THERE'S A LAW FOR THAT: EXAMINING THE NEED FOR PERSONAL FINANCE EDUCATION LEGISLATION AND ITS IMPACT ON RETIREMENT IN A POST COVID-19 WORLD

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AN INTRODUCTION TO A PROBLEM WORTH FIXING

If you ask a high school student what they are thinking about for their future, their answer probably would not be retirement. Instead, they might respond they are more concerned about financing their college education. While understandable, this is worrisome given that many individuals state we are in a "retirement crisis."[1] Specifically, there is fear that people are not saving enough for retirement, concern that inflation is deterring people from contributing to their private or employer-sponsored accounts, and uneasiness that Social Security will be unable to provide to everyone its promised benefits starting in 2034.[2] Additionally, the job of the average citizen has changed substantially, with temporary work rising in popularity. While there have been many proposed solutions to these problems, there is one problem that policymakers do not focus on enough: America's financial literacy rate.

There are many concerns regarding how individuals understand—or fail to understand—the various retirement options available to them.[3] Recent studies indicate many American workers do not possess knowledge of basic financial concepts, with one survey estimating only fifty-seven percent of Americans are financially literate.[4] Considering many schools in the United States do not teach retirement saving or any kind of personal finance, these studies make sense.[5] Financial literacy is also not exclusive to one age group. While a person's level of financial literacy tends to increase as they age, it also tends to decrease later in life as a result of natural human decline.[6] Thus, fixing any broad societal financial literacy problem is no easy feat; fixing this problem for older workers getting

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1 *See* HEATHER KERRIGAN, THE RETIREMENT CRUNCH 4 (CQ Press 2019) (quoting average Americans who are worried they have not saved enough for retirement and that government funding may deplete soon).

2 *Id.* at 8.

3 *See* Doug McMillon & John Hope Bryant, *Financial Literacy Education Could Help Millions of Americans*, TIME (June 10, 2022, 10:53 AM), https://time.com/6186290/americans-financial-literacy/ [https://perma.cc/PR6L-A56Y].

4 OSCAR CONTRERAS & JOSEPH BENDIX, FINANCIAL LITERACY IN THE UNITED STATES 8 (Milken Inst. 2022), https://milkeninstitute.org/report/financial-literacy-united-states [https://perma.cc/Y38J-YX5Z] (In determining the percentage of Americans that are financially literate, Standard & Poor factored in knowledge of four basic financial concepts: risk diversification, numeracy, inflation, and compound interest.).

5 *See* Shahar Ziv, *Should High Schools Teach Financial Literacy? More States Say Yes*, FORBES (Oct. 6, 2022, 8:15 AM), https://www.forbes.com/sites/shaharziv/2022/10/06/should-high-schools-teach-financial-literacy-more-states-say-yes/?sh=52bb9efd4c56 [https://perma.cc/JAK2-XU4C] ("Numerous studies have shown that high school students. . . display a strikingly low level of financial sophistication.); *see also* Dr. Beth Bean, *Are Americans Financially Educated on Retirement Savings?*, SOC. SEC. ADMIN., https://blog.ssa.gov/are-americans-financially-educated-on-retirement-savings/ [https://perma.cc/B4FQ-UAD7] (Nov. 2, 2023) ("80% of US adults said they wish they were required to complete a . . . course focused on personal finance education . . . and 88% think their state should require a . . . course for high school graduation.").

6 Michael S. Finke et al., *Old Age and the Decline in Financial Literacy*, 63 MGMT. SCI. 213, 214 (2017).

ready to leave the workforce might require a different solution than what is necessary for younger workers just entering the workforce.[7]

While solving any financial literacy deficit will not be easy, fixing this problem is a worthy cause and can have a positive impact on retirement outcomes, especially as the employment landscape continues to evolve.[8] In recent years, many people have turned away from traditional jobs in favor of other work due in part to the COVID-19 pandemic.[9] The so-called gig economy has offered numerous benefits to many groups looking for flexibility, including mothers needing to stay at home with children because of childcare access issues, students supporting themselves during college, and many more.[10]

While the gig-economy has offered benefits, many gig workers do not have equitable access to retirement.[11] Employment can be an integral component of an individual's retirement planning, as the income one earns from employment drives most of that individual's financial decisions, and employers may offer retirement benefits.[12] That said, gig workers often do not work for employers who offer them retirement benefits; in fact, many of these workers are not even considered "employees" but rather "independent contractors," who often do not have access to an employer-sponsored plan.[13] This access gap not only reflects a socioeconomic disparity but, because many of these workers also tend to be members of

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7 *See, e.g.*, Jing Jian Xiao et al., *Age Differences in Consumer Financial Capability*, 39 INT'L J. CONSUMER STUD. 1, 3–4 (2015).

8 For further discussion of how employment in America has shifted over the past century, see *infra* notes 18–38 and accompanying text.

9 *See generally* Alison Aughinbaugh & Donna S. Rothstein, *How Did Employment Change During the COVID-19 Pandemic? Evidence From a New BLS Survey Supplement*, U.S. BUREAU OF LAB. STAT. (Jan. 4, 2022) (exploring changes to the employment landscape during COVID-19).

10 For further discussion on how the pandemic has dramatically altered the workforce and how it has impacted various groups, see *infra* notes 31–38 and accompanying text.

11 *See* Alessandra Malito, *Gig Workers Are Worried About Running out of Money in Retirement–Here's How to Take Initiative*, MARKETWATCH (Sept. 21, 2022, 10:08 AM), https://www.marketwatch.com/story/gig-workers-are-worried-about-running-out-of-money-in-retirement-heres-how-to-take-initiative-11663769329 [https://perma.cc/6636-CNRL] (exploring retirement savings issues gig workers face and how most of these workers do not have access to employer-provided retirement plans).

12 *See* Derek Thompson, *Workism Is Making Americans Miserable*, THE ATLANTIC (Feb. 24, 2019), https://www.theatlantic.com/ideas/archive/2019/02/religion-workism-making-americans-miserable/583441/ [https://perma.cc/4S5Y-UTCG]; *see also* Rebecca Riffkin, *In U.S., 55% of Workers Get Sense of Identity From Their Job*, GALLUP (Aug. 22, 2014), https://news.gallup.com/poll/175400/workers-sense-identity-job.aspx [https://perma.cc/2CN9-L9Q6].

13 Burton J. Fishman, *DOL and NLRB Agree 'Gig' Workers are Independent Contractors*, 16 FED. EMP. L. INSIDER 1 (2019) (exploring worker classification issues gig workers previously faced). *But see* Michael T. Maroney et al., *New Proposed Rule on Independent Contractors to Impact Trucking, Gig Economy and Other Companies*, HOLLAND & KNIGHT TRANSP. BLOG (Oct. 14, 2022), https://www.hklaw.com/en/insights/publications/2022/10/new-proposed-rule-on-independent-contractors-to-impact-trucking-gig [https://perma.cc/859P-JSXP] (noting the Biden Administration's recent proposed rule to change the independent contractor definition).

vulnerable populations, this gap also unintentionally perpetuates existing racial,[14] ethnic,[15] gender,[16] and age disparities.[17]

This Article addresses how requiring personal finance education in schools can narrow the retirement access gap for young people entering an ever-evolving workforce by first looking to evidence that demonstrates the effectiveness of personal finance education. From there, it specifically argues that states should adopt legislation reflecting both the finance course requirements found in many Alabama high schools and Idaho's pending financial literacy general public initiative. Part II provides a background on the current state of employment in the United States, as well as the gig economy, and how those workers save for retirement. Part III then provides a survey of education law and financial literacy legislation both at the federal and state levels. From there, Part IV addresses and critiques proposals to fix the weak financial literacy rate, analyzing evidence regarding personal finance education's effectiveness and assessing whether such education can help retirement outcomes. Part V opines that personal finance education can have a positive effect, even if that effect is not directly tied to retirement. The Article then concludes by recommending a hybrid of Alabama's high school graduation requirement and Idaho's general public initiative to serve as model legislation and noting other aspects to consider in improving retirement outcomes.

I. YOUR DRIVER IS APPROACHING: A BACKGROUND ON THE HISTORY OF EMPLOYMENT AND RETIREMENT

A. History of Employment in America

While employment in the United States has continuously evolved throughout the nation's history, gig work has been a fundamental part of American society since the early 1900s.[18] Essentially, the differences between now and the past

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14 *See* David C. John, *Disparities for Women and Minorities in Retirement Saving*, BROOKINGS (Sept. 1, 2010), https://www.brookings.edu/articles/disparities-for-women-and-minorities-in-retirement-saving/ [https://perma.cc/2377-QCCY] (noticing racial and gender differences in labor force, particularly with respect to those who choose part-time work).

