DATA FOR **PROGRESS**

REVOLVING DOOR PROJECT

Corporate Crackdown Project: Report — Commerce and Transportation

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February 2022

Introduction

As President Joe Biden enters his second year in office, the White House is faced with the challenge of combating rising inflation and the ongoing supply chain crisis. While working-class Americans have borne the brunt of rising costs for consumer goods and stagnant wages, corporations with a hand in the supply chain have seen a tenfold increase in profits. In office, Biden has correctly identified rampant corporate consolidation as playing a role in the present crisis facing consumers. To respond accordingly, the Biden Administration must command the untapped powers of two Cabinet departments tied to consumer markets and the supply chain: the Department of Commerce (DOC) and Department of Transportation (DOT).

Despite the relevance of a department whose stated mission is fostering innovation and encouraging "job creation and economic growth," the DOC's crucial functions have long been neglected or overlooked. Nevertheless, the DOC's relative lack of public prestige and opaque organization do not imply a lack of authority. From combating pharmaceutical price-gouging through the U.S. Patent and Trademark Office (USPTO) to helping bridge the digital divide through the National Telecommunications and Information Administration (NTIA), progressive leadership at the DOC could make a huge difference in the lives of working Americans.

A surge in appropriations through the Infrastructure Investment and Jobs Act (IIJA) gives the DOT a key role in reinvigorating American infrastructures. Agencies such as the Federal Railroad Administration (FRA) wield power over labor standards and requirements for increasing rail worker retention and job creation in addition to forcing investment in supply chain strengthening redundancies. Meanwhile, agencies like the Federal Aviation Administration (FAA) oversee expansion of low-cost carriers and labor regulations that help protect America's airline workforce, oversight that impacts both the cost of air travel faced by consumers and the security of the workers who make air travel possible.

The following report is the second installment of Data for Progress and the Revolving Door Project's Corporate Crackdown Project. This memo assesses how agencies within the DOC and the DOT can use their powers to combat supply chain and trade issues through prioritizing citizen well-being over corporate profits. The report analyzes the powers of each relevant agency and provides a critical assessment of the Biden Administration's record of utilizing these agencies thus far. Furthermore, the report provides policy recommendations in the interest of utilizing agency powers to benefit American consumers. The public polling data referenced in this memo was part of a national survey conducted by Data for Progress from January 29 to 31, 2022, testing 2,379 likely voters' attitudes towards the policy recommendations outlined.

Within the Department of Commerce, this memo assesses the powers wielded by:

- The United States Patent and Trademark Office (USPTO), which wields authority in the realm of trademark registration and intellectual property (IP) identification;
- The National Telecommunications and Information Administration (NTIA), which alongside the Federal Communications Commission (FCC) plays a crucial role in developing America's broadband infrastructure;

- The International Trade Administration (ITA), which plays a major role in developing American trade policy through promoting U.S. exports; and
- The Bureau of Industry and Security (BIS), which is tasked with the development of export controls for commercial and some military technologies.

Within the Department of Transportation, this memo assesses the powers wielded by:

- The Federal Railroad Administration (FRA), which is responsible for enforcing federal safety regulation of railroads and makes strategic investment in railroad maintenance and expansion;
- The Federal Aviation Administration (FAA), which oversees all domestic air regulation and labor standards in the airline industry;
- The Maritime Administration (MARAD), which is responsible for oversight of American waterways and waterborne transportation; and
- The Federal Motor Carrier Safety Administration (FMCSA), which regulates interstate trucking regulations.

Additionally, this memo examines the activities of the Surface Transportation Board (STB), an independent federal agency tasked with regulatory oversight of railroads and freight shippers.

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office (USPTO)

I. ASSESSMENT OF FUNCTIONS

The United States Patent and Trademark Office (USPTO) is among the most impactful agencies within the DOC, and has the responsibility to process patent and trademark applications. By advising both the secretary of commerce and the president on matters of intellectual property rights (IPR), USPTO leadership can meaningfully impact the global economic landscape. The office works alongside other agencies such as the International Trade Administration (ITA) and the National Institute of Standards and Technology (NIST) to coordinate the federal approach to intellectual property rights.

