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The Role of Independent Contractors in the Finance and Insurance Sectors

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I. Introduction

More than seven million Americans work in the financial and insurance sector. While most of these workers are full-time employees, many choose to serve as independent contractors, especially in customer-facing occupations such as financial advisors, securities brokers and insurance agents.[1] As independent contractors, these workers do not earn a salary, but instead are compensated based on the results of their efforts, typically through commissions provided by the institutions with which they are associated. As entrepreneurs, these workers have the opportunity to build businesses and generate wealth as well as the flexibility to work part-time; in many cases their financial services work constitutes a second job. From the perspective of financial services providers, independent contracting allows for larger and more flexible retail networks than would otherwise be possible, thereby expanding the number and types of customers they are able to serve.

While a substantial body of economic research indicates that independent contracting in general is economically efficient and benefits both workers and consumers, critics argue that it can be used to exploit workers, for example by denying them fringe benefits (e.g., employer-provided health care) and legal protections (e.g., minimum wage, unionization rights) available to workers who are classified as employees. Based on such concerns, some legislators and policymakers at both the state and federal levels have sought to restrict the use of independent contracting by narrowing the criteria under which workers can legally be classified as independent contractors.

In this context, this paper examines the role of independent contracting in the financial and insurance services sector. Specifically, we explain the role of independent contracting in the economy generally; examine the roles played and economic benefits generated by independent contractors in the financial and insurance services industry; and, assess the impact of limiting or prohibiting the use of independent contracting on these markets.

Our findings suggest that independent contracting in these sectors benefits consumers, and that limiting or prohibiting its use would substantially reduce the supply of these services, especially to lower-income and disadvantaged populations. We also note that independent contracting allows financial and insurance professionals to become entrepreneurs by starting and growing their own businesses, thereby contributing to both new business formation and job creation. Specifically, we find:

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[1] Unless otherwise noted, we refer to the Finance and Insurance Sector as defined by the Bureau of Labor Statistics (BLS) (NAICS 52), and to financial and insurance occupations as Insurance Sales Agents ("insurance agents"), Personal Financial Advisors ("financial advisors") and Securities, Commodities and Financial Services Sales Agents ("securities agents") as those occupational categories are defined by BLS. See Bureau of Labor Statistics, "Finance and Insurance: NAICS 52" (July 15, 2022) (available at https://www.bls.gov/iag/tgs/iag52.htm). Bureau of Labor Statistics, "Occupational Employment and Wages, May 2021: 41-3021 Insurance Sales Agents" (March 31, 2022) (available at https://www.bls.gov/oes/current/oes413021.htm). Bureau of Labor Statistics, "Occupational Employment and Wages, May 2021: 41-3031: Securities, Commodities, and Financial Services Sales Agents" (March 31, 2022) (available at https://www.bls.gov/oes/current/oes413031.htm). Bureau of Labor Statistics, "Occupational Employment and Wages, May 2021: 13-2052: Personal Financial Advisors" (March 31, 2022) (available at https://www.bls.gov/oes/current/oes132052.htm).

- More than half a million people work as independent contractors in the financial and insurance industry and in financial service occupations. We estimate conservatively that independent contractors account for at least one of every seven insurance agents, financial advisors and securities agents.

- Independent contractors own and operate approximately 130,000 financial advisory and insurance brokerage firms, employing approximately 330,000 people. Many of these business entrepreneurs are able to build equity in the firms they own. Prohibiting independent contracting would severely disrupt these businesses and eliminate many of these jobs.

- Between 2015 and 2019, independent contractors in the financial services sector created approximately 54,000 new businesses and 174,000 new jobs, all or most of which would not have existed if independent contracting were prohibited.

- Independent contractor-operated financial advisors and insurance agencies account for approximately 27 percent ($47 billion) of the output of the financial advisory and insurance brokerage industries. Reducing the supply of these services would harm consumers, including by reducing financial literacy and harming their ability to accumulate wealth and save for retirement.

- The use of independent contractors allows financial service and insurance providers to reach otherwise difficult-to-serve customers, thereby expanding the availability of financial advice and related services to low- and moderate-income households. For some firms, independent contractors account for the overwhelming majority of their workforce.

- Workers in the financial services sector choose to become independent contractors because they value independence, flexibility and the opportunity to build a business and generate wealth. Prohibiting independent contracting would make these workers worse off.

The remainder of this report is organized as follows: Section II provides an overview of the role of independent contracting in the U.S. economy and of the economic motivations for using independent contracting. Section III focuses on the financial services sector, including presenting estimates of the number of independent contractors working in financial service and insurance related occupations and explaining from an economic perspective the roles they play in providing financial advisory and insurance agency services. Section IV presents our analysis of the economic effects of barring or substantially reducing the use of independent contracting in the financial services and insurance sectors. Section V presents a brief conclusion.

II. Independent Contracting in the U.S. Labor Market: An Overview

The first subsection below provides an overview of the roles played by independent contractors in the U.S. economy. The second subsection explains the economic foundations for independent contracting.

A. Extent and Nature of Independent Contracting

Independent contracting is a form of alternative work arrangement under which workers perform services under various forms of contractual arrangements but are not considered "employees" for legal purposes. The distinction has a variety of practical consequences. For example, independent contractors are treated differently from traditional employees with regard to a variety of Federal and state statutes regulating terms of employment.[2] The precise legal definition of independent contracting varies depending on context. At the Federal level, for example, the Department of Labor (which enforces the Fair Labor Standards Act (FLSA)) applies a different set of standards than the Internal Revenue Service.[3] As discussed further in Section II.B, definitional issues have important policy and economic implications. From an economic perspective, however, they also create challenges of measurement.

The commonly referenced source of data on the nature and extent of independent contracting is the Bureau of Labor Statistics' "Contingent Worker Supplement" (CWS), which is a survey of approximately 50,000 U.S. workers conducted, most recently, in May 2017.[4] The CWS reports detailed data on the number of workers engaged as independent contractors, classified by standard industry and occupational categories. In addition, the CWS gathers and reports data on the demographic characteristics of independent contractors, average and median earnings, and other worker characteristics, such as the reasons individuals give for choosing to work as independent contractors rather than employees.

It is generally understood, however, that the CWS estimates substantially undercount the number of independent contractors, in part because they only count individuals for whom independent contracting is their "main" source of work and therefore omit workers who engage in independent contracting as a "second" job.[5] In 2021, the Department of Labor concluded that the CWS survey

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[2] See generally Jeffrey A. Eisenach, *The Role of Independent Contractors in the U.S. Economy* (Navigant Economics 2010) (hereafter Eisenach, *The Role of Independent Contractors*) at 5.

[3] Department of Labor, *Independent Contractor Status Under the Fair Labor Standards Act; Withdrawal,* RIN No. 1235-AA34 (March 12, 2021). Internal Revenue Service, "Independent Contractor (Self-Employed) or Employee?" (available at https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee).

[4] U.S. Bureau of Labor Statistics, "Contingent and Alternative Employment Arrangements – May 2017," USDL-18-0942 (June 7, 2018) (available at https://www.bls.gov/news.release/pdf/conemp.pdf). Prior versions of the CWS survey were conducted in 2005, 2001, 1999, 1997, and 1995.

[5] There is an active debate about potential methodological improvements in the CWS. See, e.g., Bureau of Labor, "Frequently Asked Questions About Data on Contingent and Alternative Employment Arrangements" (August 7, 2018) (available at https://www.bls.gov/cps/contingent-and-alternative-arrangements-faqs.htm) ("The questions about contingent work and alternative employment arrangements are asked only about a person's main job. For people with more than one job, the questions referred to the characteristics of their main job – the job in which they worked the most hours."); Lawrence Katz and Alan Krueger, "Understanding Trends in Alternative Work Arrangements in the United States" *The Russell Sage Foundation Journal of the Social Sciences* 5;5 (December 2019) 132-146; Katharine Abraham *et al,* "The Rise of the Gig Economy: Fact or Fiction?" *American Economic Association Papers and Proceedings* 109 (2019) 357-361; Brett Collins *et al, Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns,* IRS SOI Joint Statistical Research Program (March 25 2019) at 2 (available at https://www.irs.gov/pub/irs-soi/19rpgigworkreplacingtraditionalemployment.pdf); Barbara Robles and Marysol McGee, *Exploring Online and Offline Informal Work: Findings from the Enterprising and Informal Work Activities*

substantially understated the number of independent contractors in May 2017 by between 32 and 52 percent and also failed to account for subsequent growth in the labor force. It, therefore, adjusted the May 2017 estimate upward 78 percent (from 10.6 million to 18.9 million), which it concluded was "still an underestimate of the true independent contractor pool."[6]

Indeed, other estimates of the number of independent contractors are much higher. For example, a private sector survey conducted annually for the past decade by MBO Partners estimated there were 40.9 million independent workers in 2017, accounting for 26.5 percent of the workforce – nearly four times the contemporaneous CWS estimate.[7] Recent evidence also indicates that the number of independent workers is growing rapidly: Graphite, an online platform designed to connect businesses to independent experts, reported that spending on hiring on its platform grew by 170 percent in 2021 compared to 2020, and the number of new independent experts joining in 2021 grew by 39 percent compared to 2020.[8] Similarly, a study by Upwork examined the impact of COVID-19 on freelancing and found that 36 percent of the U.S. workforce (59 million people) had worked as a freelancer in 2020. Upwork found that the number of freelancers remained stable despite the short-term high unemployment that resulted from COVID-19.[9] While the total number of freelancers remained relatively constant between 2019 and 2020, COVID-19 created a large shift in the type of freelance work, with the number of full-time and part-time freelancers increasing and the number of full-time employees who earned additional income from freelance work decreasing.[10]

Table 1 below shows May 2017 CWS survey estimates for the number of independent contractors, by industry, in the U.S. workforce.

