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Excluding Labor Law Violators from Federal Funding Programs

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GOOD JOBS COLLABORATIVE

Roosevelt Institute

About the Author

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About the Good Jobs Collaborative

The Good Jobs Collaborative is a coalition of policy organizations and worker advocates committed to forging a new consensus on the purpose, design, and implementation of workforce development policy in the United States. Our goal is to build a new narrative to guide workforce development policy that is grounded in principles of economic justice, advances racial and gender equity, is organized around the needs of workers first, and builds opportunities for worker voice and power.

About the Roosevelt Institute

The Roosevelt Institute is a think tank, a student network, and the nonprofit partner to the Franklin D. Roosevelt Presidential Library and Museum that, together, are learning from the past and working to redefine the future of the American economy. Focusing on corporate and public power, labor and wages, and the economics of race and gender inequality, the Roosevelt Institute unifies experts, invests in young leaders, and advances progressive policies that bring the legacy of Franklin and Eleanor Roosevelt into the 21st century.

Introduction

The Workforce Innovation and Opportunity Act (WIOA) plays a vital role in the United States' workforce development system, funding programs that provide training, employment, and support services to millions of workers, particularly those facing significant barriers to employment. Yet, since it was first enacted in 1998, WIOA has lacked a critical layer of accountability: The funding process governing public workforce development programs does not adequately ensure that federal workforce development dollars are not awarded to companies that have recently violated labor laws. The "Representation of Compliance" provision of the current WIOA reauthorization Senate discussion bill (US Senate 2024, sec. 191(1)(B)) aims to close this gap by preventing employers who violate labor laws from receiving federal funding—a critical measure to protect workers and deter unlawful employer practices that undercut both worker power and safety and high-road business practices.

The proposed "Representation of Compliance" provision has become a flash point in the WIOA reauthorization process, effectively bringing negotiations to a standstill. This brief argues for the necessity of such guardrails, examining the extent of labor law violations in the US, examples of existing federal laws that restrict funding to violators, and the need for stronger labor protections and enforcement. Currently, the United States' workforce development framework fails to provide the accountability that ensures workers have access to good jobs and economic mobility (Smith Finnie and Elliott 2024). Reauthorizing WIOA without strengthening labor law compliance would continue to fail workers on this front.

WIOA funds are distributed through state and local workforce development boards that oversee the allocation of resources to service providers, such as job training centers, community colleges, and private employers offering on-the-job training (OJT) contracts. These funds are instrumental in equipping workers with skills for high-demand occupations and in assisting employers in filling gaps in their workforce.

The "Representation of Compliance" provision would specifically target employers applying for OJT contracts under WIOA funding. It would require these employers to attest that they have not been subject to any final administrative merits determination, arbitral award, decision, or civil judgment for a violation of a covered federal labor law in the two years preceding their application. The provision defines covered federal labor laws as those enforced by the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Department of Labor.

This provision would have a significant impact on WIOA programs. Barring employers with a recent history of labor law violations from participating in OJT contracts would ensure that workers are placed in compliant, lawful working environments. It addresses the concern that federal funds could otherwise subsidize companies that undermine workers' rights through practices such as wage theft, unsafe working conditions, or illegal discrimination. This safeguard would particularly benefit workers who are most susceptible to exploitation in the workplace, such as displaced workers, low-income adults, and at-risk youth.

Some employer groups have argued that the "Representation of Compliance" provision is overly punitive and burdensome, potentially disqualifying businesses that have already resolved their violations or are working to improve compliance (Jacoby 2024). They contend that the two-year lookback period for labor law violations does not account for the complexities of labor disputes, where settlements or judgments may not always reflect the employers' intentions or ongoing compliance efforts.

Proponents, on the other hand, argue that the provision is a necessary safeguard against the misuse of public funds, reinforcing that businesses benefiting from federal workforce programs must adhere to labor laws. They see it as a logical step in enhancing accountability, protecting workers, and maintaining the integrity of publicly funded workforce initiatives. And they argue the two-year lookback period for violations ensures that companies are held accountable while accommodating the time it takes for remediation and improvement.

The Extent of Federal Labor Law Violations and the Need for Stronger Enforcement

Labor law violations in the United States remain a pressing issue. Although violators represent a small share of the more than 11 million private employer establishments in the US, the impact on workers is significant and far-reaching. In 2023, the National Labor Relations Board (NLRB) received 19,869 unfair labor practice charges against employers, the highest number since 2016 (NLRB 2023). Of these, 5,357 charges resulted in settlements, and another 743 led to complaints being issued. During the first half of fiscal year 2024, unfair labor practice charges filed with the NLRB field offices increased 7 percent compared to the same time last year (NLRB 2024). These numbers highlight the persistent issue of employers engaging in illegal practices, such as retaliation against workers who organize or engage in union activities.

