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AFL-CIO Legislative Guide: 112th Congress (2011–2012)

AFL-CIO

AFL-CIO Legislative Guide: 112th Congress (2011–2012)

Abstract

The AFL-CIO Legislative Guide for the 112th Congress covers the following issues as they relate to labor and public policy:

The Economy

Freedom to Form a Union

Health Care

Retirement Security

Core Labor Laws, Labor Standards and Workplace Protections

Education, Civil and Human Rights, Fair and Open Elections

The Global Economy

Keywords

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Comments

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Recovery • Retirement Security • Education • Fair
Elections • Workers' Rights • Job Safety • Civil
Rights • Freedom to Form Unions • Health Care
• Economic Recovery • Retirement Security •
Education • Fair Elections • Workers' Rights • Job
Safety • Civil Rights • Freedom to Form Unions •
Health Care • Economic Recovery • Retirement
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About the AFL-CIO

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The American Federation of Labor–Congress of Industrial Organizations (AFL-CIO) is a voluntary federation of 56 national and international labor unions.

Today's unions represent 12.2 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, 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. An 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.

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The Economic Crisis: How Did We Get Here?

Two years into the recovery, the U.S. economy still is mired in the most serious employment crisis since the Great Depression. The recession opened an 11 million job gap in our labor market and economic growth still is too weak to close this gap anytime soon. A "jobless recovery" is no recovery at all.

There still are nearly 14 million unemployed Americans, a record number of whom have been out of work for six months or more. One out of every five working-age men in the country is not working—either unemployed or out of the labor force—and the employment-to-population rate still is near historic lows.

To understand the choices elected leaders must make about the policies we need to strengthen and sustain the recovery, return to full employment and restore fiscal balance, we need to understand the unique character of the crisis, its causes and how it has evolved over the years.

The collapse of the U.S. housing bubble in 2007 caused a subprime mortgage crisis that quickly spread throughout the housing industry. Falling housing prices destroyed trillions of dollars of household wealth and triggered a global credit crisis in 2008. Together, falling housing prices and the financial crisis dragged the United States and other countries into a dangerous global recession.

The American Recovery and Reinvestment Act (ARRA)—together with aggressive monetary easing—arrested the free fall in early 2009 and clearly saved us from a second Great Depression. Unfortunately the ARRA was not large enough, nor sufficiently sustained, to power a rapid recovery.

However, the recession crippled tax revenues at all levels of government and budget deficits expanded dramatically. State and local governments, constitutionally required to balance their budgets, are laying off thousands of teachers, police and other public workers.

Meanwhile, the rise of the Tea Party and the election of radical Republicans to Congress and a number of gubernatorial mansions and statehouses in 2010 are forcing the federal government to pivot prematurely away from our jobs crisis toward fiscal austerity in the name of deficit reduction. This misguided policy shift is threatening, and may even stall, a still very fragile recovery. (See "State Fiscal Relief," page 2.41.)

In the wake of the Great Recession, every country must have a plan to restore fiscal balance. And some countries have acute fiscal crises that demand immediate action. The United States does not have an immediate fiscal crisis—but we do have an immediate jobs crisis. We must maintain aggressive fiscal and monetary support to sustain and strengthen the recovery and put Americans back to work. But we also must address the fundamental economic imbalances that caused the crisis.

The proximate cause of the crisis may have been a bursting housing bubble, but the ultimate causes were three fundamental economic imbalances that grew as a result of a failed economic model: an imbalance between the U.S. and the global economy; an imbalance between the financial sector and the real economy; and an imbalance in bargaining power between workers and their employers. The federal government must continue to play an active role in sustaining and strengthening the recovery. But it must also address the imbalances that caused the crisis if we are to build a strong, sustainable and internationally competitive U.S. economy in which prosperity is broadly shared.

The proximate cause of this recession was a bursting housing bubble. Houses now have lost a third of their pre-crisis value and, as prices continue to fall, millions of Americans have lost their homes. One out of every five mortgages in America is now "under water." Trillions of dollars of household wealth have been destroyed. Diminished household wealth, and the difficulty in obtaining credit from troubled financial firms, caused consumers to cut back sharply on spending, slowed economic growth and forced employers to shed jobs and cut wages.

There is a fundamental underlying imbalance between the U.S. and global economies. An unsustainable trade deficit required the United States to borrow almost 6 percent of national income before the crisis to pay for things we consume but no longer produce. The trade deficit has been financed mostly by Asian trading partners buying large amounts of dollar-denominated assets—especially U.S. Treasury bonds and mortgage-backed securities—to maintain undervalued currencies and maintain their competitiveness. These purchases also lowered interest rates and helped fuel the U.S. housing bubble. If we as a country do not find a way to produce more of the value equivalent of what we consume, we will be forced—one way or another—to consume less.

There is a fundamental underlying imbalance between the financial sector and the real economy. In a well-functioning economy, finance should serve the real economy by channeling savings to productive investment. But financial deregulation had the effect of diverting economic resources to the financial sector and away from productive investments. Financial deregulation and reckless financial innovation fueled the speculation that also contributed to the housing bubble. The Wall Street Reform and Consumer Protection Act helped stabilize large banks, but failed to resolve the problem of "too big to fail" financial institutions, which are bigger today than they were before the crisis.

There is a fundamental underlying imbalance between the bargaining power of workers and employers. This imbalance is largely responsible for the stagnation of wages over the last 30 years, which ruptured the relationship between productivity and wage growth and opened up a chasm of income inequality. One of the ways U.S. workers compensated for inadequate income growth was by incurring high levels of personal debt. Debt-fueled asset bubbles temporarily masked the failures of stagnating wages and growing inequality, but those failures have been exposed by the current crisis.

A fundamental imbalance between government and markets has exacerbated the other three imbalances. Financial deregulation and speculation, combined with stagnant family incomes, facilitated high levels of personal debt, then allowed the collapse of the U.S. housing bubble to trigger a global financial crisis. Government's failure to enforce the rights of workers is a key reason for the growing imbalance in bargaining power between employees and employers. And unsustainable imbalances in the global economy can be traced to U.S. government policies on exchange rates, trade and foreign investment that favored the interests of transnational corporations, financial institutions and the wealthy.

This recession is not like previous recessions. Earlier postwar recoveries were brought to an end by policy decisions of the Federal Reserve to combat inflation by raising interest rates. The last three recoveries, by contrast, ended with the collapse of asset bubbles—of real estate values in 1990, equities values in 2001 and of housing values in 2008–2009. The current deflation of housing values is far more serious than the deflation of equity values in 2001, and the current recession has been much more serious.

The policy tools that worked in past recessions will not work this time. In policy-induced recessions, the Federal Reserve could expect a reversal of policy—the lowering of interest rates—to generate economic growth in interest-sensitive industries. But interest rate cuts are unlikely to restart growth in the wake of asset deflation. Real interest rates are currently at historic lows, but have so far failed to power an expansion. Fiscal policy is essential, but it must be sufficiently large and sustained to counter the effects of the Great Recession and reduced private consumption and investment.

Correcting the imbalance between the domestic and global economy requires producing more of what we consume. U.S. competitiveness must be restored through public investment in education and training to create a world-class workforce and investment in energy, transportation and communications systems to create a world-class infrastructure. A public investment-led recovery program would employ millions of construction and manufacturing workers, produce valuable assets needed for long-term growth and competitiveness and bolster private investment, the key to a strong and sustainable recovery. (See "Trade Policy," page 8.1.)

Correcting the imbalance between finance and the real economy requires regulatory reform of our capital markets. Re-regulation of our financial markets is essential to ensure the safety and soundness of insured, regulated institutions and to prevent the exploitation of investors and consumers. As a country we must devote fewer resources to financial speculation, and more of our resources to productivity in the real economy. (See "Financial Re-regulation," page 2.5.)

Correcting the imbalance in bargaining power between workers and employers requires labor law reform. The United States has no choice but to return to an economic strategy of broadly shared prosperity—a strategy that was remarkably successful in the first three decades of the postwar period. The Employee Free Choice Act (EFCA) would help reverse the growing imbalance in bargaining power between employees and employers, reconnect wages to productivity growth and help rebuild the American middle class. Other necessary policy changes include an increase in the minimum wage and fiscal and monetary policies that promote full employment. (See "Minimum Wage," page 6.9.)

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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 written by then-Sen. Chris Dodd and Rep. Barney Frank was signed into law by President Obama that begins to re-regulate the financial markets. Dodd-Frank created a strong Bureau of Consumer Financial Protection. It also 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, regulates managers of hedge funds and private equity funds, and creates a council of regulators to oversee and take appropriate action to dissolve systemically risky financial institutions to prevent future bank bailouts. Despite these much-needed fixes, the law delegates an immense amount of authority to regulators to implement the legislation. Dodd-Frank requires regulators to complete roughly 170 new rules by July. It's imperative that members of Congress ensure their intentions in passing Dodd-Frank are carried out in the regulatory process. 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."[i]

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 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.

Congressional Appropriations

The Obama administration has sought hikes in funding for securities and commodity futures regulators necessary for the implementation of Dodd-Frank. In its fiscal 2012 budget, the administration is seeking $1.4 billion for the Securities and Exchange Commission (SEC), a 27 percent increase from 2010 and a $308 million budget for the Commodity Futures Trading Commission, 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 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 2012, 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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Revitalizing U.S. Manufacturing

While the most recent hemorrhaging of jobs in the manufacturing sector is the result of the global economic crisis, the decadelong decline of manufacturing has been driven by 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. Since 2000, America has lost 5.5 million manufacturing jobs—and more than 50,000 manufacturing establishments have closed.[i] At the end of 2010, manufacturing employment in the United States was 11.5 million, the lowest figure since the beginning of WWII.[ii] As a share of total U.S. jobs, manufacturing has declined from its peak of nearly 40 percent just after World War II to 20 percent in 1981 and less than 11 percent in 2008.[iii] Economic activity in the manufacturing sector is at its lowest level since June 1980,[iv] and the new orders index is at it lowest recorded reading.[v]

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,[vi] 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—than ever before. The September 2010 actions by the Chinese government limiting the export of rare earth metals, a critical component in defense and advanced technology products, where they control more than 90 percent of the world production, underscores national security concerns.[vii]

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 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 past two decades have contributed to the decline in manufacturing jobs and wages.[vii] The U.S. trade deficit in goods rose to record levels of more than $800 billion each year between 2006–2008, nearly 6 percent 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 $273 billion in 2010, nearly $3 trillion across the decade. In all manufacturing, China's share of the trade deficit rose continually from 28.5 percent in 2002 to 75.2 percent in 2009. In advanced technology products, the United States ran a 2009 trade deficit with China of $73 billion, while it ran a surplus of $17 billion with the rest of the world. [viii] 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. Between 2001 and 2007, 2.3 million jobs were lost or displaced, including 366,000 in 2007 alone.[viii] New demographic research shows that, even when re-employed in non-traded industries, the 2.3 million workers displaced by the increase in trade deficits with China in this period have lost an average $8,146 per worker per year.[ix] In 2007, these losses totaled $19.4 billion.

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 costs add $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 American" 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 seeking to enhance their skills.

Congress 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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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. But to ensure new clean energy jobs are good jobs located in the United States, Congress must establish domestic employment requirements for tax credits, grant programs and other federal investments that are not part of government procurement. The Buy American requirements for government procurement should be strengthened, made more transparent and enforced. Congress also must establish selection criteria for contractors and recipients of federal funding and establish 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]

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.[iii] Sector studies such as the *Manufacturing Climate Solutions* report by AFL-CIO unions and the Environmental Defense Fund[iv] 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,[v] and modernizing the electric grid and converting to advanced auto technology could create jobs in manufacturing and construction.[vi]

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.[vii] The Apollo Alliance estimates that 5 million jobs can be created with an investment of $500 billion.[viii] Green Jobs For America estimates hybrid and other clean cars, public transportation, efficient heating and lighting systems and clean renewable power plants could create more than 1.4 million new jobs.[ix] The Gridwise Alliance reports that $16 billion in incentives for a "smart" electric distribution system would catalyze $64 billion in additional investments and create 280,000 new jobs.[x] International reports show

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 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. Few workers at wind and solar manufacturing plants belong to unions. 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 percent 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. Congress should fully fund the Green Jobs Act and provide additional resources for green job training tied to the criteria in the act.

To ensure clean energy jobs are located in the United States, Congress must strengthen Buy American requirements. Buy American 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 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 percent of total project cost to 25 percent.

To ensure clean energy jobs are located in the United States, Congress must establish investment policies linked to domestic job creation. Buy American 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 the 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 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 : (1) greatest use of domestically produced parts and components; (2) return of idle manufacturing capacity to productive service; and (3) 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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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 the 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 China now is 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. The United States must modernize and extend the 160,000 miles of high-transmission lines that make up the electrical grid and create a "smart grid" within local distribution systems, which would increase energy efficiency by an estimated 20 percent.[iii] Such extended access is critical to the expansion of renewable energy, such as wind turbine and solar projects that tend to be located in rural communities. Since buildings account for nearly 40 percent of energy usage, 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. Through "waste heat recovery," cogeneration power plants achieve typical effective electric efficiencies of 70 percent to 90 percent. In energy-intensive industries, investments in industrial cogeneration can lead to lower operating costs, cleaner emissions and additional revenue from the sale of any excess power generated.

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," page 2.13.)

The role of the auto industry is critical. The auto industry is the single most important 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 economy-wide 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.

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.

