AFL-CIO Legislative Guide

2013

Contents

6. CORE LABOR LAWS, LABOR STANDARDS AND WORKPLACE PROTECTIONS

7. EDUCATION, CIVIL AND HUMAN RIGHTS, FAIR AND OPEN ELECTIONS

8. THE GLOBAL ECONOMY

9. LEGISLATIVE DIRECTORIES

AFL-CIO

1

Contents

About the AFL-CIO

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The American Federation of Labor–Congress of Industrial Organizations (AFL-CIO) is a voluntary federation of 57 national and international labor unions.

Today's unions represent 12 million working women and men of every race and ethnicity and from every walk of life. We are teachers and taxi drivers, musicians and miners, firefighters and farm workers, bakers and bottlers, engineers and editors, pilots and public employees, doctors and nurses, painters—and more.

The AFL-CIO was created in 1955 by the merger of the American Federation of Labor and the Congress of Industrial Organizations. The AFL-CIO's first president, George Meany, was succeeded in 1979 by Lane Kirkland, whose unexpired term was concluded by Thomas R. Donahue. In 2005, the AFL-CIO Convention re-elected President John J. Sweeney, Secretary-Treasurer Richard Trumka and Executive Vice President Linda Chavez-Thompson. After Chavez-Thompson retired in September 2007, the AFL-CIO Executive Council elected Arlene Holt Baker as executive vice president. In 2009, President Sweeney retired, and delegates to the federation's convention elected Richard Trumka as president and Elizabeth Shuler as secretary-treasurer and re-elected Arlene Holt Baker as executive vice president.

The AFL-CIO is governed by a quadrennial convention. Convention delegates, representing every affiliated union, set broad policies and goals for the labor movement and every four years elect the AFL-CIO officers—the president, secretary-treasurer, executive vice president and 54 vice presidents. These officers make up the AFL-CIO Executive Council, which guides the daily work of the federation. The AFL-CIO General Board includes the Executive Council members and a chief officer of each affiliated union and the trade and industrial departments created by the AFL-CIO Constitution, as well as four regional representatives of the state federations. The General Board takes up matters referred to it by the Executive Council, which traditionally include endorsements of candidates for U.S. president and vice president.

At the state level, 51 state federations (including Puerto Rico's) coordinate with local unions and together give working families a voice in every state capital through political and legislative activity. Officers and boards elected by delegates from local unions lead the state federations, which are chartered by the national AFL-CIO.

Also chartered by the AFL-CIO are nearly 490 central labor councils, which likewise give working families a voice in cities, towns and counties.

Programmatic departments, including Government Affairs, Politics and Organizing, carry out the day-to-day work of the federation.

The Economy

2

Contents

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

How to Fix the U.S. Economy

There is something fundamentally wrong with the U.S. economy, which will not fix itself. More than five years after the start of the Great Recession, unemployment still is higher than it was during the depths of the last two recessions and wages are barely keeping up with inflation. We still are recovering from the crash of 2008, whose root cause was the failure of our low-wage economic strategy of the last 30 years. We must urgently finish cleaning up the rubble from the crash, but at the same time we must replace this low-wage economic strategy with a high-wage strategy for shared prosperity.

Our low-wage economic strategy of the last three decades consisted of three key steps: (1) a sustained assault on the freedom of workers to bargain collectively, starting in the late 1970s; (2) the relocation of U.S. manufacturing production overseas by means of flawed trade deals, an overvalued dollar and tax subsidies for offshoring; and (3) the rise of Wall Street and its growing failure to channel savings toward productive investment. This strategy resulted in wage stagnation, record inequality and unsustainable trade deficits, which together were responsible for the extraordinary weakness of the U.S. economy in the Bush years. This weakness was papered over by a real estate bubble that allowed households to maintain living standards by going into debt, but sooner or later the bubble had to burst. Six years after the collapse of the bubble, middle-class buying power today remains too weak to fuel the robust growth we need.

We must finish digging out of the rubble of the crash of 2008. The collapse of the bubble led to falling real estate construction; plummeting household wealth; underwater mortgages; deleveraging households; record levels of unemployment; and stagnant wages. Congress must take further action to pass jobs legislation and restructure mortgages—and put an end to budget austerity that is increasing unemployment.

We must replace the low-wage economic strategy with a high-wage strategy for shared prosperity. The failure of the low-wage economic strategy of the last 30 years proves we no longer can rely on household borrowing, real estate bubbles, tech bubbles or stock bubbles to fuel economic growth. We must restore a virtuous cycle of dynamic wage growth, which leads to healthy business investment, which leads to high productivity, which leads back—if we have strong unions and low unemployment—to dynamic wage growth.

The first step of a high-wage economic strategy is to reduce inequality by restoring workers' ability to bargain collectively. We know from the experience of working people across the world that only when workers have the right to organize and collectively bargain do societies enjoy sustainable shared prosperity. After World War II, we shrank inequality and built the middle class with a strong workers' movement—and we can do it again.

- **We also must restore the historical value of the minimum wage.** The erosion of the value of the minimum wage since 1968 has been an

important factor behind the growth of wage inequality. The Fair Minimum Wage Act would increase the minimum wage to $10.10 and index it to inflation.
- **We also must lift up standards for all workers through comprehensive immigration reform.** All workers must have rights if we are to have an economy that works for all.

The second step of a high-wage economic strategy is full employment. High unemployment keeps wages down, and we cannot allow the unfounded fear of inflation to keep unemployment high and wages low. Full employment will require much higher levels of investment in education, clean energy and infrastructure, funded by tax revenue from the people and corporations that benefited most from the failed low-wage economic strategy of the last 30 years.

The third step is to develop a new model of engagement with the global economy so we make things in America again. This new model consists of eliminating the trade deficit, ending overvaluation of the dollar, eliminating the tax benefit of sending jobs overseas, enhancing Buy America safeguards, aggressively enforcing our trade laws and promoting a global New Deal to help our trading partners rely on domestic incomes rather than trade surpluses as their source of economic growth.

The fourth step is to shrink our bloated financial sector and make Wall Street serve the real economy again. We can do that by re-regulating Wall Street, eliminating the tax benefit of leveraged buyouts and imposing a tiny tax on financial speculation.

Fixing the U.S. economy will require political reform. A high-wage strategy obviously will meet with intense opposition from Wall Street and the richest 2% of Americans who benefit economically from the status quo and who wield outsize influence in our political system. Fixing the economy will require political reform to loosen the stranglehold of money over our politics and breathe new life into our democracy.

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Budget and Tax Policy

Budget austerity is keeping unemployment high and wages low. For the last several years, U.S. fiscal policy has failed to focus on the greatest economic challenge facing America—the jobs crisis—and instead has contributed to the crisis. We urgently need to reorder misguided fiscal priorities. The goals of fiscal policy should be to reach full employment; raise wages and incomes; reduce economic inequality; increase economic security; and lay the foundations for broadly shared prosperity over the long term. To achieve these goals, Congress should repeal—not replace—the sequester; pass jobs legislation; make the investments necessary for long-term economic growth; restore tax fairness by making corporations and the wealthiest Americans pay their fair share; make the delivery of health care in our public and private system more cost-effective without shifting costs to beneficiaries; and protect Social Security, Medicaid and Medicare from benefit cuts.

The increase in the federal deficit in 2009 was caused primarily by the greatest economic crisis since the Great Depression, although U.S. finances had been drained in preceding years by wasteful tax cuts and two wars that were never paid for. But the deficit is now falling faster than it has since the post-war demobilization, and projected deficits over the next decade have fallen by more than $4 trillion since the projections of August 2010. Whereas in previous post-war recessions government spending helped the economy recover, in this recession budget cutbacks at the federal and local level have prolonged the recession.

Budget austerity has kept unemployment high. Unemployment would be a percentage point lower, economic growth would be almost two points higher, and 1.5 million more Americans would have jobs if Washington had not turned to deficit reduction in 2011 when the economy had not recovered from the Great Recession.

Budget austerity has kept wages low. As a result of continued high unemployment and the erosion of workers' bargaining power, wages today are barely keeping up with inflation. We cannot fix the economy without restoring working people's buying power.

Fix the economy first. Deficits are the result—not the cause—of our economic weakness. At the current pace of job growth, the United States will not reach full employment until early 2020. Congress must do more. We cannot allow short-sighted budget austerity to prevent us from fixing the economy.

There is no debt crisis that requires us to make bad decisions. U.S. interest rates have seldom been lower, and world markets are showing more confidence in the dollar than in any other currency. There is no sound economic reason to prioritize budget austerity over jobs and growth when the greatest economic challenge facing America is the jobs crisis.

Congress should repeal—not replace—sequestration. Sequestration has been projected to cost 750,000 jobs in 2013 and many more in future years. The most effective jobs program would be to repeal sequestration and not replace it with other cuts.

Congress should pass legislation to put America back to work. Congress should pass jobs legislation that invests in infrastructure, education and the transition to a clean energy economy and that helps state and local governments avoid layoffs of teachers and first responders. Working families want and deserve congressional action on the jobs crisis. U.S. infrastructure investment needs are greater than $3.5 trillion in the next seven years alone, and U.S. educators need more, not fewer, resources. These investments in our nation and our people create jobs now and lay the foundations for long-term economic growth.

Congress should restore tax fairness by making big corporations pay their fair share. Big corporations have not contributed a single dime to "shared sacrifice." Repealing the tax subsidy for sending jobs overseas would raise $583 billion in revenue over 10 years. A tiny tax on Wall Street transactions would generate more than $350 billion, while also discouraging destabilizing high-volume Wall Street trading.

Congress must not increase the tax subsidy for shipping jobs overseas. A "territorial tax system" would eliminate U.S. taxation of overseas corporate profits, which would provide a bigger tax incentive for companies to shift their income, production and employment to low-tax foreign countries.

Congress should restore tax fairness by making the wealthiest Americans pay their fair share. Congress should start by (1) placing a surtax on income greater than $1 million ($453 billion over 10 years); (2) establishing a minimum 30% tax rate for millionaires ($54 billion); (3) ending the tax preference for Wall Street investment managers ($21 billion); and (4) ending the tax preference for Wall Street derivatives traders ($3 billion).

"Tax reform" must not tax middle-class health benefits. Several proposals to "broaden the tax base" would limit the health care tax exclusion, which is the exact same thing as taxing health benefits. Taxing health benefits would lead to employers dropping coverage or shifting costs to workers. There is no justification for taxing middle-class health benefits while lowering tax rates, which benefits the wealthy. We oppose proposals, such as those of economist Martin Feldstein, Gov. Mitt Romney and Sen. Pat Toomey, that would limit tax expenditures for households earning less than $250,000.

Congress should make the delivery of health care more cost effective without shifting costs to beneficiaries. If official projections are correct, cost growth throughout our private and public health care system will bankrupt our entire economy by the end of the century. Congress can make the delivery of care more cost effective by (1) allowing Medicare to negotiate lower drug prices; (2) creating a robust public option health plan that offers premiums 5% to 7% lower than private insurance; (3) expanding Medicare competitive bidding; (4) requiring Medicare to "bundle" payments to hospitals for post-acute care; (5) and ending pay-for-delay agreements between brand name and generic drug manufacturers.

Congress must protect Social Security, Medicaid and Medicare from benefit cuts. Workers need more economic security, not less. Congress must oppose such benefit cuts as lowering Social Security cost-of-living increases; raising the Social Security retirement age; raising the Medicare eligibility age; increasing Medicare income-related premiums; shifting costs to Medicare beneficiaries through higher deductibles, co-pays and coinsurance; and reducing federal Medicaid payments to the states.

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Financial Re-regulation

Re-regulation of financial markets is central to securing the economic future of our country and the world. The AFL-CIO has warned repeatedly against the dangers of a 30-year-old economic strategy based on low wages, asset bubbles, debt-fueled consumption and the deregulation of financial markets, the failure of which has taken a terrible toll on working families. In July 2010, legislation to re-regulate financial markets written by then-Sen. Chris Dodd and Rep. Barney Frank was signed into law by President Obama. Dodd-Frank created a strong Consumer Financial Protection Bureau and gave regulators new authorities that could be used to help shed light on the shadow financial markets by requiring most derivatives to clear and trade on open exchanges, regulating managers of hedge funds and private equity funds, and creating a council of regulators to oversee and take appropriate action to dissolve failing systemically risky financial institutions to prevent future bailouts. Despite these much-needed fixes, the law delegates great authority to regulators to implement the legislation.

As of May 1, 2013, 153 (38.4%) of the 398 total required rulemakings have been finalized, while 129 (32.4%) rulemaking requirements have not yet been proposed.[i] As memories of the 2008 financial crisis fade, Congress must keep in mind the lessons learned during that period and not cave to industry pressure to pass legislation weakening Dodd-Frank or put pressure on regulators to implement the statute in a way that undermines Congress's original intent. Additionally, in light of recent efforts to starve many important domestic programs, Congress must ensure essential funding requirements needed to implement Dodd-Frank are appropriated accordingly.

The continuing economic crisis demonstrates the failure of an obsolete economic strategy. The implosion of the housing market and cascading crises in credit markets are direct consequences of a 30-year experiment of trying to create a de-regulated, low-wage economy in which consumer spending is propped up by high levels of personal debt and asset bubbles.

The AFL-CIO warned against deregulation of financial markets. In 2006, while the Bush administration was planning further deregulation, the AFL-CIO warned of the dangers of unregulated leveraged finance. The AFL-CIO called repeatedly for transparency and for clear fiduciary duties to investors by all pools of private capital and capital market intermediaries.

The AFL-CIO urged greater protections for investors and regulatory oversight of financial markets. In 2002, the AFL-CIO warned that corporate wrongdoing "is the systematic result of markets that were once well-regulated but are now trapped in a destructive cycle where short-term financial pressures combine with the greed of corrupt corporate insiders manipulating conflicts of interest in the accounting and financial services industries to destroy companies, industries and lives."[ii]

Deregulated financial markets have taken a terrible toll on America's working

families. Calls for reform by the AFL-CIO and others went unheeded as the financial catastrophe gathered momentum in 2007 and 2008, but now the costs of deregulation are clear. Dodd-Frank has helped restore some fiscal integrity in our system.

However, Dodd-Frank relies heavily on the success of regulators by placing enormous responsibilities in their hands. As such, after decades of deregulation and industry self-regulation, it is incumbent on our regulators to establish rulemaking and supervisory frameworks that eradicate past woes but also anticipate problems in the future. Regulators also need to prevent delay in scheduled implementation of regulations.

Efforts to weaken Dodd-Frank should be fought aggressively. A number of conservative members in Congress have made it their agenda to repeal the Dodd-Frank Act. Instead of working to implement the most sweeping financial legislation in decades, some members of Congress assertively work to dismantle the bill through substantively significant legislation they inaccurately claim to be "technical fixes," policy riders and damaging amendments tacked onto unrelated pieces of legislation. Such action will set us on an unobstructed course to the deregulatory culture of yesteryear.

The Obama administration has sought hikes in funding for securities and commodity futures regulators necessary for the implementation of Dodd-Frank. In its fiscal 2013 budget, the administration is seeking $1.566 billion for the Securities and Exchange Commission (SEC),[iii] a 31 percent increase from 2010, and a $308 million budget for the Commodity Futures Trading Commission,[iv] up from $168 million spent for the agency in 2010, an increase of 82 percent. These increases are needed to hire additional staff to implement scores of new rules mandated under Dodd-Frank, passed in 2010, and to purchase new technologies to monitor complex, fast-paced electronic trading markets.

Under the guise of deficit reduction, conservative members of Congress are seeking to roll back policies they oppose by trying to restrain funding for these agencies. As Congress and the administration work through funding levels for 2013, we must insist on adequate funding for the SEC and CFTC and any other financial regulatory agency ordered to implement Dodd-Frank.

Financial re-regulation must be global. To address the continuing fallout from deregulation, the Obama administration must make a strong and enforceable global regulatory floor a diplomatic priority. Globalization often is used by conservatives, however, to promote a global regulatory race to the bottom. We must insist global regulatory coordination promote worldwide best practices for strong financial regulation.

There is work still to be done to re-regulate the financial markets. We will continue to fight for reforms to further address "too big to fail" financial institutions and make Wall Street pay its fair share to create the 8 million jobs it helped destroy.

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[i] Dodd-Frank Progess Report, Davis Polk (May 2013)

[ii] Executive Council, *Corporate Accountability and The Crisis of Confidence in American Business*, AFL-CIO (Aug. 6, 2002).

[iii] www.fas.org/sgp/crs/misc/R42730.pdf.

[iv] http://cftc.gov/PressRoom/SpeechesTestimony/opagensler-120.

Revitalizing U.S. Manufacturing

While the last two years have shown modest growth in manufacturing, the decadelong hemorrhaging of jobs in this sector is the result of the global economic crisis, bad policies and the lack of a national economic strategy. A strong U.S. manufacturing base is essential for maintaining a strong middle class and a strong national defense. Congress must address the policies at the root of the crisis in manufacturing—namely tax, trade and investment policies, and labor law reform.

American manufacturing jobs are being lost at an alarming rate. Between 1998 and 2010, America lost 6.0 million manufacturing jobs—and more than 57,000 manufacturing establishments closed.[i] At the end of 2012, manufacturing employment had grown by 500,000 jobs, primarily as a result of the recovery of the auto industry. However, manufacturing employment in the United States remains at the lowest levels since the beginning of WWII.[ii] As a share of total U.S. jobs, manufacturing has declined from its peak of nearly 40% just after World War II to 20% in 1981 and less than 12% in 2012.[iii] The U.S. economy lost a greater percentage of manufacturing jobs in the 2000s than it did during the Great Depression. When measured properly, U.S. manufacturing output actually fell 11% over the last decade, while GDP increased 17%.[iv]

Manufacturing is America's engine for generating good jobs and building a middle class. Historically, manufacturing has been a crucial source of good jobs for the large majority of American workers without a college education. Every manufacturing job supports as many as four other jobs,[v] providing an important boost to local economies.

A strong U.S. manufacturing base is essential for maintaining a strong national defense. America's national defense long has been based on the strength of its industrial base. But the emergence of globalized production networks in key manufacturing industries, along with the loss of critical domestic production and technological capacity, has made the American industrial base more vulnerable to disruptions from international crises and international terrorism. The September 2010 actions by the Chinese government limiting the export of rare earth metals, a critical component in defense and advanced technology, where China controls more than 90 % of the world production, underscores national security concerns.[vi]

The loss of manufacturing technology and technical capacity undermines innovation as an engine for growth. Massive job losses in manufacturing mean the sector's technical capacity is being offshored. The loss of research, design, engineering and development capacity, in addition to skilled production workers, means future innovations and investments are more likely to be made in the economy of another country.

The manufacturing trade deficit has grown dramatically at the cost of U.S. jobs. The deepening trade deficits of the last two decades have contributed to the decline in manufacturing jobs and wages. The U.S. trade deficit in goods exceeded $800 billion each year 2006–2008, nearly 6% of U.S. GDP. The United States imported more goods than it exported, at a rate of $2.2 billion a day. This includes chronic goods trade deficits with every major trading country and region in the world. The manufactured goods trade deficits with China soared, more than tripling since WTO accession—from $84 billion in 2001 to $295 billion in 2011, more than $3 trillion across the decade. In all manufacturing, China's share of the trade deficit rose continually from 28.5% in 2002 to 75.2% in 2011. In advanced technology products, the United States ran a 2011 trade deficit with China of $95 billion while running a surplus with the rest of the world.[vii]

According to the Economic Policy Institute, the growth of U.S. trade with China since China entered the World Trade Organization in 2001 has had a devastating effect on U.S. workers and the domestic economy. More than 2.7 million jobs were lost or displaced in all sectors, include 662,100 jobs from 2008 to 2011 alone—even though imports from China and the rest of the world plunged in 2009.[vii] Competition with low-wage workers from less-developed countries such as China has driven down wages for workers in U.S. manufacturing and reduced the wages and bargaining power of similar, non-college-educated workers throughout the economy. The affected population includes essentially all workers with less than a four-year college degree—roughly 70% of the workforce, or about 100 million workers (U.S. Census Bureau 2012b).[viii]

The manufacturing sector is especially hard hit by the national health care crisis and exploding health care costs. Because many nonunion firms and manufacturers operating abroad often refuse to provide health care for employees, responsible unionized manufacturers who do provide health care coverage are at an unfair competitive disadvantage. Health care adds $1,400 to the cost of every General Motors vehicle made in the United States. The steel and auto industries in particular have enormous retiree health care legacy costs that undercut their competitiveness and create pressures for employers to eliminate retiree benefits.

Congress must reform U.S. trade policies. Changes to trade policy must include attention to the U.S. trade deficit, protection and enforcement of U.S. trade laws, protection of intellectual property rights, and the inclusion of enforceable workers' rights and environmental standards in trade agreements.

Congress must reform U.S. tax laws. Eliminate tax incentives and loopholes that encourage financial speculation rather than investment, outsourcing and off shoring production, and enact tax incentives for companies that produce domestically.

Congress must target currency manipulation. Congress must pass legislation targeting illegal currency manipulation by China and other countries, which puts U.S.-based producers at a competitive disadvantage.

Congress must develop a strategy for investment in U.S. manufacturing. The United States must invest in critical manufacturing sectors and technologies and seek energy independence through investment in advanced transportation infrastructure, including advanced coal technology, energy efficiency, advanced automotive technology and renewable energy (solar, thermal and wind). This can be accomplished by expanding funding for 48(c), industrial efficiency projects, and other policies to encourage development of renewable sources of electricity and by providing higher loan authority and additional funding for section 136, the Advanced Technology Vehicles Manufacturing Incentive Program. Investments in America's energy and basic infrastructure needs must be coupled with expanded utilization of domestic supply chains. Investments, including R&D tax credits, should be tied to domestic employment and production. Congress also should strengthen the various "Buy America" laws to ensure public investments actually are made in the United States.

Congress must ensure America has the best and most innovative workers. Revitalizing our manufacturing sector requires that we make investments in our people to equip them to meet the needs of industry. Congress must increase access to training funds for people who are out of work as well as those who are seeking to enhance their skills.

The administration must implement the national health care law. The legislation brought new public money into the health care system, which is essential to easing cost and competitive pressures and preserving employer-sponsored health care. The successful implementation of this system with its cost-containment measures is vital to the future of manufacturing.

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[i] U.S. Department of Commerce, Economics and Statistics Administration; U.S. Census Bureau and the U.S. Bureau of Economic Analysis; U.S. Department of Labor, Bureau of Labor Statistics.
[ii] Bureau of Labor Statistics.
[iii] *Ibid.*
[iv]Atkinson, Robert D., Luke A. Steward, Scott M. Andes and Stephen Ezell, *Worse Than the Great Depression: What Experts Are Missing About American Manufacturing Decline,* Information and Innovation Technology Foundation, March 2012.
[v] *Trade Deficits and Manufacturing Job Loss: Correlation and Causality*, EPI Briefing Paper No. 171, 2006.
[vi] Dr. Joel Yudken, *Manufacturing Insecurity,* Spring 2010, AFL-CIO Industrial Union Council.
[vii] U.S. Census Bureau and the U.S. Bureau of Economic Analysis.
[vii] *The China Trade Toll,* August 2012, Robert Scott, Economic Policy Institute.
[viii] *Ibid.*

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Clean Energy Jobs

Congress must ensure clean energy jobs created by new public investments are good jobs located in the United States. Massive new public investments in clean energy technologies, energy efficiency and sustainable energy infrastructure have the potential to save and create millions of jobs, create whole new industries, revitalize American manufacturing and lay the groundwork for a revival of the American middle class. Ensuring these investments result in good U.S. jobs will require employment standards for federal investments that are not part of government procurement, strengthened Buy America requirements and selection criteria for contractors with minimum pay, benefit and training standards for jobs created by federal investments.

The market for environmental products is projected to keep growing. The annual market for environmental products and services is projected to double from $1.37 trillion currently to $2.74 trillion by 2020,[i] with energy efficiency accounting for half of this market and sustainable transport, water supply, sanitation and waste management accounting for the rest. In the United States, investments in clean technologies are now the third-largest sector for venture capital investments.[ii] The clean energy sector of our economy employs some 2.7 million workers and encompasses a significant number of jobs in establishments across a diverse group of industries that are manufacturing and export intensive. Roughly 26% of all clean energy jobs lie in manufacturing establishments, compared with just 9% in the broader economy. On a per-job basis, establishments in the clean energy sector of our economy export roughly twice the value of a typical U.S. job ($20,000 vs. $10,000). The electric vehicles (EV), green chemical products and lighting segments are all especially manufacturing intensive, while the biofuels, green chemicals and EV industries are highly export intensive.[iii]

Clean energy technologies have tremendous potential to create jobs. Clean-tech startups alone could generate an estimated 400,000 to 500,000 jobs in coming years.[iv] Sector studies such as the *Manufacturing Climate Solutions* report by AFL-CIO unions and the Environmental Defense Fund[v] demonstrate how specific clean/green technologies such as high-performance windows, auxiliary power units, LED lighting and concentrated solar thermal power could contribute to job creation. Deploying advanced coal technology could generate millions of job hours,[vi] and modernizing the electric grid and converting to advanced auto technology could create jobs in manufacturing and construction.[vii]

New public investment could create millions of clean energy jobs. The Obama administration estimates that 5 million new jobs can be created (directly and indirectly) with a public investment of $150 billion over 10 years.[viii] Green Jobs for America estimates that hybrid and other clean cars, public transport, efficient heating and lighting systems and clean renewable power plants could create more than 1.4 million new jobs.[ix] The Gridsmart Alliance reports that $16 billion in incentives for a “smart” electric distribution system would catalyze $64 billion in investments and create 280,000 new jobs.[x] International reports show that investments in improved energy efficiency in buildings could generate an additional 2 million to 3.5 million clean energy jobs in the United States and Europe.[xi]

Not all clean energy jobs are good jobs. A recent report by Good Jobs First found that low pay is not uncommon in environmentally friendly sectors of the economy.[xii] Wage rates at many wind and solar manufacturing facilities are below national averages for manufacturing. Some U.S. wind and solar manufacturers have begun to offshore production of components destined for the U.S. market to low-wage countries such as China and Mexico. State and local governments that attach strong enforceable labor standards to economic development investments pay the highest average wages.[xiii]

Congress must ensure clean energy jobs are good jobs located in the United States. Authorizing legislation must ensure the jobs created by public investments are good jobs that pay family-supporting wages and benefits and offer career paths for advancement; that federal resources are invested in the United States to create jobs located in the United States; and that federal investment does not encourage the offshoring of manufacturing jobs.

To ensure clean energy jobs are good jobs, Congress must establish minimum job standards. Congress must establish contracting and procurement criteria to ensure contractors and subcontractors on federally funded construction projects and other federally funded projects provide apprenticeship training programs, employer-paid health care, employer-paid pensions, worker safety programs and local community outreach to facilitate employment opportunities. In manufacturing, Congress should ensure contractors and subcontractors provide full health and retirement benefits, pay wages equal to at least 100% of state average manufacturing wages and provide quality training through joint labor-management partnerships, on-the-job training, skills training or other employer-based training.

To ensure clean energy jobs are good jobs, Congress must establish employer selection criteria. Congress should establish criteria for the selection of contractors and recipients of federal funding that include compliance with such existing federal laws as the Occupational Safety and Health (OSH) Act, environmental laws and anti-discrimination laws. Recipients of federal funding should be required to remain neutral in union organizing campaigns.

To ensure clean energy jobs are good jobs, Congress must expand access to high-quality training programs. The Green Jobs Act of 2007 established a competitive grant program for job training that leads to economic self-sufficiency in work related to energy technology, efficiency and manufacturing. The act authorized funding for apprenticeship programs and labor-management partnerships, which are the key to ensuring high-quality training, access to occupations with career ladders and employment opportunities for residents of local communities. Future legislation for training should continue these practices.

To ensure clean energy jobs are located in the United States, Congress must strengthen Buy America requirements. Buy America requirements could be strengthened by tightening domestic content thresholds, limiting available waivers and expanding product coverage to all manufactured goods and raw materials. Congress should achieve greater accountability by mandating commonsense standards for product substitutability, prohibiting segmentation of projects in order to avoid coverage and mandating waiver transparency. Congress should require an employment impact analysis for grants of public interest waivers and use the analysis as a major factor in determining the merits of requests. Congress also should raise the cost waiver threshold from 6% of total project cost to 25%.

To ensure clean energy jobs are located in the United States, Congress must establish investment policies linked to domestic job creation. Buy America requirements only cover government procurement, leaving many other investments untouched. Thirty years ago, it was safe to assume research and development tax credits would result in American-made products. This is no longer the case. Recently, Congress was shocked to discover that clean energy production tax credits/grants went primarily to foreign manufacturers. The nation must become, as our competitors are, far more strategic with investment policies that are linked to domestic employment. Congress must establish enforceable employment goals and standards for these investments.

To ensure clean energy jobs are located in the United States, Congress must establish investment criteria. An initial set of criteria for the award of financial incentives to targeted manufacturers should include the greatest use of domestically produced parts and components, the return of idle manufacturing capacity to productive service and location in states with the highest number of unemployed manufacturing workers. These criteria should serve as a model for the award of future federal incentives, awards and contracts.

To ensure clean energy jobs are good jobs, Congress must provide oversight and accountability. Congress must establish an oversight process with accountability measures for noncompliance and public access to, and Internet publication of, compliance information. The Government Accountability Office (GAO) should be directed to report regularly to Congress on outcomes relating to domestic investment, domestic employment and wages and benefits. Congress also should establish a "claw-back" mechanism to force contractors that willfully violate the law to disgorge all or part of the federal assistance they have received.

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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Climate Change, Energy and Environment

Addressing global climate change and achieving energy independence are both critical to the economic, environmental and security interests of the United States. America must lead a technological revolution in the way energy is generated and used, with massive investments in new technologies, energy efficiency, sustainable energy infrastructure and the skills of America's workers. A new U.S. energy strategy can be the foundation for the revival of the American middle class if it ensures the jobs created by these new investments are good jobs located in the United States and if it avoids handicapping U.S. manufacturers and workers or creating new incentives to shift production offshore.

