AFL-CIO Legislative Guide

2009

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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 11 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.

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 45 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?

The most serious economic crisis since the Great Depression has exposed the failure of an obsolete economic growth strategy based on debt-fueled consumption. The collapse of the U.S. housing bubble last year triggered a global credit crisis, and both events are now dragging the U.S. and other economies into a dangerous global recession. These are only proximate causes, however, and three underlying fundamental imbalances in our economy are ultimately responsible for producing the current crisis: an imbalance between the U.S. economy 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. All three imbalances must be corrected to restore an internationally competitive, sustainable U.S. economy in which prosperity is broadly shared.

The proximate cause of this recession is the conjunction of a housing crisis and a credit crisis. The collapse of the U.S. housing bubble erased trillions of dollars of household net worth and undermined the solvency of under-capitalized financial firms. The difficulty in obtaining credit from troubled financial firms slowed economic growth and forced employers to shed jobs and cut wages. Meanwhile, consumers cut back sharply on spending as their wealth declined, further depressing economic activity.

There is a fundamental underlying imbalance between the U.S. and global economies. An unsustainable external account imbalance requires the United States to borrow almost 5 percent of national income to pay for things we consume but no longer produce. This external imbalance has been sustained by Asian trading partners investing in dollar-denominated assets—such as U.S. Treasury bonds and mortgage-backed securities. This investment, in turn, maintained the exchange value of the dollar—and the competitive advantage of our Asian trading partners. Over the past decade, the trade surpluses of our Asian trading partners fueled a "global savings glut," which helped inflate 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 (see "Trade Policy," page 8.5).

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, away from productivity-enhancing investments in the real economy.

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 past 30 years, which ruptured the relationship between productivity and wage growth and opened up a chasm of income inequality (see "The Employee Free Choice Act and Economic Recovery," Page 2.7). One of the ways U.S. workers compensated for inadequate income growth was by incurring high levels of personal debt. For decades, the United States has pursued an economic growth strategy based on low wages and debt-fueled consumer demand. Debt and asset bubbles temporarily

masked the failures of this strategy, 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 (along with financial innovation) 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—rather than counterbalanced—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 two recoveries, by contrast, ended with the collapse of asset bubbles—of 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 will certainly be 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 so far have failed to power an expansion. Counter-cyclical fiscal policy is imperative, but the fiscal stimulus packages enacted in 2008 and 2009 were too small to counteract the combined effects of the housing bubble collapse and the global credit crisis.

Any effective recovery plan must correct the fundamental underlying imbalances in our economy. This economic crisis is not an ordinary business-cycle downturn; it represents the failure of an obsolete economic model. We no longer have the option of perpetuating a failed economic growth strategy based on asset bubbles, low wages and debt-fueled consumption.

Correcting the imbalance between the U.S. domestic and global economies requires producing more of what we consume. U.S. competitiveness must be improved through public investment that creates a world-class workforce and a world-class transportation, information and communications infrastructure. A public investment-led recovery program would bolster private investment and provide a basis for economic growth that is more sustainable than one based on high levels of debt and asset bubbles. Asian trading partners must also reform their extreme export-oriented growth model to consume more of what they produce and revalue their currencies[2] (see "International Affairs and Economic 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[3] (see "Financial Market Re-Regulation," 2.5). As a country, we must devote fewer resources to financial speculation and more of our resources to productivity-enhancing investments in green jobs, infrastructure, education and health care.

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 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 (see "The Employee Free Choice Act and Economic Recovery," Page 2.7). Other necessary policy changes include an increase in the minimum wage and fiscal and monetary policies that promote full employment.

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[1]In a White House meeting on Sept. 18, 2008, after the bankruptcy of Lehman Brothers, President Bush asked his economic advisers, "How did we get here?" Jo Becker, Sheryl Gay Stolberg, Stephen Labaton, "White House Philosophy Stoked Mortgage Bonfire," *The New York Times,* Dec. 8, 2008.
[2]AFL-CIO Executive Council, "China Trade: Beggars and Neighbors," March 3, 2009.
[3]AFL-CIO Executive Council, "Financial Regulation," March 5, 2009.

Financial Market 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 now taken a terrible toll on working families. As part of a broader strategy of economic recovery, we must re-regulate financial markets through statutory changes, regulatory changes, institutional reconstruction and diplomacy.

The current 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 long 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."[1] In 2007, as 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.[2]

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 have become clear. Since the housing bubble burst, workers have paid to bail out Wall Street at the same time as working people have lost their jobs, homes and retirement savings. More than 5 million jobs have been lost since the recession began in December 2007, household net worth fell $11.2 trillion in 2008 and home prices have declined nearly 30 percent from 2006 peaks.[3]

The U.S. government should temporarily take control of failing banks.[4] While effective financial regulation will help prevent future crises, the only effective way to deal with the current crisis is for the U.S. government to take temporary control of systemically significant financial institutions on the brink of collapse and force them to clean up their balance sheets. The result should be that banks can quickly be turned over to bondholders in exchange for bondholder concessions, or be sold back into public markets.

We must bring to an end the era of rampant financial speculation by re-regulating financial markets. Re-regulation has three distinct purposes: (1) to address systemic risk by ensuring the safety and soundness of insured regulated institutions; (2) to promote transparency in financial markets; and (3) to guarantee fair dealing and prevent financial institutions from

exploiting consumers and working people. In short, there must be no gambling with public money, no lying and no stealing.

Congress must ensure financial stability by creating a systemic risk regulator. Such a regulator must be a fully public agency and must be able to draw upon the information and expertise of the entire regulatory system. Although the Federal Reserve Board of Governors must be involved in the process, it cannot undertake this responsibility on its own.

Congress must reduce regulatory arbitrage in bank regulation. At a minimum, the Office of Thrift Supervision (OTS) must be consolidated with other federal bank regulators.

Congress must provide for routine regulation of shadow capital markets. The financial crisis is directly linked to the degeneration of a comprehensive regime of financial regulation into a "Swiss cheese" regulatory system, where the holes—the shadow markets—have grown to dominate the regulated markets. To lessen the likelihood of financial boom and bust cycles, Congress should give the Securities and Exchange Commission (SEC) the jurisdiction and tools to regulate shadow market institutions and products, including hedge funds, private equity, derivatives, and any new investment vehicles that are developed. These markets must be subject to both transparency and capital requirements, and to fiduciary duties similar to those of currently regulated entities performing similar functions.

The administration and Congress must restore the SEC's historic mission of investor protection. The Bush administration's blueprint for financial regulatory reform was profoundly deregulatory with respect to the SEC,[5] seeking to dismantle the commission's enforcement-oriented regulation in favor of an orientation more captive to business interests.[6] Congress should work with the SEC to determine if changes are needed to personnel rules to enable the commission to attract and retain effective personnel. Conversely, Congress should work with the SEC to restrict the "revolving door" for senior commission staff by applying to them the current rule for senior bank examiners—no employment for 12 months after leaving the commission with any firm on whose matters the staffer worked.

Congress must ensure fair dealing by designating one federal agency to protect consumers of financial services. We have paid a terrible price for treating the protection of consumers of financial services, such as mortgages and credit cards, as an afterthought in bank regulation.

Congress must reform the incentives governing key market actors. Regulators must be given authority to oversee executive compensation and prevent incentive structures that encourage executives to take risks that their firms' capital structures cannot support. With regard to corporate governance, the weakness of corporate boards, particularly in their tolerating the weakening of internal risk management, appears to be a central theme in the financial scandal. Accordingly, Congress and the SEC must provide meaningful ways for *long-term* investors to nominate and elect psychologically independent directors to public company boards through access to the corporate proxy. With regard to executive pay, proxy access is an important first step, but it should be followed by further changes to both securities regulation and tax policy. In particular, pay should be equity-linked beyond retirement, and pay packages as a whole should reflect a rough equality of the exposure to downside risk as well as upside gain. Last, Congress must address the extent to which both individuals and institutions can get

away with defrauding the investing public.[7] In many circumstances, lawyers, accounts and investment banks can aid and abet companies that commit securities fraud but they enjoy immunity from other lawsuits. Congress should ensure that investors have the ability to hold service providers accountable in such instances.

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.

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[1] AFL-CIO Executive Council, "Corporate Accountability and The Crisis of Confidence in American Business," Aug. 6, 2002.
[2] AFL-CIO Executive Council Statement, "*Investor Protection and Corporate Accountability,"* March 6, 2007.
[3] Department of Labor, Bureau of Labor Statistics, Economic News Release, Employment Situation Summary, March 2009, available at http://www.bls.gov/news.release/empsit.nr0.htm; Federal Reserve Statistical Release, Flow of Funds Accounts of the United States, March 12, 2009, available at http://www.federalreserve.gov/releases/z1/Current/z1.pdf; According to data through January 2009 from the S&P/Case-Shiller Home Price Indices, the 10-City Composite is down 30.2 percent since its 2006 peak and the 20-City Composite is down 29.1 percent during the same period. S&P/Case-Shiller Home Price Indices, Index News, "The New Year Didn't Change the Downward Spiral of Residential Real Estate Prices According to the S&P/Case-Shiller Home Prices Indices," March 31, 2009, available at http://www2.standardandpoors.com/spf/pdf/index/CSHomePrice_Release_033114.pdf.
[4] Steven Greenhouse, "AFL-CIO to Support Nationalizing Banks," The New York Times, March 3, 2009.
[5] Department of the Treasury, Blueprint for a Modernized Financial Regulatory Structure, at 11-13, 106-126, March.2008, available at http://www.treas.gov/press/.releases/reports/blueprint.pdf.
[6] Committee on Capital Markets Regulation, Interim Report, Novc. 30, 2006, available at http://www.capmktsreg.org/pdfs/11.30Committee_Interim_ReportREV2pdf; Committee on Capital Markets Regulation, the Competitive Position of the U.S. Public Equity Market, Dec. 4, 2007, available at http://wwww.capmktsreg.org/pdfs/The_Competitive_Positionof_the_US_Public_Equity_Market.pdf.
[7] See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994); *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.,* 119 S. Ct. 761 (2008).

The Employee Free Choice Act and Economic Recovery

To return to the kind of broad-based prosperity the United States enjoyed in the postwar period, we must reverse the growing imbalance in bargaining power between workers and their employers. This imbalance is largely responsible for the stagnation of wages over the past 30 years, which ruptured the relationship between productivity and wage growth and opened up a chasm of income inequality. For decades, the United States has pursued an economic growth strategy based on low wages, debt-fueled consumer demand and asset bubbles. We no longer have the option of perpetuating this obsolete strategy, whose failures have been exposed by the current crisis. The Employee Free Choice Act would help make our economy work for everyone again by reversing the growing imbalance in bargaining power between workers and employers.

Unions helped build the middle class through broadly shared prosperity. After union membership tripled between 1935 and 1945, income inequality shrank dramatically during the "Great Compression" of the mid-20th century, driven by the power of unions to raise workers' wages and hold CEOs in check.[1] From 1947 to 1973, both productivity and real median family income roughly doubled.[2] Unions helped build the middle class by allowing workers to bargain for better wages, benefits, and working conditions, and by transforming large groups of firms into good employers that provided good jobs for all employees, union and nonunion.[3]

Union density has been declining for decades. While 27 percent of U.S. workers were covered by union contracts in the late 1970s, only 7.7 percent of private-sector workers (and 12.5 percent of all workers) are covered today.[4]

Income inequality is on the rise again. Income inequality began to grow again in the 1970s and is now at its highest level since before the Great Depression.[5]

Wage growth has been decoupled from productivity gains. From 1979 to 2007, productivity grew by 70 percent, while real median hourly compensation grew by only 7 percent.[6]

The decline of unions has contributed to wage stagnation and inequality. Studies show that the decline in union membership was responsible for at least 20 percent of the rise in inequality.[7]

Unbalanced income growth made the economic crisis worse. One way workers responded to wage stagnation was to incur more personal debt. Meanwhile, the shift of income to top earners contributed to excessive speculation and asset bubbles.[8]

This is not an ordinary business cycle downturn. For decades, the United States pursued an economic growth strategy based on low wages, debt-fueled consumption, and asset bubbles. The failures of that strategy have been exposed by the current crisis.

The next recovery must make the U.S. economy work for everyone again. Building another bubble economy based on low wages and debt-fueled consumption is not an option. We have no choice but to pursue a strategy of broadly shared prosperity, which

was enormously successful in the postwar period.

We must reverse the imbalance in bargaining power between workers and their employers. According to a statement signed by 40 prominent economists, "The Employee Free Choice Act is not a panacea, but it would restore some balance to our labor markets. As economists we believe this is a critically important step in rebuilding our economy."[9] Increased union representation would shift income to the broad middle class and foster broadly shared prosperity.[10]

Weak consumer demand makes unions all the more necessary. Given the unavailability of the kinds of credit that fueled economic growth in recent years, consumer demand will depend increasingly on wage income.[11]

Union representation can boost productivity. Decades of research shows that unions can have substantial positive effects on business performance by increasing productivity.[12] Countries with very high levels (80 percent to 90 percent) of union density have very high productivity.[13]

Union representation can benefit smaller businesses. When unions increase wages, wage income circulates locally to stimulate the economy. Unions can lower turnover and improve productivity;[14] stabilize industries with many small employers by standardizing compensation; make a pool of well-trained labor available to the industry; provide high-quality training; establish multi-employer health and pension funds that allow firms to offer more competitive benefit packages; and partner with management to improve competitiveness.[15] The Employee Free Choice Act would apply only to businesses already covered by the National Labor Relations Act (see "The National Labor Relations Act," page 6.1).

Unionization does not cause firms to go out of business. Economic research shows that union recognition has zero causal effect on firm failure.[16]

There is no correlation between union density and unemployment levels. Numerous countries combine high union density (or collective bargaining coverage) and low unemployment. An exhaustive review of economic research by the Organization for Economic Cooperation and Development (OECD) concluded that the impact of union density on unemployment is "statistically insignificant."[17]

Unions do not harm international competitiveness. There is no clear connection between union coverage rates and a country's trade balance—a common proxy for competitiveness. If anything, countries with high union coverage rates are more likely to have trade surpluses.[18]

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[1]Paul Krugman, "What Obama Must Do," Rolling Stone, Jan. 22, 2009.
[2]Frank Levy and Peter Temin, "Inequality and Institutions in 20th Century America," MIT Department of Economics Working Paper No. 07-17, 2007.
[3]John DiNardo, "Still Open for Business: Unionization Has No Causal Effect on Firm Closures," Economic Policy Institute, March 20, 2009, at 8.
[4]Bureau of Labor Statistics, "Union Members in 2008," Jan 28, 2009.
[5]Economic Policy Institute, "Agenda for Shared Prosperity: Overview," 2007.
[6]Jared Bernstein, "Testimony Before the Ways and Means Committee," Sept. 11, 2008.
[7]Even these estimates ignore the spillover benefits of collective bargaining and cultural norms imposed by unions that made greed and inflated CEO compensation socially unacceptable. Larry Mishel, "The Right to Organize, Freedom, and the Middle Class Squeeze," Testimony Before the Senate HELP Committee, March 27, 2007.
[8]Dr. Paula Voos, Testimony Before the Senate HELP Committee, March 10, 2009.
[9]"The Employee Free Choice Act is Needed to Restore Balance in the Labor Market," Feb. 24, 2009.
[10]Dr. Paula Voos, Testimony Before the Senate HELP Committee, March 10, 2009.
[11]"There is a strong argument that the slack labor market of a recession actually makes unions all the more important. Without a united front, workers will have even less bargaining power in the recession than they had during the growth years of this decade, when they largely failed to get raises even as productivity and profits soared. If pay continues to lag, it will only prolong the downturn by inhibiting spending." "The Labor Agenda," *The New York Times,* Dec. 29, 2008.
[12]Dr. Paula Voos, Testimony Before the Senate HELP Committee, March 10, 2009; Christos Doucaliogos and Patrice Laroche, "What Do Unions Do to Productivity?" 42 Industrial Relations No. 4, October 2003; Harley Shaiken, "Unions, the Economy, and Employee Free Choice," Agenda for Shared Prosperity, Feb. 22, 2007.
[13]Ross Eisenbrey, "Strong Unions, Strong Productivity," Economic Policy Institute, June 20, 2007.
[14]Sen. John Kerry, "Small Business and Free Choice," *The Herald News,* Feb. 7, 2009.
[15]Dr. Paula Voos, Testimony Before the Senate HELP Committee, March 10, 2009.
[16] John DiNardo, "Still Open for Business: Unionization Has No Causal Effect on Firm Closures," Economic Policy Institute, March 20, 2009; Richard Freeman and Morris Kleiner, "Do Unions Make Enterprises Insolvent?" July 1994.
[17]OECD, "OECD Employment Outlook," 2006. The recent claim that every 3 percent increase in union membership would increase unemployment by 1 percent is obviously incorrect, because it would suggest a negative U.S. unemployment rate in 2009, given declining union membership over recent decades. See Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Alliance to Save Main Street Jobs, March 3, 2009. Economist Lawrence Mishel calls the claim "crackpot economics."
[18]Josh Bivens, "Unions Do Not Undermine International Competitiveness," Economic Policy Institute, Feb. 25, 2009; Josh Bivens, "Squandering the Blue Collar Advantage: Why Almost Everything Except Unions and the Blue Collar Workforce Are Hurting U.S. Manufacturing," Feb. 12, 2009.

U.S. Manufacturing

While the most recent hemorrhaging of jobs in the manufacturing sector is the result of the global economic crisis, the decade-long 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; health care reform; and labor law reform.

American manufacturing jobs are being lost at an alarming rate. Since 2000, America has lost 4.5 million jobs—and more than 40,000 manufacturing establishments have closed.[1] At the end of 2008, manufacturing employment in the United States was 12.98 million, the lowest figure since 1942.[2] 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.[3] Economic activity in the manufacturing sector is at its lowest level since June 1980,[4] and the new orders index is at it lowest recorded reading.[5]

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,[6] providing an important boost to local economies.

A strong U.S. manufacturing base is essential for maintaining 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 loss of manufacturing technology and technical capacity undermines innovation as an engine for growth. Massive job losses in manufacturing mean that the sector's technical capacity is being offshored. The loss of research, design, engineering and development capacity, in addition to skilled production workers, means that future innovations 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.[7] The U.S. trade deficit increased from $95 billion in 1995 to a staggering $756 billion in 2006, with China accounting for an ever-increasing portion of that growth.[8] By 2007, the trade deficit with China, concentrated in manufacturing, grew to $256 billion.[9] In 2008, it accounted for a shocking 60 percent of our manufactured goods trade deficit.[10] 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. 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 between 2001 and 2007 have lost an average $8,146 per worker per year.[11] 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 don't provide health care for employees, responsible unionized manufacturers who do provide health care coverage are at an unfair competitive disadvantage. Health care adds $1,400 to the cost of every General Motors vehicle made in the United States. The steel and auto industries in particular have enormous retiree health care legacy costs that undercut their competitiveness and create pressures for employers to eliminate retiree benefits.

Congress should reform U.S. trade policies. Changes to trade policy should include attention to the U.S. trade deficit, protection of U.S. trade laws and the inclusion of enforceable workers' rights and environmental standards in trade agreements (See "Trade Policy," page 8.5).

Congress should reform U.S. tax laws. U.S. tax laws should be revised to eliminate incentives for corporations to move production overseas (See "Budget and Tax Policy," page 2.27).

Congress should target currency manipulation. Congress should pass legislation targeting illegal currency manipulation by China and other countries, which puts U.S.-based producers at a competitive disadvantage (See "Trade Policy," page 8.5).

Congress should develop a strategy for investment in U.S. manufacturing. The U.S. 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). These investments should be tied to domestic investment requirements for production. Congress should strengthen the various "Buy American" laws to ensure that public investments are actually made in the United States (See "Green Jobs," page 2.17).

Congress should pass health care reform. Health care reform should be enacted through a real Medicare prescription drug benefit, increased subsidies for employer-provided coverage, expansion of public programs or some combination thereof. Bringing new public money into the health care system is essential to easing cost and competitive pressures and preserving employer-sponsored health care (See "Health Care Reform," page 4.1).

Congress should pass labor law reform. Congress must pass the Employee Free Choice Act, which would help that ensure workers in the manufacturing sector have the freedom to form unions and bargain collectively—a right that has eroded over the past few decades. Without significant labor law reform, the quality of manufacturing jobs and the opportunities for workers without college degrees to increase their standard of living will be severely limited (See "The Employee Free Choice Act," page 3.1).

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SOURCES: U.S. Department of Commerce, Economics and Statistics Administration; U.S. Census Bureau and the U.S. Bureau of Economic Analysis; U.S. Department of Labor, Bureau of Labor Statistics, 2008; "The China Trade Toll," July 2008, Robert Scott, Economic Policy Institute; "Engines of Growth: Manufacturing Industries in the U.S. Economy", July 1995; Larry Mishel, Jared Bernstein and Heather Boushey, The State of Working America 2002–2003, ILR Press, 2003; Josh L. Bivens, "Trade Deficits and Manufacturing Job Loss: Correlation and Causality," EPI Briefing Paper No. 171, 2006; Larry Mishel, Jared Bernstein and Sylvia Allegretto, The State of Working America 2006–2007; ILR Press, 2006; Jared Bernstein and Josh L. Bivens, "Manufacturing on the Ropes," EPI Economic Snapshot, Sept. 20, 2006; Bob Baugh and Joel Yudken, "Is Deindustrialization Inevitable?" New Labor Forum, Summer 2006; Richard L. Trumka, "China's Impact on the U.S. Auto and Auto Parts Industries," July 2006 Statement, U.S.-China Economic and Security Review Commission.

