Abstract: *The paper considers the role of deregulation in heightening the exploitation of marginalized racialized communities in three case studies: mortgage lending, coal mining, and worker safety protection. The paper concludes that we must protect and better serve undercapitalized and isolated consumers, and we must better protect the safety of our most marginalized workers and the communities that they live in, by laying the infrastructure for a more just and sustainable society for all.*

# The Color of Deregulation: Unequal Opportunity, Uneven Burdens

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## Introduction

We are facing an economic crisis of historic proportions. The subprime lending and foreclosure fiasco, the bailout or collapse of major financial institutions, and the vaporization of retirees' savings and pension plans have left many American families and communities in disarray. The growing acceptance of free-market ideology in public policy obscures the fact of government's influence in shaping and stabilizing the markets that are so critical to our success and sustainability as a nation. Free-market proponents' apparent indifference to individual inequality should not blind us to the presence of group-based, durable inequalities anchored by historically discriminatory policy. Markets are impacted by our history—understanding this history is critical to better understand the varied landscape of opportunity for people and communities.

In this paper, we are concerned with industry deregulation as one of the "roll-back" tools of a free-market agenda and its impact on marginalized communities. By marginalized communities, we mean groups of people who have been historically systematically denied (and continue to be denied) full democratic participation, economic freedom, and full access to the high-quality opportunity structures (a good public education, fair and sustainable credit, meaningful career opportunities) necessary for full participation in American civic life. The Kirwan Institute has a particular focus on racially marginalized groups, but recognizes that processes of exclusion are multiple and entwined; that is, the historical and present lack of opportunity due to gender, geography, religion, able-bodiedness and the like, interact with racial dynamics to result in a quilt of varied opportunity. Our goal is to expand opportunity for everyone to fully participate in American civic, economic, and cultural life by paying particular attention to the policies that either close or open the doors of opportunity to all of our children and families.

We selected three diverse case studies of deregulation of an industry and assessed the impacts of each, from mortgage lending to coal mining to the efficacy of our federal worker protection agency. We found that the means to effect deregulation must be understood robustly. In the case of the financial industry, deregulation was achieved through formal roll-backs of previous legislation. In the case of coal mining practices, existing regulations were flagrantly flaunted or modified to allow harmful practices. In the case of worker protection, economic globalization encouraged the use of immigrant labor as a cheap alternative. In addition, lax enforcement of labor standards by the federal government caused a veritable 'outsourcing' of worker protection to employers and industry occurred.

In each case, although the practices of deregulation varied widely, the outcome was that people of color and poor and geographically isolated communities were disproportionately, although not exclusively, harmed. In fact, many of these disproportionate harms were initially visited on marginalized communities before expanding their harms to their neighbors. By relaxing the protections for workers, consumers, and the environment, deregulation -- whether by rollback, exemption, or reliance on voluntary industry self-regulation -- has made our landscape of opportunity more uneven, and more unreliable for everyone. These case studies clarify that not only must we insist on better protecting the public interest, but we must think carefully about how to effectively regulate industries. Regulatory changes may vary by industry, from formal legislative changes to increased funding for agency inspections to penalties that impact corporate bottom lines.

**Systems thinking and deregulation**

In light of the recent economic crisis, it is more important than ever to understand the implications of globalization and deregulation for ourselves as individuals, our communities, and particularly for our marginalized populations. The rapid pace of globalization has meant increased interconnectedness. Deregulation has softened trade and capital borders, and introduced more complexity to the processes of global economic growth (and recession). Communication, capital, and labor flow rapidly across country and state borders. While complexity and interconnectedness have their rewards, complex systems can be impacted at many different junctures, and one component (such as predatory lending) can trigger a cascading failure. In addition, failures in one domain can have spillover effects into other domains. The foreclosure crisis triggered a worldwide economic recession, which led to widespread layoffs in several major industries. This can mean more families without health insurance and more people at risk for mortgage foreclosures. The fact that information and resources can flow around the globe, and the fact that we are all more connected to one another, means that shocks to one system cannot be contained within that system—this is the nature of systemic risk.

The impact of these systemic booms and busts is not borne equally by all; marginalized communities bear the burden of these globalized, deregulated systems. Case studies of the impacts of financial deregulation, environmental deregulation, and labor safety enforcement outsourcing all bear witness to this disappointing truth. The movement toward an increasingly deregulated economic system has in many instances *heightened* the exploitation of marginalized communities.

In the case of financial deregulation, separate and unequal mortgage and credit markets developed due to previously legal racial discrimination and exclusion. The evolution of our current foreclosure and credit crisis is a result of both historic government policies and market changes.[2] For example, FHA and VA loans spurred suburban development and homeownership growth for the white middle class; financial innovations developed and institutionalized by government, such as fully amortizing mortgages, securitization, and the secondary market expanded homeownership[3] for certain groups of people; and racial discrimination in the real estate market coalesced in the dual credit market, setting the stage for the current crisis. A lack of conventional financial institutions makes these communities prime for "fringe" financial institutions to take root and offer predatory and unsustainable financial services, which can increase the financial hardship of borrowers, and make access to conventional lending much more difficult, as defaults on subprime and predatory loans blemish credit records. Disinvestment in communities causes increases in vacancy and crime, which further choke off investment. And so the cycle continues—two-tier credit systems set the stage for the exploitation of communities of color.

Environmental deregulation has enhanced the vulnerability of Appalachian coal mining communities that struggle with geographic isolation and socio-economic marginalization. Dependant on a coal mining industry that has for decades disregarded the health of the workers and the surrounding environment, these highly vulnerable communities need protection of federal regulators the most. By permitting exemption from certain clean air and clean water regulations, and turning a blind eye to violations of existing regulations—including worker safety and dumping violations—the federal government has effectively prioritized corporate interests over the health and welfare of these communities and their environment. As a result, these communities are plagued by high levels of under- and unemployment, generational poverty, and extreme health disparities.

Globalization and labor deregulation, manifesting in the US largely as a lack of enforcement by the Occupational Safety and Health Administration (OSHA), have converged to undermine previous protections established for American workers, especially in the ability to collectively bargain for safer workplaces and living wages. However, the experiences of various communities within the globalized and deregulated labor market differ greatly. Our marginalized communities of color, especially Latino immigrants, experience labor deregulation in the form of extremely dangerous working conditions, with high disparities in work-related illnesses, injuries, and deaths; below-poverty level wages; and employer threats that effectively silence any attempt to blow the whistle on unsafe conditions. The experiences of workers in the informal economy, who are largely Latino immigrants, are even worse, and largely un-documented. Not only does labor deregulation and economic globalization increase the vulnerability of our marginalized communities of color, but other institutional barriers, such as language proficiency barriers, low educational attainment, and residential segregation further enhance their marginalization.

Historic discrimination has placed communities of color at a distinct disadvantage in this new era of globalization and deregulation. From underpaid immigrant workers suffering intolerable conditions in animal processing operations, to coal mining communities battling the dual burdens of generational poverty and environmental degradation, to families losing their homes to predatory and subprime lending, marginalized populations bear the brunt of an increasingly deregulated global economic system. Public protection of marginalized communities has been seriously compromised as a result of decades of deregulation, and the harms that isolated or racialized communities experienced often spread to neighboring systems and communities. Begun in an era where "personal responsibility" was the accepted mantra, government seems to have put basic protections of the American people in the rear-view mirror.

**Case Study One: The Subprime and Foreclosure Crisis[4]**

In the wake of the foreclosure crisis of the Great Depression, a series of prudent regulations and protective policies were put into place to encourage sustainable homeownership. In general, mortgages had underwriting criteria based upon the borrower's ability to pay. Borrowers were required to make a substantial down-payment (about 20%), and loans were long-term, fixed-rate, and self-amortizing.[5] The Glass-Steagall Act of 1933 separated commercial banks from investment banks, preventing commercial banks from speculation on investments (in other words, protecting public interest over private gain). The Federal Deposit Insurance Corporation was established to provide protection for deposits. These policies ensured a sound system of lending: homeownership rose from 44% in the late 1930s to 64% by the mid-'60s.[6] Government-backed mortgages allowed many moderate-income people the opportunity to acquire their piece of the American dream. Unfortunately, these practices were not fairly extended to people and communities of color. The expansion of homeownership was limited largely to white families through explicit criteria that encouraged all-white neighborhoods in suburban, new housing stock, and devalued or refused to insure integrated, minority, or old housing stock neighborhoods.[7] The legacy of discrimination in lending left low-income and minority communities starved for credit for decades.