15 *See* Rep. Rosa L. DeLauro & National Journal, *To Strengthen Retirement Security, Close the Pay Gap*, THE ATLANTIC (Aug. 5, 2014), https://www.theatlantic.com/politics/archive/2014/08/to-strengthen-retirement-security-close-the-pay-gap/431187/ [https://perma.cc/SW8M-K3P9] (examining how gender pay gap has perpetuated struggles women face when saving for retirement).

16 *See* Arianne Renan Barzilay, *Discrimination Without Discriminating? Learned Gender Inequality in the Labor Market and Gig Economy*, 28 CORNELL J.L & PUB. POL'Y 545, 549–50 (2019); *see also* John, *supra* note 14.

17 U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105342: OLDER WORKERS: RETIREMENT ACCOUNT DISPARITIES HAVE INCREASED BY INCOME AND PERSISTED BY RACE OVER TIME (2023), https://www.gao.gov/assets/gao-23-105342.pdf [https://perma.cc/2ZSP-NLVL] ("Households of all other races than White and households with children had about 28 and 20 percent smaller [retirement] balances, respectively.").

18 Meghna Chakrabarti, *The Origin Story of the Gig Economy*, WBUR, https://www.wbur.org/onpoint/2018/08/20/gig-economy-temp-louis-hyman [https://perma.cc/XD89-RL38] (Aug. 20, 2018) (providing history of gig economy and employment in the United States).

are the options available for gig work. The past century or so, though, has witnessed drastic changes in the employment landscape regarding workers' rights, the kinds of work available to citizens, and other critical employment benefits.[19]

It is a misconception that gig work is a new concept solely associated with modern-day employment: the idea that an individual would take multiple jobs to generate income is not exclusive to the present.[20] Indeed, many people have taken sporadic employment of all kinds throughout the nation's history.[21] In fact, many historians have noted that the gig economy started in the early 1900s, with jazz musicians using the word "gig" to describe their performances, which were essentially the jobs they relied upon to generate income.[22] The Great Depression later made it virtually impossible for approximately twenty-five percent of the population at the time to find steady work; much of the work that was available during this time was not guaranteed to be long-lasting because companies faced major budget shortfalls and could not afford to keep workers.[23]

For example, the farming industry illustrates an institution facing such challenges during this period. The Depression's impacts of "falling prices" and other non-economic challenges, such as drought, forced farmers to sell their land.[24] Because steady work was hard to come by, many farmworkers who worked exclusively for those farmers instead migrated from farm to farm and did not have one long-lasting employer.[25]

Not much later, the 1940s also saw an increase in the availability of and participation in temporary work.[26] What are now known as "temp agencies" began to rise, eventually becoming a critical institution in the nation's economy.[27] About fifty years later, one in ten Americans held jobs in "alternative employment." The rise of the Internet from the late 1990s through the 2000s has only served to increase individuals' ability to find part-time work, as many jobs only require that workers have access to a laptop and a reliable Wi-Fi or Ethernet connection.[28] Direct selling as a means of generating income has also played an

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[19] For further discussion of changes in employment patterns, see *infra* notes 22–37 and accompanying text.

[20] Micha Kaufman, *The Gig Economy: The Force that Could Save the American Worker?*, WIRED, https://www.wired.com/insights/2013/09/the-gig-economy-the-force-that-could-save-the-american-worker/ [https://perma.cc/V6GW-AS22] (last visited Oct. 10, 2022).

[21] Chakrabarti, *supra* note 18.

[22] Brian Wallace, *The History and Future of the Gig Economy*, LINKEDIN (Dec. 8, 2019), https://www.linkedin.com/pulse/history-future-gig-economy-brian-wallace#:~:text=Since%202009%2C%20%E2%80%9Cgig%20economy%E2%80%9D,gig%E2%80%9D%20to%20refer%20to%20performances [https://perma.cc/Z8BD-BB2B].

[23] Gabrielle Pickard-Whitehead, *The History and Future of the Gig Economy*, SMALL BUS. TRENDS, https://smallbiztrends.com/2019/11/the-history-and-future-of-the-gig-economy.html [https://perma.cc/8MKF-JWJ3] (Feb. 6, 2022).

[24] *Id.* (detailing the impact Great Depression had on farmworkers, creating more instances of temporary work).

[25] *Id.*

[26] *Id.* (exploring the rise of temporary agencies for people with clerical skills to find temporary employment).

[27] *Id.*

[28] *See id.*

integral part in modern history, as demonstrated by individuals contracting with companies like Mary Kay, Tupperware, and Avon.[29]

Today, gig work has become much more prevalent thanks in part to social media and smartphone apps.[30] Companies like Uber and DoorDash have made it easy for those looking for temporary, part-time work.[31] Importantly, gig workers have played a vital, if not "essential," role during the recent COVID-19 pandemic, especially in 2020 when most workplaces shut down and many individuals worked exclusively from home.[32] The early months of the pandemic saw an unprecedented reliance on gig workers as people felt uncomfortable frequenting establishments like grocery stores and restaurants.[33] Many employers also laid off employees because of pandemic-related budget shortages, forcing many unemployed individuals to seek alternatives in the gig economy.[34]

According to a 2021 Pew Research study, those who currently or who have recently performed gig work constitute about nine percent of the US population.[35] The percentage of those who have ever used online platforms to generate income, like Uber and DoorDash, is slightly higher at sixteen percent.[36] The vast majority of those who have performed gig work include adults under the age of thirty, those of Hispanic descent, and those with lower incomes.[37] Evidence also shows that women have increasingly performed gig work compared to what women had

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29 *See The Business of Direct Selling*, AMERICAN EXPERIENCE, PBS, https://www.pbs.org/wgbh/americanexperience/features/tupperware-direct/ [https://perma.cc/J8MT-N2RD] (last visited Nov. 20, 2022) (exploring history of direct selling in the country, noting historical prevalence of women in the direct selling market). Notably, the Direct Selling Association, the leading trade association in the United States, opposes current efforts to presume workers are employees. *See Protecting Independent Contractor Status Is Key to Direct Selling*, DIRECT SELLING ASS'N, https://www.dsa.org/docs/default-source/advocacy-resource-page/independent-contractor-position-paper.pdf?sfvrsn=e966cca5_5 [https://perma.cc/SP3W-A6CQ] (last visited Nov. 20, 2022); Richard Reibstein, *Direct Selling and Door-to-Door Sales Under Attack: May 2021 IC News Update*, JDSUPRA (June 11, 2021), https://www.jdsupra.com/legalnews/direct-selling-and-door-to-door-sales-6279805/ [https://perma.cc/KFH6-MJS5].

30 *See generally* Lauren M. Thompson, *Striking a Balance: Extending Minimum Rights to U.S. Gig Economy Workers Based on E.U. Directive 2019/1153 on Transparent and Predictable Working Conditions*, 31 IND. INT'L & COMP. L. REV. 225, 225–27 (2021) (arguing for the United States to enact law based on recent E.U. Directive).

31 *But see* Kate Conger et al., *Pandemic Erodes Gig Economy Work*, N.Y. TIMES, https://www.nytimes.com/2020/03/18/technology/gig-economy-pandemic.html [https://perma.cc/Y9D3-Y4UW] (Apr. 4, 2020) (emphasizing that gig workers became more essential than ever before during the pandemic and arguably lost flexibility benefits).

32 *Id.*

33 Which had a chain reaction, forcing business owners who catered to working commuters to shut down and enter the gig economy. *Id.*

34 *Id.* (discussing the many citizens who looked to gig work in the early stages of the COVID-19 pandemic at their own peril).

35 Monica Anderson et al., *The State of Gig Work in 2021*, PEW RSCH. CTR. (Dec. 8, 2021), https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/ [https://perma.cc/YE9P-M9MK].

36 *Id.*; Risa Gelles-Watnick & Monica Anderson, *Racial and Ethnic Differences Stand Out in the US Gig Workforce*, PEW RSCH. CTR. (Dec. 15, 2021), https://www.pewresearch.org/fact-tank/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/ [https://perma.cc/9QV4-3ETM].

37 Anderson et al., *supra* note 35.

performed in prior years because of childcare issues during the COVID-19 pandemic.[38] Ultimately, while the gig economy is not new, it has evolved into a different employment scheme from its roots in the 1900s and has brought along new issues to contemplate, one of which involves retirement.