[1]U.S. Department of Commerce, Economics and Statistics Administration; U.S. Census Bureau and the U.S. Bureau of Economic Analysis; U.S. Department of Labor, Bureau of Labor Statistics.
[2]Bureau of Labor Statistics.
[3]Bureau of Labor Statistics.
[4]Institute for Supply Management, January 2009 survey.
[5]op sit.
[6]"Trade Deficits and Manufacturing Job Loss: Correlation and Causality," EPI Briefing Paper No. 171, 2006.
[7]"The China Trade Toll," July 2008, Robert Scott, Economic Policy Institute.
[8]U.S. Census Bureau and the U.S. Bureau of Economic Analysis.
[9]op sit.
[10]op sit.
[11]"The China Trade Toll," July 2008, Robert Scott, Economic Policy Institute.

Green Jobs

Congress must ensure that green jobs created by new public investments are good jobs located in the United States. Massive new public investments in green 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 that new green jobs are good jobs located in the United States, Congress must establish selection criteria for contractors and recipients of federal funding; establish minimum pay, benefit and training standards for jobs created by federal investments; and strengthen Buy American requirements.

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,[1] 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.[2]

Green technologies have tremendous potential to create jobs. Clean-tech startups alone could generate an estimated 400,000 to 500,000 jobs in coming years.[3] Sector studies such as the *Manufacturing Climate Solutions* report by AFL-CIO unions and the Environmental Defense Fund[4] 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,[5] and modernizing the electric grid and converting to advanced auto technology could create jobs in manufacturing and construction.[6]

New public investment could create millions of green 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.[7] The Apollo Alliance estimates that 5 million jobs can be created with an investment of $500 billion.[8] Green Jobs for America estimates that 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.[9] The Gridsmart 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.[10] International reports show that investments in improved energy efficiency in buildings could generate an additional 2 million to 3.5 million green jobs in the United States and Europe.[11]

Not all green jobs are good jobs. A recent report by Good Jobs First found that low pay is not uncommon in environmentally friendly sectors of the economy.[12] 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.[13]

Congress must ensure that green jobs are good jobs located in the United States. Authorizing legislation must ensure that 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 that green jobs are good jobs, Congress should establish minimum job standards. Congress should establish contracting and procurement criteria to ensure that 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 that 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 that green 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 existing federal laws such 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 that green 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 that green jobs are located in the United States, Congress should 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 common-sense standards for product substitutability, prohibiting segmentation of projects in order to avoid coverage and mandating waiver transparency. Congress should require an employment impact analysis for grants of public interest waivers and use the analysis as a major factor in determining the merits of requests. Congress should also raise the cost waiver threshold from 6 percent of total project cost to 25 percent.

To ensure that green jobs are located in the United States, Congress should establish investment criteria. The Lieberman-Warner Climate Security Act of 2008 set criteria for the award of financial incentives to targeted manufacturers, including: (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 that green jobs are good jobs, Congress must provide oversight and accountability. Congress must establish an oversight process with accountability measures for non-compliance 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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[7]Obama for President, "New Energy Agenda for America," campaign white paper/speeches, Fall 2008.
[8]Apollo Alliance, "The New Apollo Program: Clean Energy, Good Jobs," Fall 2008.
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[11]UNEP, ILO, IOE, ITUC, "Green Jobs: Towards Decent Work in a Sustainable, Low-Carbon World, Suitable Work, Fall 2008.
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[13]Ibid.

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 that the jobs created by these new investments are good jobs located in the United States and if it avoids handicapping U.S. manufacturers and workers or creating new incentives to shift production offshore.

Scientific evidence has confirmed that human use of fossil fuels is indisputably contributing to global warming, resulting in changes in climate patterns, rising sea levels and threats to coastal areas.[1] The United States is one of the most energy-intensive nations in the world and for many years has been the world's leading emitter of greenhouse gases, although more recent estimates show that China is now the number one emitter.[2]

A new U.S. energy strategy should 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, 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.[3] 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.

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 Barack 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[4] (see "Green Jobs," page 2.15).

The role of the auto industry is critical. The auto industry is the single most important industry in the manufacturing sector and the corner-stone 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 U.S. jobs while raising federal and state tax revenues. Currently, many advanced-technology vehicles, and virtually all key components, are built abroad.

Energy strategy must ensure that new investments produce good jobs. Authorizing legislation must ensure that new investments

are grounded in the domestic economy, are supported by effective trade policies and do not encourage the offshoring of manufacturing jobs. It must also 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 to an economy-wide cap-and-trade program. All sectors of the economy should be required to participate in any 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.

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 auto technology all can contribute to reducing dependence on foreign oil.

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.

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; 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 that: 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 job offshoring; 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; 7) adequate assistance is available for low- and moderate-income families impacted by energy prices; and 8) state climate change measures integrate with a federal emissions cap-and-trade program to achieve environmental goals and avoid economic dislocation.

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[3]The Apollo Alliance, "Clean Energy, Good Jobs: An Economic Strategy for American Prosperity," 2008.
[4]Ibid.

Federal Investment in Transportation 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 help the flow of commerce that in turn will help create economic development opportunities.

Infrastructure investments 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 $1.25 billion invested in transportation projects, as many as 35,000 jobs are created.[1] 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.[2] Of the 599,766 bridges in the National Bridge Inventory, 25.4 percent of them—more than one in four—are structurally deficient or functionally obsolete.[3] While travel over our roadways has increased dramatically, the United States has underinvested in necessary road and bridge infrastructure.

Federal investments in transit funding are woefully inadequate to meet current needs. 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, with a target of more than $30 billion a year by fiscal year 2015. To address a national outbreak of service cuts, layoffs and fare increases, transit systems should also be able to use part of their federal transit funds for operating purposes, such as fuel and maintenance costs. Such flexibility will make up for cuts in state and local budgets.

To meet the needs of the entire surface transportation system, Congress and the administration must pass a robust highway reauthorization bill. Policy-makers must use this legislation to improve and invest in our surface transportation network, enhance safety, promote intermodal policies and protect the interests of employees.

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. [4]

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, include the FedEx collective bargaining provision, 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 essential commodities such as coal, food products, raw material and other daily necessities. Almost 2 billion tons of freight were transported by rail in 2006.[5] Moreover, demand for freight transport is expected to significantly increase in the coming years. The Department of Transportation projected that total freight transportation demand would rise by 92 percent from 2002 to 2035, including an 88 percent increase for railroads.[6] To meet this demand, freight rail will need $5.3 billion per year for the next 28 years to operate the vast majority of primary rail corridors at less than capacity. Funding for $1.4 billion of the yearly amount will need to come from other sources.[7] This investment will benefit workers by creating 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. We support President Obama's historic commitment to high-speed rail as a way to improve our transportation network and provide another transportation option. High-speed rail should be provided by Amtrak, which is the only carrier with the experience and the ability to provide high-quality national passenger service. In addition, Amtrak must receive the funding it needs to operate its existing service. Specifically, the amounts authorized in the 2008 reauthorization law must be followed.

Maritime infrastructure is in need of a renewed commitment for 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 our 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 modalities—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 that private capital and a willingness to invest are not always foregone conclusions. Our transportation system needs a steady and reliable source of funds that only the federal government can provide.

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

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[1]Employment Impacts of Highway Infrastructure Investment, U.S. Department of Transportation, Federal Highway Administration, Dec. 9, 2008.
[2]American Society of Civil Engineers, "Report Card for America's Infrastructure," www.infrastructurereportcard.org, 2009.
[3]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.
[4]FAA Aerospace Forecast Fiscal Years 2008–2025.
[5]Association of American Railroads, "Railroad Service in the United States," June 2008, at http:// www.aar.org.
[6]Federal Highway Administration, "Freight Facts and Figures 2006, Table 2.1," n.7.
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Budget and Tax Policy

Federal budget and tax policy should ensure tax fairness for working families and renewed public investment that grows the economy and helps working families get ahead. After the Bush administration's disastrous budget and tax policies helped drive our economy into a ditch, President Obama is now laying the groundwork for long-term economic growth with budget and tax proposals that call for renewed public investments in health care, education, infrastructure, training and housing, along with tax cuts for working families and a crackdown on tax breaks for companies that ship American jobs overseas. Congress can help turn our economy around by starting to turn our budget, tax and other economic policies around.

The Obama administration previewed its FY 2010 budget proposal on Feb. 28, 2009, and released its official budget submission on May 7. On April 29, the House and Senate passed the FY 2010 budget resolution, which defines the parameters for FY 2010 appropriations bills. The budget resolution also includes reconciliation instructions, which could prevent a Senate filibuster, for health care and education legislation.

President Bush's budget and tax policies were an unmitigated disaster. President Obama inherited the worst economic crisis our country has faced since the Great Depression, an unemployment rate of 8.5 percent in March 2009 and a projected budget deficit of $1.7 trillion for 2009.

Renewed public investment is necessary to help working families get ahead and lay the groundwork for long-term economic growth. Since 2005, federal programs such as worker training, Head Start, public housing and mental health services have suffered severe cuts.[2] The FY 2010 budget resolution includes about $530 billion for non-defense domestic discretionary funding, which is still less than the president's request.[3] In fact, the FY 2010 budget resolution provides only modest increases over previous year funding levels for many non-defense domestic programs that serve millions of working families, and Congress has more work to do in future budget resolutions to fully fund the programs serving working families.

The FY 2010 budget resolution provides a strong foundation for health care reform. The budget resolution creates a reserve fund for health care reform legislation, which promises to make health care more affordable for middle-class families and businesses. The budget resolution does not make any specific assumptions about the substance of health care legislation, but merely facilitates its consideration. To bring unsustainable long-term federal budget deficits under control, the rate of growth of health care costs must be reduced. Health care reform is urgently needed not only to address our long-term fiscal problems, but also to help working families make ends meet and make U.S. businesses more competitive. To keep health care reform deficit-neutral, Congress should explore limiting itemized tax deductions for families making more than $250,000 a year.

Congress should make taxes fairer for working families. Some of President Bush's 2001 and 2003 tax cuts—which overwhelmingly benefited the top 1 percent of households with annual incomes of more than $450,000 (in 2008)[4] by reducing the top four marginal income tax rates and the tax rate on capital

gains and dividends—must be allowed to expire. Given the size of this year's deficit, we cannot afford to shower still more tax breaks on the wealthiest Americans. Congress should also reject attempts to create new tax breaks benefiting the wealthiest through elimination of the estate tax.[5]

Congress should close loopholes that encourage companies to ship jobs overseas. Instead, Congress should consider restricting the ability of corporations to shelter income overseas, a measure that could yield $100 billion annually.[6] The repeal of tax deferrals on overseas profits, which many consider to be at the heart of offshore tax avoidance, would prevent schemes that allow companies to artificially shift their U.S. profits offshore. It would also have the added benefit of eliminating an incentive for companies to move production to low-tax foreign countries, and therefore encourage retention of more jobs here in the United States.

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[2]Coalition on Human Needs, "Domestic Spending Must Be Adequate to Serve Growing Needs," March 11, 2009.
[3]House and Senate 2010 Budget Conference Report.
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Corporate Bankruptcy Reform

As corporate bankruptcy restructuring has become a strategic business tool for management to address financial pressures, America's workers face a growing need for comprehensive bankruptcy reform to protect their interests. Businesses increasingly have turned to restructuring as a means of eliminating good jobs and drastically reducing their wage, health care and pension benefit obligations under existing collective bargaining agreements. Congress must reform the bankruptcy code to protect employees from disproportionate economic sacrifices and eliminate management's ability to routinely insulate itself from economic loss through inventive executive compensation schemes.

In 1978, Congress passed legislation to comprehensively revise corporate bankruptcy laws. In recent years, business bankruptcies have increased significantly. In 2008, business bankruptcy filings increased 49 percent compared with 2007,[1] not including the last quarter of 2008 when numerous retailers, financial services companies, homebuilders and other businesses were forced into bankruptcy. The outlook for 2009 is equally grim.

The bankruptcy code has been tilted toward the interests of management. Although the 1978 revisions to the bankruptcy code designed the business reorganization system to prevent the liquidation of viable businesses and preserve jobs, the code now facilitates business reorganization at almost any cost. Provisions of the code that originally were intended to protect workers' interests now enable employers to renege with remarkable ease on their commitments to workers.

Bankruptcy has become a strategic business tool for management to address financial pressures. Although Congress originally conceived bankruptcy reorganization as a means of preserving jobs, businesses have turned to restructuring as a means to eliminate good jobs and drastically reduce their labor and benefit obligations. Labor costs, pensions and health care obligations have become prime targets in bankruptcy proceedings, even when the root causes of financial distress are industry conditions and failed business models.

Bankruptcy places the financial security of millions of employees and their families at risk. Increasingly, workers are facing payment delays, costly litigation and reduced recoveries as companies, creditors and courts find more ways to avoid paying wages, benefits and severance pay to workers who lose their jobs.

Workers bear a disproportionate share of the financial costs of bankruptcy. Despite Congress's efforts to curtail excessive executive compensation, executives are nearly always insulated from the effects of financial restructuring, as executive compensation enhancements are treated as necessary elements of a reorganized competitive business.

Bankruptcy reform enacted in 2005 was inadequate. 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 between employees and executives. The few BAPCA reforms that aid workers' recoveries and curb executive pay were insufficient to remedy the

many deficiencies of the bankruptcy code that have prevented meaningful recoveries for workers and dismantled protections for labor agreements.

Congress must reform the bankruptcy code to protect employees from disproportionate economic sacrifice. Congress must restore balance to the restrictions that once were placed on employers seeking concessions from employees and eliminate the ability of management to routinely insulate itself from economic losses through inventive executive compensation schemes.

Workers should have their claims for unpaid wages of up to $20,000 go to the front of the line in bankruptcy proceedings, as well as their claims for employer benefit contributions. Current law provides for a wage priority of $10,950 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, as well as employer contributions owed to pension, health and other employee benefit plans. Bankruptcy reform is needed to increase this cap, eliminate the arbitrary earnings period and provide a separate payment priority for contributions owed by employers to employee benefit plans. In addition, reform should correct the rules that limit recovery of severance pay to a mere fraction of what workers are owed and that thwart the payment of damages under the Worker Adjustment and Retraining Notification (WARN) Act (See "Advance Warning of Plant Closures, Mass Layoffs," page 2.39).

All workers should have a claim in bankruptcy court for lost pensions. Bankruptcy law should include a payment priority for 401(k) plan beneficiaries who are victims 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 from the debtor entity for certain types of retirement or savings benefits. For example, losses in defined-contribution plans are virtually non-recoverable from a debtor plan sponsor where they are based upon stock ownership, because such interests are subordinated to general unsecured creditor recoveries. For defined-benefit plan losses, only the Pension Benefit Guaranty Corporation (PBGC) can recover a bankruptcy claim attributable to a plan termination, because the exclusive claim recovery is part of the general policy of discouraging plan terminations. Possible changes to the law include: 1) recognizing a priority, similar to the wage priority, for loss of stock value in a defined-contribution plan; and 2) permitting an acceptable recovery for individuals arising from the termination of a defined-benefit plan for lost benefits not guaranteed by the PBGC, without creating an incentive for termination of the plan.

Executives should do no better than ordinary workers in bankruptcy, and limits should be placed on management-enhanced compensation programs. Excessive compensation enhancements, perks, bonus packages and stock grants have been awarded to executives and upper management in many recent bankruptcy cases, despite efforts in Congress to reign in executive compensation awards in bankruptcy. Bankruptcy reform should curb executive pay largesse by requiring strict approval standards for the executive compensation proposed during bankruptcy and by plugging loopholes in BAPCA provisions that were intended to limit executive retention bonuses and severance pay. Compensation to officers, directors and other persons in control of the debtor, which

must be disclosed 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 emergency bonuses by senior management.

Debtor companies should not be able to divert money into non-bankrupt, healthy businesses and then claim that workers must give up wages and benefits to keep their employer afloat. With increasing regularity, businesses are shifting resources and production to profitable overseas operations while underscoring the financial distress of domestic or other debtor entities with labor contracts as part of their effort to cut wages, benefits and jobs in their U.S. operations. Bankruptcy reform should require a bankruptcy judge to consider both a company's foreign and domestic (including non-debtor domestic) entities in ruling on Bankruptcy Code Section 1113 and 1114 motions to reject collective bargaining agreements and retiree health benefits.

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[1]According to figures released by the Administrative Office of the Courts.

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. Congress must immediately pass legislation to provide meaningful enforcement of consumer protection standards, provide for a moratorium on certain foreclosures and allow for the use of Chapter 13 judicial modification relief on primary residences.

Foreclosure filings are averaging almost 6,600 per day, according to recent estimates,[1] and more than 8 million foreclosures are expected in the United States over the next four years.[2] The Center for Responsible Lending estimates that 40.6 million homes in neighborhoods surrounding foreclosed homes will suffer price declines averaging more than $8,667 per home, resulting in a $352 billion total decline in home values.[3] Florida, California, the Southwest and the Upper Midwest have been devastated by foreclosure filings and home depreciation. 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.

Efforts to address the crisis so far have proven inadequate. 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. The recently enacted Hope for Homeowners legislation was expected to help 400,000 homeowners, but only 357 people had signed up for the program as of December 2008, according to *The Wall Street Journal*.[4] The FHA Secure program promoted by the Bush administration was intended to help 80,000 homeowners who had fallen behind on mortgage payments, but it has helped only 4,100 delinquent borrowers refinance since September 2007.[5]

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 on sub-prime mortgages or any mortgages with teaser rate structures. To create a real incentive for servicers and investors to restructure loans, Congress must enact legislation offered by Rep. Doris Matsui (D-Calif.) and Sen. Robert Menendez (D-N.J.) in the 110th Congress that would provide for a nine-month deferment on certain mortgages.

Congress must lift the ban on judicial modification of primary residence mortgages. Current law allows for judicial modifications of second home mortgages, apartment house mortgages and loans on yachts, yet prohibits modifications of mortgages on primary homes. Congress should enact changes in Chapter 13 bankruptcy

that would allow desperate homeowners to save their primary homes through judicial modifications. Legislation introduced by Sen. Richard Durbin (D-Ill.), the Helping Families Save Their Homes in Bankruptcy Act of 2009 (S. 61), would eliminate the provision of bankruptcy law that prohibits modifications to mortgage loans for a homeowner's principal residence so primary mortgages can be treated the same as mortgages on vacation homes and family farms.

Congress must strengthen penalties for questionable and predatory lending practices. House Financial Services Committee Chairman Barney Frank (D-Mass.) and Senate Banking Committee Chairman Christopher Dodd (D-Conn.) introduced legislation in the 110th Congress that would establish new protections for consumers, preventing brokers from steering prime borrowers into more expensive loans, requiring responsible lending practices such as conducting meaningful analyses of a borrower's ability to repay and eliminating use of prepayment penalties.

Any federal law must build upon strong existing state law protections. State laws already have been highly effective in curbing abusive loan practices. Federal legislation must provide meaningful multiple avenues for enforcing consumer protection standards yet ensure that existing state laws are preserved. Federal legislation must have a variety of remedies to enforce these standards.

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[5]Ibid.

Unemployment Insurance

Recent efforts to repair the Unemployment Insurance (UI) system must be continued and expanded. 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 enacted in February 2009 took the first steps toward 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 through the end of December 2009 a temporary federal program that provides extended unemployment benefits for the long-term unemployed workers. Unemployment is expected to continue rising and stay high for years, and Congress should continue and expand these efforts to reverse decades of neglect of the UI system.

The UI system was created in 1935 to provide a safety net for workers who become involuntarily unemployed. The program is a federal-state partnership, administered by state employees, in which states pay unemployed workers up to 26 weeks of unemployment benefits financed by state UI payroll taxes. The federal government establishes broad standards that state programs must meet, provides extended benefits (EB) for workers in 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. These services are funded by federal UI payroll taxes.

The UI system has fallen into disrepair. Only 37 percent of jobless workers collected state benefits last year, and UI benefits average only $300 per week, replacing only 34.8 percent of wages. In a dozen states, workers have to get by on less than $250 per week.[1]

The economic recovery package provides incentives for states to update their UI programs. The American Recovery and Reinvestment Act (ARRA) provides 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 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 because they are seeking only part-time work; (2) workers who leave work for compelling family reasons, such as domestic violence or spousal relocation; (3) workers enrolled in job training who exhaust their regular UI benefits; and (4) workers with dependent family members who qualify for another $15 in benefits per week. At least 20 states have enacted legislation that qualifies them for incentive dollars, joining 14 states that already qualified based on previous state law.

The economic recovery package authorizes federal unemployment benefits. 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 authorizes continuation of this program through December 2009.

The economic recovery package provides additional help for unemployed workers. The ARRA provides a $25 weekly supplement for state and federal unemployment benefits and suspends the federal tax on unemployment benefits (up to $2,400).

UI benefits provide an automatic stabilizer during economic downturns. UI benefits return $2.15 in national output for every dollar spent on benefits.[2] In 2009, the federal and state UI system is projected to provide $113.7 billion in benefits, which will have a stimulative effect of more than twice that amount.[3] Next to food stamp benefits, UI benefits have the greatest impact among forms of economic stimulus.

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.[4]

The economic crisis will demand continued restoration of the UI system. Some predict this will be the longest and steepest economic downturn since the Great Depression. Unemployment is expected to rise above 10 percent in the early part of 2010, will not peak until long after the recession ends and will remain high for years to come.[5]

Congress may need to take additional action to shore up state UI trust funds. At least 14 states are seeking 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. As the economic crisis continues, further measures may be necessary.

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.