Layered on top of this uneven landscape of opportunity came waves of financial deregulation. Beginning in the 1980s and culminating in the Gramm-Leach-Bliley Act in 1999, Congressional legislation effectively dismantled the system of protections—for both banks and borrowers—established in the 1930s. These acts included the Deregulation and Monetary Control Act of 1980 (DIDMCA), which eliminated state interest rate ceilings on home mortgages where the lender has a first lien; the Alternative Mortgage Transaction Parity Act of 1982 (AMTPA), which dismantled state regulations over alternative mortgage transactions; and the Tax Reform Act of 1986, which disallowed consumer tax deductions on credit cards, but allowed tax deductions on mortgage interest. While the intent of the deregulation legislation was to attract global capital to a competitive market and protect depositories from interest rate risk,[8] it also opened the floodgates to unscrupulous practices and incentivized consumers to gamble with their home equity. As Jesus Hernandez summarized,

> "[these] federal financial policies set the condition for the new subprime market to boom. They eliminated the interest rate caps, so you could charge whatever interest rate you wanted. They allowed for adjustable rate mortgages and balloon payments. They overrode local government restrictions on high-cost lending products. They eliminated the tax write-offs on consumer credit, making high cost mortgages less expensive than your credit card…so everybody put the debt onto their house."[9]

Perhaps the most significant piece of deregulatory legislation was The Gramm-Leach-Bliley Act of 1999, which permitted financial conglomerations to form among banks, securities firms, and insurance companies. The Act enabled the rise of a vast and complicated network of lending and brokerage services that operated at a global scale, beyond the scope of U.S. government regulation. Joseph Stiglitz, Nobel Prize winning economist, stated that "As a result [of the Act], the culture of investment banks was conveyed to commercial banks and everyone got involved in the high-risk gambling mentality. That mentality was core to the problem that we're facing now."[10]

In a press release given six months after the beginnings of the financial meltdown, Chairman of the Securities and Exchange Commission, Christopher Cox, had this to say about one outcome of the Gramm-Leach-Bliley Act—the reliance on voluntary regulatory programs:

> The last six months have made it abundantly clear that voluntary regulation does not work. When Congress passed the Gramm-Leach-Bliley Act, it created a significant regulatory gap by failing to give to the SEC or any agency the authority to regulate large investment bank holding companies, like Goldman Sachs, Morgan Stanley, Merrill Lynch, Lehman Brothers, and Bear Stearns.
>
> Because of the lack of explicit statutory authority for the Commission to require these investment bank holding companies to report their capital, maintain liquidity, or submit to leverage requirements, the Commission in 2004 created a voluntary program, the Consolidated Supervised Entities program, in an effort to fill this regulatory gap.
>
> As I have reported to the Congress multiple times in recent months, the CSE program was fundamentally flawed from the beginning, because investment banks could opt in or out of supervision voluntarily. The fact that investment bank holding companies could withdraw from this voluntary supervision at their discretion diminished the perceived mandate of the CSE program, and weakened its effectiveness."[11]

Unfortunately, the Gramm-Leach-Bliley Act also adversely affected CRA requirements. The Community Reinvestment Act (CRA), passed in 1977, was enacted to counteract the legacy of discrimination in lending (i.e., redlining) for low- and moderate-income (LMI) and minority neighborhoods. Federally- insured banks applying to merge or to offer new financial services are measured along several indicators of performance in meeting the needs of LMI and minority neighborhoods. These indicators range from the amount and number of loans made to residents, to quality and flexibility of financial services in meeting resident needs, to meeting the needs of community development and retailers within these communities.[12] If the bank passes these tests, the merger or new product is permitted. Several studies have highlighted the positive impact the CRA has had on low-to-moderate income and minority communities, increasing access to home mortgage credit during the 1990s.[13]

The Gramm-Leach-Bliley Act required CRA compliance reviews every 4-5 years, as opposed to the biannual reviews prior to the law.[14] Longer time periods between CRA compliance reviews may have led to decreased incentives for banks to make commitments and loans to low-income and minority communities.[15] Second, it may have negatively impacted the public comment option for banks undergoing CRA reviews because of 'sunshine provisions' that exposed these community organizations and businesses that received loans to government scrutiny over their own use of the funds.[16] Third, insurance companies and brokerage firms were not required to make investments or loans to low-income and minority communities even though they had expanded into banking services.[17] It is this last consequence that arguably impacted low-income and minority communities the most. Furthermore, substantial decreases in federal support to low- and moderate-income and minority communities during the 1980s compounded the decreased market share of CRA-regulated banks in these communities.

Meanwhile, mortgages were becoming securitized. They were purchased, pooled, and sold to investors on Wall Street.[18] Securitization provided a way for capital markets to finance -- and capture some of the profits from -- large-scale mortgage lending. In an effort to meet growing capital market demand, more loans were issued with little regard for the borrower's needs. In addition, many federal and state consumer protection laws were written before the establishment of privately securitized mortgages.[19] For example, the Truth in Lending Act (TILA) "presupposes a unitary notion of a single individual or business that solicits, documents, and funds a loan; [therefore] the most basic term defining the scope of the act does not reflect the simple reality of typical business practices."[20] More recent legislation, such as The Home Ownership and Equity Protection Act of 1994 (and subsequent state versions of the law), has been criticized for inadequate reach and enforcement.[21] A 2006 study found that "the typical [state] law has little impact on the flow of subprime credit."[22]

The stage was set. In credit-starved minority communities across the country, the deregulated market brought a proliferation of high-cost, predatory lending practices, including payday lending, check cashing stores, and finally, securitized subprime and predatory loans. The maze of transactions involved in modern financial markets left consumers largely without transparent information or -- in a context where you most need one -- an advocate. Researchers from the Joint Center for Housing Studies at Harvard University point out that credit markets violate some free market assumptions, such as transparency of information: "credit markets involve increasingly complex decisions about heterogeneous products that involve probabilistic judgments. Pricing is not transparent, comparison shopping is costly and difficult, and consumer decisions are prone to systematic and predictable errors."[23] When brokers became disconnected from both borrowers and lenders and answered (rationally) to their bonus and incentive structure, consumers sometimes got pitched the worst possible product disguised as a great deal.

In the early 1990s, subprime lending was virtually non-existent. By the end of 2006, over $1 trillion in mortgage loans were subprime, representing 13% of outstanding mortgages nationally.[24] The majority of subprime loans responsible for today's massive foreclosures are held by mortgage companies that fall outside the scope of government regulations.[25] Essentially, financial deregulation helped promote a two-tiered credit system—one prime, one subprime. Responsible, accountable, non-prime lending can be a workable option for lower-income, poor-credit borrowers to access credit. However, a vast majority of subprime loans made were from institutions that were not covered by the CRA.[26] Subprime loans originated with a broker that had high adjustable rates and prepayment penalties substantially elevated the risk of default.[27]

While the foreclosure crisis has impacted every community, low-income and communities of color are disproportionately bearing the burden. Studies in Baltimore and Philadelphia found that neighborhoods that were majority-minority had the highest percentages of subprime loans.[28] The Center for Responsible Lending estimated that 52.4% of subprime loans made in 2006 were to African Americans, compared to 22.2% of subprime loans to whites.[29] Because subprime loans go into default more quickly than prime loans, the impact has been devastating for the already disinvested low-income and minority communities. About 8% of Latino borrowers and 10% of African American borrowers are expected to face foreclosure, compared to 4% of white borrowers.[30] Because homeownership constitutes about two-thirds of African American wealth, the staggering loss of wealth to be experienced by the African American community is estimated at between $164 billion and $213 billion from subprime loans.[31]

But the damage doesn't stop there. It is not only the individual homeowner that faces this financial depletion. Investors, neighbors, and cities all lose out. Investors lose their income streams, neighbors lose their equity as their property values go down, and cities lose their revenue stream from property taxes.[32] This ripple effect literally spread across the globe. As the subprime market for low-income communities of color became saturated, subprime lenders moved to ensnare homebuyers in the suburbs and exurbs as well. As defaults and foreclosures started to rise, banks, both here and abroad, took massive hits from defaults on subprime loans. Housing markets dropped precipitously, and credit tightened. This set of events triggered a global economic recession. The IMF expects the global losses from the financial market crisis, precipitated by the U.S. subprime market collapse, to reach $2.7 trillion.[33]

**Case Study Two: "*De Facto*" Coal Mining Deregulation and Impacts in Appalachia**

Before the subprime crisis spread to suburban and exurban markets and higher-income white communities, eventually affecting global housing and credit markets, it disproportionately harmed low-income communities of color. Similarly, the *de facto* deregulation we see in the coal mining industry initially disproportionately harms low-income, rural and isolated white Appalachian communities before harming entire ecosystems and regions. Whether it is the exploitation of credit-starved African American communities in Cleveland or the disadvantages faced by undereducated and generationally poor families in Appalachia -- often stigmatized as "white trash" -- geographic, racialized and socio-economic marginalization increases isolation from fair and sustainable opportunity structures, like prime credit and a healthy living environment.

