



**NATIONAL ADVISORY COUNCIL ON
INNOVATION AND ENTREPRENEURSHIP**



March 4, 2016

The Honorable Penny Pritzker
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Pritzker:

As co-chairs of the National Advisory Council on Innovation and Entrepreneurship, and on behalf of the full membership, we are pleased to submit to you our report, *The Free Agent Economy: Scope, Impact, and Implications for U.S. Competitiveness*.

This report is in response to our discussions with you during our 2015 meetings, where you requested we identify the most promising opportunities to support innovation, entrepreneurship, and economic competitiveness in the United States. One of the fastest growing and most impactful trends affecting innovation, entrepreneurship, and economic competitiveness is the expansion of the free agent economy. According to a May 2015 General Accountability Office report, the percentage of the workforce participating in free agency has grown to 40%, fueled by digital technology and the proliferation of sharing economy businesses like Uber, TaskRabbit, and Airbnb.

With the expansion of free agency have come both opportunities and obstacles for the U.S. economy. While free agency has arguably fueled the growth of new startup businesses and increased wealth creation and flexibility for many workers, it has also given rise to a troubling escalation in litigation and legislative battles over a host of issues ranging from worker classification to taxation. In addition, there is increasing competition outside the U.S. as other countries work to minimize obstacles and incentivize growth of this rapidly expanding sector in their own economies. Fueling these challenges is an absence of credible, authoritative data and analytics available to help policymakers, business owners, and citizens make sound decisions about the impact of free agency in the economy.

Absent intervention to better define and evaluate the current state of the free agent economy, these challenges threaten to derail this promising engine of U.S. economic growth, innovation, and entrepreneurship. As a Council, we agreed to study and recommend actions that will instead help protect and nurture the growth of the free agent economy.

In the following report, we offer **three recommendations**, each of which would leverage the authority and expertise of such Department of Commerce resources as the Office of the Chief Economist, Census Bureau, and Bureau of Economic Analysis:

1. Define, describe, and quantify the "free agent economy" and its associated taxonomy of terminology. This would involve specifying the extent to which sharing economy firms are captured in existing federal statistical data; proposing methods to harness existing statistical data to identify this sector; and identifying new methods to collect data on the sharing economy.
2. Analyze data on free agency to reveal trends, patterns, and potential implications for U.S. commerce and labor generally—and innovation and entrepreneurship specifically.
3. Identify potential legislative, regulatory, or policy actions that have the potential to drive the competitiveness of the U.S. economy by optimizing the benefits and minimizing the deficits created by free agency.

We believe collective implementation of this limited set of recommendations can accelerate high-growth entrepreneurship in the free agent economy, thereby increasing domestic job creation and economic growth, and ultimately contributing to America's global competitiveness.

Respectfully submitted,

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EXECUTIVE SUMMARY

Background

Since Daniel Pink first published his landmark treatise *Free Agent Nation: The Future of Working for Yourself* in 2001, the number of Americans who work at least part-time as self-employed contractors has grown to more than one-third of the workforce. Although the Bureau of Labor Statistics (BLS) stopped reporting on the growth of the "free agent" or "contingent" workforce in 2005 for budgetary reasons, in April 2015, the Government Accountability Office (GAO) issued its first-ever report on free agency (*GAO-15-168R Contingent Workforce*). Although issued in 2015, the GAO report analyzed data primarily from 2005-2010, concluding that between 2005 and 2010, the incidence of free agency (dubbed "Alternative Work" in the report) grew from approximately 35% to 40% of the workforce¹. Several more recent studies by private organizations similarly estimate the size of the free agent workforce currently to be more than a third of the total U.S. workforce--or nearly 42 million people, with some experts predicting this number will grow to as high as 45% by 2020^{2 3}.

According to experts, a number of socioeconomic forces have been driving the growth of the free agent workforce in the U.S.: economic expansion, workforce demographics, and the proliferation of the digitally-driven "sharing economy."