A new energy strategy must include investment 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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[ii] The United States accounted for 22 percent of global energy consumption in 2007. U.S. Energy Information Administration, "Annual Outlook," (2008); International Energy Agency, "World Energy Outlook 2007: China and India Insights," (November 2007).

iii The Apollo Alliance, "Clean Energy, Good Jobs: An Economic Strategy for American Prosperity," (2008).

[iv] Ibid.

Federal Investment in 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 30,000 jobs are created.[i] Employment opportunities created through infrastructure investments can last over an extended period, providing stable economic opportunities into future years.

Nationwide our roads, highways and bridges are crumbling while being subjected to increasing capacity demands. In 2009, the American Society of Civil Engineers' *Report Card for America's Infrastructure* gave the nation's roads a grade of D- and our bridges a grade of C.[ii] Of the 604,474 bridges in the National Bridge Inventory, 24.3 percent of them—about 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 percent annually. To address a national outbreak of service cuts, layoffs and fare increases, small transit systems also should be able to use a portion of their federal transit funds for operating purposes, such as employee, 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 get to 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 robust surface transportation reauthorization that provides for a dedicated source of funding segregated from the federal budget. Transportation infrastructure investments must not be 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. Policymakers must use this legislation to improve and invest in our surface transportation network, enhance safety, promote intermodal policies and protect the interests of employees.

Increased funding for our nation's aviation system is urgently 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]

It is imperative that Congress pass a strong Federal Aviation Administration (FAA) reauthorization bill. This legislation must fix the broken collective bargaining system at the FAA, implement needed safety reforms, make needed investments in our airports, modernize our air traffic control system and expand capacity. Addressing these issues will improve labor relations, create needed jobs and maintain the viability of our aviation system.

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 moves by rail annually. Moreover, demand for freight transport is expected to increase significantly in the coming years. The Department of Transportation projected that total freight transportation demand would rise by 92 percent from 2002 to 2035, including an 88 percent increase for railroads.[v] 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 provided they contain such federal labor protections as Davis-Bacon prevailing wages. Policies such as these would allow the industry certain tax credits that could be reinvested and used to make improvements to the rail network and 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 the ability to provide high-quality national passenger rail, Amtrak should be the centerpiece of any high-speed rail service.

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, and taxpayers 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 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; user fees traditionally have played this role.

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 now must 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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[ii] American Society of Civil Engineers, "Report Card for America's Infrastructure," www.infrastructurereportcard.org (2009).

[iii] Statement of the Hon. James L. Oberstar before the Senate Committee on Environment and Public Works, Full Committee Hearing on Improving the Federal Bridge Program: Including an Assessment of S. 3338 and H.R. 3999 (Sept. 10, 2008).

[iv] FAA Aerospace Forecast Fiscal Years 2008–2025.

[v] Federal Highway Administration, *Deficient Bridges by State and Highway System* (December 2010), www.fhwa.dot.gov/bridge/deficient.cfm.

Corporate Bankruptcy Reform

As corporate bankruptcy continues to be viewed by businesses and the 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 have turned increasingly to bankruptcy restructuring as a strategic tool to target workers' interests: many businesses have used bankruptcy to eliminate good-paying jobs and drastically reduce 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.

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 in 2010.

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 that originally were 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 increasingly have turned to bankruptcy restructuring to facilitate the elimination of good-paying jobs and drastic reductions in their 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 their 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 $11,725 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 nonrecoverable 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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Mortgage and Foreclosure Relief

The housing financial crisis threatens the dreams of millions of working families, and Congress must act now to provide mortgage and foreclosure relief. President Obama signed into law sweeping financial reform legislation in 2010 that established a simple federal standard for all home loans, implemented requirements that institutions ensure borrowers can repay the loans they are sold, prohibited the financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans and eliminated pre-payment penalties that trapped so many borrowers into unaffordable loans. However, Congress and the administration must take immediate additional action to resolve the nation's recurring foreclosure crisis.

Foreclosure filings were made on 2.9 million homes in 2010, with 1.05 million properties being seized[i]; according to the Center for Responsible Lending, the total number of foreclosures by the time this crisis concludes could be anywhere between 8 and 13 million.[ii] The Center for Responsible Lending also estimates the foreclosures projected to occur between 2009 and 2012 will result in $1.86 trillion in lost wealth, which represents an average loss of more than $20,000 for each of the 91.5 million houses 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.

Lack of regulation contributed to this crisis. The lack of effective regulation of mortgage markets allowed the housing market to be flooded with financial products that were misleading or exploitative. As a result, millions of homeowners find themselves with loans they cannot manage. National mortgage servicing standards also are needed to protect homeowners from such improper foreclosure practices as robosigning foreclosure affidavits.

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, merely asking lenders to restructure loans voluntarily has proven unsuccessful. Like many of its predecessor plans, the Home Affordable Modification Program (HAMP) has fallen way short on its intended goals to help troubled homeowners. The HAMP was designed by the administration to simply offer banks incentives to modify mortgages in crisis. Incentives have proven to be inadequate to get mortgage servicers to offer widespread modifications. The administration launched the program with a promise that it would help 3 million to 4 million homeowners avoid foreclosure, yet recent reports suggest the program will help fewer than 800,000 with modifications. Nevertheless, the HAMP should not be eliminated, as many in Congress have suggested. Instead, the administration should aggressively

enforce HAMP guidelines through serious penalties and sanctions for noncompliance, create an independent, formal appeals process for homeowners and ensure loan modifications are sustainable and require servicers to reduce principal where appropriate.

Congress must act now. Something must be done to assist millions of homeowners in need. The foreclosure crisis will not be resolved through voluntary efforts on the part of the financial services industry alone. Unless the government acts with urgency, millions of workers will lose their homes, millions of workers will suffer pension losses and additional millions will lose their jobs.

Congress must impose an immediate moratorium on foreclosures. To create a real incentive for mortgage servicers and investors to restructure loans with homeowners, Congress must enact legislation providing for a moratorium on foreclosures. A moratorium would give homeowners time to pursue a workout agreement and banks more time to fix recent foreclosure affidavit problems. Legislation should be introduced and passed in the 112th Congress providing for a deferment on certain mortgage foreclosures.

Congress must lift the ban on judicial modification of primary residence mortgages. Current law allows for judicial modifications of second home mortgages, commercial mortgages on apartment buildings, vacation homes and investment property, yet prohibits modifications of first mortgages on primary residences. Congress should enact changes in Chapter 13 bankruptcy that would allow desperate homeowners to save their primary residences through judicial modifications of first mortgages. Legislation has been introduced by Sen. Richard Durbin (D-Ill.) that would eliminate the provision of bankruptcy law that prohibits modifications to mortgage loans for a homeowner's principal residence so first mortgages can be modified. Similar legislation should be introduced and passed in the 112th Congress.

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[ii] Center for Responsible Lending, House Financial Services Committee Testimony, Nov. 18, 2010.

[iii] Center for Responsible Lending, House Financial Services Committee Testimony, Nov. 18, 2010.

Unemployment Insurance

Congress should continue to reverse decades of neglect of the Unemployment Insurance 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 economic recovery package began repairing the UI system by providing incentive payments to states that update their UI programs to reflect the nature of the 21st century economy. The recovery package also authorized a federal program that provides extended unemployment benefits for the long-term unemployed and provided states with much-needed additional funds to administer the UI programs, which were experiencing unprecedented demand.

The unemployment insurance (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 percent of jobless workers collect state UI benefits, and UI benefits average only about $290 per week across the state, and replace a little less than half of an average worker's wage.

The economic recovery package provides incentives for states to update their UI programs. The American Recovery and Reinvestment Act (ARRA) provided up to $7 billion in federal incentive funding to help states modernize their UI programs. One-third of that amount goes to states that use a worker's most recent wages to determine UI eligibility. For obsolete administrative reasons, states in the past did not count workers' most recent earnings, which made it harder for recent entrants to the labor market—typically women returning to the workforce after caring for children, workers who are coming off TANF and lower-wage workers—to qualify for benefits. The remaining two-thirds of incentive funding goes to states that provide benefits to workers in at least two of the following categories: (1) part-time workers who are denied benefits in many states that only provide UI to workers seeing full-time work; (2) workers who leave work for compelling family reasons, such as domestic violence or spousal relocation; (3) workers enrolled in state-approved job training who exhaust their regular UI benefits; or (4)

workers with dependent family members who qualify for another $15 in benefits per week. At least 33 states now receive these funds, either because they enacted legislation that qualified them for incentive dollars or qualified based on previous state law.

Federal unemployment benefits must not expire. In June 2008, Congress passed the Emergency Unemployment Compensation Act, which provided 13 weeks of extended federal unemployment benefits and another 13 weeks for workers in states with especially high unemployment rates. In November 2008, Congress increased the standard benefit to 20 weeks. The ARRA authorized continuation of this program and the program has been extended through 2011.

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 $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 may need to take additional action to shore up state UI trust funds. More than 30 states have taken on federal loans to help pay for unemployment benefits. To bolster state UI trust funds, the ARRA allowed states to suspend through December 2010 the interest they otherwise would be required to pay on their federal loans. Although the economy has begun to improve, the unemployment crisis continues, and further measures are necessary. Congress should pass the Unemployment Insurance Solvency Act of 2011 to provide assistance to states.

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.

Numerous federal agencies operate education, training and skills development programs for unemployed workers, disadvantaged persons and such targeted population groups as veterans, Native Americans, farm workers, youths and people with disabilities. The Department of Labor administers the largest number (17) of these programs. The core WIA programs, Adult, Dislocated and Youth, served more than 8 million people in 2009.[i] There are 14,310 active apprenticeship programs,[ii] which served 256, 166 apprentices in 2009.[iii] The Job Corps served approximately 102,411 people in 2009.[iv]

Congress should address deficiencies in the WIA system. WIA provides employment and training services to unemployed, disadvantaged and underemployed adults, dislocated workers and youths through a network of One-Stop Career Centers governed by state and local workforce investment boards (WIBs). The reauthorization of WIA this year should (1) make public-sector employment security agencies, which are uniquely capable of achieving statewide and federal policy objectives, the centerpiece of the WIA system; (2) require a minimum of WIA funding for adult, youth and dislocated workers be spent on worker training; (3) allow for greater labor representation on state and local WIBs; and (4) develop such innovative approaches as challenge grants, which would help the WIA system restructure itself around regional labor markets and industry clusters,

career pathways for youths and incumbent worker training.

Union involvement is key to the success of apprenticeship programs. Apprenticeship programs integrate systematic on-the-job training, guided by an experienced master-level practitioner in an occupation, with classroom instruction. The federal government, in cooperation with the states, registers apprenticeship programs that meet federal and state standards. The best programs—which provide multiple industries with highly skilled workers who earn family-sustaining wages—are registered with government agencies, operated by sponsors representing labor and management organizations and funded through collectively bargained contributions to tax-exempt trust funds. Joint labor-management programs have actively recruited women,[v] African American[vi] and Latino apprentices,[vii] and have been more successful than the nonunion sector in doing so.

Union involvement is key to the success of Job Corps. Job Corps is a training and education program for disadvantaged youths between the ages of 16 and 24 administered by the Labor Department that operates through 127 residential centers in the United States and Puerto Rico. About 88 percent of participants live full time in campus-like facilities where they receive housing, meals, basic medical care and living allowances and obtain a combination of career development services, academic education, post-graduation placement services, transitional support and training in more than 100 occupational areas.[viii] Job Corps has been highly effective in helping disadvantaged youths gain the skills necessary for good jobs at family-sustaining wages. The most successful Job Corps vocational and technical training programs are provided by National Training Contractors (NTCs), involving unions and management bodies, which provide students with pre-apprenticeship training that leads to productive careers in the construction and transportation trades. Union NTCs include the Masonry Institute, the Operating Engineers National Training Fund, the Painters and Allied Trades Job Corps Program, the Plasterers' Joint Apprenticeship Trust, the Transportation Communications Union/IAM Job Corps Training Program, the Carpenters Training Fund and the UAW/Labor, Employment and Training Corp.[ix]

Labor-management programs will provide training under the Green Jobs Act. The Green Jobs Act of 2007 does two things: (1) expands our capacity to identify and track new and upgraded jobs related to renewable energy production and energy efficiency technologies, and (2) establishes grant programs and demonstration projects for state and local partnerships to train workers in these areas. Existing joint labor-management bodies will be eligible for national and state partnership grants under the act. In the building and construction industry, thousands of local Joint Apprenticeship and Training Committee (JATC) bodies[x] oversee apprenticeship and journey-level upgrade training in occupations that will grow due to energy conservation measures and the increased use of alternative energy. National joint training programs in the auto,[xi] telecommunications, steel, health care, hospitality and aerospace industries, as well as the public sector, have local joint

committees that will be eligible for funding. In the steel and rubber industries, there are 72 local joint committees in 24 states that have begun offering courses in renewable energy systems and energy efficiency technologies.[xii] There also are 18 consortia of unions, management, universities and health and safety organizations that provide training in hazardous waste containment, brownfield restoration and environmental remediation that could use Green Jobs Act grants to expand their work.[xiii]

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[iii] Workforce System Results, Employment and Training Administration, U.S. Department of Labor. Four-quarter period ending June 30, 2010.

[iv] Ibid.

[v] The number of newly registered female apprentices increased to about 12,000 at the end of 2002, a 42 percent increase from 1997. Between 1996 and 2003, women made up 3.9 percent of apprentices in joint programs, higher than the proportion (2.5 percent) in employer-sponsored programs. Glover and Bilingsoy (2005).