The USPTO is led by a director, who dually serves as undersecretary of commerce for intellectual property. Through the agency's Office of Policy and International Affairs (OPIA), the USPTO is empowered to engage in international enforcement efforts in the realm of IPR. The OPIA advises both the United States Trade Representative (USTR) and the Department of State in defining IP obligations in both bilateral and multilateral trade agreements and treaties. USPTO leadership notably wields the power to issue examiner guidance, giving the director partial discretion in deciding how to apply rulings and statutes in the examination process.

The USPTO has several structural deficiencies that help enable America's monopoly-friendly patent regime. Perhaps the most obvious statutory hindrance is the funding mechanism for the USPTO itself: As the agency receives no federal funding through congressional means, its operations rely on application fees. A 2017 study conducted by the Hamilton Project suggests that this has resulted in the agency approving patent applications at a higher rate in periods of financial strain, which poses an obvious threat to consumers' welfare.

Furthermore, a combination of low standards of patentability and the fact that the USPTO is given the burden to prove an invention is not eligible to be patented further hinders the agency's efforts. The patent examination process often takes years, which led to the USPTO presiding over a backlog of over half a million patent applications. According to a 2014 estimate, patent examiners complete their examinations in just 19 hours on average in order to accommodate the exorbitant number of patent applications the agency receives.

II. THE LEADERSHIP THE USPTO NEEDS

Far from curating a "culture of innovation" that benefits consumers, the monopoly-friendly U.S. patent regime continues to take a toll on Americans' checkbooks. Per a 2018 study conducted by economist Dean Baker, American consumers spent an additional $315 billion on drugs than they would have had to pay in a true open market system. During the Trump Administration, the USPTO under director Andrei Iancu helped pad pharmaceutical monopoly profits through rulemaking designed to further tilt the scales against generic manufacturers.

Despite the limitations of the USPTO, the agency can still be oriented toward progressive reform in the realm of IPR through examiner guidance that takes a "quality over quantity" approach to issuing patents. It is imperative that the administration work closely with Congress to improve the USPTO's limited capacity, which has unfortunately served to create a revolving door between patent examiners and the private sector.

Progressive leadership at the USPTO is particularly urgent given the unfortunate outcome of United States v. Arthrex (2021) in the Supreme Court. The decision weakened the Patent Trial and Appeal Board (PTAB), created in 2011 through the Leahy–Smith America Invents Act, at the expense of consumers. Before the ruling, the PTAB had the power of inter partes review, which enabled anyone to challenge a patent's validity, giving the public a rare avenue to influence the otherwise unaccountable patent regime. Given that the PTAB's inter partes review power reduced costs for generic drugmakers while shortening the time to generic drug entry, killing this power was a top priority for Big Pharma and its allies.

The human toll of America's broken IPR regime was laid even more bare in the coronavirus pandemic, where patent monopolies have proven catastrophic to global public health efforts. According to research conducted by the Initiative for Medicines, Access & Knowledge (I-MAK), the current patent regime has played a key role in the drug pricing crisis. According to I-MAK, pharmaceutical companies have sought to entrench their profits through procuring up to hundreds of patents for a single product. As a result, the best-selling drugs in the country have an average of 131 patent applications, with said applications "strategically staggered throughout the drug's life cycle in order to maximize the exclusivity period." By abusing a system intended to safeguard innovation to stifle competition, Big Pharma has helped create the present crisis of drug pricing in the United States.

We tested the attitudes of likely voters towards a change in the patent system, especially as it relates to extending pharmaceutical patents. We find that, among all likely voters, support for changing the patent system so that there are stricter rules on patent extensions is backed by a +39-percentage-point margin, even when voters were presented with arguments for and against this change. This broad support holds true across partisan lines, with self-identified Democrats, Independents, and Republicans supporting stricter patent extensions by margins of +52 points, +39 points, and +24 points respectively.

