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To: Ms. Carol Rowan Fax: 202.691.6111 Phone:
Bureau of Labor Statistics

Fax #(s) verified before sending (initial):

From: Ilyse W. Schuman Fax: 202.478.2216 Phone: 202.423.2223

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Re: Comments on Proposed Information Collection Request Concerning the Reinstatement with Change of the Contingent Worker Supplement to the Current Population Survey



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November 28, 2016

**Submitted by Hand Delivery and Fax (202)-691-5111**

Ms. Carol Rowan
BLS Clearance Officer
Division of Management Statistics
Bureau of Labor Statistics
2 Massachusetts Avenue NE
Room 4080
Washington, D.C. 20212

Re: Comments on Proposed Information Collection Request Concerning the Reinstatement with Change of the Contingent Worker Supplement to the Current Population Survey

Dear Ms. Rowan:

Littler Mendelson's Workplace Policy Institute (WPI) submits these comments in response to the above-referenced request, published in the *Federal Register* on September 30, 2016,[1] by the Bureau of Labor Statistics (BLS) for comments concerning the proposed reinstatement with change of the Contingent Worker Supplement (CWS) to the Current Population Survey (CPS) to be conducted in May 2017.

Although independent work has a long history, it has never been clearly defined or consistently measured in official labor statistics. The absence of a clear definition of the independent workforce and what the BLS acknowledges is a lack of "reliable and comparable statistics to show how the number and characteristics" of contingent workers have changed over time combined with the tech-driven expansion of the so-called "gig" or "on-demand" economy are the backdrop against which the current CPS and the proposed collection request are set. When Secretary of Labor Thomas Perez announced on January 26, 2016 that BLS was working with the Census Bureau to rerun the CWS for the first time since 2005, he noted that the information gathered is designed to help DOL fill that data gap and "do something that's essential to smart policymaking and smart business: understanding the past and the present so that we can prepare for the future."[2]

We applaud the effort of DOL and BLS to gather more data and their recognition that "reliable, credible" data is the foundation of smart policymaking. However, notwithstanding Secretary Perez's observations concerning the necessity of data collection and analysis to the legislative and regulatory processes, the proposed questions in the May 2017 CWS will not paint

[1] 81 Fed. Reg. 67394 (Sept. 30, 2016).
[2] Sec. of Labor Thomas Perez, U.S. Department of Labor Blog, *Innovation and the Contingent Workforce*, (Jan. 25, 2016), https://blog.dol.gov/2016/01/25/innovation-and-the-contingent-workforce/.

a full picture of the independent workforce. The questions are too narrowly focused on specific workers who utilize websites or mobile applications to find and/or perform their work and use terminology that is already outdated. Recent growth in the independent workforce has no doubt been fueled in part by technological advancements such as online and application-based platforms. However, online platforms represent just a small slice of the larger gig economy. Because the proposed questions are already outdated and too narrowly tailored, BLS' ability to collect reliable data is necessarily limited.

Though intended to depict how the size and characteristics of the workforce have changed since 2005, the resulting data will create a distorted view of the gig economy which, ultimately, will impede the ability of federal and state lawmakers and agencies to make sound policy decisions based upon the data collected. The proposed questions are intended to fill an information gap concerning the workforce and the on-demand economy. As discussed below, we are concerned that the narrowness and wording of the questions in the proposed CWS will instead make the gap even wider and the challenge of smart policymaking even more difficult. Independent work, as properly defined and measured, has benefits for the economy and the workforce, offering a cushion against income volatility, increasing labor force participation, spurring demand, and increasing productivity. Legislative and regulatory changes predicated on distorted information about the size and make-up of this important sector of the economy could harm the economy, consumers and the workers themselves.

