



# LEGISLATIVE ALERT

June 25, 2015

Honorable Thad Cochran  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Honorable Barbara A. Mikulski  
Vice Chairwoman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Chairman Cochran and Vice Chairwoman Mikulski:

On behalf of the AFL-CIO, I am writing to express our strong opposition to the 2016 Department of Labor, Health and Human Services and Education (Labor-HHS) Appropriations bill scheduled for Committee consideration this week. The AFL-CIO believes funding for workforce programs, public health, and education must be sufficient to meet the growing needs in these areas. Unfortunately, the Republican allocations for 2016 are inadequate and provide little hope that the Chairman's Labor-HHS draft will adequately fund these vital programs.

Congress should support policies that will help our economy grow, will raise wages, and will work for all people—not just the affluent. Accomplishing this task would have required passing a budget that eliminated the sequestration cuts and allowed sufficient funding to ensure adequate federal recourses for our national, state, and local priorities. Sequestration was never actually intended to take effect, yet for the last several years our economy has been at risk due to its unprecedented caps. There has been no better example of the severity of these cuts than in the Labor-HHS appropriations bill.

The 2016 Labor-HHS bill includes overall cuts of \$3.6 billion below the fiscal 2015-enacted level and \$14.5 billion below the President's requested level. It cuts Employment and Training Services, Unemployment Insurance, and Employment Services by four percent or \$331 million compared to fiscal year 2015. The legislation also decreases discretionary funding for the Department of Education by \$1.1 billion—eliminating at least 8 programs and cutting over 40 programs. Furthermore, the bill significantly reduces funding for key agencies that enforce laws providing safe and healthy workplace—reducing the Occupational Safety and Health Administration (OSHA) by 5 percent or \$28 million from fiscal year 2015 funding.

The 2016 Labor-HHS bill also potentially includes several policy riders that would limit the authority of key federal agencies to carry out their vital missions. The Committee should reject the riders highlighted below and any other riders that infringe on workers' rights.

## Department of Labor

1. ***Fiduciary Rule/Conflict of Interest*** - The AFL-CIO opposes any rider that interferes with the Department of Labor's ongoing rulemaking on the fiduciary issue. This rule would help to ensure that individual retirement savers and retirement plan sponsors and their employees are receiving investment advice in their best interests—and that investment advisors are not providing conflicted or merely suitable investment advice.
2. ***H-2B Visa and Wage regulations*** – The bill undermines key protections the AFL-CIO called for in the interim comprehensive final rule issued April 29<sup>th</sup>. Specifically, we object to: requiring DOL to accept private survey data when the Third Circuit has already held that the use of such surveys is arbitrary and capricious and depresses wages; eliminating the definition of corresponding employment which will deny US workers the right to receive the same pay and benefits offered to H-2B workers; eliminating the three-fourths guarantee which will subject H-2B workers to further abuse and exploitation; expanding the definition of temporary need to a full year; and, compromising compliance efforts by eliminating audits and assisted recruitment requirements for violators.
3. **Minimum Wage for Contractors** - The bill would prohibit the Department of Labor from enforcing the minimum wage requirement for federal contractors established through executive order and regulations as they pertain to seasonal recreational services employees. This rider would deprive minimum wage and overtime protections to low-wage seasonal workers who need the additional income and protections provided by the regulations. The AFL-CIO opposes this rider and urges that it be deleted from the bill.

## National Labor Relations Board

1. ***NLRB Bargaining Unit Standard*** -The bill includes a rider preventing the NLRB from applying its usual and longstanding community of interest test for determining appropriate bargaining units as set out in its Specialty Healthcare decision. The Specialty Healthcare decision and its articulation of the community of interest test has been upheld by every court of appeals that has reviewed it. Since Specialty Healthcare was issued in 2011, the average size of bargaining units has changed little, which undermines Republican claims about the growth of “micro-unions.” The rider should be rejected.
2. ***Electronic Voting*** - The bill would prohibit the National Labor Relations Board from issuing any sort of administrative directive or regulation providing a means for employees to vote electronically on whether or not to form a union. The rider prevents the NLRB from adapting its rules to utilize technology that is used by other federal agencies that administer representation elections. It makes no sense to prevent the NLRB from utilizing current technology to improve its systems. The rider should be deleted.
3. ***Joint Employer*** - The AFL-CIO opposes the policy rider that would prevent the NLRB from modifying its rules for determining whether two or more employers are joint employers under the National Labor Relations Act. The bill would freeze the NLRB's rules in time and prevent the Board from adapting its rules to the modern workplace. The rider should be deleted from the legislation.

4. ***Prohibit Implementation of Election Rule*** - The AFL-CIO opposes the policy rider that would prohibit the NLRB from using any funds to implement its December 2014 rules to streamline and improve representation election procedures. The rules, which took effect on April 14, 2015, make modest improvements to the representation election system and minimize unnecessary litigation that delays elections. The rules should be allowed to stand and should not be blocked by a policy rider.

#### **Department of Health and Human Services**

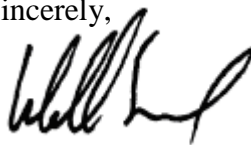
1. The bill includes new language to prohibit HHS from spending any of the funding in this bill to support State Based Marketplaces. This rider is in addition to the bill's elimination of all ACA-related funding, and would affect access to care for millions of Americans. This rider should be rejected.

#### **Department of Education**

2. ***Gainful Employment*** - The AFL-CIO opposes the proposed repeal of the recently finalized gainful employment regulation. This regulation would enforce the Higher Education Act's requirement that all career education programs receiving Title IV funding "prepare students for gainful employment in a recognized occupation." This common-sense regulation is designed to enhance college access and success. It would ensure that students have the information they need to select a career education program and that programs receiving federal funding do not consistently leave students with debts they cannot repay. We call for a strong gainful employment regulation to protect students and taxpayers.

In sum, the 2016 Labor-HHS Appropriations bill represents a misguided approach to funding programs that serve millions of working Americans. The AFL-CIO supports the adequate funding of programs to protect workers and opposes harmful anti-worker riders. We encourage you to vote against this bill and, in the alternative, vote for amendments that seek to restore funding of these programs.

Sincerely,



William Samuel, Director  
Government Affairs Department