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American Workers to Congress: We Need a Raise

by Jessica Schieder

Polls show that more than three-quarters of Americans support an increase in the minimum wage. Approximately 76 percent support raising the minimum wage to at least $9 an hour, and as many as 73 percent support an increase to $10.10, the minimum proposed in the Fair Minimum Wage Act, sponsored by Sen. Tom Harkin (D-IA) and Rep. George Miller (D-CA). That bill would raise the minimum wage over two and a half years and then peg future increases to inflation. Raising the minimum wage enjoys broad bipartisan support: when polled, 58 percent of Republicans expressed support for increasing the minimum wage to $9 per hour.

The strong support for an increased minimum wage should not be surprising, since wages have been stagnant or in decline for the majority of Americans over the past 14 years. An analysis of Social Security Administration data by David Cay Johnston found that the annual median pre-tax wage of an American worker was just $27,519 in 2012. This represents a decline in pre-tax (inflation-controlled) wage income of $980 from 2007 and is the lowest level since 1998. And studies have shown that over the past 20 years, the top one percent have captured 68 percent of economic growth.

Increasing the Minimum Wage

Almost 30 million Americans would receive a raise if the federal minimum wage was increased to $10.10. These hard-working Americans contradict popular stereotypes. These workers are, on average, 35 years old, work full-time, and earn more than half of their household's income, according to the Economic Policy Institute. More than half of those affected are white, 55 percent are female, and – while most have only a high school diploma or less – more than 43 percent have at least some college credits. Despite working at least 35 hours a week, a minimum-wage worker makes only $15,080 annually, less than the poverty level for a family of two.

The current Harkin-Miller proposal would also increase the minimum wage for tipped workers from $2.13 until it reaches 70 percent of the minimum wage. (3.3 million people are tipped workers – the minimum wage for them has not been increased since 1991). The bill indexes both wages to inflation, meaning that as prices increase, the value of the minimum wage will be protected, reducing the need to reevaluate the minimum wage every few years.

Estimates are that an increase to $10.10 an hour would reduce the number of people living in poverty by 4.6 million, boost the incomes of those at the 10th percentile by $1,700, and drive a significant "increase in the quality of life for our worst off" – and not cost any public money. And the weight of the economics evidence shows "little or no employment response to modest increases in the minimum wage," according a comprehensive literature review by John Schmitt, senior economist with the Center for Economic and Policy Research. Instead, many argue that a higher minimum wage could spark some additional hiring if workers spend more of their increased income and stimulate more economic activity. The White House has embraced the $10.10 minimum wage proposal, which would grow the economy as measured by GDP by $32.6 billion and create approximately 140,000 new net jobs.

However, House leadership seems unwilling to pass minimum wage legislation.

Expanding the Earned Income Tax Credit

The Earned Income Tax Credit (EITC) has been praised by leaders across the political spectrum for its unique ability to reward low-income households for working without discouraging that work. Calculated according to family size and structure as well as income, approximately 28 million working families benefited from the EITC in 2011. (The EITC offsets a portion of federal payroll and income taxes through an end-of-the-year tax refund and disproportionately benefits households with children.)

The Obama administration has proposed expanding the EITC in a way that would increase income for 13.5 million workers. The proposal would both increase the EITC for Americans already qualified to receive the tax refund and expand the benefit to workers who had not previously qualified. It also includes an increase in the benefit for childless adults, who are often excluded or disadvantaged when seeking out assistance through anti-poverty programs.

The White House estimates that the increase in the credit would lift about half a million people above the poverty line and reduce the depth of poverty for 10 million more, and the administration proposes paying for the EITC expansion using increased revenues from closing tax loopholes, which

disproportionately benefit corporations and the wealthy. This proposal is unlikely to move in the House.

What the Executive Branch Can Do

The Obama administration has proposed two ways to improve wages for a subset of workers: raising the minimum wage for the employees of federal contractors and raising the salary level that cuts an employee off from access to overtime pay.