Economic Forces

There are a number of economic factors contributing to the growth of free agency in the U.S. With U.S. unemployment at its lowest level since 2007 (5.1% as of September 2015) and regional unemployment rates in high-growth, technology-heavy labor markets like San Francisco as low as

¹ "Contingent Workforce: Size, Characteristics, Earnings, and Benefits (GAO-15-168R)," U.S. Government Accountability Office, April 20, 2015.

² Teresa Carroll, "Agents of Change: Independent Workers Are Reshaping the Workforce," Kelly Services, September 2015.

³ MBO Partners, Inc., "Independent Workers and the On-Demand Economy," mbopartners.com, 2015.

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3.2%, competition for skilled labor in certain high-demand jobs and sectors is heating up⁴. At the same time, with the Great Recession a not-too-distant memory and current economic forecasts mixed, many employers are wary of over-hiring a permanent workforce to keep up with current demand. Instead, employers are frequently choosing to supplement their regular workforce with free agents to manage periods of increased demand (what some experts are calling a "hybrid workforce")--rather than managing demand through cycles of mass hiring and layoffs, as in the past. According to a February 2015 report by Deloitte, 51% of U.S. employers intend to increase their use of free agent talent over the next 3-5 years⁵. In its April 2015 "U.S. Staffing Industry Forecast," Staffing Industry Analysts estimated that the temporary staffing industry, which procures much of the free agent talent leveraged by U.S. employers, will grow 11% between 2015 and 2016⁶. Given forecasts like these, it seems unlikely that the trend toward growth in free agency will significantly abate in the near future.

The "Work-to-Live" Generation

According to a 2015 study by professional services firm MBO Partners, the percentage of Millennial generation workers who choose free agency has tripled since 2011 to nearly a third, the fastest growth rate of any generation⁷. As the largest generation in U.S. history (and, as of 2015, the largest proportion of the American workforce), Millennials' influence on the future of the U.S. economy is indisputable. As the MBO study points out, Millennials are the "work to live" generation, and they are choosing free agency over traditional work because "they value the flexibility independent work provides as well as the opportunity to do work they enjoy . . . , make a difference in the world, and . . . pursue a wide range of independent work opportunities." Demographic factors also contribute to Millennials' desire for greater workplace freedom and flexibility. According to a 2015 EY study, Millennials are twice as likely as Baby Boomers to have a spouse who works full time, creating a

⁴ "Regional and State Employment and Unemployment Summary," Bureau of Labor Statistics, U.S. Department of Labor, October 20, 2015.

⁵ Lisa Disselkamp, Werner Nieuwoudt, and David Parent, *Workforce on Demand: Are You Ready?* Deloitte University Press, February 27, 2015.

⁶ "U.S. Staffing Industry Forecast: April 2015," Staffing Industry Analysts, April 7, 2015.

⁷ "Independent Workers and the On-Demand Economy," MBO Partners Inc., mbopartners.com, 2015.

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greater need for flexibility⁸. The recent APA study "Stress in America" found that Millennials were the most stressed out generation in America, with work being the number one cause of stress⁹. In short, Millennials' desire for freedom from the restrictions of traditional work is contributing to the growing trend toward free agency in American business.

The Sharing Economy Revolution

The sharing economy, in simplest terms, is "an economic model in which individuals are able to borrow or rent assets owned by someone else¹⁰". While there have always been collaborative economies involving shared purchase or use of goods, what has enabled the explosive growth of the sharing economy in the 21st century is the internet. Barriers to sharing (time, space, geography, marketing dollars) have been rendered largely irrelevant in the digital age of free mobile apps that connect people across timezones, cultures, and languages.

What's transformational about this trend is not only the prospective growth potential it holds for the U.S. economy (5-year-old sharing economy icon Uber, for example, has been given a valuation of \$50 billion, making it the most highly-valued startup in U.S. history¹¹; Airbnb, similarly, has been valued at \$25 billion¹²), but also the unique access it provides middle-class Americans to entrepreneurship. Most of the American middle-class today, particularly women and people of color, find themselves shut out of entrepreneurship opportunities due to lack of available capital¹³. Traditionally, the largest barrier to entry into entrepreneurship for most small business owners is start up capital. What makes the growth of the sharing economy so exciting for many middle

⁸ "Global generations: A Global Study on Work-life Challenges Across Generations," EY, 2015.