Unlike financial deregulation, which involves a formal dismantling of regulations in the financial industry, environmental deregulation is best characterized as *de facto* deregulation. *De facto* deregulation manifests itself in several ways: by turning a blind eye to (or feebly enforcing) existing regulations, or by making exemptions that render legislation ineffective. For example, laws governing the disposal of debris from mountaintop removal practices are routinely flagrantly ignored. The result is that millions of tons of debris are illegally dumped into valleys and streams. Deregulation is also achieved through inadequate enforcement by state and federal agencies of regulations regarding the removal of coal and disposal of waste, as well as of worker safety regulations. Exemption of coal-powered plants from existing regulations allows coal-fired power plants to emit unhealthy and dangerous levels of toxins into the air. As another example, a 1983 statute change allowed the dumping of mining debris within 100 feet of streams, contradicting the purpose of the Clean Water Act. Conceptualizing deregulation only as the "formal" method of rolling back regulations does not clearly capture the myriad ways in which industries can act outside the scope of the public's best interest.

Regulation of the coal industry is effected through the regulation of coal-fired power plants and the regulation of coal-mining practices. Key pieces of legislation relevant to coal mining include the Clean Water Act of 1972, the Clean Air Act of 1977, and the Surface Mining Control and Reclamations Act of 1977. Unfortunately, the coal industry has successfully maneuvered around the law for decades. Not only have they won exemptions from certain regulations, but they have also participated in a history of inadequate enforcement which fails to protect the health of the mine workers and the communities surrounding coal mines.

**Air Quality Regulations**

During consideration of the Clean Air Act in 1977, Congress determined that requiring *every* industry to meet newly established environmental and emissions standards, including older, existing industries, would translate into the loss of billions of dollars' worth of existing facilities.[34] It was believed that the facilities of these older, existing industries had life cycles of their own, and would naturally wear out. At that point, new facilities would be required to meet newly enacted standards.[35] Hence, older facilities were 'grandfathered' – that is, they were not required to meet these new standards. Unfortunately, one of the consequences of this policy was that owners of older industrial plants "invested a disproportionate amount of research and development capital into keeping old plants running rather than pursuing advanced, lower-polluting power-generation technologies."[36] Because these coal plants are not required to meet the clean technology requirements of the Clean Air Act, they are able to produce cheaper energy. Consequently, demand for their services from large industrial consumers – such as mills, manufacturers, and refineries – has increased, and so has pollution.[37]

The cheapest source of power is also, unfortunately, the dirtiest. Increased pollution in the form of smog and soot has dire consequences for human health as it may cause bronchitis, chronic coughs, other respiratory illnesses, and even premature death.[38] Coal-fired power plants are responsible for one-third of the pollution that causes smog;[39] those most vulnerable are the unborn, the young, the old, and those struggling with existing health issues. For example, during the 1997 "ozone season," one report found that smog pollution in the Eastern United States caused more than 6 million asthma attacks.[40] Older coal-powered plants are the largest sources of nitrogen oxide and sulfur dioxide, key components of smog and soot, respectively.[41]

This exemption from the Clean Air Act has allowed older plants to emit as much as ten times the amount of sulfur dioxide and nitrogen oxide as newer plants, and an unlimited amount of mercury and carbon dioxide.[42] If these plants were not exempt from regulations of the Clean Air Act, 75% of sulfur dioxide emissions in 1999 would have been eliminated, and 66% of nitrogen oxide emissions.[43] Another report commissioned in 2004 estimates that almost 24,000 deaths occur every year as a result of particle pollution; 22,000 of these could be avoided by requiring the older plants to cut sulfur dioxide and nitrogen oxide emissions to modern standards.[44] According to James Hansen, NASA climatologist,

> "Coal is not only the largest fossil fuel reservoir of carbon dioxide, it is the dirtiest fuel. Coal is polluting the world's oceans and streams with mercury, arsenic and other dangerous chemicals. The dirtiest trick that governments play on their citizens is the pretense that they are working on 'clean coal' or that they will build power plants that are 'capture ready' in case technology is ever developed to capture all pollutants."[45]

**Mountaintop Removal**

The removal of coal is undertaken through several methods, none of which is particularly environmentally or human health-friendly. These methods include strip mining (i.e. surface mining) and underground mining. The most egregious method of strip mining is "mountaintop removal" (MTR), which involves using millions of pounds of dynamite – an estimated three million pounds of dynamite are exploded per day in West Virginia alone[46] – to literally blast the top of the mountain off. Mountaintop removal is the preferred (i.e., cheaper and easier) mining practice in four primary Appalachian states: West Virginia, Kentucky, Virginia, and parts of Tennessee.[47] It is mostly concentrated in the Central Appalachian region.

Another example of evading legislative aims is seen in the changes to the Clean Water Act. The Clean Water Act of 1972 was established to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." However, in 2002, the Bush Administration enacted changes to Section 404 of the Act that re-defined "fill material" as including debris from mountaintop removal. The changes permitted the Army Corps of Engineers to allow dumping of almost *any* mining waste into streams. This cheap disposal of waste clearly favors industry needs over public and environmental health, and goes against the grain of the Clean Water Act. In fact, earlier mountaintop removal court cases revealed that prior to the amended Section 404, the Corps of Engineers acted outside the scope of their authority, illegally permitting valley fills for years.[48] For example, the EPA reported that in the Appalachian Plateau, iron and manganese concentrations exceeded EPA guidelines in at least 40% of wells in general, and 70% of wells located in proximity to reclaimed surface mines.[49]

Environmental consequences include land and stream pollution, stream loss, and mountain degradation. For example, an EPA study estimated that about 1200 miles of headwater streams were impacted by mountaintop mining between 1992 and 2001, with an estimated 724 miles of stream completely filled by removal practices.[50] Headwater streams are the "starting point" of larger rivers and waterways; the health of the river depends on the health of the headwater stream. The damage of MTR thus extends beyond the immediate communities of the Appalachian region to impact the sources of drinking water for cities hundreds of miles away. The extent of damage is likely underestimated, as there is no comprehensive report documenting the number of mountaintop removal mining permits and valley fill permits. The impact on the Appalachian communities exposed to coal mining is extensive. Joan Mulhern, senior legislative counsel for Earthjustice, reports that,

> The communities below these massive operations are often devastated. People are forced from their homes by blasting (which often cracks their houses' walls and foundations); by dust, noise, flying rocks, and the degradation of stream and well water… Life near mountaintop removal operations becomes so unbearable that generations-old communities are forced to move away.[51]

An effort to determine the extent of MTR practices undertaken by the EPA in 1999 was stalled when Bush took office in 2001. Initially, the EPA goal was "to consider developing agency policies ... to minimize, to the maximum extent practicable the adverse environmental effects" of mountaintop removal."[52] By October 2001, Steven J. Griles, a former mining industry lobbyist, ordered the EPA to focus on "centralizing and streamlining coal mine permitting."[53]

Mountaintop removal practices also evade the intent of the Surface Mining Control and Reclamations Act (1977). SMCRA created two programs: one for regulating active coal mines and a second for reclaiming abandoned mine lands.[54] SMCRA requires that land be returned close to its original form, unless proof can be given for a better use, the most common of which is as a wildlife habitat.[55] However, the act does not prohibit mountaintop removal. It is absurd to think that a mountain with its top lopped off can sustain the native wildlife and vegetation that existed prior to the especially offensive environmental impacts associated with mountaintop removal.

Evidence of inadequate enforcement is also pervasive. The lack of information about mined acreage, active and inactive mines, and inconsistencies in reported data suggest that the Office of Surface Mining Reclamation and Enforcement (OSM) is not adequately monitoring mines.[56] There is also evidence of a lack of inspections: OSM reports over a period of ten years showed that most states were not conducting the appropriate number of mine inspections as prescribed by the SMCRA.[57] As of 2007, the OSM had issued only four 10-day notices of SMCRA violations since 1996.[58]

**Appalachian Communities**

The Appalachian region is a major producer of coal. Three of the eleven major coal producing regions in the United States include the northern, central, and southern regions of Appalachia. Even with the concentration of the coal mining industry within their borders, pockets of communities within Appalachian states are subject to extreme levels of poverty. In fact, as the production of coal has become more efficient, utilizing new technologies, fewer workers have been needed: in 1979, the mining industry provided 35,902 jobs; by 2003, it supported only 13,036.[59] Areas with the highest concentrations of mining, found in Central Appalachia, also have staggering rates of poverty, ranging from 27% to upwards of 46%.[60] In 2000, Central Appalachia had poverty rates that were twice the national averages.[61] Not only are there fewer workers employed by the mining industry, but those that are employed are earning less than in previous decades; current wages are 20% lower than 1985 wage levels, despite the growth in productivity of the industry.[62]

Increased unemployment among families with a history of working in the mines has compounded generational poverty within these same families; many lack high school diplomas, access to safe and decent housing (for example, in 2000, 1.5% of Central Appalachian households had inadequate plumbing, 2.5 times the U.S. average),[63] poor education systems, disparate health outcomes, and the challenges of geographic and economic isolation. In 2004, the Appalachian Regional Commission identified 90 counties as "severely distressed,"[64] out of the region's approximately 400 counties (or about 23%). These counties are disproportionately concentrated in Central Appalachia. Ron Eller, Associate Professor of History and former Director of Appalachian Center at University of Kentucky- Lexington, described the situation of the Appalachian poor as,

> [A] 'placed population,' often tied to a specific geographic place. The larger society, especially in the late twentieth century, assumes that jobs are available anywhere in the country and that people are free to move wherever the jobs may be. That simply is not the case for many of the poor in Appalachia. They don't have the education to be mobile. In many cases they are tied because of a need to take care of a disabled or older relative or tied emotionally to their place.[65]

Health disparities in the Appalachian region are extensive and widespread. Many of these disparities can be attributed to the geographic and economic isolation Appalachians experience, especially rural Appalachians. Poverty, inadequate transportation, and a lack of qualified practitioners combine to create substantial barriers to quality health care.[66] Unemployment is high, and for those with jobs, many do not have health care plans. Many communities are considered "medically underserved" or experiencing a "shortage of health professionals." Rural Appalachians bear a "double burden"— lacking access to quality health care, including primary care doctors, and having severe health issues.[67] The inability to access preventive care means that substantial health issues go undiagnosed for too long.