B. Retirement Background and How Gig Workers Save for Retirement

In the United States, there are three general sources of retirement income, including individual savings, employer benefits, and government programs.[39] These three sources create a "three-legged stool."[40] Income from all three often yields secure retirement benefits, especially in the face of uncertainty regarding Social Security.[41]

Employers offer retirement savings plans to their employees as a benefit as a way to entice workers.[42] Many companies today offer plans to their employees, with some even offering generous matching programs.[43] As a way to regulate these plans, the Employee Retirement Income Security Act (ERISA)[44] serves to ensure employer-sponsored retirement plans meet basic standards for private employers.[45] It is important to note that ERISA does not protect workers without

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38 *Id.*; *see also* Jack Kelly, *Indeed Study Shows Women Took Gig Work, Preferring Flexibility Over Stability During the Pandemic*, FORBES (Mar. 8, 2022, 10:30 AM), https://www.forbes.com/sites/jackkelly/2022/03/08/indeed-study-shows-women-took-gig-work-preferring-flexibility-over-stability-during-the-pandemic/?sh=749443003ccf [https://perma.cc/FWP2-SW34] (noting pandemic's impact on women); Caroline Lewis Bruckner & Jonathan Barry Forman, *Women, Retirement, and the Growing Gig Economy Workforce*, 38 GA. ST. U. L. REV. 259, 376–77 (2022) (highlighting the pandemic's impact on women, regarding retirement savings in addition to the childcare issues caused by the pandemic).

39 *See* Michael J. Graetz, *The Troubled Marriage of Retirement Security and Tax Policies*, 135 U. PENN. L. REV. 851, 856–59 (1987) (examining the "tripartite" retirement income system).

40 KERRIGAN, *supra* note 1, at 6 ("Retirement security traditionally was focused on the idea of a three-legged stool, where the retiree relies on pension benefits, Social Security and individual savings.").

41 *See id.* Because this Article addresses access to employment-related retirement savings, it will not focus on Social Security.

42 *See* James A. Wooten, *"The Most Glorious Story of Failure in the Business": The Studebaker-Packard Corporation and the Origins of ERISA*, 49 BUFF. L. REV. 683, 686–88 (2001) (outlining early history of employer-sponsored retirement plans); *see generally* Samuel Estreicher & Laurence Gold, *The Shift from Defined Benefit Plans to Defined Contribution Plans*, 11 LEWIS & CLARK L. REV. 331, 331–32 (2007) (explaining reasons employers shifted from defined benefit to defined contribution plans).

43 *See generally* William A. Nelson, *Allowing States to Help Workers Save for Retirement: Department of Labor's Proposed Rulemaking That Provides a Safe Harbor for State Savings Programs Under ERISA*, 18 MARQ. BEN. & SOC. WELFARE L. REV. 65, 71–72 (2016) (mentioning how state payroll deduction savings programs fit into the employer-sponsored retirement plan scheme).

44 Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified primarily in scattered sections of 26 U.S.C. and 29 U.S.C.) (providing provisions protecting employer-sponsored pension plans).

45 *Id.* (setting standards employers must follow in offering and overseeing plans they offer to employees); *see generally* Wooten, *supra* note 42, at 739 (providing background on ERISA and noting President Ford signed ERISA into law in 1974).

access to an employer-sponsored retirement account.[46] Thus, workers relying on a different retirement model other than the common three-legged stool must rely on individual oversight over their own 401(k) or alternative individual account as well as federal oversight over government benefits such as Social Security.[47]

While access to an employer-sponsored plan can be helpful, there are still many choices individuals must make. As mentioned previously, a major component of the modern-day retirement scheme stems from what employers are willing to provide their employees. It is important to note that employers are not required to provide their employees any retirement benefits whatsoever. Employers that do, though, often provide a defined contribution plan in the form of a 401(k) account (or an alternative account, such as a 403(b) plan for nonprofit organizations)[48]. Further, larger employers typically offer a matching program, where an employer offers to match an employee's contributions up to a certain percentage.[49] Those with employer-sponsored plans do not have as many choices to make, as plan fiduciaries typically handle more sophisticated aspects of retirement accounts; however, those individuals still need to decide how much they want to contribute, which option from a menu of options to choose from, and how to allocate their investments.[50]

Because gig workers are often classified as independent contractors, they tend to not have as much access to the same "securit[ies]" and "benefits" as those who are considered "employees."[51] That said, gig workers do have some options in saving for retirement.[52] For example, gig workers can open an individual retirement account (IRA) or a Roth IRA, and they can even open a solo 401(k) or, if

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[46] *See generally* Tracy Snow, Note, *Balancing the ERISA Seesaw: A Targeted Approach to Remedying the Problem of Worker Misclassification in the Employee Benefits Context*, 79 GEO. WASH. L. REV. 1237, 1240–41 (2011) (introducing workers misclassification issues under ERISA).

[47] This is not to say Congress has not created any laws specifically protecting Individual Retirement Accounts. *See, e.g.*, 26 U.S.C. § 408 (2018) (providing requirements and limitations on individual retirement accounts); 26 U.S.C. § 408A (2018) (providing regulations related to Roth IRAs). As there are various laws as part of the tax code regulating various individual retirement accounts, the IRS plays a critical role in overseeing and regulating these accounts. *See* Mary Podesta & Elena Barone Chism, *The Comprehensive Regulatory Framework Around IRAs*, ICI: INV. CO. INST. (July 28, 2011), https://www.ici.org/viewpoints/view_11_ira_regs [https://perma.cc/FX24-BBCN] (acknowledging IRS's prevalent role in regulating individual retirement accounts).

[48] *See* Christy Bieber, *Employer-Sponsored Plans for Retirement*, THE MOTLEY FOOL, https://www.fool.com/retirement/plans/employer-sponsored/ [https://perma.cc/UE7T-J3XP] (Nov. 21, 2023, 4:28 PM).

[49] *See id.*

[50] Though it is generally easier for individuals obtaining a retirement benefit from their employer, there are still challenges those individuals face. Thus, this Article also posits that personal finance education can help non-gig workers as well.

[51] *See* Adejoke Adeboyejo, *Creating Security for Gig Economy Workers*, ADP (Feb. 1, 2022), https://rethinkq.adp.com/security-gig-economy-workers/ [https://perma.cc/3VZX-CDEJ] (exploring ways to help gig economy workers secure benefits like healthcare and retirement savings plans).

[52] *See* Robin Hartill, *6 Ways Gig Workers Can Invest for Retirement*, THE MOTLEY FOOL (Apr. 8, 2021, 5:45 AM), https://www.fool.com/investing/2021/04/08/6-ways-gig-workers-can-invest-for-retirement/ [https://perma.cc/HHY7-6K2U]; *see generally* Paul M. Secunda, *Uber Retirement*, 2017 U. CHI. LEGAL F. 435, 452–58 (2018) (proposing additional retirement plan option of multiple employer plans).

the worker exceeds a Roth IRA's income limitations, a Simplified Employee Pension IRA (SEP-IRA).[53] Essentially, someone who solely does gig work of any kind is the driver of their own retirement savings, meaning those workers must create individual accounts.[54] As more states have implemented laws guaranteeing state-sponsored private-sector retirement savings programs, there are now even more opportunities for gig workers to participate in retirement plans.[55]

While the retirement account options described above provide gig workers the opportunity to save for retirement, many gig workers feel a sense of intimidation when it comes to non-employer sponsored plans.[56] For one, financial planning is extremely individualized, as how much one saves for retirement depends on how much income that person generates.[57] Evidence suggests that those with lower incomes are less likely to be close to financial advisors compared to those with higher incomes and who are deemed "employees."[58] Cost may also pose a barrier, as it can be the driving reason why a gig worker does not seek out a financial advisor.[59] Further, gig workers often generate different amounts of income per pay period compared to those working for an employer who offers a 401(k) plan and a matching program, making it difficult for gig workers to determine how much to save for retirement.[60] There is also evidence demonstrating gig

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53 *See* Harthill, *supra* note 52.

54 *Id.*

55 *See* Austin R. Ramsey, *Growing Pool of Gig Workers Left Out of State Retirement Plans*, BLOOMBERG L. (May 3, 2022, 6:00 AM), https://news.bloomberglaw.com/daily-labor-report/growing-pool-of-gig-workers-left-out-of-state-retirement-plans [https://perma.cc/6JRK-XQX8] (noting recent state-sponsored retirement plans and how some exclude independent contractors and gig workers). As of July 2023, there are seventeen states and two cities that have established state retirement programs. *See* Debbie Tam, *Trendspotting: State-Run Retirement Programs*, THOMSON REUTERS: TAX & ACCOUNTING (July 20, 2023), https://tax.thomsonreuters.com/news/trendspotting-state-run-retirement-programs/ [https://perma.cc/EX6S-XZM5].

56 *See* Malito, *supra* note 11 (explaining worries gig workers feel regarding saving for retirement).

