

## Policy Paper

# The Vulnerable American Worker

## Our contingent workforce exposes weaknesses in the American social contract

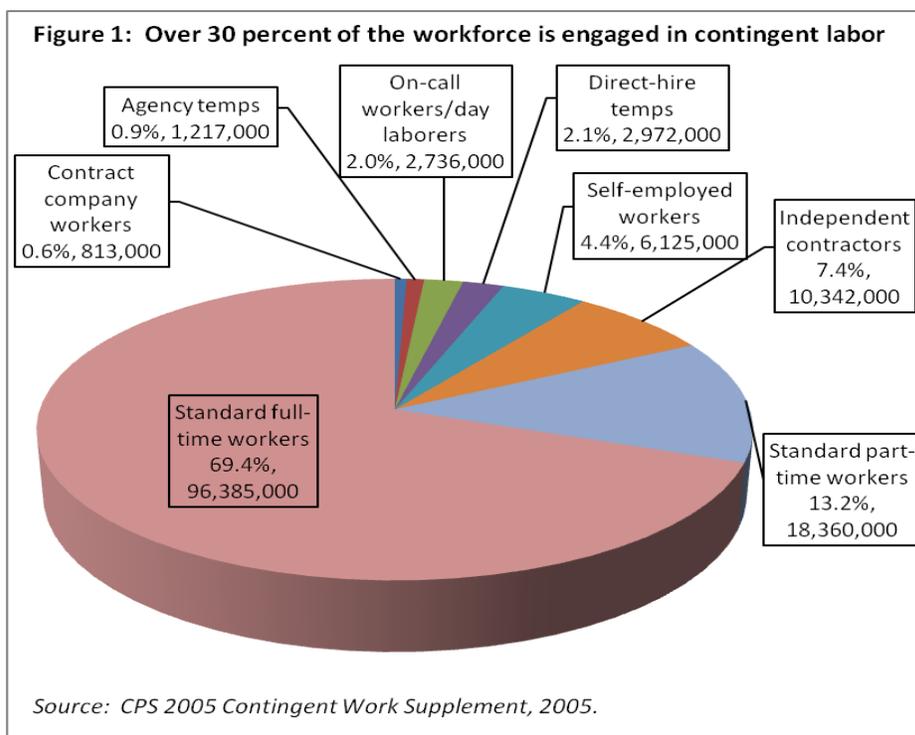
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Over 30 percent of American workers are engaged in ad-hoc, contract-based employment, known as contingent or precarious labor, instead of traditional employer-employee relations. These contingent workers take on more risk in terms of both their income and retirement security, and often do not have access to traditional employer-based protections and benefits meant to provide a safety net to Americans. This erosion of our social contract and its impact on both workers and government revenues are explored in this policy brief, followed by an outline of policy recommendations to decrease the vulnerability of the contingent American workforce.

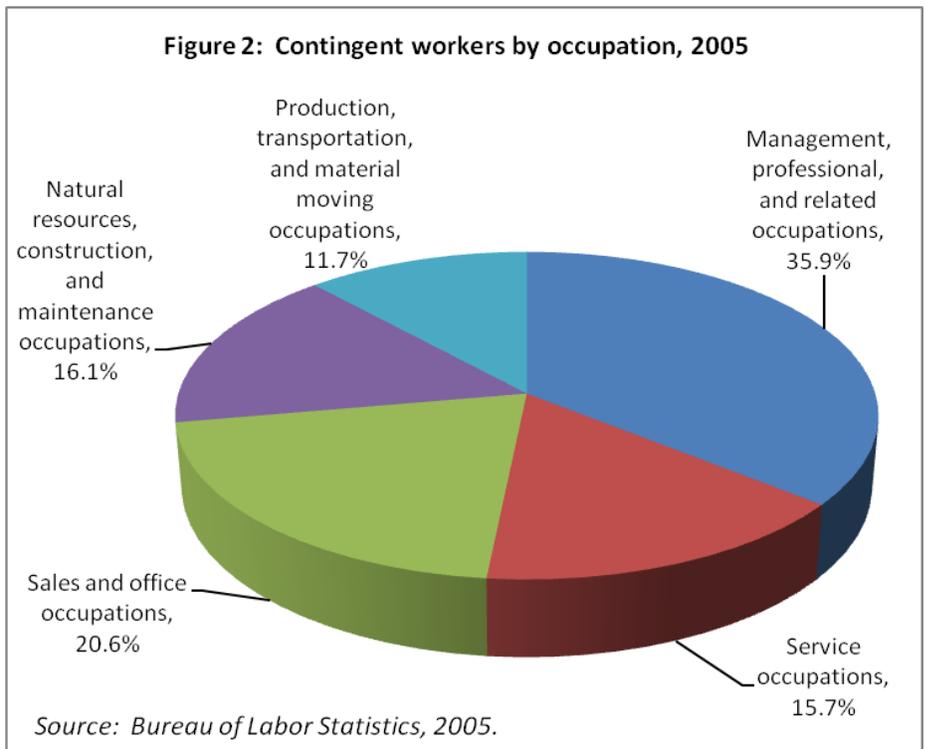
### Profiling the precarious labor industry