Scientific evidence has confirmed that human use of fossil fuels is indisputably contributing to global warming, resulting in changes in climate patterns, rising sea levels and threats to coastal areas.[i] The United States is one of the most energy-intensive nations in the world, and for many years has been the world's leading emitter of greenhouse gases, although more recent estimates show that China is now the No. 1 emitter.[ii]

A new U.S. energy strategy must include massive investments in new technologies, energy efficiency and sustainable energy infrastructure. Specifically, a comprehensive investment agenda should feature investments in coal technology (carbon capture and sequestration), advanced automotive technology, renewable energy, biofuels, nuclear, mass transit, energy efficiency (retrofits, home weatherization and standards), electric grid modernization and smart distribution.

A new energy strategy must increase energy efficiency. According to an Oak Ridge National Laboratory study, doubling the use of energy efficient technologies by 2020 could increase industry investments by $140 billion and add an estimated 600,000 jobs in the United States. For example, modernizing and extending the 160,000 miles of high-transmission lines that make up the electrical grid and creating a "smart grid" would create good jobs and increase energy efficiency by an estimated 20%.[iii] The extended access is critical to the expansion of such renewable energy as wind turbine and solar projects that tend to be located in rural communities. A concerted effort to retrofit public, industrial and commercial buildings, along with comparable efforts to weatherize homes, could increase energy efficiency while also creating new jobs. In the industrial sector, combined heat and power (CHP) plants achieve typical effective electric efficiencies of 70% to 90%, which result in lower operating costs, cleaner emissions and additional revenue from the sale of any excess power generated. The U.S. Department of Energy's (DOE) Advanced Manufacturing Office (AMO) estimates a 20% increase by 2030 in CHP's electricity generation share could help the United States leverage $234 billion in new private investments and create 1 million new jobs.

A new U.S. energy strategy can be the foundation for a revival of the American middle class. This comprehensive investment agenda promises to save jobs, create new jobs and revitalize the U.S. manufacturing sector. President Obama has projected that new energy investments will create millions of new jobs, while the Apollo Alliance estimates that investing $500 billion over 10 years would generate 5 million jobs.[iv] (*See* "Clean Energy Jobs," AFL-CIO Legislative Handbook.)

The role of the auto industry is critical. The auto industry is the most important one in the manufacturing sector and the cornerstone of an advanced manufacturing economy, featuring integration and assembly of leading-edge technologies and products. Retooling the U.S. auto industry to accelerate domestic production of advanced-technology and alternative fuel vehicles and their key components would create jobs in the United States while raising federal and state tax revenues. Currently, many advanced-technology vehicles are assembled overseas, and most of the key components are built abroad.

A new energy strategy must ensure new investments produce good jobs in the United States. Energy and environmental legislation must ensure new investments are grounded in the domestic economy, are supported by effective trade policies and do not encourage the offshoring of manufacturing jobs. It also must require prevailing wage standards, criteria for manufacturing compensation and benefits and standards for the quality of contractors and manufacturers.

To avoid driving jobs offshore, a new energy policy must provide for a balanced approach with an economywide program. All sectors of the economy should be required to participate in any carbon pricing, cap-and-trade or alternative emissions regime; no sector should be disadvantaged; and there must be a border adjustment trade regime to ensure a level international playing field. Failure to meet these three key requirements presents a serious risk of driving good jobs offshore to countries that lack emission regimes and have far less carbon efficient production.

A new energy strategy must reduce U.S. dependence on foreign oil. Over the next decade, rapidly expanding development of renewable energy, accelerating development of advanced coal technologies, modernizing the electrical grid, expanding mass transit and passenger rail, federal biofuel initiatives, Corporate Average Fuel Economy (CAFE) standards and advanced automotive technology all can contribute to reducing our dependence on foreign oil. There is an emerging opportunity in the use of CO_2 for enhanced oil recovery that results in increased domestic oil production while capturing and permanently sequestering carbon emissions.

A new energy strategy must retain all current energy generating options. The production, transportation and distribution of reliable and affordable electrical energy are critical to the U.S. economy, especially the manufacturing, transportation, construction and service sectors. To ensure a stable, reliable and affordable supply, there must be diversity in the electric utility industry and retention of all current energy sources—including fossil fuels, nuclear, hydro and renewable energy. In electrical generation, coal-powered and nuclear-powered plants are needed to meet future energy needs. The United States must further develop advanced coal technology (IGCC/CCS) and new nuclear technology that meets federal developmental, financial, regulatory and environmental requirements. Hydraulic fracturing technology has led to the expansion of domestic oil and natural gas supplies, lower energy prices, increased investment, domestic job creation and the prospect of enhanced national security. This comes with a responsibility to ensure this is done in a safe and environmentally sound manner that encourages best practice and industry development.

A new energy strategy must invest in worker and community assistance. Investments must include transition assistance and community planning; enhanced training and education resources for displaced workers; a career path through apprenticeship training for new entrants to the industry; and relief from energy costs for low- and moderate-income families.

Key principles will drive AFL-CIO efforts on climate change. The AFL-CIO will work to ensure: 1) standards and timelines are realistic in relation to available technology; 2) any investment portfolio is invested in the United States; 3) the system encourages investments in domestic energy-intensive industries and discourages the offshoring of jobs; 4) advanced developing nations fully participate in climate change solutions; 5) an effective cost-control mechanism is in place to ensure energy pricing stability; 6) adequate resources for transition, training and education are available for workers and their communities; 7) adequate assistance is available for low- and moderate-income families impacted by energy prices; and 8) state climate change measures integrate appropriately with a federal emissions cap-and-trade program to achieve environmental goals and avoid economic dislocation.

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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Federal Investment in the U.S. Transportation System and Infrastructure

Strong federal investment in our transportation system has never been more important to support the economy and to create and sustain good jobs for U.S. workers. Rebuilding our nation's crumbling infrastructure will employ millions of workers while helping to improve the movement of goods and people. Investments in aviation, rail, maritime, transit and road networks are desperately needed to move people and help the flow of commerce that in turn will help create economic development opportunities.

Investments in transportation operations and infrastructure create tens of thousands of well-paying jobs that cannot be offshored. These expenditures also create supply-chain employment opportunities, downstream consumer expenditures and a broader tax base for states and municipalities. Analysts have estimated that for every $1 billion invested in transportation projects, as many as 35,000 jobs are created.[i] Employment opportunities created through infrastructure investments can last over an extended period, providing stable economic opportunities in the future.

Nationwide, our roads, highways and bridges are crumbling while being subjected to increasing capacity demands. In 2013, the American Society of Civil Engineers' *Report Card for America's Infrastructure* gave the nation's roads a grade of D and our overall infrastructure a grade of D+.[ii] Of the 605,086 bridges in the National Bridge Inventory, 23.8% of them—almost one in four—are structurally deficient or functionally obsolete.[iii] While travel over our roadways has increased dramatically, the United States has underinvested in necessary road and bridge infrastructure. At this time of high unemployment and crippling infrastructure shortfalls, Congress must increase the federal investment in surface transportation to make our infrastructure and economy the best in the world.

Federal investments and support for public transit are woefully inadequate to meet current needs and must be enhanced. To meet the increasing demands the nation is placing on our transit systems, federal transit funding should be increased by at least 20% annually. To address a national outbreak of service cuts, layoffs and fare increases, transit systems also should be able to use part of their federal transit funds for operating purposes, such as fuel and maintenance costs. Because of state and local budget problems, transit budget flexibility is crucial to preserve the jobs of thousands of transit workers. Public transit also is essential to millions of Americans who depend on the bus or subway to commute to work or school. Such flexibility will make up for cuts in state and local budgets while saving thousands of jobs.

To meet the needs of the entire surface transportation system, Congress and the administration must pass a long-term, robust surface transportation reauthorization bill that provides for a

dedicated source of funding that is segregated from the federal budget. Transportation infrastructure investments must not used for budgetary shell games. Complex infrastructure projects often take several years to complete and fluctuations in annual appropriation levels will create uncertainty that will stop important investments from moving forward. Policy makers must use this legislation to improve and invest in our surface transportation network, enhance safety, promote intermodal policies and protect the interests of employees.

Funding for our nation's aviation system is needed to update our infrastructure and implement new technologies. The U.S. aviation system provides more than 11 million jobs and fuels economic development in almost every sector of our economy. Our aviation system is one of the safest and most efficient in the world and, despite significant economic losses in recent years, airports and airlines are operating at or near capacity. Furthermore, demand for commercial airline travel is only expected to increase. [iv]

Freight rail is integral to keeping America's economy moving. Millions of people rely upon freight rail to transport such essential commodities as coal, food products, raw material and other daily necessities. Almost 2 billion tons of freight were transported by rail in 2011.[v] Moreover, demand for freight transport is expected to significantly increase in the coming years. The Department of Transportation projected that total freight transportation demand would rise by 92% from 2002 to 2035, including an 88% increase for railroads.[vi] To meet this demand, additional investments in freight transportation will be needed. We support legislative proposals that would provide tax incentives to encourage investment in freight rail infrastructure. Policies such as these would allow the industry certain tax credits that could be reinvested and used to make improvements to the rail network, create thousands of jobs, relieve environmental concerns and address the challenges and demands of our ever-expanding economy.

Congress should support the Obama administration's goal of creating a world-class national passenger rail service system as part of its transportation legacy. For too long, Amtrak, our national passenger rail carrier, has been forced to limp from one financial crisis to the next while being asked to do the impossible—operate a national passenger rail system without adequate support from the federal government. To reverse this trend, Amtrak must receive, at a minimum, the funding levels appropriated by Congress in its 2008 reauthorization bill. We also support Amtrak's ambitious plan to upgrade and improve passenger rail service in the Northeast Corridor and urge Congress to fund this important initiative.

We support President Obama's historic commitment to high-speed rail as a way to improve our transportation network and provide another transportation option. As the only carrier with the experience and ability to provide high-quality national passenger rail, Amtrak should be the centerpiece of any high-speed rail service in the Northeast Corridor, California and throughout the country.

Maritime infrastructure needs a renewed commitment of federal investment. Chronic chokepoints at our nation's seaports and intermodal centers, where cargo is transferred, are placing limits on our economy. The majority of U.S. foreign trade moves by ship. Aggressive investments in

American seaports and maritime infrastructure are imperative to creating and sustaining good maritime and longshore jobs. Congress also needs to promote policies that enhance better connectivity between transportation modes—policies that long have been pursued around the world.

Public-private partnership (PPP) arrangements have been promoted as a method to fund transportation projects. When the public interest is properly protected, PPPs can play a role in future transportation financing. However, only a small fraction of transportation projects are candidates for this type of funding mechanism. We cannot build and maintain a national intermodal surface transportation system that is overly reliant on for-profit PPPs. PPPs must be in the public interest. Taxpayers and workers must be protected from one-sided agreements that provide long-term benefits to investors without improving service or infrastructure.

Innovative finance mechanisms, from new bonding mechanisms to already-familiar state infrastructure banks, can supplement but not replace direct federal investment. The recent disruptions in the financial markets should remind us that private capital and a willingness to invest are not always foregone conclusions. Our transportation system needs a steady and reliable source of funds that only the federal government can provide.

Congress should support legislative initiatives that would make essential investments in U.S. transportation infrastructure a priority. The investments included in the American Recovery and Reinvestment Act made a down payment on the investments needed to bring U.S. transportation infrastructure up to par and to put people to work. However, Congress must now continue to provide adequate resources if the nation is to realize the economic potential that investments in transportation services and infrastructure hold.

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Corporate Bankruptcy Reform

As corporate bankruptcy continues to be viewed by businesses and capital markets as a powerful tool for restructuring a business's financial obligations, America's workers increasingly are in need of comprehensive bankruptcy reform to protect their interests. In the last decade, businesses increasingly have turned to bankruptcy restructuring as a strategic tool to target workers' interests: many businesses have used bankruptcy to eliminate good-paying jobs and drastically cut workers' pay, health care and pension benefits. Congress must reform the Bankruptcy Code to protect employees from severe and disproportionate economic sacrifices that threaten their financial security and weaken our economy by undermining workers' purchasing power. In addition, reforms are needed to halt the use of business bankruptcy as a safe haven for lucrative executive pay schemes designed to insulate management from financial losses even as they use the process to extract deep sacrifices from the workforce. Legislation introduced by Rep. John Conyers Jr. (D-Mich.), Protecting Employees and Retirees in Business Bankruptcies Act of 2013 (H.R. 100), addresses many of the concerns raised below.

In 1978 Congress passed legislation to comprehensively revise corporate bankruptcy laws. In recent years, business bankruptcies have increased significantly. Business bankruptcy filings spiked in 2008 and 2009 and remained at high levels through 2010. While overall business filings may have been down slightly in 2012, the use of bankruptcy to target labor obligations has not declined and continues to be a prominent feature of the current bankruptcy system. Last year, companies like American Airlines, Kodak, Hostess and Patriot Coal used Chapter 11 to target labor and retiree obligations, and cargo and military transport airlines filed bankruptcy cases to address changes brought about by the wind down of the wars in Iraq and Afghanistan.

The Bankruptcy Code is intended to reflect a balance between the interests of the business debtor and other constituents affected by bankruptcy, but is severely imbalanced against workers' interests. Although the 1978 revisions to the Bankruptcy Code were designed to emphasize the preservation of a business as a going concern and preserve jobs, the code now facilitates business reorganization at almost any cost to workers' pay and jobs. Provisions of the code originally intended to protect workers' interests now enable employers to renege on their commitments to workers with remarkable ease.

Bankruptcy has become a strategic tool used to bring about business change that adversely affects workers' interests. Though Congress originally designed bankruptcy reorganization as a means of preserving jobs, businesses have turned to bankruptcy restructuring to facilitate the elimination of good-paying jobs and drastic reductions in labor and benefit obligations. Labor costs, pensions and health care obligations have become prime targets in bankruptcy proceedings, even where the root causes of financial distress stem from adverse industry conditions and failed business models.

Bankruptcy places the financial security of millions of employees and their families at risk. Workers do not have the same ability as other stakeholders to absorb and recover from the financial losses of an employer's bankruptcy. Without adequate returns for earned pay and benefits, and absent protections for their jobs and livelihood, workers face long-lasting consequences for their financial security where employers target their pay and benefits in bankruptcy.

Workers bear a disproportionate share of the financial costs of bankruptcy. Even as workers risk deep financial losses, executives largely are insulated from the effects of companies' financial restructuring as management compensation enhancements are treated as standard fare in a business bankruptcy, despite Congress's recent efforts to curtail these programs.

Bankruptcy reforms enacted in 2005 did not adequately address workers' interests. The omnibus bankruptcy legislation enacted in 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), focused far more attention on consumer bankruptcy issues promoted by the credit industry than on the disparity in treatment between employees and executives in a business bankruptcy case. The few BAPCPA reforms intended to improve workers' recoveries and curb executive pay were insufficient to remedy deficiencies in the Bankruptcy Code that do not adequately address greater risks to workers' interests as the use of business bankruptcy has expanded and as court decisions have weakened existing protections for workers of bankrupt companies. Recent changes also have failed to rein in excessive executive compensation schemes.

Congress must reform the Bankruptcy Code to protect employees from disproportionate economic sacrifice. Congress must reset the rules for using bankruptcy to target a company's labor and benefit obligations, restore job preservation as a principal goal of business reorganization and stop the unseemly growth of executive pay schemes in bankruptcy cases.

The Bankruptcy Code should provide better protection for unpaid wages and benefits; workers should have wage priority protection for unpaid wage claims up to $20,000 and additional protection for unpaid employee benefit plan contributions.
Current law provides for a payment priority of $12,475 per employee for wages and other compensation earned within 180 days prior to the filing of bankruptcy. This per-employee priority applies to all forms of compensation earned within that time period, including wages, vacation and severance pay. A priority for contributions owed to pension, health and other employee benefit plans is limited by the same per-employee cap, and is paid only to the extent the cap has not been exhausted by wages or fringe benefits. This limitation often leaves employee benefit plans without an effective priority claim. Bankruptcy reform is needed to increase the overall wage priority cap, eliminate the arbitrary earnings period and provide a separate payment priority for benefit plan contributions. In addition, reforms should correct the rules that have limited recovery of severance pay to a mere fraction of what workers are owed and thwarted the payment of damages under the Worker Adjustment and Retraining Notification (WARN) Act.

All workers should have a claim in bankruptcy court for lost pension benefits. Bankruptcy law should include a claim for 401(k) plan beneficiaries who suffer losses in the value of employer stock in their plans as a result of employer stock or pension fraud. Individuals whose lives are ruined by their employer's actions should not be forced to scramble for the little that remains after banks and other preferred creditors have gotten their share. Current law does not recognize any effective recovery in bankruptcy for certain types of retirement or savings benefit losses. For example, losses in defined-contribution plans are virtually non-recoverable where they are based upon stock ownership, because such interests are subordinated to general unsecured creditors. For pension benefits paid from a defined-benefit plan, courts have ruled losses resulting from a plan termination can be recovered only by the Pension Benefit Guaranty Corp. (PBGC). Individuals who do not recover full pension benefits when a plan terminates also should be entitled to a claim for the benefit shortfall.

Executives should do no better than ordinary workers in bankruptcy, and limits should be placed on management-enhanced compensation programs. Generous compensation enhancements, bonus packages, stock grants and other perks awarded to management have become virtually standard features of reorganization plans, despite recent efforts by Congress to rein in these programs. Bankruptcy reform should curb executive pay largesse by requiring adherence to strict approval standards for executive compensation proposed during bankruptcy and by plugging loopholes in BAPCPA that have been exploited by management and compensation professionals to skirt Congress's restrictions. Compensation for officers, directors and other persons in control of the debtor proposed in a reorganization plan should be subject to approval by the court under standards that correct the lenient rules now used by the courts and prohibit bankruptcy bonuses for senior management where workers have made sacrifices.

Reform is needed to restore balance to the bargaining process where an employer seeks changes to a labor agreement in bankruptcy. Protections enacted by Congress to safeguard labor agreements and prevent employers from using bankruptcy to change labor agreements at will reflected a balance of bankruptcy policies and important non-bankruptcy policies recognizing the process of collective bargaining. These important protections have been eroded by the courts, leaving workers to bear disproportionate losses and remain subject to harsh concessions long after the company has emerged from bankruptcy. Bankruptcy reforms are needed to reset the rules to restore a process that is fair to workers and does not leave them to bear a disproportionate burden or threaten their financial security where a debtor seeks changes to a labor agreement.

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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Mortgage and Foreclosure Relief

Housing recovery efforts have been under way for several years now, yet the dream of homeownership for millions of working families remains at risk. President Obama signed into law sweeping financial reform legislation in 2010 intended to establish a simple federal standard for all home loans, require that institutions ensure borrowers can repay the loans they are sold, prohibit the financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans and eliminate prepayment penalties that trapped so many borrowers into unaffordable loans. The agencies tasked with implementing these rules have come under tremendous pressure from financial industry lobbyists seeking to undermine congressional intent to prevent the predatory practices that led to the housing crisis. And, even after these rules are in place, much work remains to be done. Congress and the administration must take immediate additional action to resolve the nation's ongoing foreclosure crisis.

Foreclosure filings were made on 2.3 million homes in 2012, down 36 percent from the peak of 2.9 million properties with foreclosure filings in 2010. [i] Though signs of improvement have been seen, since May 2012, nearly 4 million families have lost their homes due to foreclosure, and up to 10 million homes are at high risk for foreclosure over the next several years.[ii]

In addition to the economic devastation suffered by families who lose their homes, the Center for Responsible Lending notes that by the time the foreclosure crisis ends, people who live near foreclosed homes will suffer nearly $2 trillion in lost wealth. This represents an average loss of more than $20,000 for each of the homeowners affected.[iii] The foreclosure crisis is compounded by a lack of affordable housing, resulting in very bleak housing prospects for millions of middle-class working families.

Efforts to address the crisis so far have proven insufficient. While Congress and the Treasury Department have made efforts to encourage mortgage servicers to restructure bad loans, efforts to date have not done enough to prevent unnecessary foreclosures. Like many of its predecessor plans, the Home Affordable Modification Program (HAMP) has fallen short of its intended goals to help troubled homeowners. The administration launched the program with a promise that it would help 3 million to 4 million homeowners avoid foreclosure, yet only 1.1 million homeowners had received permanent modifications as of January 2013.[iv]

While this is a step in the right direction, more must be done to address the housing and foreclosure crisis. Reducing the principal amount outstanding for underwater mortgages is the most effective way to prevent foreclosures, stabilize housing prices and get our economy working again. An effective program to address the foreclosure crisis must prioritize principal reductions.

Hold banks accountable for the illegal behavior that created the crisis. Abuse, fraud, conflicts of interest and lawlessness have been endemic at every stage of the mortgage origination, pooling, securitization, and servicing and foreclosure process. Big Banks and their executives must be prosecuted for the activities that caused the worst financial crisis since the Great Depression.

The Residential Mortgage-Backed Securities (RMBS) Working Group that was created in 2012 to investigate foreclosure fraud and bring banks to justice must be given sufficient resources to conduct a thorough investigation and pursue charges against banks and executives that broke the law.

In those cases where settlements already have been reached, the terms of those settlements must be enforced. Banks should not be rewarded for failure to comply by regulators who either look the other way or agree to new, less onerous terms when banks find the terms of their previous agreements inconvenient.

Extend HAMP when it expires at the end of 2013. Despite concerns about HAMP, more than 1 million families remain in their homes today because of the program. HAMP continues to be important to a fragile national housing recovery because it significantly improves access to modifications for families across the country and improves the sustainability of modifications with its emphasis on affordability. HAMP modifications produce better results than proprietary modifications. For example, in the third quarter of 2012, more than three-quarters of HAMP modifications had monthly payment reductions of greater than 20%, while less than half of proprietary modifications did. Furthermore, only 11% of HAMP modifications completed in the fourth quarter of 2011 were delinquent nine months later, compared with 24% of proprietary modifications.[v]

It is clear that an extension will help many families avoid foreclosure by providing affordable modifications that might not otherwise be available. Extending the HAMP for several years would greatly assist the housing market in general and neighborhoods most affected by high foreclosure rates.

Further policy changes could improve the HAMP's ability to prevent foreclosures. HAMP should be improved by requiring a standard process used by all servicers to determine whether a borrower is eligible for a modification, mortgage terms should be fair and affordable, unfair barriers to access should be removed, regulators should enforce servicing rules and homeowners should be protected from servicers' noncompliance. Finally, additional measures should be implemented to use this money to more aggressively promote and support principal reduction.

The Federal Housing Finance Agency (FHFA) must end its ideological objection to principal reduction, including to the Obama administration's mortgage principal reduction program. In 2010, the administration announced the HAMP Principal Reduction Alternative program (PRA) to encourage principal reduction in mortgages held by underwater homeowners.[vi] FHFA analysis has found that participating in the program could save $3.6 billion for Fannie Mae and Freddie Mac and $1 billion for the taxpayers.[vii]

Despite the benefits of participation in PRA to homeowners, the government-sponsored enterprises (GSEs) and taxpayers, FHFA refuses to allow the GSEs to participate in the program. By refusing to allow Fannie

Mae and Freddie Mac to engage in principal reduction, FHFA could deny relief to as many as a half-million struggling homeowners. It is well past time for FHFA to allow borrowers whose loans are held by the GSEs to obtain principal reductions.

Extend the tax exemption for mortgage debt forgiven in a short-sale or loan modification. In 2007, Congress passed the Mortgage Debt Relief Act to allow taxpayers to exclude "income" from debt forgiven in mortgage modifications, short sales or foreclosures on their primary residence.[viii] The provision is set to expire at the end of 2013.[ix]

The government should not add insult to injury by hitting borrowers who have received a loan modification with a tax bill for debt forgiven in that process. This exemption should not be allowed to expire at the end of 2013 and should be expanded to include all affected borrowers.

Make mortgage servicing more effective. The ongoing foreclosure crisis has brought to life the need for meaningful servicing standards that apply to mortgages and servicers across the country. Consumer protection for servicing is particularly important because, while borrowers can choose their lender, they cannot control who services their loan. In January 2013, the Consumer Financial Protection Bureau (CFPB) issued final rules on mortgage servicing standards. The servicing standards issued by the CFPB have begun to impose across-the-board standards for mortgage loan servicing. They are a welcome first step, but must be improved by strengthening the provisions that prohibit servicers from pursuing foreclosures at the same time they are negotiating mortgage modifications with borrowers and requiring servicers to provide affordable mortgage modifications for qualified borrowers facing foreclosure. The CFPB and all regulators with authority, including the Office of the Comptroller of the Currency, must aggressively enforce servicing rules and standards.

Finally, the CFPB must take the strongest possible steps to prevent lenders from steering borrowers into high-cost loans when they qualify for less-expensive alternatives. This must include making sure that compensation structures do not create incentives to put borrowers into high-cost loans when they qualify for a more affordable product.

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[i] www.realtytrac.com/content/foreclosure-market-report/.
[ii] http://ourfinancialsecurity.org/2013/01/at-a-crossroads-lessons-from-hamp/.
[iii] *Id.*
[iv] The Obama Administration's Efforts to Stabilize the Housing Market and Help American Homeowners; U.S. Department of Housing and Urban Development/U.S. Department of Treasury, February 2013.
[v] See OCC Mortgage Metrics Report, Disclosure of National Bank and Federal Savings Association Mortgage Loan Data, Third Quarter 2012, available at www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics-2012/mortgage-metrics-q3-2012.pdf (calculations on non-HAMP modifications take total modifications and subtract out HAMP modifications by category). See also Ioan Voicu et al., Furman Center for Real Estate & Urban Policy, Performance of HAMP Versus Non-HAMP Loan Modifications – Evidence from New York City (2011), available at http://furmancenter.org/files/publications/paper_mods_performance_102311_1.pdf

(finding that HAMP modifications have lower re-default rates even after controlling for payment reduction, interest rate reduction and term extension).

[vi] www.hmpadmin.com//portal/news/docs/2010/hampupdate060410.pdf.

[vii] www.treasury.gov/connect/blog/Documents/letter.to.demarco.pdf.

[viii] www.irs.gov/Individuals/The-Mortgage-Forgiveness-Debt-Relief-Act-and-Debt-Cancellation.

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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Unemployment Insurance

Congress should continue to reverse decades of neglect of the unemployment insurance (UI) system, especially because unemployment is expected to remain high for years. In recent decades, the UI system fell into serious disrepair and was failing to meet the needs of millions of laid-off workers.

The UI system was created in 1935 to provide a safety net for workers who become involuntarily unemployed. The program is a federal-state partnership, administered by state employees, in which states pay unemployed workers up to 26 weeks of unemployment benefits financed by state UI payroll taxes. The federal government establishes broad standards that state programs must meet; provides half of the funding for extended benefits (EB) for workers in certain states with especially high rates of unemployment; finances the administrative costs of the system; and makes loans to states whose trust funds are experiencing financial distress, all of which is funded by federal UI payroll taxes.

The UI system has fallen into disrepair. Only about 37% of jobless workers collect state UI benefits, and UI benefits average only about $290 per week across the states, and replace a little less than half of an average worker's wage.

Federal unemployment benefits must not expire. Currently, the Emergency Unemployment Compensation program (EUC) provides long-term unemployed workers with anywhere between 14 to 47 additional weeks of federally funded UI, depending on how high the unemployment rate is in the states in which they live. The average duration of unemployment remains more than 39 weeks. We certainly cannot allow this program to lapse until the average duration of unemployment falls below the level of state benefits offered, currently a maximum of 26 weeks.

UI benefits provide an automatic stabilizer during economic downturns. Next to food stamp benefits, UI benefits have the greatest impact of any other form of economic stimulus. Every dollar paid in unemployment benefits generates as much as $2 in economic activity, providing a critical local stimulus during recessions.

UI benefits provide other important benefits to society. Unemployment benefits help prevent workers from falling into poverty, stabilize housing markets in communities experiencing foreclosures and layoffs, help maintain labor standards and promote productivity by allowing workers the time to search for jobs that best match their skills.

The economic crisis will demand continued restoration of the UI system. This will be the longest and steepest economic downturn since the Great Depression. Unemployment will not peak until long after the recession ends, and will remain high for years to come.

Congress should fully fund administration of the UI system. For years, congressional appropriations for state UI administration have been grossly inadequate. The ARRA included $500 million in additional administrative funding because it encouraged states to expand UI eligibility. But more administrative funding is needed to help states process the record number of unemployment claims and build the UI infrastructure necessary to deal with periods of high unemployment. The systems for financing unemployment insurance should be rebuilt with a deficit-neutral plan that limits tax increases and maintains benefits.

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Worker Training and Skills Development

Much more federal investment is needed in worker training and skills development programs that put workers on a career path toward higher living standards. From 2000 to 2008, federal funding for worker education, training and skills development programs was slashed and a "work first" approach to training policy that continued to trap workers in low-wage jobs with little opportunity for advancement was promoted. However, in February 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). This critical piece of legislation provided a new approach for the workforce system to help our nation's workers retool their employment skills to reconnect to jobs. The additional funding added to the workforce investment system by the Recovery Act was needed in an area that essentially was starved for eight years. Congress must build on its previous efforts with the Recovery Act and work to develop and fully fund this new "good jobs" strategy that puts workers on career paths toward long-term employability with family-sustaining wages and benefits with opportunities for career development. This can be accomplished through a wide range of workforce development programs, including the Workforce Investment Act (WIA), apprenticeship programs, Job Corps and the Green Jobs Act.

The Workforce Investment Act (WIA) of 1998. The Workforce Investment Act (WIA) of 1998 was designed to provide employment and training assistance to unemployed, disadvantaged and underemployed adults, as well as dislocated workers and youth. WIA has brought together a range of workforce development programs under a nationwide network of approximately 1,600 One-Stop Career Centers.

The Workforce Investment Act of 1998 replaced the Job Training Partnership Act (JTPA). The three principal WIA funding streams are for adult workers, dislocated workers (those who have been laid off as a result of plant closings or as part of a mass layoff, and are unlikely to return to their occupation because of industry conditions) and youth. For Program Year 2013 (July 1, 2012 –June 30, 2013), the U.S. Congress made the following amounts [i] available to states for WIA services to selected populations and agencies:

- Adult program and training services: $730,624,342;
- Dislocated worker services: $1,179,657,807;
- Youth activities: $781,375,289; and
- Employment Service (Wagner-Peyser) activities, public employment services offered in the One-Stop Centers): $664,183,664.

