The Heritage Foundation Backgrounder

1058

No. 1058 | The Heritage Foundation 214 Massachusetts Avenue N.E. Washington, D.C. 20002-4999 (202) 546-4400

October 19, 1995

HOW TO CLOSE DOWN THE DEPARTMENT OF LABOR

INTRODUCTION

The Department of Labor (DoL) has become one of the most pervasive regulatory agencies in the federal government. Created in 1913, DoL is currently responsible for the administration and enforcement of over 180 federal statutes. This proliferating body of legislation and regulation covers a wide range of workplace activities for nearly 10 million employers and well over 100 million workers, presenting a barrier to the formation of firms and their ability to create jobs.[1]

The 104th Congress has a rare opportunity to initiate fundamental reforms in the administration and enforcement of America's labor laws. If implemented, such reforms could save America's taxpayers $10.5 billion from 1996 to the year 2000 alone. The primary objectives of this effort should be to:

- ✔ **Reduce excessive burdens on businesses and job creation while maintaining workplace health and safety;**
- ✔ **Improve labor market flexibility while maintaining basic employment protections.**

The best way to achieve these objectives is by closing this Cabinet-level department and moving certain of its key national functions into sub-Cabinet agencies or other departments. Other functions that are not national in scope should be devolved to the states, or in some cases to the private sector. Obsolete, ineffective, and wasteful rules and programs should be repealed or closed down.

1 See Craig E. Richardson and Geoff C. Ziebart, *Red Tape in America: Stories from the Front Line* (Washington, D.C.: The Heritage Foundation, 1995). See also William G. Laffer III, "How Regulation Is Destroying American Jobs," Heritage Foundation *Backgrounder* No. 926, February 16, 1993.

The Department of Labor's programs are organized into seven main functional areas:

1. **Unemployment Insurance (UI) and Employment Services (ES),**
2. **Job Training Programs,**
3. **Workplace Health and Safety,**
4. **Private Pension Protection,**
5. **Employment Standards,**
6. **Economic Statistics, and**
7. **Labor Union Oversight.**

UI and ES form the largest functional area, accounting for around 75 percent of DoL's budget (set at $25.5 billion for FY 1995). The next largest budget function, Job Training Programs, accounts for around 20 percent.

Examining these seven areas reveals that the administration and enforcement of American labor laws can and should be reformed, both to achieve the department's underlying objectives of workforce protection, including workplace health and safety, and to reduce the job-killing cost and complexity of today's labor regulations. To do this, Congress should take the following steps:

✔ **Devolve financing and funding for the Unemployment Insurance and Employment Services to the states.** This would enable states to decrease the duration of unemployment, reduce payroll taxes, and increase jobs. Devolution should include the Veterans Employment Service, labor market information projects, the one-stop career system concept, and the administration of unemployment insurance. Congress also should repeal the Federal Extended Benefit program and provide incentives for states to overhaul and integrate their employment services with a view to reducing the duration of unemployment payments by moving the unemployed into new jobs more quickly. States also should have the option to begin exploring privatized unemployment insurance. Any remaining federal administrative functions should be transferred to the Treasury Department.

✔ **Consolidate all job training programs for the economically disadvantaged into a state block grant.** Congress should combine these programs, including the Job Corps, Senior Community Service Employment Program, Migrant and Seasonal Farm Workers Training, Indian and Native American Employment and Training, and Youth Fair Chance, into a block grant attached to the new welfare block grant recently passed by Congress. This would eliminate a maze of categorical programs and provide states the flexibility they need to develop programs that effectively reduce welfare dependency. States should be required only to focus these resources on means-tested job placement assistance and conduct control group evaluations of their effectiveness. Federal target and categorical requirements should be removed. The minimal federal oversight functions for this block grant should be transferred to the Department of Health and Human Services.

✔ **Consolidate all other job training programs into a state workforce development block grant.** This new block grant for job placement assistance and training would include such things as dislocated worker programs, School-to-Work programs, and Adult Technology Learning programs. Even the Department of Labor recognizes that a block grant would eliminate conflicting rules and administrative structures, remove bureaucracy at every level, and end the wasting of tax dollars.[2] The determination of target groups should be left to the discretion of the states. Because the effectiveness of today's training programs is questionable,[3] total funding for this block grant should be cut by 50 percent and frozen until scientific studies can prove they are effective. In carrying out these studies, states should be required to have at least one ongoing control group evaluation on programs funded from the block grant. The minimal federal oversight functions for this block grant should be transferred to the Department of Health and Human Services.

✔ **Reform the Occupational Safety and Health Administration (OSHA) and combine it with the Mine Safety and Health Administration (MSHA).** This reform is needed to "refocus the [federal] responsibility for ensuring worksite safety and health on the workplace."[4] Merging MSHA with a reformed OSHA is a sensible first step toward improving workplace health and safety, limiting unnecessary government intervention, and reducing inefficient, wasteful government spending.[5] Businesses already have much stronger financial incentives than OSHA penalties, such as the costs of lost productivity, workers' compensation, and liability claims,[6] to maintain and continually improve workplace safety. Thus, the role of the federal government should be redefined from that of heavy-handed regulator to one of cooperative partner. Congress also should spin off the "new" OSHA as a separate sub-Cabinet agency, similar to the Federal Reserve Board of Governors. An independent governing and standards-setting board should be established. National workplace health and safety standards are too important to be determined by a department subject to political influence.

✔ **Transfer the Pension and Welfare Benefit Administration to the Social Security Administration.** Responsibility for the oversight of public and private retirement programs currently is spread across three departments.[7] Combining the agencies responsible for this oversight would lead to more efficient research and retirement policy coordination. In addition, Congress should spin off the Pension Benefit Guaranty Corporation as an independent sub-Cabinet agency, fund the PBGC separately, and begin exploring ways to privatize pension insurance.[8]

2 U.S. Department of Labor, FY 1996 budget press release, February 6, 1995.

3 Mark Wilson, "Welfare Reform and Job Training Programs: What Congress Doesn't Know Will Cost Taxpayers Billions," Heritage Foundation *F.Y.I.* No. 61, August 16, 1995.

4 *From Red Tape to Results, Creating a Government That Works Better and Costs Less, Department of Labor, Accompanying Report of the National Performance Review*, Office of the Vice President, September 1993, p. 45.

5 Mark Wilson, "Save Lives By Cutting Red Tape: Redefine the Federal Role in Workplace Safety and Health," Heritage Foundation *Backgrounder Update* No. 259, September 5, 1995.

6 John Hood, "OSHA's Trivial Pursuit," *Policy Review*, Summer 1995.

7 Labor, Treasury, and Health and Human Services.

8 PBGC currently is part of DoL's budget. As a semi-independent agency, it should be funded like the National Labor Relations Board under Title IV of the Departments of Labor, Health and Human Services, and Education, and Related Agencies appropriations bill.

✔ **Repeal and nullify outdated labor laws, executive orders, and regulations.** Congress should streamline labor regulation by eliminating the heavy burden of outdated or restrictive rules. This means, for example, nullifying Executive Order 11246 and related affirmative action regulations affecting federal contractors and subcontractors; eliminating the Office of Federal Contract Compliance Programs (OFCCP); repealing the Davis-Bacon Act and Service Contract Act, as well as Section 13(c) of the Urban Mass Transportation Act of 1964; reforming the Fair Labor Standards Act; and strengthening the Portal to Portal Act of 1947. Congress then should transfer all remaining functions of the Wage and Hour Division to the Justice Department.

✔ **Combine the Bureau of Labor Statistics and the Census Bureau within a newly created sub-Cabinet agency, the Bureau of National Statistics.** A new Bureau of National Statistics (BNS) would make it possible to develop and carry out a comprehensive, systematic effort to combine surveys and develop economies of scale. It also would be in a better position to undertake the careful evaluation and research needed to make decisions about more efficient survey design and ways to eliminate duplication and reduce paperwork and data collection burdens. Statistical functions of other departments also should be housed within the new bureau to ensure that the government's data collection efforts are insulated from politics.

✔ **Close down the Office of the American Workplace and nullify Executive Order 12954 (Striker Replacement).** Government promotion of high-performance workplaces actually serves only as corporate welfare and a training subsidy for unions. These activities already are conducted in the private sector through business associations and unions. Congress should transfer labor union oversight and investigative functions, including those in the Office of the Inspector General, to the Justice Department.

The 104th Congress has held a number of hearings and introduced a variety of bills to reform and update America's labor laws, and it continues to reassess dozens of labor policy issues that have been neglected for years.[9] This year's budget process also has provided Congress with a vehicle for reform. Aside from reforming and consolidating job training programs, the Administration's proposed budget did little to "reinvent" DoL. President Clinton proposed to raise the department's budget authority by over 14 percent and its full-time staff by 304.[10] Congress appropriately rejected the President's budget and is proceeding with its own plan to reform the administration of federal labor policy through the budget process.

