



# Turn Around America

## AFL-CIO Recommendations for the Obama Administration

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### Corporate Governance

The implosion of the housing market and the cascading crises in the credit markets are the direct consequence of a 30-year experiment of trying to create a deregulated, low wage economy where high consumer spending is propped up by easy credit and asset bubbles. Real solutions must be based on restoring the economic health of the American middle class through good jobs, health care, retirement security and a voice at work for all. And an important part of the solution must be the thoughtful, comprehensive re-regulation of the financial markets.

The AFL-CIO has long favored greater investor protections and regulatory oversight of participants in the U.S. financial markets. Only thoughtful re-regulation can restore that confidence and the ability of the markets to properly function. Reining in financial intermediaries after a 30-year free-for-all will be a complex task requiring coordinated action involving Congress and regulators at the state, federal international levels.

Effective regulation must be implemented to ensure the transparency and accountability of mortgage lenders, investment banks, credit-rating agencies, hedge funds, private equity funds, off-balance-sheet lending vehicles and other structured credit products, as well as Sovereign Wealth Funds. The AFL-CIO has called repeatedly for transparency and clear fiduciary duties to investors by all pools of private capital and capital market intermediaries. The reasons for such transparency have never been clearer.

Specific recommendations for action are as follows:

1. Protect the Securities & Exchange Commission (“SEC”) (**regulatory**): Protect the SEC as the independent voice for investors.
2. Equal Access to the Corporate Proxy (**regulatory**): Allow shareholders to nominate board candidates who appear on the company’s proxy card. A number of different draft rules have been proposed by the SEC over the past five years. Labor funds have previously petitioned the SEC to adopt a rule providing access to shareholders with at least 3% of shares, held for at least one year, for nominees challenging no more than 1/3 of the existing board
3. Re-regulate the Shadow Capital Markets (**regulatory and legislative**): The SEC should take steps within its current regulatory authority to bring transparency and basic investor protections to hedge funds and private equity funds that operate in



- the public markets. First steps should include revising Rule 13 to require disclosure of long and short positions, requiring enhanced disclosures for private equity firms bidding for public companies, and taking steps to encourage hedge funds to voluntarily register with the Commission as investment advisors.
4. Say on Pay (legislative): Give shareholders an up or down vote on each year's executive pay package. S. 1181 previously passed the House by a 2:1 margin, and is sponsored in the Senate by Senator Obama.
  5. Eliminate the carried interest tax loophole (legislative): A carried interest is a right to receive a specified share (often 20%) of the profits ultimately earned by an investment fund without contributing a corresponding share of the fund's financial capital. It is part of the standard compensation package for managers of private equity funds. Current law allows these managers to pay tax on all or most of their carried interest income at the 15% capital gains rate, instead of the individual income tax rate, typically 35% for these high-income individuals.
  6. Democratic Rights for Corporate Pension Fund Participants (legislative): Unlike union sponsored "Taft-Hartley" pension funds and most public pension funds, neither defined benefit nor defined contribution plans sponsored by single corporations provide for any employee representation on their board of trustees. This has created enormous agency problems which frequently crop up through excessive fees, inadequate contributions, conflicts of interest, etc. Participants in single-employer defined benefit and defined contribution plans should enjoy representation on their plans' board of trustees equal to that of employers.
  7. Implement proposed amendment to NYSE Rule 452 (regulatory): This rule change would prohibit brokers from voting their shares in director elections without instructions from their clients. Currently brokers cast as much as 20% of the vote in director elections with no client instructions, and despite having no economic interest in the company. As a result, the official results in a number of elections at companies have not reflected majority opposition from shareholders, allowing problem directors to continue in office. This rule change has already been proposed two years running by the NYSE, and awaits approval at the SEC.
  8. Revise the SEC staff's interpretation of the ordinary business rule (regulatory): The issues that shareholders may seek to raise at company annual meetings are limited to those not relating to "ordinary business" decisions. This standard has been interpreted such that companies may refuse to include otherwise properly submitted resolutions that speak to a variety of issues that are properly the concerns of shareholders—such as board of director conflicts and risk management.
  9. Modernization of Regulation S-K (regulatory): Repeated corporate and financial scandals during the Bush Administration have demonstrated the inadequacy of the current SEC rules governing routine disclosures related to risk by public



- corporations. Regulation S-K, which governs corporate disclosures, should be reviewed and amended to address deficiencies in areas such as financial market related risks, carbon emissions and other environmental risks and worker safety.
10. Protect 401-k Plan Participants (regulatory): The SEC and the DOL should jointly move to protect 401-k plan participants from excessive fees and other mutual fund practices that harm workers' retirement security by (1) finally adopting the SEC's independent chair rule for mutual funds (2) adopting simplified mutual fund fee disclosure (3) simplifying 401-k total fee and cost disclosure and (3) increasing resources devoted to enforcement in the area of investment companies (SEC) and 401-k plans (DOL).
  11. Adopt a coherent strategy for dealing with globalizing capital markets (regulatory): The SEC should move from using globalization as a device for weakening investor protections to a comprehensive strategy for building a strong global regulatory framework in alliance with those governments that share that commitment. This effort should address the development of a global accounting system and the problem of the shadow financial system. All efforts at unilaterally dismantling our system of investor protections should be halted, including those directed at weakening accounting, auditing, and broker dealer regulation.
  12. Address Time Horizons in US Capital Markets (regulatory and legislative): The SEC and the IRS should examine what steps could be taken to improve a long-term focus in the capital markets and US business. This would include structuring initiatives like proxy access to empower long term investors, improving disclosure for short-term oriented investors like hedge funds, looking at increasing capital gains taxes for short term trading relative to long term investing, and initiatives such as examining the accounting rules to determine if they are disadvantaging long term investments by companies, such as investment in human capital.

**Key Federal Agency Positions – Corporate Governance**

<b>Department</b>	<b>Agency</b>	<b>Position</b>	<b>Nature of Position</b>
Treasury		Secretary of Treasury	PAS
Treasury		Undersecretary for Domestic Finance	
Treasury		Undersecretary for International Finance	
Treasury	Internal Revenue Service	Director	
DOL	EBSA	Assistant Secretary	PAS
Justice	Antitrust	Assistant Attorney General for Antitrust	PAS
SEC		Chairman	PAS
SEC		Secretary, Office of Corporation Finance	SC
SEC		Secretary, Office of Market Regulation	SC
SEC		Secretary, Office of Investment Management	SC
SEC		General Counsel	SC
SEC		Chief Accountant	SC
SEC		Director, International Office	
Public Company Accounting Oversight Board		Chair and Board members	
Commodities Futures Trading Commission		Chairman and commissioners	
CFTC		Director, Market Oversight	
Pension Benefit Guaranty Corporation		Executive Director	SC