The Fair Labor Standards Act (FLSA) is another area where violations are rampant. In fiscal year 2023, employers violated the FLSA protections of 135,067 workers, including violations of minimum wage, overtime, tip requirements, and retaliation against employees (US Department of Labor 2023). Although this figure represents a decrease from the 268,310 violations found in 2019, the scale of noncompliance remains vast, affecting hundreds of thousands of workers and resulting in millions of dollars in stolen wages each year. In fiscal year 2023 alone, the US Department of Labor was able to recoup more than $156 million in back wages stolen from workers through FLSA violations. This systematic underpayment undermines workers' livelihoods and perpetuates economic inequality, emphasizing the need for more stringent enforcement measures.

The Occupational Safety and Health Administration (OSHA) also reports widespread violations of workplace safety standards. In 2023, there were 146,106 OSHA violations, with 65.9 percent classified as repeat, serious, or willful offenses (US Department of Labor 2024). During fiscal year 2023, the most frequently cited work hazards involved issues with fall protection, hazard communication, and ladder usage (OSHA 2023). This data reveals that many employers not only violate safety standards but do so repeatedly, putting workers at continued risk of injury or death. In 2019, the number of OSHA violations was even higher, with 167,669 reported offenses, demonstrating a persistent pattern of unsafe workplaces that endanger worker health and safety.

These statistics reveal that, while only a fraction of all businesses are offenders, the impact on workers is substantial. To the extent that they cut costs by compromising legal and safety standards, these offenders undercut businesses that follow the law and weaken worker power. This underscores the need for stronger enforcement mechanisms to hold violators accountable (McNicholas et al. 2021). Penalties are frequently insufficient, enforcement agencies are under-resourced, and the burden of proof often falls heavily on workers who may fear retaliation. As a result, many employers view the risk of getting caught and penalized as a manageable cost of doing business, rather than a deterrent.

For example, a recent report from the House Education and the Workforce Committee finds that the typical maximum penalty for a worker killed on the job is approximately $14,000, the penalty for repeated or willful minimum wage and overtime violations is $2,451, and the maximum penalty for cheating workers out of their tips is just $1,373 (Committee on Education and the Workforce 2024). Strengthening penalties, including through debarment from federal funding, would create a stronger deterrent effect and encourage compliance.

Underfunded enforcement agencies further exacerbate the problem. Agencies such as the NLRB, Department of Labor, and OSHA are chronically underfunded, limiting their ability to investigate complaints and enforce the law (Mangundayao, McNicholas, and Poydock 2021). In 2023, the Department of Labor's Wage and Hour Division had just one investigator for every 190,000 workers, making it difficult to hold employers accountable and allowing many violations to go unchecked. A lack of sufficient resources hampers these agencies' ability to protect workers and enforce compliance effectively.

Moreover, current laws do little to prevent repeat offenders from continuing to violate labor standards. Data showing that repeat offenders committed over 65 percent of OSHA violations in 2023 highlights the failure of the existing system to curb habitual lawbreaking. Implementing guardrails, such as suspensions or bans on federal funding for recidivist employers, would reduce repeated violations and protect workers from habitual violators. Expanding enforcement mechanisms to restrict access to federal funding for violators would strengthen protections and incentivize employers to adhere to legal standards.

Companies should not be allowed to access federal funds if they routinely flout labor laws—just as they would be barred from federal contracting for financial malfeasance. The proposed WIOA provision is essential to protect workers, just as financial compliance rules protect shareholders. Implementing similar guardrails in other contexts would reinforce the message that compliance with labor laws is a nonnegotiable requirement for businesses benefiting from public resources.

Existing Precedent for the "Representation of Compliance" Provision

Federal laws that prevent businesses from receiving funding or engaging in specific economic activities after violating labor or financial laws set a crucial precedent for the provisions proposed in the WIOA reauthorization. For example, the Federal Acquisition Regulation (FAR) includes debarment and suspension rules that allow the government to bar contractors from bidding on or receiving federal contracts after violating labor laws, such as failing to pay minimum wage under the Fair Labor Standards Act, disregarding safety protocols outlined in the Occupational Safety and Health Act, or engaging in discriminatory hiring practices prohibited by the Civil Rights Act. This ensures that federal funds do not reward companies engaged in illegal practices, thereby protecting taxpayer money and maintaining the integrity of federal procurement processes.