⁹ "Stress in America™: Missing the Health Care Connection," American Psychological Association & Harris Interactive, February 7, 2013.

¹⁰ Investopedia LLC, Investopedia 2015.

¹¹ Douglas MacMillan, and Telis Demos, "Uber Valued at More Than \$50 Billion," The Wall Street Journal, July 31, 2015.

¹² Sara Ashley O'Brien, "'Crazy money' - Airbnb valued at over \$25 billion," CNN Money, June 27, 2015.

¹³ Michael S. Barr, "Minority and Women Entrepreneurs: Building Capital, Networks, and Skills," The Hamilton Project, March 2015.

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income people is the opportunity to leverage existing underutilized assets (e.g., their cars, their homes, their social network) to create incremental wealth for themselves and their families.

Are American workers benefitting from free agency? Although the GAO report, which analyzed several-year-old data concluded that they are not, several more recent studies, reach a different conclusion. In its September 2015 report, "Agents of Change: Independent Workers Are Reshaping the Workforce," Kelly Services found that on 6 out of 7 indicators of employee wellbeing, ranging from salary, to stress level, to career advancement opportunities, free agents reported being more satisfied than traditional employees¹⁴. Similarly, in MBO Partners' 2015 "State of Independence in America" study, 80% of free agents surveyed reported being happier as free agents than they were as traditional employees and 59% reported that their health was better and they made more money¹⁵.

Despite the reported success stories of many sharing economy "entrepreneurs," there is a raging national debate over the economic and social impact of sharing economy businesses. According to Congressional Quarterly, so far in 2015, 23 states have advanced 60 pieces of legislation to restrict short-term rental platforms like Airbnb, while 30 bills regulating ride-sharing companies like Uber and Lyft have been passed, with another 64 pending¹⁶. In addition to legislative action, dozens of sharing economy startups, including Uber, Lyft, Handy, TaskRabbit, and Instacart, among others, are facing class-action lawsuits challenging their unconventional business practices. One of these, Homejoy, shut down in July following a rash of lawsuits over classification of its workers as independent contractors rather than employees. Others, like Airbnb, face similar class action lawsuits over tax, zoning, or other regulatory concerns¹⁷.

What is at issue in these disputes? Essentially, the very nature of how business is transacted in the U.S. Since the early 20th century, a complex patchwork of federal, state, and local laws and policies have been promulgated to regulate commerce and employment in the industrial and post-industrial era. Many of these, like the Fair Labor Standards Act and portions of the Internal Revenue Code,

¹⁴ Teresa Carroll, "Agents of Change: Independent Workers Are Reshaping the Workforce," Kelly Services, September 2015.

¹⁵ "Independent Workers and the On-Demand Economy," MBO Partners Inc., mbopartners.com, 2015.

¹⁶ Aaron Martin, "State Legislatures and the Sharing Economy," CQ Roll Call, March 15, 2015.

¹⁷ Harvard Kennedy School, Shorenstein Center on Media, Politics, and Public Policy, "Uber, Airbnb and Consequences of the Sharing Economy: Research Roundup," Journalist's Resource, October 19, 2015.

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define things like how businesses must classify workers, who is eligible for overtime, and how wages and benefits are to be taxed. Others, like the Occupational Safety and Health Act and local health and safety codes, ensure that both workers and consumers are guaranteed reasonable protection when working within or patronizing a business.

Few people question the importance of these legislative and regulatory protections ensuring a fair, safe, and healthy commercial system. That said, many of the most impactful laws governing how U.S. companies are permitted to operate have not been substantially reformed since they were passed 60 or 70 years ago--decades before the internet, cell phones, and the explosion of global competition changed the way we all live, work, and play. A case in point is the Fair Labor Standards Act (FLSA), which governs everything from the definition of an employee, to how many hours employees can work in a week, to the minimum wage. The FLSA was passed in 1938, a time when the majority of U.S. commerce was driven by manufacturing. Because the law was designed in large part to protect shift workers at factories from exploitation, its provisions reflect the reality of the era in which it was created. While the FLSA has been reformed several times over the years to accommodate societal changes (for example, the Equal Pay Act of 1963 amended the FLSA to provide women protection from pay discrimination), it arguably has not been adequately updated to reflect the realities of 21st century business and consumer behaviors in a largely knowledge-based economy.