## I. Accurate and complete data collection is critical to sound policymaking.

Monitoring changes in the pace and nature of work relationships is crucial to understanding the forces affecting the U.S. economy and the quality of life of American workers. The request for comments on revisions to the CWS comes at a time when decades-old labor and employment laws, enacted long before the technological advances fueling the growth of the on-demand economy were even envisioned, seem increasingly out-of-sync with the evolving 21st century workforce. Increasingly, regulatory agencies and lawmakers at both the state and federal levels are focusing on the independent workforce, the growth of that segment of the labor force, and how it applies within our binary system of classifying workers as employees versus independent contractors. Senator Mark Warner (D-VA) explains the challenge facing policymakers as they consider the implications of the gig economy for American workers:

> The changing employee-employer dynamic of the "gig economy" poses both opportunities and challenges for the American worker, allowing freedom and flexibility of hours. But many of these on-demand jobs do not provide traditional safety net protections for workers: unemployment insurance, workers' compensation for injuries, or pension and retirement planning.[3]

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[3] Sen. Mark Warner, *Senator Warner Addresses the Opportunities and Challenges of the 'Sharing Economy'*, http://www.warner.senate.gov/public/?p=gig-economy.

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In September 2015, Senator Warner called upon the Departments of Labor, Treasury and Commerce to generate better information about the on-demand economy in recognition of the need to put forth "practical solutions" to keep up with "fundamental shift[s] in the economy. . ."

Senator Warner has been joined by other lawmakers and regulators in seeking to address the implications of the growing gig economy. The BLS' request for comments on revisions to the CWS comes as other regulatory agencies are focusing on the gig economy and its workplace policy implications. Broadly, the DOL's Wage and Hour Division (WHD) has made combating the classification of employees as independent contractors a priority, and on July 15, 2015, released an Administrator's Interpretation on the application of the FLSA in the identification of employees who are misclassified as independent contractors.[4] The data collected in the CWS is likely to influence future interpretations, guidance, and enforcement activities.

The potential application of the data collected extends beyond just wage and hour law. For example, in August 2016, the National Labor Relations Board's Office of the General Counsel released a legal advice memorandum on a pending case, *Pacific 9 Transportation*, explaining that an employer's misclassification of its driver employees as independent contractors is in itself a violation of Section 8(a)(1) of the National Labor Relations Act.[5] The Equal Employment Opportunity Commission's updated Strategic Enforcement Plan for FY 2017-2021 also signaled that the Commission was poised to weigh in on the application of federal nondiscrimination laws as it relates to the gig economy with its stated emphasis on addressing "issues related to complex employment relationships and structures in the 21st century workplace, focusing specifically on temporary workers, staffing agencies, independent contractor relationships, and the on-demand economy."[6] The classification of workers as independent contractors or employees has important tax, revenue and benefit considerations for the federal government as well as for states and localities. The Internal Revenue Service (IRS) has indicated that the growth of the gig economy is on their radar by setting up a web page designed to help taxpayers involved in the sharing economy quickly locate the resources they need to help them meet their tax obligations.[7] Although the IRS has not put forth specific proposals with respect to sharing economy, the data collected in the CWS will no doubt be important to the agency's next steps.

If the goal of some policymakers is to secure a "safety net" for workers in the gig economy in a way that does not hamper innovation, flexibility and opportunity, then the data collected must be broad and insightful enough to help accomplish this objective. It must yield accurate information about the size of the independent workforce and its importance in the

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[4] U.S. Dept. of Labor, Administrator's Interpretation No. 2015-1 (July 15, 2015), https://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm.

[5] National Labor Relations Board, Advice Memorandum, *Pacific 9 Transportation, Inc.*, Case 21-CA-150875 (dated Dec. 18, 2015, released Aug. 26, 2016), http://apps.nlrb.gov/link/document.aspx/09031d45821a6263.

[6] Equal Employment Opportunity Commission, Strategic Enforcement Plan FY 2017-2021), https://www.eeoc.gov/eeoc/plan/sep-2017.cfm.