[vi] Between 1996 and 2003, 33.2 percent of the apprentices in joint programs were members of minority groups, compared with 28.9 percent in employer-operated programs.

[vii] The number of Hispanic participants in apprenticeship programs doubled between 1995 and 2003. Hispanic representation in joint programs is much higher than nonjoint programs. *The Construction Chart Book, Fourth Edition,* Center for Construction Research and Training (2007).

[viii] Peter Schochet, et al., *National Job Corps Study: The Short-Term Impact of Job Corps on Participants' Employment and Related Outcomes,* Mathematical Policy Research, U.S. Department of Labor (2000).

[ix] *Policy and Requirements Handbook* (2001), Department of Labor website.

[x] Frank J. Bennici, *The status of registered apprenticeship: An analysis using data from the Registered Apprenticeship Information System,* WESTAT, Department of Labor Office of Apprenticeship Training (2004).

[xi] Louis Ferman, et al., *Joint Training Programs: A Union-Management Approach to Preparing Workers for the Future* (1991).

[xii] *New Energy: An LJC Guide to Career Development Opportunities in Renewable and Efficient Energy,* Institute for Career Development.

[xiii] *Worker Education and Training Program, FY 2005 Accomplishments and Highlights,* National Institute of Environmental Health Sciences (2007).

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State Budgets and Public Employees' Pensions

Then new majority in the House of Representatives is focused on first-time federal reporting requirements for state and local public pension plans. "The Public Employee Pension Transparency Act" (HR 567/S. 347) would impose a costly new federal substantive reporting regime on top of existing state and local disclosure requirements for all state and local government pension plans. Failure to file the annual report would result in the loss of tax-exempt status for any state or local bonds issued.

The AFL-CIO strongly supports transparency in government to provide the public with important information it otherwise would not have and to ensure the accountability of our elected officials. This legislation, however, is less about transparency and more about facilitating the end of public pensions. The campaign to pass this legislation is marked by factual distortions and misinformation. At a time when the administration and Congress are working together to remove unnecessary federal regulation, this legislation would impose new federal substantive accounting rules in conflict with existing Government Accounting Standards Board (GASB) requirements. It further interjects the federal government into an area where state and local governments already are taking full responsibility for funding shortfalls where they exist.

This bill would conflict with standards issued by GASB,[i] the official source of accepted accounting principles for state and local governments. Since 1984, the independent Governmental Accounting Standards Board (GASB) has established accounting and financial reporting standards for state and local governments. This bill, however, would require public plans to report their funded status based on assumptions at odds with those proscribed by GASB to inflate pension liabilities and thereby fuel public panic about the continued viability of public pension plans.

Pension obligations overall are a small portion of state and local budgets. While some public plans face funding challenges similar to those in the private sector, state and local government pensions are for the most part not the source of public-sector budget problems. In 2008, **s**tate pension obligations were on average less than 4 percent of their operating budgets.[ii] Because of investment losses resulting from both the economic downturn and contributions not made, average pension obligations are expected to rise to 5 percent of operating budgets in 2014.[iii] The data clearly shows the biggest culprit for the revenue loss facing our states and cities is the Wall Street-induced recession. In the first quarter of 2009, state tax revenue (personal, corporate and sales) was down 11.6 percent, the sharpest decline in more than 50 years.[iv] For the third quarter of 2010, state tax revenue was 12 percent below pre-recession levels.[v]

Most state and local government pension plans are not in crisis, and taxpayers do not shoulder the mainstay of pension funding. The problem of public pension funds' unfunded liabilities has been exaggerated. Pension experts and actuaries consider a funded ratio of 80 percent (that is, assets to liabilities) to be sufficient. Before the economic downturn, public pension plans had, on average, 84 percent of the assets needed to pay accrued benefits.[vi] While the average ratio declined to 78 percent for 2009, 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[vii] to recover their investment losses through increased future contributions and investment gains. Moreover, public plans have a record of strong asset management, with investment returns exceeding assumptions.

For the 25-year period ending in December 2009, the median investment return was 9.25 percent, while the most typical investment return assumption was 8 percent.[viii] The public-sector pension is a proven model vehicle for preserving a secure retirement for American workers. Contrary to the claims of those who would dismantle public pensions, taxpayers shouldered only a small fraction of the funding for these benefits—just 21 percent over the 16-year period ending in 2008.[ix] Employees' own contributions plus investment returns provided for the rest. Additionally, in many states, public workers are not covered by Social Security, so the government makes no payroll tax contribution on their behalf.[x]

As the pay gap between private- and public-sector workers has widened over recent years, state and local government pension plans are key to public employees' economic security. Employee pensions are an irreplaceable source of economic security to the almost 80 percent of state and local government workers covered by them.[xi] These workers earn less, not more, than their private-sector counterparts, and over the last 15 years, the pay gap has grown.[xii] Their average annual pension benefit—a modest $22,653 in 2008[xiii]—is essential to maintaining a modicum of economic security in retirement.

State and local government pensions are important economic drivers. The benefits provided by public pensions have a sizeable impact that ripples through every state and industry across the nation. In just one fiscal year, from 2005 to 2006, expenditures from state and local and local pension benefits supported more than 2.5 million American jobs that, in turn, paid more than $92 billion in total compensation to American workers.[xiv]

State and public plans are taking steps to get their own houses in order. Two years ago, the leading public pension funds announced a set of five financial regulation principles aimed at restoring trust and confidence in the global capital markets.[xv] Their "model for change" includes greater disclosure and transparency to investors, regulators and other market participants so they can adequately understand and assess the risks attached to the plans' investments. Further, for the past several years, state and local government employers, employees and their unions have been

forging meaningful changes to improve and enhance pension sustainability over the long term. Last year, more states enacted legislation to modify their retirement plans than in any other year in recent history.[xvi]

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Endnotes

[i] GASB members and staff understand the unique characteristics of government pension plans and the environment in which they operate. GASB standards are issued only after an extensive and rigorous due process procedure, designed to encourage broad public participation in the standard-setting process**.** *See* http://gasb.org/.

[ii] 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/images/stories/Briefs/slp_13.pdf.

[iii] *Id*.

[iv] The Nelson A. Rockefeller Institute of Government, *State Tax Decline in Early 2009 Was the Sharpest on Record* (July 2009), available at www.rockinst.org/pdf/government_finance/state_revenue_report/2009-07-17-SRR_76.pdf.

[v] Center on Budget and Policy Priorities, *States Continue to Feel Recession's Impact* (February 2011) available at www.cbpp.org/files/9-8-08sfp.pdf.

[vi] Alicia H. Munnell, et al., *The Funding of State and Local Pensions:2009–2013,* Center for Retirement Research at Boston College (April 2010) available at http://crr.bc.edu/images/stories/Briefs/slp_10.pdf.

[vii] The unfunded pension liabilities may be addressed over a period of 30 years under generally accepted accounting rules issued by the Government Accounting Standards Board (GASB).

[viii] NASRA Issue Brief: Public Pension Plan Investment Return Assumptions (March 2010) available at http://nasra.org/resources/InvReturnAssumption_Final.pdf.

[ix] AFL-CIO calculation based on U.S. Census Bureau Survey of State and Local Public Employee Retirement Systems, Table 1 (1993–2008) available at www.census.gov/govs/retire/index.html.

[x] There are seven states in which more than 50 percent 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 percent 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), p. 13 available at http://aging.senate.gov/ss/ssreport2010.pdf.

[xi] U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey, Employee Benefits in the United States, Retirement Benefits (March 2010)*, available at www.bls.gov/ncs/ebs/benefits/2010/ownership_tab.htm.

[xii] Keith A. Bender and John S. Heywood, *Out of Balance? Comparing Public and Private Sector Compensation over 20 Years*, Center for State & Local Government Excellence and National Institute on Retirement Security (April 2010) available at www.slge.org/vertical/Sites/%7BA260E1DF-5AEE-459D-84C4-876EFE1E4032%7D/uploads/%7B03E820E8-F0F9-472F-98E2-F0AE1166D116%7D.PDF.

[xiii] AFL-CIO calculation based on U.S. Census Bureau 2008 Survey of State and Local Public Employee Retirement Systems, Tables 1 and 5a, available at www.census.gov/govs/retire.

[xiv] Ilana Boivie and Beth Almedia, *Pensionomics: Measuring the Economic Impact of State and Local Pension Plans*, National Institute on Retirement Security (February 2009) available at www.nirsonline.org/storage/nirs/documents/Pensionomics%20Report.pdf.

[xv] The public pension plans that have endorsed the principles include: California Public Employees' Retirement System, California State Teachers' Retirement System, Colorado Public Employees' Retirement

Association, Connecticut Retirement Plans and Trust Funds, Los Angeles City Employees' Retirement System, Los Angeles County Employees' Retirement System, Los Angeles Fire and Police Pensions, Maryland State Treasurer, New York State Common Retirement Fund, State Universities Retirement System of Illinois.

[xvi] NCSL, NACO, et al., *Facts on State and Local Government Pensions,* available at www.nasra.org/resources/PublicPensionFactSheet110125.pdf; National Conference of State Legislatures, *Pension and Retirement Plan Enactments in 2010 State Legislatures,* available at www.ncsl.org/LinkClick.aspx?fileticket=v6KpQROK1ws%3d&tabid=20836. The most common changes have been to increase employee contributions to pensions or to establish different tiers of benefits for newly hired employees. There also are more restrictions on retired public workers continuing to receive their pension benefits if they return to covered work.

State Fiscal Relief

States are struggling with the worst fiscal crisis since World War II, mid-year shortfalls of $26.7 billion are expected this year and deficits of $ 82.1 billion are projected in fiscal year 2012, according to the National Conference of State Legislatures. At the same time, high unemployment and poverty levels continue to keep demand high for government assistance. Since nearly every state has a constitutional obligation to balance its budget, this means critical programs and services have suffered numerous cuts and even elimination. Congress should continue to provide fiscal relief to states to help close their deficits without hurting the people who need help the most.

In the last Congress, 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 will soon run out—before the state fiscal crisis is abated.[i]

Budget shortfalls are expected to 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, 11 states already have reported mid-year FY 2011 budget gaps and 40 states project FY 2012 budget gaps.

States 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. Thirty-one 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 such vital services as education, health care and public safety.

Spending cuts 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]

Congress should fully fund grants in aid and funding for vital state and local programs and services, and at the same time continue to provide relief to states and local governments, particularly for economically sensitive programs and services such as Medicaid and other vital programs. 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 continue the enhanced federal match (FMAP) for states that have seen their budgets decimated by the economic downturn, rather than cutting it off in June 2011, and by avoiding unnecessary cuts in federal funding for programs and services.

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Endnotes

[i] Elizabeth McNichol et al., "States Continue to Feel Recession's Impact," Center on Budget and Policy Priorities (CBPP), Dec. 16, 2010.

[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.

Freedom to Form a Union 3

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The Employee Free Choice Act

The best opportunity for working men and women to get ahead economically is by uniting with co-workers to bargain with their employers for better wages and working conditions. Workers are suffering in tough economic times, facing unemployment, home foreclosures, stagnant wages, reduced benefits and shattered retirement security. In order to achieve an economy that works for all Americans, we need to give workers the tools they need to form unions and bargain a contract for a better life.

Our current federal labor law—the National Labor Relations Act—is 75 years old. It is outdated and has become a barrier to workers' rights and the freedom to bargain a contract. It has been criticized widely as delay-ridden, ineffective and even irrelevant to today's changed workforce. The NLRA must be modernized by streamlining its procedures and upgrading its enforcement tools. Why? The law no longer does what it was intended to do—it no longer protects workers' rights. With impunity, companies intimidate, harass, coerce and even fire people who try to organize unions. Even after workers successfully form unions, 44 percent of the time no first contract is reached. This is an urgent crisis for workers, blocking their freedom to join with their co-workers and their ability to bargain for a better future.

We need to change the NLRA to eliminate growing economic inequalities and help workers bargain contracts. Without the freedom to bargain, the economy cannot be rebuilt in a way that guarantees the middle class will be rebuilt with it. Whatever else we do to turn the economy around, we will not have broadly shared prosperity unless and until working people regain the freedom to choose a union and bargain collectively so they can get their fair share and improve jobs and benefits for everyone.

The Employee Free Choice Act is needed to fix the NLRA in three specific ways:

- **Remove current barriers that prevent workers from forming unions to bargain collectively:** The current corporate-dominated process encourages companies to coerce and intimidate workers who seek to form a union and to pressure workers in order to influence their choice.
- **Guarantee workers a contract when they form a new union:** A neutral procedure of mediation and arbitration will reverse the current law's incentives for collective bargaining delay and failure, would encourage and assist newly organized companies and workers to reach a first contract through good faith bargaining, and would dramatically reduce the delay, frustration and animosity generated by the current company-dominated system.
- **Strengthen penalties against companies that break the law during organizing campaigns and first contract negotiations:** Company violations of workers' rights have increased dramatically in frequency and intensity because remedies for corporate misconduct are so weak that companies treat

them as a cost of doing business and a cheap way to scare workers away from their supporting unions. New, tougher remedies will provide more protection for workers' rights, including civil penalties, treble back pay and mandatory injunctive relief when there is reasonable cause to believe the law has been violated.