Raising the Minimum Wage for Employees of Federal Contractors

President Obama has promised to increase the minimum wage that all new federal contractors must pay to their employees to $10.10 over the next two years. Among employees of federal contractors, there are currently approximately 560,000 Americans earning less than $12 an hour. In total, nearly 2 million people in publicly funded jobs are paid $12 or less per hour.

While the executive order comes as a relief to those contract workers, they represent only a fraction of the almost 30 million Americans who would receive a raise if Congress passed legislation.

Expanding Overtime Pay

Most Americans have a general understanding that an employee who works overtime beyond the standard 40 hours per week is guaranteed "time-and-a-half" pay for those extra hours, as required by the Fair Labor Standards Act of 1939. What many may not know is that only workers making less than $23,660 are legally guaranteed this benefit. A worker with a salary of more than this amount, who is classified as a manager or professional, is not guaranteed overtime. Assistant managers in fast-food restaurants and other retail establishments are often required to work more than 40 hours a week with no extra compensation.

Traditionally, the salary cap was periodically adjusted by the Department of Labor to account for inflation, but the cap has only been adjusted once since 1974 – ten years ago. The Obama administration has announced it will develop a rule that would raise the wage cap to $984 per week – meaning employees making less than $51,168 will be guaranteed "time-and-a-half" pay for overtime hours worked. As a result, as many as 10 million workers making less than this salary threshold could benefit. This could significantly improve incomes for this class of workers and move low-wage workers into the middle class.

Improving Jobs and Wages

For working America, the economy is broken. Wages have been stagnant for decades. The price of homes and a college education have been increasing faster than inflation or wages. It is harder than ever for families to make ends meet. The U.S. is no longer a country characterized by expanding opportunities and upward mobility.

By contrast, corporations and Wall Street have benefited from record-high stock market prices and soaring CEO pay, just a few years after being bailed out by taxpayers. The public sees the economy

working for some Americans but not for their families and children. Increases in productivity haven't resulted in increased wages and salaries for average workers. The executive branch policies discussed above are just a down payment. To really improve wages and job quality for a majority of Americans will require the congressional action outlined above, as well serious efforts at job creation (major public infrastructure investments), paid sick days, improvements in pay equity, and access to affordable education and training. As the midterm elections loom, politicians of both parties seem to be searching for a populist economic reform agenda. Let's hope they settle on this one.

Wyoming Supreme Court Advances Disclosure of Fracking Chemicals

by Sofia Plagakis

In a partial victory, the Wyoming Supreme Court ruled that Wyoming's District Court must reconsider public disclosure requests for chemicals used in fracking fluid, and the Wyoming Oil and Gas Conservation Commission (WOGCC) cannot simply claim information on fracking chemicals is protected under a trade secrets exemption. The lawsuit could set an important precedent in the disclosure of chemicals used in fracking, also known as hydraulic fracturing.

Background

In 2010, Wyoming became the first state to pass a rule requiring disclosure of the chemicals used in fracking, following well publicized instances of water contamination near well sites. However, the rule contained an exemption for so-called "trade secrets." The trade secrets, or confidential business information, exemption is a loophole that allows drillers to keep some things secret, claiming it will hurt their competitiveness if the information was made public.

In August 2011, the Wyoming Oil and Gas Conservation Commission (WOGCC), the state agency with oversight over fracking, granted 11 drilling companies trade secrets protections for 146 out of 148 chemicals they acknowledged using in fracking. Local organizations submitted a public records request for the complete list of fracking chemicals. The WOGCC refused to disclose any of the chemicals that had been granted trade secrets protections.

The Lawsuit

In March 2012, Earthjustice, a public interest law firm, filed a legal petition on behalf of the Center for Effective Government (formerly OMB Watch), Powder River Basin Resource Council, and the Wyoming Outdoor Council. The groups argued that the WOGCC should be required to reveal the identities of chemicals used during fracking. Our petition asserted that the Wyoming Public Records Act and the state's 2010 fracking chemical disclosure rule required WOGCC to disclose the information.