(EIWA) Survey, Federal Reserve Board Discussion Series 2016-089 (October 2016) at 7 (available at https://www.federalreserve.gov/econresdata/feds/2016/files/2016089pap.pdf) ("…IRS data from 1099Misc and 1099K income filers indicate a significant increase since the Great Recession, while self-employment and small business/sole proprietor data from Census surveys continue to decline.").

[6] Department of Labor, *Independent Contractor Status under the Fair Labor Standards Act, Final Rule*, RIN No. 1235-AA34 (January 2021) at 147. The Department based its conclusion on two studies, one from the U.S. Treasury and a second from Washington State Department of Commerce. See Katherine Lim *et al*, *Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data*, Department of Treasury (July 2019) at 61 (available at https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf). Washington Department of Commerce, *Independent Contractor Study* (July 2019) at 21 (available at https://deptofcommerce.app.box.com/v/independent-contractor-study).

[7] See MBO Partners, *The State of Independence in America 2017* (June 13, 2017) (available at https://www.mbopartners.com/state-of-independence/mbo-partners-state-of-independence-in-america-2017/). Workforce proportion is based on workforce as reported by BLS. The most recent MBO Partners survey indicated that the number of independent workers fell to 38.2 million in 2020, down from 41.1 million in 2019, primarily as a result of COVID-19. At the same time, the survey found that independent contractors continue to account for about 25 percent of the workforce. MBO Partners, *The State of Independence in America 2020* (December 9, 2020) at 3 (available at https://info.mbopartners.com/rs/mbo/images/MBO_Partners_State_of_Independence_2020_Report.pdf) (hereafter MBO 2020 Study). MBO also estimates independent contracting was responsible for $1.21 trillion in revenue, or 5.7 percent of Gross Domestic Product, in 2020. See MBO Study at 1.

[8] Graphite, *2022 State of On-Demond Hiring* at 5 (available at https://www.graphite.com/).

[9] Upwork, *Freelance Forward 2020* (September 2020) at 15 available at https://www.upwork.com/documents/freelance-forward-2020).

[10] Id. at 16.

TABLE 1:
INDEPENDENT CONTRACTORS BY GENERAL INDUSTRY (2017)

General Industry	Total Employed	Independent Contractors	% Independent Contractors
Real estate and rental and leasing	3,231,193	716,555	22.2%
Construction	10,484,172	2,047,784	19.5%
Administrative and support and waste management services	6,869,945	1,078,735	15.7%
Arts, entertainment, and recreation	3,319,230	507,588	15.3%
Other services, except private households	6,871,050	1,000,484	14.6%
Professional and technical services	11,462,217	1,581,045	13.8%
Transportation and warehousing	6,469,652	585,447	9.0%
Agriculture, forestry, fishing, and hunting	2,497,910	217,357	8.7%
Information	2,893,815	229,276	7.9%
Wholesale trade	3,383,361	157,992	4.7%
Retail trade	16,130,955	678,532	4.2%
Finance and insurance	7,408,455	305,234	4.1%
Private households	646,390	25,658	4.0%
Health care and social services	20,505,954	654,300	3.2%
Educational services	14,878,350	363,166	2.4%
Other	36,278,168	464,487	1.3%
Total	**153,330,818**	**10,613,639**	**6.9%**

Source: U.S. Bureau of Labor Statistics, "Current Population Survey: Contingent Worker and Alternative Employment Arrangements May 2017" (available at https://www.census.gov/data/datasets/time-series/demo/cps/cps-supp_cps-repwgt/cps-contingent.html). Note: The BLS considers "Management, Administrative and Support, and Waste Management Services" to be a major industry category, which combines the "Management of companies and enterprises" and "Administrative and support and waste management services" categories. "Other" includes Mining, Management of companies and enterprises, Manufacturing – durable goods, Utilities, Accommodation and food services, Manufacturing – non-durable goods, and Public Administration.

As the table shows, the CWS estimated that there were 10,613,639 independent contractors in the U.S. workforce in May 2017, or about 6.9 percent of the total workforce. The data also shows that independent contracting accounts for a significant portion of the labor force role in multiple sectors of the U.S. economy, including in industries as diverse as real estate, arts and entertainment, and agriculture and fishing – well beyond the so-called "gig economy" that has been a focus of much of the public policy debate around independent contracting.[11]

In Section III, we present data showing that independent contractors account for a higher proportion of the workforce in financial service occupations than in the economy overall.

[11] The extent to which the gig economy has resulted in increased independent contracting has been the subject of several studies. See e.g., Katherine Lim *et al*, *Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data*, Department of Treasury (July 2019) at 61 (available at https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf); Katharine Abraham *et al, Measuring the Gig Economy: Current Knowledge and Open Issues*, National Bureau of Economic Research Working Paper 24950 (August 2018) (available at http://www.nber.org/papers/w24950.pdf).

B. Economic Motivations for Independent Contracting

As the data above demonstrate, independent contracting is commonplace throughout the U.S. economy. From an economic perspective, the fact that workers and employers choose voluntarily to enter into such arrangements indicates they are enhancing economic welfare – i.e., that they generate gains from trade for both parties. Critics of independent contracting, on the other hand, argue that it can be used to exploit workers, for example by denying them fringe benefits (e.g., employer-provided health care) and legal protections (e.g., minimum wage, unionization rights) available to workers who are classified as employees. In this section, we review the evidence relating to the economic motivations for independent contracting for workers and for firms.[12]

1. Worker Motivations for Independent Contracting

Some critics of independent contractor relationships suggest employers frequently misclassify workers in order to benefit from a reduced worker costs and avoid having to follow labor laws that protect employees, i.e., that independent contracting is a form of exploitation of labor by business.[13] However, the argument that independent contracting results in labor exploitation is premised on the assumption that workers do not have a choice between being an independent contractor or an employee. Research into the preferences of workers clearly contradicts this view. Indeed, one of the most powerful economic explanations for the widespread use of independent contractor relationships is the well-researched fact that a majority of independent contractors are satisfied with their work arrangement *and* choose contracting because they prefer working as an independent contractor to an employment arrangement. That is, these workers have expressed what economists refer to as a "revealed preference" for independent contracting.[14]

A robust body of survey research finds that independent contractors express high levels of satisfaction with their work arrangements. For example, a 2020 survey by MBO Partners found that 76 percent of independent contractors were "very satisfied" with their work; another 2020 survey, conducted by the Coalition for Workforce Innovation, found that 62 percent of independent contractors were "very satisfied" another 32 percent "somewhat" satisfied.[15] Further, the majority of independent contractors prefer their work arrangements to traditional employment. As Table 2 shows, the 2017 CWS survey found that 79 percent of respondents preferred being an independent contractor to working as a traditional employee, whereas only nine percent would have preferred to be a traditional employee. Consistent with the reported preference for independent contracting

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[12] See also Eisenach, *The Role of Independent Contractors*.

[13] See, e.g., National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Federal and State Treasuries* (October 2020) (available at https://s27147.pcdn.co/wp-content/uploads/Independent-Contractor-Misclassification-Imposes-Huge-Costs-Workers-Federal-State-Treasuries-Update-October-2020.pdf).

[14] For a discussion of revealed preference, see OMB Circular A-4 (September 2003) at 20-22 (available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf).

[15] MBO 2020 Study at 7 ("In 2020, 76 percent said they were very satisfied, with only 21 percent neutral."); Coalition for Workforce Innovation, *National Survey of 600 Self-Identified Independent Contractors* (January 2020) at 5 ("62% say they are very satisfied with their current independent work arrangement and 32% are somewhat satisfied."). The MBO survey also found that worker the level of job satisfaction among independent contractors has been increasing (MBO Survey at 7: "In 2011, 58 percent of independents proclaimed themselves very satisfied, while 38 percent were neutral. In 2020, 76 percent said they were very satisfied, with only 21 percent neutral.").

in the BLS survey, a McKinsey Global Institute survey found 70 percent of independent contractors chose this work arrangement over being an employee.[16]

TABLE 2:
INDEPENDENT CONTRACTOR
PREFERENCES FOR TRADITIONAL WORK (2017)

Preference	Independent Contractors	%
Prefer Independent Contracting Work	8,397,920	79.1%
Prefer Traditional Work	938,434	8.8%
Depends	801,320	7.5%
Did Not Respond	475,965	4.5%
Total	**10,613,639**	**100.0%**

Source: U.S. Bureau of Labor Statistics, "Current Population Survey: Contingent Worker and Alternative Employment Arrangements May 2017" (available at https://www.census.gov/data/datasets/time-series/demo/cps/cps-supp_cps-repwgt/cps-contingent.html). Note: "Did Not Respond" includes those that did not respond, refused to respond, or did not know.

