govinfo.gov/content/pkg/FR-2019-02-08/pdf/2019-01025.pdf [https://perma.cc/DE2G-N8DW]; Nellen et al., supra note 225, at 25. Specifically, the tax data shows that taxpayers claimed almost $150 billion in 199A deductions in 2018, with the average deduction being around $8,000. Sullivan, supra. Of the 18.7 million taxpayers that claimed the 199A deduction on their 2018 tax returns, 4 million were aged fifty-five through sixty-four, and 4.3 million were over age sixty-five. 2018 TAX REPORT, supra note 46, at 127 tbl.1.5.

See generally Thomas, supra note 209 (discussing common tax issues for gig workers).


231. See, e.g., EXPANSION WARRANTS FOCUS ON COMPLIANCE, supra note 190, at 31.

232. 2020 TAXPAYER COMPLIANCE, supra note 6, at 8 fig.2.

third-party settlement organization (TPSO) and requires the payor to report the payments on an IRS Form 1099-K.\footnote{I.R.C. § 6050W; Bruckner & Nellen, supra note 190, at 486.} To reduce unnecessary and duplicative filings for companies that facilitate online sales (for example, eBay) or process electronic payments (for example, PayPal), the Treasury and IRS issued regulations and guidance that, through 2021, did not require most online platforms to provide an IRS Form 1099-K until the seller or service provider had at least 200 transactions that total $20,000 each year (“the 200/$20K IRS Form 1099-K threshold”).\footnote{Collins et al., supra note 6, at 7. Pertinent here, the Department of Treasury and IRS concluded that the 200/$20K IRS Form 1099-K threshold (and not the $600 IRS Form 1099-NEC or previous 1099-MISC threshold) was exclusively required for electronic payments processed by online platforms that are TPSOs. EXPANSION WARRANTS FOCUS ON COMPLIANCE, supra note 190, at 3–4; U.S. 2020 TAXPAYER COMPLIANCE, supra note 6, at 10, 23; 2018 Bruckner Testimony, supra note 74, at 6, 29.} Consequently, online gig workers who earn less than $20,000 or have fewer than 200 transactions in a calendar year prior to 2021 typically do not receive either an IRS Form 1099-NEC (or 1099-MISC) or an IRS Form 1099-K from the online platforms that they use to connect with their customers.\footnote{Bruckner & Hungerford, supra note 9, at 63; Nellen et al., supra note 190, at 486. Because the vast majority of online gig workers have had annual earnings below $20,000 and few have engaged in more than 200 transactions a year, recent tax compliance research has consistently found that those workers have not received IRS Form 1099-Ks. See, e.g., 2020 TAXPAYER COMPLIANCE, supra note 6, at 14; EXPANSION WARRANTS FOCUS ON COMPLIANCE, supra note 190, at 32; 2018 Bruckner Testimony, supra note 74, at 6. Consequently, the income that those online workers have earned has not been as “visible” to the IRS and has regularly been misreported—if reported at all. Collins et al., supra note 6, at 19; see also TREASURY INSPECTOR GEN. FOR TAX ADMIN., U.S. DEP’T OF THE TREASURY, REFERENCE NO. 2018-30-077, IMPROVEMENTS TO THE SS-8 PROGRAM ARE NEEDED TO HELP WORKERS AND IMPROVE EMPLOYMENT TAX COMPLIANCE 3 (2018), https://www.treasury.gov/tigta/auditreports/2018reports/201830077fr.pdf [https://perma.cc/3NZ3-9BQX]. Also, a study done by the California State Franchise Tax Board found that of the top 100 online platforms in 2016, only 12% issued IRS Form 1099-Ks to their online gig workers, and of the 12% that did send forms, only half sent more than fifty-five forms. ROSITA MINDERMANN & ALEXANDER ESCOBAR, STATE OF CAL. FRANCHISE TAX BD., GIG ECONOMY MANAGEMENT DEVELOPMENT PROGRAM PROJECT 6 (Sept. 21, 2018), https://www.ftb.ca.gov/about-ftb/meetings/board-meetings/2018/september-21/09.2018-gig-economy.pdf [https://perma.cc/S34X-NGK9]. That study also found that the companies issuing IRS Form 1099-Ks had grown in volume by 163% but that the number of gig workers receiving IRS Form 1099-Ks had increased by only 26%. Id. at 8. Also, in an interesting natural experiment estimating the behavioral responses to the introduction of IRS Form 1099-K, Adhikari and others compared the income tax returns of sole-proprietor taxicab drivers in cities that passed ordinances mandating that taxicabs have credit card readers in their vehicles with the tax returns of those in cities that did not. See Bibek Adhikari, James Alm, Brett Collins, Michael Sebastiani & Eleanor Wilking, Taxpayer Responses to Third-Party Income Reporting: Preliminary Evidence from a Natural Experiment in the Taxicab Industry, in PAPERS GIVEN AT THE 6TH ANNUAL JOINT RESEARCH CONFERENCE ON TAX.
Of great importance, however, starting in 2022, most online gig workers will get IRS Form 1099s from TPSOs if they receive at least $600 because the American Rescue Plan Act of 2021 changed the information-reporting rules for taxable years beginning after December 31, 2021. The resulting increase in third-party information reporting is expected to raise $8.4 billion over the ten-year budget window.

3. Sellers and Renters of Property

Some sellers and renters of property are also engaged in a service business for profit and must report their earnings as self-employed workers (using IRS Form 1040 Schedules C and SE). For example, someone who regularly sews masks and sells them on Etsy should
report the sales of her inventory (less cost-of-goods sold) as ordinary income (not capital gains), and she could deduct her ordinary and necessary business expenses, perhaps even the costs attributable to using a portion of her home as a home office.241

Similarly, if a property owner runs a bed and breakfast and provides meals to guests, or lists a rental property with an online platform and coordinates experiences, meals, and other services for guests, then both income and self-employment taxes should be imposed on her income; that is, her income is active self-employment income, not merely passive investment income.242 Whether the self-employment tax applies to landlords that provide fewer services (for example, not providing meals) is less clear. Certainly, running a motel is an active trade or business, but it is less clear whether an Airbnb host who lists, rents, and cleans a room or two is “self-employed” for self-employment tax purposes.243 In any event, online platforms like Airbnb and VRBO are TPSOs for federal tax information reporting purposes, and, at least so far, those platforms have relied on that 200/$20K IRS Form 1099-K threshold in determining when to furnish the IRS and their hosts with IRS Form 1099-Ks.244

On the other hand, occasional renters of property usually must report their rental income for income tax purposes, but they are usually

243. Pertinent here, a recent Airbnb survey found that almost 40% of its American hosts do not hire people to help the hosts maintain their listings (such as house cleaners or small property managers) and that 96% of hosts make recommendations to guests on nearby tourist attractions, restaurants, and clubs. Memorandum from Airbnb to U.S. Travel & Tourism Policymakers, supra note 123.
not considered self-employed. For example, a woman who rents out the other half of the duplex that she owns should report the rental income and can deduct the related investment expenses, interest, and depreciation on her federal income tax return, but she typically would not have to report any self-employment income for self-employment tax purposes.

D. Tax Compliance and Gig Workers

The extensive literature on tax compliance shows that employees report and pay taxes on virtually all of their wages, but self-employed taxpayers “consistently and substantially” underreport their income for tax purposes. Because so many gig workers are self-employed, it is clear that many are not reporting all of their self-employment earnings, let alone making their required self-employment tax contributions.

245. Complex rules govern the rentals of personal residences (e.g., personal homes and vacation homes). See, e.g., I.R.C. §§ 61, 262, 280A; IRS, U.S. DEP’T OF THE TREASURY, PUB. NO. 527, RESIDENTIAL RENTAL PROPERTY (INCLUDING RENTAL OF VACATION HOMES) 17–19 (2021) [hereinafter RESIDENTIAL REAL PROPERTY], https://www.irs.gov/pub/irs-pdf/p527.pdf [https://perma.cc/NNW7-XNJ4]; Oei & Ring, supra note 224, at 348–49. For example, if a taxpayer rents her property for less than fifteen days a year, she does not have to report the rental income nor can she deduct her rental expenses on her tax return. RESIDENTIAL RENTAL PROPERTY, supra, at 17; I.R.C. § 280A(d).

246. See Residential Rental Property, supra note 245.


248. For example, a 2020 Government Accountability Office report on the tax compliance of online gig workers cited 2016 tax data that found approximately 30% of online gig workers known to the IRS had earnings higher than $5,000 but that most did not receive IRS Form 1099-Ks from the platforms they worked with. 2020 TAXPAYER COMPLIANCE, supra note 6, at 14. That absence of information reporting has so far constrained the IRS’s ability to verify tax compliance and has also resulted in many online workers being unaware or unmindful that their online platform earnings are taxable. Id. In passing, the Authors note that women are generally more prosocial and tax compliant than men. See, e.g., John
To measure how much underreporting exists within the tax administration system, the IRS periodically estimates the size of the so-called “tax gap”—the difference between the amount that is owed to the government by taxpayers and the amount taxpayers actually pay.249 The most recent estimates available identified a $441 billion gross annual tax gap for the 2011–2013 tax years, which is composed of three components: nonfiling ($39 billion), underreporting ($352 billion), and underpayment ($50 billion).250 Of that $352 billion underreporting tax gap, individuals failing to report all of their business income attributed to some $110 billion, and individuals failing to correctly report their self-employment taxes attributed to another $45 billion.251 Overall, underreporting of nonfarm proprietor income attributed to 15% ($68 billion) of the gross tax gap.252 Of note, in April of 2021, IRS Commissioner Charles Rettig told the House


249. See, e.g., IRS PUb. No. 5364, supra note 247.

250. Id. at 1, 3. Of course, the tax gap is almost certainly much larger now. According to the IRS’s tax gap study for the 2011–2013 tax years, the net compliance rate was 85.8%. Id. at 5 tbl.1. That means that noncompliance was 14.2% (14.2% = 100% total true tax liability – 85.8% net compliance rate). Although the Authors have not found a total true tax liability calculated for recent years, historical and projected estimates of federal revenue collections are widely available. For example, according to the Congressional Budget Office, the federal government collected around $2.8 trillion in gross tax collections in fiscal year 2013 and $3.6 trillion in fiscal year 2019, which is a 29% increase in six years (Authors’ computations from CONG. BUDGET OFF., SUPPLEMENT TO “AN UPDATE TO THE BUDGET OUTLOOK: 2020 TO 2030”, at tbl.1, https://www.cbo.gov/system/files/2020-09/51138-2020-09-revenueprojections.xlsx [https://perma.cc/RWK4-2VJT]). Presumably, the tax gap also grew by around 29% over that period, implying that the gross tax gap grew from around $441 billion for the 2011–2013 tax years to around $569 billion by fiscal year 2019 ($568.89 billion = 1.29 × $441 billion). See also infra note 253 and accompanying text (noting that IRS Commissioner Charles Rettig believes that the current annual tax gap may already exceed $1 trillion).

251. IRS PUb. No. 1415, supra note 247, at 8 fig.1.

Ways and Means Committee that the actual tax gap could already exceed $1 trillion, although the IRS is not expected to release a new formal estimate until 2022.253 Figure 1 summarizes the IRS’s most recent tax gap estimates, which is expressed as the percent of income that is misreported (net income misreporting percentage).254 Figure 1 shows that wage earners getting IRS Form W-2s (and other taxpayers who face both withholding and information reporting) report 99% of their income and only fail to report 1%.255 On the other hand, self-employed workers who do not receive IRS Form 1099s (and other taxpayers subject to little or no information reporting) fail to report 55% of their income.256 In short, tax compliance is high (99%) when amounts are subject to information reporting and withholding; however, when there is no information reporting or withholding, tax compliance falls to 45% (or less).257 Indeed, noncompliance is greatest among self-employed workers “for which third-party information reporting is not separately reported to the IRS and is very difficult to obtain.”258 In other words, when income is “visible” to the IRS through information reporting or withholding, taxpayers are far more likely to properly report their income and pay taxes owed.259

254. IRS PUB. NO. 5364, supra note 247, at 7 attach. 3; IRS PUB. NO. 1415, supra note 247, at 14 fig.3, 20 tbl.5.
255. See infra Figure 1.
256. See infra Figure 1.
259. IRS PUB. NO. 1415, supra note 247, at 3.
Fortunately, starting in 2022, most online gig workers will receive IRS 1099 Forms from TPSOs if they earn at least $600 a year in services income. That increased information reporting should help improve compliance for online gig workers; however, even when workers receive IRS 1099 Forms, they do not always properly report their income for self-employment tax purposes. For example, Collins and others found that 8.6% of people who received IRS 1099 Form 1099s for nonemployee compensation for the 2016 tax year (almost two million people) did not file an IRS Form 1040 or pay any payroll taxes.

Figure 1. Tax Gap Estimates for Tax Years 2011–2013

<table>
<thead>
<tr>
<th>Income Subject to Substantial Information Reporting and Withholding</th>
<th>Information Subject to Substantial Information Reporting</th>
<th>Information Subject to Some Information Reporting</th>
<th>Information Subject to Little or No Information Reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>1%</td>
<td>5%</td>
<td>17%</td>
<td>55%</td>
</tr>
</tbody>
</table>

260. IRS Pub. No. 5364, supra note 247, at 7 attach. 3; IRS Pub. No. 1415, supra note 247, at 14 fig. 3, 20 tbl. 5.
261. See supra note 238 and accompanying text.
taxes—up from just 6.1% in 2000.\textsuperscript{262} Those authors noted that noncompliance among online labor platform workers who received Form 1099s was “particularly severe” because 43% of those workers did not file an IRS Form 1040 Schedule C or an IRS Form 1040 Schedule SE.\textsuperscript{263} Similarly, those authors found that only one-third of online gig workers paid self-employment taxes, while 55% of workers in the broader 1099 workforce paid those taxes.\textsuperscript{264}

To be sure, poor tax compliance is not limited to online gig workers that do not receive IRS Form 1099-Ks. For example, Lim and others found that although 85% of independent contractors received an IRS Form 1099-MISC or an IRS Form 1099-K for the 2016 tax year that could be matched to an IRS Form 1040 for that year, the remaining 15% could not.\textsuperscript{265} The average age of those workers was forty, and they had average independent-contractor earnings of $14,000 and median earnings of $4,000–$5,000.\textsuperscript{266} All in all, the available evidence suggests that a significant percentage of self-employed workers are not

\textsuperscript{262} Collins et al., \textit{supra} note 6, at 10.

\textsuperscript{263} \textit{Id.} at 9. On the other hand, Jackson et al., \textit{supra} note 51, at 19, found that “essentially all gig economy workers that filed a Schedule C also receive a 1099.”

\textsuperscript{264} Collins et al., \textit{supra} note 6, at 21. Similarly, in a 2019 study, the Department of Treasury’s Inspector General for Tax Administration issued a report that reviewed approximately 3.8 million IRS Form 1099-Ks received by individuals from one of nine online platforms from 2012 to 2016, and it found that (1) 25% of recipients filed an IRS Form 1040 annual return but did not report their IRS Form 1099-K earnings; and (2) 13% of recipients failed to file an IRS Form 1040 Schedule SE. Expansion Warrants Focus On Compliance, \textit{supra} note 209, at 7–8, 7 fig.1. Notably, that report did not consider the millions of online gig workers that did not receive any IRS Form 1099-K because those workers’ total earnings and transactions did not trigger the 200/$20K IRS Form 1099-K threshold nor did it review IRS Form 1099-Ks issued to taxpayers with rental income (like Airbnb or VRBO hosts). \textit{Id.}

\textsuperscript{265} Lim et al., \textit{supra} note 75, at 9. Also, a 2016 survey of online gig workers who were members of the National Association of the Self-Employed found that:

\begin{itemize}
  \item Only 32% of the online gig workers surveyed received an IRS Form 1099 for their platform earnings;
  \item 34% did not know whether they were required to make quarterly estimated tax payments with respect to their on-demand platform income;
  \item 36% did not understand what kind of records they needed for tax purposes for business income and expenses generated from working with a sharing economy partner;
  \item 43% were unaware as to how much they would owe in taxes and did not set aside money for taxes on their gig income; and
  \item Almost half did not know about any tax deductions, expenses, or credits related to their on-demand platform income.
\end{itemize}

\textsuperscript{266} Lim et al., \textit{supra} note 75, at 10.
properly reporting all of their taxable income—even those that are receiving IRS Form 1099s.

