



National Employment  
Law Project



CENTER for  
COMMUNITY CHANGE



Executive Office of the President  
Office of Management and Budget  
Washington, DC 20503

*Re: Guidance Feedback: Comments on “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009”*

To the Office of Management and Budget:

We appreciate the opportunity to submit these comments regarding the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (the “Guidance”), published by OMB on April 3, 2009. The Guidance provides important direction to federal agencies to ensure that ARRA funds are spent in such a fashion as to promote a range of key federal policy goals.

We welcome in particular § 1.6 of the Guidance, which states that ARRA funds should be used to ensure compliance with equal opportunity laws and to promote best workforce practices including: (1) local hiring; (2) support of entities that create good jobs and have a sound track record of complying with employment laws; and (3) engagement with community-based organizations. With regard to construction employment funded by the ARRA, we believe that these goals can be refined and advanced through incorporation of certain best practices into the procedures and requirements for federal contracting and grant awards. **These best practices include targeted hiring of underrepresented workers, utilization of federal- or state-certified apprenticeship training, and collaboration with high-quality pre-apprenticeship training programs.**

We and a coalition of more than fifty community and policy organizations recently submitted a memorandum to the White House Domestic Policy Council describing these measures in detail, and urging the President to promote this model on construction projects funded by the ARRA and other federal spending. A copy of the memorandum is attached.

These best practices, when implemented together, have been proven to be the most effective means for launching underrepresented and low-income workers on paths towards middle-class construction careers. The apprenticeship system is the best source of quality training and job referrals in the construction industry. “High road” construction contractors, using the certified apprenticeship system and targeting opportunities to underrepresented and low-income workers, can ensure that ARRA-funded construction projects generate quality jobs and new career opportunities.

We therefore urge that utilization of these best practices by construction employers on ARRA-funded projects be strongly encouraged or required in:

- Updated versions of the Guidance (specifically § 1.6 (policy goals), § 5 (grants and cooperative agreements), and § 6 (contracts));
- Revisions to the Federal Acquisition Regulations (FAR) (covering certain contracts awarded directly by the federal government for expenditure of ARRA funds); and
- The “Interim Final Guidance for Federal Financial Assistance,” to be issued and finalized as 2 CFR Part 176 (covering grants and other forms of federal assistance using ARRA funds).

Future versions of these documents should encourage, and in appropriate cases require, recipients of ARRA funds for construction projects to:

- (1) *Ensure that substantial percentages of construction work hours are performed by target populations.* This requires broadening the concept of “local hiring” (currently set forth in Guidance § 1.6) to also encompass targeted hiring of low-income residents and underrepresented workers – such as women and workers of color – on ARRA-funded construction projects. Local hiring is one form of targeted hiring, but in some circumstances and, depending on local geography, other forms of targeted hiring may be more effective at reaching underrepresented workers.
- (2) *Require construction contractors to participate in federal- or state-certified apprenticeship programs.* Certified apprenticeship programs are the best source of quality construction training; pairing targeted hiring with apprenticeship utilization requirements is a key best practice for promoting accessible, quality jobs.
- (3) *Link high-quality pre-apprenticeship training with the above strategies,* to ensure that workers from underrepresented communities have the preparation and supports needed to succeed in apprenticeship, and to ensure that contractors have enough qualified apprentices to meet demand.

While OMB guidance is crucial, promoting these best practices may require additional measures from other quarters of the Executive Branch. For example, certain federal agencies distributing or expending ARRA funds, such as the Departments of Labor and Transportation, may need new regulations or clarification of existing regulations. We also urge the Administration to consider whether an Executive Order, as described in our attached memorandum, would most quickly and effectively facilitate these changes.

Thank you for your consideration of these comments. We can provide additional information on projects that have utilized the approaches described herein, and can assist in developing appropriate language. If we can be of any assistance, please contact Steve Savner at (202) 339-9312 or [ssavner@communitychange.org](mailto:ssavner@communitychange.org).