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[1]Testimony of Maurice Emsellem before the House Ways and Means Committee, April 23, 2009.
[2]Chimerine, et al. "Unemployment Insurance as an Economic Stabilizer: Evidence of Effectiveness Over Three Decades," U.S. Department of Labor, 1999.
[3]Testimony of Ray Uhalde before the House Ways and Means Committee, April 23, 2009.
[4]Testimony of Maurice Emsellem before the House Ways and Means Committee, April 23, 2009.
[5]Testimony of Heidi Shierholz before the House Ways and Means Committee, April 23, 2009.

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. The Bush administration slashed federal funding for worker education, training and skills development programs over the past eight years and supported a "work first" approach to training policy that continued to trap workers in low-wage jobs with little opportunity for advancement. We need a new approach that puts workers on career paths toward long-term employability in good jobs with family-sustaining wages and benefits and with opportunities for career development. Congress should develop and fully fund this new "good jobs" strategy 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 targeted population groups such as veterans, Native Americans, farm workers, youths and people with disabilities. The Department of Labor administers the largest number (17) of these programs. Seven WIA programs served 14.6 million people in 2007.[1] There are 37,000 sponsors of apprenticeship programs,[2] and an estimated 490,000 apprentices were active in programs in 2003.[3] The Job Corps serves approximately 62,000 persons annually.[4]

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 that a minimum percentage 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 innovative approaches such 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,[5] African American[6] and Latino apprentices,[7] 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.[8] 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, the Carpenters Training Fund and the UAW/Labor, Employment and Training Corp.[9]

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[10] 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,[11] 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.[12] There are also 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.[13]

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[1]AFL-CIO Analysis of President Bush's Fiscal Year 2009 Proposed Budget, Feb. 26, 2008.
[2]"Registered Apprenticeship: A Solution to the Skills Shortage," U.S. Department of Labor website.
[3]Robert Glover and Cihan Bilginsoy. "Registered apprenticeship training in the U.S. construction industry, "Education + Training 47," No. 4/5, 2005.
[4]"What is Job Corps?" Labor Department website.
[5]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.
[6]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.
[7]The number of Hispanic participants in apprenticeship programs doubled between 1995 and 2003. Hispanic representation in joint programs is much higher than non-joint programs. *The Construction Chart Book, Fourth Edition,* Center for Construction Research and Training, 2007.
[8]Peter Schochet, et al., "National Job Corps Study: The Short-Term Impact of Job Corps on Participants' Employment and Related Outcomes," Mathematica Policy Research, U.S. Department of Labor, 2000.
[9]Policy and Requirements Handbook, 2001, Department of Labor website.
[10]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.
[11]Louis Ferman, et al., "Joint Training Programs: A Union-Management Approach to Preparing Workers for the Future," 1991.
[12]"New Energy: An LJC Guide to Career Development Opportunities in Renewable and Efficient Energy," Institute for Career Development.
[13]"Worker Education and Training Program, FY 2005 Accomplishments and Highlights," National Institute of Environmental Health Sciences, 2007.

Advance Warning of Plant Closures, Mass Layoffs

The Worker Adjustment and Retraining Notification (WARN) Act of 1988 is riddled with loopholes and must be strengthened. The WARN Act requires too few employers to give too little notice of too few plant closures and mass layoffs, and allows too many employers to flout the law with impunity. Congress must reform the WARN Act to correct these defects as part of a comprehensive strategy to deal with the wave of plant closings and corporate downsizing that has resulted in the deindustrialization of large parts of America.

The WARN Act requires employers with 100 or more full-time workers to give 60 days advance written notice of covered plant closures and mass layoffs. The statute provides three exceptions for (1) faltering companies, (2) unforeseeable business circumstances, and (3) natural disasters. Workers can sue in federal district court to recover up to 60 days of wages and benefits from businesses that violate the WARN Act's notice requirement.

Plant closures and mass layoffs can destroy communities. For every job lost in a plant closure or mass layoff, more jobs are lost at suppliers and retail and service firms. The emigration of laid-off workers can reduce local property values, and the loss of worker buying power can lead to more business failures and further erosion of the local tax base.

Advance notice helps workers and communities deal with threatened job loss. Advance notice helps local authorities and unions avoid job loss where possible, promotes the timely delivery of adjustment assistance and gives workers time to seek retraining and alternative employment. Workers reached by early intervention are more likely to be retrained, get new jobs sooner and earn higher wages.

The AFL-CIO led the movement to enact plant closure laws. Beginning in the 1970s, the union movement organized a campaign to enact plant closure notice laws at the state and federal levels. Early proposals entailed comprehensive strategies to avoid job loss—requiring six months advance notice; requiring employers to consult with local authorities and unions; requiring employers to provide relevant financial information (such as financial statements and relocation plans) to local authorities and unions seeking to avoid layoffs; and providing for technical and financial assistance to firms and communities.

The WARN Act has not lived up to its promise. The shortcomings of the WARN Act, some of which were apparent when it was enacted, include: (1) insufficient notice, (2) too few mass layoffs subject to the notice requirement, (3) too few employers subject to the notice requirement, (4) employer noncompliance, (5) no provision for enforcement by the Labor Department, and (6) ineffective penalties to deter noncompliance.

The GAO first reported on the shortcomings of WARN in 1993. In 1993, the Government Accountability Office (GAO) found that about half of all businesses that closed plants or had mass layoffs were not required to give WARN notices, and most mass layoffs were not covered. GAO also found only about half of the employers required to give WARN notices actually gave them.[1]

GAO reported more shortcomings in 2003. Only about one-quarter of the 8,350 plant closures and layoffs in 2001 were subject

to WARN, and more than 1 million laid-off workers fell outside the law's protections, the GAO found. Employers provided notice for only one-third of all plant closures and mass layoffs subject to WARN, and only two-thirds of all WARN notices were for the full 60 days.[2]

A Toledo Blade investigation documented the shortcomings of WARN. In July 2007, the Toledo Blade published an investigative series that concluded, "A federal law that requires companies to give notice to workers losing their jobs is so full of loopholes and flaws that employers repeatedly skirt it with little or no penalty, a Blade investigation has found."[3]

Congress must fix the WARN Act. Two bills introduced in the 110th Congress would correct some of the most glaring defects of the WARN Act ~~t~~he FOREWARN Act, sponsored by Sen. Sherrod Brown (D-Ohio), and the Early Warning and Health Care for Workers Affected by Globalization Act, sponsored by Rep. George Miller (D-Calif.) and approved by the House on Oct. 31, 2007. Both bills would require more employers to give more notice for more mass layoffs and plant closures, and would provide for more effective enforcement.[4] Both are excellent bills, but they could be improved by requiring an even longer notice period, especially for mass layoffs and plant closures that affect large numbers of workers.

Advance notice should be part of a more comprehensive strategy. A longer notice requirement should be integrated into a comprehensive early warning strategy to address deindustrialization, in which local authorities—in partnership with labor, business and community organizations—develop and implement "layoff aversion" strategies. Several states have already implemented early warning systems that have saved thousands of jobs and helped maintain employment in manufacturing firms. In Pennsylvania, for example, the Steel Valley Authority has prepared a complete *Layoff Aversion Guide* that contains a host of job retention strategies and models for local and state action.[5]

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[1]GAO, "Dislocated Workers: Worker Adjustment and Retraining Notification Act Not Meeting Its Goals," GAO/HRD-93-18, February 1993.
[2]GAO, "The Worker Adjustment and Training Act: Revising the Act and Educational Materials Could Clarify Employer Responsibilities and Employee Rights," GAO-03-1003, September 2003.
[3]James Drew and Steve Eder, "Without Warning: Flaws, Loopholes Deny Employees Protection Mandated by WARN Act," The Toledo Blade, July 15, 2007; See also Steve Lohr, "Piecemeal Layoffs Avoid Warning Laws," *The New York Times,* March 6, 2009.
[4]AFL-CIO Secretary-Treasurer Richard L. Trumka, "Testimony Before the Senate Committee on Health, Education, Labor and Pensions on Plant Closings, Workers' Rights and the WARN Act's 20th Anniversary, May 20, 2008.
[5]The guide is available online at: http://www.steelvalley.org/files/lag.pdf.

3 Freedom to Form a Union

Contents

The Employee Free Choice Act

Giving working people the freedom to form unions and bargain collectively is essential to turning our economy around and rebuilding the middle class. The best opportunity for working men and women to get ahead economically is by uniting with their co-workers to bargain for better wages and benefits. But too few workers are able to form unions and bargain because current labor law is broken and has become a barrier to workers' rights. The Employee Free Choice Act would help level the playing field for workers by making it easier for them to choose union representation and bargain for better wages, health care and job security. Before the end of the year, Congress must pass the Employee Free Choice Act to ensure that (1) workers have a free choice and a fair path to choose to form a union, free from corporate intimidation; (2) there are real penalties for companies that break the law; and (3) workers and employers can reach a first contract in a reasonable period of time.

The Employee Free Choice Act (H.R. 1409 and S. 560) would (1) guarantee that a majority of workers can have a union if they want one by allowing them to form a union by signing cards authorizing union representation; (2) encourage workers and employers to negotiate first contracts by providing for mediation and arbitration as a fallback solution for disputes that cannot be resolved by the parties on their own; and (3) establish stronger penalties for violations of employee rights when workers seek to form unions and during first contract negotiations.

The Employee Free Choice Act would help make the economy work for everyone again. 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 free choice to bargain with their companies for a better life (see "The Employee Free Choice Act and Economic Recovery," page 2.7).

Giving working people the freedom to form unions and bargain is the key to rebuilding the middle class. Working families are struggling to make ends meet as wages fall, jobs are eliminated, health care costs rise and pensions disappear. Wages for working men and women have stagnated while pay and bonuses for CEOs have skyrocketed. But union members are 52 percent more likely to have job-provided health care, nearly three times more likely to have guaranteed pensions and earn 28 percent more than nonunion workers. And communities with strong unions have higher living standards for everybody (see "The Union Advantage for Communities," 3.13).

America's workers want to form unions. Recent surveys show that nearly 60 million people would form unions tomorrow if given the chance.

Too few workers can form unions and bargain because companies routinely intimidate workers. Companies intimidate, harass, coerce and fire workers who try to organize unions. Most workers who try to form unions are subjected to repeated, coercive one-on-one anti-union meetings with their supervisors. Workers are fired in one-quarter of private-sector union organizing drives, and a worker in an organizing campaign has a one in five chance of being fired for union activity[1] (see "Corporate Interference by the Numbers," page 3.3).

Too few workers can form unions and bargain because our labor laws are broken. Our labor laws protect too few workers, provides them too little protection and the law's penalties for violations are so insignificant that many companies treat them as a just another cost of doing business. Neither CEOs nor anybody else should be able to violate the law and get away with it (see "Corporate Interference by the Numbers," page 3.3, and "The National Labor Relations Act," page 6.1).

Too few workers are able to get a first contract with their employers. The reason workers want to join a union is because they want a negotiated contract with their employers. Yet even after workers vote to form a union, 44 percent of newly certified unions are unable to negotiate a first contract[2] (see "First Contracts," page 3.9).

CEOs wouldn't work a day without contracts to protect their pay and perks. Yet CEOs routinely deny workers the same opportunity.

Corporate front groups have mounted a massive campaign to block the Employee Free Choice Act. As former Wal-Mart CEO Lee Scott has said, "We like driving the car, and we're not going to give the steering wheel to anybody but us." The core of their campaign is lies and distortions about the Employee Free Choice Act—especially the lie that it takes away "secret ballot" elections. In fact, the legislation would let workers choose whether to decide on union representation through majority sign-up or through an election (see "The Secret Ballot," page 3.5).

Attacks on the Employee Free Choice Act are ultimately about greed. The debate over the Employee Free Choice Act presents a choice between helping the corporations that got us into today's economic mess, or helping the working people who are forced to pay the price for those mistakes. Big corporations and CEOs are attacking the Employee Free Choice Act because they want to maintain the status quo: an environment in which they get richer while workers struggle just to get by.

The Employee Free Choice Act has widespread support. According to a January 2009 survey by Peter Hart Research, nearly three-quarters of the public—73 percent—supports the Employee Free Choice Act. Hundreds of respected religious, academic and business leaders and organizations have signed on in support.

Real labor law reform can and must happen this year. The Obama administration, leadership in Congress and 73 percent of the public support the Employee Free Choice Act. We cannot afford to miss this opportunity to rebuild the middle class and pave the way for broadly shared prosperity.

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[1]Center for Economic Policy and Research, "Dropping the Axe, March 2009.
[2]Thomas Ferguson, "Eye of the Needle," 2008.

Corporate Interference by the Numbers

(Private-sector employers)

1. Companies that illegally fire at least one worker for union activity during organizing campaigns:	**34%**
2. Chance that an active union supporter will be illegally fired for union activity during an organizing campaign:	**1 in 5**
3. Companies that hire consultants or union-busters to help them fight union organizing drives:	**75%**
4. Companies that force employees to attend one-on-one meetings against the union with their own supervisors:	**77%**
5. Companies that force employees to attend mandatory closed-door meetings against the union:	**89%**
6. Companies that threaten to cut wages and benefits if workers form a union:	**47%**
7. Companies that threaten to close the plant if the union wins the election:	**57%**
8. Companies that use 10 or more tactics in an anti-union campaign:	**49%**
9. Workers in FY 2007 who received back pay in cases alleging company violations of workers' rights under the National Labor Relations Act:	**17,204**
10. Percentage of cases in which companies do not agree to a contract within two years after workers form a union under the NLRB process:	**44%**
11. Portion of public that supports workers' freedom to bargain for better wages and benefits:	**78%**
12. Portion of public that knows companies routinely resist unionization efforts by their employees:	**47%**
13. Number and percentage of U.S. workers that belong to unions:	**16.1 million or 12.4%**

SOURCES: 1 and 3-8: Kate Bronfenbrenner, "No Holds Barred: The Intensification of Employer Opposition to Organizing," Economic Policy Institute and American Rights at Work Education Fund, May 2009, http://epi.3cdn.net/edc3b3dc172dd1094f_0ym6ii96d.pdf.
2. John Schmitt and Ben Zipperer, "Dropping the Ax: Illegal Firings During Union Campaigns, 1951-2007," Center for Economic and Policy Research, March 2009, http://www.cepr.net/index.php/publications/reports/dropping-the-ax:-illegal-firings-during-union-election-campaigns,-1951-2007/ and http://www.cepr.net/documents/publications/dropping-the-ax-update-2009-03.pdf.
9. National Labor Relations Board annual report, fiscal year 2007, Table 4.
10. John-Paul Ferguson, "The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999–2004," *Industrial and Labor Relations Review,* October 2008.
11-12: Peter D. Hart Research Associates, survey for the AFL-CIO, December 2008.
13. U.S. Department of Labor, Bureau of Labor Statistics.

The 'Secret Ballot'

The Employee Free Choice Act would not eliminate "secret ballot" elections, but would simply give workers—rather than corporations—the choice of how to form a union. Under current law, management gets to decide how workers can form a union—whether through a majority of workers signing cards in support of the union (majority sign-up) or through an election. The Employee Free Choice Act would put this choice back in the hands of workers rather than with management, since there is no good reason why management should get to dictate how workers form a union. Workers would still have the option of petitioning the National Labor Relations Board (NLRB) for a secret ballot election in the same way they do now, but the reality is that workers have largely given up on the NLRB election process because it is a company-controlled process in which workers regularly are intimidated, harassed and fired, and because it fails to meet minimum U.S. standards for free and democratic elections.

The Employee Free Choice would not eliminate "secret ballot" elections. Under Section 9(c)(1)(A) of the National Labor Relations Act (NLRA), workers can file a petition to ask the NLRB to schedule a "secret ballot" election. The Employee Free Choice Act would not repeal or amend this provision of law. Even the Wall Street Journal editorial page admits, "The bill doesn't remove the secret ballot option from the NLRA."[1]

The Employee Free Choice Act would not make any change whatsoever to the NLRA's election process. To petition the NLRB for an election, workers and unions would still file the exact same form they file now, in the exact same way as they do now.

A secret ballot election has never been the only way for workers to form unions under the NLRA. Since its enactment in 1935, the NLRA has always provided workers with two alternative paths to union representation: (1) filing a petition with the NLRB to request a secret ballot election, and (2) asking the company to voluntarily recognize the union based on union authorization cards or petitions signed by a majority of workers (majority sign-up).[2] Both paths to union representation have been endorsed by the NLRB, the U.S. Supreme Court and Congress.

The Employee Free Choice Act would put the choice of how to form a union in the hands of workers rather than with management. The Employee Free Choice Act would allow workers to form a union by majority sign-up regardless of whether management voluntarily agrees to recognize the union, so management no longer would get to dictate how workers can form unions. Workers would petition the NLRB to certify the union based on valid, uncoerced union authorization cards signed by a majority of workers.

There is no defensible argument why management should get to dictate how workers must form a union. Since 1935, workers have been forming unions by majority sign-up when their company voluntarily agrees to recognize the union.[3] There is no defensible argument why this path to union representation should be valid when management agrees to voluntarily recognize the union, but not valid when management refuses to voluntarily recognize the union.

Workers have largely abandoned the NLRB's company-dominated "secret ballot" election process. Critics of the Employee Free Choice Act object that too few workers would choose to endure the NLRB's company-dominated "secret ballot" election process if a less harrowing alternative were available. The reality is that relatively few workers are choosing to endure the NLRB process now. In 2008, only 57,290 workers won collective bargaining rights through NLRB elections.[4] The negligible number of workers who petition the NLRB for elections is unlikely to increase any time soon, regardless of whether a less harrowing alternative is available.

The NLRB election process has been turned into an obstacle course for workers. The reason workers have largely given up on the NLRB election process is that over the years this "secret-ballot" process has been turned on its head. Instead of "encouraging the practice of collective bargaining" and "protecting the exercise by workers of full freedom of association,"[5] the NLRA now serves as a tool by which management can frustrate employees' free choice with a virtually insurmountable series of practical, procedural and legal obstacles. The NRLB election process is company-dominated, so that management controls the information workers receive and routinely frustrates employee free choice by harassing, coercing and firing workers who want to form a union.[6]

NLRB elections are not comparable to elections for public office. When it comes to management behavior during the NLRB election process, the real scandal is not only what is illegal but also what is legal. If political elections were run like NLRB elections, only the incumbent would have access to a list of voters and their home addresses—until just before the election. Only the incumbent could legally require voters to listen to his or her message—in person, every day, all day long, under threat of losing their jobs. Only the incumbent could pull voters off their jobs and make them attend campaign rallies of unlimited length. Many voters would never have a chance to talk to or get information from the challenger, who would have to remain outside the boundaries of the state or district and try to meet voters as they drove past. And even if the challenger won, the incumbent could still manipulate the process to keep the challenger from taking office and frustrate implementation of the voters' choice until voters simply give up.

The NLRB's election process fails to satisfy minimum standards for free and democratic elections. Conducting balloting by "secret ballot" at the end of an undemocratic election process does not make the election democratic or free—after all, Saddam Hussein was regularly elected by secret ballot. NLRB elections commonly feature practices that the U.S. government condemns as undemocratic when they occur in foreign countries. Prof. Gordon Lafer has highlighted at least seven areas in which NLRB elections fall short of minimum U.S. standards for free and democratic elections: (1) competitive elections with equal access to voters; (2) free speech; (3) equal access to media; (4) campaign finance regulation; (5) protection from economic coercion; (6) timely implementation of voters' will; and (7) meaningful enforcement measures.[7]

Many features of NLRB elections would be illegal in federal elections. In elections for federal offices, U.S. law prohibits corporations from telling employees anything about which candidate or party they should support, or from inviting one candidate to address employees without affording equal opportunity to the opposing candidate, in recognition that such communications are inherently coercive. However, under standard

"union avoidance" strategy, supervisors engage subordinates in intimidating one-on-one, anti-union conversations.[8]

NLRB "secret ballot" elections are not really secret. Under the company-dominated NLRB process, "union avoidance" consultants train supervisors to repeatedly grill their subordinates in "eyeball to eyeball" conversations to root out support for the union. Employees have no right to refuse such conversations, but very few can go through them without revealing their union sympathies. As a result, management consultants report they are often able to predict vote totals with remarkable accuracy.[9]

The goal of "union avoidance" strategy is not to win an NLRB election, but never to have one. In internal publications, employer groups routinely promote a strategy of "union avoidance," which includes keeping workers from ever voting in an NLRB election. A common refrain of union avoidance consultants is: "You can't lose an election that never takes place." These consultants counsel employers to mount an aggressive anti-union campaign as soon as they detect any sign of organizing.[10] Their initial objective is to prevent workers from gathering signed union authorization cards from 30 percent of workers—the threshold required to petition the NLRB for an election.[11] Union avoidance consultants regularly boast of their "victories" in defeating card-signing drives.

Nevertheless, some workers likely would continue to petition the NLRB for "secret ballot" elections. Under current law, some kinds of workers, especially in health care, often prefer to demonstrate their union support through elections—provided they can obtain a commitment from management to refrain from harassing workers. After enactment of the Employee Free Choice Act, these and other workers who manage to secure such commitments from management would be those most likely to petition for an NLRB election.

The "secret ballot" argument is a red herring. It is laughable to pretend that the corporate-funded front groups advancing the "secret ballot" argument have workers' best interests at heart. They obviously have an economic interest in keeping workers from bargaining for better wages, benefits, working conditions and job security, and the best way to do that is by making it as difficult as possible for workers to form unions.