One study found that rural Appalachians have significantly higher death rates from all types of cancer than the national rates (176.3 per 100,000 population, versus 166.7).[68] This includes both cervical cancer death rates and lung cancer death rates. A study comparing Appalachia Ohio with non-Appalachia Ohio found that Appalachian Ohioans had a 38.6% greater incidence rate of cervical cancer, and a 44.4% greater mortality rate.[69] The study documents higher levels of cancer-related behaviors among rural Appalachians, such as lack of physical activity, higher tobacco smoking rates, poor diet, and obesity.[70] In addition, cancer-related screening is lower in Appalachia Ohio than non-Appalachia Ohio. For example, 82.8% of Appalachia Ohio adults reported ever having a mammogram, compared with 89.8% non-Appalachia; only 79% of Appalachia Ohio adults reported having a Pap smear within the past three years, compared with 86.9% of non-Appalachia.[71] These outcomes are indicative of poor educational opportunities, especially regarding public health.

**Who Bears the Burden of Deregulated Coal?**

*"And if the mine shuts down, you ain't got no job. And if you ain't got no job, you ain't got no food on the table."*

Communities suffering from generational poverty, under- and unemployment, geographical isolation, and poor health are in a poor position to fight the well-resourced fossil fuel industry, and deregulation has only undermined their minimal protections. Mountaintop removal has resulted in barren mountaintops, loss of vegetation and tree cover which increases flooding of communities, polluted water and soil, and degraded quality of life and increased health risks for the nearby communities.

In 2006, the tragedy at the Sago Mine in West Virginia in which 12 miners died ushered in a period of intense scrutiny over the lack of federal enforcement of safety standards. An NPR report revealed $11 million in unpaid fines for safety violations in 2003, which MSHA had failed to collect.[72] Since its opening in 1999, the Sago mine had been cited for hundreds of federal violations, numbering 208 in 2005 alone; 96 of these violations were considered "significant and substantial"; 40% of the violations were subject to the minimal possible fine, $60.[73] A 2003 report by the Government Accountability Office criticized the Mine Safety and Health Administration (MSHA) for "providing lax oversight of the industry" and recommended several changes, none of which were implemented.[74] Cuts in MSHA's budget and staffing during the Bush Administration, and the use of "compliance assistance" programs that favored industry interests over tougher regulations and enforcement of violations that protected worker interests, accounted in part for the dismal performance of MSHA in recent years.

More recent reports further document the inadequacy of laws protecting worker safety, evident in the increases in black lung disease, caused by inhalation of coal dust. The disease ravages the lungs causing emphysema, shortness of breath, disability, and premature death.[75] Federal legislation enacted in 1969 regulated the levels of airborne dust permitted in mines, but the uptick in black lung disease (more than doubling since 1995) and associated deaths, as well as investigative reports documenting fraudulent air quality testing, signal that not only was enforcement of the regulation inadequate, but that the levels themselves may have been set too high. Especially damning is the prevalence of the disease found in miners under the age of 50 – workers that should have been protected under the 1969 legislation.[76] In 1998, a year-long investigation into the alarming increase of the disease by the *Courier Journal* documents admissions by both miners and owners of fraudulent testing and non-compliance.[77] One miner interviewed reported that many miners feel trapped: "You either do it [fraudulent testing] or the mine shuts down…And if the mine shuts down, you ain't got no job. And if you ain't got no job, you ain't got no food on the table."[78] In another interview, a manager succinctly described the choice between worker's rights and protections, and the bottom line: "The health of the men never entered into it…Controlling the dust just wasn't part of the calculation. Production was number one."[79]

The "path of coal" disproportionately burdens marginalized communities, not only in Appalachia, but beyond. Recent media reports have released that the TVA is considering relocating a coal ash site from a majority-white community to predominantly poor, Black communities in Georgia and Alabama.[80] Coal ash is a by-product of techniques used at plants to reduce air pollution, and contains high levels of heavy metals and other toxins.[81] Regardless of the hazards, these sites exist completely unregulated, posing extreme health and environmental dangers to the communities nearby, as coal ash is not considered a "toxic waste." A recent Tennessee Valley Authority's ash spill serves as a reminder of the significant harm borne by individuals and whole communities. In December 2008, a structural failure released over 5 million cubic yards of toxic slush into nearby communities, destroying more than 40 homes and covering over 300 acres of property.[82] The EPA, in response to the TVA spill, identified 44 coal ash storage sites in over 26 communities as "high hazards," posing the threat of death and significant property damage if not addressed.[83] A 2007 EPA analysis estimated that people living in proximity to coal ash sites have a one in 50 chance of getting cancer from drinking contaminated water.[84] Residents nearby also face increased risks of liver, kidney, and lung damage.[85]

**A New Era?**

The Obama Administration's emphasis on clean and renewable energy has engaged a new dialogue about the coal industry and attendant regulations. Yet even in the midst of increased focus on energy, health, and the environment, concerns remain over the potential outcomes of this dialogue. For example, the EPA's stance regarding mountaintop removal regulations is unclear at best; statements that the agency will step up regulation and oversight of the operations in Appalachia, which have thus far destroyed 500 mountains and dismantled whole communities' ways of life, conflict with subsequent statements that "The Environmental Protection Agency is not halting, holding, or placing a moratorium on any of the mining permit applications….We fully anticipate that the bulk of these pending permit applications will not raise environmental concerns."[86]

On April 27th, Department of Interior chief Ken Salazar stated the administration's intention to reverse a Bush Administration change to a 1983 statute that allowed dumping within 100 feet of a stream. However, Salazar further stated that current coal productions and operations would not be affected by the reversal, indicating that the 1983 limits would not be enforced.[87] Joe Levett, attorney for the Appalachian Center for Economy and the Environment, stated,

> For years, the agency has ignored the law and allowed thousands of miles of headwater and perennial streams in Appalachia to be permanently buried by coal companies under millions of tons of waste generated by mountaintop removal coal mining….Interior's action will not provide the protection essential for Appalachian mountain streams under the surface mining law or the Clean Water Act.[88]

The Obama Administration has also proposed new rules governing worker safety. Recent proposals include stepped-up enforcement regarding violations, and monitoring and reducing the amount of allowable respirable dust levels, which is accountable for black lung disease.[89] The Administration has also required that a portion of the MSHA budget—which has been increased—will go to enforcement and increased staff. Critics doubt that these changes are enough to undo decades of harm wrought by lack of enforcement and deregulation. In response to the proposed budget, Cecil Roberts, President of the United Mine Workers Union, stated, “We know that there is much more that must be done to change the culture of the agency away from one that coddles rogue operators to one that puts the welfare of coal miners first.”[90]

On a positive note, in April the EPA proposed a ruling to identify carbon dioxide emissions and green house gases as a threat to human health. Such a finding provides grounds for litigation against coal-fired plants.[91] It is also expected that tighter restrictions on carbon emissions will be implemented, as well as requirements for new technology capable of capturing pollutants to be installed on these high-emissions plants, which are responsible for about 34% of carbon emissions.[92] However, missing from proposals to reduce carbon emissions are regulations addressing mining practices and the attendant social and environmental costs resulting from the “deregulated” mining industry, especially worker safety and health, the environmental degradation that results from MTR, and the risks posed by slurry impoundments and coal ash storage sites. Universal in nature, the proposed policies do not target the health of the workers and communities whose lives have been damaged by decades of neglect. For example, it is as yet unclear how a control on carbon emissions, through the proposed cap-and-trade system, will impact marginalized communities. It is reasonable to expect that those plants that would find it cheaper to buy permits than invest in new technology are likely to be the older, already grandfathered plants that have not been subject to the clean technology requirements of the Clean Air Act, plants that are disproportionately located in marginalized communities.

## Case Study Three

### The Triple Threat: How Immigrant Workers Fare in a Globalized, Deregulated, Unenforced Labor Market.

Globalization and labor deregulation, manifesting in the US largely as a lack of enforcement by the Occupational Safety and Health Administration (OSHA), have converged to undermine previous protections established for American workers, especially in the ability to collectively bargain for safer workplaces and living wages. However, the experiences of various communities within the globalized and deregulated labor market differ greatly. Highly skilled labor has access to global demand for their services and expertise, and increased global competition has resulted in gains in income for those at the top—most likely to the corporate owners and the highly skilled.