Respectfully submitted,

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cc: Memorandum to White House Domestic Policy Council  
“Proposal for Executive Action to Promote Targeted Hiring and Apprenticeship on ARRA-Funded Projects” (April 3, 2009)

# Proposal for Executive Action to Promote Targeted Hiring and Apprenticeship on ARRA-Funded Construction Projects

April 3, 2009

*Researched and written by the National Employment Law Project (NELP) and the Partnership for Working Families (PWF) on behalf of a coalition of fifty organizations (full membership listing below)*

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## 1. Executive Summary

The new infrastructure and energy efficiency retrofitting investments approved in the American Recovery and Reinvestment Act (ARRA) are projected to create as many as 675,000 construction jobs over the next several years,<sup>1</sup> many of which will represent various shades of green-collar jobs. These investments and other federal construction spending present a crucial opportunity to expand access to middle-class construction careers, train the next generation of the skilled construction workforce, and ensure an inclusive and equitable foundation for the emerging green economy.

However, there is reason for concern that without active steps to promote these goals, too few of these construction jobs will reach low-income residents, and underrepresented populations such as workers of color and women. Nor is it likely that high-road contractors that provide quality training through certified labor-management apprenticeship programs will be included in many projects. In recent years, states and cities have pioneered the use of targeted hiring and apprenticeship requirements on publicly funded construction projects as a means of ensuring the access to construction jobs and quality training needed to launch low-income workers and/or workers from underrepresented populations on the path to middle class careers in the building trades. In fact, in 2005 then-Senator Obama joined with Senator Kit Bond to sponsor a Sense of the Senate resolution encouraging the use of targeted hiring and apprenticeship strategies on federally funded transportation projects.<sup>2</sup>

This memo proposes steps the President can take to encourage these best practices, and explains the policy and legal rationales for doing so. Specifically, we propose that the President issue an executive order, presidential memorandum, or other directive that:

- *Instructs federal agencies to immediately issue guidance encouraging states and cities to use targeted hiring and apprenticeship utilization requirements on all federally funded construction projects, and affirming that such practices are permissible under federal*

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<sup>1</sup> Romer, Christina & Bernstein, Jared, The Job Impact of the American Recovery and Reinvestment Plan, (Jan. 9, 2009) (assuming a stimulus package of \$775 billion). Available at: [http://otrans.3cdn.net/45593e8ecbd339d074\\_13m6bt1te.pdf](http://otrans.3cdn.net/45593e8ecbd339d074_13m6bt1te.pdf).

<sup>2</sup> Pub. L. 109-59, § 1920, 119 Stat. 1144 (2005) (stating that “[i]t is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including Federal, State, and local governments, community colleges, apprentice programs, local high schools, and other community-based organizations that have an interest in improving the job skills of low-income individuals, to help leverage scarce training and community resources, and to help ensure local participation in the building of transportation projects.”).

*law. Different agencies may have to employ different approaches, due in part to differences in the regulatory and/or statutory frameworks under which they operate. The directive should further instruct federal agencies, over the medium term, to develop mandates or strong incentives for the use of these best practices, and to identify and remove any obstacles under existing regulations to more effectively promoting targeted hiring and apprenticeship utilization.*

- *Instructs the U.S. Department of Labor (DOL) to provide funding for comprehensive pre-apprenticeship training to support such initiatives and to investigate options for helping more small, minority and women-owned businesses participate in the apprenticeship training system.*
- *Instructs the Office of Management and Budget (OMB) to develop guidance for promoting targeted hiring and apprenticeship through a standardized approach across the federal agencies.*
- *Instructs the DOL's Office of Federal Contract Compliance Programs (OFCCP) and the federal agencies to strengthen enforcement of existing targeted hiring requirements – such as EO 11246, which establishes race and gender-based hiring goals on federally funded construction projects, and HUD Section 3, which requires targeted hiring of low and very low-income persons on state and local construction projects funded by the U.S. Department of Housing and Urban Development (HUD).*

## **2. Background on Targeted Hiring and Apprenticeship Utilization**

The model hiring and apprenticeship policies that states and cities have developed in recent years have grown out of several key insights. First, that proactive steps are needed to ensure access by residents of low-income communities and by workers of color and women to jobs on publicly funded construction projects. Second, that “high road” construction contractors – the majority of them unionized – that participate in federal- or state-certified apprenticeship programs are the best and most effective vehicle for training and placement into sustained construction careers. And third, that high-quality pre-apprenticeship training that includes work readiness, GED skills and other basic preparation is important for ensuring success in apprenticeship.