The Employee Free Choice Act would help make the economy work for everyone again. The Employee Free Choice Act will reform the NLRA so workers can choose union representation and achieve a first contract without fear and intimidation. When a majority of workers demonstrates their choice to form a union, their representative can be certified by the NLRB without the need for the delay-ridden, coercive and divisive NLRB election process. Federal labor law would finally, and again, guarantee the rights it promises. The Employee Free Choice Act also will guarantee that choosing union representation will result in a contract and, finally, it will create real penalties as a deterrent to unlawful employer conduct and in order to protect workers' rights. Its time has come. We need an economy that works for everyone.

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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 2009, and recently reintroduced, 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 who 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 that 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 percent and 40 percent 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 non-work areas during non-work 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 anti-union 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 anti-union 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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Endnotes

[i] *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; Chirag Mehta 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] *No Holds Barred: the Intensification of Employer Opposition to Organizing*, Kate Bronfenbrenner, 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 half a 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/archives/2009_democratic_agenda_/2008/12/card_check_and_union_coercion.php ; 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] Adrienne Eaton 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."].

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 on the job, everyone in the community benefits—not just union members.

10 Strongest Union States Compared With 10 Weakest Union States

	10 States Where Unions Are Strongest*	10 States Where Unions Are Weakest**
Average hourly manufacturing earnings, 2010[1]	$19.64	$16.23
Median household income, 2010[2]	$55,612	$43,548
Percent of population younger than 65 with no medical insurance, 2010[3]	15.8	21.1
Public education spending per pupil, 2009–2010[4]	$12,708	$9,501
Percent of eligible voters who cast a vote for highest offlce in 2010 general election[5]	45.0 percent	37.6 percent
Violent crimes per 100,000 population, 2009[6]	371	481
Property crimes per 100,000 population, 2009[7]	2,777.3	3,551.7
Percent of children in poverty, 2010[8]	19.0	25.5
Percent of population in poverty, 2010[9]	13.1	17.5

***The 10 states where unions are strongest** (based on percentage of the workforce with a union in 2010) are: New York (24.2), Alaska (22.9), Hawaii (21.8), Washington (19.4), California (17.5), New Jersey (17.1), Connecticut (16.7), Michigan (16.5), Rhode Island (16.4) and Oregon (16.2).

****The 10 states where unions are weakest** (based on percentage of the workforce with a union in 2010) are: North Carolina (3.2), Arkansas (4.0), Georgia (4.0), Louisiana (4.3), Mississippi (4.5), South Carolina (4.6), Virginia (4.6), Tennessee (4.7), Texas (5.4) and Oklahoma (5.5).

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[1]U.S. Department of Labor, Bureau of Labor Statistics, Employment, Hours and Earnings from the Current Employment Statistics Survey, downloaded 9/20/11.
[2]U.S. Census Bureau, "Table H-8. Median Household Income by State."
[3]U.S. Census Bureau, "Table HIB-6. Health Insurance Coverage Status and Type of Coverage by State—Persons under 65: 1999 to 2010."
[4]National Education Association, "Rankings & Estimates–Rankings of the States 2010 and Estimates of School Statistics 2011," December 2008, Table H-11. Current Expenditures for Public K-12 Schools Per Student in Fall Enrollment, 2009–2010.
[5]Michael McDonald, George Mason University Department of Public and International Affairs, United States Elections Project, 2010 General Election Turnout Rates, http://elections.gmu.edu/Turnout_2010G.html.
[6]U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Statistics, downloaded 9/20/11.
[7]Ibid.
[8]U.S. Census Bureau, CPS, 2010, Annual Social and Economic Supplement. POV46: Poverty Status by State: 2010.
[9]Ibid.

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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, African American and Latino workers.

Overall, women earn less than men, and African American and Latino workers earn less than white workers. Working women in 2010 made only 81.2 percent of the median weekly earnings of working men. African American workers made only 79.9 percent of the median weekly earnings of white workers, and Latino workers earned only 69.9 percent of the median weekly earnings of white workers.[ii]

Women, Latino and African American workers are overrepresented in low-wage jobs. In 2010, women represented 47.2 percent of all workers, but were overrepresented in such low-wage jobs as cashiers (73.7 percent) and child care (94.7 percent). Latinos represented 14.3 percent of all workers in 2010, but were overrepresented in such low-wage jobs as dishwashers (38.56 percent), agricultural workers (47.9 percent), maids and housekeeping cleaners (40.8 percent) and sewing machine operators (40.2 percent). African Americans represented 10.8 percent of all workers in 2010, but were overrepresented in such low-wage jobs as personal and home care aides (23.8 percent), parking lot attendants (25.7 percent) and nursing, psychiatric and home health aides (34.6 percent).[iiii]

Collective bargaining is especially important for raising the wages of workers in low-wage occupations. For example, in 2010, union cashiers earned an average hourly wage of $12.83, or $3.61 more per hour (39.2 percent more) than nonunion cashiers. Union food preparation workers earned on average $11.80, or $2.71 more per hour (29.8 percent more) than nonunion food preparation workers. Union maids and housekeeping cleaners earned an average of $13.27 per hour in 2010, or $3.58 more per hour (36.9 percent more) than maids and housekeeping cleaners. And union vehicle cleaners earned on average $15.86 per hour in 2010, or $5.26 more (49.6 percent more) than nonunion vehicle cleaners.[iii]

Union membership improves wages for women, African Americans and Latinos. The median earnings for union women was $856 per week in 2010, or $217 higher per week (34 percent) than for nonunion women workers. The median earnings for African American workers who were union members was $772 per week in 2010, or $183 higher (31.1 percent) than for nonunion African American workers. The median earnings for Latino union members in 2010 was $771 per week, or $259 higher (50.6 percent) than for nonunion Latino workers. Higher union wages help women, African American and Latino workers raise the living standards for everyone in the community. Unions also help these groups of workers to remedy discrimination on the job.[iv]

Women, African American and Latino 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 percent) have employer-provided health insurance, compared with only half (50.9 percent) of nonunion women workers. Three out of four union women workers have pension coverage (75.8 percent), compared with less than half (43 percent) 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 percent vs. 26 percent) and are nearly two and a half times as likely to have pension coverage (58.1 percent vs. 20.6 percent).[vi]

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

Latino union members overall are twice as likely to have employer-provided health insurance (70.1 percent vs. 34.8 percent) as nonunion Latino workers and more than two and a half times as likely to have pension coverage (58.4 percent vs. 22.3 percent) 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 percent vs. 21.0 percent) and nearly four times as likely to have pension coverage (40.8 percent vs. 11.2 percent) 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. Fifty-nine percent 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 2008, 14.5 percent of black workers were union members, compared with 12.4 percent of all workers. But even more African Americans say they would join unions if given the chance. According to a national survey conducted by Hart Research in 2001, African Americans age 35 and older are among the strongest supporters of the freedom to choose a union, backing the right to collective bargaining by 93 percent, with all African Americans at 85 percent.[ix]

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Health Care

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The Affordable Care Act

It is crucial that the health care reform law enacted in 2010 be implemented by states and the federal government, and it is time to build upon this foundation to improve health care coverage for working families. The Affordable Care Act of 2010 (ACA) was a historic milestone toward the goal of providing affordable health care for all. The ACA was enacted to address a mounting national crisis: health care cost inflation is bankrupting families, businesses and government; the ranks of the uninsured are growing by the day; and abuses by insurance companies continue largely unchecked. The new law provides many forms of immediate relief, and as it progresses to further stages, it will begin to address the fundamental weaknesses of the health care system. 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 Affordable Care Act and that work begins on further improvements.

On the eve of ACA implementation, in September 2010, the Census Bureau reported the uninsured rate had climbed to 16.7 percent in 2009 from 15.4 percent in 2008, with 50.7 million people uninsured. Fueling this increase, health insurance premiums for family coverage have increased 114 percent in the last 10 years.[i] In addition, health care costs continue to rise, outpacing growth in the general economy for the last 30 years.[ii] The ACA provides important new consumer protections and initiates important approaches to reducing costs and improving the quality of care.

The ACA targets immediate relief to families and retirees who face extreme health costs. A number of ACA reforms will be in effect in 2011 to help people who currently have serious difficulty securing coverage. The new health reform law ensures families can keep their children on the family's plan until age 26. Many uninsured individuals who are unable to afford insurance because they have an illness considered a "pre-existing condition" now have access to plans specially designed to cover people with serious illnesses. In addition, assistance will be available to many retirees ages 55–64, a group that faces particular difficulty in obtaining affordable coverage. In 2010, only 28 percent of large employers offered insurance to new retirees, a substantial decrease from 1991, when 46 percent provided coverage.[iii] Outside of an employer-based plan, these retirees face premiums that are substantially higher than those paid by younger individuals, and those with serious illnesses often are denied coverage. The ACA established a "reinsurance" program that is helping plans cover retirees by bearing a portion of higher-than-average costs incurred by an enrollee. Additional funding is needed to ensure this program is available until other affordable options are available under the exchanges established by the ACA.

The "Patient's Bill of Rights" provides new protections to secure coverage when people need it the most. The ACA established important new protections now in force to protect families. Insurance companies no longer may refuse to cover children with pre-existing conditions. The

companies also must end their "rescission" practices, where an individual's coverage is revoked long after applying for coverage due to mistakes made on an application form. Insurance companies employ the practice when serious illnesses cause people to obtain frequent or expensive care. Under the new protections, insurers also are banned from requiring prior approval before a patient seeks emergency care at a hospital.

The ACA will make health care more affordable for families. Beginning in 2010, for large group plans, health insurance companies are required to spend 85 percent of the premiums they collect on medical care. For plans in the small and individual group market, 80 percent of the premiums must be spent on care. Limiting the percentage companies can keep for profits and marketing will reduce premium prices. In 2014, states will establish health insurance exchanges under the ACA. These exchanges will foster competition between insurance companies, multistate plans and co-ops—helping to bring down costs and provide better choices for consumers. A level playing field will be created so plans cannot offer "Swiss cheese" benefit packages with deceptively low premiums. Transparency will be enhanced, so consumers will find it easier to compare plans and their benefits. The exchanges will allow people who previously were limited to the individual and small group markets to join larger risk pools, reducing their premiums.

The new law provides support for middle- to low-income households. Middle-income households with incomes below 400 percent of the federal poverty level will receive substantial subsidies toward the purchase of insurance in the state exchanges, and subsidies will be available to help reduce cost-sharing for these families. For a family of four in 2011, income of less than $89,400 would make a household eligible for subsidies. In addition, all individuals younger than age 65 whose incomes are below 133 percent of poverty will be eligible for Medicaid coverage. Under Medicaid, a full benefit package will be provided with minimum costs to beneficiaries.

The new law closes the infamous "doughnut hole" in Medicare Part D coverage and improves benefits for preventive care. The coverage gap in the Medicare prescription drug benefit is phased out by the ACA. In 2010, beneficiaries had to pay 100 percent of the cost of their drugs when total beneficiary and Part D plan drug spending was between $2,840 and $6,448. Beginning in 2011, beneficiaries will receive a 50 percent discount on brand-name drugs and a 7 percent discount on generics. These discounts will increase from year to year until 2020, when the coverage gap will be closed. Medicare benefits also have been improved as preventive screenings and annual wellness visits now are covered fully.

The ACA approaches universal coverage. According to the Congressional Budget Office (CBO), the health reform law will reduce the number of uninsured people younger than age 65 by 33 million. Ninety-five percent of all nonelderly legal residents will be covered, while those older than 65 will be covered by Medicare.[iv]

Health care reform makes major reductions to the deficit. The ACA makes these major gains in coverage while reducing overall costs and the federal deficit. According to (CBO), the ACA will reduce the deficit by $210 billion over 10 years.[v] In the next decade—from 2020 to 2029—the health reform law is projected to

reduce the deficit by an additional $1.3 trillion.[vi]

Congress should oppose efforts to repeal or defund the Affordable Care Act. Bills such as H.R. 2, the Repealing the Job-Killing Health Care Law Act, would repeal the ACA outright. Other legislation would prohibit the use of appropriated funds to implement the law or would repeal major provisions of the new law. This legislation would undermine the gains in coverage and deficit reduction that the ACA will achieve, and they must be defeated.

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Building on the Affordable Care Act

The Affordable Care Act (ACA) represents a watershed improvement of the health care system—it is important to defend the law against recent political attacks and begin improving this new framework. A year after this major legislation was enacted, Congress has debated a flurry of new bills to build upon the new law, to repeal it outright or to eliminate crucial elements of the law. It is important that the major advances of the new law be secured while work is done to add substantial reforms that go further in reducing the burden of health care costs and improving the health care coverage for working families.

Congress should provide additional funding for the Early Retiree Reinsurance Program (ERRP). Demand for the assistance provided by the ERRP has been high since it was initiated in June 2010. The program was designed to address an alarming trend—over the past decade, large employer coverage of retirees has dropped 18 percent. The ERRP seeks to reverse this trend by helping employer plans cover the costs of retirees who have high-cost medical claims. The ERRP will cover the cost of claims between $15,000 and $90,000 when these individuals face illnesses that are expensive to treat. In its first six months, the program has supported the coverage provided to more than 60,000 individuals.[i] Congress, however, did not provide enough funding to allow the ERRP to fulfill the goal of providing a temporary bridge to 2014. As a result, funding for this program is expected to be fully depleted midway through 2012. Congress should increase funding for this program to ensure retirees between the ages of 55 and 64 are able to obtain coverage.