57 *See, e.g.*, *A Retirement Plan That's All About You*, VANGUARD, https://investor.vanguard.com/investor-resources-education/retirement/planning-retirement-plan-advice [https://perma.cc/38QZ-79P7] (Sept. 24, 2023) (suggesting retirement planning depends on an individual's specific circumstance).

58 *See* Michelle Fox, *99% of Americans Don't Use a Financial Advisor–Here's Why*, CNBC (Nov. 11, 2019, 9:43 AM), https://www.cnbc.com/2019/11/11/99percent-of-americans-dont-use-a-financial-advisor-heres-why.html [https://perma.cc/VDS9-D4ZR] (citing reasons such as increased access to advice online and rising loan debt as contributing to reason people do not seek professional advice); *see generally* Ben Le Fort, *Why Rich People Get Professional Advice and You Don't*, THE MAKING OF A MILLIONAIRE (June 11, 2020), https://themakingofamillionaire.com/why-rich-people-get-professional-advice-and-you-dont-6b840473147f [https://perma.cc/X598-89ZR] (emphasizing financial advisors typically only work for those who can afford them and proposing a new model for financial planning).

59 *See generally* Julie Pinkerton, *What to Know About Financial Advisor Fees and Costs*, U.S.NEWS: MONEY (July 27, 2023, 4:42 PM), https://money.usnews.com/financial-advisors/articles/financial-advisor-fees-and-costs [https://perma.cc/58KR-TQQV] (noting financial advisors on average cost $193 per hour in 2022).

60 *See generally* Ray Martin, *How Gig Economy Workers Can Save for Retirement*, CBS NEWS: MONEY WATCH (July 3, 2019, 1:34 PM), https://www.cbsnews.com/news/how-gig-economy-workers-can-save-for-retirement/ [https://perma.cc/33WD-348Q] (exploring ways gig economy workers can save and set aside percentage of income toward retirement).

workers either are not aware of their retirement account options or, if they are, do not feel adequately prepared to create an account on their own.[61]

Additionally, gig workers with retirement accounts may face other barriers in managing them. Setting up a retirement account often requires individuals to connect with a broker, brokerage firm, or bank; while there are options available online, a simple Google search for "how to set up a retirement account" offers a plethora of results and can be overwhelming for those who do not know where to look first. Moreover, individuals must decide which kind of account they want to open and how to invest their money. Virtual robo-advisors can help those who want to be hands-off in their investing, though individuals might be skeptical of this technology, especially if they are older.[62] Once an individual has decided where to open an account, the individual must then input personal details such as their social security number, birth date, employment information, and contact information. Essentially, while there has been progress in including gig workers in retirement schemes, gig workers still face a myriad of issues accessing retirement savings.

II. A POTENTIAL SILVER BULLET: AN OVERVIEW OF EDUCATION LAW AND FINANCIAL LITERACY LEGISLATION

As this Article previously demonstrates, there are serious issues regarding how gig workers might feasibly save for retirement. Many gig workers are not aware of their retirement savings options.[63] This sentiment does not only ring true for gig workers, but also for many Americans who work traditional jobs with access to an employer-provided retirement plan.[64] Indeed, the Standard & Poor's Global Financial Literacy Study shows that only fifty-seven percent of Americans are financially literate.[65] In response to this lack of awareness, legislators across

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[61] Jodie Norquist, *Encouraging Retirement Saving in the Gig Economy*, ASCENSUS (Aug. 18, 2022), https://thelink.ascensus.com/articles/2022/8/17/encouraging-retirement-saving-in-the-gig-economy [https://perma.cc/6J8D-G852] (noting gig workers are not necessarily sure what options they have to save for retirement and may need guidance).

[62] Erin El Issa, *Humans vs. Robots: Americans Prefer Financial Advisors over Algorithms*, NERDWALLET, https://www.nerdwallet.com/article/investing/robo-advisor-survey [https://perma.cc/3FV7-VN4V] (Mar. 17, 2020) (eighty-four percent of Americans would rather work with a human advisor than a robo-advisor). *But see* Press Release, Oracle, Global Study: People Trust Robots More Than Themselves with Money (Feb. 10, 2021), https://www.oracle.com/news/announcement/money-and-machines-021021/ [https://perma.cc/M2MK-A7LS] (One study shows sixty-seven percent of consumers and business leaders trust a robot more than a human to manage finances due to anxiety surrounding financial complexity. Seventy-seven percent of business leaders trust robots over their own finance teams.).

[63] For discussion of awareness issues, see *supra* notes 58–63 and accompanying text.

[64] For discussion of financial literacy education across the country, see *infra* notes 99–119 and accompanying text.

[65] LEORA KLAPPER ET AL., FINANCIAL LITERACY AROUND THE WORLD: INSIGHTS FROM THE STANDARD & POOR'S RATINGS SERVICES GLOBAL FINANCIAL LITERACY SURVEY 25 (Standard & Poor 2016).

the nation have introduced legislation requiring financial literacy programs in high schools.[66]

Next Gen Personal Finance (Next Gen), the nation's leading nonprofit advocacy organization for personal finance education, has evaluated current state standards for all fifty states and the District of Columbia.[67] Importantly, the organization ranks schools based on whether personal finance coursework is required, offered as an elective, embedded in another course, or not offered at all.[68] According to Next Gen, schools requiring personal finance as a graduation requirement meet the "Gold Standard." These schools require "all students take a standalone, one semester personal finance course" before graduating high school.[69] Out of approximately 24,000 public high schools in the country, only about 1,313 schools currently meet this standard, signifying a potential opportunity for legislation to play a key role in increasing access to personal finance education and, in turn, improving the country's financial literacy rate.[70]

A. National Programs

There have been various attempts, both legislatively and non-legislatively, to nationalize public education in the United States over the past two decades.[71] Recognizing that not all students attending public schools in the country have the same access to quality education, these proposals have set standards to make public education equitable. While the federal government has not mandated personal finance education, it has increasingly prioritized this education over the past seventy years and has actively encouraged states to develop programming. Legislators at the state level have responded to this and have taken the lead in

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66 *Financial Literacy 2022 Legislation*, NCSL: NAT'L CONF. OF STATE LEGIS., https://www.ncsl.org/research/financial-services-and-commerce/financial-literacy-2022-legislation.aspx [https://perma.cc/2TUK-6Q37] (Sept. 12, 2022); *Financial Literacy 2023 Legislation*, NCSL: NAT'L CONF. OF STATE LEGIS., https://www.ncsl.org/financial-services/financial-literacy-2023-legislation [https://perma.cc/84CK-KT5C] (May 2, 2023); *Which States Require Financial Literacy for High School Students?*, RAMSEY SOLUTIONS (Apr. 10, 2023), https://www.ramseysolutions.com/financial-literacy/states-require-financial-literacy-in-high-school [https://perma.cc/KSA8-NDBS].

67 STATE OF FINANCIAL EDUCATION REPORT (NGPF: NEXT GEN PERS. FIN.), https://www.ngpf.org/state-of-fin-ed-report-2021-2022/ [https://perma.cc/FU3Z-7CDV] (last visited Oct. 17, 2022) [hereinafter FINANCIAL EDUCATION REPORT] (providing insight into current state of personal finance education across nation).

68 *Id.* at 8.

69 *What's A Gold Standard School?*, NEXT GEN PERS. FIN. (Nov. 15, 2017), https://www.ngpf.org/blog/advocacy/whats-a-gold-standard-school/ [https://perma.cc/7WUU-FU9R] (explaining what makes schools meet "Gold Standard").

70 *Who Has Access to Financial Education in America Today?*, NEXT GEN PERS. FIN., https://d3f7q2msm2165u.cloudfront.net/aaa-content/user/files/Files/NGPF_NationwideFinancialEducationAccess_2017.pdf [https://perma.cc/U2MQ-UZZL] (Apr. 6, 2018); *see Got Finance? School Search*, NEXT GEN PERS. FIN., https://wwtw.ngpf.org/got-finance/ [https://perma.cc/Y8Q7-7XFK] (last visited Nov. 20, 2022). This information includes only schools in states where the legislation has gone into effect. At the time of this Article, eight states had passed legislation that had yet to be fully implemented and thus that data is not reflected here.

71 For further discussion on legislative and non-legislative attempts to nationalize public education, see *infra* notes 73–88 and accompanying text.

introducing legislation requiring personal finance education in schools.[72] The following examples serve to provide a background to the recent legislative push for personal finance education.

