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The President's FY 2012 Budget:

Federal Priorities in Unemployment Insurance, Workforce Development, and Worker Rights

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Introduction

The President's FY 2012 Budget proposal allocates $12.8 billion in discretionary funding for the United States Department of Labor (USDOL), a 5 percent decrease from the $13.5 billion that was enacted in FY 2010. This decrease does not, however, represent an across the board cut throughout the Department. Rather, it includes additional investments in some areas and cuts in others. This approach is consistent with the President's desire to implement a five-year, non-security discretionary spending freeze in which programs essential for growth and job creation are protected or increased while other programs are cut or eliminated.

Although the proposed FY 2012 Budget calls for relatively modest cuts in the Labor Department's budget, it is important to scrutinize them all with care because with the record job losses that our economy suffered during the Great Recession and the resulting unprecedented levels of long-term unemployment many workers still face, the role of the Labor Department is more important now than ever in helping workers regain their economic footing.

This briefing paper examines the key Administration proposals that affect the Unemployment Insurance (UI) program, the Trade Adjustment Assistance (TAA) program, workforce development funding and the Wage and Hour Division (WHD). While the Administration's budget represents progress in many critical areas, especially given the current budget environment, the analysis of these issues also highlights areas where the Administration's proposals could be improved upon by Congress. Ordinarily, the House and Senate Budget Committees would complete work on their FY 2012 budget resolutions by mid-April, but given that the FY 2011 budget process is still ongoing and so contentious, the timetable for FY 2012 is very fluid.

Unemployment Insurance State Administrative Funding

Each state receives a federal administrative grant, taken from the federal UI taxes that employers pay, intended to cover the cost of paying unemployment benefits to claimants and the cost of collecting unemployment taxes from employers. In the FY 2012 budget, UI State Administration receives a slight increase of nearly $30 million over FY 2010 enacted levels. The nearly $3.3 billion requested is intended to provide states with the resources to process state and federal UI benefit payments for 12.5 million eligible workers and to collect the nearly $50 billion in tax payments that the states need to pay for the benefits workers receive. Additionally, the budget request maintains the authority to provide additional funds to cover unexpected increases in the claims workload.

Table 1. State Unemployment Insurance and Employment Services Operations FY 2012 Budget Request (thousands of dollars)

State Unemployment Insurance Operations	2010 Enacted	FY 2012 Request	Change
Unemployment Insurance	**3,256,955**	**3,286,920**	**29,965**
State Administration	**3,195,645**	**3,215,610**	**19,965**
Reemployment Eligibility Assessments	**50,000**	**60,000**	**10,000**
National Activities	**11,310**	**11,310**	**0**

Source: U.S. Department of Labor, FY 2012 Budget in Brief, http://www.dol.gov/dol/budget/2012/PDF/FY2012BIB.pdf.

Unemployment Insurance Legislative Proposals

- **Solvency:** Nearly two-thirds of states have borrowed over $40 billion (total) from the federal government because their state UI trust funds are insolvent. With interest payments on these debts coming due this year and automatic federal employer tax increases to repay the principle beginning in three states and imminent in many others, these pressures threaten both the program's effectiveness and our nascent economic recovery.

  Although benefit levels have little or nothing to do with the current insolvency of so many funds[1], history shows us that state legislators will be under tremendous pressure to cut already inadequate UI benefits and make the programs more restrictive. Indeed, some states are already doing so. Cutting benefits is counterproductive and not the answer because it ignores both the real cause of the solvency crisis, poor financing decisions by the states during good times, and the fact that UI benefits have such a simulative affect, producing an economic boost of $2 for every $1 of benefits paid during this Recession[2]. Equally important, the mandatory federal tax increases and likely state tax assessments levied on employers might slow job growth and cause the recovery to stall.

[1] Unemployment Insurance Trust Funds: Long-standing State Financing Policies Have Increased Risk of Insolvency, Unites States Government Accountability Office, GAO-10-440, April 2010, available at http://www.gao.gov/new.items/d10440.pdf
[2] Wayne Vroman, The Role of Unemployment Insurance As an Automatic Stabilizer During a Recession, July 2010, available at http://wdr.doleta.gov/research/FullText_Documents/ETAOP2010-10.pdf

In light of these risks, the Administration's budget proposal includes measures to strengthen the UI safety net by providing short term relief both to states that must begin making interest payments on the loans they have taken out, and to employers in states where they will start facing mandatory federal tax increases in order to pay back the principle of the loans. The plan also includes measures intended to help those states pay off their debts.