Congress should eliminate the excise tax on high-premium insurance plans. Unfortunately, the ACA imposes a 40 percent tax on insurance costing above $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 is 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 level of benefits only accounts for about 3.7 percent of variation in the cost of family coverage, and most of the variation is unexplained.[ii] Families are unable to influence many of the factors involved, and their insurance should not be taxed as a result.

Congress should require employers to "pay or play." The ACA does not mandate that employers provide health insurance, but it imposes a penalty if midsize 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 2010, the average employer portion of premiums for coverage of a single employee was $4,150,[iii] while the maximum penalty employers could pay for not offering

coverage is $2,000 per employee. 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 fewer 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.

Congress should oppose repeal of the personal responsibility provision. Legislation has been introduced to eliminate the requirement that individuals purchase health insurance or face a tax penalty. This legislation would undermine two important goals of health reform: to provide coverage for people with pre-existing conditions and to prevent cost-shifting. Premiums will skyrocket if healthier individuals can wait to join insurance risk pools, while a disproportionate number of people needing expensive care are covered. In addition, when those without insurance cannot pay for care when they experience acute illness, the costs are passed on to everyone else that pays for coverage. It is important that everyone shares responsibility in paying for services.

A public health insurance option should be available to all. To address spending growth in health care, Congress should make a public health insurance option available to everyone. 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 can have access to secure, affordable coverage.

States should be allowed to implement single-payer health care coverage. Congress should pass legislation to allow states that enact their own comprehensive health reform laws to obtain a waiver to allow implementation of these plans as early as 2014. The waiver process 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.

Congress should oppose efforts to eliminate delivery system reforms that will reduce health care spending and trim the federal deficit. Legislation has been introduced to eliminate the Independent Payment Advisory Board (IPAB), which is charged with proposing legislation to make Medicare spending more efficient. In addition, opponents of health reform have sought to limit the activities of the Center for Medicare and Medicaid Innovation (CMMI), which also was established by the ACA. In a number of areas across the nation, improvements to the health care delivery system reduced spending while improving the quality of care. Innovations such as medical homes, value-based purchasing and payment bundling have shown promise. CMMI will focus on implementing these reforms more widely.

Attempts to limit the CMMI, the existing authority of IPAB, and other improvements in the delivery of care must be opposed. (See more discussion of these issues in the following Issue Brief, "Securing Employer-Based Coverage, Medicare, and Medicaid in an Era of Deficit Reduction."

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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. Several recent proposals seek to reduce the federal deficit by shifting costs to working families. For example, the chairmen of the National Commission on Fiscal Responsibility and Reform, Alan Simpson and Erskine Bowles, proposed taxing health benefits; the Domenici-Rivlin deficit task force and Rep. Paul Ryan have proposed turning Medicare into a voucher system; and some Republican governors have called for turning Medicaid into a block grant program. All of these proposals would force consumers to pay more out of pocket for their own health care, but shifting costs to consumers is not the solution to slowing health care cost growth. Congress should reject proposals to tax health benefits, cut Medicare benefits, or block grant Medicaid, and instead support proposals to ensure health care is delivered in more cost-effective ways.

Health care costs have been rising for decades, and are the principal drivers of federal budget deficits over the long term.[i] The Affordable Care Act of 2010 (ACA) is projected to reduce the deficit by $210 billion over 10 years,[ii] but clearly more needs to be done.

Congress should not tax health benefits by limiting the tax exclusion for employer-based health coverage. Both the budget blueprint proposed by Alan Simpson and Erskine Bowles and the deficit reduction proposal put forward by Pete Domenici and Alice Rivlin[iii] would gradually phase out the tax exclusion so that 100 percent of health benefits ultimately would be taxed. Currently, two-thirds of Americans with health insurance—156 million people—are covered through their employment. To raise any 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. One study concluded that Sen. John McCain's proposal to replace the exclusion with a tax credit would lead to 20 million people losing their existing employment-based coverage, according to a mid-range estimate.[iv] Tax reform along the lines proposed by Simpson and Bowles would tax middle-class health benefits to pay for a reduction in income tax rates that benefits the wealthiest Americans.

Congress should reject proposals to replace Medicare with a voucher program or cut Medicare benefits. House Budget Committee Chairman Paul Ryan (R-Wis.) has proposed ending the current Medicare program in 2021 and replacing it with a program that provides beneficiaries with a voucher that has a capped annual value. Beneficiaries would use the vouchers to purchase their own private insurance.[v] The proposal is designed to reduce costs to the government because the vouchers would be indexed at a rate below Medicare's current per capita rate of growth. The Simpson-Bowles proposal also would achieve $148 billion in deficit reduction by banning first-dollar coverage in Medigap and changing the Medicare deductible and

coinsurance requirements.[vi] Congress should oppose these proposals.

Congress should reject proposals to block-grant Medicaid or allow states to restrict eligibility. The severe recession has caused Medicaid enrollment to swell and state tax revenue to fall. Facing budget shortfalls, several state governors have called upon Congress to convert Medicaid into a block-grant program, allowing states complete flexibility to tighten eligibility rules and reduce the benefits provided by the program. Other governors have requested that Medicaid maintenance-of-effort requirements in the ACA be loosened to implement similar reductions in coverage and enrollment. Congress should not allow states to escape their responsibility to help families in need during the recession.

Effective cost containment should be achieved by ensuring care is delivered in more cost effective ways, not by shifting costs to consumers. Former CBO Director Peter Orszag has emphasized reducing costs through "more stringent eligibility criteria [or] greater cost sharing" in Medicare and Medicaid are policies unlikely to be sustainable and provide broad access to coverage, and he has highlighted the limitations of "shifting costs from the federal government to households."[vii] Proposals to tax health care benefits or health plans would lead to higher out-of-pocket costs for consumers, even though health care cost growth is not driven by consumers. Instead of shifting costs to consumers, Congress should address the incredibly wasteful, inefficient and expensive way that health care is delivered in the United States[viii]

Congress should contain health care costs by requiring drug rebates for the Medicare Part D program and allowing Medicare to negotiate drug prices. According to CBO, 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 $112 billion over 10 years.[ix] Allowing Medicare to negotiate drug prices with manufacturers, as the Department of Veterans Affairs does, could save as much as $24 billion per year.[x]

Congress should contain health care costs by expanding ACA payment and delivery system reforms. For example, allowing the federal Independent Payment Advisory Board (IPAB) to make reimbursement recommendations for a wider list of providers would point the way toward additional deficit reduction.

Congress should provide for a public health insurance plan option in every state exchange. According to CBO, legislation implementing a public option would reduce the deficit by about $15 billion annually by 2019.[xi]

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Health Care 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 one of the highest injury rates of any profession continue to cause nurses to leave the bedside. When there are not enough 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 are predicted to worsen the nursing shortage by increasing the demand for nurses and decreasing the supply. One 2008 report predicted a shortage of 500,000 nurses by 2025,[i] while another estimated a shortage of closer to 1 million by 2020.[ii] Failure to address this shortage will lead to severe access and quality problems, given the aging of the U.S. population (including 78 million aging baby boomers) and the addition of 33 million people to the ranks of the insured as a result of health care reform.

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.[iii] Nurse staffing shortages are a factor in one out of every four unexpected hospital deaths or injuries caused by errors.[iv] Patients at hospitals with staffing ratios of four patients to one nurse or higher were 9.4 percent more likely to suffer from cardiac arrest or shock than patients at hospitals with ratios of 2.5 to 1 or lower.[v] A surgical patient's risk of dying within 30 days is reduced 31 percent when a hospital decreases a registered nurse's patient load from eight patients to four.[vi] More than 75 percent of registered nurses believe 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.[vii] Without substantial reform, the environment in which nurses work will continue to threaten patient safety.[viii]

Working conditions are a major cause of the nursing shortage. While our capacity to train new nurses remains inadequate, 500,000 nurses with active licenses are not practicing their profession.[ix] Decreasing this number would go a long way toward eliminating the nursing shortage. The Government Accountability Office (GAO) has concluded that improving working conditions may reduce the likelihood of nurses leaving the profession and encourage more young people to enter.[x]

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 by more than 60,000 by 2005.[xi] The California Board

of Nursing reported being inundated with RN applicants from other states.[xii] Vacancies for RNs at Sacramento hospitals plummeted by 69 percent from 2004 to 2008.[xiii] 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 percent.[xiv]

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 Nurse Staffing for Patient Safety and Quality Care Act of 2009 (H.R. 2273 in the 111th Congress) and the National Nursing Shortage Reform and Patient Advocacy Act (S. 1031 in the 111th Congress) 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. It is expected these bills will be reintroduced in the 112th Congress.

Mandatory overtime must be prohibited. 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.[xv] 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 many 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. Direct-care nurses rank 10th among all occupations for musculoskeletal disorders, experiencing injuries at rates higher than those for laborers, movers and truck drivers.[xvi] 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) would have eliminated 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. 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 may actually impede patient care.

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Retirement Security

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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2011

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 and instead should increase benefits across the board to address growing retirement income insecurity.

Social Security provides benefits to more than 54 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 8.2 million workers with disabilities, 4.5 million widowed spouses and 4.3 million children of deceased, retired or disabled workers.[ii] Nearly two-thirds (64 percent) of the elderly rely on Social Security for half or more of their income, and more than three in 10 (34 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 $2.6 trillion surplus today, which is projected to grow to $4.2 trillion by 2025. Its revenues and reserves are fully adequate to pay all scheduled benefits until 2037, 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 Affordable Care Act of 2010).

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 needed to pay for Bush-era tax cuts for the wealthiest 2 percent of Americans. Almost all (95 percent) of this revenue shortfall could be closed by eliminating the cap on wages that are subject to the payroll tax (currently set at $106,800), even if this means paying higher benefits to those with earnings above that amount.[vi] Rep. Jan Schakowsky,[vii] Our Fiscal Security[viii] and the Citizens Commission on Jobs, Deficits and America's Economic Future[ix] all have offered plans to close Social Security's funding gap without cutting benefits.

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.[x] 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. 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,[xi] and Congress should not depress that replacement rate any further.

Changing the annual cost-of-living adjustment (COLA) formula is a disguised benefit cut. Social Security's automatic annual COLA, which has averaged about 3 percent for the last 25 years, protects the value of benefits from erosion due to inflation.[xii] 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.[xiii] 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 medical inflation.[xiv]

Benefit cuts should be rejected even if they fall more heavily on seniors with higher average earnings. The Simpson-Bowles budget proposal includes a benefit formula change that 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.[xv] 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. Cutting benefits for higher-income workers would create the impression that Social Security is a welfare program and would undermine its political support.

Congress should oppose privatization of Social Security in whole or in part. House Budget Committee Chairman Paul Ryan's "Roadmap for America" would divert more than $1 trillion of Social Security revenues to fund new 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.[xvi] The Ryan proposal would actually 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.

Social Security benefits should be strengthened, not cut. Social Security benefits are modest, averaging about $15,000 per year for men—little more than the pay for full-time minimum wage work—and about $11,000 for women, slightly above the poverty level.[xvii] 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.[xviii] In light of growing retirement insecurity, Social Security benefits should be increased across the board.

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[xiii] 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 percent over 10 years.
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Pensions and Retirement Savings Plans

Retirement security is fast becoming a goal beyond the reach of most Americans. 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. 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 will comprise an increasing share of the population, but they will be without the purchasing power needed for a healthy economy.

Defined-benefit plans remain the most sound vehicles for building and safeguarding retirement income security, as they are federally insured and provide a guaranteed monthly lifetime benefit. 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.

According to the Pension Benefit Guaranty Corporation (PBGC), as of 2007, only 15.2 percent of private-sector workers earned benefits under defined-benefit pension plans, compared with 28 percent of workers in 1990, and 35 percent of workers in 1980.[i] As Secretary of Labor Hilda Solis has observed, "This dramatic transformation of the retirement plan landscape has left more workers and their families at risk than ever before."[ii] The situation for nonunion workers is worse: just 13 percent of nonunion workers have defined-benefit pension plans, compared with 67 percent of union workers.[iii] 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 plans and multiemployer plans. Single-employer pension plans are maintained by one company, and the employer and union bargain over benefit levels. Multiemployer plans cover more than one company's workers and the plan typically is run by an equal number of employer and union representatives. In 2009, the two insurance programs administered by the PBGC covered almost 28,000 single-employer plans and

1,500 multiemployer plans, benefitting 44 million workers and retirees.[iv]

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 such a short-term valuation of pension assets, forfeiting one of the core strengths of defined-benefit plans, namely, their long-term investment horizon.

A wide range of economic commentators have noted the short-term orientation of our capital markets and financial institutions was a major contributor to our current economic crisis.[v] 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 very survival of what remains of the private-sector pension system. That is, under PPA, during market downturns, employers are required to radically 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 the pension plan sponsors (employers), including extended liability amortization periods and an expanded smoothing approach to the valuation of pension assets.

Congress should explore new structures to provide working Americans with a lifetime retirement benefit beyond 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 all participate in any particular plan, just that they set aside enough for funds so employees can 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 GAO 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.[vi]

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 pensions and to establish a priority claim for workers who have lost their retirement savings in company stock funds, like the workers at Enron.

Individual savings plans can only supplement, but not replace, defined-benefit plans. While the AFL-CIO is supportive of recent proposals to make savings easier for American workers—including a matching contribution for middle- and working-class families that contribute $1,000 or more to a 401(k) plan, IRA or similar retirement savings plan; 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 2007 Federal Reserve Board Survey of Consumer Affairs, 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. Among families closest to retirement (those headed by someone ages 55 to 64), nearly two in five have no retirement savings in a 401(k), IRA or other defined-contribution account. Among those fortunate near-retirement families with some retirement savings, half had less than $100,000—enough for a monthly retirement income at age 65 of only several hundred dollars.[vii] Furthermore, individual savings plan require workers to bear all the risk, are often 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.