The costs associated with a deregulated and globalized labor market are not distributed equally, and are largely born by those who can least afford them—our marginalized communities of color. Identifiable disparities in wages and in working conditions exist, along racial lines as well as nativity-status. For example, Latino immigrant workers are 20% more likely to die from work-related injuries than are their black or white counterparts.[93] In a globalized market, immigrant labor, because of its precarious status, may depress wages of the lowest earners. One study found that income distribution has widened generally, and that immigration has contributed to this polarization by depressing wages of low-income workers.[94] However, these downward pressures are not without solutions that would benefit all workers in low-wage jobs. In discussing estimates of the effect of immigrant competition on wages, Manuel Pastor, Professor at University of Southern California, notes that the depression has “a two percent effect over twenty years. This suggests that a ten percent increase in the minimum wage could erase a century of immigrant competition."[95]

Deregulation, defined in this case study primarily as a lack of enforcement by federal regulators, means that the existing regulations and sanctions governing employer workplace practices have little impact on employer behavior, leaving workers vulnerable. Criminal prosecutions of work-related deaths are few and far between, even when ample evidence of willful negligence by the employer exists. Fines associated with violating workplace safety and health standards are minimal, representing a drop in the bucket for large, global corporations—since 1991, the median fine faced by employers charged with willful violations was $30,240; the maximum fine allowed is $500,000.[96]

And these are only the challenges associated with workers in the formal economy, to say nothing of the experience of workers in the "informal" economy. Workers within this economy are extremely vulnerable to employer exploitation—such as no pay, unreasonable hours, and extremely dangerous work conditions—and lack avenues to address such exploitations.

Labor deregulation has in fact contributed to the disempowerment of workers, especially those most vulnerable to economic shocks and employer exploitation--our marginalized communities of color. These disparities suggest the need for policies that strengthen worker protection and employment opportunities, so that all workers can share in the benefits of a globalized economy that so far, only a minority have enjoyed.

**The Impact of Globalization**

Economic globalization—or economic integration as a result of liberalized trade and deregulated capital—has been hailed as the solution for decreasing poverty and improving income inequality. The reality in many cases, however, has been quite the opposite. An OECD report published in 2008 ranks the United States as the country with the 3rd highest income inequality and poverty rates, behind Mexico and Turkey. The report documents the rapid increase in inequality in the 2000s, but notes that this is a continuation of a trend that began in the 1970s.[97] Evidence shows that unregulated trade and capital flows have in fact contributed to economic inequality, both within and among countries. Hersh et.al. sum it up thusly,

> Trade liberalization leads to more import competition and to a growing use of the threat to move production to lower-wage locales, thereby depressing wages. Deregulated international capital flows have led to rapid increases in short-term capital flows and more frequent economic crises, while simultaneously limiting the ability of governments to cope with crises. Economic upheavals disproportionately harm the poor….[98]

The bargaining power of the average worker has become seriously compromised as a result of the convergence of several factors, including increased immigration into the US, deregulation of industries that were highly unionized, and a shift in ideology from employers' "post-war social contract with workers" to a climate that valued shareholder returns above worker welfare.[99] In some sectors, outsourcing is no longer just a threat, but a reality. For example, the IT sector has been hemorrhaging jobs at rates significantly higher than those witnessed in manufacturing outsourcing because of the speed and relative ease with which the jobs can be transferred.[100]

In a study commissioned by the US-China Economic and Security Review Commission, researchers found that unionized jobs are disproportionately impacted by outsourcing, with 39% of all jobs outsourced from unionized companies.[101] What is the push for this outsourcing?

Increased global competition spurs companies to search for lower labor costs, and therefore, higher shareholder returns. Countries compete among themselves to attract the capital and investment of companies, and in so doing, a 'race to the bottom' effect may occur, whereby countries dismantle worker protections and drive down wages. This increased competition may in turn result in decreased unionization. The outcome is the "impoverization" of workers who are forced to accept poverty wages and substandard working conditions or risk losing their jobs.

There is cause for alarm over the quality of jobs that remain. The service sector, such as retail, customer service, food service and so forth, is anticipated to have the highest growth in employment, with six out of ten occupations represented within this sector through 2012.[102] However, the anticipated growth in the service sector does not translate into greater economic opportunity for those who work in these occupations. Service-sector jobs are characterized by their low wages and low benefits; 11.2% of the 'working poor'—those who work more than part- time and still earn below federal poverty level—are found within service sector occupations.[103] Non-compliance with wage, hour, and safety laws are well-documented and extensive in these occupations, including agriculture, restaurant services, janitorial services, domestic homecare, long term health care, garment shops, and poultry processing.[104] One report estimates that if employers were in compliance with all federal workplace laws, workers would receive an additional $19 billion a year.[105] And the burden is born primarily by minority workers who are over-represented in low-wage, no benefits, and labor-intensive jobs: 31.2% of the overall black workforce and 40.4% of the overall Latino workforce are represented within the service sector, compared to 20% of the overall white workforce.[106]

Employment discrimination has a long history in the United States. Racial discrimination within occupational groups has often relegated minorities to the lowest strata of jobs within a category, and thereby limited access to benefits. Disparities are evident between immigrants and native-born workers as well, with immigrant workers found in the lowest- wage jobs, such as food preparation and processing, working as operators, fabricators, laborers, or in agriculture.[107]Almost half of immigrant workers earn less than 200% of the minimum wage, compared to one-third of native-born workers.[108] Not only do these occupations pay poverty-level wages, but they are also often without benefits such as health care, family and sick leave, and pension plans.[109] Institutional barriers play a significant role in perpetuating these disparities, including language and educational barriers, and many immigrant workers are simply unaware of their rights.[110] For example, three-fourths of US workers with less than a ninth grade education are immigrants, and almost two-thirds of low-wage immigrant workers are not proficient in English.[111] It is not surprising then that economic shocks of deregulated, globalized markets impact these communities most severely, and in turn place greater demands for welfare services on governments with increasingly insufficient resources to address these needs.

Proponents of free markets and deregulation would have us believe that such conditions are merely the effects of an efficient market-based economy. But as Beth Shulman, lawyer and researcher with the Poverty and Race Research Action Council, notes,"[t]hese low-wage jobs are not, however, the result of an efficient market's 'invisible hand' but derive from political, economic, and corporate choices that have undercut workers' ability to have any control over the conditions in which they work."[112]

In addition, regulations and institutions that had previously worked to protect workers' interests have all witnessed dramatic decreases in effectiveness. In 1975, 25% of the workforce was unionized, compared to only 10% of the workforce in 2004.[113] Likewise, minimum wage laws have been weakened, which have resulted in a 20% decrease in purchasing power from 1997,[114] despite recent increases at the federal level. Noncompliance with minimum wage and overtime laws has further compounded this problem. Unemployment insurance has also been limited, with only half of the unemployed receiving any benefits between 1950 and 1980.[115]

**Deregulation and OSHA**

Labor deregulation is effected primarily by the lack of enforcement of existing legislation. Whereas one of the primary issues with environmental deregulation was the exemption of certain industries from regulation, the main issue with labor is not exemption from standards, but the lack of enforcement of these standards. Although enforcement is undoubtedly an issue in the coal industry as we noted in our case study of environmental deregulation, the lack of enforcement and empowerment is *the* issue in labor. However, note the overlap between the two cases: in 2007, the mining industry had the second highest rate of work-related deaths (25.1 per 100,000).[116] Labor market deregulation in the US has only enhanced the vulnerability of workers, dismantling the ability of OSHA, one of the main agencies charged with enforcing safety and health standards for workers, to provide protection from employer exploitation—protection that is more important now than ever as the labor market is globalized.

A deregulatory outlet unique to labor is, ironically enough, the *increase* in regulations governing the Occupational Safety and Health Administration (OSHA). The Bush administration enacted the "Advanced Notice of Proposed Rule-Making" (ANPRM), which slowed the ability of OSHA to make new rules protecting workers. The ANPRM required OSHA to publish an advanced notice describing the issue under consideration, but without requiring the provision of any details regarding the proposed policies.[117] Such a rule makes public commentary difficult at best, and at worst, meaningless. The ANPRM also required an additional notice and comment period, further slowing the rule-making process. In addition, OSHA must also give notice and comment to the Small Business Regulatory Enforcement Fairness Act panel.[118] This panel analyzes the proposed rule's impact on the small business community and other sub-groups, the documents and discussions of which are unavailable to the public.[119] This analysis can take several years, further delaying the ability of OSHA to enact new rules. However, progress is being made: the Obama Administration has taken steps to open up this process to the public, and allow the general public to attend the meetings of this panel. The Secretary of Labor, Hilda Solis, has also reversed the ANPRM requirement.