States and cities have therefore begun to combine requirements or incentives for their contractors to participate in the apprenticeship system, with corresponding requirements about the number of low-income workers and/or workers from underrepresented populations who must be employed on public projects. The specific models used by cities and states have taken several different forms. These include:

- Minimum percentage requirements for work hours that will be performed on the job by low-income workers and/or workers from underrepresented populations, and by state or federally-certified apprentices. These requirements are included as core conditions of the RFP and construction contracts awarded by the state or city. Sometimes they include specific requirements for hours worked by newly admitted or “first period” apprentices. The most effective models combine hiring and

apprenticeship requirements with funding for pre-apprenticeship courses to recruit these workers and prepare them to succeed as apprentices.

- Targeted hiring and apprenticeship utilization as “plus factors” used in evaluating proposals and determining which one offers the best value for the community.
- Project labor agreements (PLA’s), which provide a project-wide framework for implementing and coordinating targeted hiring and apprenticeship requirements across multiple contractors and unions, while also ensuring job quality and project stability.
- The most effective models combine hiring and apprenticeship requirements with linked pre-apprenticeship training. Such pre-apprenticeship programs, which are often funded as part of the construction project, serve to recruit workers from underrepresented populations, especially workers of color and women, provide them the preparation and support needed to succeed in construction careers, and then feed them directly into apprenticeships. In addition to GED and work readiness preparation, assistance with meeting childcare and transportation needs are key elements of effective pre-apprenticeship programs.

Targeted hiring is especially appropriate in the context of the ARRA, since it will help ensure that stimulus funds create good jobs that reach the families that need them the most.<sup>3</sup> And it is well established that putting wages in the pockets of low-income households is one of the most effective forms of fiscal stimulus. A recent working paper by Federal Reserve Bank of Chicago economists outlined how wage increases for low-income households boost consumer spending substantially more than tax cuts.<sup>4</sup>

As for budgetary impact, encouraging the use of targeted hiring and apprenticeship on federally funded construction projects should not result in increased costs, since all ARRA-funded construction projects are already covered by Davis-Bacon prevailing wage requirements. In fact, more extensive uses of apprentices on federally funded projects could potentially reduce project costs because contractors that use apprentices are authorized to pay them lower training wages. Moreover, greater use of high-road contractors and certified apprentices means higher quality work done more safely, avoiding cost overruns and delays. However, as detailed below, an effective targeted hiring and apprenticeship program would require making some additional funding available for, or redirecting existing funding to, high-quality pre-apprenticeship training, and for pilot programs to help more disadvantaged business enterprises (DBEs) participate in the apprenticeship system.

For more background on some of these issues, see Todd Swanstrom, “The High Road to Greater Inclusion in the Construction Industry: Problems and Prospects,” A Discussion Paper Prepared for the Annie E. Casey Foundation (Univ. of Mo. – St. Louis March 2009).

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<sup>3</sup> Among the express purposes of the Act are “to assist those most impacted by the recession” and “[t]o preserve and create jobs and promote economic recovery.” PL 111-5, §3(a)(1),(2), 123 Stat 115 (2009).

<sup>4</sup> Aaronson, Daniel, Agarwal, Sumit and French, Eric, The Spending and Debt Response to Minimum Wage Hikes, (May 29, 2008). FRB of Chicago Working Paper No. 2007-23. Available at SSRN: <http://ssrn.com/abstract=1144222>.

### 3. Legal Issues

As outlined below, we believe that federal law both generally permits adoption of targeted hiring and apprenticeship requirements on federally funded projects, and authorizes the President to require agencies to mandate – or strongly incentivize – their use on federally funded construction projects. While existing agency rules pose some obstacles to targeted hiring requirements that are based on local residency, they do not limit requirements that are based on economic disadvantage. We know of no obstacles to imposition of apprenticeship requirements on federal projects.