[7] Internal Revenue Service, Notice IR-2016-110, *IRS Launches New Sharing Economy Resource Center on IRS.gov, Provides Tips for Emerging Business Area* (Aug. 22, 2016), https://www.irs.gov/uac/irs-launches-new-sharing-economy-resource-center-on-irsgov?_ga=1.21021625.388791517.1479673613.

economy. So, too, must it yield useful information about who is participating in the on-demand economy, why they are participating, how much income they are earning through the platform economy, and how dependent they are on that income. Properly defining the true scope of the on-demand workforce is vitally important to collecting data designed to inform decision-making. Data that paints an inaccurate or incomplete picture of the independent workforce will only cloud policymakers' view, leading to laws and regulations that stifle innovation and opportunities for millions of workers who benefit from the financial reward and flexibility that the on-demand economy affords.

## II. Defining the "independent" workforce.

The task of accurate and complete data collection, and the smart policymaking it generates, is complicated by a lack of uniformity in the terminology ascribed to this economic sector and its workforce. Varyingly called the gig, on-demand, independent, sharing or collaborative economy, its multitude of labels seems reflective of the uncertainty surrounding the parameters of the workforce. Gone are the days when the vast majority of American workers begin and end their careers with one employer, working 40 hours from week to week and year to year. While an independent workforce that operates outside of that structure has existed for a very long time and has been an important part of our economy, it has been difficult for government data to capture quantitative and qualitative information about its size and nature. As a recent report titled *Independent Work: Choice, Necessity, and the Gig Economy* by the McKinsey Global Institute (MGI) notes, "although independent work is not a new phenomenon, it does not fit neatly into official labor statistics."[8]

The MGI report aims to fill some of the data gaps by examining not only the size of the independent workforce, but also the motivations and characteristics of its participants. The MGI report sets out to shed light on this part of the economy by surveying more than 8,000 respondents across six countries. The results, according to the report's authors, "provide the most detailed view available to date on who participates in independent work, why they do it, and whether they are satisfied with their careers."

Sound policy decisions regarding the independent workforce are predicated on a clear understanding of the term. The MGI report utilizes the terms "independent work" and "independent workers" that are characterized by three defining features:

1) **A high degree of autonomy:** Independent workers have a high degree of control and flexibility in determining their workload and work portfolio. They can decide which assignments to accept based on criteria such as the fee, the desirability of the client, or the timing and they can change those choices over time.

[8] McKinsey Global Institute, *Independent Work: Choice, Necessity, and the Gig Economy* (Oct. 2016), http://www.mckinsey.com/global-themes/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy.

2) **Payment by task, assignment, or sales:** Independent workers are paid by the task, assignment, contract, or the volume of sales they make. Unlike salaried employees, they are not paid for time not spent working.
3) **A short-term relationship between the worker and the customer**: Independent workers perform short-term assignments lasting less than 12 months, such as giving someone a ride, designing a website, treating a patient, or working on a legal case. Both the worker and the customer acknowledge the limited duration of the relationship. Some contracts may extend for months or even years, at which point the individuals become indistinguishable from traditional employees.

The MGI definition includes individuals who provide labor services as well as those who sell goods or rent assets, which are not mutually exclusive categories. Notably, the MGI report looks at the "full spectrum" of ways in which individuals earn income outside of the traditional employee role by focusing on the characteristics of the work itself rather than the legal arrangements surrounding it. Independent workers are often organized in many different legal forms from limited liability corporations to partnerships to non-stock corporations. By focusing on the work itself, workers are counted in the same way since they are performing the same work.

On the other side of the exchange, the MGI report explains, is the buyer of the service or task, which could be an individual consumer, a company, or an organization, referred to as the "customer," "client," "buyer," or "consumer." Independent work may at times be facilitated by a third party, such as a staffing agency for temporary assignments or a digital platform that coordinates supply and demand to make the match. As the report notes, some third parties go further to provide ancillary services such as transaction support and review and feedback mechanisms. This third party is defined as the "intermediary" or "digital platform," applying similar criteria as those used by the U.S. Department of Commerce. Such intermediaries, however, are not a necessary component of independent work, most of which takes place through direct transactions according to MGI.