The House recently voted to reduce FY 1996 DoL discretionary spending by 13.8 percent. It also instituted several important reforms. For example, the House budget prohibits funding for implementation of President Clinton's executive order concerning the perma-

9 Among the issues being considered: job training reform (H.R. 1617, S. 143); OSHA reform (HR. 1834, S. 592, and others); employee involvement committees (H.R. 743, S. 295); repealing Davis-Bacon (H.R. 500, S.141) and the Service Contract Act (H.R. 246); updating the Fair Labor Standards Act (H.R. 1226, S. 1129); reforming affirmative action (S. 497 and others); pension/ERISA reform (H.R. 995 and others); and immigration reform (H.R. 560, S. 269).

10 U.S. Department of Labor, FY 1996 budget press release, February 6, 1995.

nent replacement of striking workers by federal contractors, prohibits the issuance of two unnecessarily burdensome OSHA regulations on ergonomics and fall protection, and bars DoL from promoting "economically targeted investments" (ETIs) by private pension plans. The House also is planning to repeal the Davis-Bacon and Service Contract Acts as part of the budget reconciliation process.

The Senate Appropriations Committee recently voted to reduce DoL discretionary spending for FY 1996 by 12.6 percent. Although the Senate's DoL budget prohibits implementation of the striker replacement executive order, it does not contain the House's OSHA regulatory provisions or the prohibition on promoting ETIs. Differences between the House and Senate versions will have to be worked out in conference committee.

As the following study demonstrates, the U.S. Department of Labor has gone far beyond its original mandate to become a burdensome and feared regulatory agency that presents significant barriers to creating jobs and increasing real wages. The proliferation of mandated benefits and workplace requirements makes most small businesses think very carefully before hiring additional workers. Overzealous enforcement has made DoL the enemy of American business. Congress should do what the Clinton Administration promised but failed to do—reform this overgrown and intrusive bureaucracy.

HOW THE DEPARTMENT HAS GROWN

The Department of Labor was created by Congress in 1913 in response to pressure from organized labor. Its goals, according to the statute, were to "foster, promote and develop the welfare of wage-earners, to improve their working conditions, and to advance their opportunities for profitable employment." Initially, DoL consisted of four bureaus transferred from the old Department of Commerce and Labor: the Bureau of Labor Statistics (formerly the Bureau of Labor), the Bureau of Immigration, the Bureau of Naturalization, and the Children's Bureau. These bureaus reflected the department's original focus: collecting information and publishing reports on employment, wages, and working conditions; reviewing the effects of immigration on the job market; and monitoring the use of child labor.

In 1918, during World War I, Congress established the War Labor Administration (WLA) to insure adequate industrial production and foster labor peace in defense production industries. The WLA set policies on wages, hours, and working conditions. It recruited women and minorities to work in defense industries. It also sought to encourage better workplace race relations, promote worker safety and health, and address other employment-related problems that might hinder war production. Although Congress moved quickly after the Armistice to end its activities, the WLA's initiatives embodied ideas of the Progressive movement that later would spawn the New Deal, Fair Deal, New Frontier, and War on Poverty.

What began as primarily an advocacy, educational, and administrative department over time became a regulatory and enforcement agency. Since 1918 Congress has expanded DoL's regulatory functions considerably, often because of political pressure from social reform movements or organized labor. For instance:

- During the 1920s, in response to the women's suffrage movement, the Women's Bureau was added to promote the status of and job opportunities for women. DoL also implemented the Immigration Acts of 1921 and 1924 that ended U.S. free immigration policy by imposing a quota system.

- Confronted with the depression of the 1930s, Congress passed several laws to protect workers from economic change. The Davis-Bacon Act was enacted explicitly to protect white unionized workers on federal construction sites from competition by low-skilled nonunion workers, chiefly blacks and Hispanics. The Wagner-Peyser Act established the U.S. Employment Service, and the Social Security Act established the Unemployment Insurance system. The Fair Labor Standards Act mandated a minimum wage, overtime requirements, and child labor restrictions.

- In the late 1940s, DoL underwent many organizational changes. Its immigration responsibilities were transferred to the Department of Justice to consolidate federal immigration functions in the Immigration and Naturalization Service. In the postwar years, the failure of DoL to mediate a wave of strikes prompted Congress to transfer the department's labor conciliation functions to the independent Federal Mediation and Conciliation Service, and veterans' reemployment rights became DoL's responsibility as the Defense Department was scaled back. In 1959, concern over the influence of organized crime and other union abuses led Congress to pass the Labor-Management Reporting and Disclosure Act to oversee the financial integrity and internal democracy of American labor unions.

- In the early 1960s, unfounded concern about the impact of technology on the labor force, combined with the War on Poverty, resulted in passage of the Manpower Development and Training Act of 1962. Ten years later, spending on federal job training programs was increased significantly by the Comprehensive Employment and Training Act (CETA) of 1973. The Job Training Partnership Act (JTPA) of 1982 reduced the enormous cost of CETA but did not improve the effectiveness of federal job training programs.

- Since the 1960s, pressure from the civil rights movement has led to a variety of equal employment opportunity laws and redundant presidential executive orders to protect certain groups of individuals—women, minorities, the disabled, the elderly —such as the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and Executive Order 11246 as amended.[11]

- In the 1970s, DoL's regulatory and enforcement role expanded dramatically with passage of the landmark Occupational Health and Safety Act and again when responsibility for mine safety and health was transferred from the Department of the Interior.

- Concern over the negative impact of federal trade policies on workers prompted Congress to pass the Trade Adjustment Assistance Act in 1974. The Worker Adjustment and Retraining Notification Act was enacted in 1988 to provide advance notice of plant closings and mass layoffs to workers and their communities.

11 Executive Order 11246 requires non-discrimination in employment by federal contractors. It has been amended twice, by E.O. 11375 and E.O. 12086.

- During the 1980s and 1990s, Congress has enacted various employee benefits and protections, such as the Employee Polygraph Protection Act of 1988 and the Family and Medical Leave Act of 1993.

Since 1960, the expansion of federally mandated benefits and worker protections has begun to take its toll on business formation and job creation.[12] In 1994, according to the Bureau of Labor Statistics, legally required benefits accounted for 32 percent of all benefits paid to workers on an hourly basis.[13] Studies also show that changes in legally mandated benefits are shifted largely to workers in the form of lower real wages.[14] Further, the increase in mandated benefits does not include the cost to businesses of complying with workplace safety and health regulations.[15] Although well intentioned, these requirements add to the cost of hiring and managing workers and directly affect an employer's decisions about whether and when to hire a worker, which worker to hire, and how long to retain that worker. The rise in nonwage labor costs is important because it is one of the forces leading employers to lay off workers, as well as to utilize part-time, temporary, and contract labor.[16]

Ironically, organized labor has been so successful in persuading Congress to legislate matters that once were the province of collective bargaining that they have nearly driven themselves out of business. And with each Congress, Washington has placed more and more requirements and restrictions on employers and the labor market.[17] This growing regulatory burden has made DoL inspectors as feared as IRS auditors and most small businesses very cautious about hiring additional workers.

RECOMMENDATIONS

Today's labor market conditions and labor-management relations have changed since most of America's major labor laws were passed. Workers are demanding more flexible hours, working conditions, and compensation packages than current laws and regulations allow. It is time for Congress to reform the administration and enforcement of America's labor laws. Only a fundamental rethinking of DoL and its functions can lead to the formulation of a proper and truly effective federal labor policy. The primary objectives of this reform should be to reduce excessive burdens on businesses and job creation while maintaining workplace health and safety and to improve labor market flexibility while maintaining basic employment protections.

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12 Olivia S. Mitchell, "The Effects of Mandating Benefits Packages," National Bureau of Economic Research Working Paper No. 3260, February 1990.

13 Legally required benefits include social security, unemployment insurance, and workers' compensation.

14 Jonathan Gruber and Alan B. Krueger, "The Incidence of Mandated Employer-Provided Insurance: Lessons From Workers' Compensation Insurance," National Bureau of Economic Research Working Paper No. 3557, December 1990.

15 William G. Laffer III and Nancy A. Bord, "George Bush's Hidden Tax: The Explosion of Regulation," Heritage Foundation *Backgrounder* No. 905, July 10, 1992.

16 Jack A. Meyer, "The Impact of Employee Benefit Costs on Future Job Growth," Manufacturers Alliance Policy Review No. PR-133, March 1995.

17 A good example is the Immigration Reform and Control Act of 1986. Instead of effectively enforcing U.S. immigration laws, Congress required employers to verify the citizenship and employment eligibility of all individuals hired.

The best way to achieve these objectives is by eliminating the DoL as a Cabinet department. Certain key national functions should be carried out by sub-Cabinet agencies or transferred to other departments. Other functions that are not national in scope should be devolved to the states, or in some cases to the private sector. Obsolete, ineffective, and wasteful rules and programs should be repealed or closed down.

I. REFORM UNEMPLOYMENT INSURANCE AND THE EMPLOYMENT SERVICE.

Over two-thirds of DoL's budget is consumed by the Unemployment Compensation (UC) Program.[18] This program has two main objectives: to provide temporary and partial wage replacement to recently unemployed workers, and help stabilize the economy during recessions. The UC program is financed by a Federal Unemployment Tax (FUTA) of 0.8 percent[19] of the first $7,000 in wages and state unemployment insurance taxes that average 0.9 percent of total wages. The revenue raised by FUTA is used to administer Unemployment Insurance (UI) and maintain a system of Employment Service (ES) offices. Portions of FUTA revenues also fund the federal half of the Extended Benefits Program and federal loans to depleted state accounts. State UI tax revenues fund state UI benefit payments and the state half of the Extended Benefits Program. At the end of fiscal 1995, state accounts in the UI Trust Fund had a balance of $35.6 billion. Like the Social Security Trust Fund, any positive balance in the UI Trust Fund is used to fund other federal programs. General revenues are used to fund federal unemployment benefit programs and allowances such as Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance.