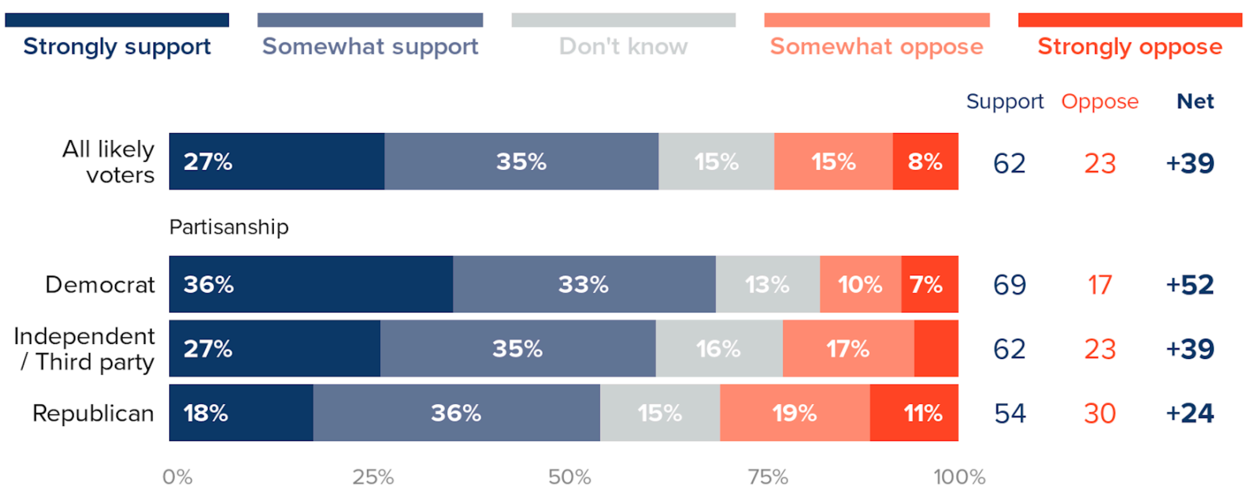
Bipartisan Majority of Voters Support Stricter Rules for Extending Pharmaceutical Patents

The current patent system allows pharmaceutical companies to extend their patents years after any substantial innovations are made to a particular medicine or vaccine. Lawmakers are considering changing the patent system so that there are stricter rules on how patents can be extended.

Supporters of this change say pharmaceutical companies currently use extended patents to artificially restrict supply and inflate costs of treatments, making potentially life-saving medicines unaffordable for regular Americans.

Opponents of this change say the current patent system allows pharmaceutical companies to maximize profits on medicines and vaccines and allows them to reinvest higher profits into future private research.

Do you support or oppose a change to the patent system that places stricter rules on how patents are extended?



January 29–31, 2022 survey of 2,379 likely voters

DATA FOR PROGRESS

The U.S. patent system has long entrenched systemic inequalities, with white patent holders from wealthy backgrounds benefitting at the expense of individuals from marginalized communities. According to a study conducted by researchers at Michigan State University (MSU), Black inventors were awarded just six patents per 1 million individuals between 1976 to 2008, far fewer than the 235 patents per 1 million in the overall population. A solid step toward rectifying this glaring inequality would be through an initiative proposed in the Inventor Diversity for Economic Advancement (IDEA)

Act, which would direct the agency to collect voluntary demographic data. In doing so, the USPTO would be able to firmly identify the extent of racial and gender inequality in the patent system, which would allow policymakers and regulators alike to respond accordingly.

III. THE USPTO UNDER BIDEN

As president, Biden has signaled his support for reinvigorating fair competition through measures such as the "Executive Order on Promoting Competition in the American Economy" in July 2021. As long as industrial giants are allowed to game the IPR regime to crush nascent competitors and preserve their massive profits, executive orders signaling support for stronger antitrust enforcement can only do so much.

Kathi Vidal, an experienced patent litigator at Big Law firm Winston and Strawn, was chosen to serve as director of the USPTO. During her career, Vidal has represented Big Tech giant Microsoft, a noted patent hoarder, and T-Mobile, a patent abuser that has sued small companies for using logo colors too similar to the magenta in its logo. Nevertheless, Vidal's established support for the PTAB is a welcome sign, and we urge her leadership to listen to the insight of progressive advocates, not conservative industry interests, when considering examiner guidance.