WIA programs are administered by state and local Workforce Investment Boards (WIBs), which are required by law to have at least one-half of their members from business. The WIBs oversee a network of One-Stop Centers, which provide in one location a wide range of services needed by unemployed, disadvantaged and underemployed adults, dislocated workers and youth. These services include information and access to job training, education and employment services, skill assessments, eligibility for and access to Trade Adjustment Assistance (TAA), assistance determining eligibility for and providing access to training, help filing for unemployment insurance, job search and placement assistance, and career counseling.

Congress should address deficiencies in the WIA system. There is much that can be done at the federal and state levels to improve upon the services WIA provides. In its current form, WIA tends to steer participants into low-skill, low-wage jobs with little opportunity for career advancement. At the national level, working families and their unions should continue to urge Congress to modify WIA so that programs promote economic self-sufficiency and connect unemployed and underemployed workers to training that leads to family-sustaining jobs and career ladders. We also must insist that Congress not eliminate or block grant any existing program, including the WIA adult, dislocated worker or Wagner-Peyser Employment Service programs, as this would reduce the services delivered to targeted populations and undermine support for the program among key constituency groups.

In 2013, Republicans on the House Education and the Workforce Committee introduced legislation (H.R. 803) that would consolidate 35 job training programs and allow governors to cut programs that serve dislocated workers, seniors, farmworkers, Native Americans, young persons in the Jobs Corps and unemployed workers who receive career counseling through the Employment Services. The bill consolidates categorical programs and combines funding streams into a single Workforce Investment Fund that would give states wide discretion to pick and choose eligible groups of participants according to the ideological predispositions of their governors. Such consolidation of WIA programs would eliminate the targeting of resources to workers and communities where the needs are greatest. In turn, a single fund of this type would make programs more vulnerable to funding cuts and pit one group of workers against another in competition for limited resources. Such consolidation of funding streams will undermine the accountability of the entire WIA system, enabling states to manipulate their resources in a manner that will result in the neglect of populations with the greatest needs.

In March 2013 the U.S. House of Representatives passed H.R. 803, which was strongly opposed by the AFL-CIO, affiliated unions, and a variety of community and public policy organizations.

Reassert the role of the public sector in WIA. The center of our nation's workforce development system must be a robust, publicly operated employment security program that has the resources to provide job-matching services, conduct labor market research on the employment implications of new and expanding industries, counsel job seekers and make referrals to job placement. Only a public labor exchange will ensure services are provided in an equitable manner, free of personal favoritism and conflict of interest. The public labor exchange must serve as the primary entry point into the system.

The statewide and public structure of the Employment Service provides a useful complement to the much more localized and privatized WIA structure. As a statewide entity, the Employment Service agency has flexibility to work more easily on a regional and interstate basis and to respond quickly to emergencies by shifting staff from one part of the state to another. Its statewide information system avoids costly duplication of multiple local information systems and the hoarding of job orders by local areas. Accountability is facilitated by the fact that the staff located throughout a state is part of a single personnel system in which hiring is based on a uniform standard of competence and skill requirements in order to provide impartial and unbiased service delivery.

To ensure WIA is responsive to the broad public interest, Congress should amend WIA to require the One-Stop Centers be publicly operated and that full information about their operations is easily accessible and widely available. The Wagner-Peyser Act (part of WIA) should be amended to fund demonstration projects to improve and increase the capacity of state Employment Service agencies to upgrade the quality and scope of the career counseling they provide to participants in the system. In addition, there should be a separate funding stream for One-Stop Centers. No funds should be taken from WIA training or other partner programs to pay for infrastructure costs. Congress also should modify WIA to rebalance the interests of business and labor on the WIBs, and establish greater labor representation.

To encourage employees across a wide spectrum of union and nonunion workplaces to obtain necessary education and skill training, the national workforce development system should incorporate a network of workplace-based learning advisers. These workers would advise their peers on their work-related skill development needs and educational options. They would advocate for the importance of continuous skill development, post-secondary education and lifetime learning as key parts of enterprise and individual success. Advisers would be knowledgeable about the training services available through One-Stop Centers, and refer their co-workers to Employment Services career counselors. In individual workplaces, workers should have the legal right to request time to undertake training and have the opportunity to work with workplace learning advisers to gain the educational credentials required to achieve employment security. WIA should be amended to allow state and local boards to use their federal funds to provide for the training, education and skill upgrading of these workplace learning advisers.

Other jobs programs administered in the Labor Department should be harmonized with apprenticeship, while maintaining a distinct Office of Apprenticeship that reports directly to the assistant secretary and is not subordinate to the Office of Workforce Investment. A reauthorized WIA should specify that all registered joint apprenticeship programs automatically are added to local and state eligible provider lists, unless those programs decide to "opt out" of being on those lists.

Maintain the Green Jobs Act. The Green Jobs Act of 2007 amended WIA to establish a new program that provides federal government funding to states, nonprofit organizations and labor-management partnerships to deliver training to targeted populations for jobs related to renewable energy, greater energy efficiency, the production of sustainable products and other areas related to the nation's transition to a clean energy economy. The act authorizes funding for national grants to nonprofit partnerships that include an equal participation by labor and business organizations. This section of WIA should remain unchanged.

Oppose block grants and new waiver authority. The current WIA statute already provides wide-ranging flexibility. Congress should not—in the name of flexibility—undermine local accountability for high-road strategies through expansion of current WIA waivers, consolidate adult and dislocated worker funding streams or transfer funding between federal adult, vocational and higher education programs.

Retain the focus of Job Corps on career training. The Job Corps is a job training and education program for disadvantaged young people between the ages of 16 and 24 that operates through as many as 127 residential centers in the United States and Puerto Rico. The Job Corps serves approximately 62,000 persons annually and has served more than 2 million young people since its founding in 1964. While enrolled in the program, most Job Corps participants live full time in campus-like facilities where they obtain a combination of career development services, academic education, post-graduation placement services and transitional support. The Job Corps has been highly effective in helping socially and economically disadvantaged youth obtain the skills necessary for good jobs at family-sustaining wages and entry into apprenticeship programs.

The purpose of the Job Corps should remain primarily as a career training and job placement program in which career technical education and workplace preparation play critically important roles. AFL-CIO affiliates and other union-associated Job Corps training providers have recommendations for program improvements, including linkages to registered apprenticeship programs.

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[i] The U.S. Department of Labor announced these allotments on May 1, 2013, in Training and Employment Guidance Letter No. 25-12, available online at http://wdr.doleta.gov/directives/corr_doc.cfm?docn=3535. The allotments to states are lower than the previous year because of a rescission of funds and the application of "sequestration," which reduced discretionary federal programs by 5%.

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

State Fiscal Relief

States and localities continue struggling with the aftermath of the worst fiscal crisis since World War II, the sub-prime mortgage meltdown and reduced property values, including significant budget shortfalls across the country. Simultaneously, persistently high unemployment and poverty levels continue to reduce tax revenues and maintain high demand for government assistance. Since 49 of 50 states have a constitutional obligation to balance their budgets, critical services and infrastructure have suffered deep budget cuts. Congress should provide fiscal relief to states as needed to help close their deficits without hurting people who need help the most.

In 2009–2010, the Senate and House passed the American Recovery and Reinvestment Act (ARRA) and FAA Air Transportation Modernization and Safety Improvement Act, H.R. 1586, with education jobs and Medicaid funding. Both provided crucial assistance to keep Americans working, create new jobs and fund vital public services. Specifically, ARRA expanded the federal contribution to states' Medicaid programs for nearly two and a half years and created a "State Fiscal Stabilization Fund." These measures provided about $135 billion to $140 billion, which reduced state deficits by $31 billion in FY 2009, and by another $68 billion in FY 2010. H.R. 1586 added $10 billion to the State Fiscal Stabilization Fund and extended the increased federal Medicaid contribution for an additional six months through June 2011. Unfortunately, the aid provided by ARRA and H.R. 1586 has run out and the state fiscal crisis is not yet fully abated.[i]

Budget shortfalls continue. States already have drawn down their reserves, trimmed spending and increased taxes to close more than $430 billion in budget shortfalls in fiscal years 2009, 2010 and 2011. Despite continuing efforts, some states continue reporting mid-year budget gaps and project future budget gaps.

States already have made numerous spending cuts. The Center on Budget and Policy Priorities reports that at least 46 states have enacted cuts in all major areas of state services since 2008. At least 31 states have cut health care, 29 have reduced services to the elderly and disabled, 34 have cut funding for K–12 education, and 35 have cut funding for colleges and universities.[ii] These cuts have come at a time of increased need.

States continue to do more with less. States have seen their revenues decline during the recession. At the same time, they are being asked to provide more assistance to vulnerable families and individuals and continue vital services such as education, health care and public safety.

Spending cuts—especially the sequester—jeopardize economic recovery. Reductions in state spending result in benefit cuts, employee layoffs and reduced economic activity. According to the Economic Policy Institute (EPI), "helping state and local governments avoid job and service cuts is as effective as creating new jobs. Nothing is more clearly an obstacle to recovery than another round of public employee job losses and cutbacks in state spending on goods and services…"[iii] EPI recently proposed investing about $600 billion over the next decade, mostly in the next three years, in part via aid to state governments, infrastructure investment and investing in teachers and school modernizations, which are cost-effective ways to boost demand.[iv]

Congress should fully fund grants in aid and funding for vital state and local programs and services, and continue to provide relief to states and local governments, particularly vital needs like Medicaid and other critical services. To rejuvenate our economy and maintain and create sustainable jobs, Congress should help state and local governments stabilize their economies. One of the most efficient ways to do this is to establish an automatic upward adjustment in the federal Medicaid payment to states (FMAP), which have suffered such economic problems as high unemployment. This counter-cyclical federal financial assistance helps during economic downturns. Similarly, Congress should avoid further cuts to federal funding for services and infrastructure.

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[i] Phil Oliff, Chris Mai and Vincent Palacios, "States Continue to Feel Recession's Impact," Center on Budget and Policy Priorities (CBPP), June 27, 2012; and Elizabeth McNichol et al, "States Continue to Feel Recession's Impact," Center on Budget and Policy Priorities (CBPP), Feb. 9, 2011.
[ii] Nicholas Johnson, et al., "An Update on State Budget Cuts," CBPP, Nov. 5, 2010.
[iii] Ross Eisenbrey, "The plan to end the jobs crisis—The economy requires a comprehensive response for a full recovery," EPI, Oct. 20, 2009.
[iv] Id.

Freedom to Form a Union

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Contents

Congress Must Amend the NLRA to Restore the Freedom to Form a Union

The National Labor Relations Act (NLRA) no longer protects workers who want to bargain for a better life. Weak remedies, diminished protections, wrongly excluded workers and delayed enforcement have denied federal labor law protections to millions. And, the law has not kept up with changes in the economy; employers' increasing use of subcontracting and fragmented employment relationships permit them to evade bargaining with workers whose employment conditions they set. Yet giving workers the right to form and join unions is the best way to establish and maintain the American middle class, reduce economic inequality and create an economy that works for everyone. Studies have documented an increasingly dramatic rise in both the frequency and intensity of violations of workers' rights. Congress should pass labor law reform to help workers who want to bargain for dignity on the job, fair wages and job security.

NLRA coverage is too limited. By law, the NLRA does not protect public employees, managers, supervisors, independent contractors, employees of businesses with revenues under a certain threshold, domestic workers or agricultural workers. NLRB decisions have further limited the act's coverage to deny representation and bargaining rights to tens of thousands of the nation's workforce who previously were covered, including teaching and research assistants[i] and, effectively, temporary employees working jointly for a supplier employer and a user client, unless both employers consent.[ii] In addition, workers have been characterized in artificial ways in order to deny them the law's protections. Low-level supervisors,[iii] disabled individuals working as janitors,[iv] faculty members,[v] artists' models,[vi] newspaper carriers and haulers[vii] have been described as supervisors, non-employees, managers and independent contractors in order to exclude them from coverage.

The law should provide a means for all employees to join together to improve their working conditions.

NLRA protections are too limited. The numbers paint a stark and compelling picture of what workers face when they try to form a union. During organizing campaigns, more than one-third of companies discharge workers for union activity; more than half threaten a full or partial shutdown of their company if the union effort succeeds; and between 15 percent and 40 percent make illegal changes to wages, benefits and working conditions, give bribes to those who oppose the union and/or use electronic surveillance to spy on union activists.[viii] Reduced protections give companies more leeway to coerce and interfere with workers' union activities while restricting workers' ability to seek out union support. Such tactics, both legal and illegal, force workers to endure a gauntlet of fear and intimidation that denies them their basic federal labor law right to form a union and bargain for dignity on the job and create an economy that works for everyone.

The NLRA fails to protect workers' rights to bargain a contract so they can achieve a better life. A collective bargaining agreement is the goal of workers who seek union representation and the right to bargain is an inherent element in protecting employee free choice. Protecting these rights de-escalates workplace conflicts and creates an overall climate of trust and cooperation at the workplace and in the broader labor and management community.[ix] Yet even when workers are able to form their union, the NLRA fails them, because so many never achieve a collectively bargained agreement. Federal Mediation and Conciliation Service data on first contracts show that between 33 percent and 46 percent of certified bargaining unit workers fail to reach a first contract. Recent studies document that only 38 percent of new unions are able to negotiate a first contract within one year of NLRB certification, and only 56 percent ever negotiate a first contract.[x] That's a failure rate for the NLRA of 44 percent.

NLRA remedies universally have been rebuked as inadequate and ineffective. Serious weaknesses have been identified—by scholars as well as by the board itself—in the board's traditional remedies.[xi] They have been described as paltry, easy and cheap and the Achilles' heel of employee rights.[xii] A 2000 report by Human Rights Watch warned that a culture of near-impunity has taken shape in much of U.S. labor law and practice because enforcement efforts often fail to deter unlawful conduct and feeble remedies often embolden employers to further violate workers' rights. Typical back-pay awards are about $3,500–$4,000 and the NLRA does not allow for fines, punitive damages or increased penalties for repeat violators. The punishment for spying on workers' activities in support of collective bargaining, interrogating them about their union support and threatening them with job loss if they form a union is to post a notice promising not to do it again. The remedy for refusing to engage in contract bargaining with workers is simply to agree to return to the bargaining table.

Delay further undermines NLRA enforcement and denies workers its protections. Under the NLRA's representation procedures, election dates are subject to repeated delays, as hearing and appeal opportunities can seem endless. Delays not only allow companies more opportunity to pound home their anti-union themes, but even more ruinously, they wear workers down through a prolonged campaign of fear, intimidation and tension that serves both to scare workers away from union support and to convince them management is omnipotent and organization therefore is futile.[xiii] In its 2000 report, Human Rights Watch concluded that any employer intent on resisting workers' self-organization can drag out legal proceedings for years.[xiv] There are neither incentives for employers who want to allow their employees a free, fair and uncoerced choice about whether or not to form a union nor penalties for those who seek to interfere with the exercise of employee rights.

Federal labor law reform is critically necessary. Legislative reform is necessary to structurally change the NLRA so workers can choose union representation and achieve a first contract without fear and intimidation. When a majority of workers demonstrates the choice to form a union, their chosen representative should be certified by the NLRB without the current delay-ridden, coercive and divisive NLRB process; workers who choose union representation must be able to achieve a contract; and real penalties are needed to deter unlawful conduct and protect workers' rights. All workers who want to join together and act collectively to improve their working condition should be able to do so by law. The obligation to bargain must encompass indirect employment relationships. The time for legislation is long overdue. We need an economy that works for everyone now.

Legislation is needed to restore NLRA protection to workers wrongly excluded from the act's protections. Congress should pass legislation that would eliminate current ambiguity regarding employee status and ensure workers are not denied collective bargaining rights by being wrongfully classified as "supervisors" or independent contractors.

Congress should confirm NLRB members who support the purposes and policies of the NLRA. To return the NLRB to its historic role as protector of workers' rights, Congress needs to confirm five members to the NLRB as well as the board's General Counsel. Preventing enforcement of federal law by holding appointments hostage is intolerable.

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[i] Brown University, 342 NLRB 483 (2004) (reversing a four-year-old decision in New York University, 332 NLRB 1205 (2000) and eliminating from the act's protections thousands of graduate student workers who have been actively seeking union representation during the pendency of the Brown case, including those at Columbia University, Yale University, Tufts University, Pratt Institute and the University of Pennsylvania, among others.

[ii] Oakwood Care Center, 343 NLRB 659 (2004), overruling M.B.Sturgis, 331 NLRB 1298 (2000).

[iii] Oakwood Healthcare, Inc., 348 NLRB No. 37 (2006); Golden Crest Healthcare Center, 348 NLRB No. 39 (2006); and Croft Metals, Inc., 348 NLRB No. 38 (2006).

[iv] Brevard Achievement Center, 342 NLRB 982 (2004).

[v] LeMoyne-Owen College, 345 NLRB No. 93 (2005), following a remand from the U.S. Court of Appeals for the District of Columbia Circuit of the board's initial decision reported at 338 NLRB No. 92 (2003); faculty are excluded from the act's protection because they "play a major and effective role in the formulation and effectuation of management policies." Slip op. 11.

[vi] Pennsylvania Academy of Fine Arts, 343 NLRB 846 (2004).

[vii] St. Joseph News-Press, 345 NLRB No. 31 (2005).

[viii] Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobilization on Workers, Wages and Union Organizing*, Cornell University, Sept. 6, 2000.

[ix] Report and Recommendations of the Commission on the Future of Worker-Management Relations, U.S. Departments of Commerce and Labor, December 1994, p. xviii.

[x] John-Paul Ferguson, "The Eyes of the Needles: A Sequential Model of Union Organizing Drives," *62 Industrial Relations Review* No. 1, (October 2008).

[xi] Archibald Cox, et al., *Labor Law: Cases and Materials*, 253–254 (13th Edition, 2001).

[xii] Cynthia L. Estlund, "The Ossification of American Labor Law," 102 *Columbia Law Review* 1527 (2002).

[xiii] Gordon Lafer, "Neither Free Nor Fair: The Subversion of Democracy Under National Labor Relations Board Elections," American Rights at Work, Washington, D.C. 24 (2007) www.americanrightsatwork.org/dmdocuments/ARAWReports/NeitherFreeNorFair.pdf.

[xiv] Human Rights Watch, "Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards," 12, 14 (2000), www.hrw.org/sites/default/files/reports/uslbr008.pdf.

AFL-CIO LEGISLATIVE
ISSUE BRIEF 2013

The 'Secret Ballot'

Since its enactment in 1935, the National Labor Relations Act always has provided workers with two alternative paths to union representation and collective bargaining: (1) initiate a process with the National Labor Relations Board (NLRB), or (2) ask the company to voluntarily recognize the union based on majority support demonstrated by signed petitions or cards (majority sign-up). For decades, both paths to union representation have been approved and endorsed by the NLRB, the U.S. Supreme Court and Congress. Millions of workers have formed unions and been able to bargain a contract for a better life through the majority sign-up process.

A bill introduced in Congress in 2011 aims at eliminating the decades-old process of majority sign-up. Misnamed the Secret Ballot Protection Act, this bill would deprive workers of their current rights under federal labor law and eliminate the only way workers have to form a union without being harassed, intimidated, threatened and discriminated against.[i] Under this bill, the only path for workers who want to bargain for a better life is a corporate-controlled, delay-ridden government procedure.[ii] Employers and unions that want to agree to use the majority sign-up process, of which there are many, would be denied their current right to do so.

What's the Secret Ballot Protection Act all about? This bill is an effort to dismantle the voluntary recognition/ majority sign-up process so many workers have used to gain bargaining rights for 75 years. Its goal is to force workers who want a voice on the job into a procedure that manifestly does not work for workers—one in which corporations control the process and where employers' intense, unrelenting resistance to organizing efforts is either condoned or, because of delay and weak remedies, effectively tolerated. The numbers paint a stark and compelling picture of what workers face when they try to form a union. During organizing campaigns, more than one-fourth of employers discharge workers for union activity; more than half threaten a full or partial shutdown of their company if the union effort succeeds; and between 15% and 40% make illegal changes to wages, benefits and working conditions, give bribes to those who oppose the union and/or spy on union activists.[iii]

What's wrong with the NLRB process? The NLRB representation election process has become a series of legal hurdles, procedural barriers and practical obstacles for workers who are struggling to form a union in their workplace. The following fundamental elements of democracy are necessary for fair and free elections: there must be equal access to the voters by candidates, voters must be free from coercion, the free speech rights of candidates must be protected and voters must have equal access to information. When these conditions are violated, the outcome is rightly condemned as a "sham election," even when the process ends in a secret ballot vote. The NLRB election process violates each of these norms.

- **Access to voters.** For a political election to be deemed free and fair, rival candidates must have full and equal access to voter lists. Under the NLRB process, the employer has full access to the "voters" from day one, but workers who want to form a union gain access only to partial information, and only just before the election is conducted.

- **Freedom from coercion.** It is a serious violation of federal election law for employers to coerce workers to vote one way or another in a political election—for example, by implying that if they don't vote in a certain way, the workplace may close or the workers may be demoted or fired. Such employer coercion is routine during NLRB representation election campaigns.

- **Free speech rights and equal access to information by voters.** For a political election to be deemed free and fair, the free speech rights of rival candidates must be scrupulously protected, and the media must make air time available to rival candidates on an equal basis. Under the NLRB process, by contrast, the employer has virtually unlimited speech rights, while the rights of workers who want to form a union are limited severely. Employers can campaign against forming a union, all day, every day, plastering the workplace with anti-union posters and literature, forcing workers to attend numerous "captive audience" meetings, forcing workers to participate regularly in one-on-one meetings with their supervisors, and more. Workers who are struggling to form a union, by contrast, are restricted to campaigning in nonwork areas during nonwork time, and non-employee union organizers can be barred from the premises.

The secret ballot isn't so secret: Employers make it their business to find out how workers are likely to vote. Employers usually hire antiunion consultants to advise them on how to defeat the workers' organizing campaign. These consultants advise employers about the importance of determining how workers intend to vote, and counsel them about ways of finding out, during repeated one-on-one pre-election meetings between workers and their supervisors. Imagine political elections prior to which voters were required to meet frequently, behind closed doors, with representatives of politicians whom they did not support—but who held economic power over them. Would such elections be viewed as free or fair?

NLRB elections are conducted on the employers' premises. If political elections were held this way, they would be conducted at the headquarters of one of the political parties whose candidates are on the ballot—not a very inviting setting for voters who support candidates of rival parties. Workers typically must run the gauntlet of antiunion managers and supervisors on their way to vote in NLRB representation elections.[iv]

Isn't the NLRB secret ballot process fairer? No. A secret ballot, by itself, does not make an election free and fair. The U.S. government rightly condemns elections in other countries as shams, even when they end in a secret ballot, if basic norms such as absence of voter coercion are not met. Even Saddam Hussein's Iraq held secret ballot elections, but no one was fooled into thinking they were free or fair.

There is no justification for the proposed legislation. The bill is a solution looking for a problem—supporters claim majority sign-up involves union coercion. Catchy claim—but one without proof. In fact, documented evidence proves the contrary. Jurisdictions that have experience with a majority sign-up process have seen no evidence of union coercion.[v] Researchers studying this very issue found "union representatives were not more likely to exert undue pressure on workers under card-check regimes than in election regimes." In fact, they found "management's pressure on workers to oppose unionization was significantly greater than pressure from co-workers or organizers to support the union in both card-checks and elections." But when workers organized through majority sign-up, "workers experienced significantly less pressure from management."[vi]

Majority sign-up is regularly and democratically used by workers to form unions and bargain for a better life. Responsible and profitable major corporations have adopted majority sign-up as standard practice and an important element of their corporations' successful high-road business plans. The result for companies like AT&T and Kaiser Permanente has been a workplace with better labor-management relations, less tension, more respect for employees and a positive impact on employee morale. Public-sector workers in 14 states have the legal right to decide to choose union representation through majority sign-up—some for many years. Majority sign-up procedures have been shown to reduce conflict between workers and management, reduce employer coercion and interference, and allow workers to freely choose for themselves whether to bargain with their employer for a better life.

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[i] Schmitt, John and Ben Zipperer, *Dropping the Ax: Illegal Firings During Union Election Campaigns, 1951–2007*, John Schmitt and Ben Zipperer, Center for Economic and Policy Research, March 2009; Comprehensive analysis of employer behavior in NLRB-conducted representation elections. Available at: www.cepr.net/documents/publications/unions_2007_01.pdf; Mehta, Chirag and Nik Theodore, *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns*, American Rights at Work, 2005, available at www.americanrightsatwork.org/publications/general/undermining-the-right-to-organize-employer-behavior-during-union-representation-campaigns.html.

[ii] Bronfenbrenner, Kate, *No Holds Barred: the Intensification of Employer Opposition to Organizing*, Economic Policy Institute and American Rights at Work Education Fund, 2009, available at www.epi.org/publications/entry/bp235/.

[iii] Id.

[iv] Gordon Lafer, "Neither Free nor Fair. The Subversion of Democracy Under the National Labor Relations Board Election," July 2007; Gordon Lafer, "Free and Fair. How Labor Law Fails U.S. Democratic Election Standards," American Rights at Work, June 2005.

[v] Ontario, Canada's most populous province, has operated a system of majority sign-up for almost a half-century, until the Conservative Harris government did away with it in 1995. The pre-eminent scholar of Canadian labor law, Prof. Harry Arthurs, has reported he does not know of a single case in which the employer had complained the union had coerced workers illegally into joining a union. John Logan, *Union Recognition and Collective Bargaining: How Does the United States Compare with Other Democracies?*
Perspectives on Work, LERA, Spring 2009;
www.lera.uiuc.edu/Pubs/Perspectives/onlinecompanion/Spring2009Vol10/Logan.html; citing Jonathan Zasloff,

Card Check and Union Coercion, Dec. 4, 2008; *The Reality-Based Community*, available at: www.samefacts.com/2008/12/law-notes/card-check-and-union-coercion/; Robert Bruno, *Majority Authorizations and Union Organizing in the Public Sector: A Four-State Perspective*, a joint research project of the University of Illinois School of Labor and Employment Relations, Department of Labor Studies and Employment Relations, Rutgers University, Extension Division, School of Industrial and Labor Relations, Cornell University, and University of Oregon Labor Education and Research Center, 2009.

[vi] Eaton, Adrienne and Jill Kriesky, *NLRB Elections Versus Card Check Campaigns: Results of a Worker Survey*, Industrial and Labor Relations Review, Cornell University Vol. 62, No. 2 (January 2009), p. 170 ["94% of workers who signed cards in the presence of union representatives did not report feeling pressure into signing the card"].

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

The Union Advantage for Communities

Studies show that states in which more people are union members are states with higher wages, better benefits and better schools. While unions are just one of the factors that affect the quality of living, the pattern indicates that when workers have a voice, everyone in the community benefits—not just union members.

10 Strongest Union States Compared With the 10 Weakest Union States

	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Average private-sector hourly earnings, 2011[i]	$24.01	$21.11
Median household income, 2011[ii]	$53,615	$47,012
Percent of population younger than 65 with no medical insurance, 2010–2011[iii]	17.0	19.4
Public education spending per pupil, 2010–2011[iv]	$12,874	$8,856
Percent of population at or above 8th grade proficiency in reading, 2011[v]	32.2	29.4
Percent of population 25 and older with a bachelor's degree, 2011[vi]	29.4	25.9
Infant mortality rate (deaths per 1,000 live births), 2006–2008[vii]	5.9	7.6
Percent of children in poverty, 2011[viii]	20.1	22.8
Percent of population in poverty, 2011[ix]	13.9	16.1

The 10 states where unions are the strongest (based on percentage of the workforce with a union in 2012) are: New York (23.2), Alaska (22.4), Hawaii (21.6), Washington (18.5), Rhode Island (17.8), California (17.2), Michigan (16.6), New Jersey (16.1), Oregon (15.7) and Nevada (14.7).[x]

The 10 states where unions are the weakest (based on percentage of the workforce with a union in 2012) are: North Carolina (2.9), Arkansas (3.2), South Carolina (3.3), Mississippi (4.3), Georgia (4.4), Virginia (4.4), Idaho (4.8), Tennessee (4.8), Arizona (5.1) and Utah (5.2).[xi]

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[i] Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics Survey, downloaded Feb. 5, 2013.

[ii] U.S. Census Bureau, "Table H-8. Median Household Income by State: 1984 to 2011."

[iii] Kaiser Family Foundation, Statehealthfacts.org.

[iv] National Education Association, "Rankings & Estimates—Rankings of the States 2011 and Estimates of School Statistics 2012," December 2011, Table H-11. Current Expenditures for Public K–12 Schools per Student in Fall Enrollment, 2010–11.

[v] Corporation for Economic Development, Asset & Opportunity Scorecard.

[vi] U.S. Census Bureau, 2011 American Community Survey. GCT1502 — Geography-United States: Percent of people 25 years and older who have completed a bachelor's degree.

[vii] Kaiser Family Foundation, Statehealthfacts.org.

[viii] U.S. Census Bureau, CPS, 2012, Annual Social and Economic Supplement. POV 46: Poverty Status by State: 2011.

[ix] *Ibid.*

[x] Bureau of Labor Statistics, "Table 5. Union affiliation of employed wage and salary workers by state," downloaded Feb. 5, 2013.

[xi] *Ibid.*

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

The Union Advantage for Women, Latinos and African Americans

Working women, Latinos and African Americans benefit greatly from union membership. Because collective bargaining emphasizes equal pay and fair treatment in the workplace, union membership can be particularly important for women, Latino and African American workers.