When the UC program was enacted in 1935, Congress intended that it be a federal-state partnership. The federal government was to set broad parameters, provide adequate and equitable funding for state administration, and oversee state law and operations to ensure compliance and conformity. The states were to be responsible for carrying out the program while complying with all federal laws and regulations, as well as their own state requirements. However, the federal government has used the state conformity process to convert the basic program philosophy into a more acceptable ideology and frequently upsets the balance of administrative funding and workloads by dictating that states absorb the costs of administering additional programs.[20]

Over the past decade, federal budget constraints have had a detrimental effect on services provided to unemployed workers by the state UI system and ES offices. Even though FUTA revenues collected for UI and ES administration have been more than sufficient, Congress continues to extend the 0.2 percent FUTA surtax on jobs and limit UI and ES administration appropriations.[21] This masks the true size of the federal deficit. The federal government actually uses the UI system to fund programs that lead to longer periods of un-

18 Most of this funding is related to the Unemployment Trust Funds and is considered mandatory.

19 The current 0.8 percent FUTA tax rate has two components: a permanent tax rate of 0.6 percent and a temporary surtax of 0.2 percent. The surtax was passed in 1976 to restore depleted state UI accounts and was supposed to expire in 1987. The surtax has been extended four times, primarily to fund extended benefit programs, since 1987 and now is supposed to expire in 1998.

20 Edwin M. Kehl, "Administrative Simplification of Unemployment Compensation Programs," in W. Lee Hansen and James F. Byers, eds., *Unemployment Insurance: The Second Half-Century* (Madison: University of Wisconsin Press, 1990).

21 The balance in the Employment Security Administration Account will be $2.4 billion in September 1995. This is $1.01 billion more than the statutory limit. There is also a $7.4 billion balance in the Federal Unemployment Account that has been built up using surplus FUTA payroll taxes.

employment for workers[22] and unnecessarily high payroll taxes. This is contrary to the primary purpose of the UI system[23] and reduces real wages.[24]

The UC program should be reformed to limit the federal role, as Congress originally intended, and to restore responsibility and accountability to the states. Studies show that states can decrease the duration of unemployment and thereby reduce payroll taxes and increase jobs.[25]

What Congress Should Do:

✔ **Devolve financing and funding for the UI system and Employment Service to the states.**

Congress should repeal the temporary 0.2 percent FUTA surtax and increase the FUTA offset[26] from the current 90 percent to 100 percent if a state conforms with federal law. States should be allowed to collect one UI tax for administration and benefits. Each state would be responsible, and accountable, to employers for UI payroll tax dollars and for the administration and effectiveness of the UI/ES system. Receipts from the single state UI tax should be deposited into each state's UI account, maintained by the Department of the Treasury. States also should have the option to begin exploring privatized unemployment insurance.

✔ **Repeal the Wagner-Peyser Act and amend FUTA to require states to establish public employment offices in labor market areas designated by state legislatures.**

Each state should have the flexibility to deliver job placement assistance in ways that meet the needs of its employers and job seekers. However, states should be required to ensure reasonable access to services for workers and to register for work all eligible claimants who are not temporarily laid off. Reform must provide incentives for states to explore ways to integrate employment services and reduce the duration of unemployment payments by moving the unemployed into new jobs more quickly. These incen-

22 Lawrence F. Katz and Bruce D. Meyer, "The Impact of the Potential Duration of Unemployment Benefits on the Duration of Unemployment," National Bureau of Economic Research Working Paper No. 2741, October 1988. This study concluded that extending the duration of UI benefits from six months to one year will increase the mean duration of unemployment by four to five weeks. Examples of federal programs that increase the duration of UI benefits are the Extended Benefits Program and Trade Adjustment Assistance.

23 In today's economy, the primary purpose of the UI/ES system is to move workers whose jobs are permanently lost into new ones as quickly as possible.

24 Daniel S. Hamermesh, "New Estimates of the Incidence of Payroll Tax," *Southern Economic Journal*, Winter 1979. Research on the incidence of taxation generally has concluded that payroll taxes are borne predominantly, if not completely, by labor in the long run through lower real wages.

25 Bruce D. Meyer, " Policy Lessons from the U.S. Unemployment Insurance Experiments," National Bureau of Economic Research Working Paper No. 4197, October 1992. The willingness and ability of states to explore innovative ways to reduce UI duration is evident from the number of state UI experiments that have been wholly state funded.

26 The actual gross FUTA tax rate is 6.2 percent. However, employers in states with federally approved UI programs (all 50 states) may credit 5.4 percent (90 percent FUTA offset) against the 6.2 percent tax rate, making the net FUTA tax rate 0.8 percent.

tives should include opening up the job placement assistance offered through the state ES offices to private competition and other UI experiments.

- ✔ **Eliminate the federal extended benefit program and the federal extended unemployment compensation account (EUCA).**

Funds in the EUCA should be transferred to state UI accounts based upon each state's relative share of covered employment. The 1992 amendments that made it easier for states to trigger extended benefits (EB)[27] should be repealed. The 1992 change made it easier for states to qualify for extended benefits and encouraged individuals to stay on unemployment benefits even when jobs were available. By basing the trigger for extended benefits on a state's total unemployment rate rather than its insured unemployment rate, Congress also broadened considerably the number of those who can qualify for extended benefits. Those who argued for this change claimed that basing benefits on the insured rate meant that many of the unemployed were not receiving benefits and that the program therefore was not working as intended. But, as pointed out at the time by Labor Department officials, this gap between the number of people who were unemployed and the number collecting benefits is normal and is an intended purpose of the program.[28]

- ✔ **Eliminate the Federal Unemployment Account (FUA), which is used to loan money to insolvent state UI accounts.**

Funds in the FUA come from a portion of the FUTA payroll tax on jobs.[29] The federal government uses the FUA to provide loans to states that have depleted their UI accounts during severe recessions. When the FUA is not being used for state loans, the surplus that builds up is used to fund other government programs and amounts to a tax on jobs to reduce the deficit. At the end of September 1995, there will be a $7.4 billion surplus in the FUA. The FUA should be eliminated and its funds transferred to state UI accounts. States that deplete their UI accounts should be able to borrow directly from the U.S. Treasury rather than from a surplus account maintained to offset the federal deficit.

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27 The 1992 amendment allowed states to trigger EB based on a certain percentage of total unemployment rate (TUR) instead of an adjusted insured unemployment rate (IUR). The IUR is computed by dividing the number of people claiming UI benefits by the number in jobs covered by UI. The TUR is the ratio of all unemployed workers to all workers in the labor force in that state. Eight states (Alaska, Connecticut, Kansas, Maine, Oregon, Rhode Island, Vermont, and Washington) have approved the use of TUR triggers.

28 Benefits generally are paid to workers with substantial labor force attachment who have lost their jobs through no fault of their own—not to workers who quit their jobs voluntarily, who were fired for cause, or who have had no recent employment, such as those who are entering or reentering the labor force. Some of the difference between the insured unemployment rate and the total employment rate is due also to the exclusion of self-employed, certain agricultural labor and domestic service workers, railroad workers, and certain seasonal camp workers from collecting UI benefits.

29 FUTA funds are deposited indirectly in the FUA when the EUCA and Employment Security Administration Account (ESAA) have reached their statutory limits. The ESAA is used to finance the administrative costs of the employment security program and should be phased out. Funds in the ESAA should be allocated to state UI accounts for the administration of state UI programs.

✔ **Repeal the Disabled Veterans Outreach Program and the Local Veteran Employment Representative Program and amend FUTA to incorporate the veteran preferences already in Title 38 of the U.S. Code (Veterans Benefits).**

The administrative efficiency of ES offices could be improved significantly by repealing barriers to the integration of veterans' services with other employment services. As the Vice President's National Performance Review noted in calling for the removal of barriers,[30] DoL's Veterans' Employment and Training Service provides for state-employed, federally funded employment specialists to serve veterans in local state employment service offices. However, staff are legally prohibited from helping non-veterans. "So, if a local office is crowded with non-veterans," points out the NPR, "these specialists cannot help out—even if they have no veterans to serve." Employment Service staff would be used more efficiently and the public better served by eliminating this requirement.

✔ **Eliminate Trade Adjustment Assistance.**

This program funds payments for unemployment benefits, allowances, and training costs to workers affected by foreign trade imports under the Trade Adjustment Assistance Act (TAA). In addition, the TAA provides for payment of similar benefits to workers adversely affected by NAFTA. As well intentioned as this may be, workers who can prove they lost their jobs because of foreign competition or NAFTA should not receive government benefits that exceed the assistance available to those laid off due to domestic competition.[31] In any case, the department's own auditors have concluded that the TAA has not worked as intended, and the new NAFTA-TAA program likely will meet the same outcome: Instead of providing retraining help, the TAA program has turned into a compensation program.[32] Funding for these ineffective programs should be eliminated.