Contingent workers, or workers without an implicit or explicit contract for ongoing employment, represent about 31 percent of the American workforce, or 47.7 million people in 2010.<sup>1</sup> This percentage remained relatively constant for the years during which the contingent workforce was tracked, from 1995 – 2005.<sup>2</sup> The GAO defines eight categories of contingent workers: agency temporary workers (temps), direct-hire temps, on-call workers, day laborers, contract company workers, independent contractors, self-employed workers, and standard part-time workers. Standard part-time workers are the largest segment of the contingent workforce, as shown in Figure 1.

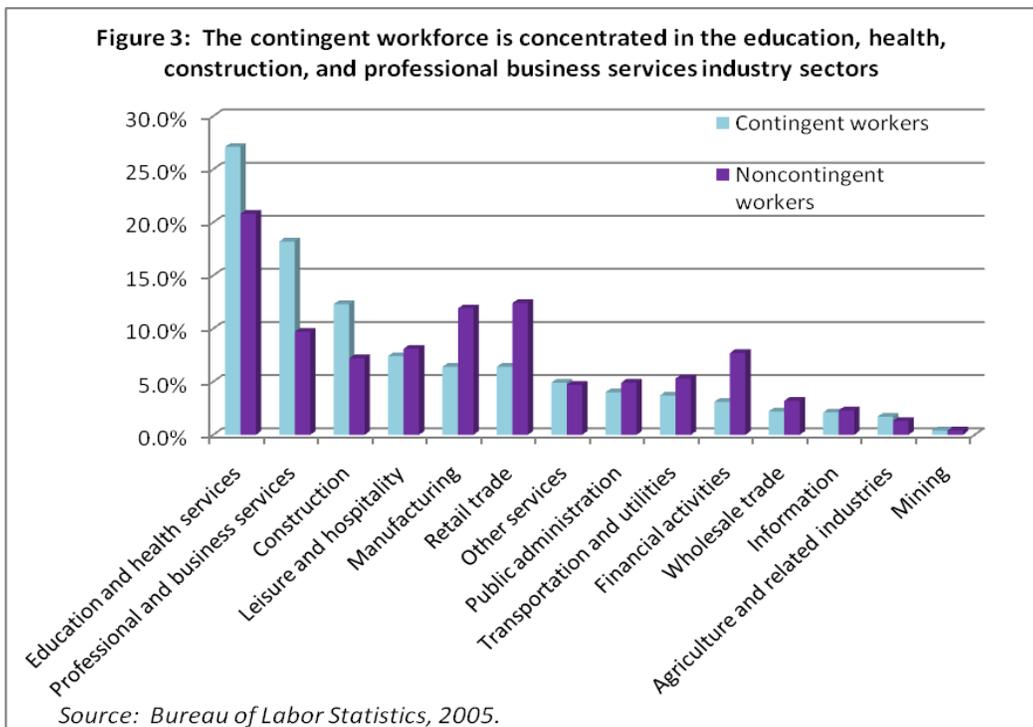


As Figure 2 shows, almost 36 percent of these workers are in professional, management occupations providing, for example, financial operations support. Another 20 percent work in sales and office administrative support roles. When industries are compared (Figure 3), education and health services alone represent 27 percent of the contingent workforce.<sup>1</sup> Together, the education and health services, professional and business services, and construction sectors account for almost 58 percent of all contingent workers, but only represent 38 percent of all workers engaged in traditional employee-employer relations.