In today's 24/7, always-on world of smart phones that deliver answers to almost any question on any topic instantly and enable many workers to do much, if not all of their work from virtually anywhere, there are an increasing number of Americans who want more freedom about how, when, and where they work. A September 2015 study by staffing firm Kelly Services found that 75% of workers who take advantage of "free agent" contractual gigs, "choose this workstyle for the freedom, flexibility, and entrepreneurial empowerment they experience with this independent approach to work and life¹⁸. What's more, of the freelance workers in the Kelly report, only 10% said they were "forced" into free agency due to lack of traditional job opportunities; the majority--90% in fact--reported that they chose to be free agents. This finding was replicated in the 2015 MBO Partners report, which found that only 16% of free agents say they chose free agency due to factors out of their control, such as a layoff or "inability to find traditional employment."¹⁹

¹⁸ Teresa Carroll, "Agents of Change: Independent Workers Are Reshaping the Workforce," Kelly Services, September 2015.

¹⁹ MBO Partners, Inc., "Independent Workers and the On-Demand Economy," mbopartners.com, 2015.

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These data conflict with the arguments underlying much of the legislation and many of the class-action lawsuits driving today's debate about the impact of the sharing economy. With multiple studies showing that a sizable majority of "free agent" sharing economy workers *want* to be independent entrepreneurs, free of the strict scheduling requirements, close supervision, and other restrictions of traditional workplaces, there is a legitimate question about whether 75-year-old laws like the FLSA--in their current form--adequately serve an evolving middle-class--or the American economy.

Objective

To recommend that the United States Department of Commerce sponsor research and publication of an official government report on free agency in America and its implications for the competitiveness of the U.S. economy and U.S. workforce.

With approximately one-third of the U.S. workforce engaged in some way in "free agent" work today (a number estimated by MBO partners to grow to 45% by 2020), it is time to take a serious and comprehensive look at the sharing economy and its implications for America. Today, the debate over sharing economy businesses, and ultimately the fate of many of those businesses, is being decided by special interest turf wars fought at the ballot box, on the floors of state or local legislatures, and in courtrooms across the country. A case in point is the ongoing battle between Airbnb, hotel industry associations, and hotel unions in San Francisco over Airbnb's right to operate in the city. As of election day 2015, nearly \$9 million had been spent by both sides of the debate on a ballot measure being put before voters in the November 2015 election²⁰.

Unfortunately, what's missing from the San Francisco debate, and debates like it around the country over the impact of the sharing economy on both American workers and businesses, is current, methodologically sound, comprehensive, impartial data--something the U.S. government is uniquely qualified to provide. To date, the only data that is ***less than three to five years old*** (i.e., post-recessionary) available to help policymakers, business owners, and citizens make sound decisions

²⁰ Ericka Cruz Guevarra, "How San Francisco's Prop. F Would Change Airbnb Rentals," KQED online, October 6, 2015.

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about the impact of sharing economy businesses is frequently produced by special interests with questionable credibility. The best of these private reports, those produced by universities and reputable consulting firms, are often narrow in scope and lack the unimpeachable reliability of government reporting. So far, no government agency has commissioned such up-to-date reporting.

Why not just let this issue play out in the courts or at the ballot box?

What's ultimately at risk is the competitiveness of the U.S. economy. While special interests like class action law firms, employer's associations, labor unions, and others win battles over sharing economy businesses one-by-one at the polls and in the courts, resulting in a patchwork of conflicting regulations across the country, more agile and unified countries will take the spoils. Already, nations like China are aggressively working to create an advantageous environment for sharing and other start-up technology businesses that hope to compete with American free agent economy businesses like Uber and Airbnb²¹.