✔ **Permit state legislators to determine ES administrative budgets, payroll taxes, and UI benefits under limited federal guidelines.**

The UI system is an experience-rated and employer-paid payroll tax. It was set up with specific objectives and a designated tax as its funding source. Federal proposals to combine the funding sources for the ES program and job training programs are unwise. Job placement services have different goals, populations, and outcomes from those of training programs. ES offices are supposed to get unemployment claimants back to work quickly, thereby ensuring that employer taxes are as low as possible. Job training

30 *From Red Tape to Results*, p. 80.

31 The TAA provides benefits to workers for 78 weeks, while the vast majority of other laid-off Americans, who qualify only for unemployment insurance, receive just 26 weeks of benefits.

32 In its 1993 semiannual report to Congress, the Department of Labor Inspector General (OIG) discovered in a nine-state audit of the program that "After 19 years of operation, neither ETA nor the states know whether the TAA program is effective" in achieving its original goals of helping workers find suitable employment. The OIG found that only one in ten former participants "found new training-related employment that paid or had the potential to pay suitable wages." Although the Act requires that participants enroll in approved training courses, " participants who did not wish to attend training were almost always granted waivers without losing entitlement allowance."

programs often do not share that objective. Suggesting that FUTA payroll tax funds be used for anything other than paying unemployment benefits and funding state job placement assistance is merely a backdoor way to introduce a payroll tax for training. Devolving ES funding removes the potential for Congress to dilute the mission of the system and divert funding for other purposes.

The limited federal guidelines should include the following:

- ☞ The single state UI tax for both administration and benefits should be experience rated.
- ☞ Funds should be used only for program administration and weekly benefits and should be capped at levels necessary for proper and efficient administration during periods of high unemployment.
- ☞ States should be required to continue cooperative and financial contracts to administer the interstate benefit program.
- ☞ Federal funding for the administration and payment of federal employee UI benefits, military separations, and disaster unemployment programs should be deposited in state UI accounts as needed.
- ☞ Federal oversight should be limited to determining whether state laws conform with federal requirements.

II. CONSOLIDATE JOB TRAINING PROGRAMS INTO BLOCK GRANTS.

The current maze of discretionary job training programs accounts for another substantial portion of DoL's budget. Many DoL programs overlap programs in other departments. The General Accounting Office has identified 163 employment training assistance programs across the federal government, spending about $20 billion per year.[33] Moreover, "this fragmented system wastes resources and confuses and frustrates clients, employers, and administrators." For FY 1995, thirty of these programs, totaling $5.8 billion, were funded through DoL.[34] The Employment and Training Administration, the primary DoL agency responsible for job training programs, is run by 1,529 employees and accounts for 50 percent of DoL's discretionary budget.[35]

President Clinton, as part of his "Middle Class Bill of Rights" initiative, has proposed significant funding increases in his FY 1996 budget.[36] For example, DoL proposed to increase funding for the School-to-Work program by 63 percent and funding for the One-Stop Career Center program by 100 percent. But the Clinton Administration also agrees that federal job training programs are fragmented, overlapping, and lack accountability. Part of the President's initiative is to consolidate and reform 70 job training programs.

33 U.S. General Accounting Office, "Multiple Employment Training Programs—Information Crosswalk on 163 Employment Training Programs," GAO/HEHS-95-85FS, February 14, 1995.

34 These numbers exclude funding for the Employment Service, the Target Jobs Tax Credit, Alien Labor Certification, and the Federal Bonding Program.

35 U.S. Department of Labor, FY 1996 budget press release, February 6, 1995.

36 *Ibid.*

Because statistics indicate that more education leads to better paying jobs, Congress and others assume that job training programs work. Unfortunately they don't. Rather than focusing on who should have responsibility for job training programs, Congress must first ask itself a fundamental question: Why should we continue to spend taxpayer money on programs that don't work?[37]

Job training programs, although well intentioned, have not raised the long-term hourly earnings of participants. They do not achieve this primary goal because there is little, if anything, the government can do to alter what happens when individuals neglect their first 12 years of primary education.[38] The billions of dollars spent on government job training and public assistance programs are too much too late. What is needed are more fundamental changes aimed at improving basic education through school choice, strengthening curricula, and completing high school. Reform that focuses on these goals will reduce the demand for government job training programs that do not work.

Bills have been introduced in both the House and the Senate to reform federal job training programs. The House recently passed the Consolidated and Reformed Education, Employment, and Rehabilitation Systems Act (H.R. 1617), introduced by Representative Howard McKeon (R-CA). The Senate also recently passed the Workforce Development Act of 1995 (S. 143), introduced by Senator Nancy Kassebaum (R-KS). Although both bills improve current law by consolidating some of the federal job training programs into state block grants and increasing accountability, major changes need to be made in conference.

What Congress Should Do:

✔ Consolidate more programs into the block grants.

S. 143 consolidates only around 80 of the 163 federal employment and training programs and reduces spending by 15 percent. H.R. 1617 consolidates even fewer programs. H.R. 1617 does not include Job Corps, the most expensive federal job training program, or vocational rehabilitation programs. S. 143 marginally reforms Job Corps, but does not consolidate it in the state block grant. However, S. 143 does include vocational rehabilitation programs.

Congress can improve both bills by consolidating the Job Corps, vocational rehabilitation, and the Senior Community Service Employment program into the state block grant.

✔ Provide maximum flexibility to the states in designing their programs.

Overly prescriptive federal requirements should be removed. State and local elected officials are in the best position to allocate block grant funds. There is tremendous diversity among and within the states. What Washington prescribes as the solution for problems in urban areas often does not fit well in places like Utah or Vermont. Prescriptive solutions and fixed allocations of funds will work in some places, but will also be

37 See Wilson, "Welfare Reform and Job Training Programs."

38 Job placement assistance may speed up the transition from welfare to work and increase the number of hours worked per year, but that is entirely different from the primary purpose of training: better-paying jobs.

the worst possible solution in many others.[39] State and local workforce development boards should be optional, not mandatory. Continuing School-to-Work activities also should be optional and not mandatory.

Further, states should have the discretion to transfer funds between the welfare and job training block grants for the purpose of implementing work requirements and job placement assistance programs. This would provide additional flexibility to states and eliminate micromanagement by the federal government.

✔ Strengthen accountability with control group evaluations.

Each state should have at least one control group evaluation of its job training programs ongoing at any given time. Such scientific evaluation should be conducted by using experimental and control groups chosen by scientific random assignment and, at a minimum, should determine whether job training and job placement programs effectively raise the hourly wage rates of individuals receiving training through such programs. Each state should report annually on the status and results of its control group evaluations.

The addition of state control group evaluations would quickly build a body of evidence on the true effectiveness of job training programs. Few job training programs have ever been subject to rigorous evaluation.[40] As a report from the Secretary of Labor points out, "there are many areas where little thorough and reliable evaluation evidence is available."[41] The few solid studies that have been conducted generally fail to show any significant increase in the hourly earnings of participants directly related to job training. Historically, performance measures and benchmarks have been the more common but unsatisfactory means of determining whether or not these programs work. The findings from performance measure methods, particularly the negative ones, have been easily manipulated and explained way. Without a requirement for rigorous, control group studies, American taxpayers will never know whether they are funding effective programs or just throwing good money after bad.

✔ Scale back the labor market information system.

Initial labor market information system (LMIS) activities should be restricted to conducting a feasibility study, developing LMIS options, and estimating the cost of those options. The current LMIS provisions in both H.R. 1617 and S. 143 immediately plunge the federal and state governments down an untested and expensive path that may not be feasible. Further, mandating states to create a LMIS at the substate level for which no data current exist will be extremely expensive. The initial information for the

39 National Governors' Association memorandum, "Comments on CAREERS Act Proposal," May 12, 1995.

40 The only effective way to evaluate job training programs is to conduct an experimental design study that randomly assigns individuals to a treatment group that can receive services from the program under study or to a control group that cannot and then evaluate the outcomes. See Orley Ashenfelter, "The Case for Evaluation Training Programs With Randomized Trials," *Economics of Education Review*, Vol. 6, No. 4 (1987).

41 *What's Working (and what's not) A Summary of Research on the Economic Impacts of Employment and Training Programs*, U.S. Department of Labor, January 1995, p. 4.

labor market information system should be restricted to data readily available from the Census Bureau and other federal and state agencies.

Further, employers should not be mandated to provide any information. All employer provided information on job openings, application procedures, employment requirements, wages, benefits, and hiring patterns should be strictly voluntary. Any information supplied by either individuals or employers should also be immune from the legal process and should not, without the consent of the individual or employer, be used for any judicial or administrative proceeding.