Monopoly power wielded by Big Tech companies poses a threat to the welfare of both the economy and the future of democracy. One of the methods Big Tech companies have used to accumulate monopoly power has been through exploiting an IP regime in desperate need of reform. Though it is exciting that Biden appointed firm opponents of Big Tech's monopoly power to the Federal Trade Commission (FTC) and the Department of Justice (DOJ), a similar approach must be made in the selection of USPTO personnel. For these reasons, it is alarming that as of December 2021, Jeremiah Chan, the head of patents, licensing, and open source at Facebook, remains on the USPTO's Patent Public Advisory Committee (PPAC).

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration (NTIA)

I. ASSESSMENT OF FUNCTIONS

The National Telecommunications and Information Administration (NTIA) of the DOC administers infrastructure grants that contribute to the development of broadband infrastructure across the United States. The agency, described as "the President's principal advisor on telecommunications and information policy," is led by the assistant secretary of commerce for communications and information.

In addition to participating in intra-agency efforts within the Department of Commerce, the NTIA also collaborates closely with the Federal Communications Commission (FCC) on a litany of information infrastructure-related issues, such as spectrum coordination. While the activities of the NTIA have generally been subject to less mainstream coverage than that of the FCC, the agency within the DOC has a crucial role to play in shaping the future of America's broadband infrastructure. The NTIA's efforts were long hindered by a lack of permanent leadership; there was no permanent assistant secretary in the post from May 2019 to January 2022.

The signing of the Infrastructure Investment and Jobs Act (IIJA) in November 2021 allocated $48.2 billion to the NTIA, making strong agency leadership more important than ever. Through the agency's newly established Office of Internet Connectivity and Growth (OICG), these funds will be administered for a variety of projects aimed at bridging the digital divide. Arguably the most important of these is the Broadband Equity, Access, and Deployment (BEAD) Program, which allocates a minimum of $100 million per state to help bridge the gap.

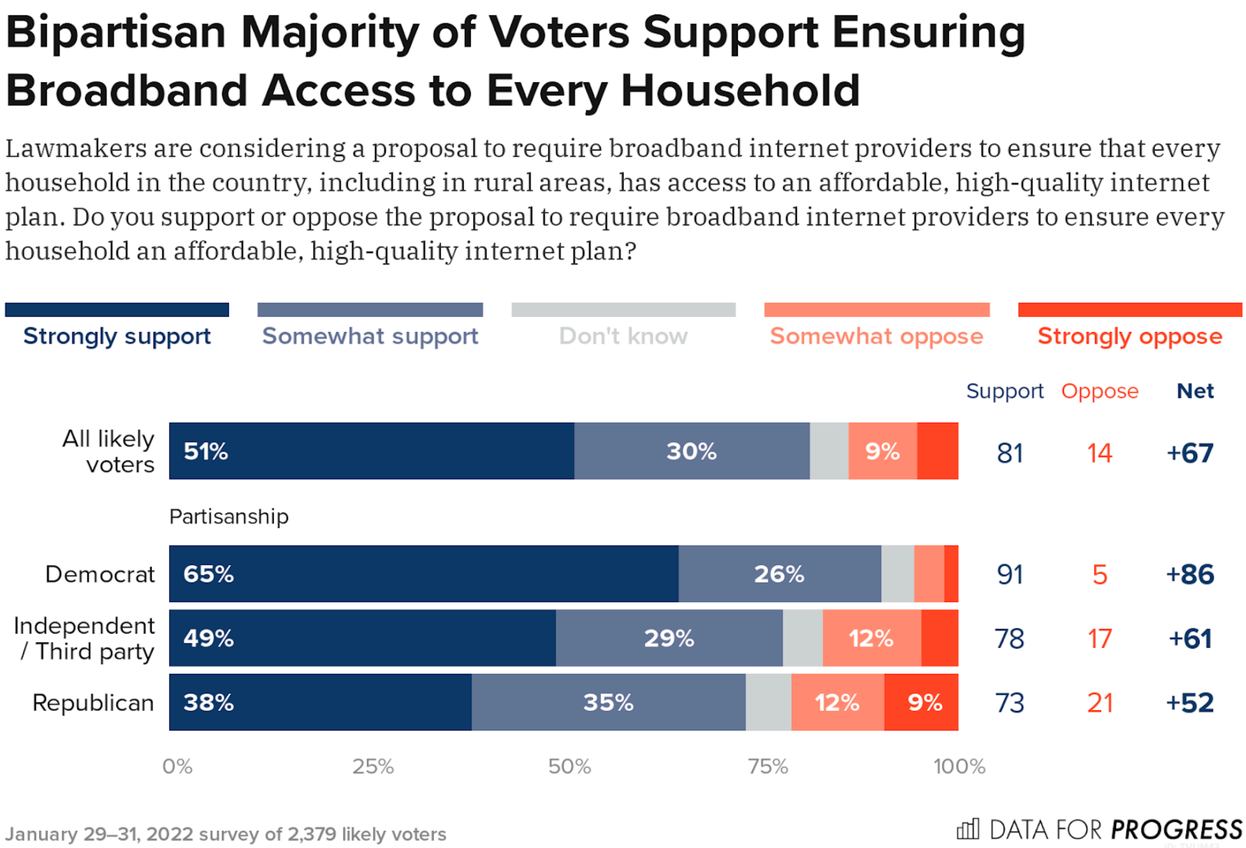
Under the BEAD Program, only network operators that deploy service at speeds of at least 100/20 megabits per second are permitted to receive federal funding, in order to bridge the digital divide in underserved areas, defined as those with speeds under 25/3 megabits per second. In addition to the BEAD Program, the NTIA has received $1 billion for the construction or improvement of existing "middle mile" broadband infrastructure. Middle mile infrastructure brings data to and from the so-called internet backbone to local networks, which is crucial to connecting anchor institutions like government offices and local schools.