Low tax-compliance rates by gig workers will inevitably contribute to a retirement financing gap for them because the underpayment of self-employment taxes will invariably translate into lower Social Security benefits for those under-contributing workers.\(^{267}\) In that regard, using 2014 SIPP data, Bruckner and Hungerford estimated that offline and online gig workers failed to contribute $2.51 billion in self-employment tax in 2014, which translated to $2.03 billion in underfunded Social Security payments.\(^{268}\)

An overarching problem for the IRS is that its annual budget has simply not kept up with its ever-increasing responsibilities.\(^{269}\) In fact, the IRS saw a 20% drop in its budget between 2010 and 2018 (in inflation-adjusted dollars), and it lost 22% of its employees over that time period.\(^{270}\) Not surprisingly, the IRS audit rate has dropped precipitously: the IRS audited just 0.15% of the 154 million 2018 individual income tax returns it received, compared to auditing 1.01% of the 143.1 million 2010 individual income tax returns that it received.\(^{271}\)

\(\text{Of note, however, President Joe Biden’s Administration}\)

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267. See Bruckner & Hungerford, supra note 9, at 65–69, 72–73, 74 tbl.1. For an explanation about how Social Security benefits are computed, see also infra Part III.A.

268. Bruckner & Hungerford, supra note 9, at 76, 77 tbl.2. Specifically, Bruckner and Hungerford (2019) recently estimated the amount of underreporting of self-employment tax by populations of independent contractors and on-demand workers. Id. Using Survey of Income and Program Participation (SIPP) data and underreporting measures derived from a 2007 U.S. Treasury Inspector General audit of self-employed taxpayers, Bruckner and Hungerford estimated that 44.2% (or 3.1 million out of 7.1 million) of independent contractors captured in the 2014 SIPP data underreported their self-employment income—resulting in approximately $4.84 billion in unpaid self-employment taxes in 2014. Id. at 90. Bruckner and Hungerford also used SIPP data to estimate that an additional $2 billion of Social Security tax went unpaid by on-demand gig workers in 2014. Id. at 76. Although the Bruckner and Hungerford article (2019) estimates were designed to be illustrative, they represent the first effort to quantify how much self-employment tax revenue is lost when online gig workers earn income and are not subject to information reporting or withholding fail to make their required self-employment tax contributions.


270. IRS FUNDING AND ENFORCEMENT TRENDS, supra note 269, at 1, 8, 11.

271. 2019 IRS DATA BOOK, supra note 269, at 35–44 tbl.17a.
recently proposed a $1.2 billion increase for the IRS’s fiscal 2022 budget, including $900 billion more for enforcement.272

III. AN OVERVIEW OF THE U.S. RETIREMENT SYSTEM

This part discusses the three main pillars of the current U.S. retirement system: Social Security, employer-sponsored pensions or retirement-savings plans, and individual savings.

A. Social Security

Social Security provides monthly cash benefits to retirees, disabled workers, and their families.273 Social Security benefits are the most common source of retirement income for households aged sixty-five or older, with almost nine out of ten individuals aged sixty-five and older receiving benefits.274

A worker builds Social Security protection by working in employment or self-employment covered by the Social Security system and paying the applicable payroll or self-employment taxes, Social Security currently covers 94% of workers in paid employment or self-employment.275
and self-employment tax contributions primarily finance Social Security benefits (89%), and the remainder comes from interest on the Treasury bonds held by the Social Security Trust Fund (7.6%) and from taxes on Social Security benefits (3.4%). At retirement, disability, or death, monthly benefits are paid to insured workers and to their eligible dependents and survivors.

1. Social Security Benefits

Workers over the age of sixty-two are generally entitled to Social Security retirement benefits if they have worked in covered employment for at least ten years. Benefits are based on a measure of the worker’s earnings history in covered employment, and Social Security benefits typically replace around 35% or 40% of the typical worker’s preretirement earnings. The benefit formula is highly complex.

https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf Noncovered workers include (1) state and local government employees covered by alternative staff-retirement systems; (2) most permanent civilian federal employees hired before January 1, 1984, who are covered by the Civil Service Retirement System (CSRS) or other alternative retirement plan; (3) employees covered by the Railroad Retirement system; (4) domestic, election, or farm workers with earnings below certain thresholds; (5) people with low levels of net earnings from self-employment; and (6) certain nonimmigrants. ZHENG, CONG. RISCH. SERV., IF10203, SOCIAL SECURITY: THE WINDFALL ELIMINATION PROVISION (WEP) AND THE GOVERNMENT PENSION OFFSET (GPO) (2021), at tbl.1; Letter from Steven C. Goss, Chief Actuary, Off. of the Chief Actuary, Soc. Sec. Admin., to various U.S. Senators who requested analysis of the implications of hypothetical legislation that would eliminate the Social Security payroll taxes (Aug. 24, 2020).


277. House Committee on Ways and Means Green Book, supra note 211, at ch. 1.

278. 42 U.S.C. §§ 402(a), 414(a)(2).

progressive. As a result, Social Security benefits tend to favor workers with low lifetime earnings relative to workers with higher lifetime earnings. Although the full retirement age for receiving Social Security retirement benefits was once age sixty-five, it is currently age sixty-six, and it is gradually increasing to age sixty-seven for workers born after 1959 (who reach age sixty-seven in or after 2027). Benefits may be increased or decreased for several reasons. Most importantly, benefits are indexed each year as measured by the consumer price index. Also, the retirement earnings test can reduce the monthly benefits of individuals who have not yet reached full retirement age but who continue to work after starting to draw Social Security retirement benefits. In addition, workers who retire before their full retirement age have their benefits actuarially reduced. On the other hand, benefits payable to workers who choose to retire after their full retirement age are actuarially increased (but only up to age

280. Benefits for retired workers are based on a measure of the worker’s earnings history in covered employment known as the average indexed monthly earnings (AIME). See SSA FAST FACTS 2020, supra note 274, at 2–4. The starting point for determining the worker’s AIME is to determine how much the worker earned each year through age sixty. Id. Once those benefit-computation years and covered earnings for those years have been identified, the worker’s earnings are indexed for wage inflation, using the year the worker turns age sixty to index the earnings of prior years. Id. The highest thirty-five years of earnings are then selected, and the other years are dropped out. Id. The AIME is then computed as the average earnings for the remaining thirty-five years (420 months). Id. The AIME is then linked by a progressive formula to the monthly retirement benefit payable to the worker at full retirement age, a benefit known as the primary insurance amount (PIA). Id. at 2. For a worker turning sixty-two in 2020, the PIA equals 90% of the first $960 of the worker’s AIME, plus 32% of the AIME over $960 and through $5,785 (if any), plus 15% of the AIME over $5,785 (if any). Id.: Primary Insurance Amount, SOC. SEC. ADMIN., http://www.ssa.gov/oact/cola/piaformula.html [https://perma.cc/8UHZ-QQK5]. Social Security also has an alternative formula that provides special minimum benefits for certain workers who had low earnings over many years of working. See, e.g., ZHILIJING ZHANG, RSCH. SFRV., R43615, SOCIAL SECURITY MINIMUM BENEFITS (2021), https://fas.org/sgp/crs/misc/R43615.pdf [https://perma.cc/MM3N-DB28].


283. See 2021 SSA Fact Sheet, supra note 206.

284. 42 U.S.C. § 403(t).

285. Id. § 402(q).
Since 2000, labor force participation rates among older Americans, and the average age that they claim their Social Security benefits, has risen. Social Security also provides generous benefits to the spouses, dependents, and survivors of workers and retired workers. For example, a retirement-age wife or husband of a retired worker can claim a monthly benefit equal to 50% of the worker’s primary insurance amount (PIA). Consequently, a retired worker and retirement-age spouse can claim a monthly benefit equal to 150% of what the retired worker alone could claim. For example, if a retired worker could claim a benefit equal to $1,000 a month, a retired couple could claim a benefit equal to $1,500 a month. In addition, a retirement-age widow or widower of the worker is entitled to a monthly surviving spouse benefit equal to 100% of the worker’s PIA. For example, if a retired worker could claim a benefit of $1,000 a month (and a retired couple benefit of $1,500 a month), the surviving spouse could claim a benefit of $1,000 a month. All in all, married couples tend to get more Social Security benefits than single individuals.


289. See id.

290. Id. § 402(e)-(f).

In addition to Social Security benefits, a means-tested Supplemental Security Income (SSI) program provides monthly cash benefits to certain low-income elderly, disabled, or blind Americans. In 2021, the maximum federal benefit for a single individual was $794 per month, and the maximum for a couple was $1,191 per month. Although dedicated payroll taxes largely finance Social Security benefits, general tax revenues finance SSI benefits.

In March 2021, Social Security paid retirement benefits to 46.4 million retired workers with an average monthly benefit of $1,504.25. Another 2.3 million elderly Americans received means-tested SSI benefits from the federal government in March 2021 with an average monthly benefit of $475.86.

2. The Adequacy of Social Security Benefits

As already mentioned, Social Security is the most common source of retirement income for households aged sixty-five or older. For example, in 2015, 84% of households aged sixty-five or older received benefits also result in two additional problems. First, dual-earner couples typically receive less total Social Security benefits than one-earner couples with the same total earnings. Id. at 194–95 (with numerical example). Basically, the single-earner in a one-earner couple will get a retired worker benefit based on relatively higher earnings and the nonearning spouse will automatically get a 50% spousal benefit (and a 100% surviving spouse benefit when the retired worker dies). Id. Meanwhile, in a dual-earner couple where both spouses share similar total earnings, each would get a smaller retired worker benefit, and the total of their two retired worker benefits would be less than 150% of the one-earner spouse’s retired worker benefit. Id. Second, because secondary earners in dual-earner couples often earn less and work a shorter time than the primary earners, the secondary earner often receives little or no additional Social Security benefits from their Social Security tax payments. Id. at 194–95 (with numerical example). For example, in a dual-earner couple where the secondary earner earns less than about half of what the primary earner makes, the additional Social Security taxes that the secondary earner pays will produce absolutely no more Social Security benefits than if the secondary earner had not worked at all because the secondary earner’s spousal benefit will be higher than that spouse’s retired worker benefit, and retirees cannot get both benefits. As Bond and others note, Social Security spousal benefits can “work[] against [a] dual-earner couple[].” Bond et al., supra note 108, at 17. 292. See, e.g., HOUSE COMMITTEE ON WAYS AND MEANS GREEN BOOK, supra note 211, at ch. 3.
293. 2021 SSA Fact Sheet, supra note 206.
294. HOUSE COMMITTEE ON WAYS AND MEANS GREEN BOOK, supra note 211, at ch. 3.
296. Id. at 3 tbl.3. 297. See supra note 274 and accompanying text; NAT’L ACAD. OF SOC. INS., supra note 274.
Social Security benefits. Moreover, in 2014, less than half (43.8%) of households received retirement benefits from sources other than Social Security, and only 61.8% received income from other assets. Of course, low-income households tend to rely more heavily on Social Security than high-income households. Moreover, all households tend to rely more heavily on Social Security (and less on earnings) as they age. Social Security benefits play an especially important role in reducing poverty among the elderly. For example, in 2019, 8.9% of Americans over age sixty-five were poor, but without Social Security, 35.8% would have been poor.

Table 6 shows that 61.1% of Social Security beneficiary households aged sixty-five or older got more than half of their income from Social Security in 2014, and 33.4% got 90% of their income from Social Security. Table 6 also shows that 61.4% of unmarried women aged sixty-five or older got more than half of their income from Social Security, and only 61.8% received income from other assets.


300. See Bond et al., supra note 108, at 13 fig.9.

301. Id. at 13.


304. SSA FAST FACTS 2017, supra note 274, at 8.
Security in 2014, and 34.1% got more than 90% of their income from Social Security.305 Table 6 also shows how important Social Security benefits are for people of color; although 60% of White households aged sixty-five or over relied on Social Security benefits for at least half of their income in 2014, 69% of Black households and 73% of Hispanic households relied on Social Security.306


Table 6. Reliance on Social Security Benefits by Gender, Family Type, and Race, 2014

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Percent of Beneficiary Households 65 or Older Whose Social Security Benefits Make Up:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>50% or More of Their Income</td>
<td>90% or More of Their Income</td>
<td></td>
</tr>
<tr>
<td><strong>Gender</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unmarried men</td>
<td>55.5%</td>
<td>29.2%</td>
<td></td>
</tr>
<tr>
<td>Unmarried women</td>
<td>61.4%</td>
<td>34.1%</td>
<td></td>
</tr>
<tr>
<td><strong>Family Type</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married couples</td>
<td>47.8%</td>
<td>20.7%</td>
<td></td>
</tr>
<tr>
<td>Unmarried people</td>
<td>70.7%</td>
<td>42.6%</td>
<td></td>
</tr>
<tr>
<td><strong>Race</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>60.0%</td>
<td>31.7%</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>69.4%</td>
<td>45.2%</td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td>61.7%</td>
<td>41.1%</td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>73.1%</td>
<td>52.2%</td>
<td></td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td>61.1%</td>
<td>33.4%</td>
<td></td>
</tr>
</tbody>
</table>

All in all, women tend to rely more heavily on Social Security than men. Indeed, 55% of adult Social Security beneficiaries in 2019 were women. Of those women, 69% were retired workers. On average, however, the monthly Social Security benefits that women receive are just 80% of what men receive. Also, according to a recent study of older women, Social Security benefits are especially important in

308. **SSA FAST FACTS 2020, supra note 274, at 19.**
309. **Id.**
310. Grace Enda & William G. Gale, **How Does Gender Equality Affect Women in Retirement?**, BROOKINGS (July 2020), https://www.brookings.edu/essay/how-does-gender-equality-affect-women-in-retirement/ [https://perma.cc/Z7LQ-CEZS]. For example, in 2019, men received an average of $1,671 per month, while women got an average of $1,337 per month. **SSA FAST FACTS 2020, supra note 274, at 20.**
helping those women maintain their independence. Moreover, two-thirds of the elderly Americans that claim SSI benefits are women.

Still, as currently structured, Social Security alone cannot ensure that all Americans will have adequate incomes throughout their retirement years. Of real concern is the fact that most American workers retire earlier than their Social Security full retirement age. For example, the average age of those who claimed Social Security retirement benefits in 2018 was 64.8, and 27.4% of workers claimed their benefits as soon as they could—at age sixty-two. The average claiming age was about the same for men (64.7) and women (64.6), but more women (32.1%) than men (28.4%) claimed their benefits at sixty-five every day.

> **Note:**
> The Social Security Administration’s seventy-five-year projection period was estimated to be $16.8 trillion, and that unfunded liability can also be expressed as 3% of taxable payroll or 1% of gross domestic product (GDP). Id. at 204 tbl.VL.F1. Basically, to wipe out that deficit, it would take (1) an immediate and permanent payroll tax increase of 3.14 percentage points (to 15.54% of GDP), (2) an immediate and permanent 19% cut in benefits, or (3) some combination of these two approaches. Id. at 4–5. The COVID-19 pandemic has had an adverse impact on the economic stability of the Social Security system, and in September 2020, the Congressional Budget Office projected that the Old-Age and Survivors Insurance (OASI) Trust Fund will be exhausted in 2031. Avi Lerner, Cong. Budget Off., The Outlook for Major Federal Trust Funds: 2020 to 2030, at 5 (Sept. 2020), https://www.cbo.gov/system/files/2020-09/56523-Trust-Funds.pdf. Pertinent here, the Social Security Administration estimates suggest that in 2021, revenue from payroll taxes, income tax on benefits, and interest on reserves will be less than the amounts paid out to beneficiaries, which will trigger the drawdown of Social Security trust fund reserves. Nat’l Acad. of Soc. Ins., supra note 274, at 26. Financial pressures on the Social Security system are growing, largely due to the population aging. For example, in 2008, the first baby boomers began receiving Social Security retirement benefits; by 2018, an average of 10,200 baby boomers turned age sixty-five every day. GAO Retirement Security, supra note 172, at 8. That average is expected to reach more than 11,000 per day by 2029. Id.