1. Elementary and Secondary Education Act, No Child Left Behind, and Subsequent Federal Legislation

Legislators at both the state and federal levels have been concerned about public education equity for years. While the Civil Rights Movement highlighted various disparities in the nation's public education system in the 1960s, the national poverty rate at the time led President Lyndon B. Johnson to declare a "War on Poverty"; this included federal initiatives and legislation to combat the poverty crisis, such as the Economic Opportunity and Food Stamp Acts of 1964.[73] In addition to those Acts, one important piece of legislation was the Elementary and Secondary Education Act (ESEA),[74] which provided more government funding to primary and secondary education.[75] Specifically, the federal government designated ESEA funding to programs related to professional development, though ESEA did not require such programs to include personal finance education.[76]

Since ESEA's passage in 1965, subsequent federal legislation has amended the Act.[77] ESEA's biggest amendment was the No Child Left Behind Act (NCLB),[78] which President George W. Bush signed into law in 2002.[79] NCLB's goal was to provide standards-based education "reform" and thus required states to establish assessments that would reliably measure student performance and

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[72] *See supra* note 66.

[73] Economic Opportunity Act, Pub. L. No. 88-452, 78 Stat. 508 (1964) (repealed 1981); Food Stamp Act, Pub. L. No. 88-525, 78 Stat. 704 (1964) (codified as amended primarily in 7 U.S.C.); *see* Michael Heise, *From No Child Left Behind to Every Student Succeeds: Back to a Future for Education Federalism*, 117 COLUM. L. REV. 1859, 1865 (2017).

[74] Elementary and Secondary Education Act, Pub. L. No. 89-10, 79 Stat. 27 (1965) (expanding federal government's authority to regulate public elementary and secondary schools across the nation).

[75] *Id.* (explaining where federal funding was to be designated).

[76] *See* Catherine A. Paul, *Elementary and Secondary Education Act of 1965*, VCU LIBRARIES: SOC. WELFARE HIST. PROJECT, https://socialwelfare.library.vcu.edu/programs/education/elementary-and-secondary-education-act-of-1965/ [https://perma.cc/4C8M-WPNB] (last visited Oct 10, 2022) (providing history and purpose of Johnson Administration's ESEA).

[77] For further discussion of federal legislation amending and replacing ESEA, see *infra* notes 78–86 and accompanying text.

[78] Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified in scattered section of 20 U.S.C.).

[79] *Id.*; *see No Child Left Behind*, U.S. DEP'T OF EDUC. https://www2.ed.gov/nclb/landing.jhtml [https://perma.cc/K7JE-DY85] (last visited Oct. 17, 2022). While President Bush's No Child Left Behind Act did not specifically address personal finance education, Bush did express concern about Social Security and led the 2005 Social Security Initiative, encouraging individuals to enroll in voluntary personal retirement accounts. *See generally* William A. Galston, *Why the 2005 Social Security Initiative Failed, and What it Means for the Future*, BROOKINGS (Sept. 21, 2007), https://www.brookings.edu/research/why-the-2005-social-security-initiative-failed-and-what-it-means-for-the-future/ [https://perma.cc/79RE-ST5B] (providing history on President Bush's 2005 Social Security initiative).

promote higher achievement in basic skills.[80] NCLB only required states to create standards of measurement to ensure students graduated with proficient understanding of basic skills; similar to ESEA, NCLB also did not mandate districts provide personal finance education.[81] Though the federal government passed NCLB, the Act gave states discretion in creating their own assessments and standards by which to measure student performance.[82] States, educators, legislators, and other advocates have criticized NCLB for failing to adequately measure student performance, leading to the next major amendment: the Every Student Succeeds Act.

The last significant piece of national legislation to note is the Every Student Succeeds Act (ESSA),[83] which a bipartisan Congress passed and which President Barack Obama signed into law in 2015.[84] ESSA's primary goal was to ensure schools prepared students for college and that students had the opportunity for a future "fulfilling" career.[85] Despite those goals, ESSA also did not require any personal finance education at the national level, though it did award grants for programs including "financial literacy and [f]ederal financial aid awareness activities."[86]

While the federal government has not required personal finance education, it has taken steps to promote this programming in schools. Notably, the Fair and Accurate Credit Transactions Act of 2003 established the Financial Literacy and Education Commission (the "Commission").[87] The Fair and Accurate Credit Transactions Act required the Commission to create a federal financial education strategy, and the Commission has created a freely accessible website where anyone can obtain information about personal finance.[88] Since 2003, the Commission has also produced reports detailing strategies to combat the country's relatively weak financial literacy rate, with oversight from the United States Department of the

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80 Pub. L. No. 107-110, 115 Stat. 1425 (2002) (expressing how law would improve student performance in public schools and create adequate standards to measure success).

81 *Id.* (setting requirements for states to create adequate standardized tests to measure student performance).

82 *Id.*

83 Pub. L. No. 114-95, 129 Stat. 1802 (2015) (codified in scattered sections of 20 U.S.C.) (revising NCLB standards to shift more control to states).

84 *Id.* (providing main education law for public schools).

85 *See id.*

86 *See, e.g.*, ESSA § 4107(a)(3)(A)(iii) (codified at 20 U.S.C. § 7117) (mentioning government would fund financial awareness programs in certain situations); ESSA at § 4201(a)(2) (codified at 20 U.S.C. § 7171); ESSA at § 4205(a)(3) (codified at 20 U.S.C. § 7175); ESSA at § 4503(b)(7) (codified at 20 U.S.C. § 7243).

87 Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, sec. 513, 117 Stat. 1952 (codified in 15 U.S.C. §§ 1681-1681x) (establishing Commission and providing goals to improve financial literacy as codified in 20 U.S.C. § 9702). It is important to note the Fair and Accurate Credit Transactions Act does not mandate public schools to provide personal finance education.

88 *Id.* (detailing members of Commission); *see* MYMONEY.GOV, https://www.mymoney.gov/ [https://perma.cc/5QBE-4KPM] (last visited Nov. 20, 2022) (providing free resources for individuals to better understand their finances).

Treasury and the Bureau of Consumer Financial Protection.[89] Ultimately, while this law has not required schools to teach personal finance education, it does signify the federal government has made personal finance education a priority.

2. Common Core

The federal government has also participated in shaping national curricula through non-legislative mechanisms. One of the most important mechanisms in recent years has been the Common Core State Standards Initiative, an educational initiative that sets academic standards with the purpose of improving academic achievement and "college readiness."[90] It is important to mention the Common Core standards are not in themselves binding legislation, though various states have adopted the Common Core standards with slight modifications in their own state legislation.[91] Various organizations participated in drafting the Common Core standards, which were meant for every state in the country, though advocates understood the states would decide whether to adopt the standards.[92] States that adopted the Common Core standards were eligible to receive increased grant money from the United States Department of Education.[93]

Notably, the Common Core standards only apply to required mathematics, language arts, and literacy classes. Like the federal legislation described previously, the Common Core standards do not set standards for personal finance. Some states, like Massachusetts, however, have adopted the Common Core standards and, in doing so, have attempted to interweave financial literacy education into their legislatively required curricula.[94]

Many parents, teachers, and advocates have attempted to fight the Common Core standards.[95] In 2014, the Louisiana Governor, Piyush Jindal, sued the federal government for allegedly "strong-arming" states into adopting the standards by effectively conditioning large amounts of federal grant money upon

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[89] *See, e.g.*, U.S. NATIONAL STRATEGY FOR FINANCIAL LITERACY 2020 (Fin. Literacy & Educ. Comm'n 2020).

[90] *See* Judson N. Kempson, *Star-Crossed Lovers: The Department of Education and the Common Core*, 67 ADMIN. L. REV. 595, 607–09 (2015) (providing history of Common Core standards).

[91] *See id.* at 624 (acknowledging states have option in shaping state's education policy).

[92] *Id.* (addressing process in shaping Common Core standards and state discretion).

[93] *See* Ryan Lee, *Federal Government Coerces the Adoption of Common Core: Keeping America's Youth Common Among the World's Elite*, 49 J. MARSHALL L. REV. 791, 809–18 (2016) (funding policy "coerce[d]" states into adopting Common Core standards even if such state did not want to implement Common Core).

[94] *See* MASS. GEN. LAWS ANN. ch. 69, § 1R (West 2023).