State and local government defined-benefit plans should be preserved. Public employee pensions are an irreplaceable source of security to the almost 80 percent of state and local government workers covered by them.[viii]

These workers earn less than their private-sector counterparts[ix] and, in some states, are not covered by Social Security. Furthermore, while their government employers may have failed to contribute to their employees' plans, public workers faithfully contributed year in and year out. While some public plans are facing funding challenges similar to the private sector, state and local government pensions are, for the most part, well managed and are not the source of public-sector budget problems. In 2008, state and local government pension expense amounted to just 3.8 percent of all non-capital spending.[x]

Prior to the market crash in 2008 and 2009, public pensions, on average, had assets sufficient to fund 85 percent of accrued benefits.[xi] State and local governments now are taking steps to put their pension plans on solid ground. The AFL-CIO opposes federal legislation that would jeopardize public employees' pensions needlessly, whether by requiring state and local governments to report their pension liabilities or authorizing states to declare bankruptcy to escape their pension obligations to workers.

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Core Labor Laws, Labor Standards and Workforce Protections

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The National Labor Relations Act

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. 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, and should confirm National Labor Relations Board (NLRB) members who support the purposes and policies of the NLRA.

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.

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 spy on, 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 an economy that works for everyone.

The NLRA fails to protect workers' rights to bargain a contract so they can achieve a better life. An 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 shows that between 33 percent and 46 percent of certified bargaining units 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 that 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]

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. Federal labor law must finally, and again, guarantee the rights it promises. The time for legislation is long overdue. Weneed 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 the RESPECT Act, which would eliminate current ambiguity regarding supervisory status and ensure workers are not denied collective bargaining rights by being wrongfully classified as "supervisors."

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 members to the NLRB who support the purposes and policies of the act.

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

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Fair Labor Standards Act Rollbacks

In previous sessions of Congress, there have been repeated attempts to roll back wage and hour protections of the Fair Labor Standards Act (FLSA). Proposals to exempt states from the FLSA's minimum wage and overtime protections and offer compensatory time off would reduce pay for millions of workers and encourage employers to demand excessive work hours. Congress should reject efforts to roll back the FLSA and focus instead on ensuring workers receive proper payment for the hours they work.

The FLSA establishes a national minimum wage of $7.25 per hour 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 FLSA's wage and hour provisions are intended to set a national floor, above which states may choose to provide additional protections.

Allowing states to opt out of minimum wage increases negates the purpose of the FLSA. 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.

Excluding bonuses from calculation of overtime pay would reduce working families' incomes. The FLSA requires employers to pay an overtime cash premium equal to 150 percent of the "regular rate of pay," which is defined to include commissions, gain-sharing and performance-contingent bonuses. Performance-based pay legislation could be introduced to exclude these forms of pay from overtime calculations, thereby reducing overtime pay for millions of workers. This type of legislation would encourage employers to lower payroll costs by converting hourly wages into bonuses, reducing workers' overtime pay even more. Plus a reduction in employers' overtime costs would lead to an increase in mandatory overtime. A large number of employers already provide performance-based pay and need no additional incentive to do so.

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.

Congress should increase the effective minimum wage for tipped employees by reducing or eliminating the federal tip credit. 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 like waitresses who rely on tips were left out. According to the authors of a 2009 study, "workers who rely on tips are subject to a special tipped worker minimum wage, which has remained frozen since 1991 at a meager $2.13 per hour—just $4,430 per year for a full-time worker."[i]

Comp time is a thinly veiled attempt to roll back the FLSA. Comp time legislation would undermine the 40-hour workweek, leading to longer hours in the workplace for less pay. It 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 cut worker pay and, by making it cheaper for employers to demand overtime work, undermine the FLSA's only incentive for employers to adhere to a 40-hour workweek. (See "Compensatory Time Off" issue brief.)

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. If Congress takes up minimum wage legislation, it must not give with one hand and take with the other.

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Endnote

[i] Rajesh D. Nayak and Paul K. Sonn, "Restoring the Minimum Wage for America's Tipped Workers," National Employment Law Project, August 2009.

AFL-CIO LEGISLATIVE

ISSUE BRIEF 2011

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. This meant that if 100 workers were in a unit, and 49 voted for representation but the other 51 simply chose not to vote, those seeking a union voice were denied that right. 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 nonvoters 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, actually are 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.

While the RLA can be improved, 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 will lose value every year to inflation. In 2007, Congress raised the minimum wage by $2.10 an hour—with the last stage of the increase taking effect July 24, 2009—as a first step toward restoring its historical value. Congress must take additional steps to raise the minimum wage to half the average private-sector wage; index the minimum wage to ensure automatic increases on an annual basis; and require the same minimum cash 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, the FLSA allows states and communities to set higher rates and cover more workers. As of January 2011, 17 states and the District of Columbia had set their minimum wages at rates higher than the federal rate. Minimum wage workers are concentrated in service occupations; the average minimum wage worker brings home 58 percent of his or her family's weekly earnings; many workers earn the minimum wage for long periods of time; and 79 percent of those who benefit from the increase to $7.25 are adults.

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 Jan. 1, 1981, to April 1, 1990. For the minimum wage to have the same purchasing power as it had at its highest point in 1968, the minimum wage in 2011 would have to be more than 10 dollars.

The value of the federal minimum wage has failed to keep up with average wages. Throughout the 1950s and 1960s, the minimum wage represented more than or nearly 50 percent of average wages. In 2010, however, the minimum wage equaled just 38 percent of the average hourly wage for private, non-supervisory workers. The minimum wage would have to be increased to $8.94 to reach 50 percent of the average wage today.

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 roughly were equal to the poverty level for a family of three. To reach the poverty line for a family of three in 2009 ($18,310), a full-time, year-round worker would have to earn $8.29.

Reasonable minimum wage increases do not cause job loss. A solid body of research has found no job loss resulting from reasonable minimum wage

increases. Researchers have found no job loss associated with the 1996–97 or 1990–91 increases in the federal minimum wage. In looking at the impact of state minimum wage increases, the Fiscal Policy Institute found that in states with minimum wage rates higher than the federal level, small business employment and employment overall grew faster than in states where the federal rate of $5.15 was in effect. One of the reasons that job loss is not associated with higher minimum wage rates is that employers are able to absorb the costs of a higher minimum wage through the benefits that come from paying their workers a higher rate of pay. These benefits include higher productivity, lower recruiting and training costs, lower rates of absenteeism and higher employee morale.

Even when the economy is struggling, reasonable increases in the minimum wage have not been found to cost jobs. Research on the 1990 and 1991 federal minimum wage increases—which occurred when the economy was in recession—found the increases did not have any negative effect on employment. In Oregon, minimum wage indexing was passed through a ballot initiative in 2002, when the state was dealing with the impact of a recession. The industry that created the most jobs during the November 2000 to February 2008 economic cycle in Oregon was the restaurant industry—a major employer of minimum wage workers. In addition, Washington State—which at $8.67 has the highest minimum wage in the nation and was the first state to index its minimum wage to provide for annual increases—has experienced stronger job growth than most other states over the last four years. Washington's economy also is much stronger than the national economy has been during our current recession.

Congress should restore the historical value of the minimum wage. As a first step, Congress should raise the federal minimum wage to its historical value of 50 percent of the average private-sector wage, which in 2009 would be $9.03.

Congress should index the minimum wage. Congress also should provide for automatic annual adjustments to the federal minimum wage.

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 wage and the federal minimum wage. Congress should ensure the same federal minimum cash wage for tipped and non-tipped workers.

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 inflation every year (and because the federal standard is set below 50 percent of the average private-sector wage). 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 Fair Labor Standards Act protections for particular workers.

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Family, Medical and Sick Leave

The Family and Medical Leave Act (FMLA) of 1993 only partially addressed the growing need of workers for more flexibility to take leave from work during the times of family need. Congress should strengthen the FMLA to expand the number of covered workers, cover more family needs and provide for paid family and medical leave. Congress also should overturn the Supreme Court's decision in *Long Island Care v. Coke* so home health workers will be covered by federal minimum wage and overtime standards. Congress 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 or to address qualifying exigencies arising out of a family member's deployment. Workers may take all 12 weeks at once or may take intermittent leave in the smallest block of time their employer already uses to account for absences. 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]

Sixteen states have enacted leave protections beyond those provided by the FMLA, and unions also have negotiated various forms of paid leave and additional unpaid leave.

The FMLA is a success. The FMLA has had virtually no negative effects on productivity, profitability or growth, and support for the FMLA is extraordinarily high among workers and their families.

The FMLA has limitations. The effectiveness of the FMLA is constrained by its limitations. Only 10 percent of workers can take paid leave to provide long-term care for a family member.[ii] Without some form of wage replacement, the FMLA's promise of job-protected leave is unrealistic for millions of working people. In fact, 78 percent of employees who have *needed but not taken* family or medical leave say they could not afford to take unpaid leave.[iii]

Congress should strengthen the FMLA. The FMLA should be strengthened to cover workers in companies with fewer than 50 employees, and the hours worked requirements should be decreased so part-time workers can be covered. 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

nonemergency care of children and elderly parents.

Congress should enact paid family leave. Congress should enact legislation to provide for wage replacement during periods of family leave. It should provide paid leave to federal workers and provide grants to states to cover the administrative costs of establishing their own paid leave programs.

Congress should guarantee workers seven annual paid sick days. Employees should not have to choose between coming to work sick or staying home and doing without wages. Yet 42 percent of all private-sector workers, 44 million workers, did not have access to paid, job-protected sick days in 2010.[iv] Only 22 percent of those earning the lowest 10 percent of wages had paid sick leave, and only 35 percent of workers with the lowest 25 percent of wages had paid sick leave. Eighty-three percent of union workers had paid sick leave, but only 64 percent of non-union workers had paid sick leave.[v] Among those who do have paid sick days, most can't use them to care for a sick family member.[vi]

Paid sick leave policies also help reduce the spread of illness in workplaces, schools and child care facilities. "Presenteeism"—when sick workers come to work rather than stay at home—costs our national economy $180 billion annually in lost productivity. For employers, this costs an average of $255 per employee per year and exceeds the cost of absenteeism and medical and disability benefits.[vii] Paid sick day policies play a critical role in limiting the spread of communicable disease, such as during the "H1N1" crisis of 2009–2010. About 8 million workers went to work while infected during the peak months of the H1N1 pandemic, and are estimated to have infected as many as 7 million of their co-workers.[viii]

Congress should enact legislation that would allow workers to accrue sick days for their own medical needs or the needs of children, elderly parents or a spouse. Part-time workers would receive a pro-rata share of paid sick days.

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Endnotes

[i] Testimony of Debra Ness before the Committee on Health, Education, Labor and Pensions Subcommittee on Children and Families, Feb. 13, 2008, and *The Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information 2007 Update* (U.S. Department of Labor, June 2007) at 129. We based this estimate on multiplying the Employer Survey Based Estimate by 15. Unfortunately, the data we have on FMLA leave use is quickly becoming out of date. The Department of Labor last surveyed employers and employees on the FMLA in 2000. Since then, the department has not conducted any national survey on the FMLA.

[ii] U.S. Bureau of Labor Statistics, National Compensation Survey, *Employee Benefits in the United States*, Table 32: Leave benefits: Access, private industry workers, 2010.

[iii] *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys 2000 Update*, conducted by Westat for the U.S. Department of Labor, at 2-16.

[iv] Vicky Lovell, Institute for Women's Policy Research, *Women and Paid Sick Days: Crucial for Family Well-Being,* 2007.

[v] Economic Policy Institute, *Minimum Wage Issue Guide,* 2007, www.epi.org/content.cfm/issueguides_minwage, and see also www.bls.gov/ncs/ebs/sp/ebnr0016.pdf (page 15).

[vi] Lovell, Vicky, *No Time to Be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave*, Institute for Women's Policy Research, 2004, p. 9, www.iwpr.org/publications/pubs/no-time-to-be-sick-why-everyone-suffers-when-workers-don2019t-have-paid-sick-leave.

[vii] Ron Goetzal, et al., *Health Absence, Disability, and Presenteeism Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Employers,* Journal of Occupational and Environmental Medicine, April 2004.

[viii] Institute for Women's Policy Research, www.iwpr.org/publications/pubs/sick-at-work-infected-employees-in-the-workplace-during-the-h1n1-pandemic.

Occupational Safety and Health

Congress must support and strengthen 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 of Mexico, which combined claimed 53 workers' lives. 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 non-metal 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 82 percent and reported workplace injury rates have declined by 67 percent. 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 2009, 4,340 workers were killed on the job and an estimated 50,000 more workers died due to occupational diseases. For 2009, the Bureau of Labor Statistics (BLS) reported 3.3 million job injuries and illnesses among private-sector workers and 863,000 injuries and illnesses among state and local government workers. (Data on federal government and self-employed workers are not collected by

BLS). Recent estimates put the true toll at 9 million to 12 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 $156 billion and $312 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 2010 OSHA budget of $558 million—compared with $10.3 billion for the Environmental Protection Agency—amounts to only about $3 per worker. Today, federal OSHA has 410 fewer inspectors than in 1980—a 28 percent decrease—and only can inspect a given workplace on average once every 137 years. While OSHA staff and resources have significantly declined since 1980, the U.S. workforce has increased by 60 million workers—more than 80 percent. The MSHA budget in FY 2010 was $357 million, supplemented by an additional appropriation of $48 million to address a growing enforcement case backlog. The budget for the National Institute of Occupational Safety and Health (NIOSH)—$302 million in FY 2010—is smaller than that of any other federal health research agency.