> **Notes:**
> 313. Moreover, the Social Security system is underfunded, and consequently, the government may end up having to cut future benefits. Old-Age & Survivors Ins. & Fed. Disability Ins. Tr. Funds, supra note 276, at 3–5. As of January 1, 2020, the unfunded liability of the Social Security system over the Social Security Administration’s seventy-five-year projection period was estimated to be $16.8 trillion, and that unfunded liability can also be expressed as 3% of taxable payroll or 1% of gross domestic product (GDP). Id. at 204 tbl.VL.F1. Basically, to wipe out that deficit, it would take (1) an immediate and permanent payroll tax increase of 3.14 percentage points (to 15.54% of payroll), (2) an immediate and permanent 19% cut in benefits, or (3) some combination of these two approaches. Id. at 4–5. The COVID-19 pandemic has had an adverse impact on the economic stability of the Social Security system, and in September 2020, the Congressional Budget Office projected that the Old-Age and Survivors Insurance (OASI) Trust Fund will be exhausted in 2031. Avi Lerner, Cong. Budget Off., The Outlook for Major Federal Trust Funds: 2020 to 2030, at 5 (Sept. 2020), https://www.cbo.gov/system/files/2020-09/56523-Trust-Funds.pdf. Pertinent here, the Social Security Administration estimates suggest that in 2021, revenue from payroll taxes, income tax on benefits, and interest on reserves will be less than the amounts paid out to beneficiaries, which will trigger the drawdown of Social Security trust fund reserves. Nat’l Acad. of Soc. Ins., supra note 274, at 26. Financial pressures on the Social Security system are growing, largely due to the population aging. For example, in 2008, the first baby boomers began receiving Social Security retirement benefits; by 2018, an average of 10,200 baby boomers turned age sixty-five every day. GAO Retirement Security, supra note 172, at 8. That average is expected to reach more than 11,000 per day by 2029. Id.
age sixty-two.\footnote{Id. at 6.20 tbl.6.B5.1; see also ZHE LI, CONG. RSC. SERV., R44670, THE SOCIAL SECURITY RETIREMENT AGE 8 fig.2 (2021), https://fas.org/sgp/crs/misc/R44670.pdf [https://perma.cc/5L6G-YP99] (showing retired-worker beneficiaries by age in 2019).} The survey data reported in Table 7 shows that most Americans also retired well before their Social Security full retirement age and that Black and Hispanic workers retired earlier than White workers.\footnote{2019 REPORT ON ECONOMIC WELL-BEING, supra note 89, at 47 & tbl.28.}

Table 7. Retirement Age Reported in the 2019 SHED, by Race/Ethnicity and Education, 2019\footnote{Id. at 47 tbl.28.}

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>61 or Earlier</th>
<th>62–64</th>
<th>65+</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Race</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>48%</td>
<td>24%</td>
<td>27%</td>
</tr>
<tr>
<td>Black</td>
<td>56%</td>
<td>23%</td>
<td>17%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>65%</td>
<td>19%</td>
<td>15%</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High school degree or less</td>
<td>50%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td>Some college/technical or</td>
<td>50%</td>
<td>25%</td>
<td>24%</td>
</tr>
<tr>
<td>associate degree</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bachelor’s degree or more</td>
<td>55%</td>
<td>18%</td>
<td>26%</td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td>51%</td>
<td>23%</td>
<td>24%</td>
</tr>
</tbody>
</table>

\footnote{See infra Part V.A.}


\section*{B. Pensions and IRAs, Generally}

Many workers also get retirement income from pensions and individual retirement accounts (IRAs); although, as more fully explained in Part V.A below, this type of retirement income is less commonly earned by gig workers.\footnote{Id. at 47 tbl.28.} At the end of 2019, Americans had $38.3 trillion in household retirement assets, including $15.9 trillion in defined benefit plans, $8.6 trillion in defined contribution plans, $11 trillion in IRAs, and $2.7 trillion in annuities.\footnote{See infra Part V.A.}
Unfortunately, the United States has a “voluntary” pension system, and retirement savings may be inadequate for many retirees. At any point in time, only about half of American workers have a pension, and participation in IRAs is even lower. This Subpart (1) explains the various types of pensions and IRAs available to employees and independent contractors and (2) reviews the data on participation rates for those retirement instruments.

1. Employer-Sponsored Pension Plans

Most pension plans qualify for favorable tax treatment, which means that they are effectively subsidized by U.S. taxpayers. Basically, employer contributions to a pension are not taxable to the employee; the pension fund’s earnings on those contributions are tax-exempt, and employees pay tax only when they receive distributions of their pension benefits. In addition, employers are generally allowed to deduct their contributions. Tax-favored pension plans (that is, qualified plans) generally fall into two broad categories based on the nature of the benefits provided: defined benefit plans and defined contribution plans.

a. Defined Benefit Plans

In a defined benefit plan, an employer promises workers a specific benefit at retirement. The default benefit for defined benefit plans is...
a retirement income stream in the form of an annuity for life (such as a monthly pension). For example, some defined benefit plans provide workers with an annual retirement benefit (B) equal to \( 2\% \) times their years of service (yos) times their final average pay (fap); so, the calculation for the final-average-pay plan would be \( B = 2\% \times \text{yos} \times \text{fap} \). Under that final-average-pay plan, a worker who retires after thirty years of service with a final average pay of $100,000 would receive a pension of $60,000 per year for life ($60,000 = 2\% \times 30 \text{ yos} \times $100,000 \text{ fap})

For married participants, defined benefit plans (and some defined contribution plans) are required to provide a qualified joint-and-survivor annuity (QJSA) as the normal benefit payment, unless the spouse consents to another form of distribution.

### b. Defined Contribution Plans

Alternatively, in a typical defined contribution plan, “the employer simply withholds a specified percentage of the worker’s compensation, which it contributes to an individual investment account for [the] worker.” For example, contributions might be set at 10% of annual compensation. Under such a plan, a worker who earned $50,000 in a given year would have $5,000 contributed to her individual account ($5,000 = 10\% \times $50,000). Her benefit at retirement would be based on all such contributions plus investment earnings. Unlike defined benefit plans, defined contribution plans usually make distributions as lump sum or periodic distributions rather than as lifetime annuities.

Defined contribution plans often include a feature that allows workers to choose between receiving cash currently or deferring

[327. Id. at 1220. In the United States, defined benefit plans are generally designed to provide annuities, in other words, “definitely determinable benefits . . . over a period of years, usually for life after retirement.” Treas. Reg. § 1.401-1(b)(1)(i) (2020).
330. See id. at 1221.
331. Id.
332. Id.]
taxation by placing the money in a retirement account, pursuant to I.R.C. § 401(k).\textsuperscript{333} For 2021, individuals can contribute (and deduct) up to $19,500 for these 401(k) plans, although workers over the age of fifty can contribute another $6,500, for a total of up to $26,000.\textsuperscript{334} Alternatively, employers can set up so-called Roth 401(k) plans.\textsuperscript{335} Contributions to these Roth 401(k) plans are not excludable, but neither the plan’s investment returns nor distributions are taxable.\textsuperscript{336}

3. Other Tax Incentives to Promote Retirement Savings

As already mentioned, certain low- and moderate-income individuals can claim a nonrefundable retirement saver’s tax credit of up to $1,000 for certain qualified retirement savings contributions.\textsuperscript{337} Also, qualified small businesses may claim a nonrefundable tax credit of up to $5,000 for certain costs incurred in setting up a new retirement plan for employees.\textsuperscript{338}

2. IRAs

Favorable tax rules are also available for non-pension-related IRAs.\textsuperscript{339} For 2021, individuals can contribute and deduct up to $6,000 to an IRA ($7,000 if aged fifty or over), and spouses can contribute similar amounts.\textsuperscript{340} Like private pensions, IRA earnings are tax-exempt, and distributions are taxable.\textsuperscript{341} Alternatively, individuals

333. I.R.C. § 401(k).
336. Id. § 402A(c)-(d).
337. See supra text accompanying note 201. In effect, the retirement saver’s tax credit acts like an employer match, with the government matching a portion of the worker’s contributions. Employer matches encourage workers to contribute, at least up to the match level, and the saver’s tax credit seems to have similar pro-savings effects. See generally Jennifer Erin Brown & David C. John, Improving the Saver’s Credit for Low- and Moderate-Income Workers, AARP: AARP PUBL. POL’Y INST. 6–7 (Sept. 2017), https://www.aarp.org/content/dam/dan/aarp/ppi/2017/09/improving-the-savers-credit-for-low-and-moderate-income-workers.pdf [https://perma.cc/SE8Y-ZSM7].
338. I.R.C. § 45E(b).
339. Id. §§ 219, 408; see also Forman, Fully Funded Pensions, supra note 322, at 1224.
340. I.R.S. Notice 2020-79, 2020-46 I.R.B. 1014 (Nov. 9, 2020); see I.R.C. § 219(b)(5)(A)-(B) (adding $1,000 to deductible amount for qualified retirement contributions of people aged fifty or older).
341. I.R.C. §§ 219(a), 408(e).
can set up Roth IRAs. Unlike regular IRAs, contributions to Roth IRAs are not deductible; instead, withdrawals are tax-free, and like regular IRAs, earnings are tax-exempt.

4. Retirement Plans Targeted to Small Businesses and the Self-Employed

a. IRAs

The simplest retirement plan a small business can set up is an IRA. Also, with a payroll deduction IRA, a small business can arrange to withhold and transmit voluntary employee contributions to their individual IRA accounts. Of note, a number of states are setting up state-sponsored pension systems that rely on IRAs to provide individual pension accounts for private-sector employees not already covered under an employer-sponsored pension plan, and some of these plans at least contemplate being open to self-employed workers too.

342. Id. § 408A.
343. Id. § 408A(c)(1); see also Forman, Fully Funded Pensions, supra note 322, at 1224 (footnote omitted).
b. Simplified Employee Pensions (SEPs)

A small business or self-employed individual can save even more for retirement by setting up a simplified employee pension (SEP) traditional IRA for each eligible employee. In 2021, contributions to these SEP-IRAs cannot exceed the lesser of 25% of the worker’s compensation or $58,000.

c. SIMPLE IRA and SIMPLE 401(k) Plans

A small business with fewer than 100 employees can set up a savings incentive match plan for employees (SIMPLE)—with IRAs for the individual employees or, alternatively, as a part of an employer-sponsored 401(k) plan. Under a SIMPLE, employees may elect to contribute up to $13,500 in 2021 ($16,500 if age fifty or over), and the employer is required to make either: (1) dollar-for-dollar matching contributions up to 3% of employee compensation or (2) fixed nonelective contributions up to 2% of employee compensation. treatment of the Treasury, Pub. No. 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans) 5–8 (2021) [hereinafter SEP, SIMPLE, and Qualified Plans], https://www.irs.gov/pub/irs-pdf/p560.pdf [https://perma.cc/V4VQ-A5HJ]; Choosing a Retirement Solution, supra note 344; IRS & Emp. Benefits Sec. Admin., U.S. Dep’t of Lab., Pub. No. 4333 (Rev. 11-2020), SEP Retirement Plans for Small Businesses (2020), https://www.irs.gov/pub/irs-pdf/p4333.pdf [https://perma.cc/7ENJ-TQBR].


d. Qualified Plans

Of course, small businesses and self-employed individuals are also able to set up qualified defined benefit or defined contribution plans. The rules for setting up and operating qualified plans are generally more demanding than the rules governing IRAs, SEPs, and SIMPLE IRAs; however, special rules do reduce the complexity associated with SIMPLE and safe harbor 401(k) plans. For 2021, defined contribution plan contributions cannot exceed the lesser of 25% of the worker’s compensation or $58,000, and the benefits that can be paid to workers covered by defined benefit plans are limited.

Under certain circumstances, employers are permitted to pool their resources and offer retirement plans using multiple employer plans (MEPs). An MEP is a qualified plan permitted to cover employees of unrelated employers. Subject to requirements under the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA), an MEP is intended to provide employers with a pooled plan arrangement that relieves much of the administrative, fiduciary,
and regulatory burden associated with a single-employer plan. In recent years, policymakers have been interested in MEPs as a vehicle for addressing the pension coverage problem in general and as a tool that could increase coverage of gig economy workers in particular. Notably, Congress recently enacted legislation that will make it easier for groups of unaffiliated employers to set up new, open MEPs, known as pooled employer plans (PEPs).

5. The Tax Expenditures for Retirement Income Security

Many of the special income tax rules for pensions, IRAs, and the partial exclusion of Social Security benefits are identified as “tax expenditures” in the tax expenditure budgets prepared annually by the Office of Management and Budget and by the Joint Committee on Taxation. For example, Table 8 shows that the Office of


Management and Budget estimates the tax expenditures associated with Social Security, pensions, and IRAs cost the government more than $200 billion a year in lost revenue.\textsuperscript{360}

<table>
<thead>
<tr>
<th>Tax Expenditure</th>
<th>2020</th>
<th>2020–2029</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial Exclusion of Social Security benefits</td>
<td>$30.9</td>
<td>$399.0</td>
</tr>
<tr>
<td>Net exclusion of pension contributions and earnings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined benefit plans</td>
<td>$73.8</td>
<td>$808.8</td>
</tr>
<tr>
<td>Defined contribution plans</td>
<td>$83.5</td>
<td>$1,296.9</td>
</tr>
<tr>
<td>Individual Retirement Accounts (IRAs)</td>
<td>$21.7</td>
<td>$303.4</td>
</tr>
<tr>
<td>Self-Employed Plans</td>
<td>$26.6</td>
<td>$462.0</td>
</tr>
<tr>
<td>Low- and moderate-income savers credit</td>
<td>$1.2</td>
<td>$12.6</td>
</tr>
</tbody>
</table>

6. \textit{Pension Coverage and Participation}

a. \textit{Pension Coverage}

Despite billions of dollars spent on retirement-related tax expenditures, Table 9 shows that, although 71% of private-industry workers had access to employer-sponsored retirement plans in March of 2020, only 55% actually participated in a plan.\textsuperscript{362} Table 9 also shows

\textsuperscript{360} OFF. OF MGMT. \& BUDGET, supra note 359, at 153 tbl.13-1.

\textsuperscript{361} Id.

that the probability of pension coverage is greater for full-time workers, higher-income workers, and workers in government and at larger firms. The probability of pension coverage is also greater for older workers, White workers, and for highly-educated workers. Also, as already mentioned, although retirement plans covered 46.3% of traditional workers in 2017, just 30.1% of on-call workers and 18.4% of contingent workers were covered.

363. More specifically, although 90% of private-industry workers in the highest 10% wage category had access to employer-provided pensions, just 29% of workers in the lowest 10% wage category had access to employer-sponsored pensions. March 2020 Employee Benefits, supra note 362. Similarly, although 94% of private-industry workers in the highest 10% wage category had access to employer-provided health care plans, just 27% of workers in the lowest tenth percent wage category had access to employer-sponsored health care plans. Id. at 9 tbl.2.


365. See supra note 29 and accompanying text; see also infra Part V.B.
Table 9. Retirement Benefits: Access, Participation, and Take-up Rates for Civilian Workers, March 2020 (All workers = 100%)\(^{366}\)

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Access</th>
<th>Participation</th>
<th>Take-up Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>All workers</td>
<td>71</td>
<td>55</td>
<td>78</td>
</tr>
<tr>
<td>Establishment characteristics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private industry</td>
<td>67</td>
<td>51</td>
<td>76</td>
</tr>
<tr>
<td>State and local government</td>
<td>91</td>
<td>83</td>
<td>90</td>
</tr>
<tr>
<td>Goods-producing industries</td>
<td>76</td>
<td>62</td>
<td>82</td>
</tr>
<tr>
<td>Service-providing industries</td>
<td>70</td>
<td>54</td>
<td>78</td>
</tr>
<tr>
<td>1 to 49 workers</td>
<td>50</td>
<td>36</td>
<td>71</td>
</tr>
<tr>
<td>50 to 99 workers</td>
<td>71</td>
<td>52</td>
<td>72</td>
</tr>
<tr>
<td>100 workers or more</td>
<td>85</td>
<td>71</td>
<td>83</td>
</tr>
<tr>
<td>Worker Characteristics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full time</td>
<td>80</td>
<td>66</td>
<td>82</td>
</tr>
<tr>
<td>Part time</td>
<td>40</td>
<td>22</td>
<td>55</td>
</tr>
<tr>
<td>Union</td>
<td>94</td>
<td>85</td>
<td>90</td>
</tr>
<tr>
<td>Nonunion</td>
<td>67</td>
<td>51</td>
<td>76</td>
</tr>
<tr>
<td>Average Wage</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lowest 25 percent</td>
<td>45</td>
<td>26</td>
<td>57</td>
</tr>
<tr>
<td>Lowest 10 percent</td>
<td>32</td>
<td>16</td>
<td>51</td>
</tr>
<tr>
<td>Second 25 percent</td>
<td>70</td>
<td>53</td>
<td>76</td>
</tr>
<tr>
<td>Third 25 percent</td>
<td>83</td>
<td>69</td>
<td>83</td>
</tr>
<tr>
<td>Highest 25 percent</td>
<td>90</td>
<td>81</td>
<td>90</td>
</tr>
<tr>
<td>Highest 10 percent</td>
<td>92</td>
<td>83</td>
<td>90</td>
</tr>
</tbody>
</table>

Participation in IRAs is even lower than participation in pensions. For example, although 37% of U.S. households had an IRA in

\(^{366}\) March 2020 Employee Benefits, supra note 362, at 7–8 tbl.1.
mid-2020, only around 12% of households made contributions to their IRAs in 2019.367

b. Adequacy

All in all, low participation rates in pension plans, in general, and low contribution rates to 401(k) plans, in particular, have led many analysts to be concerned about whether current and future generations of retirees will have adequate retirement incomes.368 Indeed, just 50.6% of families had any retirement accounts in 2019, and of those families who did have accounts then, the median value was just $65,000.369 That year, only 48.2% of families ages sixty-five to seventy-four had retirement accounts, and the median value of those accounts was $164,000.370 Moreover, just 5% of elderly individuals in