### Why use contingent labor?



Although contingent labor allows businesses to increase or decrease staff and employment costs on a flexible, ad-hoc basis and to screen workers for permanent positions, the savings in benefits costs is a main reason firms decide to use contingent labor.<sup>3</sup> This is because the Fair Labor Standards Act and the Employee Retirement Income Security Act only cover workers classified as employees,



the state of which has been broadly defined as a worker being economically dependent upon the business the employee serves.<sup>4</sup> Contingent workers are not classified as employees, and are not covered by these protections. Employers are thus incentivized to use contingent workers to decrease the cost of labor: avoiding income taxes, Medicare and Social Security taxes, and other employer-tied benefits such as healthcare premiums and pension programs can save businesses over 30 percent of

<sup>1</sup> The BLS Contingent Work Supplement 2005 did not separate education (NAICS 61) from health services (NAICS 62), although most contingent workers are probably concentrated in low-skill health service positions such as home health aides. Teacher assistants and other class aids and temporary or substitute teachers may make up the majority of contingent workers in the education segment.

traditional labor costs on average.<sup>5</sup> Contingent workers may also be purposefully misclassified by their employers to avoid paying benefits, or they may work in the grey market for cash payments.<sup>6</sup>

<b>Table 1: Key federal and state agencies that may be affected by contingent labor</b>		
<b>Entity</b>	<b>Law</b>	<b>Areas potentially affected by employee misclassification</b>
<b>U.S. Department of Labor</b>	Fair Labor Standards Act	Minimum wage, overtime, and child labor provisions
	Family and Medical Leave Act	Job-protected and unpaid sick leave
	Occupation Safety and Health Act	Safety and health protections
<b>U.S. Department of Treasury - Internal Revenue Service</b>	Federal tax law, including:	Federal income and employment taxes
	Federal Insurance Contributions Act	
	Federal Unemployment Tax Act	
	Self-Employment Contributions Act	
<b>U.S. Department of Health and Human Services</b>	Title XVIII of the Social Security Act (Medicare)	Medicare benefit payments
<b>DOL/IRS/Pension benefit Guaranty Corporation</b>	Employee Retirement Income Security Act	Pension, health, and other employee benefit plans
<b>Equal Employment Opportunity Commission</b>	Title VII of the Civil Rights Act	Prohibitions of employment discrimination based on race, color, religion, gender, and national origin
	Americans with Disabilities Act	Prohibitions of discrimination against individuals with disabilities
	Age Discrimination in Employment Act	Prohibitions of employment discrimination against any individual 40 years of age or older
<b>National Labor Relations Board</b>	National Labor Relations Act	The right to organize and bargain collectively
<b>Social Security Administration</b>	Social Security Act	Retirement and disability payments
<b>DOL/State agencies</b>	Unemployment insurance law	Unemployment insurance benefit payments
<b>State agencies</b>	State tax law	State income and employment taxes
	State workers' compensation law	Workers' compensation benefit payments