Surveys of independent contractors also confirm the economic conclusion that workers choose to be an independent contractor when they prefer the characteristics of that work arrangement over that of a traditional employee, in addition to the other work arrangements available. Workers report a variety of reasons why they prefer working as an independent contractor. The top ranked characteristics of independent contracting are the ability to be your own boss and flexible working conditions.[17] The 2017 CWS survey results shown in Table 3 show that 28 percent of workers who are primarily independent contractors say they contract mainly because they prefer being their own boss, while 27 percent are motivated by flexibility of schedule.[18]

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[16] James Manyika *et al, Independent Work: Choice, Necessity, and the Gig Economy,* McKinsey Global Institute (October 2016) at 5 (hereafter Maniyika *et al* (2016)) (available at https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy). ("70% of independent workers are independent by choice and 40% of independent workers earn supplemental income from their independent work."). See also MBO 2020 Study at 9 ("The results have been consistently positive, with 83 percent of full-time independents saying they are "happier working on my own" and 71 percent saying that "working on my own is better for my health.").

[17] MBO 2020 Study at 6 ("A very consistent theme across the ten years of the MBO Partners State of Independence research series is that independent workers choose to be independent for the autonomy, flexibility, and control it provides.").

[18] Another survey of independent contractors in 2020 found 21 percent preferred contracting because they could be their own boss or work independently, 18 percent preferred contracting because it provided work flexibility, and another 18 percent reported preferring contracting because of the work hours. See Coalition for Workforce Innovation, *National Survey of 600 Self-Identified Independent Contractors* (January 2020) at 6.

TABLE 3:
REASONS FOR CHOOSING TO WORK AS AN INDEPENDENT CONTRACTOR (2017)

Main Reason	%
Enjoys being own boss/independence	28.4%
Flexibility of schedule	26.9%
Money is better	8.5%
Other personal	6.9%
Only type of work could find	5.6%
Other economic	4.1%
Other family/personal obligations	3.4%
For the money	2.6%
Nature of work/seasonal	2.2%
Retired/SS earnings limit	1.2%
All other reasons	4.7%
No Response	5.3%
Total	**100.0%**

Source: U.S. Bureau of Labor Statistics, "Current Population Survey: Contingent Worker and Alternative Employment Arrangements May 2017" (available at https://www.census.gov/data/datasets/time-series/demo/cps/cps-supp_cps-repwgt/cps-contingent.html). Note: "Did Not Respond" includes those that did not respond or refused to respond and those that didn't know or to whom the question did not apply.

This evidence demonstrates that, for many workers, *independent contracting is the preferred labor market choice* – that is, workers would be worse off if independent contracting were not available as an option. While some workers prefer traditional employment, the labor force is characterized by heterogenous preferences for different types of work arrangements.[19] For example, women are more likely than men to report preferring independent contracting due to the flexibility it provides them.[20] Thus, independent contracting allows more women to choose to work the hours or days that fit their personal needs. Similarly, older workers are more likely to have independent contracting as their primary source of income, but young workers are more likely to engage in

[19] Indeed, the evidence suggests that, overall, there is no measurable difference in overall quality of life between traditional employees and independent contractors. (See e.g., Gallup and Intuit-QuickBooks, *Gig Economy and Self-Employment Report* (2019) at 36 (available at https://quickbooks.intuit.com/content/dam/intuit/quickbooks/Gig-Economy-Self-Employment-Report-2019.pdf) ("When asked to rate where they are now, self-employed workers show no statistically significant difference with traditionally employed workers. Likewise, there is no difference in health status, using a 1-5 scale of overall health.").

[20] MBO 2020 Study at 6 ("Yet, in spite of close-to-parity gender participation rates in the independent workforce over the past decade, men and women have generally emphasized different factors for choosing independent work. In 2017, for example, men were more likely than women to note that they love being their own boss (69 percent vs. 55 percent). While 54 percent of men report they earn more money working on their own than at a traditional job, only 43 percent women said so. Women are significantly more likely to note that flexibility was a more important motivator for independent work than men (74 percent vs. 59 percent). The 2020 female/male attitudinal findings are consistent with prior years, but the share of women independents fell from averaging around 50 percent throughout the study to 42 percent in 2020.").

supplementary contracting work, especially from online platforms.[21] In these ways, the flexibility of independent contracting allows workers to adjust the amount of time worked (and earnings) in response to changes in their life situations, i.e., to optimize their "labor-leisure" tradeoff. Independent contracting also benefits workers with a low preference for fringe benefits (e.g., those who receive benefits through a spouse or life partner or other employment); indeed, a significant body of evidence shows that workers engaged in independent contracting earn higher pecuniary incomes (and have fewer fringe benefits) than employees.[22]

2. Employer Motivations for Independent Contracting

Employers also benefit from independent contracting. First, offering workers who *prefer* to work as independent contractors the opportunity to do so leads to lower overall labor costs because those same workers would demand more in total compensation if they were deprived of the autonomy, flexibility and other job characteristics they value about independent contracting.[23] Second, independent contracting provides flexibility for employers as well as employees. Such flexibility is especially important when firms are faced with the need to adjust output to accommodate short-term fluctuations in demand.[24] From an economic perspective, an employment relationship involves both one-time and continuing fixed costs.[25] One-time costs include, on the front end, the expenses associated with setting up payroll and benefit programs, acquiring the capital needed to support the worker's activities (e.g., logging equipment or a taxicab), providing training, and complying with various Federal, state and local mandates. On the back end, they include the costs of separation, including, typically, severance pay. Continuing costs include the employee's weekly or monthly payroll or salary payments (plus benefits) and employee-related overhead, which typically must be paid whether or not the employee is fully occupied.

When a firm expects stable demand in the future, the fixed costs for a worker expected to work full time or part-time in a single position for an indefinite period may be worth incurring in return for the benefits of the employment relationship, including the assurance that the employee will, barring sickness or other unusual circumstances, always be available, and the ability to task the employee, within reasonable bounds, to perform work at the employer's direction.[26]

In some sectors and some occupations, the benefits of traditional employment are overshadowed by the costs, particularly when demand is unpredictable or sporadic. A courier service, for example,

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[21] Brett Collins *et al, Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns,* IRS SOI Joint Statistical Research Program (March 25 2019) at 17 (available at https://www.irs.gov/pub/irs-soi/19rpgigworkreplacingtraditionalemployment.pdf).

[22] See e.g., MBO Partners, *The State of Independence in America 2019* (2019) at 9 (available at https://www.mbopartners.com/state-of-independence/mbo-partners-state-of-independence-in-america-2019/); Maniyika *et al* (2016) at 15.

[23] The converse is also true – people who prefer traditional employment would demand more in total compensation to work as independent contractors. The point is that both firms and workers benefit when they have the ability to match heterogenous job characteristics to a heterogenous workforce.

[24] See e.g., Alexandre Mas and Amanda Pallais, "Alternative Work Arrangements," *Annual Review of Economics* 12 (2020) 631-658 at 649

[25] Fixed costs are costs which do not vary with output – in this case, costs associated with an individual employee which do not vary with the employee's output.

[26] For a scholarly treatment of the employment relationship from a law and economics perspective, see Scott E. Masten, "A Legal Basis for the Firm," *Journal of Law, Economics & Organization* 4;1 (Spring 1988) 181-198.

would be far less efficient if, rather than being able to call on any one of dozens or hundreds of independent contractors when demand surges or a package needs to be picked up from a particularly remote area, it could only utilize its own employees. Similarly, a construction firm would have higher costs if it were forced to hire specialists (such as tile layers) as traditional employees for which it has only transitory demand.[27]

Another economic rationale for independent contracting relates to the costs of monitoring and incentivizing performance. In a famous 1937 article, Nobel Prize laureate Ronald Coase asked why employers enter into employment relationships in the first instance, rather than simply hiring all of their inputs, labor included, through contracts.[28] Coase's central insight was that employer-employee relationships are most efficient when the costs of using the price mechanism (i.e., of independent contracting) are relatively high – for example, where it is difficult or impossible for the employer to describe in advance the specific activities workers are expected to perform, or to place a value on workers' output.[29] In such situations, employers and employees are more likely to agree on "relational" contracts, that is, contracts in which workers are paid a set wage or salary in return for allowing the employer, within limits, to direct their activities.