367. Holden & Schrass, supra note 321, at 1–2, 6 fig.3, 18, 19 fig.15.
370. Survey of Consumer Finances, 1989 – 2019, supra note 369 (choose “Retirement accounts” from
the lowest income quartile in 2018 had pension or IRA income that year, compared to 62.4% of individuals in the highest income quartile. Also, a 2020 report by the Consumer Financial Protection Bureau found that 49% of people who retired between 1992 and 2014 did not have the ability to maintain their preretirement spending levels for five years after retiring. To be sure, because Social Security benefits progressively favor workers with low lifetime earnings, low-income workers should be able to save a lower percentage of their salaries than higher income workers and still end up with adequate retirement incomes.

c. Some Demographic Considerations

As more fully discussed in Part IV below, women are less likely to work full-time and be covered by an employer-sponsored pension plan than men, and women also tend to have less retirement savings. As a result, women have greater difficulty in achieving retirement income security than men. Of particular concern, women aged sixty-five or older have less retirement income than men, and they are more likely
to be living in poverty.\footnote{E.g., U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-111SP, THE NATION’S RETIREMENT SYSTEM: A COMPREHENSIVE RE-EVALUATION IS NEEDED TO BETTER PROMOTE FUTURE RETIREMENT SECURITY 58–59 (2017) [hereinafter COMPREHENSIVE RE-EVALUATION], https://www.gao.gov/products/GAO-18-111SP [https://perma.cc/4DKU-MDKQ].} Also, although a 2020 report by the Consumer Financial Protection Bureau found that 58% of men who retired between 1992 and 2014 could maintain their preretirement spending levels for five years after retiring, just 42% of women could.\footnote{OFF. OF FIN. PROT. FOR OLDER AMS., CONSUMER FIN. PROT. BUREAU, supra note 286, at 6 fig.3.}

Table 10. Household Financial Profile by Race/Ethnicity, 2019
(In thousands of 2019 dollars or percent) 381

<table>
<thead>
<tr>
<th></th>
<th>White, non-Hispanic</th>
<th>Black, non-Hispanic</th>
<th>Hispanic</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>$69.2</td>
<td>$40.7</td>
<td>$40.7</td>
<td>$56.0</td>
</tr>
<tr>
<td>Mean</td>
<td>$122.5</td>
<td>$59.6</td>
<td>$58.5</td>
<td>$112.0</td>
</tr>
<tr>
<td><strong>Net Worth:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>$189.1</td>
<td>$24.1</td>
<td>$36.1</td>
<td>$74.5</td>
</tr>
<tr>
<td>Mean</td>
<td>$980.6</td>
<td>$142.3</td>
<td>$165.5</td>
<td>$656.6</td>
</tr>
<tr>
<td><strong>Assets:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Primary residence</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent of families with</td>
<td>73.7%</td>
<td>45.0%</td>
<td>47.6%</td>
<td>54.2%</td>
</tr>
<tr>
<td>Median value for families with</td>
<td>$230.0</td>
<td>$150.0</td>
<td>$200.0</td>
<td>$308.0</td>
</tr>
<tr>
<td>Mean value for families with</td>
<td>$354.9</td>
<td>$199.3</td>
<td>$259.7</td>
<td>$474.1</td>
</tr>
<tr>
<td><strong>Retirement accounts</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent of families with</td>
<td>57.3%</td>
<td>35.1%</td>
<td>25.5%</td>
<td>52.7%</td>
</tr>
<tr>
<td>Median value for families with</td>
<td>$80.0</td>
<td>$35.0</td>
<td>$31.0</td>
<td>$47.0</td>
</tr>
<tr>
<td>Mean value for families with</td>
<td>$294.2</td>
<td>$109.1</td>
<td>$107.0</td>
<td>$194.4</td>
</tr>
</tbody>
</table>

381. Survey of Consumer Finances, 1989 – 2019, supra note 369 (choose “Net worth” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Median ($)” in “Units”; then choose “Net worth” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Mean ($)” in “Units”; then choose “Before-tax family income” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Median ($)” in “Units”; then choose “Primary Residence” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Median ($)” in “Units”; then choose “Retirement accounts” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Percent Holding (%)” in “Units”; then choose “Retirement accounts” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Median ($)” in “Units”; and then choose “Retirement accounts” from dropdown in “Select household financial component,” “Race or ethnicity” from dropdown in “Distribute by,” and “Median ($)” in “Units”).
C. Individual Savings

The third and final pillar of the retirement system is personal savings (including financial assets and accounts outside of retirement plans, inherited wealth, and home equity). The current trend, however, has been a steep downward slide of more than 50% from a personal savings rate high of 14.2% of disposable income saved in 1975, to just 6.8% in 2018. Also, the 2019 SHED showed that just 63% of respondents reported that they could cover an unexpected $400 expense exclusively using cash, savings, or a credit card paid off at the next statement; and 12% of respondents indicated that they would not be able to cover such an expense at all. New questions have emerged in connection with the catastrophic economic impact of COVID-19; some families have been able to strengthen savings, while others have had to use their savings in connection with job losses.

IV. A Closer Look at Women, Work, and Retirement Savings

Although women’s participation in the paid workforce “surged” in recent decades, women overall “continue to have lower annual earnings than men and, on average, much lower lifetime earnings.”

Women spend a significant amount of their adult life outside of the paid workforce—44% of their time according to a 2019 study by Merrill Lynch Wealth Management and Age Wave. Breaks in paid work, together with the gender pay gap, can compound and make it
“relatively impossible” for women to reach retirement income parity with men. For example, in 2020, researchers with the National Institute on Retirement Security published an analysis of the 2016 SIPP data that found older women (sixty-five plus) had a median household income of $47,244 that year, which was just 83% of the median household income of older men, and those researchers concluded that “[t]he story of women’s retirement security is one of persistent inequality.” Quite simply, retirement research consistently finds a gender pension and retirement wealth gap. For example, a recent Transamerica Center for Retirement Savings survey found that women reported “dramatically lower” household retirement savings ($28,000) than men ($69,000).

The retirement wealth gap is even greater for women of color, who, on average, have less retirement savings than White women. For example, a recent analysis of data from the Survey of Consumer

388. Id.
Finances found that as recently as 2016, “the average White woman had $43,000 more in retirement savings than the average Black woman.” Poverty rates of older women of color also reflect this racial retirement wealth gap: for all Black and Hispanic sixty-five years old and older, the poverty rates are 20% and 22% respectively (as opposed to 10.5% for White women and just 5.8% for White men).

Moreover, research consistently finds women’s retirement wealth gap is exacerbated by additional factors including longer lifespans, higher health care costs, caregiving responsibilities, and lower financial literacy. Women also have less retirement planning and investing confidence. Marital status also plays a role: unmarried women generally have a higher risk of poverty and are more vulnerable to economic and financial setbacks because they are unable to pool

393. Id. Although the study did not have a large enough sample size to look at other racial groups, it did find that the racial gap between White women and women of color had persisted (and grown) since 1989, even though women overall were “better off.” Id.


resources with a spouse in cases of unexpected “job loss, illness, or disability . . .”

A. Women and Work

In recent years, women have maintained a substantial presence in the U.S. workforce overall. Indeed, in December 2019, the Bureau of Labor Statistics reported that women slightly outnumbered men in the paid workforce (for only the second time ever). In 2018, 57.1% of all women participated in the workforce (compared to 69.1% of men).

Moreover, many women are working multiple jobs; for example, in 2018, almost half of the 7.8 million workers that had more than one job were women, and women had a higher rate of holding multiple jobs than men. This higher multiple job holding rate of women may be related to the fact that more women than men do part-time work; for example, in 2018, 23.8% of employed women usually worked part-time compared to just 11.8% of men. Not surprisingly, women frequently suggest that child care and household responsibilities often keep them from working more in “formal employment.”

When women do work in formal employment, they tend to be concentrated in certain industries and occupations; for example, a 2019 report on economic well-being notes that 18% of women worked part-time in 2019, compared to 12% of men.

Footnotes:
397. OLDER WOMEN FACING FINANCIALLY UNCERTAIN FUTURE, supra note 173, at 9; see also Bond et al., supra note 108, at 10 (finding married people better off for retirement because of multiple streams of income).
400. Id. at 5–17 tbl.21; see also 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89, at 16 (noting that 18% of women worked part-time in 2019, compared to 12% of men); Bond et al., supra note 108, at 5 (“In 2016, 19 percent of women worked part-time, compared to 11 percent of men.”); COLLINSON ET AL., supra note 391, at 16 (finding women about twice as likely to work part-time compared to men).
401. Id. at 16 (finding women about twice as likely to work part-time compared to men).
study by the Institute for Women’s Policy Research identified the twenty most common occupations for women and found that the top three professions (elementary and middle school teachers, registered nurses, and secretaries and administrative assistants) together employed 12.7% of all women and that half of the twenty most common occupations were female dominated. Another study found that, although women were approximately half of the overall labor force in 2019, they were overrepresented as state and local government employees (60%), and almost half of Black women workers were working in education, health services, or public administration—the primary industries of state and local governments.

Women also tend to spend fewer years in the workforce than men, often because of caregiving responsibilities. Unfortunately, when women spend fewer years in the paid workforce, they will end up with less Social Security and pension benefits. For example, according to a 2012 article by Social Security Administration economist Hilary Waldron, when men became eligible for Social Security in 2007, they typically had ten more years in Social Security-covered employment than women.

Women also tend to earn less than men when they are working in paid employment, often because of gender discrimination and gender occupational segregation. For example, in the first quarter of 2021,
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the median usual weekly earnings of full-time women wage and salary workers ($898) was just 83.1% of those of men ($1,080).408 Similarly, in 2018, the median annual earnings for full-time, year-round working men was $55,291 compared to just $45,097 for women (around 82% of what men make).409 All in all, though most Americans are


408. News Release, U.S. Bureau of Lab. Stat, U.S. Dep’t of Lab., USDL-21-0655, Usual Weekly Earnings of Wage and Salary Workers—First Quarter 2021, at tbl.1 (Apr. 16, 2021, 10:00 AM) [hereinafter Weekly Earnings First Quarter 2021], https://www.bls.gov/news.release/archives/wkyeng_04162021.pdf [https://perma.cc/N9UA-BEAU]. Of course, there is also a racial pay gap, which tends to widen the overall pay gap between White males and women of color. See Stephen Miller, Black Workers Still Earn Less Than Their White Counterparts, SHRM (June 11, 2020), https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/racial-wage-gaps-persistence-poses-challenge.aspx [https://perma.cc/SS5C-RL6W]. For example, in the first quarter of 2021, the median usual weekly earnings of full-time Black ($799) and Hispanic workers ($750) were significantly lower than those of White ($1,006) and Asian workers ($1,286). Weekly Earnings First Quarter 2021, supra, at tbl.2. Of note, however, the median usual weekly earnings of Black women ($768) were 92.1% of the earnings of Black men ($834). Id. In short, the gender earnings gap is “magnified by a racial and ethnic earnings gap.” HEGESWISCH & TESFASELASSIE, supra note 403, at 6. Moreover, “Black women in ‘management, business, and financial’ occupations earn 87.2 percent of Black men’s [earnings] but only 65.1 percent of White men’s earnings in these occupations.” Id.

409. JESSICA SEMIGA, MELISSA KOLLAR, JOHN CREAMER & ABINASH MOHANTY, U.S. CENSUS BUREAU, P60-266(RV), CURRENT POPULATION REPORTS: INCOME AND POVERTY IN THE UNITED STATES: 2018, at 46 tbl.A-7 (2020), https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-266.pdf [https://perma.cc/4G3T-X25X]; see also U.S. BUREAU OF LAB. STAT., U.S. DEP’T OF LAB., BLS REPORT NO. 1089, HIGHLIGHTS OF WOMEN’S EARNINGS IN 2019, at 1 (2020), https://www.bls.gov/opub/reports/womens-earnings/2019/pdf/home.pdf [https://perma.cc/27KU-B4X7] (noting that in 2019, the median usual weekly earnings of full-time women wage and salary workers were 82% of those of male full-time wage and salary workers); OLDER WOMEN FACING FINANCIALLY UNCERTAIN FUTURE, supra note 173, at 50–52. Private-sector survey data collected on more than 425,000 salaries of full-time U.S. workers in 2019 provide additional insight on the gender pay gap: women on average earn 21.4% lower base pay than men. Andrew Chamberlain, Daniel Zhao & Amanda Stansell, Progress on the Gender Pay Gap: 2019, GLASSDOOR ECON. RSCH. 4 (Mar. 27, 2019), https://www.glassdoor.com/research/app/uploads/sites/2/2019/03/Gender-Pay-Gap-2019-Research-Report-1.pdf [https://perma.cc/4YST-JALM]; That gap, however, closed slightly to 19.1% when workers of similar ages, education, and experience are compared; moreover, the gender pay gap shrinks to just 4.9% for workers with the same job title, employer, and location (women make 95.1% of what men make). Id. Although substantial strides have been made in recent decades to educate and employ women, women remain “overrepresented in low wage professions [and are] often paid less than their male counterparts.” OLDER WOMEN FACING FINANCIALLY UNCERTAIN FUTURE, supra note 173, at 1. Moreover, despite the fact that more women than men pursue higher education degrees and are approximately half of the overall workforce, women are “59 percent of the low wage workforce[,]” and as already mentioned, part-time
underprepared and “struggle” to save for retirement, women, in particular, “face unique challenges in saving, largely stemming from a gender pay gap that persists into a retirement wealth gap.”

B. Women and Caregiving

Unpaid caregiving is a reality for most women, and recent research shows that “[c]aregiving, especially spousal caregiving, has a strong effect on retirement preparedness . . . .” Eighty percent of women have children during their lifetimes, and women are much more likely than men to leave the paid workforce to provide care for their children, parents, and spouses. Indeed, research shows that the 65% of caregivers are women and that women take as many as nine years out of the paid workforce to care for family. The decision to leave the paid workforce can also have significant consequences for women on their pay and promotion when they return; in fact, working mothers “experience a ‘mommy penalty,’” a pay gap that is three times that of non-mothers due to lost income and missed opportunities for work is more common among women than men. Id. at 1 n.2. The gender pay gap also increases with age: while young workers (eighteen to twenty-four years old) face a gender pay gap of just 1.4%, older workers (fifty-five to sixty-four years old) experience a gender pay gap of 12.3%. Chamberlain et al., supra, at 5. The gender pay gap also varies by industry: the media, retail, construction, repair, and maintenance industries had the largest pay gaps, while the biotech and pharmaceuticals, education, and aerospace and defense industries had smaller gaps. Id. The wider gender pay gap at older ages could reflect age discrimination because, as more fully explained in Part IV.B below, women tend to take more time out of the workforce to engage in unpaid caregiving. OLDER WOMEN FACING FINANCIALLY UNCERTAIN FUTURE, supra note 173, at 22–23; U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-382, RETIREMENT SECURITY: SOME PARENTAL AND SPOUSAL CAREGIVERS FACE FINANCIAL RISKS (2019) [hereinafter CAREGIVERS FACE FINANCIAL RISKS].

411. Id.; see also CAREGIVERS FACE FINANCIAL RISKS, supra note 409.
412. AGE WAVE & MERRILL LYNCH WEALTH MGMT., supra note 387, at 14; see, e.g., CAREGIVERS FACE FINANCIAL RISKS, supra note 409.

promotions caused by breaks from the workforce." \textsuperscript{414} Women also provide two-thirds of elder care, which can lead to “lost benefits and promotions if work interruptions occur, in addition to out-of-pocket costs.” \textsuperscript{415}

Unpaid caregiving by women is only half of the problem. Even paid women caregivers face significant earnings and retirement savings challenges. \textsuperscript{416} Unsurprisingly, women comprise the vast majority of the low-paid, adult-care workforce; for example, in 2017, 88% of paid adult-care workers doing in-home care were women (including home health aides and personal care aides), and 85% of paid adult-care workers in institutional settings were women. \textsuperscript{417} Finally, it is worth noting that women are substantially more likely than men not only to engage in paid caregiving but also to need paid care as they age. \textsuperscript{418}

As the U.S. population ages, the need for paid caregiving will continue to grow, and the COVID-19 pandemic may even accelerate that growth. \textsuperscript{419} Prior to the onset of the COVID-19 pandemic, the U.S.


\textsuperscript{415} Age Wave & Merrill Lynch Wealth Mgmt., supra note 387, at 15.