A clear understanding of the parameters of the independent workforce requires an understanding of what the term excludes. The proposed survey is intended to parse out information about the contingent workforce to reflect changes in the last decade. A fundamental shortcoming of the prior CWS is that it seemingly combined independent work with other so-called "fissured" workforce arrangements. It is critical to delineate the independent workforce from other work arrangements such as outsourcing or subcontracting so as not to conflate the independent workforce with that of the so-called "fissured" workforce. The MGI report excludes from its definition of an independent worker those individuals "caught in the growing trend of companies splitting off non-core functions (such as technical support, janitorial services, and security) and turning them over to vendors and subcontractors." The MGI definition of an independent worker also excludes self-employed people who themselves have many employees and "permatemps," people on long-term or continuously renewed short-term contracts, a trend in some European countries.

Using this definition of an independent worker, the MGI report concludes that independent work is a much bigger phenomenon than official statistics indicate. The report estimates that 20 percent to 30 percent of the working age population in the United States and EU-15 engage in independent work. This figure equates to between 54 and 68 million people in the United States and nearly 162 million people in EU-15 and the United States combined who engage in independent work.[9] The researchers found that existing government data significantly undercounts those who engage in independent work to supplement their income.

In an effort to access such a rapidly growing sector of the economy, BLS cannot approach its data collection effort with the mistaken belief that most, if not all, independent workers find their work through the use of digital platforms. The proposed questions in the CWS appear to do just that. The independent workforce has been sizable and important to the economy for a very long time. Its scope cannot be limited to the online platforms that predominate the news cycle and our attention today. Independent work was commonplace in many professions long before the advent of the new digital platforms. The questions proposed are narrowly focused on specific workers who utilize websites or mobile applications to perform their work. MGI's report notes, however, that only 15 percent of independent workers - or about 4 percent of the working-age population - use digital platforms to generate income. MGI further notes that platforms offering services were used by only 6 percent of independent workers. An even smaller percentage used digital platforms to sell goods. The studies of independent, on-demand work with the greatest "practical utility" must capture data that reaches beyond those who work via web-based platforms.

Not only is the independent workforce larger than expected, it is also more diverse. The MGI study refutes several assumptions: that the gig economy is dominated by millennials and that it is solely about low-income workers doing one-off jobs to make ends meet. According to MGI, the independent workforce is truly diverse in terms of age, income levels, educational attainment and gender. BLS must avoid the trap of viewing all workers in the gig economy monolithically.

A critical question facing policymakers is whether individuals are deepening their reliance on the gig economy, either by participating more often or by earning a larger fraction of their total income from such work. With respect to ascertaining worker dependence on gig economy earnings, MGI split workers into four segments:

1) **Free agents**, who derive the majority of their income from independent work.
2) **Casual earners**, who engage in independent work for supplemental income.
3) **Reluctants**, who derive the majority of their income from independent work but would prefer to switch to a traditional job if one were available.
4) **The financially strapped**, who use independent work for supplemental income to make ends meet but would prefer not to have to take side jobs.

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[9] *Id.*, p. 3.

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Casual earners represent the largest segment of the independent workforce, followed by free agents. Combining these two groups, 72 percent of independent workers turn to independent work by choice. Casual earners, those who independent work to supplement their income by choice, represent 40 percent of independent workforce. While some casual earners have traditional jobs, others are students, retirees and caregivers. Free agents, from whom independent work is primary source of income by choice, comprise 32 percent of the independent workforce.

All told, only 28 percent of America's independent workforce is using gig work as a primary or secondary form of income by necessity, meaning that they would like traditional, full-time employment, but are working in independent roles out of necessity. Only 14 percent of independent workers are "reluctants" for whom independent work is their primary source of income and turn to this work by necessity. Another 14 percent of independent workers are deemed financially strapped, using independent work as supplemental income, but would prefer not to have to do side jobs to make ends meet. According to MGI, for every primary independent worker who would prefer a traditional job, more than two traditional workers hope to shift in the opposite direction. Breaking down the independent workforce into primary versus secondary source of income categories, MGI's report also notes that supplemental earners constitute nearly 36 million, or 54 percent, of all U.S. independent workers in the United States. While many people would like to join the independent workforce by choice, some independent workers in the MGI survey expressed their preference for a traditional job. However, netting out these effects, MGI found that 30-45 percent of the working age population would like to earn either primary or supplemental income through independent work and consider themselves at least somewhat likely to pursue the option. If they were able to pursue their preferred working style, the independent workforce could grow to 76 million to 129 million Americans and 89 million to 138 million across the EU-15.