#### a. Targeted Hiring

Research has identified no legal obstacles to the use of targeted hiring based on economic status on federally funded projects – for example, requirements that a certain percentage of project hours be worked by persons who reside in low-income households or who reside in low-income communities. Such economic-status based hiring preferences do not raise constitutional issues<sup>5</sup>; fighting poverty is a well-established, legitimate governmental role. In fact, income-based targeting has frequently been encouraged as a complement to race-based affirmative action. For example, President Clinton’s 1996 “HUB Zone” executive order created a contracting preference for businesses that employ residents of high-poverty census tracts.<sup>6</sup> And President Carter’s Executive Order 12073 instructed federal agencies to create similar preferences for businesses located in “labor surplus areas” with higher than average unemployment rates.<sup>7</sup>

We recognize that certain agencies such as DOT have regulations and/or internal administrative guidance have been interpreted as prohibiting targeted hiring based upon location of residence.<sup>8</sup> We believe that this guidance was always legally questionable and overly broad. It is all the more so today in light of the endorsement of local hiring in the 2005 Sense of the Senate resolution sponsored by then-Senator Obama and Senator Bond, which was adopted as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA) of 2005.<sup>9</sup> Over the medium term, that guidance should be reviewed and reversed, and any regulations that could present an obstacle to local hiring should be withdrawn. However, even in their current form, the guidance and regulations do not pose any obstacle to targeted hiring based upon income.

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<sup>5</sup> The U.S. Supreme Court, for example, has held that economic status-based policies are subject to only “the most relaxed judicial scrutiny.” Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 212-13 (1995).

<sup>6</sup> Exec. Order 13005, 61 FR 26069 (1996).

<sup>7</sup> Executive Order 12,073, 43 FR 36873 (1978); 20 C.F.R. § 654.

<sup>8</sup> See U.S. Dep’t of Transportation, Federal Highway Administration, Memorandum, April 30, 1994. Available at: <http://www.fhwa.dot.gov/programadmin/contracts/042094.cfm>; 23 C.F.R. 635.117(b); but see City of Cleveland v. Ohio, 508 F.3d 827, 847 (6th Cir. 2007) (considering the validity of a city ordinance requiring a percentage set-aside for city residents if the contractor used in-state labor and noting that DOT regulations contained no terms that would prohibit intrastate discrimination).

<sup>9</sup> Supra note 2.

Furthermore, we believe that the President would have the authority to require agencies to mandate – or strongly incentivize – the use of targeted hiring on federally funded construction projects administered by states and cities. The basis for such a requirement would be the same authority that undergirds the more than 40-year-old executive order requiring affirmative action in hiring on federally funded construction projects.<sup>10</sup> Targeted hiring based on income is a complementary, non-race-based counterpart to affirmative action. The authority to mandate inclusive hiring on federally funded construction projects administered by states and cities has been established since at least 1971, when the U.S. Court of Appeals for the Third Circuit upheld Executive Order 11246 and the “Philadelphia Plan” used by the Nixon Administration to implement the order.<sup>11</sup> Although the courts’ understanding of the precise source of authority for EO 11246 has evolved over the years, seldom has it been seriously questioned that the order is valid. While EO 11246 established race-based hiring goals for contractors, the same authority would support hiring goals that targeted low-income individuals.

### **b. Apprenticeship**

Our research has similarly identified no federal legal obstacles to states and localities requiring that contractors on federally funded construction projects must participate in state- or federally-certified apprenticeship programs. In particular, we have identified no instance in which DOT, HUD, or other federal agencies have interpreted applicable federal rules as limiting or forbidding the use of such requirements on federally funded projects.

To the contrary, our understanding is that Wisconsin and several other states have adopted apprenticeship utilization requirements for federally-funded highway projects. Similar such requirements have been used over the years on other high-profile construction projects with the knowledge and involvement of federal agencies.<sup>12</sup> For example, the Alameda Corridor Project, a \$2.4 billion project to build a rail line and other transportation infrastructure between Long Beach and downtown Los Angeles, required developers to provide apprenticeship training and placement services to 1,000 low-income community residents and to set aside a certain percentage of all project work hours for those residents who completed the training.<sup>13</sup> Similarly, the New York City Housing Authority (NYCHA), under its “Construction Management/Build” (CM Build) program for major housing authority renovation projects, requires contractors to provide state-certified apprenticeship and pre-apprenticeship training to workers (including NYCHA residents).<sup>14</sup> And on other federally funded construction projects, such as the proposed

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<sup>10</sup> See Exec. Order 11246, 30 FR 12319 (1965).