NELP and the Center on Budget & Policy Priorities (CBPP) have also been greatly concerned about the impact of state insolvency on employer job creation and benefit cuts and recently released a paper (*Rebuilding The Unemployment Insurance System: A Deficit-Neutral Plan That Limits Tax Increases and Maintains Benefits*) detailing a plan to help states pay off their debt and prepare for the next recession so they will be ready to handle the extra drain on their UI trust funds. The NELP-CBPP proposal helped inform comprehensive solvency legislation, S.386, the Unemployment Insurance Solvency Act of 2011 introduced by Senators Durbin (D-IL), Brown (D-OH), and Reed (D-RI) on February 17.

While the President's proposal and the legislation share some common elements, there are also some important distinctions. Both plans aim to give states and employers some breathing room by delaying interest payments on their trust fund loan debts and automatic Federal unemployment tax increases until 2013. This delay would allow employers to focus on job creation and would help relieve some of the pressure states may feel to cut benefits and restrict benefit eligibility.

Both plans would also raise the taxable wage base (TWB), the minimum level of wages subject to unemployment taxes, beginning in the year 2014 and thereafter index it keep pace with future wage growth. In addition, both plans would reduce the federal tax rate on this higher taxable wage base because the main goal of the increase in the TWB is to raise state UI revenue. The resulting increase in state UI tax revenues would give states the ability repay their debt and rebuild their trust funds, but this increase would not take effect until the recovery is much further along than it is now.

However, S. 386 contains additional key elements that were not addressed in the Administration's proposal. To incentivize states to build an adequate trust fund to meet the likely demands of the next recession, S.386 allows states to receive partial loan forgiveness of up to 60% of their loan balance in exchange for a contractual agreement with the USDOL to build an adequate trust fund over a period of years while maintaining UI eligibility and benefit levels. The legislation would also offer rewards and incentives for solvent states that have and continue to maintain adequate trust funds and for those who achieve adequate trust fund reserves in the future. The bill allows those states to earn a higher interest rate of 0.5 percent on their state trust fund and would lower the federal unemployment tax on employers by $14 per worker.

- **Work Sharing ("Short-Time Compensation"):** The second legislative proposal is designed to expand the use of work sharing, also known as short-time compensation. Work sharing, which exists in about one-third of the states, prevents layoffs by giving workers access to partial unemployment when their hours are reduced. This voluntary program helps employers distribute reduced weekly hours among a large pool of employees as opposed to laying-off workers when business slows. The plan would provide temporary federal financing of work sharing benefits in the states already operating a program, while providing implementation and outreach incentive funding to support the expansion of work sharing to other states. The proposal would authorize all states to have a work sharing program and it would eliminate federal conformity ambiguities in the program.[3]

  Although it is unclear from the Administration's work sharing proposal whether it includes the worker protections that were included in the original authorization of the program, NELP recommends that Congress include protections that would prevent abuse by employers seeking to cut labor costs by ending worker health benefits and pension benefits while workers were participating in work sharing. Work sharing legislation should also protect workers' ability to challenge temporary or permanent layoffs through collective bargaining.

- **UI Fraud & Overpayments:** The Administration's budget request also includes a proposal designed to address UI fraud, both on the part of workers and employers. This proposal complements key measures included in the Administration's FY 2011 UI program integrity plan. In addition to making improvements in the National Directory of New Hires, those measures boosted the collection of delinquent employer UI taxes and claimant overpayments. The FY 2012 plan would further expand overpayment and delinquent tax collection by allowing states to use of portion of what they recover to support additional enforcement efforts, including the identification of workers who have been misclassified as independent contractors. Similarly, states would collect a penalty fee on UI benefits fraud that could also be used to combat overpayments and to bar the non-charging of benefits to employers whose actions caused overpayments.

  While the Administration's proposal takes some valuable steps to limit fraud in the unemployment program and improve program integrity, NELP recommends that any legislation implementing fraud and overpayment improvements include strong worker protections and robust employer fraud accountability measures. For instance, workers face severe penalties for fraud, but are often subject to allegations of fraud without adequate investigation or with

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[3] The 1982 law enacting the program was temporary, leading to its permanent enactment in 1992. However, the 1992 legislation was less inclusive than the 1982 version, leaving out program elements that states had used previously, including the provisions related to fringe benefits and union consent. DOL issued an agency directive prohibiting states from imposing any additional requirements beyond what it had interpreted in its guidance. This directive left states uncertain of their federal responsibility and discouraged new states from establishing work sharing programs.

insufficient notice as to the accusation against them or the penalties it carries. Moreover, fraud penalties should apply not just to workers, but to employers and their third party representatives (including TALX)[4] as well.