While the MGI report encompasses the myriad segments of the independent workforce, another recent study has focused solely on the digital platform segment of the independent economy. In a February 2016 report, *Paychecks, Paydays, and the Online Platform Economy*, the JPMorgan Chase Institute examined whether the platform economy helps individuals mitigate income volatility in their financial lives or whether it is a source of volatility in its own right.[10] These questions are critically important to understanding what motivates individual workers within the digital platform segment of the gig economy.

The JPMorgan Chase report defines the online platform economy as economic activities involving online intermediaries that are marked by four characteristics:

1) They provide an online platform that connects workers or sellers directly to customers;

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[10] Diana Farrell and Fiona Greig, JPMorgan Chase, *Paychecks, Paydays, and the Online Platform Economy* (Feb. 2016), https://www.jpmorganchase.com/corporate/institute/document/jpmc-institute-volatility-2-report.pdf.

2) They allow people to work when they want;
3) They pay on a "piece-rate" basis for a single task or good; and
4) They intermediate or facilitate payment for the good or service.

This report distinguishes between labor platforms, through which participants perform discrete tasks, and capital platforms, through which participants sell goods or rent assets. The report found that only 1 percent of adults earned income from online platforms in September 2015, but more than 4 percent participated over the three-year measurement period. Although labor platforms grew more rapidly than capital platforms, the capital platform market remains larger than that of the labor platform. In any given month, 0.4 percent of adults (or 40 percent of all platform participants) received income from labor platforms.

The JPMorgan Chase study tries to ascertain whether workers are deepening their reliance on online platforms, either by participating more often or by earning a larger fraction of their total income from platforms over time. The JPMorgan Chase study concludes that neither is occurring. In the months when individuals were actively participating, platform earnings represented a sizable but still secondary source of income. Furthermore, the study found that reliance on labor platforms has remained stable over time in terms of both the fraction of months in which participants are active and the fraction of total income earned on platforms in active months. As of September 2015, labor platform income represented more than 75 percent of total income for 25 percent of active participants. Almost half of active labor participants (46 percent) relied on labor platforms for more than 25 percent of their income. In any given month, 40 percent of all individuals who participated in labor platforms were actively earning on them.

Moreover, earnings from labor platforms helped mitigate volatility in labor income, but earnings from capital platforms did not. In aggregate, labor platform earnings appeared to largely substitute for a 14 percent shortfall in non-platform income in months with platform earnings. In months with labor platform earnings, those earnings contributed an additional 15 percent of income, increasing total income by less than 1 percent. For capital platform participants, though, platform earnings tended to supplement rather than substitute for traditional income. The report concludes by stating: "These facts provide an essential, data-driven foundation for policymakers debating proposals for new labor laws, such as the creation of a new class of workers, portable benefits for independent contractors, and eligibility for social safety net programs like unemployment insurance." We are concerned that the questions proposed by BLS will not build the data-driven foundation that is essential to sound policy.

## III. The BLS' proposed survey will paint an inaccurate and incomplete picture of the gig economy and independent workforce.

Many of the questions raised about the gig economy are best understood within the context of income volatility and the broader labor market. If the new questions proposed in the CWS are myopic in that they focus too narrowly on a small segment of the independent workforce and fail to ascertain useful information about the characteristics and motivations of workers in this broader context, the data collected will not provide accurate and relevant answers to a key question facing policymakers – whether and how to extend a safety net of benefits and protections to workers in the gig economy. As more fully explained below, the proposed questions contain significant blind spots. The danger of attempting to lump all gig economy work into a narrow one-size-fits-all category is that it will spur policymakers to adopt a misguided one-size-fits-all solution to addressing the needs of an independent workforce that is both large and diverse.