II. THE LEADERSHIP THE NTIA NEEDS

On a fundamental level, the NTIA needs leadership willing to wield agency powers to lower broadband costs and increase access in marginalized communities. As the Obama Administration noted in 2015, internet access in the United States is alarmingly expensive by international standards. Citing a comparative study of international and domestic broadband prices, the Obama White House concluded that the "median monthly price at each speed level is higher in the U.S., often by 50 percent or more." Needless to say, action speaks louder than words; the NTIA has acknowledged the presence of a digital divide since at least 1995 with little to show for it.

Access to fast, reliable broadband is far from a luxury product — it's a necessity in virtually all facets of modern life. Though the coronavirus pandemic laid bare the need for universal broadband, the fact of the matter is that marginalized communities have long been harmed by the digital divide, with 2019 data revealing that almost 80 million Americans lived without adequate broadband at home. Unfortunately, the NTIA's ability to deliver adequate policy solutions is hindered by poor broadband mapping, an issue that policy experts have been sounding the alarm on for over a decade. Similarly, in order for the NTIA to pursue efficient spectrum policies, the agency should initiate a spectrum audit in order to determine where allocated and assigned spectrum isn't actually being used.

We find over three-quarters of voters support requiring broadband providers to ensure affordable, high-quality internet plans to every household in the country. This supermajority support also holds across partisan lines, with Democratic, Independent, and Republican support margins of +86, +61, and +52 percentage points, respectively.



Furthermore, the NTIA needs leadership that understands that the digital divide did not emerge organically, but rather resulted from rampant monopoly activity in the telecommunications sector. It is vital that NTIA leadership understands that closing the digital divide is a racial justice issue. As internet service providers (ISPs) systematically privilege predominantly white communities over communities of color, marginalized people disproportionately bear the burden of unaffordable internet access. Making strong use of the additional $2 billion toward the Tribal Broadband Connectivity Program (TBCP), which serves as an effort to bridge the digital divide in Native communities, must be a priority of NTIA leadership.

Though broadband access makes up the bulk of the NTIA's portfolio, the agency has partial authority in important policy areas equally in need of strong, progressive leadership. Indeed, given that the agency serves to advise the president on information policy, strong policy recommendations to Congress and the executive branch could have a positive impact. Under the Obama Administration, the NTIA convened a multi-stakeholder process regarding facial recognition technology that was criticized by privacy advocates for being too friendly to corporate interests.