Coase's thesis explains why independent contracting is especially commonplace in occupations and industries where output is relatively easily measured and workers can thus be compensated directly for their performance: A trucker may be compensated by the mile, a courier by the package, a brick mason by the number of bricks laid, a logger by the volume of wood harvested, and an insurance agent or financial advisor by the volume of sales or the performance of clients' portfolios.

Finally, some independent contracting relationships have developed in part as a means of coping with sector-specific legal barriers to employment or other forms of government regulation. For example, independent truck drivers can drive under a firm's motor carrier license instead of having to obtain their own motor carrier license.[30] As we discuss in Section III, sector-specific regulation is an important motivator for the use of independent contracting in the financial services sector.

III. Independent Contracting in the Finance and Insurance Industry

Independent contracting plays an essential role in the financial services and insurance industry, especially in customer-facing occupations such as licensed financial advisors, securities sales agents and insurance agents. In the first subsection below, we present data on the extent of independent contracting in financial service occupations which shows that there are roughly half a million workers serving as independent contractors in these sectors. In the second subsection, we examine more closely the specific roles played by independent contractors and show that the use of independent contractors in these roles is driven by economic efficiency considerations on both the supply- and demand-side of the market: (1) Workers choose independent contracting because it provides flexibility, allows them to capture the rewards of entrepreneurship by building their

[27] See e.g., Katharine G. Abraham and Susan K. Taylor, "Firms' Use of Outside Contractors: Theory and Evidence," *Journal of Labor Economics* 14;2 (July 1996) 394-424.

[28] R. H. Coase, "The Nature of the Firm," *Economica* 4;16. (November 1937) 386-405.

[29] Id. at 392.

[30] Department of Transportation Federal Motor Carrier Safety Administration § 382.107 acknowledges the role of independent contractors driving under another firm's license.

own businesses and provides a means of complying with applicable regulatory requirements; and, (2) the public benefits because independent contracting allows firms to efficiently expand their customer-facing workforce, thereby offering more services to more customers than would otherwise be possible.

A. Extent of Independent Contracting in Financial Services and Insurance

To assess the extent of independent contracting in the financial services and insurance sectors, we gathered and analysed data from several sources. We begin by presenting data from the May 2017 CWS, which reports that there were more than 300,000 workers serving as independent contractors in the financial service sector and in financial service occupations in other sectors. As we next explain, other evidence, including industry data, suggests the true figure is much higher.

Our analysis of the CWS data focuses the use of independent contractors in the Finance and Insurance Sector (NAICs 52) (the "financial services sector"), as well as on workers serving in three specific financial service occupational categories – Personal Financial Advisors ("Financial Advisors"), Securities, Commodities and Financial Services Sales Agents ("Securities Agents"), and, Insurance Sales Agents ("Insurance Agents") – in all industry sectors. Table 4 presents the May 2017 CWS estimates data for these categories.

TABLE 4:
INDEPENDENT CONTRACTORS IN FINANCIAL SERVICES (2017)

Industry and Occupation	Total Employed	Independent Contractors	% Independent Contractors
Finance and Insurance Industry			
Financial Advisors	482,657	55,250	11.4%
Securities Agents	233,852	20,759	8.9%
Insurance Agents	572,182	97,657	17.1%
Subtotal, Financial Occupations	**1,288,692**	**173,666**	**13.5%**
Other Occupational Categories	*6,119,764*	*131,568*	*2.1%*
Subtotal Finance and Insurance Industry	**7,408,455**	**305,234**	**4.1%**
Other Industries with Independent Contractors in Financial Occupations			
Financial Advisors	34,425	18,167	52.8%
Securities Agents	2,534	2,534	100.0%
Insurance Agents	4,228	0	0.0%
Subtotal Other Industries	**41,187**	**20,701**	**50.3%**
Total	**7,449,642**	**325,934**	**4.4%**

Source: U.S. Bureau of Labor Statistics, "Current Population Survey: Contingent Worker and Alternative Employment Arrangements May 2017" (available at https://www.census.gov/data/datasets/time-series/demo/cps/cps-supp_cps-repwgt/cps-contingent.html). Note: There are industries that are not listed here with Financial Advisors, Securities Agents, and Insurance Agents who are not independent contractors.

As the table shows, the CWS estimates show a total of 325,934 independent contractors working either in the financial service sector or in financial service occupations at firms classified in other sectors by BLS. Of these, 305,234 people worked in the financial services sector itself, including 55,250 Financial Advisors, 20,759 Securities Agents, 97,657 Insurance Agents

and 131,568 people in other occupational categories.[31] In addition, 18,167 independent contractors worked as Financial Advisors in the Professional and Technical Services sector and 2,534 independent contractors worked as Securities Agents in the Real Estate, Rental and Leasing sector.

As the table also shows, independent contractors account for high proportions of the workers in these occupations: For example, 13.5 percent of all financial advisors, securities agents and insurance agents in the financial and insurance industry are independent contractors, nearly double the 6.9 percent of workers in the overall U.S. workforce.

These estimates understate both the extent and economic significance of independent contracting in the financial services sector for at least four reasons. First, as discussed above, the CWS data counts only workers for whom independent contracting is their main source of income. However, many independent contractors in the financial service sector work in financial services as a second job. For example, insurance agents can begin selling products on a schedule they control, which enables them to hold full-time employment while exploring whether a career in the industry is best for them.[32]

Second, by only counting independent contracting during a single week (typically the week prior to the interview of the individuals sampled), the CWS data understate the number of independent contractors active at some point during the sampling year.[33] That is, by design, the CWS survey only estimates how many independent contractors were working in a particular week, not the cumulative number of individuals working as independent contractors annually (or even monthly). For the same reason, the survey results fail to capture seasonality. For example, insurance sales exhibit strong seasonality, with new premium sales peaking in the fourth quarter.[34] It is likely that the use of independent contractors is correlated with demand – i.e., that independent contracting in insurance is highest in the fourth quarter of each year. Because the CWS survey was conducted in May, it would not capture these workers.

Third, respondents to the CWS survey who are independent contractors from a legal perspective may incorrectly identify as employees.[35] This possibility of misreporting is particularly salient in the insurance industry as some insurance producers may be independent contractors under common law rules but classified as statutory employees for certain employment tax purposes.[36]

[31] Other occupational categories with significant numbers of independent contractors include first line supervisors (31,847), managers (27,299) and chief executives (24,194), who together account for another 27 percent of ICs working in the sector. It is likely these self-reported job categories include individuals working as entrepreneurs or managers while performing functions similar or identical to those of financial advisors, securities agents and insurance agents.

[32] See e.g., Primerica, *Primerica 2020 Annual Report* at 3. The CWS survey estimates that, even among independent contractors who report that financial services work is their main source of income, 17.4 percent report working part-time rather than full-time.

[33] Department of Labor, *Independent Contractor Status under the Fair Labor Standards Act, Final Rule*, RIN No. 1235-AA34 (January 2021) (hereafter Department of Labor, *Independent Contractor Status under the Fair Labor Standards Act, Final Rule*) at 144.

[34] Aflac, *Form 10-K for the Year Ended December 31, 2020* (February 17, 2021) at 6.

[35] Department of Labor, *Independent Contractor Status under the Fair Labor Standards Act, Final Rule* at 145-146.

[36] Internal Revenue Service, "Statutory Employees" (available at https://www.irs.gov/businesses/small-businesses-self-employed/statutory-employees).

Specifically, many insurance firms "primarily or solely employ statutory employees to distribute their life an annuity products" allowing full-time agents "to be treated as employees for employment tax purposes (whereby they and the company they provide services for are subject to FICA tax), while maintain their independent contractor status (reporting their income on a Schedule C)."[37]

Fourth, as we discuss further in Section IV below, independent contractors in the financial sector often operate their own businesses and hire traditional employees. Prohibitions on independent contracting that made it difficult or impossible to continue operating such businesses would thus have effects on their traditional employees, as well as on the independent contractor entrepreneurs who establish and build equity in the businesses they run.

As noted in Section II, the Department of Labor in its 2020 analysis of independent contracting adjusted the CWS estimates upward by 78 percent.[38] Applying the same adjustment to the financial services sector yields an estimate of 580,163 independent contractors,[39] which is broadly consistent with private sector estimates. For example, the American Council of Life Insurers (ACLI) estimates that there are 704,100 independent agents who sell life insurance products in the U.S.[40] The Financial Services Institute (FSI) estimates that there are over 160,000 independent financial advisers.[41]

To further understand the extent of independent contracting, we also examined publicly available data from the financial reports of selected financial service and insurance firms showing their reliance on independent contractors. Specifically, we gathered and analysed financial reports from 17 major financial services firms which report using independent contracting to assess the extent of their reliance on independent contractors versus traditional employees. The results of our analysis are summarized in Table 5.

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[37] ACLI, *Comments on Proposed Rulemaking on Independent Contractor Status Under the Fair Labor Standards Act,* Department of Labor, Regulatory Information Number 1235-AA34 (October 26, 2020) (hereafter ACLI, *Comments on Proposed Rulemaking*) at 2.