\textsuperscript{417} \textit{Id. at 4} fig.1. Women over the age of forty are the majority of these adult-care workers: 64% of women engaged in in-home paid care work are over age forty, and 50% of the women working in institutional settings are, too. \textit{Id. at 4}, 6 tbl.1. Notably, while Black women comprise just 13% of working women, they are “overrepresented” as paid caregivers: Black women are 28% of women home care workers and 29% of women workers in institutions. \textit{Id. at 5}, 6 tbl.1. Hispanic women are also overrepresented. \textit{Id. at 5}.

\textsuperscript{418} \textit{Id. at 3}.

\textsuperscript{419} In addition to COVID-19’s significant impacts on labor force participation and on the timing of retirement, there may be significant long-term side effects for those that survive COVID-19. See infra Part V.C. Going forward, technology and online platforms coordinating care work may play a significant role in meeting the growing need for additional paid caregivers. In fact, online platforms such as Care.com
Census Bureau projected that the population of individuals aged sixty-five or older would more than double over the forty-four-year period from 2016 to 2060, increasing from 49.2 million in 2016 (15% of the U.S. population) to 94.7 million in 2060 (23% of the U.S. population).\(^{420}\) Moreover, the Census Bureau projected adults aged eighty-five and older to triple over that time period, increasing from 6 million in 2016 to 19 million in 2060.\(^{421}\) As a result of these changing demographics, research from 2020 had already identified paid adult-care work as a sector expected to “increase substantially” due to “both an aging population and a comparatively low risk of automation . . . .”\(^{422}\) At the same time, however, these caregiving jobs offer lower earnings and less access to fringe benefits, among other significant challenges.\(^{423}\) For example, full-time, year-round female home care workers had median annual earnings of just $23,500 in 2017, compared to $40,000 for all working women that year.\(^ {424}\) Earnings are only minimally higher for women working in institutional settings: $25,600 for women and $29,000 for men.\(^ {425}\) Also, only 13% have already established the viability of migrating offline care work to an online platform model.\(^ {426}\)


\(^{421}\) Id. at 4 tbl.1.


\(^{423}\) HESS & HEGEWISCH, supra note 416, at v.

\(^{424}\) Id. at vi, 8, 9 tbl.2.

\(^{425}\) Id. These earnings translate to less than $15 an hour for the 76% of all women who do in-home adult care (as compared to 41% of working women generally earning less than $15 an hour). Id. at 8–9, 10 fig.4.
of women adult care workers doing in-home care, and 21% of those in institutional settings had access to a pension plan.\textsuperscript{426}

C. Women and Life Expectancy

Women also tend to live longer than men.\textsuperscript{427} For example, in 2021, a sixty-five-year-old man could expect to live, on average, until age eighty-four, while a sixty-five-year-old woman could expect to live almost until age eighty-seven.\textsuperscript{428} Moreover, according to the Census Bureau, in 2016, there were almost 27.5 million women aged sixty-five and older but just under 21.8 million men.\textsuperscript{429} By age eighty-five, women outnumber men by almost two to one; for example, in 2016, there were around 4.1 million women aged eighty-five and older, compared with just 2.2 million men.\textsuperscript{430}

D. Women and Health Care Costs

Women are also likely to have higher health care costs than men as they age. For example, one study estimated that, in 2019, a retiring couple will have $285,000 in health care and medical expenses during retirement, while a single woman will have $150,000 in expenses, and

\begin{itemize}
\item \textsuperscript{426} Id. at vi, 11 tbl.3. Also, just 24\% of these in-home care workers and just 41\% of those in institutional settings had employer-sponsored health insurance, and, not surprisingly, these “shares are much lower than for the working female population overall.” Id.
\item \textsuperscript{428} Retirement & Survivors Benefits: Life Expectancy Calculator, SOC. SEC. ADMIN., https://www.ssa.gov/planners/lifeexpectancy.html (for men, select “male” in the gender box, select January 1, 1956, for date of birth, and then click “Submit”; for women, select “female” in the gender box, select January 1, 1956, for date of birth, and then click “Submit”).
\end{itemize}
a single man will have just $135,000 in expenses. Another study found that the average woman will spend $688,000 in out-of-pocket health care and long-term care costs in retirement—39% (or $194,000) more than the $494,000 for the average man. For women, these health and long-term care costs may be particularly burdensome as women may “bear these costs for longer and may have already spent down assets if their spouse predeceases them.” Health problems can also be a major factor that triggers early retirement.

E. Women and Retirement Income Security

1. Women Depend More on Social Security Benefits

Part III.A above showed that women are generally more dependent on Social Security benefits than men. Part IV.C above showed that women are more likely than men to leave the workforce to provide care for their children, parents, and spouses, and those caregiving responsibilities can result in them making less Social Security contributions and saving less for retirement. All in all, women’s lower earnings and lower savings result in significantly lower Social Security and pension benefits.

2. Women Are Less Likely to Participate in Employer-Sponsored Retirement Plans

In recent decades, research has found that working women were actually more likely to work for employers that offered pension plans, which could be attributable to the industries and sectors in which

432. AGE WAVE & MERRILL LYNCH WEALTH MGMT., supra note 387, at 16 fig.4. 
434. See, e.g., 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89, at 47 (finding 30% of respondents indicating health problems as a factor in their decisions to retire).
435. See supra Part III.A.
436. See supra Part IV.C.
437. See, e.g., Enda & Gale, supra note 310.
women tend to participate (such as, health and education, government, and non-profit sectors); however, working for those employers did not guarantee eligibility for pension benefits.\footnote{438 Id.; WOMEN STILL FACE CHALLENGES, supra note 386, at 9–10.} For example, while 72% of the men in a recent Transamerica Center for Retirement Studies survey were offered the opportunity to participate in a 401(k)-type plan, just 64% of the women were.\footnote{439 See, e.g., EMP. BENEFITS SEC. ADMIN., U.S. DEP’T OF LAB., WHAT YOU SHOULD KNOW ABOUT YOUR RETIREMENT PLAN 5, 8 tbl.2 (2020), https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/what-you-should-know-about-your-retirement-plan.pdf [https://perma.cc/RL29-S8R4] (noting requirements for part-time workers for employer-benefit plans based on hours worked and number of years of service at company for participation and vesting).} 

Even if an employer has an employer-sponsored retirement plan, part-time workers, the vast majority of whom are women, will often find it difficult to satisfy the plan’s eligibility, participation, and vesting requirements to earn any pension benefits.\footnote{440 See, e.g., Schramm v. Comm’r, 102 T.C.M. (CCH) 233 (2011) (finding adjunct professor could deduct unreimbursed business expenses as a miscellaneous itemized deduction because he was a common law employee); I.R.C. § 410(a) (allowing employers to condition participation in employer-benefit plans on one year of service (or 1,000 hours) with employer); ERISA § 202, 29 U.S.C. § 1052 (allowing employers to condition participation in pension plans on one year of service (or 1,000 hours) with employer); EMP. BENEFITS SEC. ADMIN., U.S. DEP’T OF LAB., supra note 440, at 5. In that regard, a recent survey by the American Association of University Professors (AAUP) found that 65.1% of the higher education institution respondents did not make retirement contributions for any part-time faculty members. THE ANNUAL REPORT ON THE ECONOMIC STATUS OF THE PROFESSION, 2019–20, BULL. AM. ASS’N U. PROFESSORS, Summer 2020, at 21, 46 tbl.16, https://www.aaup.org/sites/default/files/AnnualReportontheEconomicStatusoftheProfession%2C2019%2E2%80%9320.pdf [https://perma.cc/ML5Z-BT9U]; see also PAUL J. YAKOBOSKI & PAUL DiCESARE, TIAA INST., RETIREMENT BENEFITS FOR ADJUNCT FACULTY (2020), https://www.tiaainstitute.org/sites/default/files/presentations/2020-03/TIAA%20Institute_Adjunct%20Faculty_TI_Yakoboski_June2020.pdf [https://perma.cc/5JZP-549H]; PAUL J. YAKOBOSKI, TIAA INST., ADJUNCT FACULTY: PERSONAL FINANCES AND RETIREMENT SAVINGS (2019), https://www.tiaainstitute.org/sites/default/files/presentations/2019-03/TIAA%20Institute_Adjunct%20Faculty%20Personal%20Finances_TI_March%202019.pdf [https://perma.cc/62XK-CLFN]; BILL HUSSAR, JUIN ZHANG, SARAH HIN, KE WANG, ASHLEY ROBERTS, HASHAN CUI, MARY SMITH, FarlLock Mann ET AL., NAT’L CTR. FOR EDUC. STUD., U.S. DEP’T OF EDUC., NO. 2020-1414, THE CONDITION OF EDUCATION 2020, at 150–53 (2020).} For example, women working as contingent and part-time instructors in education are usually treated as employees rather than independent contractors, and that means that their wages should be covered by Social Security. But they may not work enough hours (or years) to qualify for participation in the employer-sponsored retirement plan.\footnote{441
3. Women Often Have Less Savings and More Debt

In recent years, more women than men have graduated from college and graduate school, “accounting for 57% of recent degree earners.”442 The fact that more women than men pursue higher education degrees has resulted in women owing almost two-thirds of the more than $1.54 billion student loan debt in the United States in 2020.443 That student loan debt along with the gender pay gap are major factors that contribute to the greater (and growing) challenges women face with respect to their retirement income security.444

Lusardi and others used the 2018 Health and Retirement Study (HRS) and the 2018 National Financial Capability Study (NFCS) to study attitudes and understanding about debt among individuals aged fifty-one through sixty-one.445 Their study found that 41% of those surveyed in the 2018 HRS agreed or strongly agreed that they had too much debt and that 23% had been contacted by a debt collector.446 Their study also showed that women were more likely to report that they had unpaid medical bills and that they felt more overburdened by debt.447

442. AEWAVE & MERRILL LYNCH WEALTH MGMT., supra note 387, at 6.
444. Id. at 5.
445. Id. at 6–7. Their study also found that the 2018 NFCS showed that a substantial portion (36%) of older Americans reported being overburdened by debt. Id. at 10–11. Also, more women than men reported being anxious about their personal finances (65% of women compared to 54% of men), stressed about finances (56% of women compared to 44% of men), and concerned about running out of money (53% of women compared to 48% of men). ANDREA HASLER, ANNAMARIA LUSARDI & OLIVIA VALDES, FINRA INV., EDUC. FOUND. & GLOB. FIN. LITERACY EXCELLENCE CTR., FINANCIAL ANXIETY AND STRESS AMONG U.S. HOUSEHOLDS: NEW EVIDENCE FROM THE NATIONAL FINANCIAL CAPABILITY STUDY AND FOCUS GROUPS 7, 8 tbl.3, 9, 10 tbl.4 (2021), https://gflec.org/wp-content/uploads/2021/04/Anxiety-and-
4. Women Often Have Lower Financial Literacy

Financial literacy is a key driver for retirement planning and debt management. In fact, the “correlation between financial literacy and different measures of retirement planning is quite robust[,]” and “financial literacy is associated with greater retirement planning and greater retirement wealth accumulation.” In fact, working women in general have relatively lower financial literacy than men, and many women have trouble making ends meet and saving for emergencies and retirement. Moreover, a recent survey by the Transamerica Center for Retirement Studies found that only around 12% of women were “very confident” that they could retire comfortably, compared to...
23% of men. Pertinent here, women often face social taboos in talking about money issues that contribute to women’s lack of confidence; for example, one study found that “[61%] of women would rather talk about their own death than money.”

V. PROBLEMS AHEAD FOR GIG WORKERS WORKING TO SAVE FOR RETIREMENT

“I never heard of a Jazz musician who retired. You love what you do, so what are going to do . . . play for the walls?” Nat Adderley, twentieth-century American jazz musician who recorded “Work Song” in 1960, which he referred to as his Social Security song because he continued to accrue royalties throughout his life when others performed it.

Gig work presents unique retirement savings challenges for workers. For example, in a recent survey of freelancers, Small Business Majority found that 40% did not have a retirement plan. Figure 2 shows that the most common barrier to retirement savings for

451. COLLINSON ET AL., supra note 450, at 13. Research also shows that while women may have confidence in paying bills or budgeting, there is a significant confidence drop when it comes to managing financial investments. AGE WAVE & MERRILL LYNCH WEALTH MGMT., supra note 387, at 7 (dropping from 90% and 84% confidence in paying bills and budgeting, respectively, to 52% confidence in managing investments). Although lack of confidence matters, that same research identified the primary barrier to investment for women as lack of knowledge. Id. at 8. Also, women—notwithstanding their higher education levels—express less confidence than men about managing their investments: a mere third of women SHED respondents in 2019 said that they were “mostly” or “very comfortable” investing their retirement savings. 2019 REPORT ON ECONOMIC WELL-BEING, supra note 89, at 51. Prior research has suggested that the gender gap in financial literacy is attributable to the gender-related specialization of household financial tasks—but that women’s financial literacy increases following the death of a spouse. Id. at 52 n.49; see also Kumar et al., supra note 450, at 134.
452. AGE WAVE & MERRILL LYNCH WEALTH MGMT., supra note 387, at 7.
454. Opinion Poll: Freelancers Need Flexible Retirement Options, SMALL BUS. MAJORITY 3, 6 fig.3 (Mar. 22, 2017), https://smallbusinessmajority.org/sites/default/files/research-reports/032217-Freelancers-Retirement-poll.pdf [https://perma.cc/PN7Z-2GUY]; see also Brown, supra note 9, at 10 (noting independent contractors less likely to participate in 401(k) plans).
these freelancers was inadequate earnings, followed by the inability to save due to the unpredictability of gig work.455

Figure 2. Freelancers Cite Barriers to Saving for Retirement

Although adequate cash flow is the most obvious challenge to gig workers’ ability to save for retirement, other retirement savings challenges stem primarily from the classification of gig workers as independent contractors for tax and labor law purposes.457 As this Part explains, treating gig workers as independent contractors rather than employees means that they: (1) are not subject to employer withholding of Social Security payroll taxes and (2) do not have access to employer-sponsored retirement (and health care) plans.

455. See infra Figure 2.
456. Opinion Poll: Freelancers Need Flexible Retirement Options, supra note 454, at 6 fig.4.
457. See infra Parts V.A, V.B.
A. Misclassification Means that Gig Workers Do Not Always Earn Enough Social Security Benefits

As Part II.C.1 above explained, traditional employers are required (1) to withhold income and Social Security taxes from the wages that they pay their employees and (2) to report that information to those employees and the IRS (on IRS Form W-2s).\(^{458}\) On the other hand, as Part II.C.2 above explained, there is no required withholding of payroll or income tax on amounts paid to independent contractors, and payors are not always required to report those payments on IRS 1099 Forms.\(^{459}\) To be sure, independent contractors are: (1) required to keep track of and report their income—whether it shows up on an IRS Form 1099 or not, (2) required to calculate and remit any tax owed, and (3) required to make quarterly estimated tax payments if they owe at least $1,000 of tax.\(^{460}\) Unfortunately, given the high rates of noncompliance with the self-employment tax by independent contractors, many gig workers will end up with smaller Social Security benefits than they will need in retirement.\(^{461}\) Accordingly, the determination of whether a worker is an employee or independent contractor is of the utmost importance, and this Subpart explores the implications of worker classification and the “rampant” misclassification” of workers.\(^{462}\) For example, in a 2013 study, the U.S. Department of Treasury Inspector General for Tax Administration noted that millions of employees were misclassified as independent contractors, and in their 2017 study,

\(^{458}\) See supra Part II.C.1.

\(^{459}\) See supra Part II.C.2.


\(^{462}\) Oei & Ring, supra note 227, at 695.
Bernhardt and Thomason estimated that “perhaps [one] to [two] percent of the workforce is misclassified . . .”

1. The Importance of Classification

As already explained in Parts II and III above, there are significant differences in the federal income, Social Security tax, and pension rules governing employees and independent contractors. Classification of a worker as an employee also guarantees a worker many rights under many other federal and state laws. For example, only employees are entitled to collectively bargain under the National Labor Relations Act, and only employees are eligible for the overtime and minimum wage protections of the Fair Labor Standards Act and the Family Medical Leave Act’s guaranteed family and medical leave. Similarly, state workers’ compensation programs provide benefits to employees—but not to independent contractors; and prior to 2020, the joint federal-state unemployment compensation program (the CARES Act) generally only paid benefits to eligible, unemployed former employees but not to independent contractors. Also, of

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464. See supra Parts II, III.