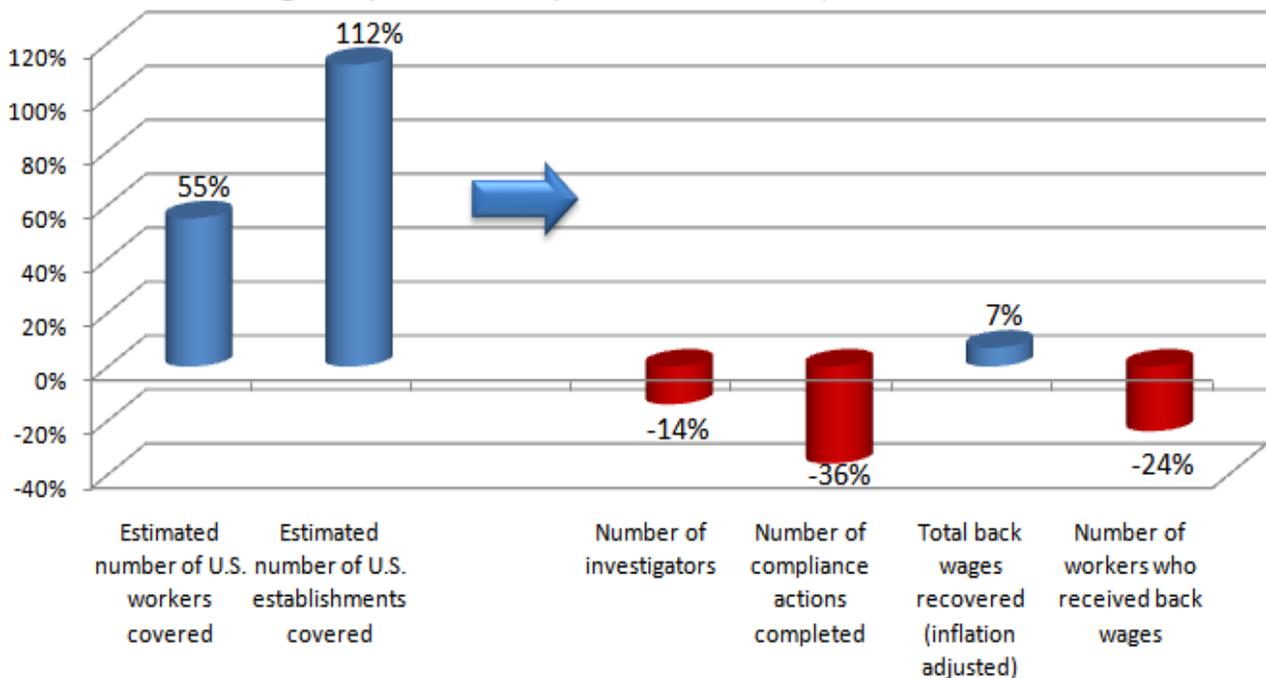
Source: GAO-06-656, 2006

Fully 30 percent of the American workforce lacks access to unemployment insurance, workers' compensation, overtime, vacation, minimum wage, health and safety regulations, family and medical leave, and lose out on contributions to their individual Social Security entitlements. Above, Table 1 shows the full range of laws by which contingent workers are often not protected, as determined by the Government Accountability Office.

These labor protections are meant to balance bargaining power in employer-employee relationships, but in the American workplace, even the workers who are protected by labor laws may find it difficult to benefit from this coverage. Americans work in a system which depends upon complaints, instead of audits, to trigger labor law enforcement: about 80 percent of the DOL's Wage and Hour Division inspections are driven by complaints.<sup>7</sup> Complaining about working conditions can be costly for individual workers, most importantly in terms of the risk of job loss. As a result, there is massive divergence between worker complaints versus employer compliance with workplace legislation – especially in unskilled and low-wage sectors – and this is among employees covered by U.S. labor laws.<sup>8</sup> The presence of an advocate in the workplace – traditionally a union – can make low-skill and contingent workers more likely to exercise their rights.<sup>9</sup> But contingent workers, who are often already insecure in their positions and rarely have an advocate, have even less bargaining power and therefore bear even more risk in 'rocking the boat'.

For example, personal care is dominated by contingent labor relations, as was shown in Figure 3. It also has one of the highest rates of overtime pay violations and the highest rate of violations of OSHA (the Occupational Health and Safety Administration) standards relative to complaints.<sup>10</sup> Employees in the sector are not being paid in accordance with the Fair Labor Standards Act and they are being injured on the job in violation of OSHA regulations, but they are still not filing complaints. This is likely related to both the low-skill nature of personal care work and the high incidence of contingent labor relations in the sector.