[38] 18.9 million / 10.6 million = 0.783.

[39] 325,934 * 1.783 = 580,325.

[40] ACLI, *Comments on Proposed Rulemaking* at 1, n. 2.

[41] Financial Services Institute, *Comments on Regulatory Information Number 1235-AA34 - Independent Contractor Status Under the Fair Labor Standards Act,* Department of Labor, RIN 1235-AA34 (October 26, 2020) (hereafter FSI, *Comments on Regulatory Information Number 1235-AA34*) at 1.

TABLE 5:
INDEPENDENT CONTRACTORS AT SELECTED FINANCIAL INSTITUTIONS

Firm	Independent Contractors	Total Workforce	% Independent Contractors
Aflac	6,500	11,406	57.0%
Allstate	43,600	85,760	50.8%
American Family	3,000	13,000	23.1%
Ameriprise	7,800	20,100	38.8%
Cetera	3,750	5,250	71.4%
Farmers Insurance	48,000	50,100	95.8%
Guardian	2,500	11,500	21.7%
Horace Mann	1,000	2,490	40.2%
LPL Financial	16,000	20,300	78.8%
MassMutual	7,600	17,574	43.2%
New York Life	12,000	23,000	52.2%
Northwestern Mutual	10,500	17,200	61.0%
Primerica	122,597	125,397	97.8%
Raymond James	5,000	19,800	25.3%
State Farm	19,200	76,700	25.0%
Transamerica	48,032	55,702	86.2%
Western & Southern	84,000	87,800	95.7%
Total	**441,079**	**643,079**	**68.6%**

Source: Company Financial Reports

As the table shows, these 17 firms alone report utilizing a total of 441,079 independent contractors, representing 69 percent of their total workforce. While this data represents only a subset of the industry, it supports our finding that independent contracting plays a very significant economic role in the financial services and insurance sectors, especially for particular firms and particular occupational categories.[42]

B. Economic Efficiency Benefits of Independent Contracting in Financial Services

As the data above show, the primary roles played by independent contractors in the financial services and insurance industries are customer facing: in financial services they serve primarily as securities agents and financial advisors, while in the insurance sector they primarily work as insurance agents. These roles are not mutually exclusive: as individuals may hold multiple certifications and offer a variety of financial and insurance products, including multiple lines of

[42] Because these data are by definition a subset of the overall industry, they understate the number of independent contractors working at financial service firms. On the other hand, as discussed below, some independent contractors may work for multiple firms, meaning that the reported figures may overstate the number of unique individuals working as independent contractors for these firms.

insurance (e.g., life, accident, critical illness, short-term disability, identity protection, homeowners and auto insurance)[43] and a full array of financial advisory services (e.g., financial planning and investment advice, retirement solutions, and wealth management) as well as securities brokerage.[44] Independent contractors in both the financial and insurance sectors are typically paid by commissions and other variable forms of compensation tied directly to performance.[45]

Financial advisors and insurance agents may choose to work with a single firm that offers independent contracting opportunities, employment opportunities, or both. Alternatively, they may choose to create their own firm where they can contract with multiple firms to offer their products. Those choosing to be independent, either with a single firm or multiple firms, each have the opportunity to build and operate their own businesses. Independent financial advisors and insurance agents choosing to work with a single firm benefit by receiving ongoing training and extensive support in terms of business operations and regulatory compliance,[46] which is particularly valuable given the extensive regulatory requirements governing the industry.[47]

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[43] Allstate, *Form 10-K for the Year Ended December 31, 2020* (February 19, 2021) at 3.

[44] LPL Financial Holdings, *Form 10-K for the Year Ended December 31, 2020* (February 23, 2021) at 1-2.

[45] See J. David Cummins & Neil A. Doherty, "The Economics of Insurance Intermediaries," *Journal of Risk and Insurance* 73;3 (2006) 359-396 at 374-375; see also Allstate, *Form 10-K for the Year Ended December 31, 2020* (February 19, 2021) at 3; LPL Financial Holdings, *Form 10-K for the Year Ended December 31, 2020* (February 23, 2021) at 4.

[46] See Securities Industry and Financial Markets Association, *The PRO Act and "ABC" Test Briefing* (Spring 2021) ("Independent financial advisors choose to be independent contractors so that they can own their own business. They determine their hours, buy or rent their office space, employ staff, select and manage vendors, and are typically responsible for their expenses and benefits. This provides great flexibility and can be very rewarding. Notably, independent financial advisors create their own client base and decide the best way to serve them, since they know their clients best. They have branding control and build their own client-service model. Their clients are a valuable asset, and while retention is high, should they choose to affiliate with another broker-dealer, clients often follow."); see also National Association of Insurance and Financial Advisors, *Comments Re: Proposed Rule on Independent Contractor Status Under the Fair Labor Standards Act,* Department of Labor, RIN 1235-AA34 (October 26, 2020) ("For instance, insurance producers – who may opt to operate their own businesses while engaging in substantial contractual relationships with one or more insurance companies – will often work with insurance companies to jointly set forth the terms of their relationship to ensure that the producer can maintain their independence, sell a diverse array of products on behalf of multiple insurance companies, and retain the right to direct or control their work and opportunity for profit or loss. Similarly, NAIFA members who are jointly licensed as insurance producers and broker-dealer representatives and/or independent registered investment advisors may own and operate their own small business, maintain flexibility over their business model and their product offerings, and exert independent control over their business operations."); and, Robert W. Klein, *A Regulator's Introduction to the Insurance Industry,* National Association of Insurance Commissioners (2005) at 26 (hereafter Klein, *A Regulator's Introduction to the Insurance Industry*) (available at https://www.naic.org/documents/prod_serv_marketreg_rii_zb.pdf). Academic evidence indicates that independent status promotes economic efficiency by strengthening the incentives of agents to accurately assess customer risk characteristics. See Laureen Regan and Sharon Tennyson, "Agent Discretion and the Choice of Insurance Marketing System," *Journal of Law and Economics* 39;2 (1996) 637-666 at 645 ("In sum, the independent agent's multiple placement opportunities and ownership of policy expirations reinforce the agent's incentives to obtain risk information about applicants.").

[47] Financial advisors and insurance agents offering securities products are required by law to affiliate with a broker-dealer firm who must supervise them for the protection of investors. Various state insurance laws also require similar supervision when distributing insurance products.

Regardless of whether they represent multiple firms or a single firm, independent contractors in the financial services and insurance industries own and operate their own businesses, including hiring employees, paying expenses, earning profits based on their business success and accumulating equity that can be sold or passed on to heirs. [48] In particular, independent contractors serving as insurance agents and financial advisors and brokers own their client relationships.[49] Independent contractors can also operate their financial or insurance businesses on a part-time basis, sometimes as a second job.

Independent contracting allows firms to engage large numbers of customer-facing sales and service representatives at low cost, with compensation tied directly to effort and commercial success. As a result, it generates significant benefits for both financial service firms and their customers, many of whom would otherwise go unserved. As discussed below, a significant body of evidence suggests that under-consumption of financial advisory services leads to reduced savings and wealth accumulation. In other words, multiple distribution models that include independent contracting results in more job opportunities, products and services for a greater number of individuals.

Those choosing to be independent contractors benefit in multiple ways. First, survey evidence from the CWS, shown in Table 6, indicates that the factors motivating workers to choose independent contracting in the financial sector are similar to those for overall workforce, except that compensation plays a larger role in financial occupations.

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[48] FSI, *Comments on Regulatory Information Number 1235-AA34* at 2 ("As previously discussed, FSI's financial advisor members have an independent contractor relationship with our IBD member firms. As independent contractors, financial advisors own their own business, provide their own start-up capital, experience profit and loss based on their own business success, dictate their own business practices, pay their own operating expenses, have complete flexibility on personnel issues, and report their compensation on Internal Revenue Service (IRS) Form 1099.")

[49] See Klein, *A Regulator's Introduction to the Insurance Industry* at 26 ("Independent agents can represent more than one insurer and 'own' their book of business."); see also Securities Industry and Financial Markets Association, *Comments on Regulatory Information Number 1235-AA34,* Department of Labor, RIN 1235-AA34 (October 26, 2020) at 2 (hereafter SIFMA *Comments on Regulatory Information Number 1235-AA34*) ("Importantly, FAs own the relationship with their clients – the most valuable asset in the securities industry – and an important reason that some individuals choose to operate as an independent contractor. In short, operating as an independent contractor encompasses the flexibility that these entrepreneurs may require to be successful as it provides them the ability to more easily transition their client base when they choose to change the [broker dealer] they affiliate with.").