In March 2013, the district court upheld the WOGCC's decision to withhold the identity of chemicals as requested by Halliburton and other energy companies under Wyoming's open records law. The district court concluded that the WOGCC's supervisor, who withheld the information, "acted reasonably."

The New Ruling

We appealed to the Wyoming Supreme Court. On March 12, the court issued its ruling. In its opinion, the court noted that Wyoming's public records law requires state agencies to explain why a request for information is denied. The court found that the WOGCC had failed to provide such an explanation and as a result, the district court did not have enough information to evaluate the state agency's decision, stating, "The record does not tell us what specific information the Supervisor relied upon, or why he did so, and therefore neither this Court nor the district court has a sufficient basis to determine whether he acted properly or not."

The state Supreme Court's decision also held that the state's Oil and Gas Commission has the burden of proof for justifying its use of trade secrets exemptions. The court further ruled that the withholding of information must fall within a narrow definition of trade secrets that generally favors disclosure over secrecy. The WOGCC wanted to use a broader definition of trade secrets, which would allow more withholding of chemical information from public disclosure and review.

"The district court will have to review the disputed information on a case-by-case, record-by-record or perhaps even on an operator-by-operator basis, applying the definition of trade secrets set forth in this opinion and making particularized findings which independently explain the basis of its ruling for each," Justice Michael Davis wrote in the opinion.

Public Reaction

Local landowners and residents welcomed the court's ruling. "It is important for public health and safety that citizens have timely access to what chemicals are used in fracking operations on and near our land," stated Kristi Mogen, a Resource Council board member who lives near fracking operations in Converse County, Wyoming.

Groups involved in the lawsuit also praised the new court ruling. "We're glad that the Wyoming Supreme Court agrees that this critical chemical information should be disclosed to the state's residents and public interest organizations," stated Sean Moulton, Director, Open Government Policy, Center for Effective Government. "The recipe for Coca-Cola is a trade secret, but the ingredients are not, and they're all listed on the can."

However, in a written statement, Halliburton said that when the district court takes up the issue, "Halliburton expects to demonstrate again that the identities of its proprietary chemicals qualify as trade secrets under the [Wyoming Public Records Act]."

Next Steps

The Wyoming Supreme Court directed the Natrona County District Court to review the action of the Oil and Gas Commission based on its narrower definition of trade secrets.

The case could set a broad legal precedent for future cases in the more than 10 states with chemical disclosure rules similar to Wyoming's. Residents need information about the chemicals used in fracking

to understand the risks and trade-offs involved in natural gas drilling.

White House Lays Foundation for Agencies to Design New Open Government Initiatives

by Gavin Baker

How can federal agencies be more responsive in making the information they gather and hold available to the public? Agencies are currently grappling with that question as they prepare new "open government plans" required by the White House. On Feb. 28, the Obama administration issued guidance to outline the approach that agencies should take with the next set of open government plans, which are due June 1, 2014.

Agency open government plans are an important way to foster a culture of transparency within federal agencies and departments. The new guidance lays the groundwork for innovative initiatives to increase government openness.

Background

One of President Obama's first acts in office was to issue a memo establishing the principles of open government in his administration. That memo directed the Office of Management and Budget (OMB) to develop guidance for agencies to implement his principles of transparency, participation, and collaboration. In December 2009, OMB issued the Open Government Directive, which tasked each agency to "describe how [the agency] will improve transparency and integrate public participation and collaboration into its activities." Agencies issued their first plans in 2010 and are to update them every two years.

The administration reiterated its commitment to openness in December when it issued its second Open Government National Action Plan. The National Action Plan promised that the White House would be more engaged in ensuring agencies follow through on their plans.

What's in the 2014 plans?