**Figure 4: Growth in U.S. workers and companies versus declines in enforcement of labor rights by the U.S. Department of Labor, 1975-2004**



Source: Brennan Center for Justice, 2005.

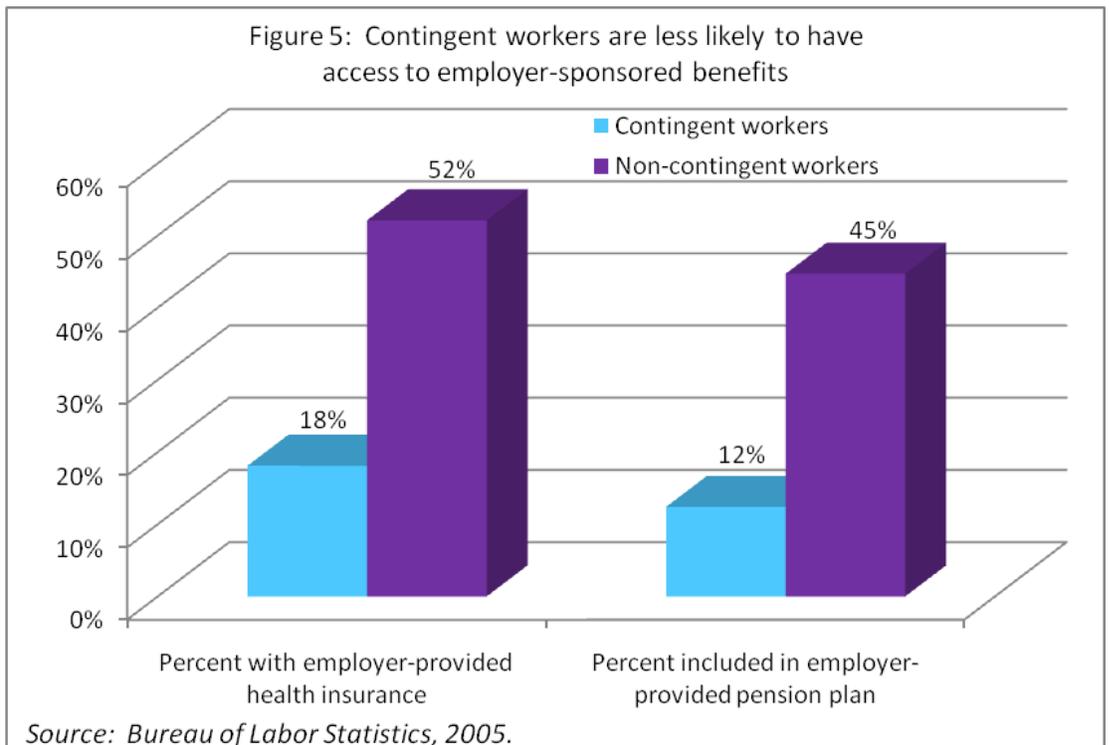
To make matters worse, the use of contingent labor – and potentially vulnerable workers – has been accompanied by decades of declining enforcement of basic labor rights.<sup>11</sup> The Government Accountability Office reports that from 1997-2007, enforcement actions decreased by more than a third, partially due to a decrease in staffing by more than 20 percent in the same period.<sup>12</sup> Figure 4 shows the growth in workers and companies relative to the shrinkage in enforcement by the U.S. Department of Labor’s Wage and Hour Division from 1975-2004, creating a massive gap into which vulnerable workers can fall.

Indeed, government studies of employers of low-wage workers have found that 50 to 100 percent of employers in the garment, nursing home, and poultry industries are in violation of wage and working hour protections.<sup>13</sup> Many contingent workers are also low-wage, but not covered, as discussed above, and one could reasonably expect even more widespread exploitation by employers who have no fear of legal recourse for poor conditions or violations of contracts.