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[1]"Unionize or Die," Wall Street Journal, March 20, 2009.
[2]Section 9(a) of the NLRA requires that employers bargain with "representatives designated or selected for purposes of collective bargaining." The NLRA has never required that such representatives be elected.
[3]AT&T, Kaiser Permanente and Harley-Davidson are examples of companies that have recognized unions based on majority sign-up. Since 2003, more than half a million U.S. workers have formed unions through majority sign-up. "Half a Million and Counting," American Rights at Work, September 2008.
[4]National Labor Relations Board, "Seventy-Second Annual Report for the Fiscal Year Ended Sept. 30, 2007," Oct. 2008, at 157.
[5]Section 1 of the National Labor Relations Act, 29 USC §151.
[6]See "Corporate Interference by the Numbers," page 3.5.
[7]Gordon Lafer, "Free and Fair: How Labor Law Fails U.S. Democratic Election Standards," American Rights at Work, June 2005.
[8]Ibid.
[9]Gordon Lafer, "Neither Free Nor Fair: The Subversion of Democracy Under National Labor Relations Board Elections," July 2007.
[10]Ibid.
[11]The NLRA requires evidence that a "substantial number" of employees wish to be represented, 29 USC §159(c)(1)(A), but in practice "substantial number" means 30 percent.

First Contracts

The Employee Free Choice Act would establish a process for companies and newly certified unions to achieve first contract agreements. Achieving a collective bargaining agreement is the reason workers seek union representation. Yet under current law, 44 percent of newly certified unions are never able to negotiate a first collective bargaining agreement with management. The Employee Free Choice Act would provide for mediation, conciliation and arbitration to encourage the parties to voluntarily negotiate their own agreement, with the possibility of an arbitrated settlement as a fallback to resolve remaining disputes the parties are unable to resolve on their own. Similar procedures in Canada have helped workers and companies voluntarily reach agreement in more than 90 percent of first contract negotiations.

The Employee Free Choice Act (H.R. 1409 and S. 560) would allow management or newly certified unions to request mediation by the Federal Mediation and Conciliation Service (FMCS) if the parties fail to reach agreement on a first contract within 90 days. If the parties fail to reach agreement within 30 days of mediation, their dispute would be referred to an arbitration board whose decision would be binding on the parties for two years.

Mediation and arbitration are necessary because workers are too often unable to negotiate a first contract. Only 38 percent of new unions are able to negotiate a first contract within one year of certification, and only 56 percent after two years.[1]

Mediation and arbitration encourage workers and management to voluntarily negotiate their own agreement. The purpose of mediation and arbitration is to encourage—not replace—collective bargaining.

In the Canadian private sector, arbitration has encouraged voluntary agreements in more than 90 percent of first contract negotiations. Eight of 11 Canadian jurisdictions, covering more than 80 percent of the labor force, provide for first contract arbitration in the private sector.[2] The availability of arbitration has contributed to a high percentage of first contract agreements—estimated at 92 percent[3]—and resorting to arbitration has been infrequent. From 1974 to 2000, only 5.9 percent of newly certified unions in jurisdictions with first contract arbitration applied for arbitration, and only 1.4 percent of new unions went on to obtain arbitrated settlements.[4]

Under U.S. public sector arbitration statutes, the vast majority of negotiations settle without resort to arbitration.[5] Twenty-five states provide for interest arbitration—not limited to first contracts—for police, firefighters, teachers or other public-sector employees.[6] Over time, the percentage of negotiations that end in arbitrated pacts appears to have declined to single digits.[7]

In the small minority of negotiations where arbitration becomes necessary, arbitrated settlements differ little from bargained contracts. The passage of arbitration laws has little to no effect on wages or benefits, and arbitration decisions do not significantly increase wages compared to states without arbitration laws.[8]

Arbitrators do not issue unworkable awards. Studies show that arbitrators try to achieve the agreement the parties would have reached on their own if they had bargained in good faith, and that they try not to break new ground.[9]

Mediation and arbitration create opportunities for workers to vote on contracts. The availability of arbitration encourages parties to voluntarily negotiate their own contract, on which workers may then have an opportunity to vote. By contrast, if newly certified unions are never able to negotiate a contract, they never have an opportunity to vote. In any event, workers would have just as much opportunity to vote on the employer's final offer before going to arbitration as they would on contract ratification. And under the Employee Free Choice Act, the parties also would be able to amend arbitration decisions, creating additional opportunities for voting.[10]

Workers often are unable to negotiate first contracts because companies treat negotiations as an extension of the anti-union campaign. Even after a majority of workers votes for union representation, union avoidance consultants advise companies how to drag out first contract negotiations almost indefinitely ("You haven't lost until you sign a contract").[11] Consultants advise that a bargaining impasse and lack of results may cause workers to give up on their union.[12]

Workers often are unable to negotiate first contracts because labor law makes it easy for companies to stonewall. By allowing companies to get rid of the union after one year, the National Labor Relations Act (NLRA) actually rewards companies for stalling negotiations. And under the NLRA, the remedies for refusal to bargain are ineffective. If the company does not bargain, all the National Labor Relations Board (NLRB) can do—after years of litigation—is order the company to bargain some more. The Employee Free Choice Act would reverse these incentives and encourage the parties to bargain their own agreement.

Interest arbitration is constitutional. Georgetown law professor Michael Gottesman explains that interest arbitration is a form of "government regulation [that] does not constitute" an unconstitutional taking.[13] Rejecting arguments by Prof. Richard Epstein that the Employee Free Choice Act is unconstitutional, Gottesman points out that Epstein's interpretation of the Takings Clause "has never been the interpretation applied by the Supreme Court" and his arguments "haven't the remotest chance of gaining judicial acceptance."[14]

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[1] John Paul Ferguson, "The Eye of the Needles: A Sequential Model of Union Organizing Drives," 62 Industrial Relations Review, No. 1, October 2008.
[2] Susan Johnson, "First Contract Arbitration: Effects on Bargaining and Work Stoppages," December 2008.
[3] Joseph B. Rose, "Collective Bargaining Performance of Newly Certified Unions in Canada: Process and Outcomes," in Gregor Gall, ed., *Union Recognition: Organising and Bargaining Outcomes,* 2008.
[4] Ibid.
[5] Donald S. Wasserman, "Collective Bargaining Rights in the Public Sector," in Richard N. Block et al, eds. *Justice on the Job,* 2006.
[6] Thomas Kochan, "Labor Law, Economic Recovery, and Shared Prosperity,"Address to Annual Meeting of the National Academy of Arbitrators, May 21, 2009; American Rights at Work, "Low Rates of Arbitration in the Public Sector," May 2009.
[7] Arnold Zack, "First Contract Arbitration: Issues and Design," Labor and Employment Relations Association (LERA), blog, March 15, 2009; Thomas Kochan, David Lipsky, Mary Newhart and Alan Benson, "The Long-Haul Effects of Arbitration: the Case of New York State's Taylor Law," draft March 2009.
[8] Arnold Zack, 2009; Thomas Kochan et al., 2009; Orley Ashenfelter and Dean Hyslop, "Measuring the Effect of Arbitration on Wage Levels: the Case of Police Officers," Princeton University, July 1999.
[9] Arnold Zack, 2009; Thomas Kochan, "Memo on Arbitration," March 19, 2007.
[10] Unions conduct such votes as a matter of policy and practice, not statutory requirement.
[11] John Logan, "Consultants, Lawyers, and the 'Union Free' Movement in the USA Since the 1970s," 33 Industrial Relations Journal No. 3, 2002, at 209.
[12] After a year of bargaining without agreement, 30 percent of workers can petition the NLRB for a decertification election, and the company must withdraw recognition of the union if more than 50 percent of workers sign cards or a petition indicating they no longer support the union. If the company withdraws recognition or the union is decertified, the union is no longer considered the workers' representative and can no longer bargain on their behalf.
[13] Michael H. Gottesman, "The Improbable Claim That EFCA Is Unconstitutional," American Constitution Society, blog, Feb. 4, 2009.
[14] Epstein also claims that minimum wage laws, unemployment benefits, employer contributions to Medicare and Social Security, welfare laws, zoning laws, historic-preservation laws, rent-control laws, virtually all the New Deal programs and "much of the twentieth century legislation" are unconstitutional takings.

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 2008 made only 80 percent of the median weekly earnings of working men. African American workers made only 79 percent of the median weekly earnings of white workers, and Latino workers earned only 71 percent of the median weekly earnings of white workers.[1]

Women, Latino and African American workers are over-represented in low-wage jobs. In 2007, women represented 46.4 percent of all workers, but were over-represented in low-wage jobs such as food preparation (61.2 percent) and child care (94.6 percent). Latinos represented 14 percent of all workers in 2007, but were overrepresented in such low-wage jobs as dishwashers (36.6 percent), vehicle and equipment cleaners (30 percent), maids and housekeeping cleaners (40.4 percent) and textile and garment pressers (52.3 percent). African Americans represented 11 percent of all workers in 2007, but were over-represented in such low-wage jobs as personal and home care aides (22.5 percent), parking lot attendants (22.1 percent) and nursing, psychiatric and home health aides (33.6 percent).[2]

Collective bargaining is especially important for raising the wages of workers in low-wage occupations. For example, in 2007, union cashiers earned an average hourly wage of $12.72, or $4.05 more per hour (46.7 percent more) than nonunion cashiers. Union food preparation workers earned on average $11.38, or $2.91 more per hour (34.4 percent more) than nonunion food preparation workers. Union child care workers earned an average of $14.55 per hour in 2007, or $5.36 more per hour (58.3 percent more) than nonunion child care workers. And union vehicle cleaners earned on average $16.85 per hour in 2007, or $7.29 more (76.3 percent more) than nonunion vehicle cleaners.[3]

Union membership improves wages for women, African Americans and Latinos. The median earnings for union women was $809 per week in 2008, or $194 higher per week (32 percent) than for nonunion women workers. The median earnings for African American workers who were union members was $720 per week in 2008, or $156 higher (28 percent) than for nonunion African American workers. The median earnings for Latino union members in 2008 was $733 per week, or $221 higher (43 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.[4]

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.[5] 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 versus 26 percent) and are nearly two and a half times as likely to have pension coverage (58.1 percent versus 20.6 percent).[6]

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.[7]

Latino union members overall are twice as likely to have employer-provided health insurance (70.1 percent versus 34.8 percent) as nonunion Latino workers and more than two and a half times as likely to have pension coverage (58.4 percent versus 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 versus 21.0 percent) and nearly four times as likely to have pension coverage (40.8 percent versus 11.2 percent) as nonunion Latino workers in low-wage jobs.[8]

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 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.[9]

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[1] U.S. Department of Labor, Bureau of Labor Statistics, "Union Members in 2008," Jan. 28, 2009.
[2] U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey data, Table 11. Employed persons by detailed occupation, sex, race and Hispanic or Latino ethnicity, 2007 annual averages; U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey data, Table 39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex, 2007 annual averages.
[3] Barry Hirsch and David Macpherson, Union Membership and Earnings Data Book, Bureau of National Affairs, 2008.
[4] U.S. Department of Labor, Bureau of Labor Statistics, "Union Members in 2008," Jan. 28, 2009.
[5] The union advantage for defined-benefit plans probably is even greater for women, African American and Latino workers. Overall, union workers are nearly three times more likely than nonunion workers to participate in defined-benefit pension plans. Defined-benefit plans remain the soundest vehicles for building and safeguarding retirement income security, as they are federally insured and provide a guaranteed monthly lifetime benefit.
[6] John Schmitt, "Unions and Upward Mobility for Women Workers," TABLE 1–Wages, Health, and Pension Coverage for Union and Non-Union Women Workers, 2004-2007, Center for Economic and Policy Research, December 2008.
[7] John Schmitt, "Unions and Upward Mobility for African-American Workers," TABLE 1–Hourly Wages and Union Share for African Americans, 2004-2007, Center for Economic and Policy Research, April 2008.
[8] John Schmitt, "Unions and Upward Mobility for Latino Workers," TABLE 1–Wages, Health, and Pension Coverage for Union and Non-Union Latino Workers, 2004-2007, Center for Economic and Policy Research, September 2008.
[9] Peter D. Hart Research Associates, polling for the AFL-CIO, various years.

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, 2007[1]	$18.00	$15.58
Median household income, 2007[2]	$57,036	$46,132
Percent of population with no medical insurance, 2007[3]	13.6	16.5
Public education spending per pupil, 2007-2008[4]	$11,395	$8,408
Percent of eligible voters who voted in presidential election, 2008[5]	62.7 percent	60.7 percent
Violent crimes per 100,000 population, 2007[6]	460.9	470.6
Property crimes per 100,000 population, 2007[7]	3,104.0	3,536.6
Percent of children in poverty, 2007[8]	13.9	20.4
Percent of population in poverty, 2007[9]	10.1	14.1

***The 10 states where unions are strongest** (based on percentage of the workforce with a union in 2008) are: New York (29.9), Hawaii (24.3), Alaska (23.5), Washington (19.8), Michigan (18.8), California (18.4), New Jersey (18.3), Connecticut (16.9), Nevada (16.7) and Illinois (16.6).

****The 10 states where unions are weakest** (based on percentage of the workforce with a union in 2008) are: North Carolina (3.5), Georgia (3.7), South Carolina (3.9), Virginia (4.1), Texas (4.5), Louisiana (4.6), South Dakota (5.0), Mississippi (5.3 percent), Tennessee (5.5) and Utah (5.8).

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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 1/13/09.
[2]U.S. Census Bureau, "Table H-8. Median Household Income by State: 1984 to 2007".
[3]U.S. Census Bureau, CPS, 2008 Annual Social and Economic Supplement. "Table HI05. Health Insurance Coverage Status and Type of Coverage by State and Age for All People: 2007."
[4]National Education Association, "Rankings & Estimates–Rankings of the States 2008 and Estimates of School Statistics 2009," December 2008, Table H-11. Current Expenditures for Public K-12 Schools Per Student in Fall Enrollment, 2007-08.
[5]Michael McDonald, George Mason University Department of Public and International Affairs, United States Elections Project, 2008 General Election Turnout Rates, http://elections.gmu.edu/Turnout_2008G.html
[6]U.S. Department of Justice, Bureau of Justice Statistics, "Crime in 2007," State-level crime trends database, downloaded 1/13/09.
[7]Ibid.
[8]U.S. Census Bureau, CPS, 2008, Annual Social and Economic Supplement. POV46: Poverty Status by State: 2007–Below 100 percent and 125 percent of Poverty All Ages.
[9]U.S. Census Bureau, CPS, 2008 Annual Social and Economic Supplement. POV46: Poverty Status by State: 2007–Below 100 percent and 125 percent of Poverty–People Under 18 Years of Age.

4 Health Care

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Health Care Reform

Congress must pass legislation this year to provide guaranteed affordable health care for all. Health care is a basic human right, and we cannot fix our economy without fixing health care. Health care reform must make coverage affordable for everyone; guarantee adequate benefits; contain cost growth by offering a public health insurance plan option; require employers to "pay or play"; address the needs of the pre-Medicare population; end insurance company abuses; and promote safe and quality care. However, reform must not include tax changes that undermine employer-sponsored coverage.

We now spend $2.2 trillion on health care annually,[1] and by 2082 we are projected to spend 49 percent of gross domestic product (GDP) on health care.[2] The average annual premium for family coverage is $12,680, and while overall premiums rose by 5 percent in 2008, they have more than doubled since 1999.[3] The rapid increase of health costs and the explosion of unemployment are now causing 14,000 people a day to lose their health care coverage,[4] swelling the ranks of the 48 million people who already lack coverage.[5]

We cannot fix the economy without fixing health care. Reducing inefficiencies, cost shifting and price distortions in the health care system would help control costs and lay the foundation for long-term economic growth. Projected long-term deficits are caused almost entirely by health care costs, but there is no practical way to control public health care costs without addressing private costs as well. Entitlement reform is health care reform. Health care reform is also critical to making U.S. businesses competitive and relieving financial pressure on working families.

We can no longer wait for health reform. The AFL-CIO has for decades advocated that health care be financed through a Social Security-like system, which in recent years has been termed "single-payer," as a simple, cost-effective way to provide health care benefits for all. We support the commitment of Congress and the president to get health care reform done this year by building on what works to close gaps in coverage, lower costs and improve quality.

Reform must make health care coverage affordable for everyone. Health care reform must make premiums, deductibles, co-pays and any other form of cost sharing affordable for everyone. Working families will need substantial subsidies, including contributions from their employers, to make coverage affordable for them.

Reform must guarantee adequate benefits. Health care benefits must be adequate to keep people healthy and help them when they are sick. Benefits should have to meet a standard that makes it possible to compare plan options easily. If Congress delegates decisions on benefit design to an expert body, it must first define the parameters of those decisions—including requirements for particular benefit categories (preventive care, chronic care, catastrophic coverage), cost sharing and out-of-pocket limits, and limits on the number of plans available.

Reform must include a public health insurance option available to everyone. The option of a public plan that offers comprehensive coverage, alongside any private

insurance options, would make health care coverage more affordable; reduce administrative costs;[6] 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 that everyone can have access to secure affordable coverage.

Reform must contain cost growth. Our health care financing system must be transformed from one that rewards quantity of care to one that rewards quality of care. The most important tools to drive higher value care are: (1) a public insurance plan option that can negotiate lower prices, produce administrative savings and drive quality improvements; (2) building an infrastructure for higher-value care by investing in health information technology (HIT) and research on the comparative effectiveness of health care services and treatments (CER); (3) simplification and uniformity of claims forms; (4) limits on administrative costs through transparency in rate setting and regulation of medical loss ratios; (5) emphasis on wellness and prevention; and (6) chronic care management.

Every employer should have to "pay or play." Employers could contribute to the new system either by providing adequate coverage for their employees or by paying into a public fund that subsidizes coverage. Employers would have the option of purchasing affordable coverage through a public plan, but they should not be given an incentive to reduce existing benefits. The employer responsibility to "pay or play" is essential to keep coverage affordable and prevent employers from dumping existing coverage of low-wage workers who might qualify for new subsidies.

Reform must address the specific needs of the pre-Medicare population. Special attention is needed for the needs of 55- to 64-year-olds, who have higher-than-average health care costs. People in this age group cannot find affordable coverage on their own, and employers who provide them coverage have higher costs. Options include (1) allowing the pre-Medicare population to buy into Medicare; (2) using reinsurance aimed at higher-than-average costs to spread those costs more broadly; and (3) lowering the Medicare eligibility age to 55.

Reform must end insurance company abuses. In a reformed system, the government must act as a watchdog over private health insurance plans. To eliminate profiteering and tactics used by private plans to weed out older and sicker individuals, transparency and broad risk pooling must be required. Reform also must include prohibitions against (1) exclusions based on pre-existing conditions; (2) post-claim underwriting and non-renewal; (3) rating based on factors such as age, gender and health status; and (4) delays and denials of appropriate care.

Reform must promote safe and quality care—by changing the way health care is delivered and financed. Health care reform must ensure that there are enough trained nurses and health care workers to care for patients by addressing problems of chronic understaffing, shortages of primary care providers, compulsory overtime and high injury rates that increase the risk of medical errors and cause care givers to leave the bedside. Payment structures must be continuously updated to adopt best practices and reduce duplicative costs caused by medical errors and lack of quality (such as high rates of hospital-acquired infections).

Reform must not include tax changes that undermine employer-sponsored coverage. Proposals to limit the exclusion of health care benefits from taxable wages would disproportionately affect employers with higher-than-average costs (e.g., small firms and firms with high percentages of older workers)[7] and lead them to pare back coverage, thus adding to the ranks of the uninsured, and would encourage healthier younger workers to pass up employer-sponsored coverage, driving up costs for older, less healthy workers.

Reform must work for multi-employer plans. Multi-employer (or "Taft-Hartley") plans, which are maintained according to collective bargaining agreements and governed by joint labor-management boards, have been an important means for providing coverage to workers who might otherwise fall through the cracks of an employment-based system: workers employed by several employers over the course of their careers (e.g., building and construction and entertainment industries) or by small firms that cannot otherwise afford to offer coverage (e.g., clothing and textile, food and commercial, hotel and restaurant, and service industries). Reform must take into consideration the unique nature of these plans, especially with regard to coverage subsidies and tax changes.

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[1] Office of the Actuary, Centers for Medicare and Medicaid Services, "National Health Expenditure Data for 2007," U.S. Department of Health and Human Services, available at: http://www.cms.hhs.gov/NationalHealthExpendData/02_NationalHealthAccountsHistorical.asp#TopOfPage.
[2] Peter R. Orszag, director, Congressional Budget Office, "Growth in Health Care Costs," Statement Before the Committee on the Budget, U.S. Senate, Jan. 31, 2008, available at: http://www.cbo.gov/doc.cfm?index=8948.
[3] Kaiser Family Foundation, "Employee Health Benefits: 2008 Annual Survey," September 2008.
[4] Center for American Progress Action Fund, "Health Care in Crisis: 14,000 Losing Coverage a Day," February 2009.
[5] Ibid.
[6] John Holahan and Linda Blumberg, "Can a Public Insurance Plan Increase Competition and Lower the Costs of Health Reform?" Urban Institute, 2008.
[7] Elise Gould, "'Cadillac' Health Care Benefits Aren't Always What They Seem," Economic Policy Institute, March 4, 2009.

Medicare

Medicare is essential to the future of our health care system, and it needs to be improved and strengthened. For more than 40 years, Medicare has delivered stable, reliable health care to seniors, and today the program covers almost 45 million beneficiaries. The Medicare Modernization Act (MMA) of 2003 not only established a new Part D prescription drug benefit, delivered exclusively through private plans, but also made significant structural changes designed to begin the privatization of Medicare. Congress must strengthen Medicare by reversing these ill-advised changes and by enacting other improvements to the program, including changes to the Part D benefit.