The BLS explains that the new questions "will explore whether individuals obtain customers or online tasks through companies that electronically match them, often through mobile apps, and examine whether work obtained through electronic matching platforms is a source of secondary earnings." One question asks whether the following describes any work respondents did last week:

> Some workers find short, in-person jobs or tasks through companies that connect them directly with customers using a website or mobile app. These companies also coordinate payment for services through the app. *For example, driving a person from one point to another using your own car, delivering people's laundry to a dry cleaner, or helping a person assemble furniture."*

Another question asks the same question about the following:

> Some workers select short, paid tasks through companies that maintain online lists of tasks. These tasks typically take between a few minutes and a few hours to complete and are done entirely online. *For example, data entry, labeling photos, translating text, or other micro-tasks.*

Two other questions ask whether this for "for your main job, second job or additional work for pay." The narrow focus of these questions on online platforms, the failure to capture the motivations and economic needs of the independent workers over time, and the use of outdated terminology will limit the "quality, utility and clarity" of the information to be collected. If such information is intended to guide policymakers about the need to provide some sort of safety net to individuals who participate in the gig economy, the four proposed questions will not yield the answer.

### A. Online platforms are only a small segment of the gig economy

Popular media and other coverage of the gig economy has created the erroneous perception that most individuals who work in that segment of the economy do so through online or application based platforms (i.e. digital platforms) that facilitate payment for the goods or services. In reality, such activities represent a small segment of the independent work that takes place in the gig economy. Indeed, the gig economy is made up of a wide range of professionals who provide domestic services, labor, and services in knowledge intensive occupations, such as law, accountancy, education, and graphic design. Those individuals and others participating in the gig economy have varying skill levels, income brackets, and reasons for operating as independent workers, and do not necessarily involve online intermediaries to facilitate payment.

They also operate through a number of different business forms (e.g. sole proprietorship, limited liability corporation, non-stock corporation), and often work for multiple clients in succession or even simultaneously on contracts that may extend for months or even years.

The rapid growth of the independent workforce has been fueled in part by a rise in digital platforms. However, it is important to understand that the gig economy is made up of much more than just popular digital platforms. The questions proposed in the CWS are too narrowly focused on specific types of workers who utilize websites or mobile applications to perform their work – a small slice of the gig economy pie. As noted above, MGI's report found that only 15 percent of the independent workforce, or about 4 percent of the working age population, have used digital platforms to earn independent income. JPMorgan Chase's report estimates that the number of individuals in the U.S. who earned income from digital platforms was only 1 percent overall as recently as September 2015.

Seeking to quantify the size of the independent or gig workforce by capturing data only from digital platforms will significantly underestimate the true size and scope of the gig economy. It is dangerous to approach data collection efforts by utilizing prompts that only apply to a small subset of independent workers. In the context of a labor market in which wages as traditionally measured are stagnant, it is important to understand the non-traditional sources of income and work for American workers. Digital platforms represent only a small part of the story.

**B. The proposed questions fail to capture the diversity of the gig economy and the motivations and needs of its workforce.**

Many workers turn to the gig economy by choice, for the autonomy, flexibility and opportunity it affords. As the data from the MGI and JPMorgan Chase studies demonstrate, the gig economy and the digital platform segment of it are incredibly diverse. No one-size-fits-all label can cover all independent workers. Policymakers therefore need a clear picture of the motivations and needs of its workers.

Two of the most important factors to be considered are their degree of reliance on independent work for their livelihood and whether they actively chose to be independent or simply turned to it for lack of a better alternative. Those factors implicate major issues that the proposed questions hint at in asking whether the described work was "your main job, second job, or additional work for pay." The use of those terms, in addition to being confusing, does not get at the key question of whether the respondents are participating in the gig economy by necessity or by choice. Nor will such questions solicit answers to the question of whether workers are deepening their reliance on platform income, either by participating more often or by earning a larger fraction of their total income from platforms over time.