The enforcement of safety standards can also be compromised by the reliance on compliance assistance programs. Compliance assistance programs are voluntary programs in which federal regulators and businesses work together in understanding federal regulations. Participating industries in the Voluntary Protection Program have doubled between 2003 and 2008.[120] However, OSHA does not have any policies in place to assure that only qualified companies participate in the program. Qualified companies are those that have successfully initiated health and safety standards that result in an injury or illness rate that is 50% or less of the national averages for their industry.[121] A recent Government Accountability Office report documents that 12% of the companies participating had illness or injury rates *higher* than the national averages for their industry.[122] The report identified several instances in which companies were still participating in the program despite serious violations. For instance, one site with seven serious violations, another site with three fatalities in five years, and still another site cited with ten violations, were all still allowed to participate.[123] Companies with these records should be subject to more stringent, formal regulations. Representative Lynn Woolsey, D-Calif., noted that "this report illustrates what many of us have been arguing all along—that when it comes to protecting America's workers, voluntary safety programs by themselves don't work."[124]

Yet another outlet for effecting deregulation is through the budget process. In the past thirty years, OSHA has seen its staff, budget, and inspection activity shrink; meanwhile, the American workforce has grown, leaving workers further exposed to workplace dangers. For example, OSHA was appropriated 12% fewer funds for enforcement in 2006 than those appropriated in 1980.[125] This translates into fewer staff. In 2006, OSHA had only 1.5 employees available for every 100,000 American workers, compared to 3 per 100,000 in 1980.[126] Decreased staff and budgets mean fewer inspections: in 1980, 1.77 inspections were conducted per 100,000 American workers; in 2006, only .668 inspections were conducted per 100,000, representing a 62% decrease.[127] Meanwhile, as the OSHA enforcement budget was declining, the budget for "compliance assistance" programs was increasing.[128] The net effect is decreased worker protection. Intangibles such as "organizational culture," "political will," and "politics" can also make existing legislation ineffective. This is evident in the nominal sanctions placed on violating industries, with minimal fines doing little to change industry behavior coupled with OSHA's reluctance to criminally prosecute work-related deaths.

OSHA is charged with protecting the health and safety of the nation's workforce. Its primary means of doing so are through setting and enforcing standards. However, reports over the past couple of decades document the failures of OSHA to fully and successfully discharge its responsibilities. Thus, labor "de-regulation" is an interesting paradox: almost simultaneously, while the industries under the scope of OSHA have become more deregulated, the agency responsible for enforcement and creating rules to protect workers has become *more* regulated – yet at the same time experiencing decreased support.

Essentially, during its forty years, OSHA has been asked to do more with less, and the challenge has proved overwhelming as the numbers of inspectors and inspections, as well as funding, have dwindled. This challenge has translated into an organizational culture of disempowerment, evident in the commentary of OSHA officials on the lack of will and incentive to fully, and legally, pursue and sanction violating industries. OSHA has moved from "an enforcement arm of government to protect workers from abusive employers" to an ineffective auditor: "With a severely limited capacity for on-site inspections, federal and state OSHA officials are most dependent on the shop floor reports from employees themselves to identify dangers in the workplace."[129]

**The Uneven Burden of Dangerous Jobs**

The 2009 AFL-CIO report "Death on the Job" documents that on average, 15 people die as a result of workplace injuries or illness per day.[130] In 2007, nearly 6,000 workers suffered work-related deaths, and approximately 4 million suffered work-related injuries or illnesses.[131] Each day, nearly 11,000 workers were injured or suffered illness on the job in 2006.[132]

OSHA's ineffectiveness in setting and enforcing workplace safety standards is especially concerning for communities of color, who are more likely to hold dangerous occupations (for example, as operators, fabricators, and laborers, and within the industries of processing and agriculture), and are therefore disproportionately impacted by the effects of labor 'deregulation' and globalization. The impact on immigrant and Hispanic workers is especially alarming. Immigrant workers comprise a growing share of the US labor force, approximately

15% as of 2003.[133] They also comprise a disproportionate share of work-related fatalities, with immigrant workers suffering from a 43% increase in fatal injuries between 1996 and 2000.[134] Forty-eight percent of the immigrant workforce in the US is Hispanic,[135] and Latino immigrants are 20% more likely to die from work-related injuries than blacks or whites.[136] And the problem has increased. Since 1992, when death rates were first collected, work-related deaths among Hispanic workers increased by 76%, while work-related deaths overall decreased by 9%.[137] In 2007, more than two-thirds of work-related deaths among Hispanics were among immigrant workers.[138] Fatal work injuries among this population are concentrated geographically. Between 1996 and 2001, six states accounted for 64% of all immigrant worker fatalities: California, Florida, Illinois, New Jersey, New York, and Texas. Not surprisingly, almost two-thirds of the foreign-born population lives in one of these six states.

Fatal injuries for immigrant workers are also concentrated by industry (or sector) and occupation. One in four work-related deaths for immigrant workers occurred in the construction sector.[139] Hispanic men in particular face high risks of work-related fatalities in this sector, and were more than twice as likely to die on the job as non-Hispanic counterparts in 2000.[140] Discrimination within occupations means that Hispanic workers are often relegated to the most dangerous, lowest- wage occupations within a sector; in construction, these are laborers, helpers, and roofers.[141] In 2003, about 31% of Hispanic worker fatalities occurred in the construction sector; almost 18% in agriculture, forestry, and fishing sector; and 12% in the transportation and public utilities sector.[142] The three most lethal occupations for Hispanic workers in 2003 included handlers, equipment cleaners, helpers and laborers (25% fatality rate); farming, forestry, and fishing (18% rate); and transportation and material moving (14% rate).[143]

As disturbing as these numbers are, they represent conditions only in the "formal" economy. But large numbers of immigrants also work in the "informal" economy. The informal economy exists unregulated—and largely undocumented—and therefore the workers are unprotected. High turnover, poor (if any) training, and pervasive evasion of employer accountability ensure that workers' rights are unenforced, and workers remain disempowered. The informal economy includes undocumented workers, seasonal workers, temporary hires, and so forth. Occupations include day laborers, sweatshop garment workers, and domestic workers. Regardless of the "type" of economy an immigrant may work in, the problem of under-reporting remains a key concern. Several explanations are apparent. Workers fear repercussions for reporting, such as termination; employers may threaten to report workers to the Bureau of Citizenship and Immigration Services; workers may not know their rights; they fear being labeled as a "complainer"; and temporary workers may lose the chance of permanent employment if they report work-related injuries.[144] Plant managers may also under-report injuries and illnesses to OSHA to avoid inspections. High turnover and under-reporting perpetuate the hazardous working conditions in which many immigrants find themselves employed. Ineffective regulation of health and safety in the workplace puts all workers in danger, but disproportionately burdens marginalized populations.

**Limits to Worker Protection**

As mentioned, fear of losing employment is pervasive, especially for immigrant workers. Threats of outsourcing jobs in response to any attempts at organizing, or threats of being fired for 'whistle-blowing' on dangerous working conditions effectively silence workers. Reports document OSHA's failure to protect whistle-blowers, and enforce workplace health and safety standards. For example, in an examination of working conditions and government protections for poultry industry workers in North Carolina, researchers found extensive violations of health and safety standards, with little to no recourse for workers.[145] Extensive injuries on the job were found as a result of industry deregulation that allowed for increases in line speeds of up to 91 birds a minute. Injuries included severed fingers, carpal tunnel syndrome, and chronic leg and back pain.[146] Workers that were injured on the job were expected to report back to work before they were healed or risk being fired.[147] The compensation was negligible, with line workers earning an average of $5 to $6 an hour, for 8 to 9 hours a day, 6 days a week.[148] While on the job, workers were forced to stand in pools of grease and water without boots for protection, and were forced to endure overflowing toilets.[149] Within an eight hour day, workers were allowed two 7-minute breaks only, and if feeling sick from the noxious odors and conditions, were sometimes forced to vomit where they worked.[150] Attempts at organizing were overthrown by management intimidation—workers were warned that they would lose their jobs, and some workers reported that managers threatened "to use legal and illegal means to keep the union out of the plant."[151]

Worker intimidation notwithstanding, there is little incentive for workers to blow the whistle on workplace violations under the limited and lengthy statutory hoops they must jump through to receive protection from OSHA. The predicament is clear:

> "…most workers are unaware that they must file a Whistleblower discrimination complaint within thirty days of their employer's retaliatory action. Often employees do not even discover the causal link between reporting a safety violation and their termination until after the month has lapsed. Essentially, the 30-day statute of limitations operates to prevent workers from obtaining justice."[152]

This brief example is only one of similarly disturbing reports on conditions of poultry processing plants. These reports are especially alarming as poultry processing is one of the fastest-growing sectors in the meat products industry, as well as one of the most dangerous. Hispanic immigrants constitute a majority of the laborers within this industry (42% compared to about 14% of manufacturing as a whole), with an estimated 26% of Hispanic workers foreign-born noncitizens (compared to 10% of manufacturing as a whole).[153] The Department of Labor found that in 2001, fully 100% of poultry processing plants were not in compliance with federal wage and hour laws.[154] Another survey of Latino workers in six counties in western North Carolina found that almost half of the respondents reported neck or back pain, and one in five reported missing at least one day of work due to the pain.[155] The study also found that the plants under-reported the rate of injuries to OSHA.[156] Decreased unionization tracks with the increased use of immigrant labor in the meat packing industry—in 1980, 46% of workers were union members; by the end of the 1980s, only 21% were.[157] A 2005 GAO report states that,