[95] *See, e.g.*, Lyndsey Layton, *Louisiana Gov. Bobby Jindal Sues Obama Over Common Core State Standards*, WASH. POST (Aug. 27, 2014, 5:45 PM), https://www.washingtonpost.com/local/education/louisiana-gov-bobby-jindal-sues-obama-over-common-core-state-standards/2014/08/27/34d98102-2dfb-11e4-bb9b-997ae96fad33_story.html [https://perma.cc/L2S7-4JGJ] (reporting on Louisiana case); Andrew Ujifusa, *Common Core Faces Kentucky Legal Challenge, Questions About 'Rebranding'*, EDUCATIONWEEK (Nov. 18, 2013), https://www.edweek.org/teaching-learning/common-core-faces-kentucky-legal-challenge-questions-about-rebranding/2013/11 [https://perma.cc/2N4T-XN6B] (exploring Kentucky case where plaintiff was ultimately unsuccessful).

a state adopting the Common Core standards.[96] His successor, Governor John Bel Edwards, announced he would drop the lawsuit, stating the litigation was a waste of taxpayer resources.[97] While litigation surrounding the Common Core standards has tapered in the past few years, many opponents still worry about any future federal education mandates, especially as the COVID-19 pandemic has negatively impacted students' learning and progress in school.[98]

B. Financial Literacy Legislation

While the Common Core standards do not set goals for personal finance education, many states have proposed and passed legislation requiring students to take financial literacy courses. 2022 was a banner year for states proposing personal finance initiatives, with over 100 financial literacy bills being proposed across most states.[99] Pending legislative proposals increased in 2023.[100] As numerous studies have indicated, a majority of the nation supports implementing financial education in schools, demonstrating the fundamental principle that public opinion often drives political action.[101]

Currently, twenty-three states require high school students take a personal finance course before graduating.[102] Of those twenty-three states, there are eig-

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96 *See generally Jindal v. U.S. Dep't of Educ.*, No. 14–CV–534, 2015 WL 854132 (M.D. La. 2015) (holding Governor alleged sufficient facts to show court had jurisdiction and declining to rule on merits of Common Core).

97 *Gov. Edwards Announces End to Common Core Lawsuit after New Congressional Act*, OFF. OF THE GOVERNOR (Feb. 04, 2016), https://gov.louisiana.gov/news/gov-edwards-announces-end-to-common-core-lawsuit-after-new-congressional-act [https://perma.cc/Y7KC-WHZ5] (announcing Governor Edwards would be dropping lawsuit Governor Jindal initiated against Department of Education regarding coerciveness of Common Core).

98 *But see* Alaina Goschke, *Virtual Learning in a Pandemic and its Effect on Lower-Income Students: How the Education Gap is Widening Beyond Repair*, 19 IND. HEALTH L. REV. 157, 176–84 (2022) (analyzing state-by-state school re-openings and COVID-19's detrimental impact on students). Goschke's article implies students in various states are not necessarily at the same education level as peers in the same grade but in other states, and Goschke ultimately argues all children, regardless of their location, have a right to in-person education. *See id.* (examining school closure's specific impact on low-income families and children).

99 *Financial Literacy 2022 Legislation*, *supra* note 66.

100 *Id.*

101 *Polls*, NEFE, https://www.nefe.org/research/polls/default.aspx [https://perma.cc/BMD3-RWAQ] (last visited Nov. 14, 2023) (giving links to a variety of financial education and literacy polls); *High School Personal Finance Poll: March 17-21, 2022*, NEFE, https://www.nefe.org/research/polls/Financial-Capability-Month-Poll-summary.pdf [https://perma.cc/9F2J-URRQ] (last visited Dec. 22, 2023) (showing eight in ten Americans support formal personal finance education in school).

102 *Which States Require Financial Literacy in High School?*, RAMSEY SOLS., https://www.ramseysolutions.com/financial-literacy/states-require-financial-literacy-in-high-school/ [https://perma.cc/H4AD-TSY5] (Oct. 27, 2023) (noting as of October 2023, there are twenty-three states in the country requiring students take a financial literacy course as a graduation requirement). These states include: Alabama, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, and West Virginia. *Id.* (listing states with standalone course requirement); *see also* FINANCIAL EDUCATION REPORT, *supra* note 67.

ht states that currently require a semester long personal finance course and nine states that are in the beginning stages of implementing this requirement with educators and school districts.[103] According to financial literacy advocates, these seventeen states are meeting the "Gold Standard" of financial literacy, whereby students are guaranteed access to personal finance education.[104] These states require students take separate courses in personal finance as a high school graduation requirement, rather than allow schools to teach personal finance as part of a preexisting class, which other states have required via legislation.

Various financial literacy advocacy organizations have analyzed personal finance education requirements, looking at factors such as whether the state requires a standalone personal finance course as a graduation requirement, whether teachers receive specialized personal finance training, the administration of standardized tests to assess a program's effectiveness, and other funding and educational resources available to school districts.[105] As previously mentioned, Next Gen Personal Finance awards those schools requiring high school students take a standalone personal finance course by naming them a "Gold Standard" school. Schools that offer a personal finance class as an elective but do not require it meet the "Silver Standard," while schools with personal finance embedded into another course meet the "Bronze Standard."[106]

Alabama is one example of a state meeting the ideal "Gold Standard" and has received high praise from various personal finance education proponents.[107] In 2022, Alabama proposed legislation that would legally require all high school students in the state to take a career preparedness course.[108] Moreover, the state's Department of Education provides educators guidelines on teaching personal finance related topics, uniquely including retirement as part of lessons on saving and investing.[109] Other states who have joined Alabama in requiring a standalone

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103 FINANCIAL EDUCATION REPORT, *supra* note 67, at 3 (differentiating between states with existing programming and those currently developing programming).

104 *Id.* at 5 (providing overview of gold, silver, and bronze standards organization utilizes to assess state legislation and curriculum). As of March 10, 2023, the "Gold Standard" states include: Alabama, Florida, Georgia, Iowa, Kansas, Michigan, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Utah, and Virginia. *Id.*

105 *Id.* at 3–6 (analyzing state requirements regarding financial literacy and assessing program's effectiveness).

106 *See Got Finance? School Search*, *supra* note 70 and accompanying text.

107 *Id.*

108 H.R. 259, 2022 Reg. Sess. (Ala. 2022). The 2022 bill unfortunately died in the House and was replaced in 2023 by H.B. 164, 2023 Reg. Sess. (Ala. 2023) (to be codified as amended at ALA. CODE § 16-40-12 (2023)). See Brandon Moseley, *Alabama House Passes Financial Education Legislation*, ALA. TODAY (Apr. 19, 2023), https://altoday.com/archives/51036-alabama-house-pas ses-financial-education-legislation [https://perma.cc/YYC9-PRT2] for more information about H.B. 164.

109 Personal Finance, *Alabama Course of Study: Career and Technical Education*, 557–59, https://www.alabamaachieves.org/wp-content/uploads/2021/05/Personal-Finance.pdf [https:/ /perma.cc/T3VJ-C4TV] (last visited Nov. 17, 2023).

course in personal finance include Mississippi, Missouri, Iowa, North Carolina, Tennessee, Utah, and Virginia.[110]

The American Public Education Foundation, another nonprofit advocacy organization, has established "The Nation's Report Card on Financial Literacy," which grades states on personal finance education requirements.[111] While the organization marked Alabama highly, it did not award Alabama an "A" grade because Alabama does not require financial literacy education from grades kindergarten through eighth grade.[112] As mentioned, though, Alabama does focus on career preparedness and many, if not all, schools in the state already require retirement education as part of the personal finance curriculum for high school students.[113]

While some states have not necessarily required a standalone personal finance education course, many have required at least some interwoven personal finance education. Many of these states allow high school students to take a personal finance elective as a graduation requirement.[114] Alternatively, other states include personal finance education in mathematics courses.[115] In 2022, twenty-six states had legislation pending in their respective states proposing required personal finance education.[116] In 2023, there were twenty-seven states and the District of Columbia introducing a combined seventy-one bills that would create a requirement for high school students and an additional one-hundred and twenty-eight bills concerning financial literacy more generally for grades kindergarten through twelfth grade.[117]

Though there are many bills that propose implementing such programing in high schools, there are other pieces of legislation proposing a broader outreach beyond high school.[118] In 2022, Idaho House Bill 535 contemplated duties upon the treasurer to include the financial education of the general population.[119] While that bill is still pending, the Idaho legislature enacted its own

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110 *Id.* The full list of states with legislation requiring a standalone personal finance course as a graduation requirement include the following: Alabama, Connecticut, Florida, Georgia, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Utah, and Virginia, and West Virginia. *See Which States Require Financial Literacy for High School Students?*, *supra* note 66.

111 *The Nation's Report Card on Financial Literacy*, AM. PUB. EDUC. FOUND., https://www.thenationsreportcard.org/ [https://perma.cc/7SR4-DT9W] (last visited Oct. 17, 2022).

112 *Id.* (noting improvements Alabama can make in implementing financial education in lower grades).

113 ALA. ADMIN. CODE r. 290-3-1-.02(8)(a) (2023).

114 *See* STATE OF FINANCIAL EDUCATION REPORT, *supra* note 67, at 11 (examining Silver Standard schools).

115 *Id.* at 4.

116 *See Financial Literacy 2022 Legislation*, *supra* note 66.