III. THE NTIA UNDER BIDEN

From Day 1 of the Biden Administration, the White House signaled that a massive expansion of broadband infrastructure was to be a top priority. Given that such an ambitious program would require relevant agencies to be staffed, it is unfortunate that the White House only nominated a permanent

NTIA head in October 2021. Prior to this, the NTIA had been without permanent leadership since the resignation of Trump-era assistant secretary David Redl in May 2019. Released on December 23, 2021, the NTIA's "Access Broadband 2021" report reveals a litany of missed statutory deadlines and inefficiencies. As of January 2022, the NTIA stated that it has approved just five of the 280 tribal applications for the Tribal Broadband Connectivity Program so far.

In early 2021, there was press speculation that Biden was to nominate former telecommunications industry lobbyist Scott Harris to the helm of the NTIA. Harris, who had previously praised Republican FCC commissioner Ajit Pai, was fortunately passed over for the job. In the end, Alan Davidson, who boasts private sector, government, and advocacy experience, was chosen, a pick that received positive marks from progressive organizations.

Though Davidson has the bona fides to be an effective civil servant, the role of lower-level NTIA personnel in overseeing agency programs makes it crucial that experienced public officials be appointed to lower offices as well. It is potentially concerning that the historic broadband programs, such as the BEAD Program created by the IIJA, are set to be overseen by Doug Kinkoph, the associate administrator of the NTIA's OICG unit. Kinkoph's background includes lobbying experience on behalf of the now-defunct telecommunications company LCI International and XO Communications, without any apparent experience in the realm of digital equity. In order to secure just outcomes in broadband, we urge Kinkoph to listen to the recommendations of experienced digital equity advocates.

DEPARTMENT OF COMMERCE

International Trade Administration (ITA)

I. ASSESSMENT OF FUNCTIONS

The International Trade Administration (ITA) of the DOC is tasked with promoting non-agricultural exports of domestically manufactured goods and services. The ITA serves to inform consumers about markets and products, ensure fair access of Americans to international markets, and safeguard against unfair trade practices. Though the United States Trade Representative (USTR) is the most relevant federal agency in trade matters, the Department of Commerce also influences trade policy through the ITA. The ITA is led by the underseccretary of commerce for international trade, who is subject to Senate confirmation.

The ITA's Enforcement and Compliance (E&C) unit enforces antidumping and countervailing duty (CVD) laws. AD laws serve as a safeguard against dumping, where a foreign producer sells products in the United States at a lower price than in its country of origin. CVD laws establish standards to determine whether industrial subsidies from foreign governments are fair or unfair, and give the United States a remedy to respond accordingly.

The ITA hosts the annual SelectUSA Investment Summit, which serves to promote foreign direct investment in U.S. industry, and claims to have secured $59 billion in new American investment projects. The ITA also hosts a series of "climate events" with the stated goal of attracting foreign investors to U.S.-based clean energy projects.

II. THE LEADERSHIP THE ITA NEEDS

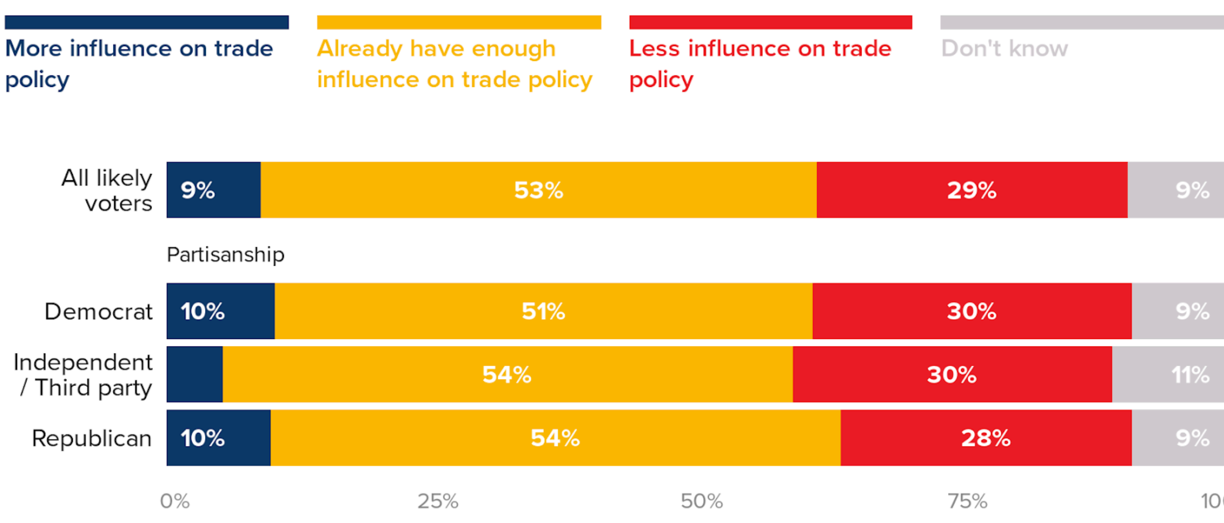
When assessing the ITA's authority, it is worth considering that Section 232 of the Trade Expansion Act of 1962 empowers the agency to recommend tariffs and quotas on imports deemed detrimental to national security. As noted by the Revolving Door Project in January 2021, this could be used for to progressive ends; an ITA that "evaluate[s] imports based on their impact on working families will be an essential step towards building a progressive trade policy." One policy route that ITA could conceivably take would be to leverage the agency's United States Commercial Service (CS) unit, tasked with curating "country commercial guides" to promote investment abroad, and to emphasize labor and human rights conditions in other countries.