III. REFORM AND RESTRUCTURE WORKPLACE HEALTH AND SAFETY.[42]

Although Congress intended that the Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) assure all workers safe and healthy working conditions, the effectiveness of these agencies in carrying out their missions is questionable. From rulemaking to enforcement, the regulatory nightmare that businesses face has made OSHA inspectors as feared as IRS auditors.[43] Although most employers maintain relatively safe and healthy workplaces, OSHA maintains an adversarial approach to setting and enforcing standards.[44] Significant reform is required to redefine the federal government's role in workplace safety and health and "refocus the responsibility for ensuring worksite safety and health on the workplace."[45] Vice President Gore's National Performance Review correctly recognized that an army of OSHA inspectors is neither necessary nor likely, given the federal budget situation. A new approach is required to increase workplace health and safety and balance the budget. Merging MSHA with a reformed OSHA is a sensible first step toward improving workplace health and safety, limiting unnecessary government intervention, and reducing inefficient, wasteful government spending.

A number of bills have been introduced in the House and Senate to reform workplace health and safety programs. The leading bill in the House is H.R. 1834, the Safety and Health Improvement and Regulatory Reform Act of 1995, introduced by Representative Cass Ballenger (R-NC). In the Senate, Judd Gregg (R-NH) has introduced the Occupational Safety and Health Amendments of 1995 (S. 526), and Kay Bailey Hutchison (R-TX) has introduced the Occupational Safety and Health Reform Act of 1995 (S. 592). Of these three bills, H.R. 1834 represents the most comprehensive OSHA reform. It also is the only bill that consolidates administrative overhead and ends duplicative costs by merging OSHA and MSHA.

Legislative changes are necessary to enable MSHA to allocate resources more efficiently and OSHA to work cooperatively with businesses—for example, by making compliance assistance a permanent, central part of its program and mission. Efforts to reprioritize agency spending or administratively reinvent the agencies would change their bureaucratic culture only marginally and do little to consolidate administrative overhead and eliminate duplicative activities. President Clinton offered to reinvent OSHA after the 104th Congress an-

42 Much of this section is from Mark Wilson, "Save Lives By Cutting Red Tape: Redefine the Federal Role in Workplace Safety and Health."

43 See Richardson and Ziebart, *Red Tape in America.*

44 Consequently, many employers are reluctant to call OSHA for compliance assistance for fear of triggering punitive inspections.

45 *From Red Tape to Results,* p. 45.

nounced its intention to create a more effective and efficient OSHA.[46] In addition, President Clinton's proposed FY 1996 budget increased funding for OSHA compliance assistance by 23 percent while increasing overall OSHA and MSHA spending by 8.9 percent. The House recently voted to increase funding for OSHA compliance assistance by 19.2 percent while reducing overall OSHA and MSHA spending for FY 1996 by 12.5 percent. The Senate Appropriations Committee recently approved a 5.0 percent funding decrease for OSHA compliance assistance and a 3.1 percent overall reduction. However, Congress can accomplish much more by fundamentally redefining the role of the federal government so that it recognizes and more effectively uses the incentives businesses already have to improve workplace health and safety.

What Congress Should Do:

✔ Significantly reform OSHA.

Although executive branch initiatives to reinvent workplace health and safety are welcome, statutory changes are required to redefine the federal government's role and ensure that congressional intent is implemented. Specifically,

❶ Reform OSHA's regulatory process.

Because OSHA's bureaucratic culture and lawyers have put the search for completely risk-free workplaces and ease of prosecution above common sense, it can take ten or more years to complete a rule.[47] OSHA's regulatory process would be more timely and less burdensome if focused initially on hazards that pose the greatest risk to the most workers. Development of compliance directives should be made part of the rulemaking process and tied directly to economic analysis. Far too often, compliance directives are more burdensome than the rules themselves. OSHA also should be required to reassess the actual costs and benefits of its regulations after five years.

❷ Enhance and expand compliance assistance.

Translating OSHA's confusing jumble of regulations into safer workplaces is difficult at best. Most employers want safe and healthy workplaces, but the Department of Labor is more concerned with prosecuting employers than with providing accurate, reliable compliance information. Explicitly redefining OSHA's mission towards compliance assistance will leverage employers' desire for safety and dramatically improve workplace safety and health.

46 OSHA will "fundamentally change its operation from one of command-and-control to one that builds partnerships among regulators and business. Second, OSHA will eliminate or fix out-of-date and confusing standards and instead identify clear and sensible priorities. Finally, OSHA will target the most serious hazards and dangerous workplaces...." White House press release, May 16, 1995.

47 *From Red Tape to Results*, p. 14.

❸ Give first instance warnings for hazards that do not pose an imminent danger.

OSHA continues its adversarial approach to standard setting and enforcement. Many employers are reluctant to call OSHA for assistance in making their workplaces safer for fear of triggering punitive inspections. First instance warnings will remove a major barrier to voluntary compliance.

❹ Require OSHA inspectors to have some expertise in the industry they are inspecting.

OSHA inspectors are called upon to inspect a variety of workplaces, many of which, like mining, involve complex operations.[48] Employers and employees deserve to have their workplaces inspected by qualified persons.

✔ Merge the Mine Safety and Health Administration with a reformed OSHA.

Although OSHA and the MSHA were created separately, workplace injury and illness data no longer justify maintaining these agencies as separate entities with practically the same level of resources.[49] Merging MSHA with a reformed OSHA and reallocating federal resources will accomplish two important objectives: It will eliminate administrative overhead and duplicative costs and increase workplace health and safety in all industries.

Reforming the Mine Act to require only one inspection per year will enable MSHA to shift its inspection resources from mine operators with exemplary safety records to operators with poor safety records. By focusing on the "bad players," OSHA's new Mine Office will improve mine safety where it is needed most. Mine operators with good safety records will continue to have incentives to remain safe, in addition to fewer inspections and lower workers' compensation costs, and the new Mine Office will be able to use its resources more efficiently to focus on the "bad players." Further, merging the two agencies will settle jurisdictional questions about enforcement and eliminate the memoranda of understanding that currently exist between OSHA and MSHA. Mine workers and taxpayers will get more mine safety for their hard-earned dollars.

The Heritage Foundation estimates that consolidating MSHA and OSHA could save up to $510 million over five years.[50] Merging MSHA and OSHA would eliminate the need to write two separate health regulations for the same workplace hazard, one for mining and one for everybody else. For example, there is no reason to have two separate Hazard Communication Standards, and noise protection for miners is no different

48 Mine inspectors are required to have at least five years of practical mining experience.

49 MSHA and OSHA have about 1,100 inspectors each. MSHA spends over $13,000 per year for every mine and about $750 per year for every miner, while OSHA spends around $100 per covered worksite and $6 per worker. However, in 1992 the coal mining industry had an injury and illness rate of 12.5, compared to 17.5 in the primary metal industry and 16.3 in the lumber and wood products industry.

50 Scott A. Hodge, ed., *Rolling Back Government: A Budget Plan to Rebuild America* (Washington, D.C. The Heritage Foundation, 1995), p. 237.

from noise protection for other workers. Regional and administrative offices would be combined, and MSHA's Office of Information and Public Affairs could be eliminated.

Merging MSHA with a reformed OSHA will not reduce workplace health and safety. No MSHA safety or health regulations would be abolished.[51] Each underground mine will be inspected thoroughly at least once a year by qualified inspectors, and all workers will be able to request federal inspections if employers ignore their concerns about unsafe conditions. MSHA's imminent danger closure rule will be maintained, and mine workers finally will be covered by OSHA's health regulations. Focusing resources on compliance assistance will improve the ability of "good players" to translate OSHA and MSHA regulations into safer workplaces. Most important, by requiring only one mandatory inspection per year instead of four, a new OSHA/MSHA will be able to reallocate its resources to focus on improving the "bad players" instead of inspecting mines with good safety records.

✔ **Establish the "new" OSHA as a separate sub-Cabinet agency that functions as a national safety and health standard-setting agency.**

Establishing health and safety compliance programs can be extremely costly and complicated. For employers operating in multiple states, where requirements vary from state to state, developing compliance programs can be almost impossible. There is no justification for different requirements in different states. The risk posed by certain hazards may vary from industry to industry and workplace to workplace, but not from state to state. Therefore, different states do not need different requirements. National workplace health and safety standards should be developed exclusively at the federal level.

National workplace health and safety standards are too important to be determined in a department that has been, and continues too be, subject to political influence. Independence and objectivity are crucial. The potential costs and benefits are too high for politics to play any role. The "new" OSHA should be a separate sub-Cabinet agency, similar to the Federal Reserve Board of Governors. An independent governing and standards-setting board should be established. Its members would be appointed by the President and confirmed by the Senate for staggered six-year terms. The board would be responsible for standards promulgation, oversight of a peer-review process, and issuance of compliance directives. It also would report its activities to Congress twice a year and be subject to congressional oversight hearings.