466. Wei-Chih Chiang, Yingxu Kuang & Charlie (Shengsheng) Huang, COVID-19 Aid and Relief for the Self-Employed, 168 TAX NOTES FED. 1573, 1574 (2020); see House Committee on Ways and Means Green Book, supra note 211, at ch. 4.
particular importance, in a federal case involving so-called independent contractors at Microsoft, the Ninth Circuit Court of Appeals reclassified those workers as employees, and those workers eventually settled with Microsoft for $97 million in back pay and pension-plan benefits.467

2. The Internal Revenue Service Test

For tax purposes, the IRS previously used an explicit twenty-factor test to determine whether a worker was an employee or an independent contractor, but more recently, the IRS has grouped those twenty factors into three categories:

- Behavioral control: Does the business control what the worker does and how the worker does the job?
- Financial control: Does the business control the business aspects of the worker’s job (including how the worker is paid and whether expenses are reimbursed)?
- Type of Relationship: Are there written contracts that describe the relationship between the business and the worker? Does the business provide employee-type benefits (that is, pension plan, insurance, vacation pay, etc.) to the worker? Will the relationship continue indefinitely, or is it for a specific project or period? Is the work performed by the worker a key aspect of the business?468

Businesses that misclassify workers as independent contractors can face significant penalties including retroactive taxes and interest.469

Under the safe harbor provided by § 530 of the Revenue Act of 1978, however, businesses are protected from those penalties if the

469. See, e.g., 2013 EMPLOYERS DO NOT ALWAYS FOLLOW IRS, supra note 219.
business’s classification of the worker as an independent contractor was reasonable and consistently applied and reported in prior years.470

When a worker is misclassified as an independent contractor, the worker can challenge that misclassification by filing an IRS Form SS-8 (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding) or an IRS Form 8919 (Uncollected Social Security and Medicare Tax on Wages).471 Misclassified workers can also sue for the greater of $5,000 or actual damages against an employer who willfully files a fraudulent information return (for example, an IRS Form 1099-NEC when an IRS Form W-2 would be appropriate).472 There are also anonymous and confidential ways to challenge an employment tax misclassification.473

3. U.S. Department of Labor Test

Over the years, the U.S. Department of Labor has used a multi-factor balancing test to determine whether workers are employees or independent contractors within the meaning of the Fair Labor Standards Act:

- The nature and degree of the potential employer’s control;


472. 1.R.C. § 7434(a)-(b); see, e.g., Kinne v. IMED Health Prods., LLC, No. 18-62183-Civ, 2019 WL 2866787, at *3–4 (S.D. Fla. July 3, 2019) (finding plaintiff stated a claim under § 7434 because defendant knew of plaintiff’s scope of employment, the defendant’s control over its employees, and defendant’s filing a Form 1099 instead of a W-2, thus intentionally filing incorrect forms).

• The permanency of the worker’s relationship with the potential employer;
• The amount of the worker’s investment in facilities, equipment, or helpers;
• The amount of skill, initiative, judgment, or foresight required for the worker’s services;
• The worker’s opportunities for profit or loss; and
• The extent of integration of the worker’s services into the potential employer’s business.  

Guidance issued during the former President Donald J. Trump’s Administration would have made it easier for workers to be classified as independent contractors; however, the Biden Administration has revoked that guidance and returned to the multi-factor balancing test.

475. In 2019, the Department of Labor’s Wage and Hour Division issued an opinion letter suggesting that the Department then viewed most service providers working for online marketers as independent contractors, not employees. Id. That opinion letter emphasized that the working relationship between the service providers and the online marketer that asked for the opinion letter was one of economic interdependence, not economic dependence. See generally id. In 2020, the Department of Labor went even further and proposed an interpretive rule that would adopt an “economic reality” test that would treat millions of janitors, construction workers, and other gig workers as independent contractors rather than as employees, and a final rule to that effect was promulgated in early January 2021. Independent Contractor Status Under the Fair Labor Standards Act, 86 Fed. Reg. 1168, 1171 (Jan. 7, 2021); see also Independent Contractor Status Under the Fair Labor Standards Act, 85 Fed. Reg. 60,600, 60,612 (Sept. 25, 2020).
The Department of Labor also relies on anti-abuse rules like the “joint employment doctrine” to make sure employers are not able to avoid their employment law liabilities by hiding behind temporary agencies and subcontractors.477

4. National Labor Relations Board

The National Labor Relations Board (NLRB) has also weighed in on the classification of workers in the gig economy.478 In a 2019 Advice Memorandum, the General Counsel of the NLRB took the position that Uber drivers—and, by implication, many other gig economy workers—are independent contractors and not statutory employees entitled to collective bargaining protections.479 The ruling has been criticized, and it is likely to be reconsidered in President Biden’s Administration.480

5. State Efforts

In 2019, California enacted a new test for determining whether a worker is an employee or independent contractor for state law


479. Id. at 13.

That legislation codified the California Supreme Court’s important decision in Dynamex Operations West, Inc. v. Superior Court. Under the new test, a worker is generally considered to be an employee (and not an independent contractor) unless the hiring entity can establish the following three conditions (the ABC test):

A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

B) The person performs work that is outside the usual course of the hiring entity’s business.

C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Under California’s ABC test, more workers will be treated as employees, including many more gig workers. Some workers may end up being classified as an employee for California law but as independent contractors for Federal tax purposes. A California court recently upheld the ABC test and ruled that Uber and Lyft should not classify their drivers as independent contractors; however, an appeal is pending, and in November 2020, California voters approved Proposition 22, the App-Based Drivers as Contractors and Labor Policies Initiative—promoted by Uber and Lyft—that re-classifies app-based drivers as independent contractors.


484. See id. The legislation provided some fifty exceptions that allow many workers to instead be treated as independent contractors—for example, for most physicians, dentists, and lawyers who are working in a sole proprietorship or working for a partnership or a professional corporation. Id. § 2750.3(b)(2).

Rather than changing their worker classification rules, other states (like Vermont and Massachusetts) have moved to impose additional reporting requirements on third-party settlement organizations. For example, in 2020, Virginia enacted legislation that requires third-party settlement organizations to report payments of $600 or more to gig workers with Virginia addresses.

B. Gig Workers Often Do Not Have Pensions or IRAs

As already explained, workers in alternative and nontraditional work arrangements are typically ineligible for employer-provided retirement or health care benefits. More specifically, independent
contractors are not permitted to participate in employer-sponsored plans that provide health care and pension coverage, and businesses rarely want to provide those fringe benefits to their part-time and temporary workers. 489 For example, as already mentioned, according to the Bureau of Labor Statistics’ most recent effort to measure contingent and alternative work, just 18.4% of contingent workers participated in an employer-sponsored pension in 2017, compared to


46.3% of traditional workers. Notably, these contingent workers engaged in contingent work as the main source of income rather than as a supplement source of income, and those gig workers who engaged in gig work to supplement income from traditional employment might have had access to a retirement plan from their traditional employment.

Similarly, Jackson and others found that while 41.9% of wage-only earners made contributions to a pension or IRA in 2014, just 21.3% of workers with some wages and some self-employment income made such contributions; also, absent traditional employment, even fewer gig workers made contributions to retirement savings: only 18.8% of online platform workers and 7.8% of sole proprietors made contributions. For all categories of workers in that study, contribution rates increased as income increased.

Munnell and others’ 2019 study found that 20.3% of workers aged fifty to sixty-two had nontraditional jobs—defined as jobs lacking both health insurance and retirement plans—over the course of the 1992–2016 waves of the HRS. That study found that only 26% of workers aged fifty to sixty-two worked consistently in traditional jobs with benefits. All in all, doing nontraditional work late in one’s career was associated with lower retirement income (and also with higher rates of depression). On the other hand, another study based on the Health and Retirement Study suggested that nontraditional work may actually improve the retirement income security of some older workers.

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490. See supra note 21 and accompanying text; May 2017 Employment Arrangements, supra note 21, at tbl.9; Appelbaum et al., supra note 29, at 18 tbl.9.
491. 2020 TAXPAYER COMPLIANCE, supra note 6, at 10; see, e.g., Rutledge et al., supra note 361, at 12 (showing that many gig workers find health and pension coverage through a spouse’s employer or a past employer of their own).
492. Jackson et al., supra note 51, at 37 tbl.9.
493. Id. at 38 tbl.10. Other data sources can also provide insights about the health care and retirement benefits of workers doing nontraditional work. For example, a 2019 Life Insurance Marketing and Research Association (LIMRA) report estimated that just 46% of employers offered any employer-sponsored benefits to part-time workers, just 29% offered any benefits to seasonal workers, and just 16% offered any benefits to contract workers. LANDRY, supra note 143, at 6.
494. Munnell et al., supra note 148, at 28 fig.1.
495. Id. at 2, 16. Moreover, the study’s authors found that although having only a brief period in nontraditional work reduced retirement income by around 26%, doing nontraditional work consistently decreased retirement income by 11%. Id. at 2.
496. Id. at 16.
Americans; for example, by extending their careers and generating earnings that could enable them to delay claiming their Social Security benefits or tapping into their retirement savings.\footnote{497}

C. The Impact of COVID-19

Following the onset of the COVID-19 pandemic, an urgent congressional priority was to legislate emergency benefits for the millions of laid-off Americans impacted by COVID-19.\footnote{498} In March 2020, Congress passed the Families First Coronavirus Response Act (FFCRA), which included payroll tax credits for employers to provide paid sick or family leave for employees as well as refundable income tax credits to offset self-employment tax for self-employed workers in need of paid family or sick leave.\footnote{499} Soon thereafter, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which included more than $1.7 trillion in emergency funding for a host of COVID-19-related programs, including (1) economic stimulus

\footnote{497. Older Nontraditional Workers, supra note 488, at 16–17; see also BETTERMINT, supra note 97; Sanzenbacher, supra note 148, at 1, 4 (finding that gig work can help older workers improve their financial position). Also, Nontraditional Work at Older Ages, supra note 488, used the 2002–2016 Health and Retirement study to look at a sample of those nontraditional workers who did not get health or retirement benefits from their current jobs. See generally Nontraditional Work at Older Ages, supra note 488. In another study, Rutledge found that although these older workers did not get health insurance coverage from their nontraditional jobs, two-thirds did get health care coverage from alternative sources (e.g., the spouse’s employer, a past employer, Medicare, Medicaid, or private insurance). Older Nontraditional Workers, supra note 488, at 3. But that still left around 31% without any health care coverage. Id. at 4. Similarly, Rutledge found that although these older workers did not get retirement coverage from their nontraditional jobs, some might use IRAs to save for retirement or they could, perhaps, increase their retirement savings through their spouses’ employers. Id. at 1.}


\footnote{499. Families First Coronavirus Response Act of 2020 (FFCRA), Pub. L. No. 116-127, §§ 7001-7004, 134 Stat. 178, 210–19. For a self-employed worker, the qualified sick and family leave refundable income tax credits together could total $12,000. Chiang et al., supra note 466.}
payments for taxpayers, (2) employee retention tax credits, (3) emergency small business loans, (4) payroll tax deferrals, and (5) extended unemployment benefits. The CARES Act also specifically allowed self-employed workers to qualify for emergency loans and provided new pandemic unemployment assistance (PUA) benefits to self-employed workers and certain other workers who were not otherwise eligible for regular unemployment benefits (for example, because they were only seeking part-time work). Congress provided additional pandemic relief in December 2020, and President Biden’s Administration provided even more relief in March 2021.

Notwithstanding the willingness of Congress to provide emergency benefits to millions of self-employed workers impacted by COVID-19, existing data and research proved to be wildly insufficient for calibrating an effective response. For example, in April 2020, the Congressional Budget Office estimated that 5 million self-employed workers (and wage and salary workers without sufficient work history to qualify for regular unemployment benefits) would claim around $35 billion in PUA assistance benefits in 2020 and 2021. As it has turned out, however, the government spent more than $130 billion on those benefits through November 13, 2021, and an estimated 14.7 million


502. See, e.g., PROMOTING ECONOMIC SECURITY, supra note 202, at 1–2.

503. Marie Sapirie, Fixing the Information Gap in the Gig Economy, 167 TAX NOTES STATE 1485, 1485 (June 22, 2020); PRELIMINARY ESTIMATE OF EFFECTS OF H.R. 748, supra note 500, at 10.
individuals were claiming PUA benefits for the week ending August 22, 2020.504

In addition to the emergency unemployment and small business loan programs designed to target self-employed workers, the CARES Act also authorized certain coronavirus-related distributions (CRDs) from pensions and IRAs of up to $100,000 in 2020 and increased the defined contribution plan loan limits to the greater of $100,000 or 100% of the vested account balance.505 Because these changes allow individuals to deplete their accumulated retirement savings, the COVID-19 pandemic is likely to have an adverse impact on the retirement income security of many workers, but much will depend on how long the pandemic lasts.506


The COVID-19 pandemic has also highlighted the tenuous nature of providing pension savings, health insurance, and other benefits through employer-sponsored plans. As millions have lost their jobs, they have also lost their benefits. For example, one early 2020 study found that 5.4 million workers lost their jobs and health insurance from February to May of 2020.\footnote{Bruckner and Forman: Women, Retirement, and the Growing Gig Economy Workforce}


Another analysis found that 2.9 million older workers (aged fifty-five to seventy) left the labor force from March through June of 2020, and that analysis projected that as many as 4 million older workers will eventually be pushed out of the workforce by the COVID-19 pandemic and are at risk of involuntary retirement before crisis and reasonable assumptions of future employee and employer behavior would only reduce retirement savings shortfalls by around 4.5% with intermediate assumptions and by 11.2% with pessimistic assumptions. Id. A more recent study suggests that workers who take large coronavirus-related distributions or loans from their retirement plans (as permitted by the CARES Act) and who do not fully repay them could face significant reductions in their retirement account balances. VanDerhei, supra note 505.


Bui et al., supra note 508, at 17 tbl.1; see also Gene Falk, Paul D. Romero, Jameson A. Carter, Isaac A. Nicchitta & Emma C. Nyhof, Cong. Rsch. Serv., R46554, Unemployment Rates During the COVID-19 Pandemic 10 (2021), https://www.everycrsreport.com/files/2021-08-20_R46554_211d85453a9b241f4a480f6c32659ca5532ed598.pdf [https://perma.cc/7Q7K-3DKN].
they are ready. Even if these older workers do find new jobs, they can expect to have lower earnings and benefits than before. Women and older minority workers were hit particularly hard by pandemic job losses, and older, minority women were hit the hardest: 19.5% of them lost their jobs from March through June of 2020. All in all, these increases in unemployment are sure to have an adverse impact on retirement savings and retirement preparedness.

Although women briefly outnumbered men in the paid workforce in December 2019, the COVID-19 pandemic eliminated those gains, as women were overrepresented in some of the “hardest-hit industries, such as leisure and hospitality, health care and education.” In addition to the job losses triggered by the pandemic, the related school and daycare shutdowns have also had a huge impact on the working women who “provide the majority of childcare” and now have children at home in the absence of full-time school and daycare.

Congress has already heard from experts on women in retirement that the “pandemic’s economic consequences have fallen heavily on women of color” and that “the pandemic will likely have additional negative long-term effects on women’s lifetime incomes, wealth, and


511. Papadopoulos et al., supra note 510, at 3.

512. Id. at 4.


514. Schmidt, supra note 398; see also Karageorge, supra note 11, at 1 (“40 percent of all working women are employed in government and in health and education services compared with just 20 percent of working men.”).

515. Karageorge, supra note 11.
overall economic security.” These problems have led many analysts to seriously think about delinking benefits from employment and instead tying benefits like retirement savings and health care to individual’s status as an individual rather than as an employee.

The COVID-19 pandemic is also likely to expedite the shift from defined benefit plans to defined contribution plans, lead to the enhancement of financial advice programs and the development of more lifetime income products, and result in improvements in safety net programs. Finally, a recent survey found that the COVID-19 pandemic has caused nearly 68 million Americans to reconsider their retirement timing, with 29% of those planning to retire thinking about retiring later and 10% thinking about retiring earlier. Another recent survey found that 38% of those surveyed said that the COVID-19 pandemic has led them to retire later than they planned or not at all.

VI. POLICY OPTIONS

Millions of workers have turned to gig work in recent years—in most cases, as a supplement to a primary source of income—but much of that gig income is misreported for self-employment tax purposes. That tax noncompliance matters because most Americans rely on Social Security for a significant portion of their retirement income. Moreover, gig workers often do not have much in the way of pension and IRA savings either. All in all, the retirement income security of many gig workers is at risk—and at increasing risk—because of the

517. See, e.g., Mitchell, supra note 346, at 17, 26; see also infra Part VI.H.
518. Mitchell, supra note 346, at 18–19.
521. See supra Parts II.D & III.A.
522. See supra Parts III.B.6 & V.B.
COVID-19 pandemic. This Part reviews a range of options to improve the retirement income security of gig workers, generally, and of women gig workers, specifically.

A. Prioritize Gig Worker Data and Research

At the outset, evidence-based policymaking requires good data, and the existing conflicting measures of gig economy work unduly complicate effective policymaking. This Article’s review of the existing survey and administrative tax data sources for measuring the gig economy workforce illustrates the need for regular and comprehensive measures of gig workers and their income. Basically, the “government does not understand the gig economy and currently does not have the capability to document relevant data.”