TABLE 6:
REASONS FOR CHOOSING TO WORK AS AN INDEPENDENT CONTRACTOR, FINANCIAL OCCUPATIONS (2017)

Main Reason	% ICs in Finance Occupations	% ICs in Overall Workforce
Flexibility of schedule	26.1%	26.9%
Enjoys being own boss/independence	24.7%	28.4%
Money is better	21.0%	8.5%
Other personal	5.6%	6.9%
Only type of work could find	5.0%	5.6%
Retired/SS earnings limit	2.3%	1.2%
Other economic	2.3%	4.1%
Other family/personal obligations	2.2%	3.4%
Nature of work/seasonal	0.9%	2.2%
For the money	0.4%	2.6%
All other reasons	0.0%	4.7%
No response	9.5%	5.3%
Total	**100.0%**	**100.0%**

Source: U.S. Bureau of Labor Statistics, "Current Population Survey: Contingent Worker and Alternative Employment Arrangements May 2017" (available at https://www.census.gov/data/datasets/time-series/demo/cps/cps-supp_cps-repwgt/cps-contingent.html). Note: "No Response" includes those that did not respond or did not know.

As the table shows, the top three factors motivating workers to choose independent contracting in financial services jobs are the same as for the workforce overall: flexibility, autonomy and compensation. For financial services, however, compensation plays a much larger role: 21 percent of respondents offer "money is better" as their main reason for choosing independent contracting, compared with just 8.5 percent for the workforce overall. These factors are consistent with the fact, discussed above, that financial sector independent contractors are entrepreneurs who own their own businesses and have an opportunity to both earn profits and build equity.

Moreover, independent contractors operate in a highly competitive market in which financial service firms compete for their business by seeking to offer the most attractive combinations of compensation, benefits and support.

As Aflac explains:

> The Company competes with other insurers and financial institutions primarily on the basis of its products, compensation, support services and financial rating. The Company's sales associates, brokers and other distribution partners are independent contractors and may sell products of its competitors. *If the Company's competitors offer products that are more attractive, or pay higher commissions than the*

Company does, any or all of these distribution partners may concentrate their efforts on selling the Company's competitors' products instead of the Company's.[50]

Similarly, Allstate's 10-K reports that there is "significant competition for producers, such as exclusive and independent agents and their licensed sales professionals."[51]

Another important benefit enjoyed by independent contractors is the ability to lower the costs of complying with substantial regulatory requirements unique to the financial service and insurance industries. Financial advisors, whether employees or independent contractors, must pass a series of exams to be licensed. FINRA-certified financial advisor take the Series 6 or Series 7 exams and the Series 63 exams required by the state in which they expect to work.[52] In addition to being licensed with the FINRA, under the Securities Exchange Act of 1934, independent financial advisors are required to be either a SEC registered broker-dealer or associated with a SEC registered broker-dealer.[53] Working in association with a registered broker-dealer provides an opportunity for independent financial advisors to avoid the expensive and time-consuming undertaking of registering with the SEC. Moreover, the broker-dealer handles the independent financial advisors' licensing and registration with FINRA. Moreover, the affiliated broker-dealer also arranges for the execution and clearing of securities transactions.[54] Therefore, associating with a

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[50] Aflac, *Form 10-K for the Year Ended December 31, 2020* (February 17, 2021) at 20 (emphasis added).

[51] Allstate, *Form 10-K for the Year Ended December 31, 2020* (February 19, 2021) at 25. See also Financial Services Institute, *Comments on Regulatory Information Number 1235-AA34 - Independent Contractor Status Under the Fair Labor Standards Act,* Department of Labor, RIN 1235-AA34 (October 26, 2020) at 4 ("A financial advisor is not captive to their broker-dealer because they can choose to go to another firm at any time. Because there are many IBD firms in a competitive market, independent financial advisors frequently switch broker-dealer affiliations taking their books of business with them. In other words, independent financial advisors do not have to start over when moving firms because it is understood that it is "their business" and "their clients"; the IBD plays a supporting role. This is different from a classic employment relationship where the worker switching employers must start their business anew. Further, the majority of independent financial advisors have aspects of their business that are outside the scope of their relationship with an IBD firm (also called outside business activities or OBAs). Because of the unique relationship between financial advisors and their clients, many clients turn to their financial advisor for additional services such as insurance, accounting, tax preparation, or other financial-related expertise that are outside the scope of the services requiring a financial advisor to hold a securities license and affiliate with a broker-dealer. OBAs provide clients with the convenience of receiving related services from one professional whom they trust and who also has sophisticated knowledge of their entire financial situation. An IBD firm must approve a financial advisor's OBAs, but it does not control them.").

[52] See FINRA, "Qualification Exams," (available at https://www.finra.org/registration-exams-ce/qualification-exams). Investment advisors must also pass the exam. See also, Investopedia, "Series 65," available at https://www.investopedia.com/terms/s/series65.asp).

[53] See U.S. Securities and Exchange Commission, "Guide to Broker-Dealer Registration" (December 12, 2016) (available at https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html). ("We call individuals who work for a registered broker-dealer 'associated persons.' This is the case whether such individuals are employees, independent contractors, or are otherwise working with a broker-dealer. These individuals may also be called "stock brokers" or "registered representatives." Although associated persons usually do not have to register separately with the SEC, they must be properly supervised by a currently registered broker-dealer. They may also have to register with the self-regulatory organizations of which their employer is a member – for example, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a the National Association of Securities Dealers, Inc. ("NASD")) or a national securities exchange. To the extent that associated persons engage in securities activities outside of the supervision of their broker-dealer, they would have to register separately as broker-dealers." See also, FSI, *Comments on Regulatory Information Number 1235-AA34* at 2.

[54] FSI, *Comments on Regulatory Information Number 1235-AA34* at 2.

broker-dealer facilitates independent financial advisors' business operations by providing an easier route through complex financial regulations and gives them access to the tools they need to develop a client base. Although broker-dealers must, in turn, supervise the securities activities of their associated independent financial advisors, this requirement is imposed on them by federal and state regulations, and not a reflection of employer control.[55] To this point, language was added to the IRC by the 1997 Taxpayer Relief Act to clarify that "supervision for compliance with securities laws cannot be interpreted as control for the purpose of an employment relationship."[56]

The insurance sector is also highly regulated, and companies must conform to complex Federal and state laws.[57] At the Federal level, the Federal Insurance Office and Financial Stability Oversight Council supervise insurance companies.[58] However, insurance companies are primarily overseen by state insurance regulators, creating a network of laws and regulations that national firms must navigate.[59] Moreover, agent licensing requirements are also set at the state level.[60] Due to licensing requirements, all insurance agents – both employees and independent contractors – are subject to an array of state regulations in place to protect consumers. These state regulations require that each insurance company supervise the agents selling its products.[61] As a result, for transactions of products such as variable insurance and variable annuity products, independent insurance agents are restricted to working with a single broker-dealer.[62] As with independent financial advisors, due to federal and state regulations, insurance companies are required to play more of a supervisory role over insurance agents than would be expected with a business-to-business relationship. Despite the regulatory requirements for supervision, in 2019, the Sixth Circuit court decided that insurance sales agents at American Family Insurance were in fact independent contractors, not employees.[63]

In summary, the evidence presented above demonstrates that independent contracting plays an essential role in the finance and insurance sectors by providing an economically efficient mechanism for suppliers to expand their customer-facing workforces while satisfying regulatory requirements, thereby reaching customers who would otherwise not have access to financial services. Further, independent contracting allows hundreds of thousands of people to become entrepreneurs in the financial services industry, sometimes as a means of supplementing their income and in other cases by starting and building successful businesses.

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[55] Id. at 2 and 4.

[56] Id. at 5 (citing Conference Report to Accompany H.R. 2014, Taxpayer Relief Act of 1997, Rpt, 105-220 at 457, 105th Congress (July 30, 1997) available at: https://www.congress.gov/105/crpt/hrpt220/CRPT-105hrpt220.pdf).

[57] Allstate, *Form 10-K for the Year Ended December 31, 2020* (February 19, 2021) at 28.

[58] Id. at 29.

[59] ACLI, *Comments on Proposed Rulemaking* at 2.

[60] Ibid.

[61] Id. at 2-3.

[62] Id. at 3.

[63] *Jammal v. American Family Insurance Co*., No. 17-4125 (6th Cir. 2019)

IV. Economic Effects of Restricting Independent Contracting in the Financial Services Sector

In this section we present our analyses of the economic impact of eliminating or substantially restricting the use of independent contracting in the financial service and insurance sectors. The first subsection focuses on the impact on financial advisors and insurance agents who are able to operate their own businesses as a result of their ability to affiliate as independent contractors with securities firms and insurance companies. As we explain, our analysis indicates that employment and other measures of economic activity in both the financial service and insurance sectors would be substantially reduced. In the second subsection, we estimate the impact of restricting contracting on economic output – i.e., on the actual output of financial advisory and insurance services – and the resulting harm that would be done to consumer welfare, especially low- and moderate-income households who would no longer benefit from these services.

A. Effects on Employment and New Business Formation

As discussed above, independent contracting enables workers in financial and insurance occupations to function as entrepreneurs, growing and operating their own businesses, while still complying with stringent financial and insurance sector regulations. Prohibiting or severely limiting independent contracting would damage or eliminate this business model. Our analysis of the impact of such restrictions focuses on the effects on the thousands of small businesses operated by independent contractor entrepreneurs in the finance and insurance industry and their employees.