IV. REFORM PRIVATE PENSION PROTECTION.

The Employee Retirement Income Security Act (ERISA) was enacted in 1974 to protect the assets in employee pension plans that provide workers with retirement benefits promised by their employers. The Pension and Welfare Benefits Administration (PWBA) is the DoL agency that administers and enforces ERISA. ERISA protects the integrity of assets by requiring administrators of private pension and welfare plans[52] to comply with strict fi-

51 A number of MSHA provisions that duplicate those in OSHA, and that therefore are no longer necessary, are repealed by H.R. 1834.

duciary responsibility standards.[53] It also requires administrators to provide participants with easily understood summaries of their plans, to file those summaries with PWBA, and to report annually on the financial operation of plans and the bonding of persons charged with handling funds and assets. Jurisdiction is shared by the PWBA, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC). Generally, PWBA has authority over Title I of ERISA,[54] the IRS has authority over Title II,[55] and PBGC has authority over Title IV.[56]

PWBA is responsible for overseeing 720,000 pension plans and 4.5 million health and welfare plans in the private sector. ERISA-covered private pension plans cover over 88 million working Americans and their dependents and hold approximately $2 trillion in assets. Over 100 million workers are covered by employer-sponsored health and welfare plans. Three-quarters of PWBA's $65 million budget and 582 FTEs (full-time equivalent employees) is dedicated to enforcement focused on compliance with fiduciary responsibility provisions of ERISA. PWBA audits plans and conducts criminal and civil investigations. In 1993, the government carried out 6,033 investigations.

President Clinton proposed to increase PWBA's budget by 17.1 percent. The House recently voted to reduce PWBA's FY 1996 spending by 7.5 percent and the Senate Appropriations Committee approved a 5.2 percent reduction. The House budget bill also prohibits the Department of Labor from promoting economically targeted investments with respect to private pension plans covered by ERISA. It specifically prohibits both the implementation of last year's PWBA Interpretive Bulletin and the funding of any Economically Targeted Investment Clearinghouse. The Senate Appropriations Committee deleted this House provision.

The primary focus of ERISA legislation this year is health insurance reform. In the House, Representative Harris Fawell (R-IL) has introduced the ERISA Targeted Health Insurance Reform Act of 1995 (H.R. 995), which would provide for health insurance portability, increased participation, improved plan solvency, and other consumer protections for workers. Senator Kassebaum has introduced the Health Insurance Reform Act of 1995 (S. 1028), the provisions of which are a subset of H.R. 995. S. 1028 was approved by the Senate Labor Committee.

A few bills reforming ERISA's pension provisions have been introduced in Congress. The most comprehensive bill, the Pension Simplification Act of 1995 (H.R. 2037 and S. 1006), has been introduced by Representative Rob Portman (R-OH) and Senator David

52 Examples of welfare benefit plans are apprenticeship plans, vacation plans, and severance arrangements.

53 ERISA requires that employee benefit plans be managed solely in the interest of the plan's participants and beneficiaries for the exclusive purpose of providing benefits and paying reasonable administrative expenses. Assets must be held in a separate legal trust, and a fiduciary must be named who is legally responsible for ensuring that the interests of the participants and beneficiaries are protected. ERISA also contains prohibitions against transactions between the plan and related parties whose interests may be adverse to the plan.

54 PWBA is responsible for establishing and administering ERISA's fiduciary responsibilities and reporting and disclosure provisions, and for determining whether a plan is covered under ERISA.

55 The IRS is responsible for establishing minimum standards governing participation, vesting, and funding of pension plans covered by ERISA.

56 PBGC administers the federal insurance system for defined benefit pension plans.

Pryor (D-AR). These identical bills would create alternative methods for satisfying nondiscrimination provisions, repeal the family aggregation provision, repeal 5-year income averaging for lump-sum distributions, repeal the $5,000 exclusion of employees' death benefits, simplify the method for taxing annuity distributions under certain employer plans, and target access to pension plans for small employers.

The House has passed H.R. 1594, introduced by Representative John Saxton (R-NJ), to place restrictions on the promotion of economically targeted investments in connection with employee benefit plans by the Department of Labor and other federal agencies. A similar bill (S. 774) has been introduced by Senator Connie Mack (R-FL).

Responsibility for the oversight of public and private retirement programs currently is spread across the Departments of Labor, Treasury, and Health and Human Services. Transferring PWBA to the Department of Health and Human Services (HHS) would lead to more efficient research and retirement policy coordination. Combining PWBA with HHS also would be a good first step toward privatizing Social Security.[57]

What Congress Should Do:

✔ Abolish the Economically Targeted Investment Clearinghouse.

In 1994, DoL established the Economically Targeted Investment Clearinghouse (ETIC) to provide information on investment opportunities to pension plan managers. This program is DoL's way of encouraging pension plans to invest in areas of the economy that bureaucrats and politicians feel are underfinanced by private capital markets. It is misguided and jeopardizes the safety of pension plan assets.[58] Tax dollars should not be used as another form of corporate welfare to market public investment choices to pension plan managers. If an investment, public or private, provides a good opportunity to pension plan managers, they will allocate plan funds accordingly.

✔ Eliminate the Office of Inspector General's independent investigative authority.

The experience and expertise for investigating fraud and abuse involving employee benefit plans reside in the PWBA. The existence of competing enforcement authorities within the DoL creates confusion and leads to duplication of effort. In recent years, PWBA has increased its efforts to bring criminal cases. As a result, PWBA investigators not only have expertise regarding how plans operate, but also know how to work criminal cases.

57 Karl Borden, "Dismantling the Pyramid: The Why and How of Privatizing Social Security," Cato Institute Social Security Privatization No. 1, August 14, 1995.

58 Cassandra Chrones Moore, "Whose Pension Is It Anyway? Economically Targeted Investments and the Pension Funds," Cato Institute Policy Analysis No. 236, September 1, 1995.

✔ **Remove ESOPs from Title I (fiduciary standards) of ERISA.**

Employee Stock Ownership Plans (ESOPs) are hybrid benefit plans with two often competing goals. They are designed to increase employee ownership in companies and thereby improve productivity. They also are treated as retirement plans, with participants allowed to defer taxes on the value of their stock until it is withdrawn at retirement. Although ESOPs are governed by ERISA's fiduciary rules, several tax code sections give them special treatment not available to other retirement plans. Because the nature and financing of ESOPs are not always compatible with ERISA's rules, PWBA has struggled to accommodate ESOPs under the rules without damaging the fiduciary requirements that generally work well for other retirement plans. The result has been confusing and complicated rulings and legal standards. Congressional intent clearly has been to foster employee ownership. Trying to incorporate ESOPs into an Act designed to protect retirement income will only undermine this goal.

✔ **Transfer the Pension and Welfare Benefits Administration to the Social Security Administration, spin off the Pension Benefit Guaranty Corporation as an independent sub-Cabinet agency, and begin exploring ways to privatize pension insurance.**

This would combine the agencies responsible for oversight of public and private retirement programs and result in more efficient research and retirement policy coordination. The Pension Benefit Guaranty Corporation (PBGC) is a semi-independent, wholly owned government corporation modeled after the Federal Deposit Insurance Corporation and guided by a board of directors. Congress should fund the PBGC separately and begin exploring ways to privatize pension insurance.[59]

V. ELIMINATE OBSOLETE WORKPLACE STANDARDS.

The Employment Standards Administration (ESA) administers and directs programs under a variety of federal labor laws and executive orders. The Wage and Hour Division:

- ☞ **Administers and enforces** federal minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act;
- ☞ **Determines** prevailing wage rates for federal contracts subject to the Davis-Bacon and Service Contract Acts;
- ☞ **Registers farm labor contractors and enforces worker protections** of the Migrant and Seasonal Agricultural Worker Protection Act; and
- ☞ **Enforces provisions and restrictions** of the Employee Polygraph Protection Act.

The Office of Federal Contract Compliance Programs administers and enforces Executive Order 11246, as amended, which requires federal contractors and subcontractors to take affirmative action in hiring. The Office of Workers' Compensation Programs adminis-

59 PBGC is part of DoL's budget. As a semi-independent agency, it should be funded like the National Labor Relations Board under Title IV of the Departments of Labor, Health and Human Services, and Education, and Related Agencies appropriations bill.

ters the three basic federal workers' compensation laws: the Federal Employees Compensation Act, Longshore and Harbor Workers' Compensation Act, and Black Lung Benefits Act.

Today's economy is fundamentally different from when most of America's major labor laws were passed. Labor market conditions and labor-management relations have changed, but America's labor laws have not. Workers are demanding more flexible hours, working conditions, and compensation packages than current laws and regulations allow. The heavy burden of outdated and restrictive workplace rules reduces job opportunities and real wages. The proliferation of mandated benefits and requirements now makes most small businesses think very carefully before hiring additional workers and is one of the forces leading employers to utilize part-time, temporary, and contract labor.

The House of Representatives recently voted to reduce ESA's FY 1996 spending by 12.2 percent.[60] The Senate Appropriations Committee has approved a 9.9 percent reduction. Both bills prohibit funding for implementation of President Clinton's executive order concerning the permanent replacement of striking workers by federal contractors, and the House plans to repeal both the Davis-Bacon and Service Contract Acts as part of the budget reconciliation process.

A number of bills to reform America's labor laws also have been introduced in Congress.[61] The House recently passed the Teamwork for Employees and Management Act (H.R. 743) to allow employers to create employee involvement committees. A similar bill (S. 295) has been introduced in the Senate by Nancy Kassebaum.

What Congress Should Do:

✔ **Nullify Executive Order 11246, as amended, and all affirmative action provisions in federal law.**

Executive Order 11246, as amended,[62] and its implementing regulations prohibit federal contractors from discriminating against employees or job applicants because of race, color, religion, sex, or national origin and requires them to take affirmative action to ensure equal opportunity for protected groups. Contractors must develop a written plan covering each of their establishments that includes remedial steps to correct underutilization of available women and minorities.