Millions of American businesses, as well as scores of state and local governments, rely on federal data every year to make business plans, forecast budgets, and craft policy. From census figures to unemployment statistics to GDP growth, reliable U.S. government data is a critical component of maintaining a vibrant, competitive economy. Because of it, entrepreneurs, investors, legislators, NGOs, and others are able to confidently make decisions and take smart risks that ultimately foster innovation and drive growth within the American economy. What's desperately needed is similar government data on what may be one of the greatest opportunities for expansion of both the U.S. economy and middle class wealth creation so far this century: the free agent economy.

Goals

A successful Commerce Department report on the free agent economy would accomplish the following:

1. **Define, describe, and quantify the phenomenon commonly referred to as the "free agent economy" and its associated taxonomy of terminology** This official definition of the scope of

²¹ Chris Russell, "Where is China's Silicon Valley?" China Embraces The Sharing Economy, CKGSB Knowledge, Winter 2014.

the free agent economy, its accompanying lexicon (e.g., "free agent" vs. "contingent" vs. "temporary" vs. "contract" vs. "freelance" vs. "1099" worker; "sharing economy;" etc.), and its data-gathering and methodological standards would solve a significant problem driving much of the chaos and contradiction plaguing discussions of free agency today: because there is no agreement on how to define free agency, its key terminology, or its data gathering and computation methodology, the data collected and analyzed to describe it lacks convergence, creating discrepancies. This official report, bearing the authority and credibility of the U.S. government, will establish the "taxonomy of record" for describing and defining this phenomenon in America, enabling the cross-referencing and integration of data from both private and public sources, enabling a "single version of the truth" concerning data driving national debates about worker's rights, taxation, economic competitiveness, and other issues associated with growth of the free agent economy.

2. **Analyze data on free agency to reveal trends, patterns, and potential implications for U.S. commerce and labor generally--and innovation and entrepreneurship specifically.** Questions the data in the report would endeavor to answer would include the following:

- What is the size of the "free agent economy?"
- How fast is it growing?
- What are the demographic and economic profiles of the entrepreneurs and businesses engaged in this commerce?
- How do these profiles compare to those of other countries' free agent economies?
- What is the impact so far of this phenomenon on other parts of the U.S. economy and society?
- How might we project the potential future impact?
- What are the implications for free agent workers as well as for traditional workers?
- Where might there be opportunities to reform existing legislation or regulation to optimize the benefits and minimize the deficits created by the free agent economy?

3. **Identify potential legislative, regulatory, or policy actions that have the potential to drive the competitiveness of the U.S. economy by optimizing the benefits and minimizing the deficits created by free agency.** Much of the current debate about the impact of free agency is polarized and characterized by dichotomous, "either-or" solutions founded on the legal,

legislative, and regulatory landscape as currently defined (for example, debates about whether free agent workers are or are not employees under the current legal definition of "employee" in the FLSA). What is missing from these debates is an objective, data-based analysis of potential reforms to existing legislation and regulation governing issues of concern to free agents and free agent-dependent businesses that might enable them to better serve the needs of both traditional businesses/employees and free agents/the businesses they support--while still satisfying the larger interests of the American public. By providing a comprehensive and holistic perspective on the legislative and regulatory environment in which free agency exists (rather than a narrow one that focuses only on the implications for one constituency--e.g., traditional employees, free agent employees, traditional business, free agent/sharing economy entrepreneurs, the taxpayer), this report will offer an invaluable 360-degree view of the implications of free agency for America--as well as an informed point of view on the means by which a healthy and competitive free agent economy might be achieved.

NACIE's Role

NACIE's role in this proposal shall be as follows:

- Research and recommend a solution to the current free agent economy opportunity in America that supports NACIE's mission of "identifying and recommending solutions to issues critical to driving the innovation economy, including enabling entrepreneurs and firms to successfully access and develop a skilled, globally competitive workforce."
 - Work with EDA and other Department of Commerce staff and expert outside resources to refine the proposal so that it complements current Department strategic priorities and resourcing and is sufficiently concrete and specific in its recommendations to enable immediate action.
 - Present the proposal to the Secretary of Commerce for consideration.
 - Advise the Secretary and the Department of Commerce staff on implementation as appropriate.
-