The survey and administrative tax data reviewed in this Article painted an unrealistic, conflicting picture of the gig workforce. For example, the Bureau of Labor Statistics survey sources have generally shown no change or small declines in self-employment rates in recent decades, while the administrative tax return data has consistently shown significant increases in those rates despite the significant underreporting of gig income. At the same time, however, that administrative tax data does not provide enough detail on the work, earnings, or demographics of the self-employed workers who misreport or underreport their self-employment income. Such information would be particularly important for measuring the retirement income security of those workers.

Moreover, although high-wage self-employed workers like dentists, architects, and lawyers could primarily be responsible for the bulk of

523. See supra Part V.C.
525. See, e.g., 2020 TAXPAYER COMPLIANCE, supra note 6, at 10–12; Bernhardt & Thomason, supra note 6, at 18–19; Abraham et al., Measuring the Gig Economy, supra note 16.
527. See Lim et al., supra note 75, at 6.
the $45 billion self-employment tax gap (and the related income tax gap), this Article’s review of the literature finds that there are millions of low- and moderate-income gig workers who do not properly report their self-employment earnings.\textsuperscript{528} Tax noncompliance appears especially high among the online gig workers who work for online platforms that, so far, have been able to rely on the 200/$20K IRS Form 1099-K threshold.\textsuperscript{529} All in all, due to “the limited data [that the] IRS has on the platform workforce, [the] IRS cannot be assured that it knows enough about the size, characteristics, and behaviors of [the] workforce to better understand how to help workers comply with tax obligations.”\textsuperscript{530}

The COVID-19 pandemic has demonstrated the critical need for better information about gig workers and their earnings. As Congress scrambled to design its emergency assistance programs, the existing data simply proved to be unreliable; for example, recall that while Congressional estimators projected that approximately 5 million workers would claim PUA benefits, just six months into the program, approximately 14.7 million individuals had claimed them.\textsuperscript{531} Clearly, far more people are working in contingent and alternative work arrangements than have been documented in recent surveys or administrative tax data. Going forward, information gathered while distributing the new pandemic benefits should—in a few years—lead to a better understanding of the earnings and demographics of gig workers.

This Article shows that administrative tax data should drive policy discussions about the retirement income security of gig workers. Virtually all the existing retirement programs are run through the tax system—both the payroll and self-employment taxes that drive Social Security benefits and the income tax expenditures that subsidize pensions and IRAs (and Social Security). Consequently, high-quality

\textsuperscript{528} See supra Part II.D.
\textsuperscript{529} See 2020 TAXPAYER COMPLIANCE, supra note 6, at 14. A recent analysis of studies using administrative tax data concluded that “the data [the] IRS receives do not allow it to accurately count the number of platform workers or determine their tax reporting behaviors.” Id. at 12.
\textsuperscript{530} Id.
\textsuperscript{531} See supra notes 503–504 and accompanying text.
administrative tax data is essential for making policy decisions about retirement income security; although, to be sure, improved survey data could also help.532 Accordingly, the federal government should prioritize Department of Treasury and IRS research on gig workers and their earnings. In particular, the Treasury and the IRS should consider incorporating gig workers and their earnings into their periodically published statistical reports, such as the annual IRS Statistics of Income report on individual incomes taxes.533 With better measures of gig workers’ earnings and demographics, policymakers would be better able to engage in evidence-based policymaking. The Department of Treasury, the IRS, and Congress should also prioritize research on: (1) the tax compliance of both offline and online gig workers; (2) the self-employment tax gap; and (3) the earnings and demographics of all individual taxpayers. In particular, both the IRS and the Joint Committee on Taxation could do a much better job of collecting and analyzing information about how our tax laws affect women and people of color.534 The absence of such demographic tax information hinders policymakers, yet it is well-understood that many

532. It is worth noting that in 2020, the National Academies of Sciences, Engineering, and Medicine issued a report that (1) analyzed the role of the Bureau of Labor Statistics signature survey on alternative contingent work, the Contingent Worker Supplement (CWS); and (2) made recommendations about how to improve the administration of the CWS and leverage multiple data sources to develop a comprehensive, qualitative picture of alternative work. See generally NAT’L ACADS. OF SCI., ENG’G & MED., supra note 23. Although acknowledging the value of tax data as a “complement” to the CWS, that report specifically did not recommend that the Bureau of Labor Statistics prioritize linking CWS data to tax data. Id. at 95. This Article’s Authors disagree; in our view and based on our prior professional experience as congressional tax policy staff, administrative tax data is central to understanding alternative work arrangements and is survey data that is complementary.

533. See, e.g., 2018 TAX REPORT, supra note 46, at 1.

facially neutral tax provisions can have adverse effects on women and minorities.\textsuperscript{535}

\textbf{B. Tax Reforms}

A variety of tax reforms could also help improve the retirement income security of gig workers, in general, and women gig workers, in particular. Most importantly, increasing compliance with the self-employment tax would help shore up the Social Security benefits of gig workers.\textsuperscript{536}

\textit{1. Information Reporting Analysis}

As part of developing better administrative tax data on gig workers, Congress, the Treasury, and the IRS should consider using new information available from the 2020 filing season and toughening the information reporting rules for gig workers. As Part II.D of this Article showed, gig workers have tax compliance challenges and often misreport or underreport their earnings for tax purposes.\textsuperscript{537} This Section explains how Congress, the Treasury, and the IRS could develop new data to better measure gig work and reform the existing information reporting rules to facilitate tax compliance of online gig workers.\textsuperscript{538}


\textsuperscript{536} In passing, it is worth noting that to improve tax compliance generally, Congress should increase the IRS’s budget. See supra notes 269–271 and accompanying text; CONG. BUDGET OFF., PUB. NO. 56783, OPTIONS FOR REDUCING THE DEFICIT: 2021 TO 2030, at 88 (2020) [hereinafter REDUCING THE DEFICIT], https://www.cbo.gov/system/files/2020-12/56783-budget-options.pdf [https://perma.cc/J5YW-NQ9C] (noting that increasing appropriations for IRS activities would also significantly increase federal revenues). In that regard, the Authors are pleased that the Biden Administration recently proposed a $1.2 billion increase for the IRS’s fiscal 2022 budget and hope that the Congress will agree. Hoffman, supra note 272.

\textsuperscript{537} See supra Part II.D.

\textsuperscript{538} 2020 TAXPAYER COMPLIANCE, supra note 6, at 12; see also Charles O. Rossotti, Natasha Sarin &
As already mentioned, in March 2021, Congress amended the rules governing information reporting by third-party settlement organizations (TPSOs). Accordingly, starting in 2022, TPSOs will have to report payments of $600 or more to independent contractors and to the IRS, which should greatly improve tax compliance by the affected workers. Moreover, the new 1099-K Forms that will be filed beginning in 2022 will provide insight on the scope of online gig work for researchers and policymakers going forward.

Similarly, the tax filings from the 2020 federal income tax returns will provide an excellent new source of information about independent contractors, in general, and gig workers, in particular, as many of them


539. See supra notes 238–239.

received unemployment compensation benefits during the COVID-19 pandemic and the state unemployment agencies reported those benefits to the IRS.541 More specifically, state unemployment agencies were required to send taxpayers and the IRS the relevant information on IRS Forms 1099-G (Certain Government Payments) reporting those payments.542 There is no question that the 2020 IRS Forms 1099-G filings made by state agencies reporting PUA claims will present a new and unique opportunity for insight on the scope of gig work and earnings.

2. Promote Withholding on Payments to Self-Employed Workers

To improve tax compliance by self-employed workers, it could make sense to impose mandatory withholding in connection with IRS Forms 1099 or, at least, to permit payor service recipients to offer voluntary withholding.543 For example, the IRS might issue guidance to allow independent contractors and their service recipients to enter into voluntary withholding agreements without those payors facing any risk that the IRS would use those agreements to challenge their worker classification determinations.544 Alternatively, Congress could


544. 2019 PURPLE BOOK, supra note 543. According to a recent Government Accountability Office analysis of this option, the IRS could issue rules allowing for such voluntary withholding if the Secretary of Treasury “finds that withholding would be appropriate and would improve tax administration, and if the company and independent contractor agree to such withholding.” 2020 TAXPAYER COMPLIANCE, supra note 6, at 27–28.
enact legislation to require withholding on payments to independent contractors of large businesses.545

3. **Gig Worker Standard Business Deduction**

Another approach for improving tax compliance by self-employed gig workers might be to simplify their business expense deductions, for example, by allowing self-employed workers—or just self-employed gig workers—to claim a standard business deduction in lieu of actual business expenses (calculated as either a proportion of gross earnings or a flat dollar amount).546 Although the Government Accountability Office recently acknowledged that such a standard business deduction would reduce tax filing complexity, the Agency also said that more research would be needed about how to design that deduction; for example, if the deduction were only available to gig workers, it might “raise disparate treatment concerns.”547

4. **Make Permanent the Removal of the Age Sixty-Five Limit on the Eligibility of Older Americans for the Earned Income Tax Credit**

The American Rescue Plan Act eliminated the maximum age of sixty-five for the earned income tax credit for childless individuals for the tax year 2021, and the Authors hope that this change is made permanent.548 Expanding the earned income tax credit eligibility rules for childless older workers should be especially helpful for older women because they tend to have less retirement income than men and are “nearly twice as likely as men to be living in poverty.”549

545. See, e.g., The Gig is Up Act, H.R. 5419, 116th Cong. (2019). This Act, introduced by Rep. Debra A. Haaland (D-NM), would have required withholding for independent contractors of large businesses—defined as those with at least $100 million a year in gross receipts and 10,000 independent contractors. Id. § 2(a).
546. See, e.g., Thomas, supra note 209, at 1454–66; Watson, supra note 61, at 14–16.
547. 2020 TAXPAYER COMPLIANCE, supra note 6, at 39.
549. OLDER WOMEN FACING FINANCIALLY UNCERTAIN FUTURE, supra note 173, at 8.
5. Make the Saver’s Tax Credit Refundable

Many analysts believe that making the retirement saver’s tax credit refundable would encourage more low-income workers to save for retirement.\(^{550}\) That way, the credit could provide benefits to workers with incomes below the income tax threshold (and to those who are close to the threshold but whose credits are currently limited to the amount of income taxes that they owe).\(^{551}\) According to one estimate, making the retirement saver’s tax credit refundable would “make [it] available to 49 million tax filers who under current law received no benefit from the credit.”\(^{552}\)

C. Social Security and Supplement Security Income (SSI) Reforms

Reforming the Social Security and Supplement Security Income (SSI) programs could also help improve the retirement income security of gig workers, especially women.\(^{553}\) Indeed, many analysts have suggested increasing Social Security and SSI benefits to ensure that all elderly Americans have enough retirement income to keep them out of poverty.\(^{554}\) The United States might even move towards having a citizen’s (or residence-based) pension like Australia and some other


\(^{551}\) Pertinent here, low-income women struggle to save because they “cannot spare even small amounts from their paychecks, particularly if they are single mothers.” Entmacher & Matsui, supra note 550, at 775; see also supra Figure 2 (showing lack of adequate income as a reason as to why many workers do not contribute to retirement savings).

\(^{552}\) Entmacher & Matsui, supra note 550, at 777.

\(^{553}\) To be sure, as William G. Gale and Grace Enda, senior fellow and senior research assistant in the Economic Studies Program at Brookings Institutions, respectively, point out, “fixing a retirement system that was not designed to accommodate women’s experiences will require significant changes, not just in retirement policy but in labor market practices and policies as well.” Enda & Gale, supra note 310.

countries. Alternatively, this Subpart offers some less dramatic reforms.

1. Update the Supplemental Security Income (SSI) Program

To directly impact the finances of older Americans, Congress should consider making long-overdue updates to the SSI program. For example, Congress has not updated the asset limits for the SSI program ($2,000 for an individual and $3,000 for a couple) for more than thirty years, and those limits make it “virtually impossible for [SSI recipients] to save for retirement.” In that regard, the Social Security Income Restoration Act of 2019 would have updated the income and asset limits for the SSI program so that beneficiaries could save more and work more without having their SSI benefits reduced.

2. Improve Social Security for Women

There are also a variety of ways to increase Social Security benefits for women. For example, various analysts have suggested: (1) increasing the minimum benefits available under Social Security, (2) increasing benefits for widowed spouses from low-earning couples, (3) reducing the marriage duration required for divorced

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558. Li, supra note 280, at 11–12; NAT’L ACD. OF SOC. INS., supra note 274, at 34.
spousal benefits from ten years to five or seven years,\textsuperscript{560} (4) establishing earnings sharing,\textsuperscript{561} or (5) providing caregiver credits.\textsuperscript{562}

\section*{D. Pension and IRA Reforms}

For most Americans, retirement income security will depend on having both Social Security benefits and additional retirement savings in a pension or IRA.\textsuperscript{563} As this Article has shown, however, many workers—and especially many gig workers—are not using pensions or IRAs to save for retirement. As Appelbaum and others have observed, “[t]he challenge for the United States is to provide protections for all workers that are not tied to whether they work in a standard or nonstandard work arrangement.”\textsuperscript{564} This Subpart discusses a variety of recommendations for increasing retirement savings and improving pension and IRA benefits for both workers, in general, and gig workers, in particular.


\textsuperscript{562} Revisiting Benefits, supra note 560, at 21–22. With respect to caregiver credits, Part IV.B explains that many women take time out of the paid workforce for caregiving responsibilities. See supra Part IV.B. As current Social Security benefits do not account for any lost or reduced earnings attributable to unpaid caregiving responsibilities, workers who leave the labor force or take part-time work or lower-paying jobs to facilitate family caregiving will end up with lower Social Security benefits than otherwise. REVISITING BENEFITS, supra note 560, at 21–22. This lack of support for caregiving has led some analysts to suggest that the Social Security system should provide up to five years of credit for caregiving so that caregivers could qualify for larger Social Security benefits. See, e.g., id.; Entmacher & Matsui, supra note 550, at 756–57; Nat’l Acad. of Soc. Ins., supra note 274, at 34; Enda & Gale, supra note 310. Enda and Gale also suggest that more mothers could be incentivized to remain in the workforce if the federal government expanded subsidies for childcare and provided a tax benefit for secondary earners in two-earner couples. Enda & Gale, supra note 310. In that regard, the Social Security Caregiver Credit Act of 2019 would amend the Social Security Act to provide individuals serving as caregivers of dependent relatives with deemed wages for up to five years of such service and support State medical training programs for caregivers. Social Security Caregiver Credit Act of 2019, S. 2317, 116th Cong., §§3, 4 (2019) (introduced by Sen. Christopher Murphy (D-CT)).

\textsuperscript{563} See supra Parts III.A.2 & III.B.6

\textsuperscript{564} Appelbaum et al., supra note 29, at 21.
1. Expand Coverage and Improve Portability

Ideally, every worker should earn a pension benefit on virtually every job, and forfeitures should be extremely rare. When workers leave an employer, their accrued pension benefits should go with them to the next employer (or to a universal pension account). One approach would be to adopt a system of payroll deduction IRAs and automatically enroll workers into those IRAs. Such automatic

565. See, e.g., Forman & Mackenzie, supra note 320, § 6.05, at 6-54 to 6-55.
enrollment features will almost certainly lead to high participation rates, higher levels of retirement savings, and better retirement income outcomes. Another approach for expanding pension coverage would be to increase employer participation in multiple employer plans (MEPs) because many analysts believe that new open MEPs would be a good way to provide retirement benefits to gig workers.

For that matter, Congress could piggyback a system of individual retirement savings accounts onto the existing Social Security withholding system. These universal pension accounts could be held by the government or by large financial institutions. Either way, the funds should be invested well, and, at retirement, account balances should be paid out as lifetime annuities. As Congress has not yet enacted any kind of more universal pension system, however, Oregon and a number of other states have created their own state-run pension systems, with individual retirement savings accounts for workers not already covered by an employer-sponsored pension.