Workforce Development Programs

- **Trade Adjustment Assistance:** In 2009, Trade Adjustment Assistance (TAA) eligibility guidelines were broadened to cover new classes of workers, including service sector employees and individuals injured by trade with non-free trade agreement countries, such as China and India. Additional improvements increased income supports and lowered administrative barriers, making it easier for workers to take advantage of training opportunities. Finally, it more than doubled the funding allocated to states for training increasing it from $220 million to $575 million, the first such increase since FY 2004. But, on February 12, 2011, the 2009 version of TAA expired, and unless reauthorized through the end of FY 2011, the program will operate with its pre-2009 parameters and funding levels for only one more year.

  For FY 2012, USDOL requests total funding of $1.671 billion, including a $571 million legislative proposal to continue the 2009 TAA program. The amount requested is $147.3 million less than FY 2010, reflecting the expectation that fewer workers will require TAA than during the height of the recession. Without new legislation, TAA funding will fall by $718.3 million to pre-2009 levels, while many workers harmed by trade will be left out and states will have fewer dollars available to retrain workers in new fields.

  Table 2. Trade Adjustment Assistance: Fiscal Year 2012 Budget Proposal

  (thousands of dollars)

	FY 2010	Full Year Continuing Resolution FY 2011	Current Law FY 2012	Legislative Proposal FY 2012
Wage Insurance	65,000	65,000	35,000	52,000
TAA Benefits	1,067,000	1,067,000	805,000	932,000
TAA Training	686,400	686,400	260,100	687,100
Total Budget Authority	**1,818,400**	**1,818,400**	**1,100,100**	**1,671,100**

  Source: U.S. Department of Labor, FY 2012 Budget in Brief, http://www.dol.gov/dol/budget/2012/PDF/FY2012BIB.pdf.

- **Training and Employment Services:** Training and Employment Services (TES) account for $3.6 billion of the U.S. Department of Labor's $12.8 billion discretionary budget. TES is comprised

[4] For more information about overpayment issues with third-party agents see *Contesting Jobless Claims Becomes a Boom Industry, New York Times*, April 3, 2010 available at http://www.nytimes.com/2010/04/04/us/04talx.html?_r=1&hp

primarily of Workforce Investment Act programs that provide job training, income supports, and employment services aimed at youth, disadvantaged adults, and experienced workers harmed by layoffs.

Following a small increase in FY 2010, the FY 2012 budget request for training and employment services returns discretionary spending amounts to FY 2009 levels by cutting programs by $200 million. Inflation-adjusted spending on TES programs will be almost 20 percent lower in 2012 than in 2003 when there were six million fewer unemployed workers. In comparison, the overall inflation-adjusted USDOL budget fell by 11 percent over the same time period.

Total funding for the three primary WIA programs serving adults, dislocated workers, and youth is nearly flat compared with FY 2010. However, USDOL proposes to make eight percent of funds ($237 million across all three programs) appropriated for formula grants available to finance the new Workforce Innovation Fund. To ensure that allocations to the Workforce Innovation Fund will not reduce funding available to local areas, the percentage of state formula funding that governors may reserve for statewide activities would be reduced from 15 to 7.5 percent.

FY 2012 program terminations include the elimination of the $125 million Career Pathways Innovation Fund and the $45 million Transitional Jobs Demonstration housed within the Pilots, Demonstrations and Research line item. In addition, funding for the Reintegration of Ex-Offenders program will be cut by $18.5 million and construction funds for the Job Corps youth program will be cut by $8 million. The Senior Community Service Employment Program which was cut by $375 million with a recommendation to move the program to the Department of Health and Human Services.

- **Workforce Innovation Fund:** The budget proposal would create a $380 million Workforce Innovation Fund to be jointly administered by USDOL and the Department of Education. The Fund would award competitive grants to States and broad partnerships for projects that implement structural reforms with an emphasis on evidence-based practices. In addition to the $237 million taken out of state formula grants, USDOL will provide an additional $61 million from State Unemployment Insurance and Employment Service Operations. Meanwhile, the Secretaries of Labor and Education would be able to hold five percent in reserve for technical assistance and evaluations related to the projects.