MGI and JPMorgan Chase both found that independent work was predominately a secondary source of income, especially with respect to the digital platform economy. The studies indicate that participants did not increase their reliance on platform earnings over time in

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terms of both the fraction of months that participants are active and the fraction of total income earned on platforms in active months. So too, the studies conclude, is independent work predominately a path of choice, not necessity, for workers. As noted above, MGI found that 54 percent of independent workers in the United States use independent work to supplement their income, rather than as a primary source of income. JPMorgan Chase's reporting on the matter goes even further, noting that only 82 percent of labor platform and 96 percent of capital platform participants in the digital platform actually relied on platform earnings as their primary source of income. Indeed, JPMorgan Chase's report concludes that labor platform participants were active 56 percent of the time, and their platform earnings while active equated to only 33 percent of total income. Capital platforms, on the other hand, were active only 32 percent of the time and earned only 20 percent of total income while active.

On the all-important question of worker choice, MGI concluded that 72 percent of independent workers in the United States participated in the gig economy out of preference rather than necessity. Notably, those workers also expressed a high degree of personal satisfaction with the lifestyle, flexibility, and autonomy associated with independent work. Only 14 percent of the independent workforce are workers for whom independent work is their primary source of income by necessity. Additionally, MGI's report notes that those who find independent work within the digital platform segment of the gig economy represent a unique segment of the labor force that is particularly likely to be independent by choice. Indeed, according to MGI's report, 87 percent of so called "digitally enabled" independent workers in the U.S. choose this working style. Independent work has not only drawn workers out of existing jobs, it can also reengage individuals who are either inactive or unemployed. The flexibility that independent work provides could be particularly appealing to retirees, students, the disabled and caregivers.

The BLS' proposed questions will not account for the large role that worker choice plays in the gig economy – and its policy implications. The questions fail to address the motivations of workers within the gig economy and the digital platform segment of the economy. The questions will not get at whether the respondents are participating in online platforms – whether as a primary or secondary source of income - by choice because of the flexibility and autonomy it offers. Accordingly, we fear that the survey will propagate a false perception that workers are participating in the gig economy by necessity, not by choice. The questions will not yield answers about the characteristics of the respondents in such a way as to gage whether they have access to an existing safety net, as may be the case with retirees, students or caregivers. Individual choice in participating in the gig economy has played a large role in spurring the expansion of this increasingly important sector of our economy. We caution policymakers against adopting laws and regulations that effectively make a choice for them.

**C. The BLS misses the mark with respect to some of the terminology it uses and their scope, enshrining misperceptions about the nature of the gig economy.**

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We have already noted our concern with the decision by the BLS to focus solely on digital platforms, which, as the MGI and JPMorgan Chase studies attest, represent only a very small slice of the gig economy.. The questions further segment that already small portion of the independent economy by asking questions that solicit affirmative responses only from workers who either: (1) find work through companies that connect them directly with customers using a "website or mobile app" and also "coordinate payment" through the app or (2) select short, paid tasks through companies that maintain online lists of tasks typically taking between a few minutes and a few hours to complete and are done entirely online. Those prompts necessarily exclude large segments of the gig economy and the digital platform segment and use terminology already growing outdated.

These questions, though intended to update statistics to better reflect technology-driven changes in the labor market, are likely to be seen as antiquated in the near future. For example, the use of the term "website" is on a downward trend, and Google Trends indicates the term has seen a nearly 30 percent decline in usage over the past 5 years. The requirement in question 1 that platforms must "coordinate payment" through the app may become an insignificant or irrelevant feature of platforms in the future depending on how the payment platforms evolve and become more efficient over time.