<sup>11</sup> Contractors Ass’n of Eastern PA v. Sec. of Labor, 442 F.2d 159 (1971). EO 11246, which was issued by President Johnson in 1965, requires federal and federally assisted contractors to implement affirmative action plans to increase the participation of women and minorities in the workforce. See *supra* note 10.

<sup>12</sup> Opponents of such policies – chiefly non-union construction contractors -- sometimes charge that the Employee Retirement Income Security Act (ERISA) preempts states and cities from requiring that contractors participate in certified apprenticeship programs. However, those contentions are at odds with the Supreme Court’s most recent teaching in California Division of Labor Standards Enforcement v. Dillingham Construction N.A. Inc., 519 U.S. 316 (1997), on how ERISA applies to apprenticeship regulations.

<sup>13</sup> Ranghelli, Lisa, *Replicating Success – The Alameda Corridor Job Training & Employment Program*, (2002). Center for Community Change. Available at:

<http://www.communitybenefits.org/downloads/Replicating%20Successpdf.pdf>

<sup>14</sup> Brennan Center for Justice at New York University School of Law, *Winning Construction Jobs for Local Residents: A User’s Guide for Community Organizing Campaigns* (July 2005), p. 25. Available at:

[http://nelp.3cdn.net/319dbb5959ea88bd77\\_7sm6iy4lf.pdf](http://nelp.3cdn.net/319dbb5959ea88bd77_7sm6iy4lf.pdf)

Seattle Monorail Green Line project, PLA's have been signed requiring contractors to utilize certified apprentices.<sup>15</sup>

Here too we believe that the President generally has the authority to mandate such requirements on all federally funded construction work. Cases that would provide a basis for that authority include Building and Construction Trades Department, AFL-CIO v. Allbaugh.<sup>16</sup> In that case, the U.S. Court of Appeals for the D.C. Circuit upheld President George W. Bush's executive order prohibiting state and local governments from requiring (or prohibiting) the use of Project Labor Agreements (PLA's) on federally funded construction projects. The order was limited by the proviso "to the extent permitted by law" – i.e., federal agencies were instructed to prohibit state and local governments from requiring (or prohibiting) the use of PLA's, except in any circumstances where federal law denied federal agencies the latitude to issue such instructions to state and local governments. The Allbaugh court explained that, so long as an order to the federal agencies is accompanied by such a proviso, it amounts to an instruction by the President to implement his preferred policy to the extent that federal law affords the agency administrative discretion to do so.<sup>17</sup> The court held that the broad supervisory authority vested in the President by Article II of the Constitution over subordinates in the Executive Branch "necessarily encompasses [such] 'general administrative control of those executing the laws.'"<sup>18</sup> In Allbaugh, that authority was found to encompass banning the use of PLA's on federally funded projects. But it seems that it could conversely be invoked to require federal agencies to mandate, "to the extent permitted by law", that state and local governments include apprenticeship utilization requirements on federally funded construction projects.

#### **4. Proposed Presidential Action**

We propose that the President should take the following steps to ensure that federally funded state and local construction projects, particularly those funded under the ARRA, provide quality jobs and training for low-income residents:

##### **a. Immediately Encourage Targeted Hiring and Apprenticeship and Affirm Their Permissibility**

We propose that the President issue a directive to federal agencies instructing them immediately to issue guidance to states and cities recommending targeted hiring and apprenticeship utilization requirements on federally funded construction projects as a best practice, and making clear that these practices are permissible under federal law. The directive should instruct the agencies to provide guidance on model policies, including each of the model approaches discussed in Section 2 above, and to provide technical assistance to assist states and localities in using them.

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<sup>15</sup> "Seattle Monorail Project Reaches Green Line Labor Agreement." *Business Wire*, March 16, 2004. Available at: <http://www.allbusiness.com/labor-employment/labor-relations-labor/5582065-1.html>.

<sup>16</sup> 295 F.3d 28 (D.C. Cir. 2002)

<sup>17</sup> Id. at 33.