Overall, women earn less than men, and African American and Latino workers earn less than white workers. Working women in 2012 made only 80.9% of the median weekly earnings of working men. African American workers made only 78.4% of the median weekly earnings of white workers, and Latino workers earned only 71.7% of the median weekly earnings of white workers.[i]

Women, Latino and African American workers are over-represented in low-wage jobs. In 2012, women represented 47% of all workers, but were over-represented in such low-wage jobs as food preparation (58%), cashiers (71.8%) and child care (94.1%). Latinos represented 15.4% of all workers in 2012, but were over-represented in such low-wage jobs as grounds maintenance workers (44.4%), dishwashers (40.5%), vehicle and equipment cleaners (35.9%), and maids and housekeeping cleaners (43.3%). African Americans represented 11.1% of all workers in 2012, but were over-represented in such low-wage jobs as personal care aides (21.8%), taxi drivers and chauffeurs (24.8%), parking lot attendants (23.5%) and nursing, psychiatric and home health aides (34.5%).[ii]

Collective bargaining is especially important for raising the wages of workers in low-wage occupations, many of which have high percentages of women, Latino and African American workers. For example, in 2011, union cashiers earned an average hourly wage of $12.72, or $3.31 more per hour (35.2% more) than nonunion cashiers. Union food preparation workers earned on average $13.51, or $4.18 more per hour (44.8% more) than nonunion food preparation workers. Union child care workers earned an average of $11.99 per hour in 2011, or $2.24 more per hour (23% more) than nonunion child care workers. Union grounds maintenance workers earned on average $20.56 per hour, or $9.04 more per hour (78.5% more) than nonunion grounds maintenance workers. And union vehicle and equipment cleaners earned on average $18.47 per hour in 2011, or $7.89 more (74.6% more) than nonunion vehicle and equipment cleaners.[iii]

Union membership improves wages for women, African Americans and Latinos. The median earnings for union women were $877 per week in 2012, or $214 higher per week (32.3% more) than for nonunion women workers. The median earnings for African American workers who were union members were $784 per week in 2012, or $185 higher (30.9% more) than for nonunion African American workers. The median earnings for Latino union members in 2012 were $840 per week, or $310 higher (58.5% more) than for nonunion Latino workers. Higher union wages help women, African American and Latino workers raise the living standards for the entire community. Unions also help these groups of workers to remedy discrimination on the job because a union contract provides the means to resolve grievances and seek equal treatment.[iv]

Union members are much more likely to have employer-provided health care and pensions. Union membership provides these same advantages for women, African Americans and Latinos. Women workers are more likely to have employer-provided health insurance and pension coverage if they belong to a union. Among women workers who belong to unions, three out of four (75.4%) have employer-provided health insurance, compared with only half (50.9%) of nonunion women workers. Three out of four union women workers have pension coverage (75.8%), compared with less than half (43%) of nonunion women workers.[v] And, for working women in low-wage occupations, the union difference is even greater; union women workers in low-wage jobs are more than twice as likely as their nonunion counterparts to have employer-provided health insurance (58.7% vs. 26%) and are nearly three times as likely to have pension coverage (58.1% vs. 20.6%).[vi]

For African American workers who belong to unions, three out of four (75.9%) have employer-provided health insurance, compared with only half (51.1%) of nonunion African American workers. Nearly two out of every three African American union members (65.6%) have pension coverage, compared with only two out of five nonunion African American workers (39.6%). Among African Americans in low-wage occupations, union members are more likely to have employer provided health insurance (54.3%) than nonunion African American workers (32.5%) and are more than twice as likely (56.8%) as nonunion workers (23.4%) to have pension coverage.[vii]

Latino union members overall are twice as likely to have employer-provided health insurance (70.1% vs. 34.8%) as nonunion Latino workers and more than two and a half times as likely to have pension coverage (58.4% vs. 22.3%) as nonunion Latino workers. For low-wage workers, the union difference is even more dramatic; Latino workers in low-wage jobs who belong to unions are three times as likely to have employer provided health insurance (67.3% vs. 21.0%) and more than three and a half times as likely to have pension coverage (40.8% vs. 11.2%) as nonunion Latino workers in low-wage jobs.[viii]

Women, Latino and African American workers want unions. Opinion polling also shows that millions more women would join a union if they could. Some 59% of working women who do not have a union say they would vote for one tomorrow if given the chance, according to a survey by Peter D. Hart Research Associates. African Americans are more likely to be members of unions. In 2012, 13.4% of African American workers were union members, compared with 11.3% of all workers. But even more African Americans say they would join unions if given the chance. According to a national survey conducted by Peter D. Hart Research Associates, African Americans ages 35 and older are among the strongest supporters of the freedom to choose a union.[ix]

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[i] U.S. Department of Labor, Bureau of Labor Statistics, Union Members — 2012, Jan. 23, 2013. Table 2.

[ii] U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey data, Table 11. Employed persons by detailed occupation, sex, race and Hispanic or Latino ethnicity, 2011 annual averages.

[iii] Barry Hirsch and David Macpherson, Union Membership and Earnings Data Book, Bureau of National Affairs, 2012.

[iv] U.S. Department of Labor, Bureau of Labor Statistics, Union Members — 2012, Jan. 23, 2013. Table 2.

[v] The union advantage for defined-benefit plans probably is even greater for women, African American and Latino workers. Overall, union workers are three and a half times more likely than nonunion workers to participate in defined-benefit pension plans (Bureau of Labor Statistics. National Compensation Survey Table 2. Retirement Benefits: Access, participation, and take-up rates, civilian workers. March 2012.) Defined-benefit plans remain the soundest vehicles for building and safeguarding retirement income security, as they are federally insured and provide a guaranteed monthly lifetime benefit.

[vi] John Schmitt, *Unions and Upward Mobility for Women Workers*, TABLE 1–Wages, Health, and Pension Coverage for Union and Non-Union Women Workers, 2004–2007, Center for Economic and Policy Research, December 2008.

[vii] John Schmitt, *Unions and Upward Mobility for African-American Workers*, TABLE 1–Hourly Wages and Union Share for African Americans, 2004–2007, Center for Economic and Policy Research, April 2008.

[viii] John Schmitt, *Unions and Upward Mobility for Latino Workers,* TABLE 1–Wages, Health, and Pension Coverage for Union and Non-Union Latino Workers, 2004–2007, Center for Economic and Policy Research, September 2008.

[ix] Peter D. Hart Research Associates, Polling for the AFL-CIO, various years; U.S. Department of Labor, Bureau of Labor Statistics, Union Members — 2012, Jan 23, 2013. Table 2.

Health Care

Contents

AFL-CIO LEGISLATIVE
ISSUE BRIEF 2013

The Affordable Care Act

The Patient Protection and Affordable Care Act of 2010 (ACA) represents a historic milestone toward the goal of providing affordable health care for all. The ACA was enacted to address a national crisis: millions of people living without coverage; insurance company abuses that sent thousands of families into bankruptcy each year; and unabated health care cost growth. The health care reform law already has provided relief to millions of Americans. Health care is a basic human right, and the labor movement has fought for more than a century to gain universal access to high-quality health care. It is important to secure the advances made by the ACA and to begin work on improving this framework to ensure working families have access to affordable care.

In 2011, more than 46 million people in the United States were uninsured, about 15% of the total population.[i] National health care costs outpaced growth in the general economy from 2000–2011,[ii] a trend reflected in increased out-of-pocket costs for consumers. About 18% of employees with employer-based insurance had high medical cost burdens (costing more than 10% of income) in 2009, along with 52.9% of people with non-group insurance.[iii] The ACA begins to address these problems, reducing the number of uninsured Americans, providing consumer protections, and initiating new approaches to reducing costs and improving the quality of care. However, the net gain from health reform must be improved by taking steps to strengthen employment-based coverage, to prevent the dropping of workplace coverage and to ensure employers are required to offer comprehensive, affordable family coverage.

Some 27 million people will gain insurance coverage under the ACA, though expansion of the Medicaid program and new federal premium subsidies.[iv] The ACA will cover most of the nation's uninsured population by expanding Medicaid to cover people up to 138% of the federal poverty level and providing federal premium subsidies for households between 100 to 400% of poverty to purchase coverage in new marketplaces. (For a family of four in 2013, 100% of the poverty level is $23,550 and 400% is $94,200.) Unfortunately, at the outset of the 113th Congress, governors in 21 states had indicated they were uncertain about pursuing the ACA Medicaid expansion, and nine declared their states would not expand their programs.

Overall, states would only have to increase their Medicaid expenditures by 2.8% over the next nine years to expand coverage, and the federal government will cover no less than 90% of the added cost on a permanent basis. Yet, a number of governors and other top officials in the states continue to contend that the burden on state budgets would be too high, despite the fact states will see an offsetting decline in uncompensated care costs between $26 to $52 billion over six years. [v] Many of these states' governors also have said they would not implement the new marketplaces that would provide standardized plan offerings for people receiving premium subsidies. It is important, however, for states to pursue these coverage expansions, and Congress must encourage this progress by ensuring federal Medicaid payments will not be reduced and that implementation efforts at the Centers for Medicare and Medicaid Services (CMS) are fully funded.

Congress should improve upon the ACA framework to ensure the gains made by health reform are not diminished by losses in employment-based coverage. Legislation should address the unintended incentives provided to employers to drop coverage for some employees. In particular, Congress should ensure that multiemployer health plans are not undermined by incentives for employers to dump employees into Medicaid or the exchanges. The ACA should be improved to place these nonprofit, consumer-oriented plans on an equal footing with for-profit insurance companies that stand to gain substantial new business under the health reform law. Also, the ACA's affordability standard must be defined in terms of coverage for employees *and* their dependents. Employers should be bound by a strict "pay or play" mandate to provide coverage, and a public option should be made available in the exchanges to help drive premium costs down through enhanced competition.

New marketplaces (or "exchanges") will help consumers purchase insurance in the individual and small group markets. Beginning in October 2013, people eligible for federal subsidies and others purchasing insurance on their own will have access to new marketplaces to shop for coverage in 2014. A level playing field will be created in the exchanges so plans cannot offer "bare bones" benefit packages with deceptively low premiums, and people who previously were limited to the individual and small group markets will be able to join larger risk pools. As these exchanges are implemented, the federal government should ensure they are operated with high standards of quality and cost-effectiveness and that they not become captives of the large insurance companies. Implementation of the exchanges also must not compromise employment-based coverage, such as multiemployer funds.

The ACA provides new consumer protections. The ACA established important new protections that now are in force to protect families. Insurance companies no longer may refuse to cover children with pre-existing conditions. As a result, 17 million children no longer face coverage denials.[vi] More than 3 million young adults have gained coverage due to a requirement that they be allowed to stay on their parents' plans through age 26. Also, the law prevents insurers from invoking "rescissions," where an individual's coverage is revoked due to mistakes made on an application form. Insurance companies had employed the practice when serious illnesses caused people to obtain expensive care. The ban on this practice has already prevented 10,700 rescissions.

In addition, since 2010, large group insured plans have been required to spend 85 percent of the premiums they collect on medical care (the "Medical Loss Ratio rule"). For plans in the small and individual group market, 80 percent of the premiums must be spent on care. Limiting the percentage that companies can keep for profits and marketing resulted in $1.1 billion in premium rebates for 2011.[vii] Companies also must justify premium increases of 10% or more under new federal rate review standards—which has saved consumers an additional $1 billion.

The ACA provides additional coverage for services, saving working families millions of dollars. The law makes a number of preventive services "free"—provided without any cost-sharing—for 54 million Americans in private insurance plans and more than 32 million Medicare beneficiaries. These policies save consumers money and encourage early treatment of conditions that are more costly to treat later on. The ACA also begins to phase out the "doughnut hole" coverage gap in Medicare Part D. Since the implementation of the ACA, nearly 5.6 million seniors and people with disabilities have saved more than $4.8 billion on prescription drugs.

New delivery system reforms are initiated by the health reform law. The ACA established the Center for Medicare and Medicaid Innovation, which will develop alternatives to traditional fee-for-service payment models. One model, Accountable Care Organizations, will reward providers for efficiency by making bundled payments to cover an entire episode of care, as opposed to simply paying for each procedure provided. Other approaches will pursue "value-based purchasing," where provider payments are adjusted based on the quality of care provided. As these reforms are adopted more widely, costs should decrease across the health care system.

Congress should oppose efforts to repeal or defund important parts of the Affordable Care Act. Opponents of the ACA have targeted the Medical Loss Ratio rule, the individual mandate, fees on medical device manufacturers and taxes on wealthy households that help fund the coverage expansions of the ACA. Other attacks would reduce the premium subsidies that help families or would allow states resisting coverage expansions to opt out of the ACA. This kind of legislation would undermine the gains in coverage and consumer protections provided by the ACA, and it should be opposed by Congress.

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[i] U.S. Census Bureau (2012), http://factfinder2.census.gov/faces/tableservices/js/pages/productview.xhtml?pid=ACS_11_1YR_S2701&prodType=table.

[ii] Center for Medicare and Medicaid Services (2012), www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/NHEGDP11.zip.

[iii] Commonwealth Fund (October 2012), www.commonwealthfund.org/~/media/Files/Publications/In%20the%20Literature/2012/Oct/1639_Cunningham_despite_recession_effects_high_med_costs_HA_10_24_2012_ITL.pdf.

[iv] Congressional Budget Office (February 2013), www.cbo.gov/publication/43900.

[v] Center on Budget and Policy Priorities (July 2012), www.cbpp.org/cms/index.cfm?fa=view&id=3801.

[vi] White House (2012), www.whitehouse.gov/sites/default/files/uploads/careact.pdf.

[vii] Department of Health and Human Services (September 2012), www.healthcare.gov/law/information-for-you/benefits.html.

Building on the Affordable Care Act

The Affordable Care Act (ACA) represents a watershed opportunity to improve the health care system: It is important to defend this framework for reform against political attacks and to begin building upon it. The major advances of the new law must be secured while work is done to add substantial reforms that go further in reducing the burden of health care costs and improving health care coverage for working families.

Congress should end the incentive for employers to move workers to part-time status to avoid paying for health coverage. A number of employers—including major restaurant chains and retailers—have announced plans to systematically reduce the hours of their part-time workers to avoid providing health care coverage for them. The ACA's shared responsibility provision penalizes some employers who do not offer affordable coverage to employees working 30 hours or more a week. Some employers, however, are choosing to avoid this responsibility by dropping workers' hours below the 30-hour threshold. To blunt this incentive created by the act's structure, Congress should enact legislation requiring employers to help finance coverage for part-time workers that work a substantial number of hours each week.

Congress should require employers to "pay or play." The ACA does not mandate that employers provide health insurance, but it imposes a penalty in some cases if mid-sized and large employers fail to do so. Building a system of shared responsibility around employer-provided health care is a cornerstone of health reform. Unfortunately, the employer penalty fails to provide enough incentive for employers to share in the responsibility for coverage. In 2012, the average employer premium contribution for coverage of a single employee was $4,664,[i] while the maximum penalty employers will pay for not offering coverage is $2,000 per employee who obtains subsidized coverage in an exchange (when the penalty applies in 2014). The original House-passed version of the health reform law had stronger "pay or play" provisions, and Congress should examine approaches to strengthening these requirements for employers. In general, penalties should apply to employers with less than 50 employees, and the penalties should be increased to provide a real incentive to provide adequate coverage. For the construction industry, these requirements should apply to employers with five or more employees. Companies complying with the law should not face a competitive disadvantage in bidding for construction contracts. Such a policy could save the government about $83 billion over 10 years.[ii]

The excise tax on high-premium insurance plans should be eliminated or reduced. Unfortunately, the ACA imposes a 40% tax on insurance costing greater than $10,200 for single coverage and $27,500 for families. These thresholds are indexed to increase at a rate that is lower than the yearly increase in health costs. As a result, more and more health coverage will be taxed each year. Employers are expected to react to this new tax by hollowing out the coverage they provide—reducing health benefits and increasing the deductibles, co-pays and coinsurance workers must pay. Proponents of this new tax contend that only excessive levels of coverage are targeted. However, data show the actuarial value of benefits only accounts for about 3.7% of variation in the cost of family coverage, and most of the variation is unexplained.[iii] Families are unable to influence most of the factors involved—such as the insurance market and risk pool characteristics—and their insurance should not be taxed as a result.

A public health insurance option should be offered in the ACA insurance exchanges. To address spending growth in health care, Congress should make a public health insurance option available in the exchanges. A public plan that offers comprehensive coverage and competes with private insurance options would make coverage more affordable; reduce administrative costs;[iv] drive quality improvements better than private plans could; rationalize reimbursement better than private plans could; establish a standard benefit with continuous coverage so people would not have to choose annually among many plans; keep private plans "honest"; and ensure everyone has access to secure, affordable coverage. Pursuing this policy would reduce federal spending by $104 billion over 10 years.[v]

A Medicare-for-all model could provide cost-effective universal coverage. Over the last four decades, Medicare has surpassed private plans in providing cost effective coverage, keeping its per capita cost growth a third lower than private insurance.[vi] In the short run, Medicare's market power should be leveraged to extend payment and delivery system reforms throughout the health care system. Ultimately, a Medicare-for-all program administered by the government offers the potential of providing comprehensive coverage and cutting our national health costs in half—achieving the cost-effective, universal coverage realized by most industrialized countries.[vii]

States should be allowed to implement single-payer health care coverage. Congress should pass legislation to allow states to implement their own single-payer health programs. This legislation must guarantee that states will provide access to affordable health coverage with a full range of benefits, commensurate with the requirements that apply to all states under the ACA. Such legislation would allow Vermont and other states to implement single-payer health insurance coverage, an approach proven to provide quality coverage with extremely low administrative costs. Useful approaches were introduced in the 112th Congress by Sen. Bernie Sanders and Rep. Peter Welch (S. 73/H.R. 439) and by Sen. Sanders and Rep. McDermott (S. 915/H.R. 1200).

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[i] Kaiser Family Foundation and Health Research & Education Trust. Employer Health Benefits: 2012 Annual Survey. (2012) http://ehbs.kff.org/pdf/2012/8345.pdf.

[ii] Figure represents the difference between CBO estimates for employer responsibility provisions of H.R. 3962 ($135 billion) and the ACA ($52 billion).

[iii] Gabel, J. et al. "Taxing Cadillac health plans may produce Chevy results." Health Affairs 29:1, 174 – 181. (2010)

[iv] Holahan, J. and Blumberg, L. "Can a public insurance plan increase competition and lower the costs of health reform?" Urban Institute. (2008)

[v] The public option would reduce the deficit by $15 billion in 2020—and by $88 billion from 2012–2021—according to the Congressional Budget Office (CBO). CBO, *Choices for Deficit Reduction* (November 2012), p. 14.

[vi]Center on Budget and Policy Priorities (September 2011), www.cbpp.org/cms/?fa=view&id=3589.

[vii] Organisation for Economic Co-operation and Development (OECD, 2011), www.oecd.org/unitedstates/49084355.pdf.

Health Care Cost Containment vs. Cost Shifting: Proposals to Reduce the Federal Deficit

Forcing middle-class families to pay more of their health care costs simply shifts costs and does not contain health care cost growth. Since 2010, Congress has lurched from one fiscal crisis to the next, as deficit hawks have sought to use the fear of government shutdown to reduce federal spending by shifting costs to working families. Proposals have been put forward to tax health benefits, cut Medicare benefits and cap the federal financing of Medicaid, all of which would force individual consumers to pay more out of pocket for their own health care. Shifting costs to consumers, however, does nothing to make the system more efficient or restrain health care cost growth. It just changes who pays. Congress should reject these proposals, and instead support approaches that restructure health care delivery to make it more cost-effective.

Cost-shifting approaches seek to reduce utilization by making consumers pay more for each unit of service they use. In the health care market, however, demand is provider-driven: people tend to use the services their practitioners tell them to use. When increased cost-sharing encourages consumers to second guess what they need, research shows they only get it right about half the time. Many forgo care they actually need, often leading to the use of more expensive care later.[i] Given the unique nature of the health care market, applying appropriate leverage on provider prices is the best approach to increasing the cost-effectiveness of health care.[ii]

Congress should not tax health benefits by limiting the tax exclusion for employer-based health coverage. House Budget Committee Chairman Paul Ryan (R-Wis.) has called for the taxation of workers' health benefits as a means of reducing the deficit, and Beltway think tanks have put forward proposals to limit this tax preference. Currently, 58% of Americans with health insurance—156 million people[iii]—are covered through their employment. To raise a significant amount of revenue, any proposal to limit the exclusion would have to reach deep into the middle class. Taxing benefits would lead either to higher taxes on the middle class or employers providing reduced benefits. Opponents of the tax exclusion think working families are "overinsured" and that reducing benefits will slow health care use. However, working families already have seen their out-of-pocket expenses through employer-based coverage skyrocket in recent years.[iv] Taxing benefits also would lead to more employers dropping coverage for their workers, accelerating a 10% decline in employer-provided coverage over the last decade.[v]

Congress should reject proposals to replace Medicare with a voucher program. House Budget Committee Chairman Ryan has proposed ending the current Medicare program and replacing it with a program that provides beneficiaries with a voucher of limited value. Beneficiaries would use the vouchers to help purchase their own private insurance or to cover a portion of their premiums in traditional Medicare. The proposal is designed to reduce costs to the government by privatizing much of the program and by capping the rate of increase for these vouchers at a rate far below the historical growth of health costs.[vi] This approach would threaten the future of traditional Medicare and lead to higher costs for beneficiaries; Congress should oppose it.

Congress should block efforts to reduce Medicare benefits or increase the eligibility age for the program. Recent deficit-reduction plans include proposals to raise the eligibility age for Medicare, increase the co-payments required for each service and charge higher premiums for middle-income beneficiaries. Raising the Medicare eligibility age from 65 to 67 would be a direct cost-shift to beneficiaries, retiree health plans and the states. This cost-shift actually would double the cost of caring for these individuals—it would save the federal government $5.7 billion but incur costs of $11.8 billion for everyone else (including added out-of-pocket costs of $3.7 billion for adults ages 65–67).[vii] Similarly, proposals to require co-payments for health care services, by limiting first-dollar supplemental coverage, also would substantially increase the financial risk borne by seniors. Asking so-called "higher-income" beneficiaries to pay higher premiums, such as those in the top 25% of income for Medicare households, actually would hit individuals making $47,000 or more (in 2012 inflation-adjusted dollars) when fully implemented.[viii] Unfortunately, these proposals requiring beneficiaries with modest incomes to cover new health care costs have been included in "grand bargain" deficit-reduction plans that fail to require adequate new revenues from the wealthiest 2% of Americans.

Congress should reject proposals to block-grant Medicaid or limit the federal contribution to the program. Recent proposals to cut hundreds of billions of dollars in federal spending for Medicaid would impose a new "per capita cap" or "blended rate" formula to determine the federal match. These formulas would short-change states preparing to cover new populations under the Affordable Care Act (ACA).

Effective cost containment should be achieved by ensuring care is delivered in more cost-effective ways, not by shifting costs to consumers. Congress should focus on addressing the incredibly wasteful, inefficient and expensive way that health care is delivered in the United States.[ix] Substantial savings can be obtained by allowing payers to leverage lower prices from health providers.

Congress should contain health care costs by requiring drug rebates for the Medicare Part D program and allowing Medicare to negotiate drug prices. Extending the Medicaid drug rebates that manufacturers are required to provide to cover drugs purchased for beneficiaries of the Medicare Part D Low-Income Subsidy (LIS) program would save $141billion over 10 years.[x] Granting Medicare full authority to negotiate drug prices with manufacturers would save as much as $230 billion over a decade.[xi]

Congress should contain health care costs by pursuing payment and delivery system reforms. Expanding Medicare competitive bidding to all health products and all federal health programs would save $38 billion over 10 years, as well as deliver significant additional savings to individual beneficiaries. In addition, requiring Medicare to "bundle" payments to hospitals for post-acute care, so Medicare will pay for results rather than the volume of services provided, would save $10 billion over 10 years.[xii]

Congress should provide for a public health insurance plan option in every state exchange. A robust public option that offers premiums 5% to 7% lower than private insurance and that partners with Medicare to implement cost-saving reforms would save $104 billion over 10 years.[xiii]

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[i] Swartz, K. "Cost-sharing: Effects on spending and outcomes." (December 2010) www.rwjf.org/content/dam/farm/reports/issue_briefs/2011/rwjf402103/subassets/rwjf402103_1.

[ii] See Vladeck, B. "Market Failure and the Failure of Discourse: Facing Up to the Power of Sellers." (2009) http://content.healthaffairs.org/content/28/5/1305.abstract, and Anderson, G., Reinhardt, U., et al. "It's the Prices, Stupid: Why the United States is So Different from Other Countries." (May 2003) http://content.healthaffairs.org/content/22/3/89.abstract.

[iii] Employee Benefit Research Council. "Sources of Health Insurance and Characteristics of the Uninsured." (December 2012) www.ebri.org/pdf/briefspdf/EBRI_IB_09-2012_No376_Sources1.pdf.

[iv] See, e.g., Kaiser Family Foundation, "Snapshots: The Prevalence and Cost of Deductibles in Employer Sponsored Insurance: A View from the 2012 Employer Health Benefit Survey" (November2012) www.kff.org/insurance/snapshot/chcm110212oth.cfm.

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[vi] House Budget Committee. "The Path to Prosperity: A Responsible, Balanced Budget." Fiscal year 2014 budget resolution. (March 2013) http://budget.house.gov/uploadedfiles/fy14budget.pdf.

[vii] For purposes of illustrating the full effect of an increase in the eligibility age, the study assumes full implementation to age 67 in 2014. Kaiser Family Foundation, "Raising the age of Medicare eligibility." (July 2011)

[viii] Kaiser Family Foundation. "Income-Relating Medicare Part B and Part D Premiums under Current Law and Recent Proposals: What are the Implications for Beneficiaries?" (February 2012) www.kff.org/medicare/upload/8276.pdf.

[ix] *See*, *e.g.*, Kelley, R. White paper: Where can $700 billion in waste be cut annually from the U.S. healthcare system? Thomson Reuters (October 2009).

[x] Correspondence with Office of Sen. Rockefeller.

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[xii] Center for American Progress. "Senior protection plan." (November 2012).

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Nursing Workforce

The current nursing shortage is compromising the ability of our health care system to deliver safe, high-quality patient care. Chronic understaffing, compulsory overtime and a high injury rate continue to cause nurses to leave the bedside. When there are too few nurses to care for patients, medical errors and preventable patient deaths increase. We cannot solve the nursing shortage without requiring minimum nurse-to-patient ratios, prohibiting the use of mandatory overtime and requiring the use of safe patient-handling equipment to reduce injury rates.

The nursing shortage is getting worse. Demographic pressures will worsen the nursing shortage by increasing the demand for nurses. More nurses will be needed as health needs increase for 78 million aging baby boomers and when 27 million people gain insurance coverage as a result of health care reform. By 2030, the United States will face a shortage of 540,000 nurses.[i] Failure to address this crucial workforce need will lead to severe access and quality problems.

The nursing shortage threatens safe, high-quality patient care. The link between poor patient safety and poor working conditions (such as understaffing) is well-documented. There is a direct correlation between nurse staffing levels and patient outcomes for patients with life-threatening conditions, as well as those with lesser, though still significant, vulnerabilities to poor outcomes.[ii] Nurse staffing shortages are a factor in one out of every four unexpected hospital deaths or injuries caused by errors.[iii] Patients at hospitals with staffing ratios of four patients to one nurse or higher were 9.4% more likely to suffer from cardiac arrest or shock than patients at hospitals with ratios of 2.5 to 1 or lower.[iv] A surgical patient's risk of dying within 30 days is reduced 31% when a hospital decreases a registered nurse's patient load from eight patients to four.[v] More than 75 percent of registered nurses think the nursing shortage presents a major problem for the quality of their work life, the quality of patient care and the amount of time nurses can spend with patients.[vi]

Nurse-patient staffing ratio laws have reduced the nursing shortage. In California, after passage of a nurse-to-patient ratio law in 1999, the number of actively licensed RNs increased more than 60,000 by 2005.[vii] The California Board of Nursing reported being inundated with RN applicants from other states.[viii] Vacancies for RNs at Sacramento hospitals plummeted by 69% from 2004 to 2008.[ix] Within six months of the Australian state of Victoria's implementation of staffing ratios in 2000, some 3,300 nurses returned to work full time, and the number of students graduating from a pre-eminent technical institute in Victoria who planned to study nursing increased by 144%.[x]

Congress should pass legislation to ensure safe staffing levels. To retain nurses and improve patient care, health care reform must require hospitals to meet safe staffing standards. Both the National Nursing Shortage Reform and Patient Advocacy Act (S. 739, sponsored by Sen. Barbara Boxer, D-Calif.) and the Nurse Staffing Standards for Patient Safety and Quality Care Act

(H.R. 2187 in the 112th Congress, expected to be reintroduced by Rep. Jan Schakowsky, D-Ill., in the 113th) would establish minimum staffing levels while providing flexibility to exceed these levels when patient needs and staff input indicate it is necessary to ensure safe patient care.

Mandatory overtime must be prohibited. On average, registered nurses work 6.6 hours of mandatory overtime per week.[xi] Nurses who work shifts of 12.5 hours or more are three times more likely to commit errors than nurses who work a standard shift of eight and a half hours.[xii] Nurses must be allowed the option of refusing overtime work when, in their professional judgment, they determine they do not have the capacity to properly care for patients. Legislation is needed to prohibit mandatory overtime for nurses in hospitals and other health care facilities except in emergencies. Congress and previous administrations have acted to curtail overtime in the transportation industry to protect the public, and the need to address mandatory overtime in health care is no less compelling.

Congress should establish a standard for safe patient handling. Health care workers rank highest among occupations experiencing musculoskeletal disorders, with rates higher than those for construction laborers, truck drivers and janitors.[xiii] Moreover, patients who are lifted, transferred or repositioned manually are not at optimum levels of safety. The Nurse and Health Care Worker Protection Act of 2009 (H.R. 2381 and S. 1788 in the 111th Congress) sought to eliminate the manual lifting of patients by direct-care RNs and other health care workers through the use of mechanical lifting devices except during declared states of emergency. Similar legislation should be introduced in the 113th Congress. Requiring the use of mechanical lift devices and the establishment of safe-patient-handling plans would keep more nurses at the bedside and more patients safe.

Adoption of new health information technology (HIT) systems must involve front-line health care workers. For HIT systems to work, front-line workers such as nurses must be involved in their planning, design and implementation. Experience has shown that if front-line workers are not involved, the systems will not be effective in delivering timely and accurate health services and actually may impede patient care.