Beneficiaries in traditional Medicare are subsidizing overpayments to private plans. Private managed care plans, known as Medicare Advantage (MA) plans, receive about 14 percent more per beneficiary than traditional Medicare would receive.[1] These overpayments amounted to almost $1,000 per beneficiary in 2008, and a total of $33 billion from 2004 through 2008.[2] The Congressional Budget Office (CBO) estimates that private plans will be overpaid $157 billion over the next 10 years.[3] One set of private plans, private fee-for-service (FFS) plans, will be paid 18 percent more in 2009 than traditional Medicare would spend on the same beneficiaries.[4] This tilted playing field is creating a two-tier system that allows private plans to offer better benefits and lower premiums than seniors can get under the traditional Medicare program. The vast majority of beneficiaries who are enrolled in traditional Medicare—almost 80 percent—are subsidizing the minority who are covered by the private Medicare Advantage plans. In 2008, couples in traditional Medicare paid an additional $72 in Part B premiums to finance overpayments to private plans.[5]

Congress must reverse Medicare's growing reliance on private plans. The growing reliance on private plans has made Medicare coverage less stable, more confusing and more costly for beneficiaries and taxpayers. To reverse the threats posed by the MMA, Congress should eliminate overpayments to private Medicare Advantage plans, repeal the 45 percent "trigger" funding rule and cancel the "premium support" demonstration program set to begin in 2010.

The Part D prescription drug benefit is inadequate. Rather than providing continuous coverage for drug expenses, the Part D benefit leaves a gap in coverage that makes seniors liable for $3,454 (in 2009) entirely out of their own pockets, even as they continue to pay monthly premiums. The Kaiser Family Foundation (KFF) estimates that 3.4 million seniors—14 percent of all Part D enrollees who filled prescriptions but did not receive the low-income subsidy—had drug spending that fell into this coverage gap in 2007, the most recent year for which data is available.[6]

Part D premiums have skyrocketed. The average monthly Part D premium for 2009 is 25 percent higher than it was in 2008. For the six prescription drug plans that cover half of Part D beneficiaries, the initial low premiums offered in 2006—the first year of the program—have skyrocketed, with the largest plan showing a 41 percent increase between 2006 and 2009 and the second-largest plan charging over four times more in 2009 than it did in 2006.[7]

The MMA prohibits Medicare from negotiating lower drug prices. The MMA prohibits the Medicare program from using the negotiating power of 45 million beneficiaries to negotiate lower drug prices, which the Department of Veterans Affairs already does successfully. This means seniors will continue to pay exorbitant drug prices and to pay more toward their deductible and more for coverage because the Part D benefit is tied to the rising cost of drugs, as the increases in the first three years of the Part D program show.

Congress must make the Part D benefit more stable and affordable. Congress should start by requiring Medicare to negotiate for lower prescription drug prices, providing beneficiaries with an option to get their drug coverage under traditional Medicare (just as they get their doctor and hospital coverage under traditional Medicare), and using the savings from lower drug prices to fill the gap in coverage. Congress also should eliminate the asset test that has kept many low-income individuals from enrolling and qualifying for financial help to pay their expenses.

Congress must improve and strengthen Medicare. Congress needs to update the Medicare program and to make coverage more affordable. Changes made in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)—a decrease in co-insurance for mental health benefits and the flexibility to add preventive services—are steps in the right direction. Other needed improvements include combining the Part A and Part B deductibles and eliminating the income-related premium for Part B.

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[1] Medicare Advisory Payment Commission, "Report to the Congress: Medicare Payment Policy," March 2009, available at http://www.medpac.gov/documents/Mar09_EntireReport.pdf.
[2] Brian Biles, Emily Adrion, and Stuart Guterman, "The Continuing Cost of Privatization: Extra Payments to Medicare Advantage Plans in 2009," Commonwealth Fund, September 2008
[3] Congressional Budget Office, Budget Options, Volume I: Health Care, December 2008, available at http://www.cbo.gov/ftpdocs/99xx/doc9925/12-18-HealthOptions.pdf.
[4] Medicare Advisory Payment Commission, "Report to Congress: Medicare Payment Policy," March 2009.
[5] January Angeles and Edwin Park, "Curbing Medicare Advantage Overpayments Could Benefit Million of Low-Income and Minority Americans," Center on Budget and Policy Priorities, February 2009, available at http://www.cbpp.org/2-19-09health.pdf.
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Health Care Workforce

The current nursing shortage is compromising the ability of our health care system to deliver safe, 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 or reform our health care delivery system 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,[1] while another estimated a shortage of closer to 1 million by 2020.[2] 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 expected increase of tens of millions of people with health insurance demanding more services.

The nursing shortage threatens safe, 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.[3] Nurse staffing shortages are a factor in one out of every four unexpected hospital death or injury caused by errors.[4] Patients at hospitals with staffing ratios of four patients to one nurse or higher suffered from cardiac arrest or cardiac shock 9.4 percent more often than patients at hospitals with ratios of 2.5 or lower.[5] 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.[6] More than 75 percent of registered nurses believe the nursing shortage presents a major problem for the quality of their work life, quality of patient care and the amount of time nurses can spend with patients.[7] The environment in which nurses work will continue to threaten patient safety until it is substantially reformed.[8]

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[9]—a number that would go along 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.[10]

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.[11] The California Board of Nursing reported being inundated with RN applicants from other states.[12] Vacancies for RNs at Sacramento hospitals plummeted by 69 percent from 2004 to 2008.[13] 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.[14]

Health care reform must include safe staffing levels. To retain nurses and improve patient care, health care reform must require hospitals to meet safe staffing standards. The Nurse Staffing for Patient Safety and Quality Care Act of 2009 (H.R. 2273) 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.

Health care reform must prohibit mandatory overtime. Nurses who work shifts of 12.5 hours of more are three times more likely to commit errors than nurses who work a standard shift of eight and a half hours.[15] Health care reform must respect nurses' professional judgment and allow them the option of refusing overtime work when they determine that they do not have the capacity to properly care for patients. The Safe Nursing and Patient Care Act of 2007 (H.R. 2122) would 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.

Health care reform must include 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.[16] 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) would eliminate 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. Health care reform that requires 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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[16] Bureau of Labor Statistics.

Resources

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5 Retirement Security

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Social Security

The current economic crisis, the resulting dramatic decline in individual retirement savings and the rapid disappearance of defined-benefit pension plans are powerful reminders of the importance of Social Security. Although years of relentless attacks have undermined public confidence in the program, Social Security can be restored to long-range balance without radical changes. Congress and the president should consider only reforms that respect Social Security's insurance design, and they must oppose any efforts to reduce benefits or privatize the program.

Social Security is the cornerstone of American retirement security and the nation's single most important family income protection program, as well as the most effective anti-poverty program ever enacted in the United States. According to the Social Security Administration (SSA), 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 (32 percent) rely on it for nearly all (90 percent or more) of their income.[1] In addition to the retirement program, which provides 34.6 million retired workers and their spouses with benefits guaranteed for life and adjusted annually for inflation, Social Security provides guaranteed benefits to almost 7.4 million workers with disabilities, 4.4 million widowed spouses and 4 million children of deceased, retired or disabled workers.[2] In all, more than 50 million Americans, and one out of every four households, rely on monthly Social Security benefits.[3]

Congress and the president must promote understanding of the vital role Social Security plays in the financial security of American families and restore confidence in the program. Years of relentless attacks on Social Security's value and solvency have undermined public confidence in the program. As President Obama has said consistently, the finances of Social Security are essentially sound and will remain in balance far into the future with only minor adjustments.

Social Security can be restored to long-range balance without radical changes. Social Security revenues and reserves are fully adequate to pay all benefits due until 2037,[4] and about 75 percent of full benefits thereafter. The exhaustion date is four years earlier than the date projected in last year's report because of decreased payroll tax revenue and high disability claims. Social Security, however, is not in crisis. To put the shortfall into perspective, if Congress does not allow tax cuts for Americans making over $250,000 to expire after 2010 as scheduled, the revenue loss over the next 25 years will be almost equal to the entire Social Security shortfall over this period. Social Security's long-term solvency could be addressed by raising the taxable earnings cap (currently set at $106,800) to cover 90 percent of earnings and/or dedicating estate tax revenues above a certain limit to the Social Security Trust Fund.

Congress should consider only reforms that respect Social Security's insurance design and its importance as the core tier of retirement security. The decline in employer-provided pensions makes Social

Security all the more important for all of America's workers. Congress and the president must oppose any reduction in Social Security's benefits—whether in the name of "entitlement reform" or by increasing either the early retirement age or otherwise the normal retirement age beyond current law; changing the benefit formula to increase the number of years of earnings counted or to index benefits to prices instead of wages; or restricting eligibility. Congress and the president must also oppose any proposal to privatize the program. The safety net that is Social Security must not be weakened.

Adequate funding for the Social Security Administration is crucial. Over the past 10 years, Social Security's administrative budget has been constricted by upwards of $1.3 billion, resulting in staff shortages, huge backlogs of disability claims, long waits for applicants and impossible caseloads for staff. To ensure the system's efficiency and responsiveness, Congress must provide adequate funding for the Social Security Administration.

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[4] The 2009 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, available at http://www.ssa.gov/OACT/TR/2009/trTOC.html.

Pensions and 401(k) Plans

The majority of U.S. workers will face retirement with far less security than previous generations unless something is done to ensure them a guaranteed pension benefit. To the extent that U.S. workers have been able to achieve retirement security, it was because our retirement system was one of mutual responsibility—government-provided Social Security, employer-provided pensions and personal savings. Yet even before this economic crisis, retirement security was increasingly beyond the reach of most Americans as employer-provided pensions fell into decline and 401(k) plans offered a poor substitute. To promote retirement security, Congress must stabilize and revive the private pension system, protect workers in the event of corporate bankruptcy, give the Pension Benefit Guaranty Corporation (PBGC) more flexibility to maintain pension plans and consider alternative approaches to provide workers a guaranteed retirement benefit in addition to Social Security.

Employer-provided pensions are in decline. Only 20 percent of private-sector workers are covered by defined-benefit pension plans,[1] and that number is decreasing. The funding rules for single employer pension plans in the Pension Protection Act of 2006 (PPA), coupled with the imposition of new accounting standards, contribute to an environment in which even healthy companies choose to freeze their pension plans or close them to new hires.

Congress should stabilize and revive the private pension system. Necessary reforms to encourage the maintenance of pension plans include the establishment of funding rules—based on reasonable assumptions—that recognize the long-term nature of pension plans, rather than funding rules that focus on meaningless random snapshots of a plan's funded status. In addition, Congress must repeal the PPA provision that punishes plan participants for an employer's failure to fund a defined-benefit plan, and the provision that restricts the benefit guaranteed by the PBGC.

Congress should protect workers' pensions and retirement savings in the event of corporate bankruptcy. Industry-wide restructurings have left no doubt that America's workers need corporate bankruptcy reform to protect their interests. United Airlines, Delphi and other companies have used bankruptcy as a business strategy to reduce labor costs and shed benefit obligations such as pension and retiree health benefits. Provisions of the bankruptcy law, originally enacted to protect worker 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 corporate bankruptcy. Congress must pass a bankruptcy reform bill that gives workers a bankruptcy court claim for lost pension benefits, establishes a priority claim for workers who have lost their retirement assets in company stock funds due to employer fraud and prohibits companies from selling assets to escape the payment of promised pension (and health) benefits (see "Corporate Bankruptcy Reform," page 2.27).

Congress should give the PBGC flexibility to facilitate the maintenance of private pension plans. In many cases, pension plans could be maintained if plan sponsors were allowed additional time to meet funding obligations. Congress should provide the PBGC with authority to negotiate an alternate

funding schedule (with an appropriate role for the Treasury Department) if a pension plan could thereby be preserved. Congress should also authorize the PBGC to facilitate protection of benefits under multiemployer plans by providing subsidies from the Multiemployer Guaranty Fund to enable plan sponsors to merge healthy plans with plans in financial jeopardy to prevent failure of the weaker plan (or plans).

Congress must provide more protections for 401(k) plan participants. As employers increasingly abandon professionally managed pension funds in favor of participant-directed 401(k) plans, plan participants need better information about the costs of their investments and access to appropriate and unbiased investment education and advice. The full disclosure and breakdown of plan fees to both plan participants and plan sponsors should be required of all 401(k) providers. In addition, providers should be prohibited from giving workers conflicted or self-interested investment advice.

Congress should consider alternative approaches to provide workers with a guaranteed retirement benefit beyond Social Security. While the AFL-CIO remains committed to preserving and improving current pension and 401(k) plans that provide adequate and secure benefits for workers, we cannot ignore the fact that the current system—regardless of how many changes are made—will remain inaccessible, inadequate and insecure for millions of workers. We call on Congress and the new administration to join us in a dialogue about how to address the retirement security crisis and secure adequate and guaranteed lifetime retirement income for all of America's workers. While the AFL-CIO is not committed to any one approach to achieve this goal, it is our view that the following set of principles should be the benchmark against which new proposals should be evaluated:

- Retirement security should be based on mutual responsibility, with financing and risk allocated equitably among government, employers and workers;
- Every full-career worker should have the opportunity to retire at age 65 with at least 70 percent of his or her pre-retirement income (including Social Security);
- Retired workers should receive guaranteed lifetime retirement income; and
- Retirement benefits should be portable, following every worker from job to job.

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[1]For nonunion workers, the situation is even more grim: Only 15 percent of nonunion workers have defined-benefit pensions, compared with 67 percent of union workers. Department of Labor, Bureau of Labor Statistics, National Compensation Survey, Retirement Benefits (March 2008), available at http://www.bls.gov/ncs/ebs/benefits/2008/ownership/private/table02a.pdf.

Resources

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Core Labor Laws, Labor Standards and Workforce Protections

6

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The National Labor Relations Act

The National Labor Relations Act (NLRA) is broken and no longer upholds the freedom of workers to choose whether to form a union without interference from their employer. Giving workers the right to form and join unions is the best way to establish and maintain the American middle class, but the NLRA has proven too weak to protect that right. Decisions by a hostile National Labor Relations Board (NLRB) have seriously eroded worker protections under the act. Congress should pass the Employee Free Choice Act to help level the playing field for workers by making it easier to choose union representation and bargain for fair wages, health care and job security, and should confirm NLRB members who support the purposes of the NLRA.

The NLRA was enacted in1935 to protect the right of workers to form and join unions and bargain for better working conditions. The NLRA declares it the policy of the United States to encourage "the practice and procedure of collective bargaining" and to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purposes of negotiating the terms and conditions of their employment or other mutual aid and protection." The NLRA prohibits unfair labor practices (ULPs) by employers—such as interference with workers' freedom to form or join unions and firing or otherwise discriminating against workers to discourage union activity—as well as ULPs by unions. Members of the NLRB are nominated by the president and confirmed by the Senate to serve five-year terms, but the board has been operating with only two members since Dec. 31, 2007. The general counsel of the NLRB investigates and prosecutes ULP cases, processes petitions for union representation elections, supervises the NLRB regional offices and enforces NLRA-protected rights by bringing cases for adjudication before the board.

NLRA coverage is too limited. Under international human rights law, "every person" (with limited exceptions) has the right to form and join a union and bargain collectively. But according to the Government Accountability Office (GAO), only 78 percent of U.S. private-sector workers—and only 66 percent of federal, state and local government workers such as teachers and firefighters—enjoy collective bargaining rights under the NLRA, the Railway Labor Act (RLA) or other provision of law.[1] The NLRA does not protect public employees, managers and supervisors, independent contractors, employees of businesses with revenues under a certain threshold, domestic workers or agricultural workers.

NLRA protections are too limited. Many forms of employer interference and coercion are legal under the NLRA. For example, the NLRA's one-sided communication rules allow employers to wage coercive anti-union campaigns in the workplace—including captive audience meetings and one-on-one meetings with supervisors—while unions are severely limited in their ability to communicate with workers.

NLRA remedies are notoriously ineffective. While the NLRA prohibits some forms of employer interference, its remedies are too weak to deter employer violations. The typical NLRB remedy for firing union supporters is an award of back pay minus

interim earnings—averaging $3,935. The NLRA does not provide for fines or punitive damages or increased penalties for repeat violations. An employer that has engaged in misconduct such as threatening or spying on workers during an organizing campaign is typically required to post an NLRB notice promising not to do it again. The remedy for an employer's refusal to bargain with the union is simply a board order to return to the bargaining table.

The Bush NLRB abdicated its role as a protector of workers' rights. The Bush administration stacked the NLRB with anti-union members, and the Bush board abandoned its statutory responsibility to protect workers' rights. By overruling precedent, changing the rules and misapplying precedent in decision after decision, the Bush NLRB turned the NLRA on its head and denied workers the protections the law is supposed to guarantee.

The Bush NLRB limited NLRA coverage. The Bush board directly and indirectly eliminated whole segments of the workforce from the definition of "employees" protected by the NLRA, including teaching and research assistants, people with disabilities working as janitors, faculty members, artists' models and newspaper carriers and haulers. In the *Oakwood* trilogy of cases, the Bush NLRB radically expanded the category of unprotected "supervisors." And the Bush board effectively denied bargaining rights to temporary employees who work jointly for a supplier employer and a user client.

The Bush NLRB withdrew NLRA protections. Decisions of the Bush board limited the kinds of activities protected by the NLRA and gave wide latitude to employer behavior designed to discourage unionization.[2]

The Bush board weakened NLRA remedies. The Bush NLRB emboldened employers to violate workers' rights by weakening the NLRA's already miserably inadequate remedies and making it even less expensive and less burdensome for employers to break the law.[3]

Procedural delays further undermine NLRA protections. The effectiveness of NLRA remedies is undermined by the ability of employers to drag out legal proceedings until long after union supporters have been fired or intimidated. The median time elapsed between the filing of a charge with the NLRB and the issuance of a decision by an administrative law judge is 269 days, or almost nine months.[4] For cases that make it all the way to an NLRB decision, the median time elapsed between the filing of a charge and the issuance of a board decision is 1,173 days, or more than three years.[5]

Employer interference is rampant. Because of the NLRA's own limitations, NLRB decisions that have turned the statute on its head and the NLRB's endemic procedural delays, private employers in the United States can and do routinely interfere with virtual impunity with workers' freedom to form unions (see "Corporate Interference by the Numbers," page 3.3).

U.S. law fails to guarantee freedom of association. Freedom of association—including the right to form and join unions—is a fundamental human right recognized under international law and enshrined in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. As documented by Human Rights Watch,[6] U.S. labor law and practice fail to ensure workers' freedom of association because of inadequate coverage, legal loopholes that allow unchecked employer interference, inadequate remedies and procedural delays.

Congress should pass the Employee Free Choice Act this year. The Employee Free Choice Act would not repair all the flaws of

the NLRA, but it would help level the playing field for workers by making it easier to choose union representation and to bargain for fair wages, health care and job security (see "The Employee Free Choice Act," page 3.1).

Congress should restore NLRA protection to workers wrongly excluded as "supervisors." Congress should pass the RESPECT Act of 2007, which would eliminate the current ambiguity regarding supervisory status and ensure that workers are not denied collective bargaining rights by being wrongfully classified as "supervisors."

Congress should confirm NLRB members who support the purposes of the NLRA. Legislation to level the playing field for workers is necessary but not sufficient. To return the NLRB to its historic role as protector of workers' rights, Congress also needs to confirm board members who support the purposes of the NLRA.

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[1] GAO, "Collective Bargaining Rights: Information on the Number of Workers With and Without Bargaining Rights," GAO-02-835, September 2002.
[2] See Jon Hiatt, AFL-IO General Counsel, Testimony Before the House Committee on Education and Labor, Dec. 13, 2007.
[3] Hiatt, 2007.
[4] NLRB Annual Report 2007, Table 23, Page 184.
[5] NLRB Annual Report 2007, Table 23, Page 184.
[6] Carol Pier, "The Employee Free Choice Act: A Human Rights Imperative," Human Rights Watch, January 2009.

The Railway Labor Act

The Railway Labor Act (RLA) must be implemented in a way that protects the interests of workers in the airline and railroad industries and allows them to bargain fairly. While the RLA was originally a collaborative effort between labor and management, too often employers have been allowed to manipulate the statute to deny workers their basic rights to organize and engage in collective bargaining. The National Mediation Board (NMB) has failed to administer the RLA in a fair and balanced manner and has shirked its responsibility to promote collective bargaining and uphold the rights of workers to form and join unions. While the RLA can be improved, many of the problems associated with the statute could be addressed by a fair and balanced NMB not dominated by employer interests.

The RLA, which was enacted in 1926, 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 requires employers and their employees to exert "every reasonable effort" to make and maintain collective bargaining agreements. The NMB is a three-member federal agency charged with overseeing the RLA and labor-management relations in the air and rail industries.

Under NMB rules, workers can be denied union representation even when a majority of voters support it. Under current NMB rules, all unreturned ballots are counted as "no" votes, so workers may be denied a union even when a majority of workers who cast ballots vote for union representation. By contrast, in elections overseen by the National Labor Relations Board (NLRB), only the votes of workers who vote are counted.

NMB rules reward vote suppression. Because of the rule that unreturned ballots must be counted as "no" votes, vote suppression campaigns such as one run by Delta Airlines can be very effective. During two recent attempts by Delta Airlines flight attendants to join a union, Delta's vote suppression campaign featured surveillance, interrogation, harassment and intimidation of union activists and even instructing its workers to destroy the NMB balloting information necessary to vote.

The NMB has failed to ensure that collective bargaining disputes are settled in a fair and timely manner. Under the RLA, collective bargaining agreements do not expire but rather become amendable on a certain date. Until a new bargaining agreement is reached, the current contract remains in place, and workers are barred from striking until the mediation procedures of the RLA are exhausted and the NMB determines that an impasse has been reached. While these procedures are designed to minimize disruptions of service, collective bargaining only works if the NMB does its job to facilitate and encourage genuine bargaining and releases the parties from mediation once it is clear that negotiations have reached an impasse. The current NMB has failed to meet this responsibility and has kept parties in endless mediation.