<sup>18</sup> Id. at 32, quoting Myers v. U.S., 272 U.S. 52, 164 (1926).

**b. Over the Medium Term Develop Mandates or Strong Incentives for Use of Targeted Hiring and Apprenticeship and Remove Obstacles to Such Policies**

We propose that the directive should further instruct the agencies, over the medium term, to establish (to the extent permitted by law) mandates or strong incentives for the use of targeted hiring and apprenticeship requirements on federally funded construction projects. Mandates for the use of such practices would be the most straight-forward and effective means of promoting their use. But the creation of strong economic incentives or “sweeteners” for projects that use these best practices could be another effective strategy.

In addition, the directive should instruct federal agencies to identify obstacles under existing agency guidance, regulations and/or statutes to more effectively promoting targeted hiring and apprenticeship utilization, and to propose plans for removing those obstacles. For example, as noted above, current DOT administrative guidance and/or regulations take the position that targeted hiring that uses local residency as a criterion is prohibited under DOT rules. We believe that this position is, at a minimum, overly broad and that local hiring preferences are, in many circumstances, one of the most effective approaches for targeted hiring. We therefore propose that the DOT guidance and any other agencies’ similar rules should be rescinded and reevaluated. And to the extent that agencies determine that any such obstacles are compelled by statute, the agencies should develop proposals for appropriate statutory reforms to address and remove them.

**c. Provide Pre-Apprenticeship Funding and Help More DBE’s Participate in Apprenticeship**

We also propose that the President direct the U.S. Department of Labor (DOL) to provide funding for pre-apprenticeship training to support construction projects that use targeted hiring and apprenticeship requirements, and to develop new initiatives to help more small, minority and women-owned business enterprises (DBE’s) participate in the apprenticeship system.

Experiences with targeted hiring and apprenticeship nationally have made clear that in order for the strategy to be effective, it must be combined with high-quality pre-apprenticeship training that prepares low-income residents to succeed in apprenticeship programs.<sup>19</sup> The DOL was allocated a substantial pool of Workforce Investment Act (WIA) funds under the ARRA and, in guidance already issued to the states on the use of these funds, has encouraged states to utilize WIA funding in support of both apprenticeship and pre-apprenticeship programs.<sup>20</sup> The DOL should build on its current recommendations and provide more targeted support for apprenticeship and pre-apprenticeship training by directing WIA funds to state and local projects that use our recommended strategy. In doing so, we recommend that DOL prioritize pre-apprenticeship programs that include as partners community organizations with proven records of recruiting underrepresented workers, training them effectively, and placing them directly into apprenticeship programs.

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<sup>19</sup> Id.

<sup>20</sup> U.S. Dep’t of Labor, Employment and Training Administration, Training and Employment Guidance Letter No. 14-08 (March 18, 2009). Available at: <http://wdr.doleta.gov/directives/attach/TEGL/TEGL14-08.pdf> (pg. 16)

In order to create strong incentives for using the strategies outlined in this proposal, we recommend that the DOL reserve a substantial portion of WIA funding and potentially extend other funding such as National Emergency Grants (NEG's) to projects or states that adopt the targeted hiring and pre-apprenticeship approach.

An equally urgent priority should be finding ways to help more DBE's participate in apprenticeship, which is widely recognized as one of our nation's best workforce development systems. Because most of the quality apprenticeship programs nationwide are operated by unionized employers together with their construction unions, the best way for contractors to participate in apprenticeship is by operating as unionized employers. However, paying the middle-class wages and benefits that this entails requires a level of financial stability and capitalization that historically has been difficult for many DBE's to achieve.

We believe that these challenges can be overcome and that doing so should be a top priority for the administration. In principle, cost should not be an obstacle here since the costs of paying for apprenticeship training – and of a full package of middle-class wages and benefits – are already included in the prevailing wages that must be provided by all contractors working on federally funded construction projects covered by Davis-Bacon and its related acts. The DOL should evaluate the problem and develop a pilot program for providing technical assistance and creative financing to help more DBE's participate in quality apprenticeship programs.