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Retirement Security

5

Contents

Social Security

Social Security is the most effective anti-poverty program in our history, our most important family income protection program and the cornerstone of retirement security. Contrary to the misinformation spread by Social Security's opponents, Social Security is not in crisis; it has not added a single dime to the budget deficit; it is not a major contributor to projected long-term deficits; and its modest funding shortfall over the next 75 years can be addressed without benefit cuts or major changes to the program. Congress should oppose any proposal to cut benefits or privatize Social Security; instead it should increase benefits across the board to address growing retirement income insecurity.

Social Security provides benefits to more than 56 million Americans—one out of every four households—including retirees, workers with disabilities, spouses and children.[i] The retirement program provides 36.9 million retired workers and their spouses with lifetime guaranteed benefits, adjusted annually for inflation. Social Security also provides guaranteed benefits to almost 8.8 million workers with disabilities, 4.3 million widowed spouses and 4.4 million children of deceased, retired or disabled workers.[ii] Nearly two-thirds (65 percent) of the elderly rely on Social Security for half or more of their income, and more than three in 10 (36 percent) rely on it for nearly all (90 percent or more) of their income.[iii]

Social Security is not in crisis. Social Security has a $2.7 trillion surplus today, which is projected to grow to $3.06 trillion by 2020. Its revenues and reserves are fully adequate to pay all scheduled benefits until 2033, and at least three-quarters of scheduled benefits for the rest of the 21st century.[iv] Included in those reserves are the accumulated contributions of generations of American workers, which have been invested in Treasury bonds backed by the full faith and credit of the U.S. government. Proponents of benefit cuts and privatization find it necessary to dismiss Social Security's bond holdings and exaggerate the program's modest 75-year funding shortfall to make their unpopular proposals look less frightening by comparison. The truth is that Social Security is fully affordable.

Social Security did not cause the federal budget deficit. Social Security has not added one dime to the deficit. By law, it is prohibited from borrowing or going into debt. Social Security benefits must be paid, as they always have been, from dedicated payroll tax revenues and savings in its trust fund. The real causes of federal budget deficits over the next 10 years are Bush-era tax cuts, two wars that were never paid for and the Great Recession.[v] Over the long term, projected deficits almost exclusively are caused by health care cost growth in excess of GDP (despite significant deficit reduction achieved by the 2010 Affordable Care Act).

Social Security can be restored to long-term actuarial balance without cutting benefits. Social Security's revenue shortfall over 75 years is comparable to the revenues lost because of the Bush-initiated tax cuts for the wealthiest 2% of Americans. Most of this revenue shortfall could be closed by eliminating the cap on wages that are subject to the payroll tax (currently set at $113,700), even if this means paying higher benefits to those with earnings above that amount.[vi] Sen. Tom Harkin (D-Iowa) introduced in the 112th Congress the "Rebuild America Act," (S. 2252), which would have extended the life of the Social Security Trust Fund to 2052 by gradually phasing out the cap on wages subject to the payroll tax. With this enhanced financing, the proposal would raise benefits across the board and strengthen the cost-of-living adjustment to better reflect the actual expenses borne by seniors and Americans with disabilities.

Social Security's funding gap is driven by weak wage growth and economic inequality, not rising life expectancy. Weak wage growth and increasing earnings inequality account for more than half the projected shortfall that has emerged since Social Security's finances last were restored to long-term balance in 1983. Earnings inequality has eroded Social Security's taxable earnings, because earnings above a cap are exempt from Social Security taxes. Likewise, slower wage growth increases the costs as a share of taxable earnings.[vii] To further bolster Social Security's finances, Congress should focus on proposals to foster wage growth and reduce economic inequality.

An increase in the retirement age is an across-the-board benefit cut. Increasing the age at which workers can claim full retirement benefits from 67 to 69 would reduce lifetime benefits by about 13 percent, and raising it to 70 would reduce lifetime benefits by 20 percent. At whatever age workers retire, their benefit would be lower than under current law, and workers would have to work longer to receive the same benefit. Working longer may not be possible for workers who have health problems, have worked in jobs that are physically demanding or simply cannot find employment. In part because the retirement age already is scheduled to rise from 65 to 67 by 2022, Social Security benefits will be replacing a falling share of worker's wages over the next two decades,[viii] and Congress should not depress that replacement rate any further.

Switching to a "chained CPI" to calculate Social Security's annual cost-of-living adjustment (COLA) is a disguised benefit cut. The purpose of Social Security's automatic annual COLA, which has averaged about 3% for the last 25 years, is to protect the value of benefits from erosion due to inflation.[ix] Proposals to adopt a supposedly "more accurate" formula to determine the COLA, such as the "chained CPI," really are just disguised attempts to lower the COLA and reduce benefits.[x] Moreover, this benefit cut would affect current, not just future, beneficiaries. And since COLAs have a compounding effect over time, reducing the COLA would have the most impact on those who receive benefits the longest—older women, who already have high levels of poverty, and those who are disabled at a young age and go on to live long lives. If accuracy is the goal, then the CPI-E, the price index that measures inflation experienced by the elderly, should be used. In fact, a "senior index" would lead to a higher—not lower—COLA, because seniors are disproportionately affected by health care inflation.[xi]

Benefit cuts should be rejected even if they fall more heavily on seniors with higher average earnings. Benefit formula changes described as affecting only higher-income workers, in fact, often squeeze middle-class beneficiaries. One proposal put forward by the Simpson-Bowles commission would cut benefits for retirees with average lifetime earnings as low as $38,000, with even bigger benefit cuts for seniors with higher average earnings. Other proposals, such as "progressive price indexing," would reduce benefits for workers with average lifetime earnings as low as $22,300.[xii] Cutting benefits for middle-class retirees is by no means "progressive," even if the cuts being proposed are larger for seniors with higher average earnings. Social Security enjoys strong public support because it is a right that workers have earned by making payroll contributions throughout their careers. It is a social insurance program, and cutting benefits for higher-income workers would create the impression that Social Security is a welfare program and undermine its political support.

Congress should oppose privatization of Social Security in whole or in part. In recent years, as a back-door way to weaken the program, opponents of Social Security have championed privatization. House Budget Committee Chairman Paul Ryan (R-Wis.) proposed a plan that would have diverted more than $1 trillion of Social Security revenues to new less secure individual retirement accounts. To make up for this diversion of revenue, the Ryan plan would cut Social Security benefits dramatically and require the transfer of $1.2 trillion from general revenues.[xiii] Privatization proposals, like the Ryan plan, actually would make Social Security's funding problems worse, require unacceptable benefit cuts and increase retirement insecurity by exposing seniors to the risk of stock market fluctuations. [xiv]

Social Security benefits should be increased, not cut. Social Security benefits are modest, averaging about $15,139 per year for all workers. This annual benefit is just about equal to the full-time minimum wage and $4,000 above the federal poverty level.[xv] While Social Security benefits already are scheduled to replace less of a worker's wages, other sources of retirement income are either nonexistent for most workers, in decline (private pensions) or collapsing (home equity). The "retirement income deficit"—the gap between the pensions and savings American workers ages 32 to 64 have and what they would need to maintain their standard of living—is estimated to be $6.6 trillion.[xvi] In light of growing retirement insecurity, Social Security benefits should be increased across the board.

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[xi] Cost-of-living adjustments are available at www.ssa.gov/OACT/COLA/colasummary.html.
[xii] For example, the proposal to peg the COLA to a "chained CPI" claims to account for the full effects of economic substitution on changes in the cost of living. The chained CPI produces lower levels of inflation than the traditional CPI does, resulting in an average reduction of 0.3 percent in annual benefits, according to the Congressional Budget Office and the Social Security Administration, or 3% over 10 years.
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[xiv] Paul N. Van de Water, *The Ryan Budget's Radical Priorities*, Center on Budget and Policy Priorities (July 2010), available at www.cbpp.org/cms/index.cfm?fa=view&id=3114.
[xv] SSA, Beneficiary Data Number of Recipients at the End of December 2012, available at www.socialsecurity.gov/cgi-bin/currentpay.cgi.
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Private- Sector Pensions and Retirement Savings Plans

Only 14% of workers in a recent survey said they are very confident they will have enough money to live comfortably in retirement[i], and their anxiety is well founded. According to the nonpartisan Center for Retirement Research at Boston College, the retirement income deficit—that is, the gap between the pensions and retirement savings Americans *have* today and what they *should have* today to maintain their standard of living—is a staggering $6.6 trillion.[ii] In no small part, this gap is explained by the fraying of our private pension system, with fewer workers now covered by traditional pension plans. Although workers' ability to achieve retirement security long has been premised on a system of mutual responsibility—government-provided Social Security, employer-provided pensions and personal savings—only Social Security now guarantees a nearly universal benefit. Most of our 76 million baby boomers will face retirement with fewer assets than previous generations—if they are able to retire at all—and many will be forced to remain in the workforce to stave off poverty. Moreover, these seniors, who will comprise an increasing share of the population, will be without the purchasing power needed for a healthy economy.

Defined-benefit pension plans remain the soundest vehicles for building and safeguarding retirement income security because they provide a guaranteed lifetime monthly benefit and are federally insured. Private employers, however, have backed away from them in favor of riskier defined-contribution plans, like 401(k) plans. Employers disfavor defined-benefit plans for many reasons, including the real and perceived volatility of their contribution obligations, the cost of these contributions, their assumed risk in funding the plans, and counterproductive and complex legal and accounting requirements.

The Bureau of Labor Statistics has documented the decline in defined-benefit pensions, which now cover just 18% of private-sector workers, down from 35% in the early 1990s.[iii] Moreover, one in four plan participants is now in a frozen plan (a plan that is either closed to new hires or where participants' accruals have ceased). As former Secretary of Labor Hilda Solis observed, "This dramatic transformation of the retirement plan landscape has left more workers and their families at risk than ever before."[iv] The situation for nonunion workers is worse. As of 2011, just 13% of nonunion workers had defined-benefit pension plans, compared with 67% of union workers.[v] These trends portend poorly not only for the economic health of our retirees, but also for the nation overall.

Union members participate in two kinds of pension plans, single-employer and multiemployer plans. Single-employer pension plans are maintained by one employer. Multiemployer plans typically cover multiple small employers who are parties to a collective bargaining agreement with a single union, and the pension plan is "jointly trusteed" (run by both employer and union representatives). According to the most recent data, the Pension Benefit Guaranty Corp. (PBGC) insures some 26,000 single-employer plans with almost

33 million participants, and 1,460 multiemployer plans, benefiting some 10.4 million workers and retirees.[vi]

Congress should revisit the funding requirements for single-employer pension plans. The Pension Protection Act of 2006 (PPA) changed the funding requirements for both single- and multiemployer pension plans. While well intentioned, PPA reflects a fundamental misunderstanding about single-employer plans. Unlike a deposit-taking institution, a pension plan need not meet all of its benefit obligations at any one time. The PPA, however, requires a short-term valuation of pension assets, thereby forfeiting one of the core strengths of defined-benefit plans, namely their long-term investment horizon. Furthermore, the PPA adds volatility to pension funding even in relatively favorable market conditions (as do recent changes to the pension accounting rules promulgated by the Financial Accounting Standards Board).

During an economic downturn, this volatility threatens the survival of what remains of the private-sector pension system. That is, employers are required during market downturns to dramatically increase their funding to make up for large unrealized market losses. Employers must make these payments just at the moment when they are likely to be weakest. While some tightened funding requirements may be necessary to prevent a downward spiral in weaker plans during a market crisis, funding obligations should not be based on one-time asset valuations. In our current economic and regulatory environment, employers that provide for their employees' retirement security are under great pressure to cease doing so, and each employer that walks away creates greater pressures on the next employer to follow suit. Thus, the AFL-CIO supports many of the technical changes to the PPA's single-employer funding regime sought by pension plan sponsors, including extended liability amortization periods.

Congress should revisit the PPA-imposed benefit restrictions on single-employer plan participants. Because PPA was enacted partly to limit the exposure of the PBGC when an unfunded pension plan terminates, it restricts participants' benefits when a plan is underfunded, so as not to exacerbate that underfunding. These restrictions mean, however, that participants are at risk of never receiving the pension benefits they have earned and have been promised over years or even decades of service. Congress should amend PPA to require the restoration of lost pension benefits when a plan's funding level recovers and exceeds the level that triggered the loss of benefits in the first instance.

Congress should revisit the PPA's curtailment of the pension benefits guaranteed by the PBGC. The date a pension plan is terminated is the date on which plan participants cease to earn service. And, in the case of an underfunded plan, the employer liability owed to the PBGC is calculated as of that date. For more than three decades, that date also was used to calculate the guaranteed benefits PBGC paid to workers and retirees. PPA, however, changed that longstanding rule. Under PPA, a plan terminated because of a bankruptcy is "deemed" terminated as of the date the bankruptcy petition is filed, rather than on the actual plan termination date.[vii] Since a bankruptcy petition will necessarily be filed before the plan is actually terminated during the bankruptcy proceeding, the result of the statutory change is to reduce participants' and beneficiaries' guaranteed benefits. Congress should amend PPA to restore the previous rule, so that date of actual plan termination is used to calculate PBGC guaranteed benefits.

Congress should explore new structures to provide working Americans with a lifetime retirement benefit in addition to Social Security. If recent years provide any guide, it is highly unlikely there will be a resurgence of defined-benefit pension plans under current law. And the grim reality is that even undoing the destructive aspects of the PPA will not be sufficient to stabilize America's private pension system. For that, Congress should look to the principle of universal shared responsibility for retirement security—government through Social Security, individuals through savings and employers through minimum retirement benefit funding obligations. Such an approach would not require that employers participate in any particular plan, just that they make a contribution that enables employees to accumulate sufficient retirement assets for a financially modest, yet secure, retirement. Variants of this type of approach to broad-based retirement security currently are in place in Australia, the Netherlands and Switzerland. A 2009 Government Accountability Office study that looked in particular at the Dutch and Swiss experiences found their programs for universal private pension coverage should be of interest to policymakers seeking to address the lack of meaningful private retirement plan coverage for American workers.[viii]

Corporate bankruptcy reform is required to protect workers' pensions and retirement savings. Industrywide restructuring over the past decade has left no doubt America's workers are in need of corporate bankruptcy reform to protect their interests. Increasingly, companies are using bankruptcy as a business strategy to drastically reduce labor costs, including their pension and health care obligations. Provisions of the bankruptcy law, originally enacted to protect workers' interests, now enable employers to renege on their commitments to workers with remarkable ease. In the service of business "competitiveness," virtually no aspect of workers' financial security is off limits in a bankruptcy proceeding. The AFL-CIO supports corporate bankruptcy reform to provide workers with a bankruptcy court claim for lost pension benefits and to establish a priority claim for workers who have lost retirement savings because of fraud in company stock funds, like the workers at Enron.

Individual savings plans only can supplement, but not replace, defined-benefit plans. While the AFL-CIO is supportive of proposals to make savings easier for American workers, such as payroll deduction IRAs and enhanced opportunities to convert retirement accounts into annuities, it is our strongly held view that individual savings plans are not an adequate substitute for a guaranteed retirement benefit. The typical defined-contribution plan, e.g. the 401(k) plan, provides a meaningful benefit only to those workers who can afford to contribute throughout their working lives. The facts about how much workers save for retirement, from the 2010 Federal Reserve Board Survey of Consumer Finances, [ix] are sobering and offer no hope these plans will make up for the loss of pensions. Half of all American families have no retirement savings whatsoever. For those with retirement savings, the median account value is $44,000; for those closest to retirement (ages 55 to 64), the median account value is $100,000—enough for a monthly retirement income at age 65 of about $500.[x] Furthermore, individual savings plans require workers to bear all the risk, often are insufficiently diversified and suffer from poor returns. Moreover, individual savings plans, like 401(k) plans and IRAs, do not offer all the benefits of real pensions. Well-designed defined-benefit pension plans provide benefits for all covered workers, provide lifetime retirement income, deliver valuable survivor and disability protections and may offer important early retirement benefits and post-retirement benefit increases.

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AFL-CIO LEGISLATIVE
ISSUE BRIEF 2013

Retirement Security for Public Employees

The millions of workers engaged in public service as civilian employees of the federal, state or local government serve the American people in a multitude of ways. They are our first responders; they care for our veterans; teach our children; administer the Social Security, Medicare and Medicaid programs; deliver our mail; guard our prisons; support our military; ensure the safety of airline passengers; protect our borders, the public health, the environment and the safety of our workplaces—to highlight just a few of their significant responsibilities.

In recent years, public employees' retirement benefits have become a recurring target for budget cutters who have garnered support for this agenda by exploiting the growing anxiety among private-sector employees about their economic well-being in retirement as they witness the disappearance of private pensions.[i] But rather than lowering the bar by diminishing the retirement benefits of our public employees, Congress should be seeking ways to ensure all Americans are able to retire in dignity with a secure pension.

Federal employees, who played no part in causing the economic crisis or increasing the federal budget deficit, have sacrificed enough. Federal employees already have been subjected to a recent two year-pay freeze (giving up $60 billion over 10 years), as well as a mandatory increase in their pension contributions. In February 2012, federal and postal employees were required to contribute an additional $15 billion toward their pension benefit over 10 years. In contrast, few private employers that provide defined-benefit pensions require any employee contributions whatsoever. Additionally, our "shadow government" of federal contractors costs much more than our federal workforce; federal service contractors can charge taxpayers up to $760,000 a year for the compensation of just one employee. [ii]

The gap between private-sector and state and local public-sector workers' wages means government pension plans are even more essential to public employees' economic security. Employee pensions are an irreplaceable source of economic security to the almost 80% of state and local government employees they cover. These workers earn on average less than their private-sector counterparts,[iii] and their average annual pension benefit, a modest $24,137 in 2011,[iv] is thus critical to their ability to maintain a modicum of economic security in retirement.

Most state and local government pension plans are not in crisis, and taxpayers do not shoulder the bulk of pension funding. The problem of public pension funds' unfunded liabilities has been exaggerated. Pension experts and actuaries consider a funded ratio of 80% (that is, assets to liabilities) to be sufficient. Before the economic downturn, public pension plans had, on average, 84% of the assets needed to pay accrued benefits.[v] While the average ratio of assets to liabilities slipped to 76% for 2011,[vi] a one-time snapshot of a plan's funded status is not necessarily a predictor of the plan's strength. Pension plans have long-term horizons; they have years to recover their investment losses through increased contributions and investment gains. Moreover, contrary to the claims of those who would dismantle public pensions, taxpayers shoulder only a small fraction of the funding for these benefits. Between 1993 and 2009, 27.1% of public pension fund receipts came from employer contributions, 14% came from employee contributions and almost 60% came from investment earnings.[vii] Moreover, in many states, public workers are not covered by Social Security, so the government makes no payroll tax contribution on their behalf. [viii]

Pension obligations overall are a small portion of state and local budgets. The large operating deficits that many states are facing are caused largely by the weak economy. While some public plans face funding challenges, state and local government pensions for the most part are not the source of public-sector budget problems. State and localities' annual contributions to their pension trust funds equal an average of 3.8% of their operating budgets. [ix] Because of investment losses resulting from the economic downturn and contributions not made, average pension obligations are expected to rise to just 5% of operating budgets in 2014.[x]

State and local government pensions are important economic drivers. Often overlooked is the vital role that pensions play in stimulating the U.S. economy and in creating jobs. During economic downturns, pension income can be especially important in stimulating the local economy, because retirees know they will receive a steady check despite economic conditions. The benefits provided by public pensions have a sizeable impact that ripples through every state and industry across the country.[xi] State and local pensions support almost 3 million American jobs.[xii]

The imposition of federal obligations on state and local pension plans would be counterproductive and unnecessary. The AFL-CIO strongly supports transparency in government to provide the public with important information and to ensure the accountability of our elected officials. Legislation to impose first-time federal requirements for state and local pension plans, however, is less about transparency and more about facilitating the end of public pensions. At a time when the administration and Congress are working together to remove unnecessary and cumbersome federal regulation, the imposition of new federal substantive accounting rules that would conflict with existing Government Accounting Standards Board requirements makes no sense. Such a measure would inject the federal government into an area where state and local governments already are taking responsibility for funding shortfalls where they exist.

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[i] Some 78% of state and local government employees are covered by a defined-benefit pension plan, compared with 18% of private industry employees. (Among private-sector unionized employees, coverage is a higher 67%). William J. Wiatrowski, *The last private industry pension plans: a visual essay*, U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review* (December 2012), available at www.bls.gov/opub/mlr/2012/12/art1full.pdf.

[ii] See *Determination of Benchmark Compensation Amount for Certain Executives*, Office of Management and Budget, Office of Federal Procurement Policy, Federal Register Volume 77, Number 78, April 23, 2012, pages 24226–24227, available at www.gpo.gov/fdsys/pkg/FR-2012-04-23/html/2012-9747.htm.

[iii] See Jeffrey Keefe, *Debunking the Myth of the Overcompensated Public Employee*, Economic Policy Institute, Sept. 15, 2012, available at www.epi.org/page/-/pdf/bp276.pdf.

[iv] Erika Becker-Medina, *Annual Survey of Public Pensions: State-Administered Defined Benefit Data Summary Report: 2011,* U.S. Census Bureau, August 2012, available at www2.census.gov/govs/retire/2011_summary_report.pdf.

[v] Alicia H. Munnell, et al., *The Funding of State and Local Pensions: 2011–2015*, Center for Retirement Research at Boston College, Number 24, May 2012, available at http://crr.bc.edu/wp-content/uploads/2012/05/slp_24.pdf.

[vi] Public Fund Survey*, Summary of Findings for FY 2011,* available at www.publicfundsurvey.org/publicfundsurvey/summaryoffindings.html.

[vii] Illana Bovie, *Pensionomics 2012: Measuring the Economic Impact of DB Pension Expenditures*, National Institute for Retirement Security, March 2012, page 3, available at www.nirsonline.org/storage/nirs/documents/2012_pensionomics_report.pdf.

[viii] In seven states, more than 50% of state and local government workers are not covered by Social Security: California (56%), Colorado (70%), Louisiana (72%), Massachusetts (96%), Nevada (81%), Ohio (97%) and Texas (52%). Nationwide, 27% of state and local government workers are not covered. S. Rep. No. 111-187, Special Committee on Aging, *Social Security Modernization: Options to Address Solvency and Benefit Adequacy,* May 2010, page 13, available at www.aging.senate.gov/ss/ssreport2010.pdf.

[ix] Iris J. Lay and Elizabeth McNichol, *Misunderstandings Regarding State Debt, Pensions, and Retiree Health Costs Create Unnecessary Alarm; Misconceptions Also Divert Attention from Needed Structural Reforms,* Center on Budget and Policy Priorities, Jan. 20, 2011, available at www.cbpp.org/cms/index.cfm?fa=view&id=3372.

[x] Alicia H. Munnell, et al., *The Impact of Public Pensions on State and Local Budgets*, Center for Retirement Research at Boston College, October 2010, available at http://crr.bc.edu/wp-content/uploads/2010/10/slp_13-508.pdf.

[xi] For a state-by-state measure of the economic impact of state and local pension benefits, see Illana Bovie, *Pensionomics 2012: Measuring the Economic Impact of DB Pension Expenditures*, National Institute for Retirement Security, March 2012, page 3, available at www.nirsonline.org/storage/nirs/documents/2012_pensionomics_report.pdf.

[xii] *Ibid.*

Core Labor Laws, Labor Standards and Workforce Protections

6

Contents

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Fair Labor Standards Act

The FLSA establishes a national minimum wage and requires employers to pay a time-and-a-half cash premium for work performed in excess of 40 hours per week. The purpose of the FLSA's overtime provisions is threefold: (1) to reward workers with a wage premium for overtime work; (2) to discourage employers from demanding excessive work hours; and (3) to encourage employers to hire additional staff rather than overworking their current staff.

The Fair Labor Standards Act (FLSA) set the standard for a 40-hour workweek by requiring employers to pay their employees time-and-a-half for overtime hours in excess of 40 per week. The FLSA was the culmination of more than a century of struggle, in which many workers sacrificed their lives not just to improve the hours and conditions of their own employment, but to improve living standards for all workers and make our society more socially and economically just.

Congress should raise the minimum wage for all workers and adjust the minimum wage each year to keep pace with the rising cost of living. When Congress raised the federal minimum wage in 2007, it gave millions of low-wage workers a modest raise. But millions of low-income employees who rely on tips were left out. The tipped wage has remained frozen since 1991 at a meager $2.13 per hour—just $4,430 per year for a full-time worker. Effective minimum wage legislation would restore the value of the tipped credit to at least 70% of the minimum wage.

Congress should preserve the overtime protections of FLSA. The purposes of the overtime laws are to encourage businesses to hire new employees instead of overworking existing employees, and to compensate workers for the burden of working long hours. Those goals are as urgent today as ever. With millions of workers in need of full-time employment, we need to give employers more incentives to hire.

In previous sessions of Congress, there have been repeated attempts to roll back wage and hour protections of the Fair Labor Standards Act (FLSA). Congress should reject efforts to roll back the FLSA and focus instead on ensuring workers receive proper payment for the hours they work and encouraging employers to hire new workers. Proposals to weaken the FLSA's minimum wage and overtime protections would reduce pay for millions of workers and encourage employers to overwork their current staff rather than hire additional employees. FLSA overtime eligibility should under no circumstances be narrowed in response to particular employers who seek to pay workers less while requiring them to work longer hours.

Congress should support proposed regulations that would extend FLSA coverage to home care workers nationwide.
The Fair Labor Standards Act (FLSA) was amended in 1974 to include "domestic service" workers like nannies and housekeepers, but an exemption was created

for workers providing “companionship care” such as babysitting in homes. Today, home health care has developed into an industry and become one of the fastest-growing occupations, but home health care workers still do not have federal minimum wage and overtime protections.

Legislation to replace overtime requirements with “comp time” is a thinly veiled attempt to roll back the FLSA. Comp time legislation would excuse employers from having to pay a cash premium for overtime work if they instead offer employees compensatory time off. Comp time legislation would undermine the FLSA’s only incentive for employers to adhere to a 40-hour workweek by making it cheaper for employers to demand overtime work.

Minimum wage legislation must not include FLSA rollbacks. It would be entirely inappropriate to couple minimum wage legislation with a weakening of wage and hour protections. Rolling back FLSA protections would not benefit workers in any way.

Congress should not allow states to opt out of minimum wage increases. The FLSA’s wage and hour provisions are intended to set a national floor, above which states may choose to provide additional protections. States already have the flexibility to establish minimum wage rates higher than the FLSA. Proposals to let states opt out of minimum wage increases would give states an effective veto over any future increase and thus nullify the FLSA’s role as a national floor.

Congress should ensure workers receive a full day’s pay for a full day’s work. Across the country, unscrupulous employers have denied employees’ payment for hours worked, refused to pay the minimum wage, withheld overtime compensation, forced employees to work off the clock, shortened or denied meal breaks, stolen tips and misclassified workers as independent contractors to avoid payroll taxes. Such actions are forms of wage theft and too often go unreported and unpunished. Illinois, Maryland, Massachusetts, New Mexico and New York have passed laws to stop wage theft at the state level. Congress should consider a national response, such as the Wage Theft Prevention Act.

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The Railway Labor Act

Workers in the airline and railroad industries need a labor law that is implemented in a manner that protects their interests and allows them to bargain fairly. While the Railway Labor Act (RLA), enacted in 1926, was a collaborative effort between labor and management, too often the statute has been manipulated by employers to deny workers the basic freedom to form unions and engage in collective bargaining. The National Mediation Board (NMB), the three-member federal agency charged with overseeing the RLA and labor-management relations in the air and rail industries, must implement the law fairly, promote collective bargaining and uphold the rights of workers to form and join unions.

The RLA is the principal federal statute governing labor-management relations in the aviation and rail industries. Among other things, the RLA affirms the rights of employees to organize and bargain collectively through representation of their own choosing, free from interference, coercion or even influence by carriers. The RLA also requires employers and their employees to exert "every reasonable effort" to make and maintain collective bargaining agreements. Unfortunately, employers have at times been allowed to circumvent the statute's requirements, and previous NMBs, particularly under the Bush administration, have failed to administer the statute in a fair and balanced manner.

The current NMB has reversed years of employer-based bias and brought a more balanced approach to labor-management relations. Most notably, in 2010 the board changed its outdated and inherently unfair election rules to allow for a majority of those voting to decide whether to be represented by a union. Before this change, the NMB election rules arbitrarily counted all workers who did not vote as opposed to union representation. While the board's rule change simply allows a majority of voting workers to decide the outcome and brings the election rules in line with basic democratic norms, opposition from some employers and anti-worker interest groups was fierce. Despite heavy-handed lobbying and mischaracterizations by these groups, attempts to overturn this rule in Congress have failed and challenges in federal court have to date been rejected.

Not surprisingly, employers fighting organizing campaigns have altered their tactics to reflect the NMB's new rules. Instead of telling their employees to destroy ballots and not vote—as they did when non-voters were counted as "no" votes—companies now engage in massive and overwhelming efforts to instruct their employees to affirmatively vote "no." To ensure employees' rights to choose a union free from employer coercion and interference are not violated, the NMB must aggressively monitor union elections, investigate claims of interference and order remedies that are meaningful and will deter illegal employer conduct.

In addition to its responsibilities in the organizing arena, the NMB also must ensure collective bargaining disputes are settled in a fair and timely manner. Under the RLA, collective bargaining agreements do not expire, but instead become amendable at a certain date. Until a new agreement is reached, the current contract remains in place. Furthermore, workers are barred from striking until the mediation procedures of the RLA are exhausted and the NMB determines an impasse has been reached. While these procedures are designed to minimize disruptions of service, collective bargaining only works if the NMB facilitates and encourages genuine bargaining and releases the parties from mediation once it is clear negotiations have reached an impasse.

Some companies have attempted to remain under the RLA (as opposed to the National Labor Relations Act) to shield themselves from organizing efforts or to extinguish existing collective bargaining rights. Most notably, Federal Express has argued that virtually all of its ground employees, including truck drivers and mechanics, are actually aviation workers covered by the RLA. Contractors for air carriers that are not carriers themselves also have tried to manipulate the law to stay under the RLA. Jurisdiction under the RLA should not be used as part of a union avoidance strategy, and this type of misapplication of our nation's labor laws no longer can be tolerated.