Similarly, the Davis-Bacon Act requires contractors and subcontractors on federal construction projects to pay workers prevailing local wages. Companies found violating this law can be debarred from future contracts for up to three years. The debarment provision acts as a critical enforcement tool and a strong deterrent that reduces the burden of rooting out bad-acting, free-riding companies by making it costly to break laws, drive down wages, and undercut competitors by exploiting workers.

President Barack Obama's now-revoked Executive Order 13673, known as Fair Pay and Safe Workplaces, required federal contractors to disclose labor law violations when bidding on contracts, promoting transparency and accountability. Although rescinded under President Donald Trump in 2017, this order demonstrated a clear recognition of the need to ensure that public funds do not support companies with histories of labor violations. Even without this order, the federal government has continued to use similar methods to maintain ethical standards in its contracting.

Another relevant example is the False Claims Act (FCA), which prohibits companies from defrauding government programs. Companies that violate labor laws and submit false certifications of compliance under the FCA can face severe penalties, including treble damages and fines. The presence of credible penalties for firms falsely claiming adherence to labor standards when applying for federal funds serves as a powerful deterrent against labor law violations in an economy with nearly 169 million workers, 6 million private firms, and 109,000 active federal contractors (Federal Reserve Bank of St. Louis 2024; US Bureau of Labor Statistics 2024; Government Accountability Office 2024).

The Sarbanes-Oxley Act (SOX), though primarily concerned with financial regulations, also sets a significant precedent for holding companies accountable. SOX imposes stringent requirements on financial disclosures, and failures to comply can result in severe penalties, including bars on serving as corporate officers or directors, effectively limiting future business opportunities (Wagner and Dittmar 2006). This model could be adapted to enforce labor law compliance by barring repeat violators from receiving federal funds.

More recently, the Inflation Reduction Act, CHIPS and Science Act, and Infrastructure Investment and Jobs Act all included labor compliance guardrails for federally funded infrastructure and industrial projects (National Governors Association 2023). Expanding these provisions would ensure that public funds are not used to support businesses that exploit their workers. Violations could lead to the revocation of incentives or the imposition of penalties, ensuring that federal dollars are not subsidizing illegal labor practices.

Federal provisions that foster corporate accountability are especially important because state law protections vary significantly. Just as federal laws stepped in to create consistent protections for investors, federal action is necessary to ensure uniform worker protections across the country. The variation in state-level child labor laws provides a clear example of why federal oversight is necessary (Sherer and Mast 2023). The current patchwork of labor laws leaves workers in some states more vulnerable to exploitation than in others.

Conclusion: The "Representation of Compliance" Provision as a Flash Point

Guardrails that prevent labor law violators from receiving federal funding are crucial in ensuring that taxpayer money does not indirectly support illegal practices, such as child labor, wage theft, and unsafe working conditions. These measures help maintain a fair and competitive marketplace where law-abiding businesses are not undercut by those willing to flout the rules. Additionally, they uphold the government's role in protecting worker rights and promoting ethical business practices. They ensure that federal resources are not used to subsidize companies that harm workers, just as other laws ensure that taxpayer dollars don't support financial fraud or corporate malfeasance.

The contentious nature of the "Representation of Compliance" provision reflects a broader disagreement about who federal workforce programs should serve: Are they primarily designed to help employers or workers (Naidu and Sojourner 2020)? This provision is a crucial step toward ensuring public funds equally support employers who play by the rules and the workers they employ. With wage theft affecting millions of workers each year, barring employers with histories of wage violations from federal funding would be a significant, simple deterrent to supplement overloaded enforcement agencies. It would also ensure that federal dollars are not rewarding companies that undermine workers' financial security. Likewise, ensuring that employers with serious or repeat OSHA violations are excluded from federal funding opportunities would promote safer workplaces.

The "Representation of Compliance" provision builds on well-established precedents for protecting shareholders and taxpayers and is necessary to close the current gaps that allow labor law violators to receive federal support. It would ensure that public funds no longer subsidize businesses that consistently put their workers' health and safety at risk. Although the provision has sparked controversy and stalled the reauthorization process, it addresses a vital need for accountability in federally funded workforce programs. Expanding these protections across other federal programs would strengthen labor law enforcement, reduce recidivism among violators, and safeguard the rights and safety of millions of American workers.

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