Even higher-wage contingent workers, specifically well-educated independent contractors, find it difficult to collect the wages they are owed because they have no recourse to legal action. One survey of over 3,000 freelancers with a median gross income of \$43,000 found that over 40 percent had difficulty collecting their agreed-upon payments on time, and 33 percent never received payment from at least one client in 2009.<sup>14</sup>

In addition to losing legal protections and missing out on opportunities to build Social Security contributions, contingent workers often do not have access to health and pension benefits. The misclassification of employees as independent contractors alone deprives 80,000 workers of benefits each year.<sup>15</sup> As Figure 5 shows, contingent workers are less than half as likely as traditional workers to have access to employer-provided health insurance or pension plans.

Lack of access leads to lack of coverage: only about 50 percent of contingent workers enjoy health insurance coverage, compared to almost 80 percent of traditional employees. Almost half of independent contractors state that their biggest worry is lack of affordable health insurance, and 53 percent changed or gave up their health insurance due to lack of affordability in 2009.<sup>16</sup>



However, during times of job insecurity may be when workers most need reliable health insurance coverage. Job insecurity is associated with negative impacts on both physical and mental health. Contingent workers are more likely to be injured, exposed to

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hazardous conditions, and sexually harassed at work.<sup>17</sup> The threat of losing one's job also creates insecurities about income, social contacts, daily routines, skill development opportunities, and social status,<sup>18</sup> and it is therefore unsurprising that precarious work is associated with greater instances of depression and anxiety.<sup>19</sup>

In sum, contingent forms of labor have led to less income and job security for Americans. Contingent workers are more vulnerable to abusive employer practices when not covered by labor legislation meant to transfer bargaining power toward and protect workers.<sup>20</sup> In addition, they bear the full weight of providing benefits for themselves and their families, which has the effect of shifting both responsibility and risk onto workers. As a result, contingent workers – specifically the 76 percent who are not independent contractors – are not necessarily happy with their employment situation.<sup>21</sup> According to the 2005 Current Population Survey, about 63 percent of employed contingent workers would prefer non-contingent work.<sup>22</sup>

## Contingent work undermines government revenues

This often-precarious labor comes at a cost not only to workers in terms of lost labor protections and benefits, but also to state and federal tax coffers. This can be due to the different reporting and withholding requirements for contingent workers, to misclassification by the employer, and to the weak enforcement of labor regulations by the U.S. Department of Labor.

The misclassification of employees as independent contractors and its impact on government revenues has been examined more than that of other forms of contingent labor. The most frequently-cited study used by the IRS, known as SVC-1<sup>23</sup>, determined that about 15 percent of employers misclassified employees as independent contractors.<sup>24</sup> A more recent study commissioned by the U.S. Department of Labor found that the rate of misclassification may be highly variable by state: about 9 percent of employers misclassified some of their employees in New Jersey, but fully 42 percent misclassified workers in Connecticut.<sup>25</sup>

Independent contractors report 22 to 50 percent less income than the average reported in traditional employee-employer relationships.<sup>26</sup> This leads to significant revenue losses for the government, amounting to an estimated \$1.6 billion in tax year 1984 (current value, about \$5.8 billion<sup>27</sup>). The impact of independent contractor misclassification on Unemployment Insurance (UI) alone may be 7.5 percent of total UI tax revenue per year.<sup>28</sup> Much of this loss is due to lax classification requirements under Section 530 of the Revenue Act of 1978.<sup>29</sup> However, this may change. In the 2011 budget, the Obama administration has included a proposal to “increase certainty with respect to worker classification” that is estimated to increase revenues by \$6.933 billion from 2010-2020.<sup>30</sup>

The prevalence of contingent labor relations in our current system of benefits hurts everyone. It is bad for workers who are excluded from social safety nets. It is bad for the businesses that engage in traditional labor relations and have increased labor costs compared to firms that push benefit costs onto workers, or worse, misclassify workers and fail to pay UI contributions. And it is bad for governments: contingent labor use lowers federal income tax revenue, decreases UI and Social Security contributions, and may increase contingent workers' dependence upon government welfare assistance in lieu of UI during economic downturns.<sup>31</sup>

## Policy implications

The use of contingent workers only seems likely to increase in the next decade. Contingent workers are concentrated in the education and health services, professional and business services, and construction sectors: precisely the same sectors projected to drive employment growth in the next ten years by the Bureau of Labor Statistics.<sup>32</sup> At the same time, illegal immigration has provided a

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supply of vulnerable low-skill labor willing to work for little pay and with little power to respond to exploitation and abuse.<sup>33</sup> Lastly, globalization will continue to put downward pressure on prices in sectors producing goods and services that compete on the global market, as firms seek to reduce costs to remain competitive.