The terminology of the questions seems to enshrine misperceptions about the nature of the gig economy itself. The questions are posed in such a way that suggests an individual is working for a platform, rather than using a platform to find work. The use of the terms "main job" and "secondary job" reflect this misperception. Another concern with the use of the terms "main job" or "secondary job" is that they do not fit within the construct of people who own their own business and participate in the gig economy. Nor is it necessarily the case that tasks will be completed in a few minutes or a few hours. In addition, the reference to respondents' activities during the "last week" is problematic because it fails to recognize the schedule volatility that is inherent in – and indeed attractive to - work in the gig economy. There is a significant amount of week-to-week and month-to-month variation in the activity of participants within the digital platform and broader gig economy. Indeed, the questions ignore a key feature of independent work, which is that independent workers can decide which assignments to accept or reject for a variety of reasons (such as the fee being offered, the desirability of the client, the timing of the task, or school or vacation schedules), and they can change those choices over time based on economic need, personal reasons, and other factors. A limited one-week snapshot will paint an incomplete and distorted view of the independent workforce.

## IV. Recommendations.

A more detailed questionnaire aimed at capturing the scope the current and future gig economy as well as the characteristics and motivations of its workers is necessary. We understand that the number of questions the BLS can issue is limited. However, the questions could be revised to solicit responses that provide a more holistic picture of the independent workforce that is not limited to electronic platforms. Towards that objective, the BLS could revise the currently proposed questions to focus more on the nature of the work

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completed rather than the nature of the platform through which the work is advertised, solicited or completed. As discussed previously, the use of digital platforms represents only a small slice of the independent economy. In order to paint a robust picture independent workforce, the initial question prompt should focus on the unique identifying aspects of such work. A fundamental problem with the existing questions is that there are income streams that respondents will not view as "jobs." Posing broader but distinct questions that capture the full scope of independent work – work sourced through an intermediary as well as work sourced without an intermediary – could help identify individuals who do not think of themselves as independent workers, but indeed are. By promoting respondents to self-identify based on the characteristics of their work rather than the nature of the platform that they utilize to find work, the survey could casts a wider net that will lead to greater clarity concerning the scope of the gig economy.

Additionally, the questions should avoid placing arbitrary restrictions on the types of responses solicited through the use of outdated language and terms like "main job" and "second job." The MGI and JPMorgan Chase reports both suggest that independent workers are more easily identifiable in terms of their dependence on earnings rather than by whether an activity constitutes their "main job," especially in light of market factors that drive individuals to supplement their income. Furthermore, restricting responses to work completed in the prior week ignores the schedule fluctuations within the gig economy that draws many workers to it in the first place. The questions should, therefore, be rewritten to solicit responses that focus on a longer temporal scope, for example the prior year. So too should the questions be revised to address workers' reliance on their earnings and whether they engage in the independent workforce by choice or necessity, rather than merely asking whether the work is their "main job, second job or additional work for pay."

Finally, we suggest that current and future questions bear in mind the necessity of identifying and understanding past, present, and future trends in order to collect reliable data to guide smart policymaking and smart business. Future questions should focus on the number of different platforms that are utilized by an independent worker; the number of hours participants spend on each platform; how and why individuals choose to engage in the various forms of independent work; and how volatility in traditional work arrangements affects participation in the gig economy.

Many policy questions raised about the gig economy are best understood within the context of income volatility and the broader labor market. Participation in independent work often reflects specific industry pressures and broader trends that present themselves in the general labor force, such as the demand for low skill vs. high skilled workers and the preference for flexibility. Understanding the nature and scope of the gig economy cannot be viewed in isolation from the broader labor market and economic landscape, nor should it be viewed as static.

We urge the BLS, and the policymakers who will turn to the survey to guide their decisions, to take such a broad perspective of the gig economy as it exist both today and as it evolves in the future. As the MGI report concludes, "[j]ust as working models changed in the

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wake of the Industrial Revolution, the nature of work may be evolving again as the digital revolution takes hold." Accurate, holistic and forward-thinking data is the all-important first step to take to navigate changing terrain so that we can, indeed, prepare for the future.

We appreciate your consideration of these matters. If we can provide any additional information or resources, please contact us.

Respectfully submitted,

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