The new guidance sets out a number of requirements and reminders for agencies as they craft their new plans: they should include highlights and achievements from the 2012 plans, status updates on ongoing initiatives, and discussions of prior open government efforts. In addition to these progress updates, the guidance instructs agencies to "introduce bold, ambitious new open government initiatives." The guidance also states that planning should be collaborative and that agencies should solicit input from key stakeholders and the public.

A new element of the guidance addresses proactive disclosure (releasing information before a formal request has been made) in order to increase access to public information. Agencies have been told to identify "records or record categories for proactive disclosure and ensure that those records or record categories provide the public with key information about the operations and activities of the agency or are highly sought after." Building on the administration's previous policy commitments to affirmatively

post information online, the new guidance should encourage agencies to make more records and data easily accessible. Increasing proactive disclosure can also reduce the need for agencies to process duplicative requests under the Freedom of Information Act (FOIA).

The new guidance reiterates the original Open Government Directive's call for agencies to reduce their backlog of overdue FOIA requests. Any agency with a "significant" backlog of requests is directed to detail how it will reduce that backlog by ten percent each year. However, the guidance still doesn't define what constitutes a "significant" backlog. To date, agencies have had decidedly mixed results in meeting the directive's backlog reduction goals, and the failure to define a hard benchmark is a missed opportunity.

How to engage

Agencies are now writing the plans, leading up to the June 1 deadline. The public is a key stakeholder in this process. Interested members of the public should visit an agency's open government page to find out how to share their ideas about what should be included in the upcoming plans.

We would like to see agencies: a) engage the public on what resources they want more access to; b) expand their use of Internet resources, including their Open Government pages, to solicit and to discuss initiatives for improving agency transparency; and c) continue to decrease FOIA backlogs and increase proactive disclosure.

Portman Proposal Limits Environmental Reviews and Public Input on Proposed Development Projects

by Katie Weatherford

Sen. Rob Portman (R-OH) is pushing ahead with his campaign against public safeguards, using a subcommittee hearing on March 11 that was designed to discuss ways to improve the effectiveness of our regulatory system to promote yet another anti-regulatory bill, the Federal Permitting Improvement Act of 2013. The bill would require faster environmental impact assessments under the National Environmental Policy Act (NEPA) for proposed major infrastructure projects and limit public input in, and oversight of, federal decision making.

According to the Coalition for Sensible Safeguards, co-chaired by the Center for Effective Government, "NEPA's guarantees of public input and government transparency are crucial to protecting federal lands, local communities, and American landowners from short-sighted and uninformed project development. This bill would gut crucial environmental and public health protections."

The NEPA Process

On Jan. 1, 1970, President Richard Nixon signed NEPA, the first in a series of major federal environmental laws. First, the law ensures that agencies consider the environmental impacts of proposed federal actions before that action is taken. Second, it requires agencies to initiate a dialogue with the public about proposed federal actions.

To accomplish the first goal, the statute requires federal agencies to prepare an environmental impact statement (EIS) for "proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." NEPA also established the Council on Environmental Quality (CEQ) within the White House to oversee the implementation of the law.

NEPA encourages public participation by requiring agencies to: a) publish a notice in the *Federal Register* about a proposed federal action, b) make the environmental impact assessment available for review, and c) allow participation in upcoming meetings or through the submission of written comments on the action or its environmental impacts. NEPA also allows interested parties to file suit against an agency for failing to adequately respond to their comments.

However, NEPA includes no obligation for agencies to take steps to mitigate the environmental impacts of a federal action; a project may proceed even if it is determined to have significant harmful environmental impacts. But later statutes and executive orders require agencies to address potential risks to public health and the environment.