> "Declining rates of unionization coincided with increases in the use of immigrant workers, higher worker turnover, and reductions in wages. Immigrants make up large and growing shares of the workforces at many plants. Labor turnover…is quite high and in some worksites can exceed 100%....The frequent movement of immigrant workers among plants and communities limits the opportunities of unions to organize meat and poultry workers."[158]

**Minimal Sanctions for Violations**

A *New York Times* investigation in 2003 found that between 1982 and 2002, 93% of cases involving worker deaths from willful negligence on the part of the company resulted in no criminal prosecution.[159] The investigation further found that 70 employers went on to commit the same violations, without penalty.[160] Lack of prosecution was evident even when there were multiple deaths on the job, or when administrative judges found that there was ample evidence to prosecute for willful negligence.[161] The *Times* investigation uncovered 2,197 deaths over a twenty-year span. This resulted in collection of $106 million in civil suits, and less than thirty years of jail time.[162]

In the almost forty years that OSHA has existed, only 151 out of 200,000 cases of work-related death have been criminally prosecuted.[163] Of the 151 cases brought to the Department of Justice for prosecution, only one-third have been pursued, eight of which have resulted in prison sentences.[164] What accounts for such a dismal track record? There are four primary reasons—the culture of OSHA, the power of corporations (and their lawyers) to influence policy, the bureaucratic structure of OSHA itself, and inadequate legislation.

In the *Times* series, OSHA officials revealed the lack of political will within the agency to prosecute willfully negligent cases, even though this was within the scope of their authority. Willful negligence is applied whenever a company is shown to exhibit either intentional violation of safety standards, or plain indifference. If willful negligence results in a worker's death, then it is considered a criminal violation, according to the OSHA Act. Many interviewees cited that prosecution was not considered a priority. Mr. Bakewell, a retired OSHA inspector, commented "I personally don't think 'Oh, it's a fatal, it's willful, it should go criminal.' You just don't need that grief. The honest to God truth is that it's just going to slow you down. They want numbers, lots of inspections, and it hurts you to do one of those cases."[165]

Other respondents remarked that OSHA was a numbers-driven culture—prosecutions are not counted and so they do not matter. Not only are OSHA officials reticent to use the full scope of their authority, but changes to OSHA policy, influenced by corporate lawyers, allowed inspectors to down-grade charges from "willful" negligence to "unclassified." Labeling citations as "unclassified" forecloses the opportunity to prosecute violating employers. Although the "unclassified" designation is not written into any law or regulation governing OSHA, it does appear in field manuals.[166] This informal change in policy mitigates OSHA's effectiveness in curtailing work-related deaths.

Policy governing OSHA provides the "wrong" incentives. For example, killing a worker is considered only a misdemeanor under federal law. The predicament is clear; as one investigator responded, "After you do all the work, get the file perfect, you take it to the U.S. attorney, and they say 'It's a misdemeanor?'"[167] And investigators can spend thousands of hours on a case. Thus, there is little incentive for OSHA investigators to pursue the course of prosecution, especially considering that the culture of the agency does not consider prosecution a priority. It is not surprising then that most cases never make it to trial.

Not only is there little to motivate inspectors to be more aggressive, but there is little to motivate employers to be more careful. The jail sentence associated with a misdemeanor is 6 months, assuming a case is successfully brought to trial. In the absence of prosecution, the fines associated with citations are clearly not high enough to deter negligent safety practices. Even those cases retaining the classification of willful negligence, which are seldom prosecuted, carry with them criminal fines of $500,000,[168] a number that for many corporations represents a drop in the bucket. With almost 6,000 deaths on the job in 2007, the penalties of violating federal safety standards appear sorely insufficient.

In an interview with Frontline in 2003, Charles Jeffers, Assistant Secretary of Labor in the late 1990s, succinctly described the inadequacies of existing legislation,

> "The penalties in the OSH Act [are] inadequate to deal with people that don't take their safety responsibility seriously….The current law is inadequate to deal with serious violators, repetitive violators, situations where people are put at risk day after day.
>
> The theory of the OSH Act is that if there's a violation, if there is an exposed wire, that exposed wire might kill somebody. So the penalty is because that wire is exposed. That might be a $500 penalty, and no one has ever been hurt. But if someone goes and touches that wire, and gets electrocuted and killed, it's still an exposed wire and that same $500 penalty."[169]

And the problem is deeper still. The theory behind the original legislation of the OSH Act is obsolete in today's reality, as Jeffers notes:

> "When OSHA was passed, it was not envisioned that OSHA would be an agency that punished a company where people get killed. It was an agency that was going out to prevent accidents. In practice, OSHA has so few inspectors that they can't get around to visit places and be preventive. In fact, OSHA can only go to places where people have already been hurt, already killed….So the theory of the law that OSHA would be preventive has never been able to be carried out since it's only funded at a level to enable it to respond to where problems have occurred."[170]

In response to the negligence and ineffectiveness uncovered through the *Times* reports, OSHA initiated the Enhanced Enforcement Program (EEP) in 2003. The purpose was to provide OSHA inspectors the ability to more aggressively pursue corporations that willfully violate federal safety laws. The initiative provides for OSHA follow-up inspections and inspections of related worksites, in an effort to determine a pattern of violations. The initiative also provides inspectors with the authority to require companies to hire safety and health consultants. Although the EEP represents only about 1% of enforcement activities, OSHA deems these companies to pose the most significant threat to American workers.[171] However, this program too appears to be sorely ineffective. The Office of the Inspector General, in an audit of 282 EEP qualifying cases, found that OSHA did not comply with the program requirements in 97% of audited cases, including correct designation as an EEP case, inspection of related worksites, follow-up inspections, or settlement requirements.[172] The result of these errors was subsequent work-related deaths.[173]

The effectiveness of enforcement under the EEP represents another example of obsolete policy. The current standard of enforcement is targeted to individual establishments. This is not in keeping with the global reality of corporations. For example, the EEP requires only one additional follow-up inspection and requires that the related work sites must be within the same company and within the same OSHA region (the U.S. is broken into eleven regions).[174] However, companies operate under many different names and are not necessarily constrained by geographic boundaries. Corporate practices can be wide-spread; similar safety violations can be evident in numerous companies within the same parent company, but may exist in different regions and therefore may never be inspected and cited under the current EEP initiative. The corporation takes the hit for that one company, not for all of its companies with similar violations. The impact of the violations and the associated penalties are thus diluted. In addition to a flawed design, changes to the policy in 2008 further reduced the ability of OSHA to effectively and aggressively enforce safety standards.[175] The 2008 revision incorporated "qualifying history" as a component in considering whether a case qualified for EEP standing.

Qualifying history refers to previous fatalities and similar violations. However, lack of quality data detailing the history of qualifying cases further increases the risk that cases may not be properly designated as EEP.[176] In 2008, OSHA designated a mere 7% of cases as EEP, compared to an average of 50% between 2003 and 2007, before the revision took place.[177] In his written testimony before the Workforce Protections Subcommittee's Hearing on the Enhanced Enforcement Program, Elliot Lewis, Assistant Inspector General for Audit Office of Inspector General, wrote,

> Our overall conclusion is that OSHA has not placed the appropriate management emphasis and resources on this program to ensure indifferent employers were properly designated for this program and subject to EEP actions. It is essential that OSHA target its limited resources to inspect workplaces with the highest risk of hazardous conditions that have greater potential to cause injuries and fatalities….full and proper application of EEP procedures may have deterred and abated workplace hazards at the worksites of 45 employers where 58 subsequent fatalities occurred.[178]

OSHA faces constraints on several fronts. Not only is the agency reliant on voluntary compliance programs that do not work, but their hands may be tied in the context of decreased funding and staffing support, leaving few alternatives to compliance programs. Amidst a growing—and diversifying—workforce requiring new and tougher standards to ensure their safety and health while on the job, and the global nature of companies, it is evident that OSHA officials find themselves overwhelmed by the increase in demand for their protection, while simultaneously struggling with the diminished capacity to address concerns. Not only are the tools available not effective in enticing safe workplace behaviors from industry, but officials are not able to fully exercise their legal authority to create and enforce standards and protect American workers. Part of this inability stems from an organizational culture that does not prioritize criminal prosecution of willful negligence resulting in workers' deaths, part stems from sanctions that are meaningless to global industries, and part stems from the inadequate resources at the agency's disposal. The result is that an agency charged with the protection of the American workforce, through the myriad manifestations of deregulation, has little recourse to actually do so.