The NMB failed to meet its responsibilities in contract negotiations with Amtrak. Amtrak and its workers went over eight years

without a new contract, during which time the NMB refused several requests from workers to be released from mediation. During the protracted negotiations, workers went without a real wage increase, and the amount of back pay due them became an additional barrier to settlement. After intense pressure, the NMB finally released the parties from mediation. Ironically, a Bush-appointed Presidential Emergency Board (PEB) recommended settlement terms largely in line with the unions' position and determined that back pay to compensate workers for going eight years without a contract was warranted. While the final result affirmed the unions' position, there is no reason why an agreement could not have been reached earlier and with significantly less acrimony.

The bargaining system for workers in the airline and railroad industries is broken and tilted in favor of management. Forcing rail and aviation employees and their unions to stay at the bargaining table well beyond the point of any productive negotiations frustrates the rights of workers and denies settlements within a reasonable time frame. By failing to change this endless cycle of delay, the NMB is denying basic due process.

Companies should not be allowed to use the RLA as a "union avoidance" strategy. Some companies have attempted to remain subject to RLA jurisdiction to shield themselves from union organizing efforts, or to subject themselves to RLA jurisdiction in order to extinguish existing collective bargaining rights. Most notably, Federal Express has argued that virtually all of its ground employees, including truck drivers and mechanics, are actually aviation workers covered by the RLA rather than the NLRA. Contractors for air carriers that are not themselves carriers have also tried to manipulate the law to stay under the RLA.

Many of the problems associated with the RLA could be addressed by a fair and balanced NMB not dominated by employer interests. The NMB has abdicated its responsibility under the RLA to ensure that employees can make representation choices free from employer interference. Board members must be appointed to the NMB who will help the board meet its statutory responsibility to promote collective bargaining and establish and protect the rights of workers to freely choose union representation.

The NMB must change its rules so that workers are not denied union representation when a majority of voters support the union. The NMB must abolish its practice of counting unreturned ballots as "no" votes. Denying union representation to workers when a majority of those who vote want to be represented makes absolutely no sense and is contrary to the policy of fostering collective bargaining.

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Minimum Wage

After its final scheduled increase in July 2009, the minimum wage will remain 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 scheduled for 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 2009, 26 states and the District of Columbia had set their minimum wages at rates higher than the federal rate.[1] 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.[2]

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 between Jan. 1, 1981, and April 1, 1990.[3] For the minimum wage to have the same purchasing power it had at its highest point in 1968, the minimum wage in 2009 would have to be $8.84—$1.59 more than $7.25, the minimum wage effective on July 24, 2009.[4]

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. To reach 50 percent of the average wage today, the minimum wage would have to be increased to $8.94.[5]

The minimum wage should not leave full-time workers in poverty. During the 1960s and 1970s, the annual earnings of a full-time, year-round worker earning the minimum wage were roughly equal to the poverty level for a family of three. To reach the poverty line for a family of three in 2009 (projected to be $17,225), a full-time, year-round worker would have to earn $8.29 per hour.[6]

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 1996-1997 or 1990-1991 increases in the federal minimum wage.[7] 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.[8] 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.[9]

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.[10] 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.[11] In addition, Washington state—which at $8.55 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 past four years. Washington's economy is also much stronger than the national economy during our current recession.[12]

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 an hour.[13]

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 an hour, as long as tips make up the difference between the cash minimum for tipped workers of $2.13 and the 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 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 FLSA protections for particular workers.

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[3] U.S. Department of Labor, Employment Standards Administration, "History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2007," downloaded January 2009.
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[5] Economic Policy Institute, EPI "Issue Guide—Minimum Wage," August 2008.
[6] AFL-CIO projected the poverty thresholds for 2008 and 2009. These projections were calculated using inflation estimates from the Congressional Budget Office, "The Budget and Economic Outlook: Fiscal Years 2009 to 2019," January2009. Sources for the average poverty thresholds from 1959 to 2007 are as follows: U.S. Commerce Department, U.S. Census Bureau, Table 1. Weighted Average Poverty Thresholds for Families of Specified Sized: 1959 to 2006, downloaded January 2009; and U.S. Commerce Department, U.S. Census Bureau, "Poverty Thresholds for 2007 by Size of Family and Number of Related Children Under 18 Years," downloaded January 2009. Source for the minimum wage rate for each year is U.S. Department of Labor, Employment Standards Administration, "History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2007," downloaded January 2009. Annual minimum wage earnings for comparison with average poverty thresholds are calculated assuming a person worked 40 hours a week for 52 weeks.
[7] Jared Bernstein and John Schmitt, "Making Work Pay: The Impact of the 1996-1997 Minimum Wage Increase," Economic Policy Institute, 1998; David Card and Alan B. Krueger, Myth and Measurement: The New Economics of the Minimum Wage, Princeton University Press, 1995.
[8] Fiscal Policy Institute, "States with Minimum Wages above the Federal Level have had Faster Small Business and Retail Job Growth," March 2006.
[9] Economic Policy Institute, "Minimum Wage Issue Guide: Facts at a Glance," Updated August 2008.
10 Edith Rasell, Jared Bernstein and Heather Boushey, "Step Up, Not Out—The Case for Raising the Federal Minimum Wage for Workers in Every State," Economic Policy Institute, February 2001.
[11] Oregon Center for Public Policy, "New Year Brings Wage Boost for Oregon's Lowest-Paid Workers," December 2008.
[12] Economic Opportunity Institute, "Fact Sheet: Washington's Minimum Wage," December 2008.
[13] AFL-CIO projected the 2009 average hourly production worker wage using inflation estimates from the Congressional Budget Office. Sources: Congressional Budget Office, "The Budget and Economic Outlook: Fiscal Years 2009 to 2019," January 2009; U.S. Department of Labor, Bureau of Labor Statistics, Current Employment Statistics Survey, data accessed January 2009.

Occupational Safety and Health

Congress and the new administration must restore U.S. job safety and health programs to their intended mission of protecting workers from injuries, illness and death. As major hazards to workplace health and safety have been neglected in the past eight years and resources devoted to job safety have been reduced, progress toward reducing job injuries and illnesses has been halted. To address the growing crisis in worker safety and health, Congress and the Obama administration must provide adequate resources for health and safety programs, strengthen enforcement, update and strengthen regulatory standards, improve statutory protections for miners and other workers and provide assistance and compensation for 9/11 responders.

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 three 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 79 percent and reported workplace injury rates have declined by 60 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 2007, 5,488 workers were killed on the job and an estimated 50,000 more workers died due to occupational diseases. For 2007, the Bureau of Labor Statistics reported more than 4 million job injuries and illnesses, without including injuries of public-sector or self-employed workers or unreported injuries. Recent estimates put the true toll at 9 million to 12 million injuries and illnesses per year. The cost of these injuries and illnesses is estimated at between $163 billion and $290 billion per year. Fatality and injury rates are much higher for Latino and immigrant workers, and in 2006 fatalities among Latino workers reached an all-time high.

Congress and the new administration must address the growing crisis in protecting worker safety and health. The mining disasters at Sago and Crandall Canyon, and chemical plant explosions and major construction accidents in New York and Las Vegas, are evidence of a growing crisis in protecting workers' safety and

health. Moreover, changes in the workplace, the workforce and society have created new problems such as ergonomic hazards, indoor air contaminants and bio-terrorist threats. Pandemic influenza poses a serious threat not only to the health of the entire country but also to health care workers and other responders who will be on the front lines in the event of an outbreak. After eight years of neglect and inaction, Congress and the new administration must meet these challenges and restore job safety programs to their intended mission of protecting workers from injuries, illnesses and death.

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 2008 OSHA budget of $486 million—compared with $7.5 billion for the Environmental Protection Agency—amounts to only $3.89 per worker. Federal OSHA has 530 fewer inspectors today than in 1980—a 36 percent decrease—and can only inspect a given workplace on average once every 133 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 2008 was only $334 million, which includes a 10 percent increase to implement mine safety legislation adopted in 2006 in the wake of recent mining disasters. The budget for the National Institute of Occupational Safety and Health (NIOSH)—$274 million in FY 2008—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. The Bush administration and some in Congress have attempted—through appropriations, legislation, regulation and policy—to shift OSHA's emphasis from enforcement to voluntary compliance assistance. But the evidence clearly shows that compliance assistance only works in the presence of strong enforcement. In FY 2007, OSHA's average penalty for serious violations—likely to cause death or serious harm—was only $906. 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 38 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. There is now a huge backlog of standards that need to be issued, including rules on silica, beryllium, cranes and derricks, diacetyl and combustible dust.

Congress must strengthen the OSH Act. The OSH Act has remained largely unchanged since 1970. While groundbreaking at the time, the statute is now weaker than most other safety, health and environmental laws, particularly with regard to enforcement. The OSH Act's criminal penalties are weak—limited to cases involving a worker death that results from a willful violation, and such offenses are only misdemeanors. Civil penalties are also weak—in FY 2007 the median final penalty in enforcement cases involving a worker death was only $3,675. 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 2007, would expand OSH Act coverage to uncovered workers, enhance whistleblower protections and increase penalties for serious, willful and criminal violations.

Congress must provide additional protections for miners. In response to the Sago and other mine disasters in 2006, Congress passed the Mine Improvement and New Emergency Response (MINER) Act, the first major reform to the MSH Act. The Supplemental Mine Improvement and New Emergency Response (S-MINER) Act, introduced in the 110th Congress, would further improve emergency response measures and put in place protections to prevent mine disasters and protect workers from injuries and disease.

Congress must provide assistance to 9/11 responders and community members. The James Zadroga 9/11 Health and Compensation Act (H.R. 847) would establish a program to provide medical monitoring, treatment and compensation to thousands of 9/11 responders and community members as a result of exposures resulting from the collapse of the World Trade Center.

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SOURCES: "Survey of Occupational Injuries and Illnesses, 2007," Bureau of Labor Statistics, U.S. Department of Labor; *Census of Fatal Occupational Injuries, 2007,* Bureau of Labor Statistics, U.S. Department of Labor; *Costs of Occupational Injuries and Illnesses,* J. Paul Leigh, et. al., University of Michigan Press, 2000; *Death on the Job:The Toll of Neglect, A National and State-by-State Profile of Worker Safety and Health in the United States,* 17th edition, AFL-CIO, April 2008; "Discounting Death: OSHA's Failure to Punish Safety Violations that Kill Workers," U.S. Senate Committee on Health, Education, Labor and Pensions, April 2008.

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 times of family need. Congress should strengthen the FMLA to expand the number of covered workers, cover more family needs and provide paid family and medical leave. Congress also should pass legislation to guarantee employees seven days of paid sick leave for routine medical care, to recover from short-term illnesses or 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 from a family member's military 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.[1] Sixteen states have enacted leave protections beyond those provided by the FMLA, and unions 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 economic 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 limited coverage and the inability of millions of workers to afford leave without pay. Half the private-sector workforce lacks access to unpaid leave under the FMLA because of the size of their employer, the number of hours they work or their tenure with their employer.[2] And 78 percent of employees who have needed but not taken FMLA leave say they could not afford to take unpaid leave.[3] Without some form of wage replacement, the FMLA's promise of job-protected leave is unrealistic for millions of working people.

Congress should strengthen the FMLA. The FMLA should be expanded to cover workers in companies with fewer than 50 employees, and the minimum hours worked should be lowered 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 non-emergency care of children and elderly parents.

Congress should make technical corrections to the FMLA. Due to unusual timekeeping methods in the airline industry, pilots and flight attendants are essentially excluded from the FMLA. The Airline Flight Crew Technical Corrections Act (H.R. 912) would extend eligibility requirements for unpaid leave to include airline crews by changing the calculation of qualifying hours for these workers.

Congress should provide for paid family or medical leave. Congress should enact legislation to provide for wage replacement during periods of family leave. Specifically, 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 nearly half of all private-sector workers do not have access to paid, job-protected sick days.[4] Lower-paid workers are especially vulnerable: 79 percent of low-income workers—the majority of whom are women—do not have a single paid sick day.[5] Among those who do have paid sick days, most cannot use them to care for sick family member.[6] Paid sick days 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.[7] The Healthy Families Act (H.R. 2460) would provide full-time employees with seven paid sick days per year—and a prorated amount for part-time employees—to be used for short-term illness, to care for a sick family member or for routine medical care.

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[1] Testimony of Debra Ness before the Committee on Health, Education, Labor and Pensions Subcommittee on Children and Families, Feb. 13, 2008, help.senate.gov/Hearings/2008_02_13/Ness.pdf, 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.
This estimate is calculated by 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 has not surveyed employers and employees on the FMLA since 2000.
[2] Forty percent of workers do not work for covered employers, and an additional 10 percent of workers are not eligible because they do not meet the tenure or hourly requirements of the FMLA. Jane Waldfolgal, www.bls.gov/opub/mlr/2001/09/art2full.pdf, pages 19-20, and Jody Heymann http://www.iwpr.org/pdf/heymann.pdf, page 2.
[3] "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.
[4] Vicky Lovell, Institute for Women's Policy Research, "Women and Paid Sick Days: Crucial for Family Well-Being, 2007."
[5] Economic Policy Institute, "Minimum Wage Issue Guide," 2007, www.epi.org/content.cfm/issueguides_minwage.
[6] Vicky Lovell, "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.
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Prevailing Wage Laws: 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 innovative financing techniques such 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 repeatedly have attempted 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.

Workers who are paid more 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 that 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.[1]

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 more highly paid and highly skilled workers that often projects using them cost less than those using lower-wage, less-skilled workers. A growing body of economic research refutes the claim that prevailing wage laws drive up the costs of construction,[2] and shows that "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."[3]

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.[4] A 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. [5]

Most prevailing wage determinations are based on nonunion wage scales. According to U.S. Department of Labor data, 72 percent of Davis-Bacon wage determinations issued in 2000 were based upon nonunion labor scales. The union wage is used only if the Labor Department wage survey process determines that the local union wage is the prevailing wage.

Davis-Bacon protects blue-collar workers and sustains communities. Davis-Bacon ensures quality training for construction workers,[6] lowers the rate of construction-related injuries,[7] promotes health care coverage for construction workers [8] and minimizes disruption to local labor markets and local unemployment.[9] If construction wages were to decline significantly, demand would increase for government programs, ranging from financial aid for college students to food stamps and public health services.

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[1] "Wages, Productivity and Highway Construction Costs: Updated Analysis 1994-2002," Construction Labor Research Council, March 2004.
[2] Nooshin Mahalia, "Prevailing Wages and Government Contracting Costs: A Review of the Research," Economic Policy Institute, Briefing Paper #215, at 1, 2008.
[3] Howard Wial, "Do Lower Prevailing Wages Reduce Public Construction Costs?" Keystone Research Center, July 1999, www.keystonesearch.org.
[4] Peter Philips, Ph.D., "A Comparison of Public School Construction Costs, University of Utah," February 2001. http://www.faircontracting.org/pdf/Public_School%20Peter%20Phillips.pdf.
[5] Peter Phillips, Ph.D., "Kansas and Prevailing Wage Legislation," Prepared for the Kansas Senate Labor and Industries Committee, Feb. 20, 1998. http://www.faircontracting.org/NAFCnewsite/prevailingwage/new/kansas_prevailing_wage.pdf.
[6] Peter Philips, "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.
[7] 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.
[8] Jeffrey Petersen, "Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws," Industrial Relations 39, 2000, www.smacna.org.
[9] 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.

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 save on 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.[1]

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.[2]

Misclassification has become increasingly common. In 1984, the Internal Revenue Service estimated that 15 percent of employers misclassify their employees as independent contractors.[3] In 1995, the Government Accountability Office (GAO) testified that "IRS officials believe misclassification has been increasing."[4]

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.[5] 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.[6]

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 agencies and loopholes allowing employers to misclassify their employees with impunity.

Tax loopholes encourage misclassification. The most significant loophole in the tax code is the Section 530 "safe harbor,"[7] 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 is also guilty of misclassification. Section 530 also prohibits the IRS from reclassifying misclassified employees prospectively,[8] and from issuing guidance on proper classification.

The Taxpayer Responsibility, Accountability and Consistency Act would pare back tax loopholes. Legislation introduced by Rep. Jim McDermott (D-Wash.) in the 110th Congress would limit the Section 530 "safe harbor" to businesses that rely on IRS determination letters or audits. No longer could employers misclassify their employees simply because a "significant segment" of their industry does it.

Employee Misclassification Prevention Act would strengthen enforcement. Legislation introduced in the 110th Congress by Rep. Robert Andrews (D-N.J.) would amend the Fair Labor Standards Act (FLSA) to clarify that the FLSA requires accurate recordkeeping of employment status; to provide a $10,000 civil fine for recordkeeping misclassification; to provide double liquidated damages for wage and hour violations when the employer has willfully or repeatedly violated FLSA recordkeeping requirements; and to require that employers notify employees and independent contractors of their employment status.

Stronger enforcement would not penalize scrupulous businesses. Neither the McDermott nor the Andrews bill 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.

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1 National Employment Law Project (NELP), "1099'd: Misclassification of Employees as Independent Contractors," 2005.
2 Government Accountability Office, "Employment Arrangements: Improved Outreach Could Help Insure Proper Worker Classification," 2006, at 7-9 and Appendix IV.
3 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.
4 Natwar M. Gandhi, GAO associate director for tax policy and administration issues, "Testimony Before Small Business Subcommittee on Taxation and Finance," August 1995.
5 Government Accountability Office, "Employment Arrangements: Improved Outreach Could Help Insure Proper Worker Classification," 2006, at 2.
6 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.
7 Section 530 of the Revenue Act of 1978.
8 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.

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 mass 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 mass transit and commuter rail employees are protected by the requirements of Section 13(c), [1] 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 mass transit (subway and bus 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; and (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. The Government Accountability Office (GAO) has confirmed that transit agencies are reaping the benefits of Section 13(c) while making technological advancements, receiving grants on a timely basis, increasing operational efficiency and maintaining and reducing labor costs.[2] Of

100 transit agencies surveyed by GAO, an overwhelming number reported that Section 13(c) generally had no effect on labor costs.[3]

Section 13(c) requirements must apply to all existing federal transit programs. Reauthorization of the highway and transit authorization bill known as SAFETEA-LU, which expires Oct. 1, 2009, must guarantee that 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,"[4] have provided some measure of job security and income stability for freight rail workers following mergers, line sales and abandonment by rail carriers. Congress must uphold these protections to ensure that 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 expansion of passenger rail, including new service on existing lines and new dedicated passenger rail lines. Passenger rail—and specifically high-speed service—must be expanded, but workers' 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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[1] Established by Section 13(c) of the Federal Transit Act, 49 U.S.C §5333(b).
[2] General Accounting Office, "Transit Labor Arrangements: Most Transit Agencies Report Impacts Are Minimal," GAO-02-78, Nov. 19, 2001.
[3] General Accounting Office, "Transit Labor Arrangements: Most Transit Agencies Report Impacts Are Minimal," GAO-02-78, Nov. 19, 2001.
[4] New York Dock Railway-Control Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

Bargaining Rights for Public Safety Employees

First responders who risk their lives every day to protect the public—such as firefighters, police officers and emergency medical services personnel—deserve the same right to speak out and be heard in the workplace that other employees enjoy. Productive partnerships between public safety employees and their employers have resulted in measurable improvements in fire and police departments across the country and have contributed to emergency preparedness and national security. Congress must pass the bipartisan Public Safety Employer-Employee Cooperation Act to ensure minimum collective bargaining rights for public safety employees in all 50 states.

The Public Safety Employer-Employee Cooperation Act (H.R. 413) would ensure minimum collective bargaining rights for first responders in all 50 states. These minimum rights would include (1) the right to bargain over wages, hours and working conditions; (2) a dispute resolution mechanism, such as fact-finding or mediation; and (3) enforcement of contracts through state courts. States that do not meet these standards within two years would be subject to regulation by the Federal Labor Relations Authority (FLRA), an agency with unrivaled expertise in public sector labor relations.

Labor-management partnerships benefit communities. Labor-management partnerships, which are built on collective bargaining relationships, make police and fire departments more effective by enabling rank-and-file workers to provide input into the most efficient methods to provide services. Studies show that communities that promote such cooperation not only suffer fewer fatalities of public safety employees but also enjoy more efficient delivery of emergency services.[1]

Labor-management partnerships contribute to homeland security. Labor-management partnerships play an essential role in efforts to detect, prevent and respond to terrorist attacks, and to respond to natural disasters, hazardous materials and other mass-casualty incidents.

Public safety employees deserve the same rights as other employees. The vast majority of America's workers already have the right to speak out and be heard at work. Firefighters, police officers and emergency medical personnel deserve the same right to discuss workplace issues with their employer that other employees have.

Most states already meet the standards of H.R. 413. Most states would be completely unaffected by H.R. 413 because they already are in full compliance with its requirements. In states that do not have a statewide law providing collective bargaining rights, H.R. 413 would limit the authority of the FLRA to enforce its regulations in cities and counties with local ordinances that do meet the bill's requirements.

H.R. 413 would give states broad flexibility. The bill would leave almost all the most significant labor issues for states to resolve. H.R. 413 would not undermine existing state bargaining laws, and would provide states with wide latitude to craft bargaining laws that reflect local customs and circumstances. It would be relatively easy for states not currently in compliance to come into compliance, and the implementation and

enforcement of state laws would be left to the states.

H.R. 413 would not mandate binding arbitration. The requirements of H.R. 413 could be met instead by fact-finding or mediation.