Personnel is policy, and closing the "revolving door" between the private sector and government positions with authority over trade policy is needed to build a worker-centered trade policy. In the past two decades, individuals in the role of undersecretary of commerce for international trade have often come from corporate backgrounds. These include alumni of AT&T, Big Law firm King & Spalding, and Bank of America. To reinvigorate the ITA, the agency should be led by career civil servants committed to the public interest, not former corporate lobbyists.

When asked about the level of influence corporate executives should have in determining trade policy, most voters (53 percent) said that corporate executives have enough influence while nearly a third of voters (29 percent) said they should have less influence. Similar opinions are held across party lines; within parties, the opinion that corporate executives should have more influence over foreign trade was chosen by no greater than 10 percent of respondents.

Voters Believe Corporate Executives Should Not Have More Influence in Trade Policy

Do you think executives of large corporations should have more or less influence in determining trade policy with foreign countries, or do they already have enough influence?



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III. THE ITA UNDER BIDEN

Under the Trump Administration, U.S. trade policy undermined workers' welfare, supply chain resilience, and America's diplomatic efforts. Under Biden, the ITA has taken an active approach to trade policy, notably instituting antidumping duties on common alloy aluminum sheets from 18 countries. In August 2021, the ITA convened public comments for its Clean Technologies Export Competitiveness Strategy program, covering policy areas crucial to solving the climate crisis such as renewable energy, heat production, and agriculture. However, despite the urgency of the 2021 supply chain crisis, it took almost a year into Biden's presidency for key ITA officials to be named.

Marisa Lago, Biden's choice to lead the agency as undersecretary of commerce for international trade, is a career public official, unlike her predecessor under Trump. While Lago's background in civil service is a welcome one, a review of ITA personnel reveals a litany of officials with corporate backgrounds. Cara Morrow, the current director of policy for the ITA, is a former trade official who handled e-commerce policy for Facebook. This is of potential concern given that the revolving door between Big Tech and the federal government, including in the realm of trade policy, has hindered policy-makers' ability to hold these corporate giants accountable. To achieve the president's articulated vision of a worker-centered trade policy, we urge Morrow to prioritize the insight of pro-labor trade policy advocates when considering policy proposals.

Given that public promotion of U.S. industry is among the ITA's key tasks, it is disappointing that the position of director of public affairs within the Office of the Under Secretary remains vacant. The appointment of Obama Administration alum Grant Harris, who criticized Trump's withdrawal from the anti-worker Trans-Pacific Partnership (TPP), as assistant secretary of commerce for industry and analysis is also of potential concern for supporters of progressive trade policies. President Biden has signaled his support for turning the page on the industry-friendly status quo in trade policy, an effort that must be coupled with the appointment of committed progressives to key trade positions. As shown in the "Protecting Workers From Corporate Crime" report, pro-labor leadership at the USTR has already yielded meaningful dividends for workers at home and abroad.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security (BIS)

I. ASSESSMENT OF FUNCTIONS

The Bureau of Industry and Security (BIS) of the DOC wields control-of-exports authority for reasons of national security. The BIS, whose stated goal is to uphold the "treaty compliance system and promot[e] continued U.S. strategic technology leadership," is led by the undersecretary of commerce for industry and security. Per the provisions of the Export Control Reform Act, the president is also obliged to appoint two assistant secretaries of commerce to assist the undersecretary in administering the complex agency.