As the NMB seeks to meet its responsibilities under the RLA, it has at times lacked adequate staff and resources. Given current consolidations in the airline industry, significant rule changes being implemented by the board and pending collective bargaining contracts, the board is faced with a significant workload. To help address this problem and to ensure workers' interests are protected, Congress should work with the agency to ensure the board has the resources it needs.

While the RLA is not perfect, many of the problems associated with the law can be addressed by a fair and balanced NMB that is not dominated by employer interests. Collective bargaining must be promoted, and the rights of workers to freely choose union representation must be established and protected.

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Minimum Wage

The minimum wage remains far below its historical level and continues to lose value every year to inflation. In 2007—after a decade of inaction—Congress raised the minimum wage by $2.10 an hour, with the last stage of the increase taking effect on July 24, 2009. While that increase itself was insufficient to make up for the erosion the standard already had suffered, the value of the wage has eroded even further since then. Congress must raise the minimum wage back to its historic level; annually index the minimum wage to ensure it keeps up with the rising cost of living; and require the same minimum wage for tipped and non-tipped employees.

The Fair Labor Standards Act (FLSA) establishes the federal minimum wage rate. The minimum wage was increased from $5.15 to $6.55 in 2007 and 2008, with the final step to $7.25 implemented on July 24, 2009. While the minimum wage operates as a national floor, states and communities are allowed to set higher rates and cover more workers. As of January 2013, 19 states and the District of Columbia already have set their minimum wages at rates higher than the federal rate.

The purchasing power of the minimum wage has fallen over time. The purchasing power of the minimum wage plummeted during the 1980s, when there wasn't one increase in the wage rate from 1981 to 1990—and this period was followed almost immediately by another 11 years without a minimum wage increase, from 1996 to 2007. For the minimum wage to have the same purchasing power as it had at its highest point in 1968, the minimum wage in 2013 would have to be nearly $10.60.

The minimum wage should not leave full-time workers in poverty. During the 1960s and 1970s, the annual earnings of a full-time, year-round worker earning the minimum wage were roughly equal to the poverty level for a family of three. To reach the poverty line for a single-parent family of three in 2012 ($18,498), a full-time, year-round worker would have to earn at least $8.89. Given that the federal poverty level is a metric intended for administrative purposes rather than gauging the earnings required for basic economic security, a minimum wage increase well beyond the federal poverty level would be needed to ensure a realistic income for low-paid workers.

A minimum wage increase would stimulate the economy. The Economic Policy Institute estimates the most recent congressional proposal to raise the federal minimum wage (the Fair Minimum Wage Act of 2012) would generate more than $25 billion in new consumer spending, which would result in more than 100,000 new full-time jobs, as higher sales lead businesses to hire more employees.

Reasonable minimum wage increases do not cause job loss. A large body of research shows that raising the minimum wage is an effective way to boost the incomes of low-paid workers without reducing employment. Even during times of high unemployment, minimum wage increases do not lead to job loss.

Low-wage employers can afford to pay higher wages. Contrary to myth, fully two-thirds of all low-wage workers (those making less than $10 per hour) are employed by large companies with more than 100 employees—not the small mom-and-pop stores that many corporate interests suggest. Furthermore, the largest employers of low-wage workers—retail and fast food chains like Walmart and McDonald's—remain in strong financial condition today and have recovered from the recession: According to a 2012 report by the National Employment Law Project, 78% of the 50 largest low-wage employers have earned profits every year for the last three years, and 63% are earning higher profits today than before the recession.

Growing numbers of skilled adult workers, many of whom support families, are relying on the minimum wage to make ends meet. Approximately 88% of workers who would benefit from raising the federal minimum wage are adults older than age 20, and about 40% of these workers have some college education. Women make up approximately 55% of workers who would be affected by raising the minimum wage. The average low-wage worker contributes roughly half of his or her entire family's income.

Unless Congress raises the minimum wage, the core of the U.S. economy will continue to shift toward low-wage service-sector jobs. While 60% of all jobs lost in the Great Recession were middle- and high-skill occupations, fully 58% of all jobs created in the post-recession recovery have been low-wage occupations. According to the Bureau of Labor Statistics, low-wage occupations are projected to make up six of the 10 fastest-growing occupations through 2020.

Congress should restore the historical value of the minimum wage. As a first step, Congress should raise the federal minimum wage to recover its peak value (reached in 1968), approximately $10.60 an hour.

Congress should index the minimum wage. Congress also should provide for automatic annual adjustments to the federal minimum wage, as is already done in 10 states: Arizona, Colorado, Florida, Missouri, Montana, Nevada, Ohio, Oregon, Vermont and Washington.

Congress should ensure the same minimum cash wage for tipped and non-tipped employees. Current federal law allows employers to pay tipped workers as little as $2.13, as long as tips make up the difference between the $2.13 base wage and the full federal minimum wage. The tipped minimum wage has been frozen at $2.13 for 22 years, even as the regular minimum wage has risen twice—widening the gap that tips must cover and lowering the incomes of tipped workers in the process. While employers are supposed to ensure their tipped employees receive the minimum wage, many are paid less due to wage theft and other illegal practices. Nationwide, women represent nearly two-thirds of workers in tipped occupations and about 70% of restaurant servers, who experience poverty at almost three times the rate of the workforce as a whole. Congress should ensure the same federal minimum cash wage for tipped and non-tipped workers. As a first step, Congress should restore the value of the tipped credit to at least 70% of the minimum wage.

Minimum wage increases should not be accompanied by anti-worker provisions or tax cuts. Federal legislation is needed to increase the minimum wage only because the federal standard loses value to the rising cost of living every year. Restoring buying power lost to inflation does not require any compensation, such as tax cuts, for employers of low-wage workers. It is especially inappropriate to condition restoration of the minimum wage's buying power on a weakening of FLSA protections for particular workers.

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Family, Medical and Sick Leave

The Family and Medical Leave Act (FMLA) of 1993 was a first step in addressing the needs workers have to take time to care for family and medical issues without risking their jobs. However, the FMLA only partially addresses the growing need of workers for more flexibility to take leave from work during times of family or medical need. Congress should build upon the FMLA to expand the number of covered workers, address more family situations and create a paid family and medical leave insurance program. Congress also should pass legislation to guarantee employees paid time for routine medical care, to recover from short-term illnesses and to care for a sick family member.

The FMLA requires state agencies and private employers with more than 50 employees to provide up to 12 weeks annually of job-protected unpaid leave to care for a newborn or newly adopted child or seriously ill family member, to recover from the employee's own serious medical condition, to care for an injured service member in the family (up to 26 weeks), or to address qualifying exigencies arising out of a family member's deployment. Workers may take all their leave at once or may take intermittent leave in the smallest block of time their employer already uses to account for absences for most FMLA purposes. Since 1993, workers have used the FMLA more than 100 million times to take the unpaid time off they need to care for themselves or their families.[i]

Now is the time for Congress to adapt innovative policies that promote economic security when family and medical needs arise.

Eighteen states have enacted family and medical leave protections beyond those provided by the FMLA for new parents and other family caregivers, eight states have enacted laws that provide for unpaid leave for more purposes than the FMLA, five states have paid leave insurance programs for a worker's own serious health condition and two states have created family leave insurance programs for child and ill family care.[ii] Unions have negotiated various forms of paid leave and additional unpaid leave.

The FMLA is a success. Because of the FMLA, about 14 million workers were able to take job-protected leave to care for their loved ones or themselves in 2011. And employers do not report significant burdens. In fact, 90% of worksites reported that complying with the FMLA has had a positive effect or no noticeable effect on employees and their business. More than one-third (37%) of worksites covered by the FMLA reported that compliance with the FMLA has had a "positive effect" on "employee productivity, absenteeism, turnover, career advancement and morale, as well as the business' profitability." Half (54%) said compliance has had "no noticeable effect."[iii]

The FMLA has limitations. The effectiveness of the FMLA is constrained by its limitations. Some 40% of workers are excluded from FMLA protections because of the size of their employers, the number of hours they work or their tenure with their employer.[iv] And workers too often cannot afford to take unpaid leave, cut their leaves short or jeopardize their financial stability in order to take an unpaid leave.[v]

Congress should strengthen the FMLA. The FMLA should be expanded to cover workers in companies with fewer than 50 employees; dropping the employer size threshold to 20 employees would cover about 10 million more workers, or 67% of the workforce. Reducing the hours-worked requirement would make a significant difference for part-time workers and would ensure coverage for 63% of the workforce.[vi] The FMLA also should be strengthened to cover more family needs, such as parental involvement in school, time for victims of violent crimes and domestic violence to attend court dates and non-emergency care of children and elderly parents.

Congress should enact paid family and medical leave insurance. Congress should enact legislation to provide for wage replacement during periods of family and medical leave. A national paid leave insurance program, modeled on successful programs in California and New Jersey, would provide workers with insurance benefits when a new child arrives, a family member falls very ill or the worker has a serious health condition that requires care. To pave the way for the federal program, Congress should provide paid leave to federal workers and create a competitive grant program for states to cover the administrative costs of establishing their own paid leave programs.

Congress should guarantee workers can earn up to seven paid sick days annually. Employees should not have to choose between coming to work sick or staying home and doing without wages or risking their jobs. Yet about four in 10 private-sector workers do not have access to paid, job-protected sick days.[vii] Lower-paid workers are especially vulnerable: 82% of the lowest-wage workers—the majority of whom are women—do not have a single paid sick day.[viii] More than half of parents don't have even a few paid sick days to use when a child is sick.[ix]

When workers can't access paid sick time, their economic and job security suffers. Just 3.5 unpaid days away from work jeopardizes a typical family's ability to afford groceries when that family's breadwinners do not have paid sick days.[x] And nearly one-quarter of adults (23%) say they have lost a job or been threatened with job loss for taking time from work when they or a family member were sick.[xi]

Paid sick days policies help reduce the spread of illness in workplaces, schools and child care facilities. Workplace injuries are more common when workers do not have paid sick days,[xii] and illness spreads more virulently through workplaces.[xiii] In addition, the productivity of workers who lack paid sick days declines. "Presenteeism"—when sick workers come to work rather than stay at home—costs our national economy $160 billion annually in lost productivity, far outweighing the cost of absenteeism.[xiv]

Congress should enact legislation that would allow workers to accrue paid sick days for their own medical needs or the needs of children, elderly parents or a spouse. Part-time workers would accrue sick time in proportion to the hours they work.

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[i] National Partnership for Women & Families estimate based on the rate of leave taking multiplied by an estimate of the number of covered and eligible workers in each of the 20 years since the FMLA's enactment.
[ii] Details are available here: www.nationalpartnership.org/ExpectingBetter.
[iii] See National Partnership for Women & Families, A Look at the U.S. Department of Labor's 2012 Family and Medical Leave Act Employee and Worksite Surveys (February 2013), www.nationalpartnership.org/site/DocServer/DOL_FMLA_Survey_2012_Key_Findings.pdf?docID=11862.
[iv] *Ibid.*
[v] *Ibid.*
[vi] *Ibid.*
[vii] U.S. Department of Labor, Bureau of Labor Statistics. (2012, July 11). *Employee Benefits in the United States: Selected paid leave benefits: Access, National Compensation Survey (Table 6)*. Retrieved 17 December 2012, www.bls.gov/news.release/pdf/ebs2.pdf.
[viii] *Ibid.*
[ix] Smith, K., & Schaefer, A. (2012, June). Who Cares for the Sick Kids? Parents' Access to Paid Time to Care for a Sick Child. Carsey Institute at the University of New Hampshire publication. Retrieved 13 February 2013, from www.carseyinstitute.unh.edu/publication/who-cares-sick-kids-parents%E2%80%99-access-paid-time-care-sick-child.
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[xiv] Stewart, W., et al. (December 2003). "Lost Productive Health Time Costs from Health Conditions in the United States: Results from the American Productivity Audit." *Journal of Occupational and Environmental Medicine*, 45. Retrieved Jan. 31, 2013, from www.workhealth.org/whatsnew/whnewrap/Stewart%20etal_lost%20productive%20work%20time%20costs%20from%20health%20conditions%20in%20the%20US_%20Results%20from%20the%20American%20Productivity%20Audit%202003.pdf.

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Occupational Safety and Health

Congress must support and strengthen the U.S. job safety and health laws and programs to protect workers from injuries, illness and death. Over the past 40 years, the nation's job safety laws have significantly reduced job injuries, illnesses and deaths. However, many workers remain at risk, as evidenced by the 2010 disaster at the Upper Big Branch Mine in West Virginia, and explosions at the Clean Energy plant in Connecticut, Tesoro Refinery in Washington and Transocean/BP oil rig in the Gulf Coast, which combined claimed 53 workers' lives. This year we witnessed the catastrophe in West, Texas, where a fire at a fertilizer distributor caused a massive explosion that killed 15 people, injured hundreds and destroyed blocks in the surrounding town. Congress and the Obama administration must provide adequate resources for health and safety programs, strengthen enforcement, update and strengthen regulatory standards, and improve statutory protections for miners and other workers.

Under the Occupational Safety and Health (OSH) Act of 1970, which provides the basic legal framework for protecting most U.S. workers, the federal Occupational Safety and Health Administration (OSHA) has the responsibility to set and enforce safety and health standards to protect workers from job hazards. The OSH Act permits states to run their own plans, provided they have standards and enforcement as effective as OSHA. Twenty-one states currently operate state plans for private- and public-sector workers, and four states operate state plans for public-sector workers. The Mine Safety and Health Act, administered by the Mine Safety and Health Administration (MSHA), regulates safety and health conditions in both underground and surface mines—in coal mines and other metal and nonmetal mining operations (including gold, lead, sand and gravel). The MSH Act requires much greater oversight (a minimum of four inspections per year in underground mines and two inspections per year in surface mines) than the OSH Act, which does not provide for mandatory routine inspections.

The OSH and MSH acts have been great successes. Since the passage of the OSH Act, workplace fatality rates have declined by 81% and reported workplace injury rates have declined by 67%. The biggest declines have been in manufacturing and construction—the industries where OSHA has focused its efforts—and in mining, which receives more intensive oversight by MSHA. Exposures to many toxic substances, including asbestos and lead, have been reduced dramatically.

Workplace deaths and injuries are still too high. In 2011, 4,693 workers were killed on the job and an estimated 50,000 more workers died due to occupational diseases. For 2011, the Bureau of Labor Statistics (BLS) reported 3.0 million job injuries and illnesses among private-sector workers and 821,000 injuries and illnesses among state and local government workers. (Data on federal government and self-employed workers is not collected by BLS). Recent estimates put the true toll at 8 million to 11 million injuries and illnesses per year. Certain groups of workers, including construction workers and Latino and immigrant workers, are at higher risk, experiencing much higher rates of fatalities and injuries. The cost of occupational injuries and illnesses is estimated at between $250 billion and $300 billion per year.

Congress must provide adequate funding for job safety programs. The level of federal resources currently devoted to job safety is relatively small, compared with funding for other agencies. The FY 2012 OSHA budget of $565 million—compared with $8.4 billion for the Environmental Protection Agency—amounted to only about $3.00 per worker. For FY 2013, funding is even more limited, with a budget reduction of more than $28 million due to the sequester. Today federal OSHA has 450 fewer inspectors than in 1980—a 30% decrease—and can only inspect a given workplace on average once every 131 years. While OSHA staff and resources have declined significantly since 1980, the U.S. workforce has increased by 40 million workers—more than 40%. The MSHA budget in FY 2012 was $372.5 million. The budget for the National Institute of Occupational Safety and Health (NIOSH)—$294 million in FY 2012—is smaller than that of any other federal health research agency. For FY 2013, both MSHA and NIOSH are facing funding cuts of at least 5.1% as a result of sequestration.

OSHA enforcement needs to be strengthened. Strong standards and enforcement form the foundation of the OSH Act, supplemented by compliance assistance, outreach and education. Over the years some have attempted—through appropriations, legislation, regulation and policy—to shift OSHA's emphasis from enforcement to voluntary compliance assistance. But the evidence clearly shows compliance assistance only works in the presence of strong enforcement. In FY 2012, OSHA's average penalty for serious violations—likely to cause death or serious harm—was $2,156. OSHA enforcement needs to be strengthened, with serious consequences for serious and willful violations that put workers in danger.

Safety and health standards need to be updated and strengthened. OSHA and MSHA standards and regulations have reduced exposure to major workplace hazards, but standards for many hazards are out of date or nonexistent. In the past 40 years, OSHA has set standards for only 29 toxic substances—and it takes OSHA eight to 10 years to issue standards for major hazards. Industry opposition to any kind of regulation has grown. Under the Bush administration, the issuance of new regulations and protections ground to a halt, and the only significant safety and health rules issued came as a result of court orders or congressional mandates. At the beginning of its first term, the Obama administration began to move forward on much-needed rules on silica, combustible dust, coal dust exposures and injury and illness prevention programs. But following the 2010 mid-term elections and in the face of intense opposition to regulation by House Republicans and business groups, progress on safety and health rules stalled. Failure to act on these needed rules has resulted and will continue to result in more unnecessary injuries, illnesses and deaths.

Congress must strengthen the OSH Act. The OSH Act has remained largely unchanged since 1970. While groundbreaking at the time, the statute is now weaker than most other safety, health and environmental laws, particularly with regard to enforcement. The OSH Act's criminal penalties are weak—limited to cases involving a worker death that results from a willful violation, and such offenses are only misdemeanors. Civil penalties are also weak—in FY 2012 the median final penalty in enforcement cases involving a worker death was only $5,175. Millions of public-sector workers and other workers fall outside coverage of the statute and have little or no safety and health rights or protections. The OSH Act's anti-discrimination protections and remedies are out of date and ineffectual. The Protecting America's Workers Act (H.R. 1648, S. 665), which has been introduced in the 113th Congress, would expand OSH Act coverage to uncovered workers, enhance whistleblower protections and increase penalties for serious, willful and criminal violations.

Congress must provide additional protections for miners. In 2006, following the Sago and other mine disasters, Congress passed the Mine Improvement and New Emergency Response (MINER) Act, the first major reform to the MSH Act. That law strengthened emergency response measures. In 2010, an explosion at the Upper Big Branch mine killed 29 miners, the worst mining disaster in 40 years. In response, legislation to strengthen the MSH Act was introduced to prevent future disasters. The Robert C. Byrd Mine Safety Protection Act (H.R. 1373) and the Robert C. Byrd Mine and Workplace Safety Act (S. 805) would strengthen MSHA oversight and enforcement at dangerous mines, enhance miners' rights and reduce the risk of coal dust explosions.

Congress must ensure assistance to 9/11 responders and community members. In 2010, after many years of effort, Congress enacted the James Zadroga 9/11 Health and Compensation Act to establish a program to provide medical monitoring, treatment and compensation to thousands of 9/11 responders and community members now sick as a result of exposures resulting from the collapse of the World Trade Center. Continued oversight is required to ensure this important law is properly implemented so those who are sick get the medical treatment and compensation they need and deserve.

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Sources: *Survey of Occupational Injuries and Illnesses, 2011,* Bureau of Labor Statistics, U.S. Department of Labor; *Census of Fatal Occupational Injuries, 2011,* Bureau of Labor Statistics, U.S. Department of Labor; *Economic Burden of Occupational Injury and Illness in the United States,* J. Paul Leigh, The Milbank Quarterly, Vol. 89, No. 4, 2011; *Death on the Job: The Toll of Neglect, A National and State-by-State Profile of Worker Safety and Health in the United States,* 22nd edition, AFL-CIO, April 2013.

AFL-CIO LEGISLATIVE
ISSUE BRIEF 2013

Misclassification of Employees as Independent Contractors

Unscrupulous employers should not be allowed to gain an advantage over their competitors by misclassifying employees as independent contractors. Many employers—15% or more—misclassify their employees as independent contractors to save as much as 30% on labor costs. But misclassification puts workers at an extreme disadvantage when they seek to demonstrate their entitlement to statutory benefits and protections. To crack down on misclassification and level the playing field for scrupulous businesses, Congress must pass legislation to strengthen enforcement by the Labor Department and pare back tax loopholes that encourage misclassification.

Under current law, employers are required to pay payroll taxes and withhold income taxes on the wages of their "employees," and their "employees" are entitled to various workplace rights and protections. But there is no requirement that employers pay or withhold taxes on their payments to independent contractors, who have few workplace rights or protections. Some businesses treat their employees as independent contractors and report payments for their services on 1099 tax forms filed with state and federal fiscal authorities. Other businesses simply pay their employees off the books and fail to report these payments to state or federal authorities.

Employers misclassify to avoid paying labor costs. Employers that misclassify their employees as independent contractors not only avoid paying payroll taxes for Social Security, Medicare and unemployment insurance, but also may avoid paying workers' compensation premiums, reduce costs for their health care and pension plans and avoid having to withhold income taxes. Businesses that misclassify may save up to 30% on labor costs.[i]

Misclassification harms workers. Misclassified employees can face significant hurdles in obtaining workers' compensation when they get hurt on the job. They may be cheated out of minimum wage and overtime pay, may be wrongly excluded from their employer's health insurance and pension plans, may be found ineligible for unemployment benefits when they lose their job and may be wrongly denied family and medical leave. They will have to pay both the employer and employee contributions to Social Security and Medicare (15.3% rather than 7.65%) or they may end up not qualifying for either program when they retire.[ii]

Misclassification has become increasingly common. In 1984, the Internal Revenue Service estimated that 15% of employers misclassify their employees as independent contractors.[iii] In 1995, the Government Accountability Office (GAO) testified that "IRS officials believe misclassification has been increasing."[iv]

Misclassification is especially common in certain industries and in certain regions. Misclassification is especially common in the construction industry and is a growing problem in high-tech jobs, communications, trucking and delivery services, janitorial services, agriculture, home health care, child care and other industries.

Misclassification costs the federal treasury money. The GAO estimates that independent contractor misclassification costs the federal treasury $2.72 billion every year in unpaid Social Security, unemployment and income taxes.[v] The IRS estimates the "tax gap"—the amount of federal tax underpayment—at $345 billion every year, with underreporting of FICA and federal unemployment taxes accounting for $15 billion.[vi]

Federal enforcement has been inadequate. While states are leading the way in tackling misclassification, enforcement at the federal level has been hampered by lack of funding, lack of coordination among state and federal enforcement agencies and loopholes that allow employers to misclassify their employees with impunity. For example, the IRS is legally banned from writing binding rules in this area, and the Department of Labor can't even issue fines because it's not legally a violation of the Fair Labor Standards Act (FLSA) to intentionally and willfully misclassify a worker.

Tax loopholes encourage misclassification. The most significant loophole in the tax code is the Section 530 "safe harbor,"[vii] enacted in 1978 to provide "interim" relief for employers until Congress had an opportunity to resolve the complex issues involved in the employment tax area. Section 530 protects not only good-faith employers that have misclassified their employees in reasonable reliance on court rulings or government audits, but also employers that have misclassified their employees when a "significant segment" (up to 25%) of their industry also is guilty of misclassification. Section 530 also prohibits the IRS from reclassifying misclassified employees prospectively,[viii] and from issuing guidance on proper classification.

The Fair Playing Field Act of 2010 would have pared back tax loopholes. Legislation introduced by then-Sen. John Kerry (D-Mass.) in the 111th Congress would have ended the moratorium on IRS guidance addressing worker classification; required the secretary of the treasury to issue prospective guidance clarifying the employment status of individuals for federal employment tax purposes; amended the provisions of the tax code that provide for reduced penalties for failure to deduct and withhold income taxes and the employee's share of FICA taxes; and required persons who contract independent contractors on a regular and ongoing basis to provide a written statement to each independent contractor of the federal tax obligations of independent contractors, the labor and employment law protections that do not apply to independent contractors, and the right of the independent contractor to seek a status determination from the IRS.

Legislation introduced in the 112th Congress by U.S. Sens. Tom Harkin (D-Iowa), Sherrod Brown (D-Ohio) and Richard Blumenthal (D-Conn.) would have amended the FLSA and cut down on payroll fraud, protect workers' rights and level the playing field for all employers. The Payroll Fraud Prevention Act sought to prevent payroll fraud by employers that misclassify their workers as independent contractors and would have provided workers with the protections they are entitled to and the benefits they have earned. The legislation sought to protect workers from being misclassified as independent contractors, thereby ensuring access to safeguards like minimum wage and overtime, health and safety protections, and unemployment and workers' compensation benefits.

Stronger enforcement would not penalize scrupulous businesses. Stronger enforcement would not negatively affect the many businesses that use *bona fide* independent contractors. Such enforcement would not change the legal definition of who is an employee and who is an independent contractor. However, it would level the playing field for the majority of employers that properly classify their employees and are forced to compete against less scrupulous rivals that gain an unfair advantage through misclassification. In order to successfully address the misclassification problem, both the FLSA and the IRS approach must be addressed, not just one or the other. Addressing the FLSA issue alone still would fail to bring in the revenues state and local governments desperately need. In the alternative, if the IRS issue is addressed without amending the FLSA, then the Department of Labor remains ill-prepared to provide solutions that address the misclassification problem.

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[i] National Employment Law Project (NELP), "1099'd: Misclassification of Employees as Independent Contractors," (2005).

[ii] Government Accountability Office (GAO), "Employment Arrangements: Improved Outreach Could Help," July 2006.

[iii] Inspector General for Tax Administration, "While Actions Have Been Taken to Address Worker Misclassification, an Agency-Wide Employment Tax Program and Letter Data Are Needed," (Feb. 4, 2009), at 8.

[iv] Natwar M. Gandhi, GAO associate director for tax policy and administration issues, "Testimony before Small Business Subcommittee on Taxation and Finance," (August 1995).

[v] Government Accountability Office (GAO), "Employment Arrangements: Improved Outreach Would Help Insure Proper Worker Classification" (2006), at 2.

[vi] Inspector General for Tax Administration, "While Actions Have Been Taken to Address Worker Misclassification, an Agency-Wide Employment Tax Program and Better Data Are Needed," (Feb. 4, 2009), at 8. However, this estimate is based on 1984 data that have not been updated.

[vii] Section 530 of the Revenue Act of 1978.

[viii] Statement of Donald C. Lubick, acting assistant treasury secretary for tax policy, "Testimony Before the Finance Committee Subcommittee on Taxation and IRS Oversight," (June 5, 1997), at 4.

The Davis-Bacon and Service Contract Acts

The purchasing power of the federal government should not be used to depress local labor standards. The Davis-Bacon Act and the Service Contract Act require contractors on federally assisted construction contracts and federal service contracts, respectively, to pay their employees at rates prevailing in the communities where work is performed.
Congress should continue application of the Davis-Bacon Act on all federally assisted construction without regard to the form of federal assistance provided.

The Davis-Bacon Act of 1931 and more than 60 other federal statutes require contractors on federally assisted construction projects to pay workers no less than the wage and benefit rates prevailing in the community where work is performed. Prevailing wage provisions have been applied to statutes authorizing construction of hospitals, water pollution control projects, airports, mass transit and housing. The Service Contract Act (SCA) of 1965 provides that on contracts worth more than $2,500 for services provided to the federal government—such as janitorial, custodial, food services, housekeeping services, security guard services, maintenance, clerical work and certain health and technical services—contractors must pay employees at least the wages and fringe benefits prevailing in the local community.

Davis-Bacon has been applied to construction receiving all types of federal assistance. Congress has included Davis-Bacon provisions for projects funded by federal grants, loans, loan guarantees and insurance programs, as well as such innovative financing techniques as tax credit bonds, state revolving loan funds, credit enhancements and other means of leveraging federal money through matching funds from state and private sources.

Congress should continue applying Davis-Bacon to construction receiving any kind of federal assistance. Despite the continual reaffirmation by Congress of the prevailing wage principle, opponents have attempted repeatedly to block application of the law to various new federal construction programs and new funding techniques by claiming such applications are an "unwarranted expansion" of the act.

Davis-Bacon prevents a race to the bottom in federal construction. Without Davis-Bacon protections, contractors could lowball their bids by using the cheapest workers, either locally or by importing cheap labor from elsewhere. When Davis-Bacon is applied, by contrast, contractors win federal construction jobs based on having the most productive, best equipped and well-managed workforce.

Higher-paid workers are more productive. A study of the 10 states in which nearly half of all highway and bridge work in this country is done found when high-wage workers were paid double the pay of low-wage workers, they built 74.4 more miles of roadbed and 32.8 more miles of bridges for $557 million less.[i]

Higher productivity can lower construction costs without lowering

wages. Ford administration Labor Secretary John T. Dunlop has observed that productivity is so much greater among higher-wage, higher-skilled workers that often projects using them cost less than those using lower-wage, lower-skilled workers. A growing body of economic research refutes the claim that prevailing wage laws drive up the costs of construction,[ii] and shows "real savings in public construction costs are more likely to come from investments in worker training, which can make workers more productive, thereby lowering costs without cutting wages."[iii]

Repeal of Davis-Bacon would produce no significant cost savings. In a 2001 University of Utah (UU) study of public school construction costs in three Midwestern states, a simple comparison of the mean inflation adjusted square foot cost of building 391 new public schools found no statistically significant difference between the cost of building public schools with prevailing wages or without.[iv] Another 1998 UU study compared projects in 15 Great Plains states with projects in Kansas after repeal of its state prevailing wage law in 1987. The Kansas projects experienced more workplace injuries and deaths, lower wages and fewer benefits, a reduction in and elimination of apprenticeship programs, an overall decline in the quality of applicants, substantial cost overruns and downstream increases in maintenance costs.[v]

Most prevailing wage determinations are based on nonunion wage scales. According to U.S. Department of Labor data, more than 70% of Davis-Bacon wage determinations issued are based upon nonunion labor scales. The union wage is used only if the DOL wage survey process determines the local union wage is the prevailing wage.

Davis-Bacon protects blue-collar workers and sustains communities. Davis-Bacon assures quality training for construction workers,[vi] lowers the rate of construction-related injuries,[vii] promotes health care coverage for construction workers[viii] and minimizes disruption to local labor markets and local unemployment.[ix] If construction wages were to decline significantly, there would be an increase in demand for government programs, ranging from financial aid for college students to food stamps to public health services.

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Endnotes

[i] *Wages, Productivity and Highway Construction Costs: Updated Analysis 1994–2002*, Construction Labor Research Council (March 2004).

[ii] Nooshin Mahalia, *Prevailing Wages and Government Contracting Costs: A Review of the Research,* Economic Policy Institute Briefing Paper #215 (2008), at 1.