Key Concerns with the Portman Proposal

NEPA was enacted with bipartisan support and has served a noble purpose for over 40 years. Yet Sen. Portman's latest anti-regulatory proposal would gut key provisions of the law. The bill would undermine the fundamental goals of NEPA by expediting the permitting of large-scale federal infrastructure projects and stripping the public of its opportunity to participate in the decision making process. Key components of the bill include:

- ***Creates a New Government Entity with Complete Power over Development Decisions.*** The bill would establish a new entity, called the Federal Permitting Improvement Council. Members of the council would include representatives from certain executive branch departments, and a Federal Chief Permitting Officer (FCPO) from within the White House Office of Management and Budget (OMB) who would chair the council. This new "permitting czar," with advice from the Council, would set performance deadlines, with a maximum of six months for agencies to complete reviews and authorizations for even the most complex projects. Despite ongoing criticisms about the lack of transparency at OMB and charges of undue political and corporate influence in decision making, the new "permitting czar" would reside in the executive office known for its lack of accountability regardless of which party is in the White House. The czar would have substantial power over any major development projects that require a federal permit or regulatory approval from a federal agency and an initial investment of $25 million or more. In short, this council could “fast track” these major infrastructure projects, including any energy development project on federal land, even overriding the federal agency assigned to review the project.

- ***Speeds up the Environmental Review Process.*** Within 60 days of receiving a notice from a project sponsor about a proposed project, the lead agency would be required to develop a coordination plan. The agency’s plan would be required to follow the performance schedule deadlines established by the Council, with limited exceptions. The czar would review the plan, and if the agency deviated from the performance schedule, the czar could change the permitting

timetable. If the agency failed to meet a deadline in its coordination plan, it would have to provide the czar with a written explanation for why it failed to meet the deadline, provide a proposed new deadline, and also provide monthly status reports on any agency action for the project. This provision is ironic since OMB's review of agency standards and protections regularly fails to meet the 90-day deadline and does not provide written explanation of their requested changes to rules, though it is required to do so by executive order.

- ***Allows Project Sponsors to Request Exemption from NEPA.*** The bill would allow project sponsors (the entity seeking approval for a project) to submit a request for the federal agency reviewing the project to adopt documents prepared under state laws as the environmental assessment or impact statement for the project. Although the law allows the federal agency, in consultation with the Council on Environmental Quality, to reject those documents if the state's law does not provide environmental protection and public participation requirements "substantially equivalent" to NEPA, federal agencies may feel pressured to adopt sub-par state documents where they have an insufficient amount of time or resources to conduct an exhaustive assessment of the state's procedures.

- ***Limits Public Input on a Proposed Project.*** Under the proposal, the public is limited to 60 days for submitting comments on a draft environmental impact statement and 30 days for all other comment periods established during the environmental review process, rather than the 90-day comment period currently provided under NEPA. Moreover, impeding the public's ability to participate in the decision making process and speeding up the time agencies have to assess environmental impacts of proposed projects will likely result in public concerns being ignored.

- ***Increases Barriers for Members of the Public to Challenge Shoddy Reviews in Court.*** The bill would drastically shorten the statute of limitations for a member of the public to challenge an agency's assessment in court, lowering it from six years to a mere 150 days. If major environmental impacts of a project are not adequately assessed or public concerns are simply ignored, members of the public would have a very limited opportunity to challenge the agency in court. On top of this, the bill directs courts to consider economic and job impacts of a project in choosing whether to grant an injunction against the project moving forward.

Conclusion

If the Portman proposal is enacted, it would curtail the environmental assessment process and severely restrict the public's opportunity to participate in the decision making process for federal projects, attacking the very purpose for which NEPA was enacted.

Portman claims this bill is necessary because it often takes years to complete the review and approval process for many large infrastructure projects subject to NEPA. But, according to the Congressional Research Service (CRS), the primary causes of project delays are typically "local/state and project-specific factors, primarily local/state agency priorities, project funding levels, local opposition to a project, project complexity, or late changes in project scope." Further, CRS explains that the environmental review process may ultimately "save time and reduce overall project costs by identifying

and avoiding problems in later stages of project development." What this bill is designed to do is undermine the NEPA process by giving more power and influence to "project sponsors" at the expense of citizens and regulatory agencies responsible for protecting the public interest.

For anyone who believes that government is supposed to serve the interests of the American people, this bill should be dead on arrival.

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