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 2010, OSHA's average penalty for serious violations—likely to cause death or serious harm—was only $1,050. 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. The Obama administration has been moving forward on much-needed rules on silica, combustible dust, coal dust exposures and injury and illness prevention programs, but is facing extreme opposition from business groups on any new regulations. Failure to act on these rules will 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 also are weak—in FY 2009, the median final penalty in enforcement cases involving a worker death was only $5,000. Millions of public-sector workers, flight attendants 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, which was introduced in 2009 and has been re-introduced in 2011, would expand OSH Act coverage to uncovered workers, enhance whistle-blower 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 and Workplace Safety Act would strengthen MSHA oversight and enforcement at dangerous mines, enhance miners' rights and reduce the risk of coal dust explosions. Similar legislation has been introduced in the 112th Congress and should be adopted.

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 implemented properly so that those who are sick get the medical treatment and compensation they need and deserve.

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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 percent or more—misclassify their employees as independent contractors to save as much as 30 percent 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 percent 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 percent rather than 7.65 percent) 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 percent 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 percent) 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 Senator 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. Sen. Kerry should reintroduce this legislation in the 112th Congress.

Legislation introduced in the 112th Congress by U.S. Sens. Tom Harkin (D-Iowa), Sherrod Brown (D-Ohio) and Richard Blumenthal (D-Conn.) would amend the FLSA and cut down on payroll fraud, protect workers' rights and level the playing field for all employers. The Payroll Fraud Prevention Act would prevent payroll fraud by employers that misclassify their workers as independent contractors and would provide workers with the protections they are entitled to and the benefits they have earned. The legislation would 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.

U.S. Labor Department's Regulatory Agenda—Right to Know. The Department of Labor intends to update federal Fair Labor Standards Act recordkeeping requirements to facilitate and better ensure compliance by employers and to assist in enforcement. Covered employers would be required to notify workers of their rights under the FLSA, and to provide information regarding hours worked and wage computation. In the alternative, any employer that seeks to exclude workers from the FLSA's coverage will be required to perform a classification analysis, disclose that analysis to the worker and retain that analysis to give to WHD enforcement personnel who might request it. It's unclear when DOL will issue this reg.

Stronger enforcement would not penalize scrupulous businesses. Neither the Kerry bill, the Harkin/Brown Bill, nor the DOL regulations would affect the many businesses that use bona fide independent contractors. They would not change the legal definition of who is an employee and who is an independent contractor. However, they 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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[ii] Government Accountability Office (GAO), "Employment Arrangements: Improved Outreach Could Help Insure Proper Worker Classification (2006), at 7-9 and Appendix IV.
[iii] 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.
[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 Could 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.

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Compensatory Time Off

Comp time legislation would excuse employers from their Fair Labor Standards Act (FLSA) obligation to pay a cash premium for overtime work. While supporters of compensatory time off claim they want to give workers more flexibility and control over their busy schedules, the reality is comp time proposals undermine the 40-hour workweek—resulting in more workers working longer hours for less pay—and give flexibility and control to employers rather than workers. Congress must reject comp time proposals and instead promote greater work schedule flexibility for workers without loss of pay and without undermining the 40-hour workweek.

The FLSA requires employers to pay time-and-a-half cash premium for work performed in excess of 40 hours per week. Comp time legislation would remove this obligation from private-sector employers that offer workers comp time off instead of payment. Comp time proposals also would allow employers to reject comp time requests not made "within a reasonable period" or that would "unduly disrupt" the employer's operations.

Comp time legislation would undermine the 40-hour workweek, leading to longer hours and unpredictable work schedules. The FLSA discourages excessive hours beyond the 40-hour workweek by making overtime *more expensive* for employers. In contrast, comp time proposals would encourage excessive hours by making overtime *less expensive*. Comp time proposals allow employers to pay *nothing* for overtime work at the time the work is performed, and could allow employers to schedule comp time off without any additional costs.

Comp time legislation would cut workers' pay. Millions of workers depend on cash overtime pay to make ends meet. Yet workers compensated with time off rather than cash would see a reduction in their take-home pay. Workers who take comp time off no longer would receive the income supplement overtime pay once provided by other employers. Workers who refuse comp time also would receive a pay cut if management allocates overtime assignments preferentially to workers who accept comp time. Moreover, any banking of comp time would cheat workers out of the interest on their earnings.

Comp time programs would not really be voluntary. By making mandatory overtime cheaper for employers, comp time legislation would create economic pressures, making worker participation in the private sector less likely to be truly voluntary. Comp time legislation would confer a cost advantage on employers that no longer pay cash overtime. Employers would be free to assign overtime only to employees who agree to be compensated with comp time; to retaliate against workers who

refuse comp time; or to refuse to hire them. Nominal prohibitions against coercion in most comp time proposals are inapplicable or unenforceable and would afford workers no real protection.

Comp time legislation provides no additional work schedule flexibility. The FLSA does not prohibit any kind of flexible work schedule arrangements; it merely requires premium pay for overtime work. The FLSA also allows employers to adopt, upon incurring *any* overtime liability, a wide variety of flexible work arrangements, including variable starting and ending times (sometimes confusingly called "flex time"), split shifts and compressed work weeks. Overtime liabilities can be attributed to employers simply failing to take advantage of the flexibility allowed by the FLSA.

Comp time legislation would give flexibility to employers, not employees. An employee's use of comp time, unlike cash overtime pay, effectively would be left to the discretion of the employers. Workers would have little practical recourse against employers that reject requests for use of comp time. Comp time loses its value when workers lack control over its use. The only flexibility allowed by comp time legislation is the flexibility for employers not to pay cash for overtime work.

Congress must not allow employers to replace the 40-hour workweek with an 80-hour two-week work period. Under an 80-hour work period, employees who work 50 hours in one week and 30 hours in the following week would lose 10 hours of time-and-a-half premium pay. Doing away with the 40-hour week would reduce overtime pay for workers, make mandatory overtime cheaper for employers, encourage employers to demand longer hours and make work schedules even more unpredictable for workers.

Congress should prohibit excessive involuntary overtime. All workers, including those currently ineligible for overtime pay, should be able to refuse excessive overtime that overwhelms their personal schedules without fear of losing their jobs.

Congress should give workers the right to request workplace flexibility. Successful and popular European legislation establishes a process for workers to request flexible work arrangements and requires employers to have good reasons for denying workers flexibility. Such legislation would encourage employers to take advantage of the flexibility already allowed by the FLSA without forcing workers to forfeit their overtime pay.

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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 percent 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_wage/Public_School%20Peter%20Phillips.pdf.
Peter 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_wage/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.

[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.

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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 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. Lenders and insurance companies benefit because with skilled workers and protection from delays due to labor disputes, their investments are safer. Communities benefit because many PLAs provide recruiting, hiring and training for disadvantaged workers and local residents.

But construction owners and the taxpayers benefit the most because PLAs eliminate costly delays due to labor conflicts or skilled worker shortages. They ensure a steady flow of highly trained construction labor guaranteed by nationwide referral systems, they include no-strike agreements, and they establish mechanisms for avoiding and resolving disputes. 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, causing expensive delays and a steady threat of work disruptions. 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 a 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.

For almost 20 years, PLAs have been subject to partisan attacks by Republican presidents and protection by Democratic presidents. President George H.W. Bush issued an executive order in 1992 that barred PLAs on federally funded construction projects. President Clinton rescinded that with a 1993 executive order, but President George W. Bush reinstated the ban in 2001. In 2009, President Obama restored PLAs for large federal and federally assisted construction projects.

PLAs work. While protecting workers' wages and working conditions, PLAs ensure project owners have access to reliable local sources of highly trained, highly skilled construction craft workers.

Through no-strike agreements and alternative dispute resolution provisions, PLAs prevent delays resulting from labor disputes. 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. Corporate-backed anti-worker politicians 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 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. Although federal law permits the parties to a PLA to restrict subcontracting to union subcontractors, to comply with state competitive bidding laws, public PLAs are open to union and nonunion subcontractors.

Corporate-backed 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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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 TEA-21 and SAFETEA-LU. 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) 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 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) had generally 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 SAFETEA-LU 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 after 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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Endnotes

[i] Established by Section 13(c) of the Federal Transit Act, 49 U.S.C §5333(b).

[ii] General Accounting Office, *Transit Labor Arrangements: Most Transit Agencies Report Impacts Are Minimal* (GAO-02-78) (Nov. 19, 2001).

[iii] General Accounting Office, *Transit Labor Arrangements: Most Transit Agencies Report Impacts Are Minimal* (GAO-02-78) (Nov. 19, 2001).

[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].

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.

H.R. 122, introduced by Rep. Phil Gingrey (R-Ga.) would eliminate official time. Reasonable amounts of official time has been supported by government officials and both political parties for almost 50 years.

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 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.

In exchange for being saddled with the responsibility of providing services to those who pay as well as those who refuse to pay, 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.

Official time is limited already. 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 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. From 2004 through 2008, the use of official time governmentwide decreased from an average of 3.7 to 2.6 hours per bargaining unit employee. Between 2007 and 2008, official time decreased by 3.3 percent.

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 might 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 initiated by the agency or by the union. As examples, 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.

Currently, union representatives are participating on official time to work with the Department of Defense to develop a departmentwide performance management and recognition system and accelerate and improve hiring practices within the department. 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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Endnote

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

Federal Pay and Benefits

A 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, and a two-year federal pay freeze was enacted at the close of the 111th Congress. How did a two-year 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, *USA Today* has placed numerous articles on its front page that twist the facts surrounding federal pay to pretend that 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 percent 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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Endnote

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

Bargaining Rights and National Security

Congress has repealed much of the Bush administration's attempt to undermine collective bargaining rights for civilian employees of the Department of Defense (DoD). DoD has mismanaged the authority granted by Congress in 2004 to design and implement a contemporary human resources management system. The Bush administration's National Security Personnel System (NSPS) was an attempt to undermine unions and collective bargaining for DoD civilian employees, which Congress and DoD employees have roundly rejected.

The National Defense Authorization Act of 2004, (NDAA) gave DoD authority to establish a new human resources system for civilian employees. DoD issued final regulations on the NSPS on Nov. 1, 2005, and began implementing the NSPS in 2006. The NSPS replaced the grade and step pay system with a pay-for-performance pay system, which involved changes to DoD policies on tenure, hiring, reassignment, promotion, collective bargaining, performance measurement and recognition. As of February 2009, there were about 205,000 civilian DoD employees under the NSPS system.

DoD ignored worker input before implementing the NSPS. The 2004 National Defense Authorization Act required DoD to engage in meaningful discussions with unions regarding the development of the new personnel system. Congress directed DoD to create the new system jointly with employee representatives and mandated a "meet and confer" process before any changes to existing personnel and labor relations policies could be implemented. The United Department of Defense Workers Coalition, (UDWC), a group of 36 unions representing DoD civilian employees, was created to "meet and confer" with DoD management beginning in 2005. However, despite numerous "meet and confer" sessions and 58,000 comments from concerned DoD employees, DoD management ignored virtually all proposals supported by the UDWC and made few changes to its final NSPS regulations.

Congress made significant changes to the NSPS in 2008. The NDAA of 2008 limited DoD's ability to put all funding budgeted for annual employee pay increases into performance pay pools. The 2008 legislation also restored to NSPS employees the rights and protections of the governmentwide adverse actions and appeals process. And it brought NSPS employees back under the same reduction in force (RIF) process that covers all other federal agencies. In addition, the NDAA of 2008 restored 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."[i] Chapter 71 generally requires agency management to "meet and negotiate" in good faith with recognized unions over conditions of employment "for the purposes of arriving at a collective bargaining agreement," with certain exclusions.

DoD continued to try to avoid restoring collective bargaining rights. DoD attempted to exploit restrictions in the 2008 legislation's restoration of collective bargaining rights. For example, the 2008 NDAA allowed for the limitation of collective bargaining on certain "governmentwide" rules, and DoD tried to fit as many policy details as possible within this exception.

GAO faulted NSPS. The 2008 Defense Authorization Act directed GAO to review whether DoD effectively had incorporated specific accountability and internal safeguards and to assess employee attitudes toward NSPS. In its reports and testimony before Congress, GAO criticized DoD for failing to effectively manage the design and implementation of the NSPS. GAO observed that including employee involvement "must be meaningful, not just pro forma," and that employee involvement "can improve policies and procedures, increase acceptance within the workforce, and minimize potential adverse morale implications." The percentage of employees who agreed their performance appraisal was a fair reflection of their performance declined from 67 percent in May 2006 to 52 percent in May 2007. [ii]

The Obama administration undertook a review of NSPS in March 2009, and the 2010 National Defense Authorization Act signed by President Obama in October 2009 repealed NSPS. A joint labor management planning workgroup met in December 2010 to identify requirements for the start-up of the design teams charged with the development of the new personnel authorities outlined in the NDAA of 2010. This is a major positive step in the relationship between management and its workers.