As businesses continue to turn toward contingent work relations, Americans will continue to be excluded from the social contract, mostly due to the link between employers and social welfare. As it stands, about one-third of our workforce cannot access traditional employer-based health insurance and pension plans. In addition to the cost of independently-purchased health insurance, fluctuating income makes planning difficult, especially for families, who then have no recourse to Unemployment Insurance. Lastly, retirement security can become non-existent for the contingent workforce, as contingent labor cuts into workers' participation in Social Security.

If contingent forms of employment continue to be excluded from our safety net, it may have negative long-term impacts on the health, well-being, and productivity of our workforce.<sup>34</sup> As such, Congress must address the needs of American workers, especially in the context of a Great Recession and jobless recovery. The following five policy recommendations highlight areas that warrant closer examination.

- 1) Our social support system must be expanded to include the entire workforce. A start would be redefining employment in the Fair Labor Standards Act and Occupational Safety and Health Act to ensure contingent workers receive the basic benefits and protections enjoyed by traditional employees, such as minimum wage guarantees, overtime pay, and safety and health regulations of the workplace.
- 2) All Americans need access to affordable health insurance. The new state-based Health Benefit Exchanges should help make coverage more affordable by offering partially-subsidized plans (on sliding scale based on income for those earning 133 – 400 percent of the federal poverty level) to those who do not get health insurance from their employers starting in 2014.<sup>35</sup> Medicaid coverage will be extended to all workers making less than 133 percent of the Federal Poverty Level. Still, implementation is yet to come, and how much the new law improves the situations of contingent workers, especially relative to workers with access to traditional employer-sponsored health insurance, remains to be seen. For now, most contingent workers outside traditional employer-employee relationships must bear the full cost of healthcare alone. Contingent workers – 30 percent of the American workforce – need access to affordable health insurance and should have the ability to deduct premium costs from their income before tax in the same way employers do.
- 3) Contingent work, by its very nature, is less secure than traditional employer-employee relationships, making workers' income more vulnerable to fluctuations in the economy. These workers have a strong need for safety nets during difficult times. Employers should be required to collect and contribute to Unemployment Insurance and Social Security contributions for all workers – including contingent workers – so that the entire workforce contributes to and benefits from our two main sources of income and retirement security, and to avoid placing the entire burden of the social safety net on the worker alone. This expanded coverage, however, must be accompanied by appropriate immigration reforms that punish employers using vulnerable, illegal labor as a way to undercut legal workers and depress labor costs.
- 4) Enforcement of labor rights must be improved to protect vulnerable workers. The Wage and Hour Division needs greater funding to increase the number of inspectors employed and to expand the practice of random audits, especially in industries dominated by contingent labor. The reliance upon complaints (70-80 percent) rather than random audits for inspections is not sufficient to enforce labor protections, especially those of low-wage and vulnerable contingent workers. Improved

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enforcement also includes education for contingent workers about rights, and the availability of an advocate to lower the risk contingent workers bear in making complaints.

- 5) Lastly, gathering information on the contingent work population is integral to understanding the changing needs of the American labor force. However, the Bureau of Labor Statistics discontinued the Contingent Work Supplement in 2005; a supplement only begun in 1997. The Contingent Work Supplement must be renewed in order to provide comprehensive information and understanding about the changing nature of our workforce.

As the American labor market continues to embrace contingent labor, a system in which workers have multiple, changing employers with little or no job security, Congress must initiate policies that begin the transition from employer-based benefits towards a citizen-based social contract.<sup>36</sup>

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## Endnotes

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