H.R. 413 would not impose any additional costs on communities. The bill would essentially establish a process without mandating an outcome. H.R. 413 would not require that any agreements be reached and would allow local legislative bodies to reject any collectively bargained agreement. Nothing in the bill would require any community to spend a single penny it did not believe to be in the public interest. Government agencies would retain unfettered discretion to simply say "no" to any union proposals.

H.R. 413 would outlaw strikes. The bill would outlaw strikes and work slowdowns by public safety officers as a matter of federal law. The reality is that public safety officers who currently have bargaining rights do not strike, and the overwhelming majority of state laws already prohibit such strikes. Opponents of H.R. 413 point to a series of strikes that occurred 40 years ago, but virtually all of these strikes concerned the right to bargain, and H.R. 413 would make strikes over this issue even *less* likely.

H.R. 413 would not hinder emergency response. The bill would not infringe on the ability of government agencies to manage public safety operations however they see fit. Every one of the 343 firefighters who perished at Ground Zero on Sept. 11, 2001, was a card-carrying union member who enjoyed collective bargaining rights, and most were not even supposed to be on duty that day. Similarly, union first responders waded into toxic flood waters after Hurricane Katrina to search for survivors. The suggestion that these life-saving efforts may have been hindered by the collective bargaining rights of first responders is offensive.

H.R. 413 would not affect so-called right-to-work laws. The bill would have no effect on state right-to-work laws that prohibit contracts requiring nonunion members to pay agency fees to defray the costs of union representation.

The Public Safety Employer-Employee Cooperation Act is bipartisan. In the 110th Congress, the House passed the bill by a margin of 314 to 97, including 98 Republicans. In the Senate the bill had 37 co-sponsors, including nine Republicans. The Senate voted to break a filibuster against the bill by a margin of 69-29, including 17 Republicans. The bill did not go to the Senate floor for a final vote.

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[1]For example, the Secretary of Labor's Task Force on Excellence in State and Local Government, a national bipartisan study group to improve delivery of state and local government services, found in 1996 that "collective bargaining relationships, applied in cooperative, service-oriented ways, provide the most consistently valuable structure for beginning and sustaining workplace partnerships with effective service results." http://www.dol.gov/oasam/programs/history/reich/reports/worktogether/toc.htm.

Bargaining Rights and National Security

Congress should repeal the Bush administration's system to undermine collective bargaining rights for civilian employees of the Department of Defense. For nearly five years, the Defense Department has mismanaged 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 Defense Department civilian employees, which Congress and department employees have roundly rejected. Congress should repeal the NSPS in its entirety and direct the department to comply with its collective bargaining obligations under the Civil Service Reform Act of 1978 (Chapter 71).

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

Defense ignored worker input before implementing the NSPS. The Defense Authorization Act of 2004 required the department to engage in meaningful discussions with unions regarding development of the new personnel system. Congress directed the department 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 coalition of 36 unions representing Defense Department civilian employees, was created to "meet and confer" with department management beginning in 2005. However, despite numerous sessions and 58,000 comments from concerned employees, the department's management ignored virtually all proposals supported by the UDWC and made few changes to its final NSPS regulations.

The NSPS was an effort to undermine unions and collective bargaining rights. The NSPS was the brainchild of the Heritage Foundation, an anti-government think tank opposed to workers' rights. Former Secretary of Defense Donald Rumsfeld and leadership of the Office of Personnel Management (OPM) created the NSPS to gut unions, strip workers of their civil service and job protections and put in place an untested and discriminatory pay band system. Much of the NSPS was patterned after the illegal program used by the Department of Homeland Security called "Max HR," whose funding Congress has discontinued.

Congress made significant changes to the NSPS in 2008. The Defense Authorization Act of 2008 limited the Defense Department'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 government-wide 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.

Congress restored collective bargaining rights in 2008. The Defense Authorization Act of 2008 restored the collective bargaining rights of Defense Department 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 Defense, "to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees."[1] 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.

The Defense Department has attempted to avoid restoring collective bargaining rights. The department has attempted to exploit restrictions in the 2008 legislation's restoration of collective bargaining rights. For example, the 2008 Defense Authorization Act allowed for the limitation of collective bargaining on certain "government-wide" rules, and Defense has tried to fit as many policy details as possible within this exception. The 2008 legislation also declared that "rates of pay" would be nonnegotiable but subject to bargaining obligations over procedures to be used, and provided appropriate arrangements for employees adversely affected by pay decisions. Defense responded by defining "rate of pay" in its 2008 regulations in a way that included anything that remotely touches on the amount of pay an employee receives.

The Defense Department repeatedly has demonstrated an unwillingness to accept its collective bargaining obligations. The 2008 Defense Authorization Act required the department to establish a fair, credible and transparent personnel system. Instead, the NSPS pay and performance systems are opaque, mysterious, confusing and prone to inequities. The NSPS allows managers to give favored employees more money, new jobs and advancement opportunities without giving them promotions, without using competitive processes and without giving other employees notice of opportunities.

GAO faulted NSPS. The 2008 Defense Authorization Act directed the GAO to review whether Defense had effectively incorporated specific accountability and internal safeguards and to assess employee attitudes toward NSPS. In its reports and testimony before Congress, the GAO criticized the department for failing to effectively manage the design and implementation of the NSPS. The GAO observed that including employee involvement "must be meaningful, not just pro forma," and that employee involvement "can improve polices and procedures, increase acceptance within the workforce, and minimize potential adverse morale implications." The GAO found that employees who had the most experience under NSPS had negative perceptions. NSPS employees who believed the system would have a positive effect on the Defense Department's personnel practices declined from 40 percent in 2006 to 23 percent in 2007. The percentage of employees who agreed that their performance appraisal was a fair reflection of their performance declined from 67 percent in May 2006 to 52 percent in May 2007.[2]

The Obama administration is reviewing NSPS. On March 16, 2009, The Defense Department and the Office of Personnel Management announced they were undertaking a review of the NSPS. The Department announced it will delay any further conversions of organizations into NSPS until at least October 2009 pending the outcome of this review.

Congress should repeal NSPS. Congress should repeal NSPS in its entirety and direct the Defense Department to fully comply with its obligations under Chapter 71.

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[1] 5 U.S.C. §7102(2).
[2] GAO, "Human Capital: Improved Implementation of Safeguards and an Action Plan to Address Employee Concerns Could Increase Employee Acceptance of the National Security Personnel System," GAO-09-464T, April 11, 2009.

Outsourcing and Insourcing

Congress must clean up the mess made by the Bush administration in outsourcing government work. For eight years, the Bush administration promoted the wholesale privatization and contracting out of inherently governmental functions and those closely associated with inherently governmental functions, resulting in conflicts of interests, exorbitant costs, recurring scandals and stinging rebukes from the Government Accountability Office (GAO). Congress must establish a new competitive sourcing process that is more accountable to taxpayers and fairer to federal employees. Specifically, Congress must maintain the moratorium on new privatization reviews pending a thorough reform of the competitive sourcing process; require that inherently governmental work be performed only by federal employees; incrementally bring back in-house inherently governmental work that already has been contracted out; exclude health care and retirement costs from public-private cost comparisons; and give federal employees more opportunities to compete for new work and work currently outsourced.

The Bush administration promoted wholesale privatization. The Bush administration used privatization to blur the lines between the public interest and private interests. Federal agencies often were forced to contract out work that was inherently governmental and closely associated—that is, so bound up in the public interest that it must be performed by federal employees—or they were prevented from taking on new work. Excessive privatization by the Bush administration resulted in sole-source contracts, conflicts of interests, loss of control over important government functions and exorbitant contracting costs.

The Department of Homeland Security (DHS) impermissibly outsourced sensitive work. The GAO found that DHS used contractors to prepare budgets, develop policies, support acquisition, develop and interpret regulations, reorganize and plan and administer privatization studies under OMB Circular A-76.[1] In outsourcing this work, DHS officials did not even bother to subject contractors to extra surveillance or look for opportunities to "insource"—that is, source the work in-house.

GAO repeatedly has documented flaws of the privatization review process. GAO has issued reports criticizing the A-76 competitive sourcing process as implemented by the Department of Agriculture[2] and the Department of Labor.[3]

Insourcing is the remedy for excessive privatization. Federal contractors claim nothing can be done about outsourcing carried out by the Bush administration. However, the remedy for excessive privatization is insourcing, which occurs routinely in state and local governments. Insourcing is still relatively rare at the federal level, but interest is growing.

Insourcing saves money. As the Bush administration's Office of Management and Budget (OMB) was forced to acknowledge, federal employees beat contractors in 83 percent of A-76 privatization reviews conducted since 2003, when the A-76 process was completely overhauled.[4]

Insourcing already is being implemented successfully. Using an earlier insourcing law, the Department of the Army has already insourced almost 1,400 contractor jobs since 2008, saving taxpayers

$297 million.[5] The Bush administration used the tragedy of 9/11 as an excuse to contract out Department of Defense security guards, but scandals[6] forced Congress to direct that contractor guards be insourced over several years.[7] The Department of the Air Force says that by 2012 it will have brought back in-house all 2,000 outsourced security guards.[8]

Congress has demanded a redefinition of inherently governmental work. In the FY 2009 defense authorization bill, Congress directed the executive branch to redefine what work is inherently governmental so the public can be sure work that should be performed by federal employees actually is performed by federal employees.[9]

Congress must maintain the moratorium on new privatization reviews. The recently enacted omnibus FY 2009 appropriations bill includes an indefinite government-wide prohibition on privatization reviews under OMB Circular A-76.[10] Before A-76 reviews can be recommenced, legislation must be enacted to thoroughly reform the competitive sourcing process and scrap pending privatization reviews.

Inherently governmental work must only be performed by federal employees. A general policy must be established that all inherently governmental work, all work related to inherently governmental work and all mission-essential work is to be performed only by federal employees. All remaining work could be performed by contractors or by federal employees, depending on which workforce is more efficient and consistent with agency needs and all competition requirements.

Agencies must be required to certify that outsourced work is not inherently governmental. Before contracting out any new work, agencies must be required to certify that none of the work is inherently governmental, closely related to inherently governmental work or mission-essential. Agencies should also be required to document why federal employee performance is impractical.

Agencies must be required to establish contractor inventories. Contractor inventories, such as one being developed by the Department of Defense, show everything about a contract—from how many people do the work to how well they are performing.

Agencies must be required to insource incrementally. Over several years, agencies should be required to incrementally insource all work that should be performed by federal employees but has been contracted out.

Agencies must be required to give federal employees opportunities to perform outsourced work. Agencies must be required to establish schedules for insourcing opportunities, particularly for work that is being poorly performed or has been contracted out without competition.

Oversight of the competitive sourcing process must be transferred to another agency. Perhaps the most necessary reform of the A-76 competitive sourcing process is the transfer of oversight responsibility from the OMB to another agency. One thing we have learned over the past eight years is that an agency cannot impartially oversee the A-76 process if it also is an advocate for using that process in a certain way. Moreover, OMB staff members insist the agency is insufficiently staffed to oversee privatization reviews.

Other longstanding problems with the competitive sourcing process must be fixed. Possible reforms of the A-76 process include limiting the length of privatization reviews, increasing the cost differential to

take into account the significant quantifiable costs of carrying out privatization reviews, abolishing re-competition in the event of satisfactory in-house performance and ending the plainly excessive overhead charge imposed on all in-house bids.

Congress should enact the Correction of Longstanding Errors in Agencies' Unsustainable Procurements (CLEAN UP) Act. The legislation, introduced by Sen. Barbara Mikulski (D-Md.) and Rep John Sarbanes (D-Md.), would establish clear and consistent sourcing principles for all agencies; encourage agencies to insource new work when appropriate; establish schedules for incrementally insourcing inherently governmental, closely associated with inherently governmental and mission-essential functions; establish comprehensive and reliable inventories of service contracts so that agencies can identify which contracts are poorly performing and which contracts are appropriate for insourcing; determine where and when agencies will experience shortages of federal employees; recommend specific and much-needed reforms to the A-76 privatization process; suspend all use of that privatization process until the reforms of the legislation have been substantially implemented; and develop internal re-engineering as an alternative to the privatization process.

Congress must maintain the prohibition against outsourcing smaller governmental functions absent a fair cost comparison. The FY 2009 omnibus appropriations bill prohibits all agencies other than the Department of Defense from awarding smaller functions to contractors without a full and fair public-private competition process that excludes both health care and retirement costs from the cost comparison process.[11] The prohibition should be expanded to include the Defense Department.

Congress must maintain the requirement that agencies give federal employees opportunities to compete for new and outsourced work. The FY 2009 omnibus appropriations bill requires all agencies other than the Department of Defense to develop policies to give federal employees opportunities to compete.[12] This requirement applied to the Defense Department in FY 2008.

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[1] Government Accountability Office, "Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors," GAO-08-142T, Oct. 17, 2007.
[2] GAO, "Forest Service: Better Planning, Guidance, and Data Are Needed to Improve Management of the Competitive Sourcing Program," GAO-08-195, January 2008.
[3] GAO, "Department of Labor: Better Cost Assessments and Department-Wide Performance Tracking Are Needed to Effectively Manage Competitive Sourcing Program," GAO-09-14, November 2008.
[4] Office of Management and Budget, "Competitive Sourcing: Report on Competitive Sourcing, Fiscal Year 2006," May 2007.
[5] "Army Contractor Manpower Reporting and Insourcing Trifold, Results as of October 2008," http://www.asamra.army.mil/insourcing/documents/trifold-2-bullets-final-manpower-01.29.09.pdf. "Results as of December 2008: To date 1383 closely associated with inherently governmental functions have been insourced at an average savings of $50 million per year totaling $299 million over the program years."
[6] Government Accountability Office, "Contract Security Guards:Army's Guard Program Requires Greater Oversight and Reassessment of Acquisition Approach," GAO-06-284, April 2006.
[7] FY 2007 Defense Authorization Bill, P.L. 109-364, Section 333.
[8] "AF Replacing Security Guards with Civilians," Federal Times, Nov. 22, 2008.
[9] FY 2009 Defense Authorization Bill, P.L. 110-417, Section 321.
[10] Section 736 of H.R. 7323 and Section 737 of S. 3260.
[11] Section 734 of H.R. 7323 Section 736 of S. 3260.
[12] Section 735 of H.R. 7323 and Section 735 of S. 3260.

The Performance Rights Act

Musicians and singers deserve fair compensation for their work. Under a longstanding loophole in federal copyright regulations, musicians and singers are not paid when their music is broadcast over traditional AM/FM radio. Traditional radio broadcasters get their listeners and advertising revenue by playing the sound recordings of singers and musicians, yet they refuse to pay these performers a dime for their work. Congress must rectify this inequity in copyright law by passing the Performance Rights Act, which would create a full performance right for sound recordings broadcast over traditional AM/FM radio.

Musicians and singers have been fighting for a performance right since 1972, when sound recordings were first brought under copyright law. In 1978, the U.S. Copyright Office completed a two-volume study recommending that broadcasters pay a full performance right to performers.[1] Under current law, broadcasters pay pay a performance right to performers when their work is played on digital music platforms such as Internet radio, satellite radio (XM and Sirius) and cable radio, but not on AM/FM radio.

The overwhelming majority of musicians and singers are not rich. Most performers are hardworking men and women who make a living patching together different income streams and working hard for long hours with no guarantee of success.

Commercial AM/FM radio depends on music to earn revenue. Last year, commercial radio had revenues of $16 billion.[2] Radio broadcasters earn these revenues by luring listeners—and therefore advertisers—with the music they play.

The United States is the only developed country with no performance right for broadcast radio. And because the United States has no performance right, royalties collected for U.S. performers overseas cannot be paid to them.

Radio is the only means of broadcast that does not pay a performance right. All other means for broadcasting music—Internet radio, satellite radio and cable radio—pay a performance right.

Radio is the only industry using copyrighted works to generate revenue that does not pay a performance right. Movie studios pay authors for the right to use books as the basis for films. AM/FM radio should pay musicians for the right to use their work, just like any other form of entertainment.

The promotional value of radio is no excuse not to grant a performance right. Television networks and radio broadcasters pay for the right to broadcast sporting events even though doing so promotes ticket and merchandise sales. It should be no different for radio broadcast of music. The promotional value of radio should be taken into account when setting the royalty rate, not when deciding to create a performance right.

The Performance Rights Act makes exceptions for some broadcasters. Some commercial radio—especially smaller, nonprofit radio—plays music that otherwise would not get airtime. The Performance Rights Act would make explicit exceptions for

small commercial stations, nonprofit stations (including National Public Radio) and religious broadcasters. Small commercial broadcasters would pay a $5,000 per year flat fee to performers, nonprofit stations would pay a $1,000 fee, and religious broadcasters would pay nothing.

The Performance Rights Act does not seek to punish radio. Musicians and singers support radio and wish for its success. The Performance Rights Act would not punish radio, but would simply ensure that performers get paid for their work.

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[1] U.S. Copyright Office, Register's Report on Performance Rights in Sound Recordings (1978).
[2] According to 2006 BIA Financial Network findings.

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 U.S. 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 must now be restored to the federal judiciary, and 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 handle about 29,000.[1]

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 and other divisions of the Labor Department, 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 will be 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.[2]

The federal courts are now 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[3] and 300 appointments to federal district courts. Republican-appointed judges now make up a majority on 11 of the 13 circuit courts of appeal, the only exceptions being the Second Circuit and the Ninth 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 has 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[4] found that courts dominated by Republican appointees were more likely to reverse the NLRB when it 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 Fourth Circuit in 13 cases, the Sixth Circuit in 10 cases, the Eighth Circuit in seven cases, and the Fifth 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.[5]

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 Second Circuit upheld all but two cases, one of which was decided by an all Republican-appointed panel. The Ninth Circuit enforced the NLRB's rulings in all but three cases, one of which had a Republican-appointed panel. The Third Circuit enforced all but four cases, and two of these were majority Republican-appointed panels.

Balance must be restored to the federal courts. 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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[1] http://www.slate.com/id/2107744/; http://www.uscourts.gov/cgi-bin/cmsa2008.pl.
[2] "Bush's Full Court Press," Los Angeles Times, Jan. 13, 2003.
[3] Charles Savage, "Appeals Courts Pushed to Right by Bush Choices," The New York Times, Oct. 29, 2008.
[4] http://www.aflcio.org/issues/civilrights/upload/impact_final.pdf.
[5] 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).

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Education, Civil and Human Rights and Fair and Open Elections

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Strengthening Public Education and Improving College Access

Congress must ensure that every child has access to a well-rounded quality education and that every school facility is a place where teachers can teach and students can learn. Unfortunately, debate over the No Child Left Behind Act (NCLB) has substituted for real discussion about an education policy that prepares children for the 21st century. As part of such a forward-looking policy, Congress must provide for universal early childhood education; establish community schools that serve the neediest children by bringing together 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; maintain NCLB's commitment to high-quality education for all children while addressing serious flaws in the law; improve access to higher education, especially for students and families facing the greatest financial challenges; and address the critical need for vocational education for students who are not college-bound

Congress must provide for universal early childhood education starting with low-income children at age three. High-quality early childhood education has been shown to be effective in bridging the achievement gap between advantaged and disadvantaged students. Universal early childhood education programs must be accessible and affordable to all families who want their children to participate. Poor children must be given priority and must be provided with no-cost, high-quality services, including health and nutrition services. Federal, state and local officials must work together to create and expand programs that are inclusive, meet high standards of quality and are publicly funded. Unions representing teachers 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. Federal legislation is needed to establish "community schools," which would serve the neediest children by bringing together all available services and supports they and their families need to succeed. Unions representing teachers 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. America's public school systems are the lifeblood of our democracy and the engine of our prosperity. In light of serious budget constraints facing many school systems, Congress must build on federal investments in K-12 education that were provided in the economic stimulus packages of November 2008 and February 2009.

Congress should fund targeted investments that challenge schools, provide them with the tools they need and demand that they do the very best for all children. In particular, Congress must fully fund NCLB and the Individuals with Disabilities Education Act (IDEA).

Congress must address serious flaws in the NCLB Act. Unfortunately, the NCLB has resulted in "standardized test score competition." The NCLB's adequate yearly progress (AYP) formula does not fully recognize gains in student achievement made by schools that start furthest behind and labels them failures for not reaching an arbitrary level of proficiency. Congress must provide an accountability and assessment standard that gives credit for progress and proficiency and appropriately takes into account English language learners (ELL) and students with disabilities. Congress must also provide for meaningful interventions that raise student achievement in struggling schools, as opposed to unproven programs such as Supplemental Services. In addition, NCLB should focus on improving teaching and learning conditions for students and teachers in order to fulfill the law's promise of closing the achievement gap. Research shows that improved student leadership, better working conditions and increased professional preparation and support can close both the achievement gap and the staffing gap. Congress should provide school districts with resources to negotiate and develop, at the local level, incentives to attract and retain qualified teachers in low-performing schools—including increased compensation, improved working conditions, meaningful professional development, a safe environment and other instructional supports.

Congress must oppose school voucher programs. Congress must oppose unproven private school voucher 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. The purchasing power of the maximum Pell Grant has declined over the past two decades, and the balance of loans and grants has shifted sharply to loans. Meanwhile, as this economic crisis deepens, more and more students are being forced to drop out of college for lack of financial support. Congress must improve access to college education and maximize retention of students who do enroll by increasing the size of Pell Grants and curtailing additional costs imposed on student loans.

Congress must fund vocational education programs to support career-oriented students. These supports should begin with restoring career and technical education programs in high schools. Congress also should support partnerships between secondary and post-secondary institutions that focus on workforce development and create productive career pathways. Our nation needs a greater commitment to providing students with skills that complement the needs of emerging industries. In addition, Congress needs to provide more aid to guidance and outreach programs at colleges and institutions that have a large number of adult students. Programs such as Trio and Gear Up, which have demonstrated their effectiveness with first-generation and disadvantaged students, deserve greater support.