The process of transitioning back to the former pay system—to be done no later than 2012—got under way in earnest with the New Beginnings conference in September 2010. The conference brought together approximately 200 people, equally represented by labor and management, to discuss various aspects of the new authorities—the enterprise performance appraisal system, streamlined hiring flexibilities and the discretionary civilian workforce incentive fund—and provide ideas and suggestions for design teams to follow. Ideas and suggestions from the conference were compiled into a report to guide the design teams' work.

A second planning workgroup meeting convened in January to continue laying the groundwork for the design team launch. While there still is much work to be done, preliminary plans call for three design teams composed of diverse groups equally represented by labor and management. The review and analysis process is expected to take several months and will culminate with a series of options and recommendations on how the authorities may be implemented. Design team options and recommendations will be presented to

the department's key decision makers for their 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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Endnotes

[i] 5 U.S.C. §7102(2).

[ii] GAO-08-773, Sept. 10, 2008.

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, and their decisions have an immediate and lasting impact on the lives of working families. Because the Supreme Court reviews so few lower court decisions, judges at the district and appellate court level—particularly the D.C. Circuit Court of Appeals—play key roles in upholding labor and employment law protections for workers. Because the Bush administration stacked the federal courts with judges hostile to the interests of working families, balance now must be restored to the federal judiciary; judges must be appointed who will interpret labor, civil rights, wage and hour and other employment statutes as conferring rights on workers, and who will enforce those rights.

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 federal 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 30,000 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 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.

The Bush administration appointed ultraconservative judges hostile to the interests of working families. One of the most troubling legacies of the Bush administration has been the lasting impact of its ultraconservative judicial appointees. From day one, the Bush administration embarked on an aggressive campaign to stack the courts with ultraconservative ideologues, many of whom "share a disdain for worker rights," according to the *Los Angeles Times*.[ii]

The federal courts now are stacked with Bush appointees. The Bush administration succeeded in winning the

confirmation of dozens of right-wing appointees to lifetime positions on the federal bench, including two appointments to the U.S. Supreme Court, 61 appointments to the courts of appeal[iii] and 300 appointments to federal district courts. Republican-appointed judges now make up a majority on most of the 13 circuit courts of appeal, with the notable exceptions being the 2nd Circuit and the 9th Circuit. Because federal judges are appointed for life, the impact of these appointments will last far beyond the Bush administration itself.

Of the nine members of the D.C. Circuit, only three are appointees of Democratic presidents. The crucially important D.C. Circuit is dominated by Republican appointees. The Bush administration filled three seats on this circuit, including the lifetime appointment of ultraconservative Janice Rogers Brown. Republican senators blocked two highly qualified Clinton nominees to this court.

Republican-appointee domination of federal courts of appeal has 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[iv] found that courts dominated by Republican appointees were more likely to reverse the NLRB when the NLRB issued decisions upholding workers' rights. 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 Republican-appointee majorities denied enforcement, overturning the NLRB's decision in whole or in part, in 100 cases. 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. 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 records of Bush administration judicial appointees, and studies of the voting patterns of Republican appointees generally.[v]

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.

Balance must be restored to the federal courts. Vacancy rates are high on the federal bench, and these seats need to be filled. But it is important that judges be appointed 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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Endnotes

[i] www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2010/tables/B05Mar10.pdf; www.supremecourt.gov/about/justicecaseload.aspx.

[ii] "Bush's Full Court Press," *Los Angeles Times*, Jan. 13, 2003.

[iii] Charles Savage, "Appeals Courts Pushed to Right by Bush Choices," *The New York Times* (Oct. 29, 2008).

[iv] www.aflcio.org/issues/civilrights/upload/impact_final.pdf.

[v] Charles Savage, "Appeals Courts Pushed to Right by Bush Choices," *The New York Times* (Oct. 29, 2008) (summarizing study by Cass Sunstein on judicial voting patterns).

Education, Civil and Human Rights, Fair and Open Elections

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Contents

Strengthening Public Education and Improving College Access

Congress must ensure every child has access to a well-rounded quality education and that 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 integrate these programs into the public school system. High-quality early childhood education has many immediate and long-term benefits for children and their families, benefits 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 to and affordable for 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 for 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. The Elementary and Secondary Education Act (ESEA) should maintain adequate and targeted funding for children in greatest need. This is particularly important now given the double whammy 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 incent 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 nonbargaining 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, action has been taken to reverse this trend through concerted efforts 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 in the most need, 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 goes to students enrolling in the for-profit sector of higher education (approximately 25 percent). Unfortunately, evidence suggests students in that sector often do not persist or complete 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 not only strengthening federal anti-discrimination laws, but also strengthening equal pay laws, providing voting representation for residents of Washington, D.C., prohibiting employment discrimination based on sexual orientation and gender identity, 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 (H.R. 12) would require employers to demonstrate that wage gaps between men and women doing the same work is 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. (POWER). 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 by once again allowing mixed motive cases.

Congress must provide voting representation for D.C. residents. Although U.S. citizens who live in Washington, D.C., must pay federal income taxes, register for selective service and serve on federal juries, they have no voting

representation in the Senate or House of Representatives. Until this grave injustice is addressed, Congress should support the District of Columbia Legislative Autonomy and Budget Autonomy Acts, which would give D.C. residents more control over local decisions.

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 must end employment 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 strong support in Congress and from the public.

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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AFL-CIO LEGISLATIVE

ISSUE BRIEF 2011

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 record-keeping 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. Contributions by individuals 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 committees that rely upon 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. Congressional campaigns have not been as successful as presidential campaigns in fundraising on the Internet or by other non-resource-intensive fundraising methods, yet their costs have increased in real terms. 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

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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 debt. 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; address the problems in pending free trade agreements (FTAs) negotiated by the Bush administration with Korea, Panama and Colombia; reframe U.S. trade and international policies by setting the terms and conditions for any future trade negotiations; and reauthorize an expanded, improved and well-funded Trade Adjustment Assistance (TAA) program.

Over the past 15 years, the U.S. global trade deficit has skyrocketed from $70 billion in 1993 to an unacceptable $497.8 billion. Over that period, the U.S. shed more than 5 million manufacturing jobs—many of them lost to offshoring or import competition.[i] 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 tradable services—from call centers to legal research to airline maintenance. Meanwhile, over the past few decades, average U.S. wages have stagnated.[ii]

Congress and the administration must address the U.S. current account deficit. The key levers for addressing the trade deficit include continued enforcement of our trade laws; an action-oriented dialogue with China over our enormously unbalanced and unfair trade relationship; reform of U.S. tax policy to eliminate incentives for offshore production; strategic use of procurement policy to support the creation of good jobs domestically; and ensuring we transition to using more renewable energy and clean coal and reducing carbon emission in a way that does not handicap U.S. manufacturers and workers or create new incentives to shift production offshore. (*See* AFL-CIO Legislative Handbook, "Energy, Environment and Climate Change" Issue Brief.)

Congress and the new administration must strengthen and enforce U.S. trade laws. The Bush administration

repeatedly failed to use the tools at its disposal under U.S. trade laws, instead allowing illegally dumped or subsidized imports, as well as import surges, to batter U.S. manufacturing. Even when U.S. manufacturers prevailed in litigation, U.S. Customs and Border Protection failed to collect duties—a loss estimated to exceed $600 million since 2001.[iii] Effective enforcement of U.S. trade laws against unfair trade practices is crucial, and trade laws in a range of areas must be improved.

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[iv] to $252 billion in 2010 (that does not include December 2010, so will be revised upward),[v] setting a new, record bilateral trade deficit.[vi] Economists across the political spectrum agree China is actively manipulating its currency.[vii] Some economists suggest the manipulated currency provides an effective export subsidy of at least 30 percent.[viii]

Currency misalignment must be addressed immediately. One solution to currency misalignment is a negotiated realignment of exchange rates that begins to smoothly unwind the existing trade imbalance. Negotiations should be multilateral, since the problem does not affect the United States and China exclusively. However, after several years of opportunities, the administration has made little progress on this front.

Congress must address currency manipulation. Since the political will to initiate such negotiations does not exist, legislative options must be explored. The AFL-CIO supports The Currency Reform for Fair Trade Act of 2011 (H.R. 639 and S. 328), legislation that would empower the International Trade Commission (ITC) to impose countervailing duties in case of currency misalignment.

Congress must oppose the pending U.S.-Korea Free Trade Agreement (FTA). We applaud the efforts by the Obama administration to go back and renegotiate the FTA in order to address, in part, one of our concerns, namely the unbalanced bilateral auto trade between the United States and South Korea. The new terms will give U.S.-based auto and light truck assembly some additional breathing room. However, it is hard to see how the trade agreement does anything to meaningfully address the staggeringly high levels of unemployment and underemployment in the United States. Even official studies show the FTA will increase our overall trade deficit and lead to a further hollowing out of U.S. manufacturing. Further, FTA provisions on investment, services and labor, among others, continue to concern us. The failure to press Korea to adopt laws consistent with the ILO Declaration also is deeply troubling.

Congress must not consider any trade agreement with Colombia until egregious labor and human rights violations are substantially resolved. Colombia continues to be the most dangerous place in the world in which to be a trade unionist, with 46 trade unionists assassinated in 2010 alone. More than 2,850 unionists have been

murdered since 1986.[ix] Notwithstanding recent prosecutions, impunity for the people responsible for these crimes remains widespread.[x] Until the Colombian government adequately addresses this problem and adopts, maintains and enforces labor laws that comply with the International Labor Organization's core labor rights, no trade agreement with Colombia should be considered.

The pending FTA with Panama must be renegotiated. Panama remains a tax haven for U.S. and foreign corporations. Panama's labor laws must be improved, as workers continue to face several steep obstacles to the exercise of their fundamental rights.

With regard to all three pending trade agreements, Congress should urge the review and revision of other key chapters, including services, procurement and investment.

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 Sen. Sherrod Brown's (D-Ohio) and Rep. Mike Michaud's (D-Maine) Trade Reform Accountability Development and Employment (TRADE) Act, which calls for a thorough review of existing agreements and sets forth procedural and substantive benchmarks for future agreements as well as provides a useful road map for future trade negotiating authority. Should this legislation be reintroduced, the AFL-CIO will support it again.

Congress must take the lead in reforming our flawed trade policies, starting with the Trans-Pacific Partnership Trade Agreement. Our reformed trade and international policies must have at their core the creation and retention of good jobs at home and equitable, sustainable and democratic development abroad. They should strengthen and enforce workers' rights and environmental protections; defend the ability of governments to regulate in the public interest and provide high-quality public services; ensure high standards for food and product safety; set clear investment rules that do not encourage offshoring or threaten legitimate regulation; and protect innovation while ensuring access to affordable, lifesaving medicines.

The Trans-Pacific Partnership (TPP) is an opportunity for the Obama Administration to show it is serious about meaningful trade reform that will generate good jobs. Congress must play an active role now in shaping the direction of U.S. trade policy to ensure the TPP is an agreement we can all support.

Congress must extend the reformed TAA program. As part of the American Recovery and Reinvestment Act of 2009 (ARRA), Congress passed much-needed improvements to the Trade Adjustment Assistance (TAA) program.

These improvements included increased funding (from $575 million a year to

$220 million a year), coverage for service workers who lost their jobs to trade, and an improvement of the health care tax credit. In addition, it extended the scope of coverage to all U.S. workers who lost their jobs to trade, regardless of whether or not the United States had an FTA with that nation.

Unfortunately, this program expired on Feb. 12, 2011, and reverted back to the old TAA program. Congress must work quickly to extend this much-needed program.

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[i] Robert Scott, *The Importance of Manufacturing Key to Recovery in the States and the Nation*, EPI Briefing Paper, Feb. 28, 2008, p. 8.[ii] Robert Scott, *The Importance of Manufacturing Key to Recovery in the States and the Nation*, EPI Briefing Paper, Feb. 28, 2008, p. 8.

[iii] GAO, *Antidumping And Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, March 2008.

[iv] U.S. Department of Commerce, U.S. International Trade in Goods and Services Annual Revision for 2001, available online at www.census.gov/foreign-trade/Press-Release/2001pr/Final_Revisions_2001/exh13tl.pdf.

[v] U.S. Department of Commerce, U.S. International Trade in Goods and Services Annual Revision for 2007, available online at www.census.gov/foreign-trade/Press-Release/2007pr/final_revisions/exh13tl.pdf.

[vi] In contrast, the U.S. deficit with the European Union (EU) improved in 2007 and 2008, due in large part to the decline in value of the dollar relative to the euro. The dollar decline with the rest of the world also was roughly 30 percent in 2007.

[vii] See, e.g., Robert Scott, The China Trade Toll, EPI Briefing Paper, July 30, 2008, p. 2; C. Fred Bergsten, Peterson Institute for International Economics, Hearing on U.S. Economic Relations with China: Strategies and Options on Exchange Rates and Market Access, Subcommittee on Security and International Trade and Finance, Committee on Banking, Housing and Urban Affairs, U.S. Senate, May 23, 2007.

[viii] See, *China Trade Toll*, supra.

[ix] ENS, *Report on Violations to Life, Liberty and Integrity of Unionists in Colombia, Jan.–Dec.2008* (January 2009), pp. 2–3.

[x] Kenneth Roth, Executive Director, Human Rights Watch, Letter to Speaker Nancy Pelosi on Colombia Free-Trade Agreement, Nov. 20, 2008.

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 union 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 that 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 percent 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 who 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 who require cooperation from immigrants to enforce state and local laws—not to vigilantes or local law enforcement officials.

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 in 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 such industries 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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Endnote

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

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