To estimate the number of businesses owned by independent contractors in the finance and insurance sector, we utilize the U.S. Census Bureau's County Business Patterns (CBP) data to estimate the number of independent contractors in the Insurance Agencies and Brokerages industry (NAICS 524210) and the Investment Advice industry (NAICS 523930) who own businesses that employ at least one person. Both of these industries are subsets of the Finance and Insurance industry classification (NAICS 52) and are defined as firms performing the types of customer-facing activities associated with the occupational categories we have identified as being most closely associated with independent contracting.[64]

[64] The Insurance Agencies and Brokerage Industry "comprises establishments primarily engaged in acting as agents (i.e., brokers) in selling annuities and insurance policies." See NAICS, "NAICS Code Description – 524210," (available at https://www.naics.com/naics-code-description/?code=524210). The Investment Advice Industry "comprises establishments primarily engaged in providing customized investment advice to clients on a fee basis, but do not have the authority to execute trades. Primary activities performed by establishments in this industry are providing financial planning advice and investment counseling to meet the goals and needs of specific clients." See NAICS, "NAICS Code Description – 523920," (available at https://www.naics.com/naics-code-description/?code=523920.) We chose not to include the Portfolio Management Industry (NAICS 523920) (which "comprises establishments primarily engaged in managing the portfolio assets (i.e., funds) of others on a fee or commission basis… have the authority to make investment decisions, and … derive fees based on the size and/or overall performance of the portfolio") in our analysis as we believe this classification is more likely than the other two sectors to include firms (such as mutual fund managers) that are do not rely on the independent contracting model. To the extent there are independent contractors in this sector, our analysis understates the economic impact of removing independent contracting.

The Census' CBP series maintains annual data currently available through 2019 on the number of firms with at least one employee and the number of establishments (physical locations) associated with these firms for each six-digit NAICS industry. Table 7 presents this information for the Insurance Agencies and Brokerages industry and the Investment Advice industry.

TABLE 7:
FIRMS AND ESTABLISHMENTS IN THE INSURANCE AGENCIES AND BROKERAGES AND INVESTMENT ADVICE INDUSTRIES

Industry	NAICS	Firms	Establishments
Insurance Agencies and Brokerages	524210	122,198	135,077
Investment Advice	523930	20,213	22,246
Total		142,411	157,323

Source: U.S. Census Bureau, County Business Patterns.

As we have explained above, insurance agents in the Insurance Agencies and Brokerages may either be employed directly by insurance companies or be independent contractors selling insurance products on behalf of one or more companies,[65] while financial advisers in the Investment Advice industry are required to be employed by, or independent contractors for, a broker-dealer firm registered with the SEC.[66] Thus, the data presented above include both firms operated by independent contractors and insurance companies and broker-dealers that employ insurance agents and financial advisors as traditional employees. Because we are interested in firms operated by independent contractors, we subtract from the totals above the 5,929 insurance companies identified by Insurance Information Institute and the 3,435 registered broker-dealer firms identified by the Financial Industry Regulatory Authority ("FINRA") as operating in the U.S. in 2020.[67] When these figures are subtracted from the 142,411 firms listed in Table 7, we are left with an estimated 133,047 independent contractor-operated firms in these sectors.[68] As the data suggest, the vast majority of these firms are single establishment firms, reflecting an industry structure that is characterized primarily by small businesses.

To assess the employment impact of restricting independent contracting, we next examine data on employment by these firms, which is also available from the CBP. Table 8 presents the CBP data on firm counts and employment in the Insurance Agencies and Brokerages and the Investment Advice industries, by firm size.

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[65] ACLI, *Comments on Proposed Rulemaking* at 1-2.

[66] SIFMA *Comments on Regulatory Information Number 1235-AA34* at 2; SEC, "Guide to Broker Deal Registration," (available at https://www.sec.gov/reportspubs/investorpublications/divisionsmarketregbdguidehtm.html#II).

[67] See Insurance Information Institute, "Facts + Statistics: Industry Overview" (https://www.iii.org/fact-statistic/facts-statistics-industry-overview#:~:text=In%202020%20there%20were%205%2C929,and%20other%20companies%20(1%2C227). FINRA, 2021 FINRA Industry Snapshot at 11.

[68] 142,411 – 5,929 – 3,434 = 133,047.

TABLE 8:
FIRM COUNTS AND EMPLOYMENT BY FIRM SIZE IN THE INSURANCE AGENCIES AND BROKERAGES AND INVESTMENT ADVICE INDUSTRIES (2019)

	Firms				Employment			
Industry	Insurance Agencies and Brokerages	Investment Advice	Total	Share	Insurance Agencies and Brokerages	Investment Advice	Total	Share
<5 Employees	91,911	17,626	109,537	76.9%	167,732	24,494	192,226	22.7%
<10 Employees	112,330	19,171	131,501	92.3%	295,772	34,249	330,021	39.0%
<20 Employees	118,266	19,658	137,924	96.8%	372,235	40,523	412,758	48.8%
<100 Employees	121,285	19,973	141,258	99.2%	475,985	50,867	526,852	62.3%
≤500 Employees	121,853	20,071	141,924	99.7%	547,670	58,843	606,513	71.7%
All Sizes	122,198	20,213	142,411	100.0%	740,319	105,799	846,118	100.0%

Source: U.S. Census Bureau, County Business Patterns.

As explained above, the data above includes insurance carriers and broker-dealers who employ their own agents and advisors as well as firms owned and operated by independent contractors. Removing the categories, we estimated there were approximately 133,047 independent contractor-operated firms. Examining the data above, we note that this figure corresponds closely to the 131,501 firms in these sectors identified as having fewer than 10 employees, and also that it is likely that independent contractor-operated firms are smaller, on average, than insurance companies and broker-dealers. Accordingly, we base our estimate of the employment effect of restricting independent contracting on this cohort. As the table shows, these firms – which would either be eliminated or significantly disrupted by restrictions on independent contracting – employ approximately 330,021 people and account for 39.0 percent of total employment in these sectors.

We believe this figure represents a conservative estimate of the disruption to employment that would result from restricting independent contract for at least three reasons: (1) this analysis is limited to firms with at least one employee and thus fails to capture independent contractors in the financial service sector who are sole proprietors; (2) our analysis also explicitly excludes over 1,500 independent contractor-operated firms that employ more than 10 people;[69] and, (3) our assumption that insurance carriers and broker-dealers are uniformly larger than the independent contractor-operated firms is inherently conservative.[70]

In addition to accounting for a large share of employment in these industries, independent contractor entrepreneurs also contribute to the dynamism of the U.S. financial sector by forming new businesses and, in the process, creating new jobs. The Census' Business Dynamics Statistics (BDS) program maintains detailed data on new business formation and job creation in the U.S. economy.

To estimate new business formations attributable to independent contractor entrepreneurs in the subset of the finance and insurance sectors defined by the six-digit Insurance Agencies and

[69] 133,047 – 131,501 = 1,546.

[70] The estimates of new business formation, job creation and overall output presented below are also conservative for the same reasons.

Brokerages and Investment Advice industries,[71] we first used BDS data to identify the total number of new establishments attributable to firms with less than ten employees in the four-digit sectors containing these industries (5242 and 5239).[72] We then estimated the number of establishments founded at the six-digit industry level, using the percentage of firms accounted for by each six-digit industry within its respective four-digit industry sector based on Census CBP data. Table 9 presents the number of new business establishments (i.e., discrete locations) founded by independent contractor entrepreneurs in the Insurance Agencies and Brokerages and Investment Advice industries by year from 2015 to 2019.[73]

TABLE 9:
GROWTH IN NEW ESTABLISHMENTS DUE TO INDEPENDENT CONTRACTOR ENTREPRENEURS IN THE INSURANCE AGENCIES AND BROKERAGES AND INVESTMENT ADVICE INDUSTRIES

NAICS Industry	NAICS Code	2015	2016	2017	2018	2019	Total
Insurance Agencies and Brokerages	524210	9,014	8,993	9,028	8,831	8,712	44,578
Investment Advice	523930	1,959	1,955	1,923	1,993	1,956	9,787
Total		10,973	10,948	10,952	10,824	10,669	54,365

Sources: U.S. Census Bureau, Business Dynamics Statistics; U.S. Census Bureau, County Business Patterns.

As shown in Table 9, entrepreneur independent contractors were responsible for founding approximately 9,000 establishments annually in the Insurance Agencies and Brokerages industry and approximately 2,000 establishments in the Investment Advice industry from 2015 to 2019. Over the five-year period, we estimate that entrepreneur independent contractors were responsible for founding 44,578 establishments in the Insurance Agencies and Brokerages industry and 9,787 establishments in the Investment Advice industry, yielding a total of 54,365 new establishments. A prohibition against independent contracting in the financial services sector would have eliminated or substantially reduced this entrepreneurial activity.