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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 1950's and 1960's, 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, broadening federal hate crimes statutes, providing voting representation for residents of Washington, D.C., prohibiting employment discrimination based on sexual orientation and gender identity, taking steps to end racial profiling, and fully funding the Census Bureau.

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 Equal Pay Act, the Age Discrimination Act and the Americans with Disabilities Act. Fifty 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 gender, sexual orientation, disability, age and religion continue their struggles for equality under law and an end to prejudice.

Congress should 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 are truly a result of factors other than gender and would prohibit retaliation against workers who share salary information or inquire about their employer's wage practices. It also would conform Equal Pay Act remedies and class action procedures to those available for other civil rights claims and strengthen the government's ability to identify and remedy systematic wage discrimination.

Congress should 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. Congress must pass the D.C. Voting Rights Act of 2009 (H.R. 665 and S. 160) to provide D.C. residents with a meaningful vote in the House of Representatives.

Congress should empower federal authorities to prosecute hate crimes. The Local Law Enforcement Hate Crime Prevention Act (H.R. 1913) would give the Department of Justice power to investigate and prosecute hate crimes when local authorities are unwilling or unable to do so. H.R. 1913 has been approved several times in recent years by bipartisan majorities in both the House and Senate.

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

Congress should 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 prevent employers from forcing workers to forfeit their right to bring federal civil rights claims to court. 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 that 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.

Congress must correct Supreme Court decisions that undermine civil rights laws. The Civil Rights Act of 2009 is comprehensive legislation that addresses several Supreme Court decisions that have undermined existing civil rights laws. The legislation overturns the Supreme Court's 2001 decision in *Alexander v. Sandoval* by establishing a private right of action for discrimination, based on evidence of disparate impact, against entities receiving federal funding. The Civil Rights Act of 2009 also strengthens gender and age discrimination protections, improves remedies for victims of discrimination, prevents employers from forcing workers to bring federal law claims to arbitration instead of the courts, and addresses workplace exploitation of undocumented workers.

Congress should transfer fair housing enforcement to an independent agency. Forty years after Congress first passed the Fair Housing Act, Americans continue to live in segregated communities. The fair housing enforcement system at the Department of Housing and Urban Development (HUD) is flawed because the Department depends on lenders, builders and cities to carry out its policy goals, while at the same time it is charged with investigating housing discrimination by those same entities. For example, HUD depends on lenders to promote homeownership, on builders to build affordable housing and on cities to redevelop neighborhoods after a natural disaster. A bipartisan commission,

co-chaired by former HUD secretaries Henry Cisneros and Jack Kemp, recommended amending the Fair Housing Act to transfer authority for fair housing enforcement from HUD to an independent agency.

Congress must fully fund the Census Bureau. Full funding of the Census Bureau is necessary to conduct the most accurate census in 2010. Census funding for communications, outreach and partnership programs targeting minority and other hard-to-count communities are critical to accurately count these important populations. In addition, Congress must fully fund the American Community Survey, which collects the socioeconomic data upon which we rely to obtain an accurate picture of our nation's population.

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Fair and Open Federal Elections

The integrity of our democracy depends on fair and open federal elections that inspire public confidence and enable citizens to participate fully. Through their unions, ordinary workers across the country work together to review the records and positions of candidates, volunteer their time and mobilize for political and legislative action, and union member activism serves as a potent counterweight to the power of money. Congress must ensure that our federal campaign finance system encourages open political debate; enhances grassroots participation in the democratic process; protects the ability of groups representing workers, consumers and others to petition the government and participate in politics; and minimizes candidate reliance on private funding.

The AFL-CIO has been actively involved for years in issues involving campaign finance regulation. Workers have an enormous stake in laws passed by Congress that affect how people and organizations can participate in the political process, and in the rules implemented by the Federal Election Commission (FEC). As one of the largest and most diverse membership organizations in the country, 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.

Independent political advocacy must be protected. Elections are essentially about ideas and policy choices, and the First Amendment protects the right to engage freely in public issue advocacy, whether or not this advocacy may affect an election or a governmental action. The genius of the First Amendment is that it guarantees both individual liberty and group self-realization. Legal restraints on the speech of unions and their members under the guise of "campaign finance reform" are therefore unwise and potentially unconstitutional and should be rejected. The rights of membership groups—whether their status is a union, a nonprofit organization or an unincorporated association—must be protected. Ordinary people have the common sense and independent judgment necessary to make up their own minds without arbitrary controls over what they can hear or read, or with whom they can be engaged.

Congress must repeal restrictions on union broadcast speech. Provisions of the Bipartisan Campaign Reform Act (BCRA) of 2002 that criminalize certain union broadcast speech must be repealed. On such matters as the meaning of "express advocacy" and the kinds of public engagement that an organization must finance through a federal political action committee (PAC), the FEC has purported to embrace standards that Congress has not enacted and no court has approved. If litigation does not correct those actions, legislation should.

Existing limits on "coordination" must be re-examined. Restraints on so-called "coordination" between unions (and other private actors) and officeholders, candidates and political parties should not infringe on the freedom of association. The FEC has adopted overly intrusive constraints on individual and group activity that render such engagement fraught with legal peril. If litigation does not correct this problem, legislation may be necessary.

Congress should place no new restrictions on Section 527 organizations. Under longstanding federal tax law, Section 501(c) nonprofit organizations such as the AFL-CIO and other unions must establish and maintain separate "Section 527" accounts for their electoral activity—or else pay a steep federal tax. The AFL-CIO and many unions have long maintained Section 527 accounts for independent advocacy, voter mobilization, donations to allied organizations, state and local political contributions and other electoral activities. These political accounts enable nonprofit organizations and their members and adherents to participate fully and affordably in the political process.

Section 527 organizations currently must register and file with the Internal Revenue Service reports that are modeled on the Federal Election Campaign Act (FECA) reporting system for federal political action committees. However, Congress has deliberately imposed no further restrictions on how Section 527 organizations may raise and spend their money. Section 527 organizations should not be treated exactly the same as federal PACs because they undertake much broader political activity and also are regulated by state election laws. Though detractors routinely mischaracterize the speech of Section 527 organizations as "negative," this is an illegitimate objection under the First Amendment. In any event, most electoral speech is produced by candidates, political parties and editorial pages, whose speech is typically overwhelmingly negative, yet there are appropriately no comparable calls to censor them.

The presidential public financing system must be re-examined. The public financing system for presidential elections provides too little money too late and has been effectively superseded by candidate fundraising on the Internet. The public financing system must be completely rethought to determine whether and how it can serve the goals of relieving viable candidates from the distractions of fundraising and protecting them from the influence of private campaign contributions. 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.

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 significantly reduce 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 full disclosure of spending and receipts, consistent with current federal campaign law.

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Resources

Coalition of Labor Union Women
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Institute for Women's Policy Research
1707 L St., N.W.
Suite 750
Washington, DC 20036
202-785-5100
www.iwpr.org

Leadership Conference on Civil Rights
1629 K St., N.W.
10th Floor
Washington, DC 20006
202-466-3311
www.civilrights.org

National Committee on Pay Equity
555 New Jersey Ave., N.W.
Washington, DC 20001
www.pay-equity.org

National Women's Law Center
11 Dupont Circle, N.W.
Suite 800
Washington, DC 20036
202-588-5180
www.nwlc.org

National Partnership for Women & Families
1875 Connecticut Ave., N.W.
Suite 650
Washington, DC 20009
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www.nationalpartnership.org

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The Global Economy

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International Affairs and Economic Policy

The United States must offer the international financial institutions (IFIs) policy guidance to help them break from a failed economic orthodoxy that has harmed workers and hindered global development. Working people around the world are suffering not only from the global economic crisis but also from the misguided policies of IFIs such as the World Bank and the International Monetary Fund (IMF). The United States must correct these policy errors and promote a worker-centered approach to the global economy, adequately fund programs in the federal government that promote international labor rights and ensure that U.S. international aid strengthens, rather than undermines, democracy and workers' rights around the world.

International Monetary Fund and World Bank policies negatively affect workers. Since the 1980s, the World Bank and IMF have imposed loan conditions—called structural adjustment programs (SAPs)—that often change the entire structure of a developing country's economy by requiring privatization of public services, the weakening of labor laws and budget cuts to social programs. The IMF and World Bank have rolled back workers' rights by requiring that collective bargaining laws be weakened, reduced real wages by mandating wage freezes and wage cuts and required that public services be privatized and deregulated.

The World Bank discourages respect for labor rights. A widely read World Bank publication, "Doing Business," promotes the weakening of labor standards in developing countries.[1] The World Bank measures labor market regulation with its Employing Workers Indicator (EWI) and argues that such regulation drives workers out of the formal employment into the informal economy. Yet the academic literature finds no significant correlation between the EWI and economic performance or employment levels in the informal economy. The EWI awards no points for respecting core labor standards, yet the World Bank uses the EWI as a "guidepost" for good social and labor policy and as a reference for policy recommendations.

Congress should direct the World Bank to stop discouraging adherence to core labor standards. Legislation (H.R. 6306) introduced in 2008 by Rep. Barney Frank (D-Mass.) would restrict the World Bank's use of the EWI and direct the bank not to use its development assistance programs to undermine adherence to the International Labor Organization's Declaration on Fundamental Principles and Rights at Work.

Congress should ensure that the IFIs promote pro-worker policies. The IFIs must address the crisis in economic inequality, which is at the root of the global economic crisis. The IFIs must support macroeconomic and labor market policies that promote "decent work," as conceived by the ILO, and trade unions should have a central role in developing these policies. The U.S. government can use its voice and vote to ensure that the IFIs adopt such an approach, and Congress should condition future funding on this basis.

The IMF should stop requiring fiscal and monetary austerity. During a global recession, countries must be free to run budget deficits to promote domestic demand

and meet social needs. The IMF has pledged to scale back the extent to which it requires fiscal and monetary austerity, at least for the duration of the economic crisis, but so far its loan conditions have looked like more of the same. Fiscal and monetary austerity not only is the opposite of what G-7 countries are practicing in the current crisis but also is harmful to development.

Congress should overhaul the Foreign Assistance Act. Congress should maintain international development aid during the current downturn, but the quality of aid must be improved before substantial new outlays are made.

Congress should pass comprehensive debt cancellation. Impoverished countries, especially in Africa, owe substantial debt to the IMF and World Bank. This money could be better used to invest in education, public health, infrastructure and a modern manufacturing and service economy. In 2008, the House of Representatives passed the Jubilee Act (H.R. 2634), which calls for cancellation of impoverished country debt; prohibits harmful economic and policy conditions on debt cancellation; mandates transparency and responsibility in lending from governments and IFIs; restricts the activities of "vulture funds"; and calls for an audit of debts resulting from odious and illegitimate lending. The 111th Congress should enact the Jubilee Act.

The Millennium Challenge Corporation (MCC) must be reformed. The Bush administration's Millennium Challenge Account (MCA) has the potential to help developing countries meet their millennium development goals on health, education and nutrition. However, the MCC employs largely ideological indicators—such as a trade policy indicator created by the Heritage Foundation—to determine whether countries are eligible for a compact.[2] At the same time, important indicators such as adherence to international labor rights are completely missing. MCC indicators must be reviewed and reformed.

Congress should maximize the beneficial impact of the Overseas Private Investment Corporation. OPIC financing and insurance assistance for overseas investment comes with important conditions relating to jobs, development, workers' rights and the environment, but these conditions should be strengthened, and OPIC should be made more transparent.

The AFL-CIO promotes core international labor standards. The AFL-CIO has an International Department and maintains a 501(c)(3) organization—the American Center for International Labor Solidarity, or the Solidarity Center—to promote international labor rights and labor solidarity before the executive branch and international organizations such as the International Labor Organization (ILO).[3] The Solidarity Center maintains 29 offices around the world and conducts programs in more than 60 countries, and its major programs aim to eliminate the worst forms of child labor, address the problems of HIV and AIDS through workplace education, eliminate discrimination in the workplace, promote core labor standards and eliminate sweatshop environments in labor-intensive industries.

Congress should fully fund the International Labor Affairs Bureau (ILAB). The ILAB at the Department of Labor undertakes key initiatives such as eliminating child labor, promoting basic worker standards such as the ILO's Declaration on Fundamental Principles and Rights at Work, and supporting HIV and AIDS education. The ILAB is also responsible for enforcing the labor provisions of trade agreements. Congress must ensure full funding for the ILAB to carry out its agenda.

Congress should restore the primacy of international labor rights promotion at the State Department. The Bush administration reduced the number of labor reporting officers (LROs) in U.S. embassies and consulates and lowered their status. Congress should make the promotion of fundamental labor rights a priority once again in the Foreign Service and the State Department.

Congress should help the Agency for International Development (USAID) improve its programs. As presently constituted, USAID is not able to develop effective globally integrated economic and political programs, especially with regard to labor-related programs. Congress should work with USAID to design and fully fund coherent and effective programs.

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[1] See, Peter Bakvis, "How the World Bank & IMF Use the Doing Business Report to Promote Labour Market Deregulation in Developing Countries," ICFTU, 2006, available online at http://www.icftu.org/www/PDF/doingbusinessicftuanalysis0606.pdf.
[2] See, Millennium Challenge Corporation, "Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2009," 2009, available online at http://www.mcc.gov/documents/mcc-report-fy09-criteriaandmethodology.pdf.
[3] For further information, see www.solidaritycenter.org.

Trade Policy

Congress should 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 should 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; and reframe U.S. trade and international policies by setting the terms and conditions for any future trade negotiations.

In the past 14 years, the U.S. global trade deficit has increased more than tenfold in nominal terms—from $70 billion in 1993 to more than $700 billion in 2007.[1] Over that period, the U.S. shed more than 3 million manufacturing jobs—many of them lost to offshoring or import competition.[2] The jobs being offshored are not only 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 14 years, average U.S. wages have stagnated.[3]

Congress and the new administration should address the U.S. current account deficit. The key initial levers for addressing the trade deficit include dramatically improved enforcement of our trade laws; a newly focused 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 that 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 "Climate Change, Energy and Environment," page 2.19).

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.[4] Effective enforcement of U.S. trade laws against unfair trade practices is crucial, and trade laws in a range of areas must be improved. The Trade Enforcement Act of 2009 (H.R. 496) introduced by Rep. Charles Rangel (D-N.Y.) represents a good first step.

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[5] to $256 billion in 2007,[6] by far the largest bilateral trade deficit in U.S. history.[7] Economists across the political spectrum agree that China is actively manipulating its currency. [8] Some economists suggest that the manipulated currency provides an effective export subsidy of at least 30 percent.[9]

Currency misalignment should be addressed immediately. The preferred 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.

Congress may need to address currency manipulation. If the political will to initiate such negotiations does not exist, other options must be explored. The AFL-CIO supports the Currency Reform for Fair Trade Act of 2007 (H.R. 2378 and S. 1027), which would empower the International Trade Commission (ITC) to impose countervailing duties in case of currency misalignment.

The pending FTA with Korea should be renegotiated. With the U.S. auto industry on life support, the last thing Congress should do is approve an unbalanced free trade agreement that eliminates all barriers to Korean auto exports to the United States and reduces tariffs on Korean light trucks, while leaving in place several discriminatory non-tariff barriers to U.S. auto exports to Korea. FTA provisions dealing with investment, trade remedies and the Kaesong Industrial Complex in North Korea must also be renegotiated, and the continued weakening of Korean labor law and recent unlawful arrest of several prominent trade union leaders must be addressed.[10]

The pending FTA with Panama should 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.

No trade agreement with Colombia should be considered until egregious labor and human rights violations are 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 2008 alone, an increase from 2007. Nearly 2,700 unionists have been murdered since 1986.[11] Notwithstanding some recent prosecutions, impunity for the people responsible for these crimes remains widespread.[12] 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. 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 should 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 that any new agreements enjoy broad support among the American public. Sen. Sherrod Brown (D-Ohio) and Rep. Mike Michaud (D-Me.) have sponsored the 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. The bill provides a useful roadmap for any future trade negotiating authority.

Congress must take the lead in reforming our flawed trade policies. 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.

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[1] U.S. Department of Commerce, U.S. International Trade in Goods and Services 2007, Feb 14, 2008, available online at http://www.census.gov/foreign-trade/Press-Release/2007pr /12/ft900.pdf.
[2] Robert Scott, "The Importance of Manufacturing Key to Recovery in the States and the Nation," EPI Briefing Paper, Feb. 28, 2008, p. 8.
[3] Ibid.
[4] GAO, "Antidumping And Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection," March 2008.
[5] U.S. Department of Commerce, U.S. International Trade in Goods and Services Annual Revision for 2001, available online at http://www.census.gov/foreign-trade/Press-Release/2001pr/ Final_Revisions_2001/exh13tl.pdf.
[6] U.S. Department of Commerce, U.S. International Trade in Goods and Services Annual Revision for 2007, available online at http://www.census.gov/foreign-trade/Press-Release/2007pr/ final_revisions/exh13tl.pdf.
[7] 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 was also roughly 30 percent in 2007.
[8] 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.
[9] See, "China Trade Toll," supra.
[10] See, Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy, April 27, 2007, available online at http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Republic_of_Korea_FTA/Reports/asset_upload_file698_12781.pdf.
[11] ENS, "Report on Violations to Life, Liberty and Integrity of Unionists in Colombia, Jan.-Dec. 2008," Jan 2009, pp. 2-3.
[12] 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 in the United States. As one component of a broader agenda of "shared prosperity," 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. Specifically, Congress must enact an inclusive and practical program to adjust the status of unauthorized workers; reform existing "guest worker" programs to provide more protections for workers; strengthen enforcement of all worker protection laws; and develop a secure and effective worker authorization mechanism.

The debate over fixing our broken immigration system has centered around two questions: (1) what to do about the situation of undocumented workers, and (2) how to reform the mechanisms by which we invite workers into this country in the future. Currently, an estimated 11.5 to 12 million unauthorized workers[1] are working in the U.S. without adequate protection under the law. There are two main programs for temporarily importing low-skilled "guest workers"—agricultural guest workers enter the United States through the H-2A visa program, and other low-skilled guest workers enter through the H-2B visa program. There are also two other programs for high-skilled guest workers—the H-1B and the L visa programs.

Immigration reform is a key component of a "shared prosperity" agenda. A shared prosperity agenda must focus on improving productivity and job quality for all workers; limiting downward wage competition; strengthening labor standards, especially the right of workers to organize and bargain collectively; providing a social safety net; and providing high-quality lifelong education and training for workers and their families.

The exploitation of undocumented workers lowers labor standards for all workers. When unscrupulous employers take advantage of the vulnerability of undocumented workers, they drive down labor standards for all workers. Exploitation of undocumented workers negatively affects wages and working conditions and promotes the development of marginal low-wage industries that depend heavily on substandard wages, benefits and working conditions.

Immigration reform must raise labor standards by reducing exploitation of undocumented workers. All workers—native-born and immigrant—must have access to effective enforcement of the full range of workplace protections. Reducing exploitation of undocumented workers would not only 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.

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.

Adjusting the status of undocumented workers requires a careful balancing of rewards and penalties. The reward for most law-abiding unauthorized immigrants who have been in this country for some time would be a clear path to permanent lawful status and citizenship. The penalty for workers who fail to come forward would be a high probability that they will not have access to employment and will be deported instead. Workers seeking an adjustment of status would be required to pay a reasonable fine—large enough to penalize their transgressions but not so onerous as to deter them from registering—and to provide proof that all due taxes have been paid. These workers would be put at the end of the line for green cards while earning their lawful "permanent resident" status.

Existing guest worker programs provide workers with limited civil and employment rights. Guest worker programs invite hundreds of thousands of workers into this country from abroad with very limited rights, as demonstrated in a recent report by the Southern Poverty Law Center (SPLC).[2] The SPLC tells the stories of guest workers who have been subjected to abuse by employers and recruiters—with little or no legal recourse. The SPLC report concludes that "these (guest) workers are systematically exploited and abused.…If guest workers complain about abuses, they face deportation, blacklisting or other retaliation."

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

Congress must reform guest worker programs to provide more worker protections. Fundamental reform of the H-2A, H-2B and H-1B guest worker programs must include a ban on the currently unregulated, and often exploitative, business of foreign labor recruiters; ensure that 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.

Congress must strengthen enforcement of U.S. labor laws. The protection of foreign and domestic workers requires much more effective enforcement of all U.S. workplace protections. Effective enforcement of wage and hour and safety and health laws must be based on a strategy of protecting the most vulnerable workers. Such an initiative would require the leveraging of scarce agency resources and innovative enforcement strategies that induce self-compliance and self-regulation. Voluntary compliance works best where there is vigorous enforcement against the worst offenders.

The existing U.S. worker authorization system has failed. The Immigration Reform and Control Act of 1986 (IRCA) attempted to regulate the employment of unauthorized workers by requiring that employers verify that their employees are authorized to work in the United States. This system has failed to curtail the employment of unauthorized workers for three main reasons: (1) it relies on employers to police themselves; (2) it fails to use one secure identifier—giving employers a broad defense against charges of hiring undocumented workers; and (3) it only requires

that *employers* verify work authorization, encouraging the use of contractors and the misclassification of regular workers as independent contractors.

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 one secure identifier and impose strict liability on employers who fail to comply with the system's requirements. The new system must also have strong anti-discrimination protections so that employers are not tempted to refuse to hire workers who appear foreign, and it must protect basic civil liberties.

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[1] Jeffrey S. Passel, "The Size and Characteristics of the Unauthorized Migrant Population in the U.S.," Pew Center, March 7, 2006.
[2] Mary Bauer, "Close to Slavery: Guest Worker Programs in the United States," Southern Poverty Law Center, March 15, 2007.

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