For more detailed information about workforce development programs and their funding, please visit The National Skills Coalition website at www.nationalskillscoalition.org.

Table 3. Training and Employment Services FY 2012 Budget Request
(thousands of dollars)

Training and Employment Services	2010	Request 2012	Change
Adult Employment and Training Activities	**861,540**	**860,527**	**-1,013**
Formula Grants	861,540	791,685	-69,855
Workforce Innovation Fund	0	68,842	68,842
Dislocated Workers Employment and Training Activities	**1,413,000**	**1,403,763**	**-9,237**
Formula Grants	1,183,840	1,080,635	-103,205
Workforce Innovation Fund	0	93,968	93,968
National Reserve	229,160	229,160	0
Youth Activities	**924,069**	**923,913**	**-156**
Youth Employment and Training Activities	924,069	850,000	-74,069
Youth Innovation Fund	0	73,913	73,913
Other	**629,921**	**438,744**	**-191,177**
Green Jobs Innovation Fund	40,000	60,000	20,000
Workforce Data Quality Initiative	12,500	13,750	1,250
Reintegration of Ex-Offenders	108,493	90,000	-18,493
Career Pathways Innovation Fund	125,000	0	-125,000
Pilots, Demonstrations and Research	93,450	6,616	-86,834
Evaluation	9,600	11,600	2,000
Women in Apprenticeship	1,000	1,000	0
Indian and Native American Programs	52,758	54,158	1,400
Migrant and Seasonal Farmworkers	84,620	86,620	2,000
YouthBuild	102,500	115,000	12,500
Total Budget Authority	**3,828,530**	**3,626,947**	**-201,583**

Source: U.S. Department of Labor, FY 2012 Budget in Brief, http://www.dol.gov/dol/budget/2012/PDF/FY2012BIB.pdf

Worker Rights Enforcement

The President's budget provides $1.8 billion for the Department of Labor's worker protection agencies. This amount is consistent with prior increases in funding that seek to return the enforcement capacity of the agencies to 2001 funding levels, after years of decline. The $132 million increase over FY 2010 enacted levels includes targeted increases to improve mine safety, bolster worker health and safety whistleblower protections, and enhance state and federal capacity to detect and deter the misclassification of workers as independent contractors.

- **Wage and Hour Enforcement:** Department of Labor's Wage and Hour Division (WHD) administers and enforces a broad range of federal labor laws on matters, such as the minimum wage, overtime pay, recordkeeping, family and medical leave, migrant workers, worker protections in certain temporary worker programs, and the prevailing wages for government service and construction contracts. The Division's reach encompasses nearly all private and state and local government employment.

- **Misclassification of Employees as Independent Contractors:** Building on its proposal last year to address worker misclassification, this year's budget invests $46 million in a multi-agency initiative to combat the practice that costs both state and federal governments millions in lost tax revenue while denying workers the protections and benefits they should receive as an employee. The agencies involved in the initiative include the Office of Federal Contract Compliance Programs, the Wage and Hour Division, the Occupational Health and Safety Administration, the Office of the Solicitor, and the Employment and Training Administration.

  The plan provides $25 million in funding for state competitive grants that help states develop their audit strategies and interagency data sharing. These funds would also be used to create a pilot high performance bonus incentive for states with the most effective or most improved detection and enforcement programs. Finally, the budget provides the WHD with an additional $15 million to add 107 investigators that will perform targeted investigations in industries found to have higher rates of misclassification such as construction, child care, home health care, janitorial, and meat processing.

State Paid Family and Medical Leave Fund

In recognition of the challenges families face in meeting their concurrent work and family responsibilities, the Administration's budget proposal includes $23 million to create a State Paid Leave Fund within USDOL. Currently, three states have enacted paid family leave programs that provide up to six weeks of state-managed insurance to cover employees for reasons included in the Family and Medical Leave Act, such as caring for a seriously ill family member or newborn. The Paid Leave Fund will provide competitive grants to states for planning and implementation of a new state family paid leave program.

Conclusion

The outcome of the FY 2011, which remains unresolved, will have a significant influence on the FY 2012 budget process and on all department funding levels. While the President's Budget proposal is always important in establishing Administration priorities for the next fiscal year, it is even more important this year as Congress wrestles with what remains of the FY 2011 budget. The priorities this budget proposal presents in the areas of Unemployment Insurance, Workforce Development, and Worker Rights Enforcement may provide a valuable roadmap as Congress considers deep spending cuts to the FY 2011 Budget.