

DATE: February 16, 2022

TO: Interested Parties

FROM: Brownstein

RE: Summary of White House Task Force's Report on Promoting Working Organizing and Collective Bargaining

I. Overview

On Monday, Feb. 7, the White House Task Force on Worker Organizing and Empowerment ("Task Force") released its [Report](#) that includes nearly 70 recommendations to promote worker organizing and collective bargaining for public and private sector employees. The Task Force is led by Vice President Kamala Harris as chair and Labor Secretary Marty Walsh as vice-chair, and the recommendations were developed in collaboration with over 20 executive agencies, departments and White House offices.

Much of the Report focuses on federal contractors and the federal government as an employer. The report's recommendations do not have an immediate impact on most private sector employers. Instead, it directs federal agencies and departments to take steps toward removing barriers that may impede unions' ability to organize workers and educating workers on their organizing rights. It is unclear how federal agencies will proceed and the timeline to implement the recommendations is not immediately clear.

Included below is:

- Background
- Summary of select Task Force recommendations for federal contractors
- Summary of select Task Force recommendations that may be of interest to private employers
- Impact on private employers and next steps

II. Background

The Task Force and Report were the result of the April 26, 2021, [Executive Order \(EO\) 14025](#) titled, "Worker Organizing and Empowerment." The Executive Order established the Task Force and directed it to "identify executive branch policies, practices, and programs that could be used, consistent with

applicable law, to promote [the] Administration’s policy of support for worker power, worker organizing, and collective bargaining.”

As set forth in the Report, the Task Force’s recommendations are designed to:

- Position the federal government as a “model actor.”
- Use the federal government’s authority to support worker empowerment by providing information, improving transparency, and ensuring existing pro-worker services are delivered in a timely and helpful manner.
- Use longstanding authority to leverage the federal government’s purchasing and spending power to support workers who are organizing and pro-worker employers.

The nearly 70 recommendations are divided into four categories:

- (1) Federal Employees: Making the Federal Government a Model Employer;
- (2) All Employees: Increasing Visibility, Support, Awareness, and Promotion of Collective Bargaining;
- (3) All Employees: Ensuring Effective Enforcement of Existing Laws; and
- (4) All Employees: Developing Research and Collecting Data to Advance Worker Organizing and Empowerment.

The recommendations are intended to “address many of the obstacles workers face,” including difficulties gaining access to union organizers at their workplaces; threats and instances of retaliation by employers against workers exercising their rights; a lack of awareness of their rights to organize and bargain collectively; and roadblocks for workers trying to secure help from federal agencies in protecting these rights.

III. Summary of Select Task Force Recommendations for Federal Contractors

Below are select recommendations included in the Report that may be of interest to federal contractors:

Ensure Union Organizers Access to Private-Sector Contractors’ Employees on Federal Property. The Task Force recommends the General Services Administration’s (GSA) Office of Government-wide Policy and the Office of Management and Budget (OMB) consider revising the Federal Management Regulations (FMR) to make clear that worker organizing and collective bargaining among employees of contractors working in federal government facilities are not covered or restricted by the general prohibition on soliciting, posting and distributing materials under the jurisdiction, custody or control of GSA.

Union Eligibility for Federal Grants. The Task Force recommends OMB (1) use existing mechanisms such as training and issues alerts to clarify that labor unions should not be inappropriately excluded from

grant and various other federal funding opportunities, where appropriate, such as certain service contracts; (2) work to make changes to the reporting mechanisms for financial assistance programs to update the list of eligible recipients to explicitly include labor unions; and (3) work with agencies to ensure that labor unions can participate in appropriate grant and other federal funding opportunities on a fair and equal basis with other nonprofit organizations.

Attach Certain Labor Standards Regarding Job Quality/Made in America to Federal Grants. The Task Force recommends the Domestic Policy Council (DPC), in coordination with the DOL, OMB and the National Economic Council (NEC), develop a list of job quality metrics and use said metrics to improve job quality for federal contractors. The Task Force also recommends that OMB maximize domestic sourcing by strengthening Made in America Standards and close loopholes in Made in America laws. Made in America laws come from President Biden's [EO 14005](#), Ensuring the Future is Made in America By All of America's Workers.

IV. Summary of Select Recommendations of Interest to Private Sector Employers

Below are select recommendations included in the Report that may be of interest to private sector employers:

Facilitate First Contracts for Employers Who Organize. The Task Force recommends that President Biden instruct the Federal Acquisition Regulatory Council (FAR Council) to require contractors to undergo training and mediation through the Federal Mediation and Conciliation Service (FMCS). The Task Force also recommends President Biden encourage the National Labor Relations Board (NLRB), FMCS and the Federal Labor Relations Authority (FLRA) to offer the FMCS' services in mediating a first contract and training in first contract negotiations.