**d. Develop Government-wide Guidance Promoting the Use of Targeted Hiring and Apprenticeship**

The administration should instruct the Office of Management and Budget (OMB) to provide government-wide guidance and coordination to facilitate agency action on the recommendations outlined above. Specifically, this guidance should address: immediate agency steps to encourage and affirm the permissibility of targeted hiring and apprenticeship; and medium term action to develop mandates or strong incentives for their use, and to dismantle any obstacles to such policies that currently exist.

**e. Strengthen Enforcement of Existing Targeted Hiring Policies**

Our proposal would complement existing federal targeted hiring requirements, and should be combined with aggressive efforts to strengthen their enforcement. The most important of these is Executive Order 11246, which establishes race- and gender-based<sup>21</sup> goals for affirmative action hiring on federally funded projects. Enforcement of EO 11246 atrophied under the Bush administration. The President should direct DOL's Office of Federal Contract Compliance Programs (OFCCP), which coordinates the order's enforcement, and the federal agencies to ensure that EO 11246 is rigorously implemented on ARRA-funded projects, in tandem with promoting targeted income-based hiring and apprenticeship utilization.

Another existing federal targeted hiring policy is Section 3 of the HUD Act of 1968, which mandates hiring of low and very low-income persons on HUD-funded state and local

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<sup>21</sup> In 1967, President Johnson amended EO 11246 to include women. Exec. Order No. 11375, 32 Fed. Reg. 14303 (1967).

construction projects.<sup>22</sup> Section 3 has rarely been implemented effectively. However, some of the few successful implementation efforts have been those – such as New York City’s CM/Build program – that have combined targeted hiring with apprenticeship.<sup>23</sup> Our proposal would therefore dovetail with Section 3, and should be combined with instructions to HUD that it strengthen its enforcement and implementation of Section 3 by combining aggressive Section 3 targeted hiring goals with apprenticeship utilization requirements. To do this, we propose that HUD revise and strengthen its Section 3 implementing regulations. In that process, HUD should also identify statutory changes needed to improve Section 3’s effectiveness.

## **5. Conclusion**

Thank you for your consideration of the proposal presented in this memorandum. We believe that the administration can ensure that federally funded construction projects deliver quality jobs for low-income communities and/or underrepresented populations by promoting the combination of targeted hiring and quality apprenticeship training that has proven so effective at the state and local levels. These approaches bring key stakeholders together towards the common goal of building paths to sustainable construction careers while promoting quality employment practices in the construction industry. We look forward to working with the administration to develop this proposal further and to tailor these approaches to the needs of individual federal agencies.

For more information, contact Steve Savner at the Center for Community Change at [ssavner@communitychange.org](mailto:ssavner@communitychange.org) or 202-339-9312.

The following organizations have endorsed this proposal:

Alameda Corridor Jobs Coalition  
Alliance to Develop Power  
ARISE  
CASA de Maryland, Inc.  
Center for Community Change  
Center for Law and Social Policy - CLASP  
Central Illinois Organizing Project – CIOP  
Chicago Coalition for the Homeless  
Chicago Workers Collaborative  
Coalition on Human Needs  
Community Voices Heard  
FACE  
Gamaliel Foundation  
Gamaliel of Georgia  
- ABLE  
Gamaliel of California  
- Genesis

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<sup>22</sup> See 12 U.S.C. § 1701u

<sup>23</sup> See supra note 14.

- JOB
- CAUSE

Gamaliel of Illinois

- SSAC
- Pilsen Neighbors
- Gamaliel of Metro Chicago
- United Congregations Of Metro East

Gamaliel of Michigan

- MOSES
- EZEKIEL
- JONAH
- ISAAC

Gamaliel of Virginia

- Empower Hampton Roads

Green for All

Half in Ten

Illinois Coalition for Immigrant and Refugee Rights – ICIRR

InterValley Project

ISAIAH

Maine People’s Alliance

National Employment Law Project – NELP

National Training and Information Center/National People's Action

National Women’s Law Center

OneAmerica

Partnership for Working Families

PICO National Network

PolicyLink

Progressive Leadership Alliance of Nevada - PLAN

Transportation Equity Network

Wider Opportunities for Women – WOW

WISDOM

- CUSH
- ESTHER
- JOB
- JOSHUA
- MICAH
- RIC
- SOPHIA