[iii] Howard Wial, *Do Lower Prevailing Wages Reduce Public Construction Costs?,* Keystone Research Center (July 1999), www.keystoneresearch.org.

[iv] Peter Philips, Ph.D., *A Comparison of Public School Construction Costs*, University of Utah (February 2001), www.faircontracting.org/PDFs/prevailing_wages/Public_School%20Peter%20Phillips.pdf.

[v] vPeter Phillips, Ph.D., *Kansas and Prevailing Wage Legislation,* Prepared for the Kansas Senate Labor and Industries Committee (Feb. 20, 1998), www.faircontracting.org/PDFs/prevailing_wages/kansas_prevailing_wage.pdf.

[vi] Peter Philips, Ph.D., *Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices and Warehouses in Nine Southwestern States*, University of Utah (1996), www.smacna.org, www.faircontracting.org/PDFs/prevailing_wages/sq_ft_report.pdf.
[vii] Dr. Michael Sheehan, et al., *Oregon's Prevailing Wage Law: Benefiting The Public, The Worker, And The Employer*, Oregon & Southwest Washington Fair Contracting Foundation (2000).
[viii] Jeffrey Petersen, *Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws*, Industrial Relations 39 (2000), www.smacna.org.
[ix] Robert P. Casey Jr., *A Performance Audit of the Pennsylvania Department of Labor and Industry's Prevailing Wage Program*, (2002), www.auditorgen.state.pa.us.

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Project Labor Agreements (PLAs)

Project Labor Agreements (PLAs) bring together workers from many different crafts on major public works projects under a common set of work rules, working conditions, hiring and dispute settlement practices. PLAs are collective bargaining agreements between building trade unions and contractors. They govern terms and conditions of employment for all craft workers—union and nonunion—on a construction project. PLAs have been used for generations on successful public and private construction projects.

PLAs are designed to benefit everyone involved. Union and nonunion workers benefit because their wages and benefits are defined and protected at local standards. Union and nonunion contractors benefit from the assurance of a level playing field and a guaranteed skilled workforce. Communities benefit because many PLAs provide recruiting, hiring and training for disadvantaged workers and local residents.

But construction owners and taxpayers benefit the most because PLAs reduce costly delays due to skilled worker shortages. They ensure a steady flow of highly trained construction labor guaranteed by nationwide referral systems. Public and private PLA construction projects are known for coming in on time and on budget.

PLAs have been used successfully for generations. PLAs have been used in the public and private sectors for nearly a century. PLAs first were used on the big public works projects of the 1930s. Grand Coulee Dam, Hoover Dam and Shasta Dam all were built using PLAs.

Project managers saw the need to avoid a long series of labor negotiations as one contract after another came up for renewal. The elegantly simple solution to the problem was to put all workers under a single, umbrella contract providing for uniform hours, holidays and working conditions that applied to all trades throughout the specific project. The Tennessee Valley Authority, the Department of Energy, the Southern Nevada Water Authority and the Los Angeles Unified School District are just some examples of public-sector owners successfully using PLAs for construction projects because they promote efficient and quality construction.

Driven primarily by cost efficiency, use of PLAs in the private sector has grown even more than on public projects. Leading Fortune 100 and 500 companies, including Toyota, Walt Disney, ConocoPhillips, Southern Company and the World Trade Center have used PLAs successfully. PLAs have been used in the public and private sectors for so long because they work.

While protecting workers' wages and working conditions, PLAs ensure that project owners have access to reliable local sources of highly trained, highly skilled construction craft workers. By harmonizing work rules and schedules, and requiring regular worksite labor-management meetings, PLAs ensure the job proceeds smoothly. All of this reduces costs. PLAs support a massive network of labor management training and apprenticeship programs that enables workers to gain skills they need to get good middle-class jobs—while ensuring a flow of skilled workers into the construction trades. Joint labor-management programs spend about $800 million a year on private training, supporting more than 1,700 training facilities and 10,000 certified instructors. These programs account for 80 percent of all graduates from construction apprenticeships.

PLAs are under attack by anti-worker politicians who are attacking our jobs, pay and unions. In fact, they're doing the bidding of the notoriously anti-union Associated Builders and Contractors (ABC) by trying to outlaw project labor agreements. ABC is known for opposing such basic workers' rights as the 40-hour workweek, fair pay measures, prevailing wages, protection from being cheated of overtime pay through misclassification, the Employee Free Choice Act and enforcement of workplace safety laws. Lately the ABC is falsely claiming that PLAs are only for union contractors. The fact is, federal law requires contractors to hire without respect to union affiliation, so union and nonunion employees can work under a PLA. To comply with state competitive bidding laws, public PLAs are open to union and nonunion subcontractors.

Some legislators are repeating ABC's lies about PLAs. The truth is, contractors that don't want to pay fair wages for skilled labor are behind the attacks.

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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Worker Protections for Transit and Rail Employees

Fair labor policy is compatible with sound transportation policy, and both are necessary to keep U.S. rail and public transportation systems running smoothly, safely and securely. Federal protections for workers in the U.S. transit industry have resulted in balanced and reliable labor-management relations that ensure a highly trained, experienced, safe and professional workforce while allowing for technological, structural and productivity improvements. Congress should apply so-called "Section 13(c)" protections for transit and commuter rail employees to all existing federal transit programs; uphold federal protections for freight rail workers during periods of mergers and consolidation; uphold protections for passenger rail workers as passenger rail is expanded; and oppose all efforts to weaken these critical bargaining and employment rights by legislation or regulation.

The collective bargaining rights of transit and commuter rail employees are protected by the requirements of "Section 13(c)," [i] which have been included in every federal transit act since 1964, including SAFETEA-LU and MAP-21. When federal funds are used to acquire, improve or operate transit systems or commuter rail operations, Section 13(c) requires that fair and equitable arrangements be in place to safeguard the rights of employees affected by the federal investment. Section 13(c) protects the rights of more than 320,000 urban, suburban and rural transit employees under collective bargaining agreements, as well as the rights of commuter rail workers.

Section 13(c) requirements protect workers. Section 13(c) protects transit workers from the adverse affects that may result from federal investment in local transit systems. The protective agreements required by 13(c) must, at minimum: (1) preserve the rights and benefits of employees under existing collective bargaining agreements; (2) continue collective bargaining rights; (3) protect individual employees from a worsening of their position with respect to their employment; (4) provide assurances of employment to employees of acquired transit systems and priority of re-employment; and (5) include paid training or retraining programs.

Section 13(c) requirements have helped maintain stability in the transit industry. The U.S. public transit industry has enjoyed remarkably balanced and stable labor-management relations since Congress first passed Section 13(c) in 1964, and Section 13(c) arrangements are uniquely responsible for this success. Stability in labor-management relations has ensured a highly trained, experienced, safe and professional workforce and allowed for the development of significant technological, structural and productivity improvements to transit and commuter rail systems.

Section 13(c) requirements benefit transit agencies. Recent reports issued by the Government Accountability Office (GAO) confirm that transit agencies are reaping the benefits of Section 13(c) while making technological advancements, receiving grants on a timely basis, increasing operational efficiency and maintaining and reducing labor costs.[ii] Of 100 transit agencies surveyed by GAO, an overwhelming number reported that Section 13(c) generally had no effect on labor costs.[iii]

Section 13(c) requirements must apply to all existing federal transit programs. Reauthorization of the highway and transit authorization bill, known as MAP-21, must guarantee all applicable labor protections apply to all current and new programs.

Congress must uphold federal protections for freight rail workers during periods of mergers and consolidation. In the freight rail sector, presidents from both parties and bipartisan majorities in Congress have recognized that policy decisions made during periods of consolidation and realignment of rail carriers can have serious negative consequences for workers. Mandatory protections, commonly referred to as "*New York Dock,*"[iv] have provided some measure of job security and income stability for freight rail workers following mergers, line sales and abandonments by rail carriers. Congress must uphold these protections to ensure railroads do not ignore their collective bargaining obligations to employees in the event of mergers or consolidation.

Federal law must protect passenger rail workers as passenger rail is expanded. There has been a groundswell of support in recent years for the expansion of passenger rail, including new passenger service on existing lines and new dedicated passenger rail lines. Passenger rail—and specifically high-speed service—must be expanded, but worker rights also must be protected as expansion moves forward. Specifically, current rail laws, including the Railway Labor Act, the Railroad Retirement Act, the Railroad Unemployment Insurance Act and federal rail safety laws must continue to protect rail workers. Davis-Bacon prevailing wage laws also must apply to rail construction work.

Federal protections for passenger rail workers must not be weakened. It makes no sense to allow private or state operators to provide passenger rail service and hold them to different standards than those applicable to Amtrak. For example, there have been attempts to turn over passenger rail service to private entities that seek to avoid operating as rail carriers and thus circumvent obligations such as their obligation to participate in the railroad retirement system.

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[i] Established by Section 13(c) of the Federal Transit Act, 49 U.S.C §5333(b).
[ii] General Accountability Office, *Transit Labor Arrangements: Most Transit Agencies Report Impacts Are Minimal* (GAO-02-78) (Nov. 19, 2001).
[iii] *Ibid.*
[iv] NEW YORK DOCK PROTECTIVE CONDITIONS 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act].

AFL-CIO LEGISLATIVE
ISSUE BRIEF 2013

Effective Representation of Federal Employees

As part of a systematic attack on working and middle-class Americans, some have advocated cutting the salaries and benefits of those who serve the public as employees of the federal government. These are the individuals who keep the government functioning through times of political crisis or deadlock. They are the people who get the Social Security checks out on time, ensure a safe food supply, go after those who pollute our water and air, and care for our wounded veterans. Those who make these attacks do so to distract the American people from our unfair and regressive tax system and corporate welfare state that led to the Great Recession. Their ultimate target is the very government programs that serve the needs of the people and protect the American Dream.

The anti-labor forces in Congress led by Rep. Phil Gingrey (R-Ga.) continued their perennial attack on federal workers by reintroducing a measure to eliminate official time, the Federal Employee Accountability of 2013 (H.R. 107), in the first week of the 113th Congress.

The AFL-CIO strongly opposes any proposal that would weaken federal employee unions by curtailing, restricting or eliminating the reasonable and judicious use of official time. The opponents of official time are attempting to silence labor's voice in the workplace by attacking the use of official time by employees.

Federal employee unions are required to provide representation for all employees in their collective bargaining units. These worker representatives have been unfairly painted as the cause of our country's economic troubles by anti- labor forces in Congress. By law, federal employee unions are required to provide representation for all employees in their collective bargaining units, even those who don't pay dues. Federal employee unions also are forbidden from collecting any fair-share payments or fees from non-dues paying members for the services to which they are legally entitled.

The Civil Service Reform Act of 1978 allows federal employee unions to bargain with agencies over official time. Under the law, federal employees who serve as union representatives are permitted to use official time to engage in negotiations and perform representational activities while on duty status.

Legally permitted representational activities include:

- Creating fair promotion procedures that require selections be based on merit, so as to allow employees to advance their careers;
- Establishing flexible work hours that enhance agencies' service to the public while allowing employees some control over their schedules;
- Setting procedures that protect employees from on-the-job hazards, such as those arising from working with dangerous chemicals and munitions;
- Enforcing protections from unlawful discrimination in employment;

- Developing systems to allow workers to perform their duties from alternative sites, thus increasing the effectiveness and efficiency of government;
- Participating in improvement of work processes; and
- Providing workers with a voice in determining their working conditions.

Limitation of official time. By law, use of official time is limited to time spent in negotiations for a collective bargaining agreement and other representational activities authorized by statute. The law provides the amount of time that may be used is limited to that which the labor organization and employing agency agree is reasonable, necessary and in the public interest. As pointed out in a Congressional Research Service report, "(a)ny activities performed by an employee relating to the internal business of the labor organization must be performed while in a non-duty status."[i]

Activities that may *not* be conducted on official time include:

- solicitation of membership;
- internal union meetings;
- elections of officers; and
- any partisan political activities.

Communications with Congress. Because the pay, benefits and job security for federal employees are established through the legislative process, Congress recognized that federal employee unions would need to communicate with lawmakers about these key terms and conditions of employment. Consequently, the law permits the use of official time for union representatives to deal directly with members of Congress.

To ensure its continued reasonable and judicious use, all federal agencies track basic information on official time and submit it annually to the Office of Personnel Management (OPM), which then compiles a governmentwide report on the amount of official time used by agencies.

Through official time, union representatives are able to work together with federal managers to use their time, talent and resources to make our government even better. Gains in quality, productivity and efficiency—year after year, in department after department—simply would not have been possible without the reasonable and sound use of official time.

Union representatives and managers have used official time to transform the labor-management relationship from an adversarial standoff into a robust alliance. And that just makes sense. If workers and managers are really communicating, workplace problems that otherwise would escalate into costly litigation can be dealt with promptly and more informally.

Official time under labor-management partnerships or forums is used to bring closure to workplace disputes between the agency and an employee or group of employees. Those disputes otherwise would be funneled to more expensive, more formal procedures—the agency's own administrative grievance procedures, EEOC complaints, appeals to the Merit Systems Protection Board and federal court litigation.

Union representatives use official time for joint labor-management activities that address operational mission-enabling issues in the agencies. Official time allows such activities as designing and delivering joint training of employees on work-related subjects and introduction of new programs and work methods that are initiated by the agency or by the union. For example, such changes may be technical training of health care providers in the Department of Veterans Affairs or introduction of data-driven food inspection in the Food Safety and Inspection Service.

The AFL-CIO strongly opposes any proposals to erode the rights of union representatives to use official time to represent both dues and non-dues paying members of collective bargaining units. Official time under the Federal Service Labor-Management Relations statute is a longstanding, necessary tool that gives agencies and their employees the means to expeditiously and effectively utilize employee input into mission-related challenges of the agency.

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[i] 64-FLA No. 54 decision of FLRA.

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2013

Federal Pay and Benefits

In March 2013 President Obama signed into law legislation extending the federal pay freeze that began at the end of the 111th Congress through the rest of Fiscal Year 2013. It appears the administration accepts the consensus formed in late 2010 around the idea that because so many working-class people were experiencing economic hardship as a result of the corrupt practices of banks and Wall Street firms, federal employees should experience hardship as well. How did the continuing freeze on the wages and salaries of federal employees become our nation's response to the collapse of the housing bubble, the financial crisis caused by this collapse, the bailout of large banks, insurance companies and Wall Street firms, and the fact health care costs will continue to soar in spite of the passage of health care reform?

As wrong as it may seem, Nobel Laureate Paul Krugman referred to the freeze as "cynical deficit reduction theater" that was "a literally cheap trick that only sounds impressive." He also confirmed "federal salaries are, on average, somewhat less than those of private-sector workers with equivalent qualifications." But none of these facts seemed to matter to the administration and members of Congress who voted for the freeze. They were, at least to some degree, responding to a well-orchestrated campaign by USA Today, the Heritage Foundation and the Cato Institute that used a combination of sophistry and outright lies to make a case that federal employees are overpaid relative to their private-sector counterparts.

Since the summer of 2010, some media outlets have published numerous front-page articles that suggest federal employees are overcompensated. The articles have compared gross averages in the private sector with average salaries of the current federal workforce, manufactured data on the dollar value of private-sector fringe benefits and compared it with distorted data on the cost of federal benefits, and sensationalized the fact that a growing number of federal salaries have exceeded $100,000 per year. The Washington Post helped to promote the myth of overpayment in October 2010 by commissioning a poll that asked Americans whether they thought federal employees were underpaid or overpaid, implicitly giving support to the notion that such issues are a matter of opinion rather than fact. The results of the poll reflected only how well the USA Today misinformation campaign had worked.

To bolster the false impression of federal employee overcompensation, the Heritage Foundation's James Sherk published a deeply flawed econometric study[i] with a headline-grabbing claim that the government "overtaxes all Americans" by providing federal employee pay and benefits "on the order of 30 percent to 40 percent above similarly skilled private-sector workers." Sherk claimed federal salaries are "22 percent above private-sector workers." In an odd coincidence, Sherk's numbers are the mirror opposite of the calculations performed by the economists and pay experts from the Bureau of Labor Statistics (BLS) and the Office of Personnel Management (OPM).

The BLS conducts annual surveys that actually match federal jobs with those in the private sector and state and local governments and compare salaries on a regional basis. These surveys show a persistent pay gap that averages 22% nationwide in favor of the private sector. Federal pay is governed by a law that aims to achieve comparability between federal and nonfederal salaries for similar work, and the BLS data on the pay gap has formed the basis of each president's proposed pay adjustment since the comparability law was passed in 1990.

The federal pay system played no role in the creation of the economic crisis that required massive government spending to resolve. Federal employees did not cause the housing bubble either to inflate or to burst. Federal employees did not engage in speculative investments in derivatives of mortgage securities. Federal employees did not mislead investors, did not outsource jobs to China or Mexico and did not destroy the financial system. The pay freeze was a cynical ploy to appease those who oppose the missions of almost every executive branch agency and program. Federal employees deserve better than the role of pawn in the war against government.

Efforts to reduce or freeze federal pay for general deficit reduction amount to levying a special tax increase on just one group of Americans—federal employees. All Americans must pay their fair share to fund government operations, and it is wrong to place an extra tax burden on this one, politically convenient group of citizens who perform such important work for the American public every day.

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[i] www.heritage.org/research/reports/2010/07/comparing-pay-in-the-federal-government-and-the-private-sector.

'Right to Work'

So-called "right to work" laws in 24 states prohibit workers and employers from negotiating union security clauses, which ensure all workers who receive economic benefits and rights at work from union representation share the costs of maintaining the union. These laws make it harder for unions to represent workers effectively, with harmful consequences for union and nonunion workers—such as lower pay—as well as for their communities. That's why these laws are more accurately termed "right to work for less" laws. Congress should oppose federal "right to work" legislation, which would mandate "right to work" in every state, and instead allow workers in every state to freely negotiate union security clauses.

Once a majority of workers opts for union representation, federal law requires the union to represent all workers fairly, whether or not they are members. Yet federal law also guarantees workers *in every state* the choice not to be members of the union that represents them. In 26 states, workers and employers are free to negotiate *union security clauses,* which require nonmembers to pay *agency fee*s to cover their fair share of the costs of union representation, though *not* the costs of the union's political, legislative, social and charitable activities.

The remaining 24 states (Indiana and Michigan passed laws in 2012) have exercised their option under federal law to enact laws that prohibit workers and employers from negotiating union security clauses, thereby allowing free-rider nonmembers to avoid paying their fair share of the costs of union representation.

"Right to work" provides neither rights nor work. Despite their misleading name, "right to work" laws do not guarantee anyone a job, and they do not protect workers against unfair firing. These laws only weaken collective bargaining rights and limit workers' freedom to demand respect, fair pay and safety on the job. While promoted under the guise of a job creation agenda and worker-friendly rhetoric, these laws are about silencing the voices of working families in our democracy.

"Right to work" unfairly interferes in the freedoms of private business and employees to negotiate with each other. In states without these laws, private business and employees can freely negotiate to make sure everyone who benefits from a union contract pays their fair share of the costs of obtaining and protecting those benefits. A "right to work" law allows the government to interfere unfairly in the freedoms of private businesses and employees to negotiate with each other.

"Right to work" laws impose unfair financial burdens on union members. Federal law requires unions to represent members and nonmembers equally—even nonmembers in "right to work" states who pay no agency fees—in grievances, arbitrations, bargaining and every other aspect of representation. *Federal law requires no other kind of membership organization to guarantee the benefits of* *membership to nonmembers.* By allowing nonmembers to avoid paying their fair share of the costs of union representation, "right to work" laws shift those costs to union members. Because everyone benefits, everyone should pay their fair share.

"Right to work" laws depress union membership. Because nonmembers in "right to work" states can obtain the benefits of membership without paying agency fees, they have less incentive to become union members. Moreover, the free-rider problem makes it less financially viable for workers in "right to work" states to form and maintain unions. As a result, fewer workers in these states are able to bargain effectively for improved wages, hours, benefits and working conditions.

"Right to work" laws weaken unions' ability to represent workers. By depressing union membership and forcing unions to divert members' dues money to pay for representing nonmembers, "right to work" laws make it harder for unions to represent workers effectively in the workplace and to advocate for the interests of working families in their communities and with elected officials.

"Right to work" laws take our states in the wrong direction. State legislatures should be focused on policies that will strengthen the economy, end the practice of giving tax dollars to companies that ship the work overseas, close corporate tax loopholes and stop employer fraud that deprives workers of rights and cheats on corporate taxes. None of this will happen if corporate special interests pass "right to work" legislation in the states, because these laws tilt the balance of power even more toward big corporations, at the expense of hard-working, middle-class families.

"Right to work" laws harm union and nonunion workers alike. By depressing union membership and limiting the effectiveness of unions, "right to work" laws harm both union and nonunion workers and their communities. In states with "right to work" laws, wages are lower, poverty rates are higher, infant mortality rates are higher, more people lack health insurance, workplace fatality rates are higher, unemployment benefits are lower and per-pupil education spending is lower.

- **Earnings:** According to Bureau of Labor Statistics data, average annual pay in "right to work" states was $5,759 less in 2011 than in free-bargaining states.

- **Poverty:** According to U.S. Census Bureau data, "right to work" states in 2011 had a poverty rate of 14.9%, compared with 13.6% in free-bargaining states. Child poverty is also higher in "right to work" states—21.4% in "right to work" states, compared with 19.8% in free-bargaining states.

- **Infant mortality:** In 2006–2008, the infant mortality rate in "right to work" states was 15.4% higher than in states without these laws.

- **Health care:** People in "right to work states" are more likely to be uninsured. According to U.S. Census Bureau data analyzed by the Kaiser Family Foundation, in 2010–2011, 19.1% of people younger than 65 were uninsured, compared with 14.9% in free-bargaining states. And for children, 10.6% were uninsured in "right to work" states, compared with only 7.6% in free bargaining states.

- **Workplace health and safety:** According to the AFL-CIO's *Death on the Job: the Toll of Neglect (2012)*, in 2010 the rate of workplace fatalities was 36% higher in "right to work" states than in states without these laws.

- **Unemployment insurance:** According to the Department of Labor's Employment and Training Administration, the maximum weekly unemployment benefit in effect on Jan. 1, 2012, was 25.9% lower in "right to work" states than in free bargaining states.

- **Education:** According to the National Education Association, during the 2010–2011 school year, "right to work" states spent 26.7% less per student on education than states without these laws.

Congress must oppose federal "right to work" legislation. For the benefit of union and nonunion workers and their communities, Congress must oppose federal "right to work" legislation, which would mandate "right to work" in every state.

Congress should allow free bargaining in every state. "Right to work" laws must be repealed, not expanded. Section 14(b) of the National Labor Relations Act (NLRA), enacted as part of the anti-worker, anti-union Taft-Hartley Act of 1947, allows states to prohibit union security agreements. Section 14(b) must be repealed to allow free bargaining in every state.

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Sources: AFL-CIO, *Death on the Job: The Toll of Neglect*, 2012; Bureau of Labor Statistics; Census Bureau; Employment and Training Administration; Kaiser Family Foundation, Statehealthfacts.org; National Education Association, Rankings & Estimates: Rankings of the States 2011 and Estimates of School Statistics 2012, December 2011.

All the data used in this fact sheet are from 2011 or earlier—as a result, the states referred to as "right to work" in the data analysis are the 22 states that had such laws on the books at that time. The data analysis includes Indiana and Michigan as free-bargaining states because those states did not pass "right to work" legislation until 2012.

Bargaining Rights and National Security

After years of confrontation with the Department of Defense (DoD), the unions led by the United Department of Defense Worker Coalition (UDWC) have made significant progress to date in convincing Congress to repeal much of the Bush administration's attempt to undermine collective bargaining rights for civilian employees through the National Security Personnel System (NSPS) and to restore the collective bargaining rights of DoD employees under the Civil Service Reform Act of 1978 (Chapter 71 of the Federal Labor Management Relations Act), with some restrictions.

Chapter 71 establishes the right of federal civilian employees, including civilian employees at DoD, "to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees." These actions led to the establishment of joint labor-management planning workgroups, which created the Joint Design Team.

The design team options and recommendations were presented to the department's key decision makers for their consideration. While the process was envisioned to take several weeks to a month, it continued through all of 2011 and much of 2012.

The Joint Design Team's recommendations were presented to DoD for review and consideration on Sept. 6, 2012. Finally, on Jan.17, 2013, DoD forwarded the recommendations accepted by its internal review for congressional consideration and approval.

By establishing teams charged with the development of the new personnel authorities, the parties created a major positive step in the relationship between management and its workers. The authorities included the enterprise performance appraisal system, streamlined hiring flexibilities and the discretionary civilian workforce incentive fund.

The planning workgroup is a follow-on action stemming from the New Beginnings conference held in September 2010. The New Beginnings conference brought together approximately 200 people, equally represented by labor and management, to discuss various aspects of the new authorities and provide ideas and suggestions for the design teams to follow.

The design teams were composed of diverse groups equally represented by labor and management. Approximate team size was 20 to 24 people, with labor and management sharing responsibility for identifying design team members. The review and analysis process was to create a series of options and recommendations on how the authorities may be implemented.

To date, the parties continue to meet to resolve the differences over 12 recommendations not presented by DoD to Congress for consideration.

This initiative is of enormous interest and importance to the department's leadership, Congress and the labor

movement. Decisions and outcomes will influence and affect how the department manages its most valuable asset—the DoD workforce.

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Federal Judicial Nominees

Federal courts play a pivotal role in preserving important protections for workers that are provided by U.S. labor and employment laws. Decisions by federal judges have an immediate and lasting impact on the lives of working families. Because the U.S. Supreme Court reviews so few lower court decisions, judges at the district and appellate court level—particularly the U.S. Court of Appeals for the District of Columbia Circuit—play key roles in upholding labor and employment law protections for workers and their families. Prior Republican administrations have systematically appointed federal court judges hostile to the interests of working families.

While most public attention is focused on nominees to the U.S. Supreme Court, federal judges at the district and appeals court levels often have the final say in cases seeking review of decisions and actions by the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA) and other agencies. The federal courts also hear cases brought under Title VII of the Civil Rights Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act, and other key worker protection statutes. Each year the Supreme Court decides about 80 cases, while the circuit courts decide about 57,500 cases on the merits.[i]

The D.C. Circuit holds a uniquely important role among the 13 federal circuit courts. The U.S. Court of Appeals for the District of Columbia Circuit is widely regarded as the second most important court in the United States because of its jurisdiction and location in the nation's capital. The D.C. Circuit is the court that most closely oversees the actions of federal agencies. It reviews regulations adopted by OSHA, the Mine Safety and Health Administration (MSHA), the Wage and Hour Division at the Department of Labor (DOL) and other divisions of DOL, as well as appeals from the unfair labor practice decisions of the NLRB. The D.C. Circuit hears more significant labor-related cases, including regulatory cases, than any other circuit court of appeals. This crucially important court remains dominated by Republican appointees.

Republican administrations appointed ultraconservative judges hostile to the interests of working families. One of the most troubling legacies of Republican presidents has been the lasting impact of their appointments of ultraconservative judges. Because federal judges are appointed for life, the impact continues.

Republican-appointed judges on federal courts of appeal have a negative impact on unions and workers. A 2008 study by the AFL-CIO of how the federal courts of appeal handle cases involving workers' rights under the National Labor Relations Act (NLRA) to form and join unions found that courts dominated by Republican appointees were more likely to reverse the NLRB when the NLRB issued decisions upholding workers' rights.[ii] The AFL-CIO reviewed 109 cases in which the NLRB issued a decision upholding workers' rights and its decision was challenged in the courts of appeals. The courts with a majority of Republican appointees denied enforcement, overturning the NLRB's decision in whole or in part, in 100 cases. Not surprisingly, the study found that courts of appeal judges whose nominations had been opposed by the AFL-CIO ruled against workers' rights. The findings of the AFL-CIO study are consistent with those of other reports on the voting patterns and records of Republican appointees.[iii]

Courts of appeals with majorities of Democratic appointees are the most sympathetic to workers' rights. Conversely, the AFL-CIO study found that circuit courts with a majority of Democratic appointees at some point in time during the period reviewed were the most sympathetic to the NLRB's rulings upholding workers' rights. The 2nd Circuit upheld all but two cases, one of which was decided by an all Republican-appointed panel. The 9th Circuit enforced the NLRB's rulings in all but three cases, one of which had a Republican-appointed panel. The 3rd Circuit enforced all but four cases, and two of these were majority Republican-appointed panels.

The federal judiciary has a vacancy crisis that must be addressed so balance will be restored to the federal judiciary. There were 55 unfilled seats when President Obama took office in 2009, but as of May 2013 there were 86 vacancies.[iv] Vacancy rates are high on the federal bench. These judicial vacancies need to be filled with those who have at some point in their legal careers worked with individuals in need, not just privileged or business interests; who will interpret labor, civil rights, wage and hour, and other employment statutes as conferring rights on workers; and who will enforce those rights.

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[i] United States Courts, "U.S. Courts of Appeals—Appeals Commenced, Terminated, and Pending, by Circuit, During the 12-Month Period Ending September 30, 2012," *available at* www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/B01Sep12.pdf.

[ii] AFL-CIO, "The Impact of Republican-Appointed Judges: The Courts of Appeals' Mistreatment of Union and Worker Success Before the NLRB" (2008). The D.C. Circuit denied enforcement in 47 cases; the 4th Circuit in 13 cases; the 6th Circuit in 10 cases; the 8th Circuit in seven cases; and the 5th Circuit in five cases.

[iii] Professor Cass Sunstein, in his book *Why Societies Need Dissent* (Harvard Press 2003), found that three-member court of appeals panels comprised of either a majority of Democratic appointees or entirely of Democratic appointees were much more likely to find in favor of workers than panels comprised of a majority or entirely of Republican appointees. His study reviewed, among other laws, the Americans with Disabilities Act and sex discrimination under Title VII of the Civil Rights Act of 1964. See also Cass R. Sunstein, "If Judges Aren't Politicians, What Are They?," Bloomberg News (Jan. 7, 2013). ("If you want to know how a judge will vote in a case involving affirmative action, sexual harassment or gay rights, the political party of the appointing president is a significant clue.")

