

## **PRESIDENT OBAMA'S STIMULUS PACKAGE PROPOSAL**

### **CONGRESS CONSIDERS S.1-H.R.1: AMERICAN RECOVERY AND REINVESTMENT BILLS**

**S.1: American Recovery and Reinvestment Act of 2009:** Introduced by Senator Harry Reid, this bill would create jobs, restore economic growth, and strengthen America's middle class through measures that (1) modernize the nation's infrastructure, (2) enhance America's energy independence, (3) expand educational opportunities, (4) preserve and improve affordable health care, (5) provide tax relief, and (6) protect those in greatest need. This bill would mark the first step in a concerted effort to create and save 3-4 million jobs, jumpstart our economy, and begin the process of transforming our economy for the 21<sup>st</sup> Century with \$275 billion in economic recovery tax cuts and \$550 billion in carefully targeted priority investments with built-in accountability measures. According to President Obama's Economic Team, the recovery plan would create 3.7 million jobs over two years, 90 percent of them in the private sector. Of those jobs, roughly 18 percent (i.e., about 678,000) would be in construction. Disproportionate shares of the new jobs are expected to go to women (42 percent), union-represented workers, and industries that have been hit hardest by the recession (e.g., construction and manufacturing).

**H.1: American Recovery and Reinvestment Act of 2009:** Introduced by Rep. David Obey, this bill was passed in the House and received in the Senate with no Republican support. House Democrats unveiled their \$825 billion Economic Stimulus Package that includes provisions to save/create 4 million jobs over the next two years. The legislation includes (1) \$318 billion in spending on infrastructure, energy, education and training, and other programs; (2) \$275 billion in tax cuts; (3) \$166 billion in state fiscal relief and additional Medicaid funding; and (4) \$66 billion in unemployment and health care benefits for long-term jobless workers. FCA supports S.1/H.R.1 and has actively encouraged Congress to pass an Economic Stimulus Package with significant funding made available to modernize the Nation's infrastructure.

**House Committees on Appropriations/Ways and Means Outline Stimulus Package:** Chairmen Rep. Dave Obey (D-WI) and Rep. Charles Rangel (D-NY), respectively, commented upon the House passed bill and its Stimulus Package: "We have designed specific provisions to help State and local governments fund critical infrastructure projects to improve our roads, schools, bridges and airports, while also maintaining and creating good-paying jobs for working families." As part of the Stimulus Package, to date there is approximately \$55 billion earmarked for "Building Infrastructure" expenditures, to include GSA Federal Buildings and Facilities (\$7.85 billion), Military Construction (\$8.46 billion), VA Construction (\$1 billion), School Construction (\$20 billion), Housing Facilities (\$8.31 billion), and Other Facilities (\$9.38 billion). For a detailed expenditure breakdown, visit FCA's website at [www.finishingcontractors.org](http://www.finishingcontractors.org). The goal for these "shovel ready" projects is 90-120 days, but a Congressional Research Service report cautions that they may not be able to begin within that timeframe due to the time-consuming bidding process. House Democrats are also making "green jobs" a major component of the overall Stimulus Package. The House Appropriations Committee also approved an amendment to H.R.1 (Section 1111) by Rep. Pete Visclosky which requires all laborers and mechanics on projects funded by the economic stimulus bill to be paid prevailing wages. Senate and House Democratic leaders have pledged to pass an economic recovery bill before leaving town for the Presidents' Day recess (February 16-20).

**House Committee on Transportation and Infrastructure Outlines Job Tracking Mandate:** Committee Chairman, Rep. James Oberstar (D-MN), outlined his committee's recommendations for how to track and report infrastructure spending in the Stimulus Package: within 30 days of enactment, to ensure "transparency and accountability," states would have to report on "advertisement of bids, awarding of bids, resolution of bid disputes, and listing the

contractors to whom the bids were awarded.” Within 60 days states would have to report to Congress on job details, and that information would be made public and updated every 30 days thereafter. States and metropolitan organizations, who would receive transit money directly, would lose the funding if it is not used within 180 days.

#### **EFCA - SUPPORT BOLSTERED BY STRONG DEMOCRATIC MAJORITIES.**

Labor is praising President-Elect Obama’s lopsided win as a victory for workers’ rights, an opportunity for labor to prosper under the majority Democratic Party representation in both houses of Congress, not to mention the White House. Some of the Obama Administration’s early actions most likely will include a repeal of Executive Order 13202, which currently bans the requirement of PLAs on federally funded projects, and a push to pass **S.1041/H.R.800: Employee Free Choice Act (EFCA)**, the latter being labor’s top priority in the new 111<sup>th</sup> Congress. This legislation would amend the NLRA to give workers the option to form a union through a NLRB check of authorization cards signed by a majority of employees. At the IUPAT’s request, the FCA Board of Directors voted in favor of jointly supporting this legislation. See FCA’s website for its press release stating FCA’s support of EFCA.

#### **PENALTIES TO INCREASE FOR HIRING UNDOCUMENTED WORKERS.**

Rep. David Dreier (R-CA) introduced a bill (**H.R.98: The Illegal Immigration Enforcement and Social Security Protection Act of 2009**) that would increase penalties for employers who knowingly hire undocumented workers or fail to verify their employment eligibility by increasing fines up to \$50,000; currently, fines range from \$275-\$16,000 for each unauthorized worker, depending on the number of offenses. The legislation would also allow for jail sentences for employers in violation of up to five years per occurrence; currently, employers could face up to six months in jail regardless of the number of offenses. The bill was referred to the following House Committees: Ways and Means, Judiciary, Homeland Security, and Education and Labor.