Improve Transparency of Anti-Union Campaigns by Employers. The Task Force states that in 75% to 80% of union organizing campaigns, employers engage in "persuader" activity, which is when employers hire third-party consultants to develop communications and campaign strategies designed to defeat the organizing drive. The Task Force recommends the Department of Labor (DOL) review its rules and policies on persuader reporting and take all appropriate actions to strengthen its rules and enforcement to ensure maximum compliance and reporting of persuader activity. The Task Force also recommends federal contractors file persuader reports to disclose that they are a federal contractor so that federal contracting agencies are aware of the reports and ensure that federal monies are not spent on persuader activities, consistent with a [2009 EO](#).

Select Industry Recommendations

Department of Defense Verification of Posting of Organizing and Bargaining Notice. The Task Force recommends the Department of Defense (DOD) emphasize and verify that its contractors

comply with regulations regarding notification of employee rights under the National Labor Relations Act (NLRA).

Increase Awareness of Employee Rights among Head Start Staff. The Task Force recommends the Department of Health and Human Services (HHS) develop and implement a campaign targeted to increase awareness and knowledge among Head Start staff of their rights to organize and bargain collectively under federal labor law and Head Start rules.

Inform Farmworkers about Their Right to Join a Union at USDA Farmworker Housing Facilities. The Task Force recommends that the Department of Agriculture's (USDA) Rural Housing Service encourage its farm labor housing grantees to share information about the right to organize and bargain collectively. The Task Force also recommends the USDA ensures that its grantees do not discriminate against individuals based on their membership or participation in a labor union, worker organizing or collective bargaining.

Connect Small-Business Owners with Resources on Unionization. The Task Force recommends that the Small Business Administration (SBA) assemble a resource guide for small businesses, in partnership with the DOL, FMCS and the National Labor Relations Board (NLRB) to inform small-business employers of their obligation to respond legally and fairly to worker organizing and provide an overview of additional resources and trainings for employers.

Launch a Know Your Rights Initiative on the Rights to Organize and Collective Bargaining. The Task Force strongly encourages the NLRB, FLRA, FMCS and National Mediation Board (NMB) to prioritize expanded outreach at the national and regional level, particularly to young workers and underserved communities, and post updated, visible and accessible materials on agency websites and social media platforms about workers' organizing and bargaining rights. The Task Force also recommends that the GSA facilitate informative training or listening sessions for federal contractors' employees about the benefits of collective bargaining and unions. GSA may use speakers from local unions, labor councils and other labor organizations, and provide access to GSA's existing platforms such as Industry Day, fairs and conferences, when possible.

Reduce Administrative and Tax Burdens on Workers Joining Unions. The Task Force recommends HHS prioritize rulemaking on automatic deductions for benefits from Medicaid provider payments and timely proceed with reviewing the record and developing a final rule. The Task Force also recommends that the Office of Tax Policy at the Treasury Department review recent proposals to identify those policies that are relevant to, and could be used to advance, the Task Force's mission, and to identify and evaluate additional proposals to be included in next year's Green Book.

Improve Coordination and Cooperation on Anti-Retaliation Enforcement. The Task Force recommends the DOL and NLRB update and strengthen their Memoranda of Understanding and make all necessary changes to ensure that workers alleging retaliation when they are engaged in concerted

activity receive the full protection of the law. The DOL and other relevant agencies should strengthen their coordinated efforts to make referrals to ensure that workers are protected against retaliation when they are involved in a labor dispute.

Support Enforcement of Labor and Employment Standards. The Task Force instructs the Department of Homeland Security (DHS) to develop and implement immigration enforcement policies that facilitate the DOL’s work (and other sister agencies) to protect organizing and collective bargaining rights and enforce wage, workplace safety and other standards. The Task Force also recommends longer-term undertakings to DHS, including to (1) conduct a comprehensive departmentwide policy review to ensure that DHS policies support the enforcement of employment and labor standards, including the rights to organize and bargain collectively; and (2) develop component plans to ensure that victims of, and witnesses to, labor exploitation and unfair labor practices are unafraid to cooperate with law enforcement in its investigation and prosecution of unscrupulous employers.

Prevent and Address Worker Misclassification. The Task Force directs the DOL to prioritize action to prevent and remedy the misclassification of workers as independent contractors through (1) rigorous enforcement, (2) partnerships with other relevant federal and state agencies, such as the Internal Revenue Service and the Department of Transportation, (3) guidance, rules and/or education for employers and workers, as needed, and (4) robust outreach to workers, employers, unions and worker advocates.¹

Davis-Bacon Regulatory Reform. The Task Force recommends that the DOL prioritize review of its Davis-Bacon and Related Acts regulations, which generally require contractors on federal or federally funded contracts to pay the federally determined prevailing wage. The Task Force also instructs the DOL to propose improvements to ensure that contractors pay the required prevailing wage.