2. Improve Spousal Benefits in Pensions and IRAs

Although a qualified joint-and-survivor annuity (QJSA) is the default form of benefit for defined benefit plans, the usual rule for defined contribution plans is instead that the balance in a participant’s account is payable to the spouse at death. That means that the typical defined contribution participant is generally free to spend his or her defined contribution savings as he or she pleases and may not end up leaving anything for the benefit of his or her surviving spouse, let alone a survivor annuity. The rules governing IRAs are even more relaxed: an individual with an IRA is free to spend the balance in her account

569. See, e.g., Secunda, supra note 9, at 438; Secunda, supra note 357, at 219–20.
as he or she wishes and, furthermore, is free to designate whoever he or she wants as his or her beneficiary. Congress could help protect nonemployee spouses by extending the QJSA regime to defined contribution plans and IRAs, or by at least requiring that the nonemployee spouse consent to the cash out from defined contribution plans and IRAs.574

State courts can divide the pensions and IRAs of married couples through qualified domestic relations orders (QDROs).575 Securing a QDRO can be a challenge, however, and Congress might want to think about ways of making it easier for divorcing couples to split their retirement savings.576

E. Worker Classification Reforms

Distinctions premised on worker classification and the myriad of tax and labor laws governing the classification of workers were developed early in the twentieth century with an eye on the manufacturing economy, and the United States needs new rules for workers providing services in the twenty-first century.577 In particular, given that many of the challenges facing gig workers directly stem from their worker classification, Congress could consider updating worker classification rules for tax or labor law purposes. Basically, there are four alternative approaches.578

The first approach would be “to clarify and simplify” the worker classification test.579 Presumably, this approach would result in more workers being treated as employees and receiving the worker protections and benefits that come with that status.580

574. See, e.g., Women’s Retirement Protection Act, S. 975, 116th Cong., § 3 (2019) (introduced by Sen. Patty Murray (D-WA)).
575. See, e.g., I.R.C. § 401(a)(13); ERISA § 206(d), 29 U.S.C. § 1056(d).
576. RETIREMENT SECURITY, supra note 311, at 11–18; see also S. 975.
577. See, e.g., Oranburg, supra note 465, at 8–20.
579. Id. at 58.
580. Id. at 58–63.
The second approach would be to extend worker benefits and protections to independent contractors as well as employees.\textsuperscript{581} For example, antidiscrimination protections (like those provided to employees under Title VII of the Civil Rights Act of 1964) could be extended to all workers—including independent contractors.\textsuperscript{582}

The third approach would be to create a new category of workers and create special rules and protections for them.\textsuperscript{583} In Canada, for example, if an independent contractor works for a single firm for an extended period, that worker obtains certain rights as a “dependent contractor.”\textsuperscript{584} Similarly, former U.S. Secretary of Labor, Seth D. Harris and prominent labor economist, Alan B. Krueger recommended creating a new category of “independent workers” that would occupy the middle ground between employees and independent contractors.\textsuperscript{585} These independent workers would qualify for many, but not all, of the benefits and protections that traditional employees receive.\textsuperscript{586}

\begin{itemize}
\item \textsuperscript{581} Id. at 63–64.
\item \textsuperscript{582} Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17. Professor Orly Lobel argues that whether a worker is an employee or an independent contractor should not make any difference when prohibiting companies, like Uber, from making discriminatory decisions based on sex, race, religion, national origin, age, or disability. Lobel, supra note 463, at 64; see also Ruth Berins Collier, Veena B. Dubal & Christopher L. Carter, Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States, 16 Persp. on Pol. 919, 930 (2018).
\item \textsuperscript{583} Id. at 64–69.
\item \textsuperscript{584} Id. at 65; see also Miriam A. Cherry & Antonio Aloisi, “Dependent Contractors” in the Gig Economy: A Comparative Approach, 66 Am. U. L. Rev. 635, 652–53 (2017); Abbey Steimer, Betwixt and Between: Regulating the Shared Economy, 43 Fordham Urb. L.J. 31, 62 (2016); Brett Harris, Uber, Lyft, and Regulating the Sharing Economy, 41 Seattle U. L. Rev. 269 (2017).
\item \textsuperscript{586} Id. at 2, 15–21. In particular, Professor Seth D. Harris at Cornell University and Professor Alan B. Krueger at Princeton University suggest that these independent workers should benefit from tax withholding and employer contributions for payroll taxes, and they should have the right to organize and collectively bargain and civil rights protections; however, they would not have the right to time-and-a-half for overtime hours. Id. at 15, 27. Moreover, Harris and Krueger suggest that the service recipients that hire these independent workers could use their scale and pooling opportunities to offer retirement savings opportunities, health insurance (and automobile, liability, and life insurance), banking and savings products, and even tax preparation assistance. Id. at 17. Professor Oranburg has also suggested creating a new category of worker, at least for certain platform workers. Oranburg, supra note 465, at 47. He argues that “legally classifying gig workers as employees or independent contractors is an exercise in jamming round pegs into square holes.” Id. Oranburg’s approach is intended to be very flexible for both firms and
\end{itemize}
Finally, the fourth approach would be to delink employment benefits from work altogether, like with universal health care rather than employer-sponsored health care benefits and individual pension accounts, rather than employer-sponsored pension plans. Part VI.H below offers a more thorough discussion of this fourth approach.

F. Financial Literacy

Congress and researchers have become increasingly aware of the fact that financial literacy also plays a critical role in women’s retirement security. In that regard, the U.S. Senate Special Committee on Aging held a hearing in 2020 to review the findings of a Government Accountability Office report that Congress commissioned to study the financial security of older women. That report reviewed the Agency’s findings from its interviews with fourteen focus groups of older women, and all of those focus groups expressed concern about “how a lack of personal finance education hindered their retirement security.” Most of those focus groups also discussed ideas on how to improve personal financial education for workers. Id. A firm would create its own definition of its gig workers that the firm would register with the U.S. Department of Labor on a new “Form GW.” Id. at 50. The form would stipulate which employee benefits would be offered to its platform workers (for example, health insurance, retirement savings, and unemployment insurance) and which would not. Id. Then, the U.S. Department of Labor would simply review each Form GW to make sure that the firm’s definition complied with the applicable labor laws and that the form could be clearly understood by the covered workers. Id. In effect, firms could define which benefits its platform workers would receive, and workers and firms would rely on competitive labor markets to sort things out. Id. at 56. For example, workers who wanted more health and retirement benefits might gravitate towards traditional employment, while other workers with adequate retirement savings and alternative health care coverage might prefer independent contractor status and less fringe benefits. See id.

587. Lobel, supra note 463, at 69–71; see also Mitchell, supra note 346, at 26; REDER ET AL., supra note 566, at 7; Miriam A. Cherry & Ana Santos Rutschman, Gig Workers as Essential Workers: How to Correct the Gig Economy Beyond the COVID-19 Pandemic, 35 A.B.A. J. LAB. & EMP. L. 11, 15–16 (2020).

588. See infra Part VI.H.

589. See OLDER WOMEN FACING FINANCIALLY UNCERTAIN FUTURE, supra note 173, at 19 n.45; Lusardi & Mitchell, supra note 449, at 17, 22. See generally supra Part IV.E.4.


591. OLDER WOMEN REPORT, supra note 513, at 6.
women, including (1) incorporating personal financial education into school curriculums beginning in kindergarten; (2) developing after school and summer school programs on personal finance; (3) creating online tools; (4) providing older women with estate planning guides; and (5) encouraging employers to “provide financial planning sessions for their employees (not just those nearing retirement), and[] access to financial advisors.”

Women can also benefit from targeted financial planning guides. For example, the Women’s Institute for a Secure Retirement (WISER) has developed various guides to help particular groups of women workers plan for retirement, including one targeted to nurses.

Financial literacy courses could also be developed to help small businesses. Women business owners are a fast-growing segment of small business owners. Most of these firms are small businesses—non-employer service firms with revenues below $100,000—and these small firms could be a target audience for financial literacy initiatives.

For example, Congress could direct the Office of Women’s Business Ownership to develop standardized online financial literacy courses that could, in turn, be made available and distributed through its Women’s Business Center network.  

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592.  Id. at 7; see also Jill E. Fisch, Annamaria Lusardi & Andrea Hasler, Defined Contribution Plans and the Challenge of Financial Illiteracy, 105 CORNELL L. REV. 741, 780 (2020) (suggesting that employers should be required to provide financial education to their employees).
593. See, e.g., O’ROURKE, supra note 550, at 1.
594. See, e.g., O’ROURKE, supra note 550, at 1.
595. See, e.g., O’ROURKE, supra note 550, at 1.
596. See, e.g., O’ROURKE, supra note 550, at 1.
597. The Small Business Administration’s Office of Women’s Business Ownership oversees a network
G. Establish a Federal Benefits and Retirement Commission

The Authors’ review of work and retirement for today’s gig economy workers has inevitably led them to think about the future of work and retirement in America—and to think about the kind of institutional and programmatic changes that will be needed to push through the short-term problems related to the COVID-19 pandemic, the medium-term problems associated with the aging and retirement of Baby Boomers, and the long-term problems related to retirement of younger workers. The scope of these looming retirement income security challenges demands a comprehensive response—and a response that acknowledges the reality that millions of Americans already engage in gig work and millions more will.

According to the Government Accountability Office, the United States needs a comprehensive evaluation of its approach to financing retirement, and Congress needs to consider establishing an independent commission to comprehensively examine the U.S. retirement system and make recommendations to clarify key policy goals for the system and improve how the nation can promote more stable retirement security.

H. Make Worker Benefits More Portable

The three pillars of the current U.S. retirement system “are anticipated to be unable to ensure adequate benefits for a growing number of Americans due, in part, to the financial risks associated with


598. See Maciej Duszyński, Gig Economy: Definition, Statistics & Trends [2022 Update], ZETY, https://zety.com/blog/gig-economy-statistics [https://perma.cc/D5AZ-9UJ9] (Feb. 9, 2022) ("57.3 million people freelance in the U.S. It is estimated that by 2027 there will be 86.5 million freelancers.").

599. See generally COMPREHENSIVE RE-EVALUATION, supra note 376; see also PROMOTE FUTURE SECURITY, supra note 382, at 23–24. Other analysts have recommended the creation of an Older Workers Bureau at the Department of Labor to promote the welfare of older workers. See, e.g., PAPADOPOULOS ET AL., supra note 510, at 5.
certain federal programs.” In particular, as this Article has shown, although gig workers use gig work to supplement their income, they rarely get health or retirement benefits on those jobs, and “[a] more comprehensive approach for addressing the lack of benefits among workers in part-time and nonemployee arrangements is [] needed.”

Our employment-based pension care system developed as somewhat of a historical accident, and pensions could instead be tied to individuals rather than employers (and the same goes for health care). Indeed, many analysts now believe that the U.S. system of workplace-based benefits is obsolete and that more portable benefits are better suited to the modern workplace. In short, changing patterns of work necessarily raises questions about the reliability of having so many of U.S. institutions built around traditional work, such as employment-based health and employment-based pension plans.

600. COMPREHENSIVE RE-EVALUATION, supra note 376.
603. REIDER ET AL., supra note 566, at 4, 7 (“Our system of benefits is outdated and inadequate.”); Maxim & Muro, supra note 566; Lobel, supra note 463, at 70; Mitchell, supra note 346, at 26; Azar, supra note 220, at 416; MAZER ET AL., supra note 566, at 2; Elmi, supra note 488, at 22.
Instead of tying health care, pensions, workers’ compensation, unemployment insurance, and other benefits to employers, it would make more sense to tie those benefits to workers as individuals.\textsuperscript{605} Policymakers could build entirely new programs or, alternatively, increase eligibility of existing programs—all with a goal of universality.\textsuperscript{606} Benefits would be universal and portable, like Social Security in the United States and like universal health care in many other industrialized nations.\textsuperscript{607}

For example, individual pension accounts could be attached to individual workers and follow those workers from job to job rather than having pension plans tied to employers, which is common under the current employer-sponsored pension plan system.\textsuperscript{608} That is how Australia’s mandatory pension system (known as superannuation) works.\textsuperscript{609} In effect, employers in Australia send their required “superannuation” contributions to managed funds that the workers choose to hold in their “MySuper” accounts.\textsuperscript{610} Of course, there are many other policy models to build on in the United States, including, for example, the Patient Protection and Affordable Care Act of 2010, the multiemployer pension plan model applicable to many unionized

\begin{thebibliography}{99}
\bibitem{605} See, e.g., Mitchell, supra note 346, at 17, 26; Gale et al., supra note 13, at 186, 191–95 (suggesting a move from away from employer-sponsored health and pension plans and towards “employer-facilitated accounts”). Critical policy groundwork for portable benefits has already been done by the Aspen Institute’s Future of Work Initiative, which developed a resource guide for policymakers designing portable benefits that asks relevant questions, including (1) what benefits should be included; (2) who is eligible; (3) how they will be funded, and (4) who should administer programs. See generally \textsc{Reder et al.}, supra note 566; \textsc{Mazer et al.}, supra note 566, at 17.
\bibitem{606} \textsc{Reder et al.}, supra note 566, at 7; see also \textsc{Mazer et al.}, supra note 566, at 11.
\bibitem{610} \textsc{Australian Sec. & Inv. Comm’n}, supra note 609, at 8, 9, 11.
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employees, the state-sponsored pension model recently adopted by states like Oregon to cover workers whose employers do not have traditional pension plans, and open MEPs.611

Our Social Security system is also largely built on the traditional employment arrangement, with Social Security benefits tied to payroll (and self-employment) taxes.612 The Social Security system works well in the traditional employment situation—where both the employer and the employee can be counted on to pay their respective shares of Social Security payroll taxes—but the Social Security system seems to be failing in the self-employment sector as the tax gap studies clearly show noncompliance is rampant there.613 Of course, Social Security insurance retirement benefits do not have to be tied to payroll and self-employment taxes. Instead, some countries provide non-contributory “universal” pensions that provide at least modest income streams to virtually all their elderly residents. For example, Australia’s Age Pension is a means-tested income support benefit of up to AU$868.30 per fortnight for seniors who have been Australian residents for at least ten years.614 To be sure, the U.S. SSI program is also designed as a universal means-tested program, but it is not very generous and serves only a fraction of America’s elderly.615 Like SSI, most of those Australian-style, resident-based pensions are means-tested and funded out of general revenues rather than payroll taxes, but many are more generous than SSI.616 Congress could expand SSI into a more universal pension system, and that expansion could be financed out of general revenues or, perhaps, with a new carbon tax or

611. See, e.g., REDER ET AL., supra note 566, at 52–68.
612. See supra Part III.A.1.
613. See supra Part II.D.
615. See supra notes 558–559.
value-added tax. For that matter, the federal government might also move towards demogrant or some other universal basic income program for all Americans, not just seniors. For example, each year, Alaska distributes dividends financed by a permanent fund, funded largely from oil revenues, to its residents. The permanent fund dividend for 2019 was $1,606.

CONCLUSION

Self-employed workers are a varied lot and can include high-income doctors, lawyers, and other professionals, but the self-employed also includes many low-earning gig workers engaged in rideshare driving, caregiving, and housecleaning. Although gig workers typically lack employer-provided retirement benefits and the underreporting of their self-employment income leads to reduced Social Security benefits, gig work can be a strategy for some workers to shore up their current and future retirement income. For example, some gig workers rely on gig work to prolong their careers and postpone claiming Social Security or tapping into their retirement savings. For women, gig work may be especially important to shore up their retirement incomes.

All in all, however, the current tax, retirement, and labor laws and regulations have not worked to facilitate tax compliance and have instead triggered a retirement financing gap for gig workers, most of

617. For example, a 5% value-added tax could raise $2.8 trillion over ten years, and a modest tax on greenhouse gas emissions could raise $1 trillion over ten years. REDUCING THE DEFICIT, supra note 536, at 84–85. The point here is that it may just turn out to be more efficient to raise the revenue for social insurance benefits from a tax base rather than wages and self-employment earnings.


621. See, e.g., Nontraditional Work at Older Ages, supra note 488, at 4, 15–17; SANZENBACHER, supra note 148, at 5.

622. See, e.g., Enda & Gale, supra note 310.
whom are likely to rely primarily on Social Security in retirement.\textsuperscript{623} That retirement financing gap is a major problem for many women because they tend to face a gender earnings gap while working, tend to live longer than men, and tend to have higher health care costs as they age—all of which translate into a retirement wealth gap when they retire.\textsuperscript{624} Moreover, for many women, a relatively low level of financial literacy compounds the challenges of financing their retirements.\textsuperscript{625} These retirement financing challenges are even more consequential for women of color.\textsuperscript{626} Motherhood, too, plays a role in lowering women’s retirement income.\textsuperscript{627} Nevertheless, it could be that the lower earnings during working years and the need for flexibility to accommodate caregiving are what motivate so many women to engage in gig work in the first place.

All in all, more research on gig workers is warranted. This Article’s comprehensive review of the existing gig work and women’s retirement research consistently leads the Authors to conclude that the United States has a retirement financing system that does not readily support the contributions made by women workers. The retirement income security problems of women are not insurmountable, but the solutions do require inclusive data and research on the gender differences in gig work, retirement income security, and policy solutions that endeavor to reduce the gender retirement wealth gap.

\textsuperscript{623} See, e.g., CHALLENGES IN THE RETIREMENT SYSTEM, supra note 299, at 2; see also supra Part IV.E.1.
\textsuperscript{624} See supra Part IV.
\textsuperscript{625} See supra Part IV.E.4.
\textsuperscript{626} See supra Part IV.E.
\textsuperscript{627} See supra Part IV.E.