**Two Sides of the Same Coin**

The convergence of these three factors—globalization, deregulation, and a lack of enforcement—have placed all workers at jeopardy through lax or missing protections, including ineffective regulations and decreased unionization. But these factors have had especially dreadful impacts on marginalized communities, particularly the Hispanic and immigrant workers who find themselves disproportionately subjected to the most dangerous work conditions, such as those found in the meat packing industry or construction sector, with little recourse for relief. Fear is pervasive, accountability is missing, and the agency charged with protecting workers is arguably missing in action, or at the least in effectiveness. And these are just the conditions of the formal economy. When combined with the limited knowledge of conditions in the "informal" economy, it becomes clear that worker safety, and in general labor market reform, is not just about workplace standards and regulations. Worker safety also has implications for education policy, and whether our immigrant communities have access to quality education and opportunities to increase language proficiency. Worker safety also has implications for workforce development, and whether the opportunity for skills development and job training are equally provided to all, including immigrant workers, so that all may contribute to and benefit from the rapidly changing global economy. These implications have widespread benefits: education and skills are positively related to employment and income, positively impact regional and national economic productivity and development, and deliver other social benefits, including reduced welfare dependence, reduced crime, and improved health awareness.[179]

Worker protection also has implications for housing—workers who do not fear the repercussions of whistle-blowing on dangerous working conditions may be less likely to move, resulting in lower labor turnover, and increasing the need for decent and affordable housing. Increased enforcement of compliance with wage laws—and the need to establish minimum wages that provide a 'living wage'—will also have an impact on the need for housing. The location of housing in turn influences access to other "opportunity structures" that influence life chances, including good schools, public transportation, health care, child care, and good grocery stores.

The disturbing experiences of immigrant workers in both the formal economy—where Latino immigrants face a 20% greater risk of work-related death—and the informal economy, demand that comprehensive and fair immigration reform must be a part of any labor reform agenda. In turn, these reforms must also focus on education, housing, transportation, and health care policies in order to truly support a healthy and productive workforce that will ensure long term economic success for us as individuals, and as a nation.

**Deregulation and Marginalization: What the Case Studies Tell Us**

These case studies illustrate disparate impacts on marginalized populations and communities across the spectrum of mortgage lending, coal mining practices, and labor protection. Each of these case studies ultimately shows that the gap between dominant and marginalized workers, communities, and institutions has grown during the era of deregulation, not shrunk. While deregulation was supposed to open the door to credit alternatives for historically underserved communities of color, it opened the floodgates to irresponsible products disconnected from the communities and families they were supposed to serve. Similarly, *de facto* deregulation of the coal mining industry and power plants has ensured benefits to the shareholders of these companies, but has depleted the social, cultural, and environmental quality of coal communities and the environment. Labor deregulation was presumably intended to increase worker competition and incentivize worker skill upgrades, but instead has launched a race to the bottom where workers compete to work for less, under worse and worse conditions. Meanwhile, communities compete with each other to see who can get the least investment in their community from a potential employer -- giving tax breaks, discouraging union organizing, and so forth.

An alarming pattern is emerging: a corporate culture that risks the public interest and neglects the protection of historically disadvantaged communities, whether in the form of predatory lending practices, increased and sustained exposure to pollution, or forced acceptance of unsafe working conditions and poverty-level wages. In the era of deregulation, a distinct burden is disproportionately borne by low-income and racialized communities. Democratic principles of civic participation and the right to organize have become threatened under a governing mentality that places private interests and shareholder returns above public welfare.

Public policy in a 21st century industrialized economy should be oriented to shrink, not grow, the divide between the "haves" and the "have-nots" – a divide that has been growing steadily since the 1970s. What we are seeing as a result is a huge, growing, and unsustainable gap between haves and have-nots that is rivaling the Gilded Age in its excesses. The Children's Defense Fund found that over the last thirty years, the income of the top 20 percent of households was about 15 times greater than that of the households in the bottom 20 percent—*the widest gap on record* based on an analysis of U.S. Census Bureau figures.[180] From 2000-2004, the number of American children living in poverty rose 12.8% (13 million American children live in poverty). Extreme child poverty (a family of three living with an annual income under $7,610) rose 20% between 2000 and 2004, and the increases in extreme poverty were highest among Latino and Black children.[181] As these signs of economic instability grow, troubling barriers to opportunity continue to frustrate marginalized groups. Meant to be the great engine of equal opportunity, our education system is growing more racially and economically segregated, transferring and expanding inequality across generations.[182] Predatory lending, an uneven credit market, depreciation in the housing market and foreclosure are reducing the value of household assets, the lion's share of the average American's net worth. The ability to remain healthy in American society is threatened by a surge in uninsured people and rising health care costs.[183]

As Nobel Laureate Paul Krugman wrote in *The New York Times*, "Living in or near poverty has always been a form of exile, of being cut off from the larger society. But the distance between the poor and the rest of us is much greater than it was 40 years ago…To be poor in America today…is to be an outcast in your own country."[184] Krugman notes that one percent of families receive about 16% of total pretax income, while median family income has risen only about 0.5% a year – an increase mostly due to wives working longer hours.[185] This astonishing concentration of wealth at the top is why, Krugman argues, the U.S., "for all its economic achievements, has more poverty and lower life expectancy than any other major advanced nation." Perhaps most importantly for advocacy, Krugman argues that institutions, norms and the political environment matter more for the distribution of income than any "invisible hand" of the market.[186] We can rethink our norms. We can affect the political environment. And we can strengthen and re-align existing institutions to protect and empower marginalized communities.

As the case studies in this report vividly illustrate, deregulation has been particularly harmful to our marginalized communities. The impact on these communities and the inherent risk to all of us created by our current deregulatory environment is severe and growing. How can government protect the rights of marginalized populations, in an increasingly dynamic and global society? We need to think about policy differently: we need to take stock of the extraordinary changes in the world around us, like family structure, globalization, and technology. We need to think about what public policy in a 21st century industrialized democracy should do. And we need to think about how to design policy effectively to reflect our new goals and aspirations. The lack of government regulation and protection can effectively close the doors of opportunity to huge swaths of people. While deregulation is ostensibly supposed to free the market to reward individual achievement -- and indeed, sometimes it does -- there is a role for government to play that protects and supports individuals and communities and better distributes the benefits and burdens of market change and growth.

**Moving Forward: What Role Should Government Play?**

Public money should go first to those most in need, and it should transform the landscape of opportunity into a more equitable one, not one increasingly marked by racial and socio-economic isolation and marginalization. In this respect, tax policy—such as providing "tax relief" for the highest income earners—is critical. The budget cuts to OSHA and MSHA provide clear examples of how the Bush Administration utilized tax cuts to deplete, or seriously cripple, programs that it did not favor, and fund those programs that it did favor (such as the Iraq War) by amassing record level federal deficits.[187] The tragedy is that these cuts impacted our marginalized populations the most—further increasing their marginalization. These programs were not superfluous programs, but essential responsibilities and duties of agencies to protect American workers' health and safety.

Regulation needs to occur on many varied fronts and with all of the tools that have been utilized to deregulate: changing laws, empowering agencies with funding and enforcement 'teeth,' imposing sanctions and fines, and improving the design and efficacy of voluntary, industry-led compliance programs to support worker protection, not industry bottom-line protection. We need to push for specific changes in statutes to reverse dangerous and absurd exemptions. We need to support the creation of new protection agencies as circumstances dictate, such as President Obama's proposed Consumer Financial Protection Agency. But we must also fight for increased funding for enforcement and good data collection for existing agencies. And we must be inventive and thoughtful with regulatory design, given the global realities of 21st century businesses. To this end, Secretary of the Treasury Timothy Geithner stated, "We did not have well-designed regulation…So our job is to get those better. And it's not going to require more of them; it's just going to require better design, more effectively applied, more broadly applied to contain risk, protect consumers."[188] The same analysis may be applied to other sectors as well. For example, increasing the capacity of OSHA to protect worker safety does not necessarily lie in increased regulations, but in a retrofit of existing regulations to meet the current needs of American workers and permit OSHA officials to undertake their responsibilities in a global era.

However, we not only need to be vigilant with protections, we need to be affirmative with creative solutions to the unequal landscape of opportunity. In terms of the subprime lending fiasco, re-regulating credit markets may be effective to protect some abuses, but what if the regulations cut off credit for underserved communities completely? We need to design alternative fair and sustainable credit products, as well as to prevent abusive ones. Regarding the coal-mining industry, effectively enforced and meaningful regulations are needed. But we also need alternatives to coal and we need economic development plans for Appalachia outside of coal production. To protect worker safety, we may need to look outside the walls of the factory or mine as well as within: why are immigrants overrepresented in dangerous jobs and job-related fatalities? Why did work-related deaths among Hispanic workers increase, while overall rates decreased? Why are Appalachians under-educated and more prone to cancer? Investments in immigrant social services or in Appalachian economic development and public health might empower workers and benefit their communities in myriad ways. Lastly, we need to deliberately and affirmatively include the voices of people impacted by policies into their design, execution, and measurement. People should have a say in their own protection, in the health and future of their communities, and in the policies that disproportionately impact them.

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