Federal contractors and subcontractors already must comply with existing civil rights laws without the executive order. Laws requiring non-discrimination in employment are enforced through agencies at the Equal Employment Opportunity Commission and the Department of Justice. There are other, more equitable ways to expand employment opportunities for all Americans without requiring preferential hiring simply because individuals belong to certain groups. In addition, the regulations to implement Executive Order 11246 impose 20.4 million hours of paperwork (9,795 full-time, year-round

60 This excludes the Black Lung Disability Trust Fund.

61 Among them: repealing Davis-Bacon (H.R. 500, S.141) and the Service Contract Act (H.R. 246); updating the Fair Labor Standards Act (H.R. 1226, S. 1129); reforming affirmative action (S. 497 and others); striker replacement (H.R. 1176, S.603); and immigration reform (H.R. 560, S. 269).

62 Executive Order 11246 was implemented in 1965 and amended by E.O. 11375 and E.O. 12086.

workers) on federal contractors and subcontractors, the single largest DoL paperwork requirement.

A recent Supreme Court decision on affirmative action concluded that "the federal government can no longer make decisions based on the race of the individual except when there is a compelling governmental interest."[63] Concurring, Justice Antonin Scalia wrote, "In my view, government can never have a 'compelling interest' in discriminating on the basis of race in order to 'make up' for past racial discrimination in the opposite direction." Further, Justice Clarence Thomas wrote, "Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law. That these programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution, the government may not make distinctions on the basis of race."

✔ **Repeal the Davis-Bacon and related Acts and the Service Contract Act.**

The Davis-Bacon Act was enacted during the Depression explicitly to prevent low-skilled nonunion workers—chiefly blacks and Hispanics—from competing for federally funded construction jobs.[64] Unfortunately for these workers, it has succeeded. This year's budget process may be the only real opportunity to put an end to this Depression-era law that contributes to racial discrimination, needlessly costs taxpayers billions of dollars a year, stifles productivity, and subsidizes special interests. If only the facts were at issue, there would be no need for debate—the Davis-Bacon Act would be repealed. However, repeal is threatened once again by intense pressure from special interests seeking to preserve their generous subsidies. Congress must withstand this pressure, act in the interests of all American workers, and repeal the Davis-Bacon Act.

The Service Contract Act (SCA) artificially inflates the cost of federal service contracts by as much as $500 million per year and, like Davis-Bacon, creates an unfair barrier for many unskilled entry-level workers, who tend to be poor and minorities. DoL has long been criticized for the way it operates under this law. Despite two amendments,[65] the SCA continues to suffer from statutory ambiguity, administrative problems, arbitrary requirements, and capricious enforcement.[66] The General Accounting Office has recommended repealing the SCA because of DoL's "inability to administer the act efficiently and effectively" and because "it is impractical, in our opinion, to make 'prevailing wage' determinations under the act in a consistently equitable manner."[67] Outdated by extensions of the Fair Labor Standards Act to service workers, the SCA has become an unnecessary and costly bureaucratic burden that should be repealed.

63 *Adarand Constructors v. Pena*, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).

64 Mark Wilson, "Four Reasons Why Congress Should Repeal Davis-Bacon," Heritage Foundation *Backgrounder Update* No. 252, June 7, 1995.

65 The SCA was amended in 1972 and 1976. The purpose of these amendments was to expand coverage, improve administrative efficiency, and assure enforcement.

66 Beverly Hall Burns, "The Service Contract Act of 1965: Time to Revise or Repeal," *Villanova Law Review*, Vol. 29, No. 2 (1983-84).

67 U.S. General Accounting Office, "The Congress Should Consider Repeal of the Service Contract Act," 1983.

✔ **Reform the Fair Labor Standards Act to allow employers to offer flexible schedule and compensation options.**

The Fair Labor Standards Act (FLSA) was enacted to protect unskilled, low-pay workers. However, in today's economy where both parents likely are working, its rigid and inflexible provisions hurt more than help. The FLSA deprives workers of the right to order their daily lives on and off the job to meet the responsibilities of work and home. For example, under the FLSA a worker who wants to work 35 hours one week in order to attend a child's parent-teacher conference, in exchange for working 45 hours the following week, either must forgo five hours of pay or have an employer willing to pay overtime the second week. Congress should extend to private workers the same freedom that federal employees have — flextime — and enable employers to offer flexible schedule and compensation options to their workers.[68]

✔ **Reform the National Labor Relations Act to remove restrictions on the ability for employers to create employee involvement structures.**

Employee involvement (EI) structures are a way to involve workers in business operations to improve productivity, safety, and customer service. Under current law, however, the only discussions of workplace issues that are clearly legal between employers and employees are those that occur in traditional collective bargaining arrangements. Employers can listen to their nonunion employees but cannot respond to their views without risking litigation and significant legal costs. Further, the Commission on the Future of Worker-Management Relations noted that the most legally vulnerable EI structures are "those that take a broader, more systemic approach to participation that the evidence suggests have the greatest long-term, positive effects on economic performance."[69] Congress should reform the National Labor Relations Act to exempt EI structures formed to address issues of quality, productivity, safety, and customer service.

✔ **Transfer immigrant worker oversight and enforcement functions to the Immigration and Naturalization Service.**

In the late 1940s, DoL's immigration responsibilities were transferred to the Department of Justice to consolidate federal immigration functions in the Immigration and Naturalization Service. Since then, the federal government has shifted some of its immigration responsibilities to employers[70] and added new DoL enforcement requirements.[71] Responsibility for immigration policy once again is fragmented. Transferring

68 In 1978, Congress recognized the benefit of these work arrangements and passed the Federal Employees Flexible and Compressed Work Schedules Act. This Act authorized a three-year experimental period of alternative work schedules for federal employees. The experiment was so successful, it was extended in 1982 and made permanent in 1985.

69 U.S. Department of Labor, Commission on the Future of Worker-Management Relations, *Report and Recommendations*, December 1994.

70 Rather than control illegal immigration at U.S. borders, the Immigration and Nationality Act requires employers to verify the employment eligibility of all workers.

71 DoL currently is responsible for oversight and enforcement of the H-2A program—temporary agricultural employment for alien farm workers—and the H-1A program of the Immigration Nursing Relief Act of 1989.

DoL's immigration functions to the INS would combine the responsibility for federal immigration programs in one agency and facilitate more efficient immigration policy coordination.

✔ **Transfer any remaining ESA programs to more appropriate departments or sub-Cabinet agencies.**

Legal enforcement of the Fair Labor Standards Act should be transferred to the Justice Department. Responsibility for federal workers' compensation laws and black lung benefits—both primarily health-related income assistance programs—should be transferred to the Department of Health and Human Services. Responsibility for all employment discrimination complaints should be consolidated in the Equal Employment Opportunity Commission.

VI. GIVE GREATER INDEPENDENCE TO THE BUREAU OF LABOR STATISTICS.

The American statistical system is one of the most decentralized data-producing systems in the world. Eleven specifically statistical federal agencies spend more that $1 billion annually. Further, the Office of Management and Budget (OMB) has found more than 70 individual agencies spending more than $500,000 a year for statistical activities and estimates that the federal government spent at almost $2.7 billion in FY 1994 for statistical operations.[72]

The Bureau of Labor Statistics (BLS) is the primary federal data-gathering agency in the broad field of labor economics and prices. It has no enforcement or regulatory functions and operates somewhat independently from DoL. The BLS collects, processes, analyzes, and disseminates data relating to employment, unemployment, and other characteristics of the labor market. It also publishes data on consumer and producer prices and workplace health and safety. Most of the data are collected by voluntary surveys conducted by the BLS and the Bureau of the Census, or on a cooperative basis with state agencies.

Change is needed. The current structure of the federal statistical system is inefficient and ineffective.[73] The problems with the U.S. statistical system result directly or indirectly from fragmentation across the federal government. The system has neither the advantages that come from centralization nor the efficiency that comes from strong coordination of a decentralized system. As currently organized, it will be hard-pressed to meet the data demands of a technologically advanced and increasingly global economy.

The House recently voted to reduce BLS spending for fiscal year 1996 by 1.3 percent. The Senate Appropriations Committee recently approved a 6.1 percent reduction. Both bills double the amount appropriated for revising the consumer price index (CPI).

72 *Statistical Programs of the United States, Executive Office of the President, Office of Management and Budget, Issues for Fiscal Years 1980-94.*

73 Janet L. Norwood, *Organizing to Count* (Washington, D.C.: The Urban Institute Press, 1995), p. 71. Janet Norwood was Commissioner of the Bureau of Labor Statistics from 1979 to 1991.

What Congress Should Do:

✔ **Transfer the BLS into a new sub-Cabinet Bureau of National Statistics along with the Census Bureau and the Bureau of Economic Analysis.**

Consolidating the Census Bureau, the BLS, and the BEA in a centralized system is "the most effective solution to the problems of the federal statistical system."[74] A new Bureau of National Statistics (BNS) would make it possible to develop and carry out a comprehensive, systematic effort to combine surveys and develop economies of scale. The BNS also would be in a better position to undertake the careful evaluation and research needed to make decisions about more efficient survey design and ways to eliminate duplication and reduce paperwork and data collection burdens. Incorporating the Bureau of Economic Analysis into the BNS is essential if the new bureau is to influence priorities for the broad array of statistical information required for the national income and product accounts. Reforming the system will assure a much better use of the tax dollars currently being spent on statistics.