Using a similar methodology, we also used BDS data to estimate annual job creation from 2015 to 2019 (the most recent year for which BDS data are available) attributable to independent contractor entrepreneurs in these industries.[74] The results are shown in Table 10.

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[71] As discussed above, the unique registration requirements for insurance agents, brokers, and financial advisors make it possible to quantify economic impacts for NAICS industries 524210 and 523930, in which entrepreneurial activity by independent contractors is particularly salient. However, because independent contractors also participate in other industries within the finance and insurance sector, these estimates understate the broader economic impacts for finance and insurance.

[72] The most granular industry-level data available in the BDS are at the four-digit NAICS code level.

[73] There are two measures of new business formation in the BDS, "firm births" and "establishment births." However, only data on establishment births is available by firm size at the four-digit NAICS level, the necessary level of granularity for the analysis in this section. Establishment births include all establishments created as a result of the founding of new firms as well as expansion to new locations by existing firms. Thus, our analysis of new business formation and expansion based on establishment births captures all start-up activity in the relevant industries.

[74] As with new business formations, we first used BDS data to identify total job creation attributable to firms with less than ten employees in the four-digit sectors containing these industries (5242 and 5239). We then estimated job creation at the six-digit industry level, using the percentage of employment accounted for by each six-digit industry within its respective four-digit industry sector based on Census CBP data.

TABLE 10:
JOB CREATION DUE TO INDEPENDENT CONTRACTOR ENTREPRENEURS IN THE INSURANCE AGENCIES AND BROKERAGES AND INVESTMENT ADVICE INDUSTRIES

NAICS Industry	NAICS Code	2015	2016	2017	2018	2019	Total
Insurance Agencies and Brokerages	524210	31,512	31,152	30,942	31,771	29,284	154,661
Investment Advice	523930	3,749	3,763	3,798	4,086	3,850	19,245
Total		35,261	34,915	34,740	35,856	33,134	173,906

Sources: U.S. Census Bureau, Business Dynamics Statistics; U.S. Census Bureau, County Business Patterns.

As the table shows, independent contractor entrepreneurs were responsible for creating approximately 30,000 jobs annually in the Insurance Agencies and Brokerages industry and 4,000 jobs in the Investment Advice industry from 2015 to 2019. Over the five-year period, we estimate that independent contractor entrepreneurs were responsible for creating 154,661 jobs in the Insurance Agencies and Brokerages industry and 19,245 jobs in the Investment Advice industry, yielding a total of 173,906 jobs. Insurance producer and investment adviser entrepreneur independent contractors have thus served as an engine of job creation in the financial services sector which would be eliminated or substantially reduced if independent contracting were prohibited.

B. Effects on Output and Consumer Welfare

Restricting or prohibiting the use of independent contracting in the financial services and insurance industry would reduce the output of these services in a multitude of ways. Firms, especially those that rely heavily on independent contractors to reach customers, would be forced to dramatically alter their business models resulting in significant cost increases. Individuals who currently choose to work as independent contractors because of the flexibility and wealth-creation opportunities it provides would choose other occupations or reduce their overall work effort. Customers who currently are served by independent contractors, especially low- and moderate-income customers who benefit from the part-time, small-scale nature of many independent contractors, would lose access to the financial advisory and related services these licensed individuals provide.

While the sum total of these costs is difficult to quantify with precision, we can quantify a portion of the economic costs by assessing the amount of output associated with the independent contractor-operated firms identified and analysed in the previous subsection, based on data from the Census Bureau's Economic Census. Table 11 presents Economic Census data on total sales for the Insurance Agencies and Brokerages and the Investment Advice industries by firm size.

TABLE 11:
OUTPUT BY FIRM SIZE FOR THE INSURANCE AGENCIES AND BROKERAGES AND INVESTMENT ADVICE INDUSTRIES ($MILLIONS; 2017)

Industry	Insurance Agencies and Brokerages	Investment Advice	Total	Share
<5 Employees	$23,787	$4,500	$28,286	16.3%
<10 Employees	$40,443	$6,492	$46,934	27.1%
<20 Employees	$52,708	$8,317	$61,025	35.2%
<100 Employees	$75,238	$12,982	$88,221	50.9%
≤250 Employees	$86,578	$16,302	$102,880	59.4%
All Sizes	$134,551	$38,781	$173,332	100.0%

Source: U.S. Census Bureau, Economic Census. Note that the largest firm size category available in the Economic Census data is 250 employees.

As in the previous section, we use firms with less than 10 employees as a conservative proxy for the economic impact of entrepreneur independent contractors in the finance sector. Table 11 shows that the total economic output of entrepreneur independent contractors in the finance sector was at least $46.9 billion as of the most recent Economic Census or 27.1 percent of output in the Insurance Agencies and Brokerages and the Investment Advice industries. At least in the short- to medium-term, all of the output from these firms would be disrupted if independent contracting were prohibited.

The overall harm to consumer welfare associated with this reduction in output is also difficult to quantify with precision. However, economic research continues to find evidence that financial literacy, financial advice and financial education are associated with a range of beneficial financial planning and practices by households that lead to long-term financial well-being. As one authoritative review of the economic literature explains, "it seems clear that there are likely to be important benefits of greater financial knowledge, including savvier saving and investment decisions, better debt management, more retirement planning, higher participation in the stock market, and greater wealth accumulation."[75]

Financial advice goes beyond selecting investments to include "a complex set of interrelated sprocesses" [76] New studies on financial advice focus on improvements across a range of advantageous behaviors, such as portfolio diversification, savings discipline, and disciplined behavior during market volatility, as opposed to focusing only on how advice improves returns. [77] Researchers have long found that when households do invest, their investment portfolios typically do not align with the portfolio theory.[78] Investors frequently under-diversify and under-invest in

[75] See Annamaria Lusardi and Olivia S. Mitchell, "The Economic Importance of Financial Literacy: Theory and Evidence," *Journal of Economic Literature* 52;1 (March 2014) 5-44.

[76] Claude Montmarquette and Nathalie Viennot-Briot, "The Gamma Factors and the Value of Financial Advice," *Annals of Economics and Finance* 20-1 (2019) 387-411 at 388.

[77] Ibid.

[78] Frederick Kibon Changwony, Kevin Campbell, and Isaac T. Tabner, "Savings Goals and Wealth Allocation in Household Financial Portfolios," *Journal of Banking and Finance* 124 (2021) (hereafter Changwony *et al* (2021)) at 1.

stocks, despite the well-established long-term risk premium produced by stock market investments. These errors can be reduced by financial advice. For example, one empirical study found "that advised individuals aged 35-54 years making less than $100K per year had 51% more assets than similar non-advised investors."[79] It adds:

> These are typical middle-class households in the middle of their accumulation years. Moreover, advised individuals are better investors across many key dimensions commonly associated with long term investing success. Specifically, we found that compared with individuals without a financial advisor, advised individuals
>
> - Own more diversified investment portfolios
> - Stay invested in the market by holding less cash and cash equivalents
> - Take fewer premature cash distributions; and
> - Re-balance their portfolios with greater frequency to stay in line with their investment objectives and risk tolerance.[80]

Other empirical studies into household investment conclude that when households seek financial advice, "they are more likely to set goals, develop a plan, invest in equities, and hold diversified portfolios."[81] This effect is the most pronounced for households that start with very limited savings goals.[82] Researchers also found a significant increase in fundamental financial activities, such as saving money, when people learn about goal setting and receive financial education and counselling.[83] From a psychological perspective, with financial advice households also experience a decrease in anxiety related to volatile markets, complex financial products, and economic crises.[84]

Thus, while we are unable to quantify with precision the consumer harm that would result from the reduced availability of financial services and financial advice, the evidence demonstrates it would be substantial.

V. Summary and Conclusions

In this paper we have assessed the evidence on the economic role of independent contracting in the U.S. economy overall and, in particular, in the financial services sector. We find that independent contracting plays an essential economic role in financial services by providing an economically efficient approach to supplying customer-facing services such as financial advice, securities sales and insurance while complying with stringent financial regulatory requirements. Independent contracting also supports a large and thriving entrepreneurial ecosystem which

[79] Oliver Wyman, *The Role of Financial Advisors in the US Retirement Market* (July 10, 2015) at 2.
[80] Ibid.
[81] Changwony *et al* (2021) at 4.
[82] Id. at 19.
[83] See, e.g., F. Carpena, S. Cole, J. Shapiro, and B. Zia, "The ABCs of Financial Education: Experimental Evidence on Attitudes, Behavior, and Cognitive Biases," *Management Science* 65;1 (2019) 346–369.
[84] Changwony *et al* (2021) at 4.

facilitates new business formation, job creation and wealth accumulation. Changes in laws or regulations that substantially limited or prohibited the use of independent contracting in financial services would harm whose who currently work as independent contractors, harm consumers by reducing their financial literacy and thus their ability to accumulate wealth and save for retirement, and harm the economy overall.

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