#### **E-VERIFY CONTRACTOR RULE POSTPONED.**

The Federal government agreed to postpone implementation of an amendment to E.O. No. 12,989 and a related Federal procurement law that require Federal contractors to use E-Verify, after a coalition of business groups filed a lawsuit challenging the rule. The implementation date was delayed from January 15 until February 20. Subsequently, President Obama’s Administration postponed the effective implementation an additional three months (May 2009) to enable the Administration time to review the law, specifically the policy’s effects on the construction industry.

#### **STATES CRACKING DOWN ON INDEPENDENT CONTRACTOR MISCLASSIFICATIONS.**

States are experiencing deep financial pressures, with sharp drops in tax revenues and large budget deficits. When employees are misclassified as independent contractors (ICs), it often results in failure of the workers to pay income taxes, thereby causing lost revenue to the Federal and state governments (one major reason for Congresses’ passing the upcoming three tax withholding [Section 511 of P.L. 109-222]). As a result, state governments have joined with the Federal government in looking into ways of identifying workers who have been incorrectly classified as ICs.

In 2008, then Sen. Barack Obama and Sen. John Kerry, along with Rep. Robert Andrews, sponsored legislation in Congress that would have allowed liquidated damages for affected workers and for civil penalties not to exceed \$10,000 for misclassifying workers as ICs. Look for similar Federal and state legislation to be introduced in 2009.

For your information, tax attorney, Dennis Perez of Hochman, Salkin, Rettig, Toscher & Perez, in Beverly Hills, CA, says that Section 530 of the Internal Revenue Act provides a safe harbor to companies that issue Form 1099 income statements and consistently treat a class of workers as independent contractors. There are also several other actions employers can take to increase their chance that workers are properly classified as employees or ICs: (1) Have a written, signed contract, with each worker classified as an IC, prepared by a qualified attorney, that spells out the terms and conditions of the relationship; (2) Submit a Form SS-8 to the IRS for the IRS’s determination of a specific worker’s status as an employee or IC; (3) Do a self-audit of each worker’s or each class of worker’s status before a

Federal or state agency does an audit; and (4) Have an attorney or an HR professional familiar with employment law and IC guidelines in your state conduct such an audit. For an explanation of the IRS guidelines used to determine IC status, visit: <http://www.irs.gov/businesses/small/article/0%2C%2Cid%3D99921%2C00.html>.

#### **CONGRESS INTRODUCES LEGISLATION TO REPEAL THE THREE PERCENT TAX WITHHOLDING.**

Senator Arlen Specter and Reps. Wally Herger/Kendrick Meek introduced two companion bills calling for the repeal of the three percent tax withholding: **S.292 and H.R.275**, respectively. Also this month, the House included repeal of the three percent withholding tax in its summary for the Economic Stimulus bill, while the Senate included only a one-year delay.

#### **TOP REGULATORY ISSUES**

##### **OSHA SEEKS TO ADD PROTOCOLS ON FIT-TESTING TO RESPIRATORY STANDARD.**

OSHA has sent a notice of proposed rulemaking to the White House Office of Management and Budget that would add two fit-testing protocols to its respiratory protection standard. The proposed rule would revise Appendix A of the standard, which applies to the general industry, shipyard construction, and the construction industry, to include the following two new protocols which would cut testing time approximately in half: Revised Protocol 1 would reduce exercise time by 30 seconds compared to the current method; and Revised Protocol 2 would reduce exercise time by 20 seconds, eliminate two exercises, and raise the pass/fail criterion from 100 to 200 half-masks and 500 to 1,000 full-face piece respirators.

#### **TOP LABOR-MANAGEMENT ISSUES**

##### **AFL-CIO AND CHANGE TO WIN (CTW) UNION PRESIDENTS MEET.**

Presidents of 12 of the country's largest labor unions, as well as the heads of the AFL-CIO and CTW Federations, met in Washington, D.C., to discuss reunifying the labor movement into one organization. The meeting was arranged and facilitated by former Rep. David Bonior, a member of President Obama's Transition Team. Mr. Bonior, who now heads American Rights at Work, has worked closely with both Federations and their affiliates in pushing passage of the Employee Free Choice Act. Apparently, several union leaders have been discussing for months how to create a model for a labor organization that differs from the current structure.

##### **NYC LABOR AND MANAGEMENT SEEK TO LOWER COSTS.**

Begun in November 2008 in response to general contractors and owners asking contractors to lower their bids by 25 percent due to the falling economy, some 50 NYC construction unions and 28 contractor organizations with CBAs are continuing discussions about how to create a package of labor cost savings that both labor and management can accept. Faced with at least \$5 billion worth of cancelled or stalled projects, NYC contractors are seeking a 25 percent reduction in labor costs to try to counter their significant bid loss, thereby containing further damage to the industry and its employment base. Ongoing discussions are centered on a citywide PLA concept aimed at offering lower project costs while preserving jobs. The two sides are aiming to complete such a proposed package and then submit it for an independent cost evaluation to measure the proposal's impact. The contractors are also working to identify cost savings on the management side in the following areas: profits, materials and supplies, and supervisor staffing.

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