Three major concerns need to be addressed.

1. The BNS should be run by an independent Board of Directors, appointed by the President with the advice and consent of the Senate for a fixed term similar to the Federal Reserve Board of Governors.
2. To ensure that the public's response to voluntary surveys is not jeopardized, the BNS should be given complete legal confidentiality for all information collection activity. Data sharing arrangements with other agencies, for statistical purposes only, could be maintained under carefully controlled procedures approved and administered by the BNS Board.
3. Any administrative savings should stay within the agency to improve the quality and quantity of the nation's statistical information. Providing accurate information to the public and their state and local representatives is an important function of the federal government.

VII. ELIMINATE THE OFFICE OF THE AMERICAN WORKPLACE.

The Office of the American Workplace (OAW), created in 1993 by Secretarial Order, is responsible for administering and directing discretionary workplace programs that encourage the development of "high performance" workplaces.[75] OAW also is responsible for administering statutory programs to certify employee protections of various federally sponsored transportation programs, overseeing the financial integrity and internal democracy of American labor unions, and assisting unions in improving their organizational and administrative effectiveness. Labor Secretary Robert Reich recently has assigned OAW the task of implementing President Clinton's executive order prohibiting the permanent replacement of striking workers by federal contractors.

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74 *Ibid.*

75 According to the U.S. Department of Labor, "high performance" workplaces utilize work organizations, technology, and performance measurements that enhance business competitiveness; improve the skills, involvement, and commitment of front-line employees; and promote innovative relations among managers, labor unions, and professional organizations.

OAW carries out these functions through two offices: the Office of Workplace Programs (OWP) and the Office of Labor-Management Standards (OLMS). In FY 1995, of OAW's total budget authority of $31.4 million and 400 employees, $7.4 million went to OWP and $24.0 million to OLMS. For FY 1996, the President requested $41.8 million, or 33 percent more. Both the House and the Senate Appropriations Committees have voted to eliminate OWP and transfer OLMS to DoL's Employment Standards Administration.

What Congress Should Do:

✔ Eliminate the Office of Workplace Programs.

In addition to setting up a clearinghouse for information on high performance workplaces, OWP provides funds to unions to train labor leaders on what constitutes a high performance workplace. However well intentioned this may be, the federal government should not subsidize businesses and unions to teach them about the concept of "high performance" workplaces. This is more appropriately a function of business associations, chambers of commerce, and labor unions themselves. It is corporate and union welfare and should be eliminated.

✔ Eliminate the Office of Labor-Management Standards.

Nor should American tax dollars subsidize unions to "assist" them in improving their organizational and administrative effectiveness. These functions should be eliminated, the number of full-time equivalent positions in OLMS should be reduced significantly, and OLMS field offices should be eliminated. The investigative and union oversight functions of the office should be transferred to the Federal Bureau of Investigation (FBI) in the Department of Justice.[76]

✔ Repeal Section 13(c) of the Urban Mass Transportation Act of 1964.

Section 13(c) of the Urban Mass Transportation Administration Act of 1964 gives public transit the most restrictive labor environment in America. To receive federal funds, local public transit agencies must pay employees up to six years of severance pay if their jobs are eliminated as a result of efficiency improvements. No other workers enjoy such special privilege. Should public transit agencies pursue service improvements that lead to fewer workers, their mandated 13(c) liability can surpass the federal funds they receive.[77] Although many local governments are trying to improve their public transportation systems through competitive contracting and allowing private sector suppliers to operate, Section 13(c) discourages or blocks these efforts.

Section 13(c) also adds to public transit costs and discourages efficiency by giving labor unions special privileges. Before a public transit agency can receive a federal grant, DoL must certify that special protective arrangements for local transit workers have

76 The investigative and union oversight functions in the Office of Labor Racketeering in DoL's Office of the Inspector General also should be transferred to the FBI.

77 Assuming the 1988 annual compensation level of $41,000 for the average public transit bus driver, legally mandated severance pay could be as much as $250,000 per worker.

been made. DoL generally interprets this to require negotiation of special labor agreements between the public transit agency and its union.

Public transit agencies want desperately to improve service and lower costs. At the same time, however, unnecessarily high labor costs make them unable to withstand a long period without federal funding. Section 13(c) has created this "Catch 22" for most public transit authorities and should be repealed.

VIII. STREAMLINE DEPARTMENTAL MANAGEMENT.

The Departmental Management (DM) appropriation provides funding for a number of different programs that manage, set policy, and oversee its implementation at DoL. This includes the Office of the Secretary and Deputy Secretary, the Solicitor's office, the Bureau of International Labor Affairs, the Civil Rights office, and the Women's Bureau.

In FY 1995, DM's total budget authority was about $155 million and 2,548 employees. Over half the budget, $82 million, went to legal services and adjudication, and $26 million went to executive direction. For FY 1996, the President requested $173.1 million, or almost 12 percent more. The House recently voted to reduce DM spending for FY 1996 by 13.2 percent. The Senate Appropriations Committee recently approved a 7.6 percent reduction. The House substantially downsized the Bureau of International Labor Affairs, noting in its report that the bureau's activities are primarily discretionary and could be carried out by the Office of the Trade Representative or the State Department.

What Congress Should Do:

✔ **Eliminate the Bureau of International Labor Affairs (ILAB), the Women's Bureau, the Civil Rights office, and the National Occupational Information Coordinating Committee.**

The Bureau of International Labor Affairs, Women's Bureau, Civil Rights office, and National Occupational Information Coordinating Committee either duplicate existing federal functions or perform unneeded functions.

The Bureau of International Labor Affairs coordinates the Department's international responsibilities, including relations with international organizations, estimating the impact of trade proposals, and ensuring compliance with worker rights provisions in U.S. trade law. These functions duplicate those carried out by the U.S. Trade Representative, the Department of the Treasury, and the Department of State.

The purpose of the Women's Bureau is to promote "the welfare of wage earning women and [seek] to improve their working conditions, to increase their efficiency and to advance their opportunities for profitable employment."[78] The mission of the Department of Labor, including the Secretary, is to promote the employment opportunities of all Americans. There is no need for a separate bureau devoted to women, just as there are none devoted to other minorities, such as African Americans, Native Americans, or Asian Americans.

78 U.S. Department of Labor, FY 1996 budget press release, February 6, 1995.

The Civil Rights office ensures compliance with Title VI of the Civil Rights Act of 1964, as well as other regulatory nondiscrimination provisions in programs receiving financial assistance from DoL, and promotes equal opportunity in these programs and activities. It also makes sure that all Department of Labor employees and applicants are treated equally. There should not be a separate appropriation for this activity within the department. All agencies within DoL should ensure that their programs are carried out in a nondiscriminatory manner. Individuals who believe they have been discriminated against by the department can file complaints under existing laws enforced by the Justice Department and the Equal Employment Opportunity Commission.

Despite what federal officials may think, the National Occupational Information Coordinating Committee is not a necessary federal function. After funding for job training is consolidated into state block grants, the states should be given the option of setting up their own committees, in the event they decide that such committees would be useful, and funding them out of their block grants.

CONCLUSION

Today's economy is fundamentally different from when most of America's labor laws were passed. Labor market conditions and labor-management relations have changed, but U.S. labor laws have not. Workers are demanding more flexible hours, working conditions, and compensation packages than current laws and regulations allow. Further, proliferating workplace legislation and DoL regulations to enforce them present a significant barrier to the creation of businesses and jobs, as well as to increases in real wages. It is time for Congress to reform the administration and enforcement of America's labor laws, and this means a fundamental rethinking of both the Department of Labor and federal labor policy.

The primary objectives of this reform should be to reduce excessive burdens on businesses and job creation while maintaining workplace health and safety and to improve labor market flexibility while maintaining basic employment protections. The best way to achieve these objectives is by closing down the agency as a Cabinet-level department. If the recommendations in this study are implemented, $10.5 billion can be saved for the taxpayer from 1996 to 2000.

Cabinet-level status should be reserved only for departments that provide core national activities of the federal government. The Department of Labor does not fit this description. Administering unemployment insurance, three-quarters of DoL's budget, is a state function and should be devolved to the states as a first step toward privatization. Ineffective federal job training programs should be consolidated into state block grants and rigorously studied. OSHA should be significantly reformed, combined with MSHA, and set up as an independent sub-Cabinet agency free from political influence. America's statistics would be improved by combining the BLS with the Bureau of the Census as another sub-Cabinet agency. Obsolete, ineffective, and wasteful rules and programs should be repealed or closed down. What remains of the Department of Labor, less than 2 percent of its budget, then could be transferred to more appropriate Cabinet-level agencies like HHS, Treasury, and Justice. There is no reason for these remaining functions to be conducted by an independent department with Cabinet-level status.

Mark Wilson
Rebecca Lukens Fellow in Labor Policy