117 Emma Donahue, *Stand-alone and Flexible: A 2023 Legislative Review of K-12 Financial Education Requirements*, NAT'L ENDOWMENT FOR FIN. EDUC. (Sept. 25, 2023), https://www.nefe.org/news/2023/09/a-2023-legislative-review-of-k12-financial-education-requirements.aspx [https://perma.cc/GQ9R-9PF7].

118 *Id.*

119 H.B. 535 § 13, 66th Leg., 2d Reg. Sess. (Idaho 2022) (including provision explicitly speaking to retirement education).

separate personal finance law in 2023 that affects high schoolers.[120] Ultimately, Idaho's pending bill contemplates the financial literacy of the entire population while Alabama's standards as seen in 2022 focused on helping high school students enter adulthood with a solid grasp of financial concepts.

III. DOES FINANCIAL LITERACY EDUCATION IMPROVE RETIREMENT OUTCOMES? ARGUMENTS FOR AND AGAINST

There are various arguments as to whether implementing required financial literacy education will help workers plan for retirement. While many believe financial literacy education can only help students, others believe requiring this education would be ineffective because studies show the impact is minor.[121]

Those in favor of formal financial literacy education believe proper education can enable the nation as a whole to combat the effects of events like recessions.[122] For those who may be considered a "vulnerable borrower," personal finance education can help in navigating challenging financial obstacles because it provides those individuals an understanding of marketplace activity and other financial services.[123] Ultimately, financial literacy advocates emphasize that learning about certain concepts early on allows students to better understand more sophisticated financial concepts as they progress through adulthood, which may include retirement-related areas such as maintaining a diversified stock portfolio.[124]

Additionally, proponents of financial literacy education point to evidence demonstrating a correlation between related coursework and better financial outcomes, such as individuals taking on less consumer and student loan debt.[125] In 2002, a Federal Reserve Bulletin detailed several studies on whether there existed a correlation between financial literacy education and positive financial behavior.[126] The study found that individuals who received personal finance education had saved more money and had better wealth management on average.[127]

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[120] 2023 Idaho Sess. Laws 197. The law, however, does not mention retirement education. *See* IDAHO CODE § 33-1615 (2023).

[121] Sandra Braunstein & Carolyn Welch, *Financial Literacy: An Overview of Practice, Research, and Policy*, FED. RSRV. BULL. 445, 451–52 (Nov. 2022).

[122] *See* Kathryn Reed Edge, *Readin', Writin' and Financial Literacy*, 47 TENN. BUS. J. 29, 39 (2011) (arguing financial literacy can be critical in times of financial woes and illustrating how lawyers potentially fit into current financial illiteracy paradigm when advising clients).

[123] Joseph A. Smith, Jr., *Financial Literacy, Regulation and Consumer Welfare*, 8 N.C. BANKING INST. 77, 98 (2004) (outlining how financial literacy improves outcomes).

[124] Edge, *supra* notes 122, at 29.

[125] *See* Liz Frazier, *5 Reasons Personal Finance Should Be Taught in School*, FORBES (Aug. 29, 2019, 6:58 PM), https://www.forbes.com/sites/lizfrazierpeck/2019/08/29/5-reasons-personal-finance-should-be-taught-in-school/?sh=3abf99351784 [https://perma.cc/YCU6-GGDN].

[126] Braunstein & Welch, *supra* note 121, at 452 (presenting researcher surveys that, among other things, collected national samples on the effect of financial literacy across various demographics, age groups, and worker groups).

[127] *Id.*

Notably, the study also revealed those individuals participated more in retirement programs.[128]

Since 2002, other organizations have conducted studies showing personal finance coursework improves financial behaviors. In a study conducted by the FINRA Investor Education Foundation, students in Georgia, Idaho, and Texas who had taken a personal finance class improved their credit scores on average by 3.2% three years after having taken the class.[129] Further, a joint study from FINRA Investor Education Foundation and the National Endowment for Financial Education found a clear correlation between financial education and improved financial behaviors.[130] Specifically, the meta-analysis showed positive effects in financial knowledge, credit, budgeting, saving, insurance, and remittances.[131] Importantly, the study did not present any evidence that these positive effects diminish over time, and the study concluded personal finance education is a cost-effective way to improve financial behaviors.[132]

Conversely, those who criticize personal finance education point to contrary research and believe it is ineffective. In a 2009 study commissioned by Mandell and Klein, evidence suggested those who took a personal finance course were no more financially literate than those who had not taken coursework.[133] Further, the students from the study did not report feeling more confident in their financial behaviors than others.[134] The study did not, however, report that students exhibited worse financial behaviors after taking a personal finance class, and the consensus of more recent research since 2009 is that personal finance education does indeed improve financial behaviors, even if the improvement is small.[135]

Other critics have expressed skepticism over whether high school is the appropriate age to teach personal finance, as some research indicates personal finance education is more effective when the learner is trying to accomplish a specific financial goal.[136] Similarly, those same critics often express that personal

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128 *Id.*

129 *See* Michelle Fox, *From Saving Money to Paying Down Debt, Here's Why Financial Literacy is So Important*, CNBC (Apr. 1, 2022, 9:00 AM), https://www.cnbc.com/2022/04/01/why-financial-literacy-is-so-important.html [https://perma.cc/7QMZ-WTQ6].

130 Tim Kaiser et. al., *Financial Education Matters: Testing the Effectiveness of Financial Education Across 76 Randomized Experiments*, FINRA INV. EDUC. FOUND. & NAT'L ENDOWMENT FOR FIN. EDUC. 4 (Mar. 2022) (finding "clear" correlation between improved financial behaviors and personal finance education).

131 *Id.* at 5. The meta-analysis showed general financial knowledge improved most at a standard deviation of .204 while credit improved least at a standard deviation of .0402. However, these behaviors only improved and, importantly, did not worsen after a student took a personal finance class.

132 *See id.* at 6.

133 Lewis Mandell & Linda Schmid Klein, *The Impact of Financial Literacy Education on Subsequent Financial Behavior*, 20 J. FIN. COUNSELING & PLAN. 15, 21–22 (2009) (also pointing out that positive financial literacy scores and behavior may have resulted from education received post high school).

134 *Id.* at 22.

135 Carly Urban et al., *The Effects of High School Personal Financial Education Policies on Financial Behavior*, 78 ECON OF EDUC. REV. 1 (2020).

136 *See* Melody Harvey & Carly Urban, *Is High School the Right Time to Learn About Retirement?*, TIAA INST. (Feb. 2022), https://www.tiaainstitute.org/sites/default/files/presentati

finance education will do little to narrow any existing economic barriers or gaps.[137] Critics also often argue what is actually needed is better economic policies that result in better financial outcomes.[138]

Moreover, there is concern regarding whether legislation is the proper mechanism to solve this problem.[139] In the United States, a large component of the population is skeptical of either too much federal overreach or too much state discretion.[140] In terms of federal overreach, a national personal finance legislative initiative may undergo deep scrutiny just by its very nature of being a federal bill or program.[141] As previous laws like ESSA and NCLB have undergone scrutiny, any potential federal program will likely need to survive similar challenges.[142] With regard to the opposite, where states would have discretion, people often point out that in some situations, disparate state-by-state results often exacerbate existing negative patterns.[143] Essentially, while many believe in the benefits of personal finance education, there are also many who worry about whether it is effective and how to best implement it.

While critics make valid points, most research demonstrates there are indeed positive effects associated with exposure to formal personal finance education.[144] Though these effects may not always be as large as one might hope, there are ways to maximize the positive impacts of personal finance education, one being requiring classroom instruction before graduation. Further, although federal legislation may not be the ideal mechanism for enforcing such a requirement, states can still pass similar legislation to one another. Additionally, a federal initiative has existed since 2003 through the Financial Literacy and Education

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ons/2022-01/TIAA%20Institute_Does%20financial%20education%20in%20high%20school_TI_Harvey%20Urban_February%202022.pdf [https://perma.cc/PN8T-26AL].

137 Kat McKim, *The Financial Literacy Gap Doesn't Exist*, FORTUNE (Nov. 10, 2021, 12:00 PM), https://fortune.com/2021/11/10/financial-literacy-gap-doesnt-exist-wealth-gap-inequality/ [https://perma.cc/6FTY-NB3C] (arguing there is no "gap" because students across "'income spectrum' have similar levels of financial knowledge").

138 *See* Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197, 267–68 (2008) (proposing alternatives to financial education such as more substantive regulation of financial products, increasing resources available to consumers, better framing financial decisions, and aligning sellers' incentives with consumers' needs).

139 *See* Heise, *supra* note 73, at 1863 (outlining concerns of too much federal oversight over public education and arguing parental control is more effective).

140 *See id.* at 1895 (implying both federal and state governments need to embrace school choice).