[iv] Alliance for Justice, www.afj.org/judicial-selection/judicial-selection-snapshot.pdf (May 3, 2013).

Education, Civil and Human Rights, Fair and Open Elections

7

Contents

Strengthening Public Education and Improving College Access

Congress must ensure every child has access to a well-rounded quality education and every school is a place where teachers can teach and students can learn. As part of such a forward-looking policy, Congress must help to provide for universal early childhood education; establish community schools that serve the neediest children by offering comprehensive services and support systems they and their families need; build on smart federal investments in K–12 public education; oppose the diversion of scarce resources from public education to private school voucher programs and other forms of unproven privatization schemes; provide educators with the support and resources they need to succeed; maintain a commitment to high-quality education for all children; improve access to higher education, especially for students and families facing the greatest financial challenges; and protect students and taxpayers against fraud and abuse in the federal student aid system.

Congress must invest in a high-quality, universal early childhood education and care system that begins to address children's needs from birth to age 3 and seamlessly integrates these programs into the public school system. High-quality early childhood education has many immediate and long-term benefits for children and their families that long have been proven and documented by years of scientific research and analysis. The benefits include better higher-order thinking and attention skills, improved social skills, stronger oral literacy, enhanced reading, writing and math abilities, higher graduation rates and smaller achievement gaps between students of different socioeconomic backgrounds. Universal early childhood education programs must be accessible and affordable to all families who want their children to participate. Poor children must be given priority and must be provided with no-cost, high-quality services, including health and nutrition services. Federal, state and local officials must work together to create and expand programs that are inclusive, meet high standards of quality and are publicly funded by separate, dedicated revenue streams to fund early childhood education systems that discourage any attempts to redirect existing K–12 and higher education funding. Unions representing teachers and other school staff are committed to accommodating these programs within the public schools, where possible, and to creating partnerships with community-based programs to ensure there are sufficient placements for all children whose parents wish to enroll them.

Congress should fund a "kindergarten-plus" program. In addition to full-time, full-day kindergarten, Congress should provide federal funding to establish a "kindergarten-plus" program. Such a program would provide disadvantaged children with additional time in kindergarten, starting the summer before they ordinarily would enter kindergarten through the summer before first grade.
Congress must support "community schools" that serve the neediest children

and communities. Federal legislation and resources are needed to establish "community schools," which would serve the neediest children by co-delivering available services and supports students and their families need to succeed. Unions representing school-based employees are committed to working with state and local officials, federal agencies and community groups to coordinate resources in support of the community school model.

Congress must build on smart federal investments in K–12 education. The federal government's chief responsibility and role in education is promoting equal opportunity for a high-quality education for all children. ESEA should maintain adequate and targeted funding for children in greatest need. This is particularly important during times of state and local budget cuts. A primary focus of Title I of ESEA is to ensure disadvantaged children are provided an education that allows them to compete on the same level playing field as their more advantaged peers. This fundamental tenet and responsibility requires that education funding remain targeted and not become a competition among states and, consequently, their students.

In addition, to be successful, ESEA must provide incentives for constructive approaches aimed at ensuring teachers have the tools, time and trust to help their students succeed, and incentivize effective labor-management relationships.

These approaches should include career ladders, high-quality, job-embedded professional development aligned with appropriate standards and curriculum, support to maintain safe classrooms and schools, collaboration time and the establishment of appropriate class sizes. Any reforms, whether in terms of teacher development and evaluation or turning around low-performing schools, must be evidence-based and developed and implemented within the context of meaningful labor-management relations while respecting collective bargaining and other forms of union recognition in non-bargaining states.

Congress must oppose private school voucher and tax credit programs. Congress must oppose unproven private school voucher and tax credits programs that undermine K–12 public education**.** Vouchers would divert scarce resources from public schools, which are free and open to all students and accountable to parents and taxpayers alike, to support private schools that are not accountable to taxpayers and can exclude students for any reason, including ability to pay.

Congress must improve access to higher education, especially for the neediest families. The American system of higher education is shifting away from a policy of strong financial support for public colleges and universities, students and their families. Over two decades, the purchasing power of the maximum Pell Grant has declined and the balance of loans and grants has shifted sharply to loans. Fortunately, in the last two Congresses, lawmakers have sought to reverse this trend through a concerted effort to enhance the purchasing power of the Pell grants. Congress also sought to ensure the federal student loan programs were working as efficiently as possible to help students, particularly those with the most need, to afford post-secondary education.

Today, as the economic crisis deepens, an unprecedented number of individuals are turning to higher education. Congress must support access to college education for these students and maximize student retention by maintaining the support and funding levels of the maximum Pell Grant and curtailing the growing levels of federal and private loan debt taken by students. This continued support of our federal student aid programs will be critical as we work toward President Obama's goal of leading the world in post-secondary degree attainment.

Congress also must ensure taxpayer dollars for federal student aid are used wisely. A significant percentage of federal grants and loans now go to students enrolling in the for-profit sector of higher education (approximately 25%). Unfortunately, evidence suggests that students in that sector often do not persist or complete their chosen programs and are likely to incur significant, often unmanageable, levels of debt. This, in turn, leads to a very high rate of loan default. Congress must support necessary regulations to protect the integrity of federal higher education programs and ensure all students have access to an affordable education that meets their educational goals.

Congress must fund essential supports for nontraditional college students. Congress must improve grant aid for guidance and outreach programs at colleges that have a large number of nontraditional students—including students of color and disadvantaged students—especially to programs that work well, such as Trio and Gear Up.

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Civil, Human and Women's Rights

The wide range of civil rights issues facing Congress demonstrates the breadth of today's civil and human rights movement. Many Americans associate the civil rights movement with the mass demonstrations and freedom struggles of the 1950s and 1960s, but the civil rights legislative agenda of today reflects a broadening movement. This agenda includes strengthening existing wage discrimination and anti-discrimination laws, eliminating discriminatory barriers in the workplace, modernizing our election system and taking steps to end racial profiling.

The first of the modern civil rights statutes was the 1957 Civil Rights Act. In subsequent years, a civil rights legal framework was developed with the 1963 Equal Pay Act, the 1964 Civil Rights Act, the 1965 Voting Rights Act, the 1968 Fair Housing Act, the Age Discrimination in Employment Act and the Americans with Disabilities Act. More than 50 years after enactment of the first civil rights statute, weak federal enforcement and hostile U.S. Supreme Court decisions have left many Americans without effective protection from these landmark statutes. Meanwhile, Americans who have faced discrimination based on race, gender, sexual orientation, disability, age, religion and ethnicity continue their struggles for equality under law and an end to prejudice.

Congress must close loopholes in the Equal Pay Act. The Equal Pay Act of 1963 made it illegal for employers to pay unequal wages to male and female employees who perform work requiring equal effort, skill and responsibility. Yet today, wage disparities between women and men are evident in the private and public sectors and at every educational level. The Paycheck Fairness Act would require employers to demonstrate that wage gaps between men and women doing the same work are truly a result of factors other than gender and would prohibit retaliation against workers who share their own salary information or inquire about their employer's wage practices. It also would update the remedies and class-action procedures available under the Equal Pay Act so they conform to those available for other civil rights claims. The Equal Pay Act also would strengthen the government's ability to identify and remedy systematic wage discrimination. This or similar legislation should be enacted into law.

Congress should pass The Protecting Older Workers Against Discrimination Act (POWADA). The Supreme Court's 2009 decision in *Gross v. FBL Financial Services* severely weakened the Age Discrimination in Employment Act (ADEA) and other federal anti-discrimination and retaliation statutes. The Protecting Older Workers Against Discrimination Act would restore the strength of these laws.

Congress must end discrimination based on sexual orientation or gender identity. Every American worker should be judged solely on his or her merits, but in most states it remains legal to fire or refuse to hire a worker simply because of his or her sexual orientation or gender identity. The Employment Non-Discrimination Act (ENDA) would prohibit such discrimination in most workplaces while carefully addressing the needs of small businesses, religious institutions and other employers that have a legitimate need for flexibility. ENDA enjoys bipartisan support in Congress and strong public support.

Congress also should repeal the Defense of Marriage Act to provide certainty and stability for all married couples. The Respect for Marriage Act would restore the federal government's longstanding respect for state marriages by ensuring marriages valid under the law of the state where they are performed are recognized for purposes of federal law. The Respect for Marriage Act also would restore the approach historically taken by the states to determine, governed by principles of comity and the full faith and credit clause of the Constitution, whether to recognize a marriage for purposes of that state's law. Nothing in The Respect for Marriage Act would force a state to recognize a marriage performed by a sister state, or require any person, religious organization, locality, or state to celebrate or license a marriage between two persons of the same sex.

Congress should support modernization of our voting system so it is free, fair and accessible to all Americans. Our current system has myriad laws that vary by state, county and neighborhood, but everyone should be ensured of the right to vote. Voter ID and proof of citizenship laws are part of a recent effort to limit access to the polls by making it more costly and time-consuming for the elderly, the poor, minorities and young voters to participate in the electoral process. By contrast, same-day registration, early voting, no-fault absentee voting and voter registration modernization benefits election officials and expands opportunities for participation in the election process. Restoration of voting rights for ex-offenders helps to rehabilitate ex-offenders and also will better our democracy.

Congress must take steps to end racial profiling. The End Racial Profiling Act (ERPA) would prohibit any local, state or federal law enforcement agency or officer from engaging in racial profiling and would make efforts to eliminate the practice a condition for law enforcement agencies to receive federal money. Law enforcement agencies would be required to collect demographic data on routine investigatory activities, develop procedures to respond to racial profiling complaints and craft policies to discipline officers who engage in the practice. ERPA also would establish a private right of action to provide victims of racial profiling with the legal tools to hold law enforcement agencies accountable.

Congress should modernize the Fair Housing Act. The Housing Opportunities Made Equal (HOME) Act would extend the civil rights protections of the Fair Housing Act to people on the basis of their sexual orientation, gender identity, marital status or source of income. It also would provide additional protections for people with disabilities and ensure recipients of federal housing and community development funding are not perpetuating segregation. These necessary protections, many of which already are provided by a number of states and local municipalities, would eliminate prevalent types of discrimination and help re-establish fairness in our nation's damaged housing market.

Congress must prevent employers from forcing workers to forfeit their right to sue under federal civil rights laws. For some time, the Supreme Court has allowed employers to require nonunion workers to use an employer-designed arbitration system, instead of mechanisms provided under federal law, to settle statutory employment discrimination claims. But most courts had held that union-represented workers could not be required to arbitrate their statutory claims. In a 5–4 decision (*14 Penn Plaza v. Pyett),* the Supreme Court ruled individual union members could lose their right to sue in court under federal anti-discrimination statutes if their collective bargaining agreement expressly provides for arbitration of such statutory claims. Workers are more likely to receive a fair hearing in federal court than in arbitration, and Congress must restore their right to sue under federal civil rights laws.

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Free and Fair Elections (Campaign Finance Reform)

Genuine campaign finance reform facilitates workers' voices and small donors, prevents influence-buying and meaningfully discloses political spending. The outsized influence of moneyed interests undermines the integrity and fairness of our democracy. The current campaign finance system is skewed in favor of wealthy individuals and business interests by enabling them to use their greater resources to disproportionately finance candidates and political parties. A fair campaign finance system would not allow corporations to buy special influence, protection and favoritism at the expense of ordinary people.

Workers and their unions have an enormous stake in how campaign finance is regulated. It is vital that these laws, and the rules adopted by the Federal Election Commission, protect their rights to participate in the political process. As one of the largest and most diverse membership organizations in the country, the AFL-CIO has been actively involved in these issues for many years. The AFL-CIO maintains an active role in shaping public policy, seeking just legislation and participating in the selection of public officeholders on behalf of working families.

The AFL-CIO strongly supports reasonable disclosure and disclaimer requirements related to independent political expenditures and electioneering communications. We had concerns that the DISCLOSE Act proposed in the last Congress instead would have imposed extraordinarily costly and impractical new recordkeeping and reporting obligations on thousands of labor and other nonprofit membership organizations.

Significant sources and uses of political funds must be meaningfully disclosed. Too much special interest money in politics remains hidden behind third-party organizations established for the purpose of obscuring the true source of funding. Individuals and groups that spend to influence voting should be subject to meaningful and timely disclosure about that spending and its sources. At the same time, the law should protect the privacy of small donors and union and other organizational members.

Some restrictions on contributions are necessary to avoid direct influence-buying. Business corporations should be barred from contributing directly to candidates and political parties. Individual contributions should be limited to levels that won't buy influence but will enable candidates and parties to raise sufficient funds to run vigorous campaigns. Small-donor committees should be able to contribute more to candidates and parties than those that rely on large donations.

Workers and unions should be able to speak out freely about candidates and issues. Increasing income inequality and hard times make it especially vital that workers and their unions can freely discuss candidates, legislation and public policy choices. Campaign finance laws should not burden how members and their unions make internal political decisions or communicate with each other or to the public at large.

Unions operate by majority rule and enable millions of workers to have a real voice in the workplace and in society at large. Legislative bills and ballot measures that would create special restrictions on union political activity and advocacy are unfair, discriminatory and would favor only business interests. Anti-"coordination" rules should be clear and respect associational rights. Unions and groups must be able to engage with incumbents about official business and with candidates about their policy positions without triggering "contribution" rules.

The presidential public financing system must be completely re-examined. Since the current system was created in 1976, the costs of running for president have increased meteorically while individual and PAC contribution limits have declined substantially in real terms. Candidates who can demonstrate genuine popular appeal should have access to a strong public financing option. Viable candidates should be able to qualify for public funds that enable them to run competitive races, especially against self-financed candidates.

Congressional candidates should have a public financing option. Public financing of primary and general congressional campaigns would reduce significantly the impact and distraction of private campaign fundraising. With public financing, the interests of ordinary citizens could compete on their merits with the interests of large corporations and millionaires. In a public financing system, modest contributions from individuals and broad-based political action committees should be the prerequisite for a candidate to meet the threshold to qualify for public funding. Participating candidates should have access to substantial free or reduced-cost broadcast time and postage rates. Any such system should be as simple as possible and should require disclosure of spending and receipts consistent with disclosures required of other candidates.

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The Global Economy

8

Contents

Trade Policy

Congress must take the lead in reforming our flawed international trade and investment policies. Failed economic policies—including a high dollar, tax breaks for overseas production and trade agreements designed to protect the profits, flexibility and mobility of capital—have exacerbated income inequality in America, accelerated the shift of jobs out of the country, hollowed out our productive capacity and piled up an unsustainable international trade deficit. Congress must take the lead in reforming our flawed trade policies to support the creation and retention of good jobs at home and sustainable development abroad; strengthen and enforce workers' rights and environmental protections in trade agreements; and defend the ability of our own government and other governments to regulate in the public interest. More specifically, Congress must address the U.S. current account deficit; strengthen U.S. trade laws and ensure their effective enforcement; address currency manipulation; reframe U.S. trade and international policies by setting fair terms and conditions in current and future trade negotiations so that working families can share in the benefits; and reauthorize an expanded, improved and well-funded Trade Adjustment Assistance (TAA) program.

Over the last 15 years, the U.S. global trade deficit has skyrocketed from $70 billion in 1993 to an unacceptable $682 billion in 2012. Over that period, the United States shed more than 5 million manufacturing jobs—many of them lost to offshoring or import competition. The jobs being offshored not only are in low-wage and labor-intensive production, but also in production of advanced technology products, autos and aerospace, as well as tradeable services— from call centers to legal research to airline maintenance. Meanwhile, over the last few decades, average U.S. wages have stagnated and benefits have been cut.

Any new trade negotiating authority must reframe U.S. trade and international policies. Any consideration of extending trade negotiating authority must lay out clearly defined criteria for new trade agreements and strengthen the role of Congress throughout the negotiation process to ensure any new agreements enjoy broad support among the American public. In the past, the AFL-CIO has supported efforts such as those by Sen. Sherrod Brown's (D-Ohio) and Rep. Mike Michaud's (D-Maine) Trade Reform Accountability Development and Employment (TRADE) Act, which called for a thorough review of existing agreements and set forth procedural and substantive benchmarks for future agreements as well as provides a useful road map for future trade negotiating authority. The AFL-CIO will continue to support efforts such as these.

The Trans-Pacific Partnership Free Trade Agreement (TPP FTA)
The Obama administration and the leaders of 10 other Pacific Rim countries (Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam) have been negotiating the outlines of "an ambitious, 21st century" Trans-Pacific Partnership FTA (TPP FTA). Japan also has expressed a continuing interest in joining.

The administration has called this FTA a "new model." However, there are few indications that the substance of the agreement will differ in a significant, positive way from past trade agreements based on the NAFTA model. It is not evident he administration's "new model" includes anything like proposals that labor and progressive groups have been advocating for more than a decade, including not only high standards for labor rights, food safety, and clean air and water, but such critical commercial concerns as strong rules of origin, assurances of reciprocal market access and disciplines on currency manipulation.

While the administration touts the TPP FTA as a job-creating enterprise, it has not commissioned a job impacts study so that it can structure its negotiations to maximize job creation and minimize job loss. The administration has provided no information as to how the TPP FTA specifically will promote manufacturing more effectively than U.S. trade policy has been doing for the last 20 years.

A major difference from past trade agreements is that a completed TPP FTA would allow new countries to join, or "dock on," at any time. This dock-on aspect could be one of the most critical of the entire agreement, as it would allow any country in the world to join the agreement at a later date. This includes China. It also is not clear yet whether the agreement will ensure an up-or-down vote in Congress will take place for each new entrant (for example, new entrants can join the WTO without such a vote).

Negotiations for the TPP FTA remain closed to the public, and the text of the agreement remains classified. The press largely has ignored the negotiations, even when they have happened on American soil. The American public seems largely unaware and unengaged in the process. However, some information has been gained through the course of the negotiating rounds.

USTR has indicated it would like to complete negotiations by October 2013. Some observers say that deadline is optimistic, but the earlier negotiations are completed, the less time American workers have to become informed players on the issue.

Labor Chapter: Indications are the labor chapter will have modest improvements over the Bush-era labor chapter, but probably far less than U.S. and international unions have been advocating. It is likely the labor chapter will continue to refer only to the ILO Declaration on Fundamental Principles and Rights at Work, rather than the more clearly defined conventions.

Government Procurement: Indications are these provisions largely will be the same as in the past, meaning they will limit "Buy America" and reduce the U.S. government's and states' abilities to stimulate our own economies and serve such other important public policy aims as job creation and social justice.

Services: There are no indications that language to ensure public services are sufficiently protected from privatization efforts has been included.

State-Owned Enterprises (SOEs): There are concerns about the ability of the proposed approach to adequately protect against unfair competition by SOEs with respect to investments on American soil that would compete head to head with existing companies here at home.

Investment: The administration has indicated it intends to maintain the investor-state dispute settlement provisions that provide extraordinary rights to foreign investors to bypass domestic courts and take governments to international arbitration panels to contest laws, regulations and even judicial decisions they oppose. Labor unions and other civil society organizations would not have access to similar relief to enforce labor and environmental standards.

Financial Services: It seems unlikely the administration will propose changes to strengthen the right of countries to implemental "prudential measures" to stabilize financial systems.

Regulatory Coherence/Convergence: Publicly available TPP FTA documents reveal a possible trend toward a cost-focused, anti-regulatory agenda that discounts the benefits of health and safety regulations.

Medicines: These texts have been leaked and indicate the United States is pursuing provisions that would make it more difficult for developing countries to gain access to affordable lifesaving medicines. Moreover, language has been proposed that could impair states' efforts under the health reform law to control health costs by creating approved medication lists or setting maximum medication prices.

Effect on States: The terms of the TPP FTA will bind state action in many areas. Given the supremacy of both federal law and international treaties over state law, the rules the federal government agrees to in the TPP FTA can limit the scope of a state's ability to legislate and regulate in the public interest. For example, a state's ability to enact some kinds of services regulations (e.g., on insurance or legal services providers) could be restricted, and state and local legislative, regulatory and judicial actions could be subject to challenge by foreign investors under the investment provisions. While states have the option not to be bound by the "government procurement" provisions of the TPP FTA, there is no other section of the agreement that gives states the option not to be bound.

All indications are the TPP FTA is likely to be based largely on the corporate-driven model that has helped displace jobs and decrease wages over the last 20 years. The AFL-CIO will continue advocating for a progressive trade model that addresses the needs of working families and ensures that all, not just the 1%, can share in any benefits of trade.

U.S.-EU Free Trade Agreement

The administration has begun engaging in high-level talks with the European Union regarding a potential U.S.-EU Free Trade Agreement.

The AFL-CIO thinks increasing trade ties with the EU could be beneficial for both American and European workers. Both regions have advanced economies, high national incomes, and well-developed legal and regulatory regimes designed to protect health and the environment and defend workers' rights. In many respects, European nations' efforts to provide a social safety net and protect families and the environment exceed the levels of U.S. law and regulation—any U.S.-EU agreement must not be used as a tool to deregulate or drive down labor standards. If that is the goal, the working families of both regions will pay the price.

Discussions should remain disciplined and focused on efforts to create and maintain good jobs. Actual U.S. job growth that can be measured with precision (not extrapolated from U.S. Department of Commerce data) should be a priority of any U.S.-EU FTA discussions. In the last few years, millions of U.S. jobs in manufacturing and other sectors have been lost. If the U.S.-EU discussions are to have any positive impact on U.S. workers, discussions must remain focused on specific efforts to spur the direct creation and maintenance of good jobs. Negotiators should be discouraged from focusing on policies that could result in making it easier for U.S. corporations to shift production and technology.

Efforts also must be made to distinguish between activities that benefit the U.S. economy by supporting U.S. jobs and activities that *only benefit shareholder value* for certain corporations. Many corporations headquartered in the United States manufacture products in Europe either directly or through subsidiaries or supplier networks. While shareholder value of those companies may benefit from the transfer of additional work to Europe, U.S. workers would not.

Unlike trade with many other regions, increased trade with the EU offers the opportunity to trade with nations that have robust labor, environmental, health and safety regulatory regimes—regimes that should be respected as we work to ensure regulatory compatibility. The United States should strengthen and enhance commitments in recent U.S. trade agreements in which parties commit to adopt, enforce and maintain ILO core labor rights. In addition, given the EU's robust labor market policies, we urge promoting and securing rights and protections for workers by adopting an approach appropriate to the EU's highly developed labor regulations—including the promotion of labor neutrality agreements and strengthening social protections for workers. Anything less would be a step back for workers both here and in Europe.

A key component of a U.S.-EU FTA should be the exclusion of the Investor-State Dispute Settlement (ISDS) mechanism. Given the advanced judicial systems of both the United States and EU, ISDS is an unwarranted risk to domestic policymaking at the local, state and federal levels.

In light of the global financial crisis and recession, the inclusion of financial services in the liberalization agenda of a possible U.S.-EU FTA only would enlarge the financial sector and create more structural uncertainties in the Atlantic and global economy. As both the EU and the United States are strong financial powers, the agreement should exclude financial services "liberalization" that would promote mergers and acquisitions, creating new global conglomerates that would be "too big to fail." The American and European space to regulate financial services and rein in Wall Street excesses must not be eliminated by this agreement.

In 2012, the United States had a $107 billion deficit in trade in goods with the EU. If well negotiated, with a goal of increasing employment and well-being for working families, using a U.S.-EU FTA to increase market access to Europe, with its highly industrialized nations and large middle class, could positively affect that trade imbalance and create jobs in the United States by increasing net exports. Unfortunately, experience has shown that, despite rosy predictions by the U.S. International Trade Commission (ITC) and various free trade advocates about export and job growth, promised gains from NAFTA-style trade agreements generally fail to pan out. The recent debate over trade agreements with South Korea echoed past debates over NAFTA and permanent normal trade relations with China. In each case, the estimates of job creation by the ITC and other experts were wildly inaccurate. As a result, the AFL-CIO will be closely monitoring developments in the U.S.-EU FTA discussions. The administration must abandon the corporate-driven, NAFTA-style model and adopt an entirely new approach, hewing more closely on the Michaud-Brown TRADE Act.

As always, the AFL-CIO will be unable to support any trade agreement unless it is well balanced, stimulates the creation of good jobs, protects the rights and interests of working people and promotes a healthy environment. To work properly, trade agreements also must be fairly and consistently enforced. Further, trade agreements, without complementary policies such as infrastructure development, export promotion strategies and active labor market policies, will not produce the outcomes desired.

International Services Agreement (ISA)
In January 2013, the administration announced its plans to commence negotiation of an International Services Agreement with 20 other World Trade Organization (WTO) members. Such an agreement would expand on the United States' existing commitments regarding trade in services, which are contained in the WTO's General Agreement on Trade in Services (GATS). While the United States has an existing surplus in trade in services, these negotiations also will have to be watched carefully.

Expansion of trade in services usually involves not the elimination of tariffs, but the elimination of legal and regulatory regimes that are viewed as "barriers" to trade. However, one party's "barrier to trade" may be another party's "essential public interest regulation." As with any other trade agreement, its value to U.S. working families will turn on the specific rules negotiated in the agreement. Critical issues to working families include what commitments the United States will make regarding trade in services and how these commitments will affect domestic job creation, wages and benefits; whether the commitments will require decreasing state or federal standards regarding professional certification or licensure, occupational safety and health, the open nature of the Internet, data privacy or other working conditions or quality of service issues; and whether the United States will make "Mode 4" (immigration) commitments, reducing congressional oversight and ability to direct and amend immigration policy.

Trade Adjustment Assistance (TAA)
The AFL-CIO urges Congress to adopt a long-term, expanded, improved and well-funded stand-alone Trade Adjustment Assistance bill that expands eligibility to service- and public-sector workers impacted by trade as well as to secondary-sector workers; improves the health care benefits available to dislocated workers; increases the funds for training; improves outreach by states to eligible workers; requires that TAA be administered by state Unemployment Insurance agencies (merit staff); and strengthens plant closing notification legislation (the WARN Act).

Currency Manipulation and China Policy
Currency misalignment with China has imposed a tremendous cost on America's workers and producers. China's exchange-rate policy has contributed significantly to our bilateral trade deficit, which increased

from $84 billion in 2001 to $291 billion in 2012. Economists across the political spectrum agree the Chinese government is actively manipulating its currency. Some economists suggest the manipulated currency provides an effective export subsidy of at least 30 percent.

Addressing currency misalignment is long overdue. One solution to currency misalignment is a negotiated realignment of exchange rates that begins to smoothly unwind the existing trade imbalance. However, after several years of opportunities, the administration has made little progress on this front.

Since the administration has failed to act meaningfully, Congress must address this issue. The AFL-CIO supported The Currency Reform for Fair Trade Act of 2011 (H.R. 639 and S. 328) in the 112th Congress. This legislation would empower the International Trade Commission (ITC) to impose countervailing duties in case of currency misalignment. Should this legislation be re-introduced, the AFL-CIO will support it once again.

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Immigration

Congress must fix our flawed immigration laws to improve living standards for all workers. The exploitation of both undocumented workers and temporary "guest workers" lowers wages and labor standards for all workers. As a component of a shared prosperity agenda, the labor movement supports a comprehensive approach to immigration reform that includes five major interconnected pieces: (1) an independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need; (2) a secure and effective worker authorization mechanism; (3) rational operational control of the border; (4) adjustment of status for the current undocumented population; and (5) improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

Immigration reform must fully protect U.S. workers, reduce exploitation of immigrant and guest workers, and reduce the economic incentive of employers to hire undocumented workers and guest workers rather than U.S. workers. When unscrupulous employers take advantage of the vulnerability of undocumented workers, they drive down labor standards for all workers. Reducing exploitation of undocumented workers not only would help maintain wage and other labor standards, but also reduce the economic incentives for U.S. employers to hire undocumented workers rather than U.S. workers.

Future flow must be taken into consideration. One of the great failures of our current system is that employment-based visa levels are set arbitrarily. The system for allocating employment visas—both temporary and permanent—should be placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and—based on a methodology approved by Congress—determine the number of foreign workers to be admitted for employment purposes, and examine the impact of immigration on the economy, wages, the workforce and business.

Congress must develop a secure and effective worker authorization mechanism. A secure and effective worker authorization system would take verification and enforcement out of the hands of employers, rely on secure identification methodology and impose strict liability on employers who fail to comply with the system's requirements. The new system also must have strong anti-discrimination protections so employers are not tempted to refuse to hire workers who appear foreign, and the system must protect basic civil liberties.

An "enforcement-only" approach will not work. While border security clearly is important, it will not make a dent in the 40 to 45 percent of unauthorized immigrants that did not cross the border but overstayed legally obtained visas. Border controls, therefore, must be balanced by a comprehensive approach and respect the dignity and rights of the more than 30 million valid visitors that cross our borders each year, as well as residents in border communities. Border enforcement is likely to be most effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials—who require cooperation from immigrants to enforce state and local laws.

Congress must provide swift adjustment of status for unauthorized workers. An inclusive and practical program to provide swift adjustment of status for undocumented workers would raise labor standards overall by giving exploited workers full rights in the workplace, and allowing them to organize and bargain collectively without fear of deportation.

Temporary worker programs should be improved, not expanded. Existing guest worker programs invite hundreds of thousands of workers into this country with very limited rights. As demonstrated by a report by the Southern Poverty Law Center (SPLC), these guest workers are systematically exploited and abused.…"If guest workers complain about abuses, they face deportation, blacklisting or other retaliation." [i]

The exploitation of guest workers lowers labor standards. When unscrupulous employers take advantage of guest workers because of their vulnerability, they place downward pressure on wages and labor standards in industries such as construction (through the H-2B program) and the professional and high-technology sector (through the H-1B program).

Congress must reform guest worker programs to provide more worker protections. Fundamental reform of the H-2A, H-2B and H-1B guest worker programs must include a ban on the currently unregulated, and often exploitative, business of foreign labor recruiters; ensure accurate prevailing wages are being offered and paid to guest workers; provide a stronger enforcement mechanism that includes a private right of action; require employer audits; set stronger requirements for domestic worker recruitment; and require more rigorous tests of the U.S. labor market to assess shortages.

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[i] Mary Bauer, "Close to Slavery: Guest Worker Programs in the United States," Southern Poverty Law Center, March 15, 2007.

Legislative Directories 9

Contents

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