Encourage the Use of Project Labor Agreements. The Task Force recommends the use of Project Labor Agreements (PLAs). A PLA is essentially a collective bargaining agreement with a union regarding an individual construction project.²

Encourage the Establishment of Union Apprenticeship Programs. The Task Force recommends the issuance of an EO that, consistent with applicable law, would establish targets or preferences for the use of registered apprenticeships and training for recipients of federal funds. The Report highlights that unions are eligible grantees of the American Rescue Plan Act’s (ARPA) “[Good Jobs Challenge](#),” which

¹ On Jan. 4, the DOL’s Wage and Hour Division and the NLRB released a [memorandum of understanding](#) detailing their agreement to collaborate on investigations and share information on potential violations of law, specifically targeting independent contractor misclassifications and retaliation against workers. Also, on Dec. 27, 2021, the NLRB [announced](#) that it will reconsider its test for determining independent contract or employee status.

² On Feb. 4, President Biden signed an [EO](#) mandating the government enter into PLAs with labor unions, setting pay and conditions for federal construction projects that cost more than \$35 million.

may be used for starting or scaling apprenticeship programs. With ARPA funding, the Economic Development Administration (EDA) within the Commerce Department established a \$500 million Good Jobs Challenge, which is designed “to help get workers in America back to work by establishing or strengthening sector-based partnerships that bring employers who have hiring needs together with other key entities, including training partners, unions, community-based organizations, and others.”

Evaluate Union Suitability as Lead Applicants, or Partners, on Department of Labor Grants. The Task Force recommends the DOL review all of its grants to determine whether there are any legal barriers preventing unions from being lead applicants. Where there are no legal barriers, the DOL should explicitly name unions as potential lead applicants in grant solicitations when doing so would be consistent with the grant’s purpose, activities and goals. The DOL should also use its existing authority to establish application selection criteria that preference applicants that demonstrate commitment to worker organizing, collective bargaining and union engagement, where consistent with the DOL’s legal authority.

Ensure Unions Have a Seat at Many Federal Advisory Tables. The Task Force recommends that all federal agencies include, as appropriate, labor unions in advisory committee membership balance plans and conduct more outreach to labor unions about opportunities to submit nominations to serve on advisory committees.

Establish an Integrated Data Approach. The Task Force recommends that the DOL and OMB explore the feasibility of establishing an integrated data approach to employer violations of the laws enforced by DOL, including the possibility of securing Technology Modernization Fund (TMF) funding for the project.

V. Impact on Private Sector Employers and Next Steps

The release of the Report is the latest action in furtherance of President Biden’s campaign promise to increase union access and collective bargaining in the public and private sectors. So far, the Biden administration has had little luck in furthering its agenda on the legislative front. For example, while the House Democrats passed the Protecting the Right to Organize Act (PRO Act), [H.R.842](#), earlier last year, it is unlikely to pass in the Senate given the lack of Republican support, as well as concerns from key Democrats.

The release of the Report signals the Biden administration’s intent to advance its agenda through EOs and regulatory action. However, the Report does not have any immediate impact as it relates to private employers who are not federal contractors. As a result, the impact on private employers that are not federal contractors will likely be limited to the issuance of guidance relative to increased worker access to union materials and awareness of their right to organize. Private employers may also expect the following:

- Pressure to receive training from FMCS in first contract bargaining and to utilize FMCS to broker a first contract.
- The NLRB and other agencies to affirmatively reach out to workers about their rights to organize.
- Increased scrutiny of independent contract classifications. This has already taken form via the aforementioned memorandum of understanding released by the DOL and NLRB.
- Increased scrutiny of “persuader” activity.

The DOL intends to play a critical role in assisting the Task Force in achieving its mission. In its [announcement](#) in support of the Report, the DOL stated that it will work across agencies to implement the following recommendations:

- Ensure workers know their organizing and bargaining rights.
- Protect workers who face illegal retaliation when they organize and stand up for workplace rights.
- Establish a resource center on unions and collective bargaining.
- Shed light on employer’s use of anti-union consultants.
- Collect and report more information on unions and their role in the U.S. economy.
- Advance equity across underserved communities by supporting worker organizing and collective bargaining.

When and how these recommendations will in fact be implemented is yet to be determined and Brownstein will continue to track the Biden administration’s efforts on implementing the Report’s recommendations. In addition, the Task Force has indicated that it will submit another report in six months detailing the progress in implementing the recommendations.