141 *See id.*

142 For a discussion on ESSA and NCLB, see *supra* notes 73–88 and accompanying text.

143 *See generally* Dan Kadlec, *Why We Want–But Can't Have–Personal Finance in Schools*, TIME (Oct. 10, 2013), https://business.time.com/2013/10/10/why-we-want-but-cant-have-personal-finance-in-schools/#:~:text=Education%20is%20run%20at%20the,clarity%20before%20they%20sign%20on [https://perma.cc/8X6U-6UMU] (stating concerns about state discretion in personal finance education); *see also* Urban et al., *supra* note 135, at 11 (concluding that varying results should not be read by "policy vs. no policy" but rather how states are implementing their policies effectively).

144 For further discussion of research demonstrating the positive impacts of personal finance education, see *supra* notes 125–132 and accompanying text.

Commission.[145] While it is unclear whether the public supports the Commission, there is no evidence suggesting the contrary. Lastly, while better economic policies may have a more pronounced effect on retirement savings, providing equitable access to personal finance education can play a significant role for an individual trying to understand their own finances.

IV. REQUESTING MORE THAN AN UBER: WHY FINANCIAL LITERACY EDUCATION CAN HELP GIG WORKERS PLAN FOR RETIREMENT

This Article urges states to adopt a hybrid of Alabama's high school course requirement and Idaho's pending general public initiative that includes a specific provision for retirement.[146] This model legislation would offer a comprehensive approach to financial literacy education that would allow people without equitable access to retirement to gain relevant education. For one, Alabama's curriculum requires a comprehensive course, and the state's 2022 proposal included coursework specifically regarding retirement.[147] While students may not necessarily be worrying about retirement while in high school, exposure to financial literacy concepts arguably makes it easier for people to absorb information later in life when they start planning for retirement.[148] While it might be more feasible to implement personal finance coursework in existing classes, a standalone course like Alabama's has the effect of reinforcing the importance of the topic.

While Alabama's state requirement offers a formal, comprehensive option for all public-school students, Idaho's general public requirement ensures personal finance education is accessible to everyone in the state, especially those seriously considering retirement planning.[149] A provision that includes outreach to the public like Idaho proposes helps ensure more people have access to more resources, which would be especially important if an event like the COVID-19 pandemic were to ever happen again. Further, providing access to the public means more households will be able to engage in a more candid and transparent discourse concerning retirement saving, which can be beneficial to all generations within a family. Additionally, an effective law should include a provision requiring retirement education to ensure everyone has awareness and knowledge of related concepts. Supplementing a standalone course requirement where retirement savings is specifically taught with community resources can ensure all communities regardless of age, race, ethnicity, or gender have the opportunity to become financially literate; such a combination might even help dismantle the existing aforementioned trends.[150] As students in America figure out how a post-pandemic world will operate, having access to the right kind of financial literacy education

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145 Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, sec. 513, 117 Stat. 1952 (codified in 15 U.S.C. §§ 1681-1681x).

146 ALA. CODE § 16-40-12 (2022); H.B. 535 § 13, 66th Leg., 2d Reg. Sess. (Idaho 2022).

147 For discussion of Alabama's current curriculum requirements, including curriculum specifically concerning retirement planning, see *supra* notes 107–112 and accompanying text.

148 For further discussion on the benefits of early personal finance education exposure, see *supra* notes 125–132 and accompanying text.

149 ALA. CODE § 16-40-12 (2022); H.B. 535 § 13, 66th Leg., 2d Reg. Sess. (Idaho 2022).

150 For discussion on these trends, see *supra* notes 13–17 and accompanying text.

can help prepare them—and those already out of school—for any potential situation they encounter, which may, in the evolving job market, include gig work.

Ensuring equitable access to personal finance education can help gig workers who primarily rely on that type of work in saving for retirement. After all, evidence indicates many of those people come from households that are unlikely to engage in personal finance conversations or provide access to relevant knowledge.[151] Likewise, it is highly unlikely someone relying primarily on gig work comes from any kind of generational wealth, meaning they may have never discussed income savings principles with a parent or other trusted adult.[152] As mentioned, evidence shows at least some correlation between personal finance classes and more rational financial decisions.[153] Conversely, there is scant evidence suggesting someone receiving financial literacy education has suffered as a result. Thus, state legislatures should include retirement education as part of personal finance classes. Further, states across the nation should note how financial literacy programming can serve to eliminate retirement savings gaps, many of which result in unintentional socioeconomic and demographic disparities.

There are a couple of potential issues states must consider when drafting legislation. One, it is important that qualified teachers be leading financial literacy programs.[154] Teachers often encounter difficulties performing their jobs as educators adequately due to budget constraints, meaning it might be difficult for states without sufficient resources to ensure school districts can provide teachers with the tools they need to implement a successful curriculum.[155] Additionally, it is worth mentioning that the burden is still on workers themselves to make appropriate financial decisions; therefore, providing financial literacy education does not necessarily ensure every student will make the financial decisions such programming encourages.[156]

CONCLUSION: THANK YOU FOR YOUR BUSINESS

Solving any retirement gap is no easy feat. While personal finance education can play an important role in curbing issues as to who has access to retirement,

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[151] *See* Min Zhan et al., *Financial Knowledge of the Low-Income Population: Effects of a Financial Education Program*, 33 J. SOCIO. & SOC. WELFARE 53, 55 (2006) (acknowledging problems low-income individuals face regarding helpful resources).

[152] *See* Anderson et al., *supra* note 35.

[153] For further discussion of how personal finance education can lead to better retirement outcomes, see *supra* notes 122–132 and accompanying text.

[154] *See* Sarah O'Brien, *States that Require Personal Finance Classes Should Not Overlook Teacher Training, Experts Say*, CNBC (Apr. 5, 2021, 8:00 AM), https://www.cnbc.com/2021/04/05/states-requiring-personal-finance-classes-need-to-train-teachers-too.html#:~:text=Grow.-,States%20that%20require%20personal%20finance%20classes,overlook%20teacher%20training%2C%20experts%20say&text=(State%20of%20financial%20education%3A%20Many,was%20taught%20earlier%20in%20school [https://perma.cc/NJ3N-PMND] (arguing school districts must adequately prepare and provide resources to those teaching personal finance); *see generally* Derek W. Black, *Taking Teacher Quality Seriously*, 57 WM. & MARY L. REV. 1597, 1607–08 (2016) (outlining why quality teaching is vital in education).

[155] *See id.* (pointing out struggles teachers often face).

[156] *See* Willis, *supra* note 138, at 267–68 (opining financial literacy education will not necessarily change future outcomes and emphasizing future financial events are unknown).

this programming can only work with other economic help.[157] Individuals will still make their own financial choices, and personal finance education cannot guarantee individuals will indeed make better financial decisions.[158] But, giving all people the tools to think critically about retirement planning—and ensuring access to such knowledge is not limited to an elite few—provides a solid starting framework to tackle the retirement gap many people are facing today.[159]

As evidence demonstrates, exposure to personal finance education can play a critical role in helping young people evaluate how they are spending and accumulating debt. Recent studies overwhelmingly agree not only that personal finance coursework improves financial behaviors, but that it is a cost-effective way of doing so. Though some critics are skeptical of the degree to which personal finance education is effective, any positive impact is a step in the right direction. Further, though personal finance education may not have a direct tie to better retirement outcomes, helping younger individuals navigate other financial decisions like student loan and consumer debt earlier in life can help them save more for their future retirement.

Alabama and Idaho should be the models for crafting relevant personal finance education. Providing students in high school access to a course that teaches them about financial planning—and specifically providing students with courses that discuss retirement planning—increases the chances those same students will make better, more educated decisions later in life when they enter the workforce. As the workforce has become much more diverse and with gig work becoming increasingly attractive, those starting to work will have a better chance of creating a successful retirement plan.[160]

Ultimately, financial literacy education alone will not solve any "retirement crisis". It also will not eradicate unfortunate demographical impacts or guarantee every individual makes the best financial decisions. As every individual who takes a personal finance course still has the freedom to choose how to manage their income, there is only so much that law and policy can do. That said, financial literacy education can deepen students' awareness of what to consider before they start working, and this education evens the playing field between students who have access to this information and those who do not. Requiring personal finance education in the classroom can help society navigate our "retirement crisis" and increase the nation's financial literacy rate—a worthy cause indeed.

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157 *See id.* at 267 (emphasizing stronger regulatory oversight and policies are necessary as opposed to financial literacy education).

158 *See id.* at 267–68 (noting financial decisions are personal).

159 For further discussion on how required personal finance education can eliminate existing inequities, see *supra* notes 151–153 and accompanying text.

160 For background on how the current employment landscape has shifted, see *supra* notes 18–37 and accompanying text.

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