Formerly known as the Bureau of Export Administration, the agency was renamed in the aftermath of the September 11, 2001, attacks to emphasize its core mission. Long deemed an obscure and inconsequential unit of the Department of Commerce, the "agency has become ground zero of the technology competition with China" since the inauguration of Donald Trump. The Export Control Reform Act of 2018 strengthened the agency's authority.

During the Trump Administration, hundreds of Chinese firms, most notably Big Tech giant Huawei, were added to the agency's "Entity List", which is used to penalize foreign companies in violation of U.S. export rules. Within the BIS is the Office of Export Enforcement (OEE), which plays a role in developing export controls for commercial and some military technologies. The OEE prevents illegal exports through mandating compliance to statutory and regulatory requirements. Through the Sentinel Program, the OEE assesses "prospective end-users on pending license applications for diversion risk."

II. THE LEADERSHIP THE BIS NEEDS

In addition to being used in the interest of sound trade policy, the BIS can be a tool for constructive, multilateral foreign policy efforts. Indeed, as progressives look to reorient American foreign policy away from the antiquated notion of diplomacy as a zero-sum game, and toward seeking mutually beneficial relationships abroad, trade policy must change as well. For far too long, the BIS has been used to punish traditional geopolitical rivals of the United States without meaningfully considering the impacts on workers' welfare.

The Entity List has historically been used to penalize foreign firms for suspected or confirmed violations of export rules. As some legal analysts have noted, the provisions of 15 CFR § 744.11 suggest that placement on the Entity List can be done to advance other policy goals as well. Indeed, under these guidelines the BIS may place parties on the Entity List if there is "reasonable cause to believe … that the entity has been involved … in activities that are contrary to the national security or foreign policy interests" of the U.S. government.

III. THE BIS UNDER BIDEN

To lead the BIS, Biden nominated Alan Estevez, a former Department of Defense official who joined Deloitte Consulting as a national security strategy consultant in 2017. Matthew Axelrod, a former Department of Justice official during the Obama Administration, was chosen to serve as assistant secretary for export enforcement.

Under Biden, the BIS launched its first enforcement action against an American company that was found to engage in unauthorized exports to Huawei, a violation of the Export Administration Regulations. Following the 2021 coup d'état in Myanmar, the BIS punished Myanmar-based firms that were associated with the country's military establishment and/or known to engage in labor violations. The use of BIS authority to penalize Wanbao Mining, a copper company that has been subject to complaints from international human rights groups such as Amnesty International for years, implies that the BIS can be used to advance workers' interests globally.

The blacklisting of Israeli firm NSO Group over spyware in November 2021 was also notable, given that it is rare for the BIS to blacklist firms based in countries deemed allies of the United States. Nevertheless, the BIS has generally adhered to "great power" competition standards under Biden. It is unfortunate that BIS rules unveiled in October 2021 to curb the sale of hacking technology abroad to

Russia and China included “carve-outs” for traditional allies of the United States. Going forward, the BIS must break from the nationalism of the Trump Administration in favor of an approach to export policy rooted in multilateralism and a desire for sound industrial policy.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration (FRA)

I. ASSESSMENT OF FUNCTIONS

The Federal Railroad Administration (FRA) of the DOT enforces the federal safety regulation of railroads in addition to strategic investment in railroad maintenance and expansion. The FRA also holds rulemaking powers addressing the effects of consolidation in the freight industry, and notably regulates labor standards for rail workers. The FRA’s Office of Railroad Safety employs almost 400 inspectors, including safety management teams to coordinate safety efforts. Through issuing federal grants for public projects such as passenger rail services, the FRA has a critical role to play in bolstering U.S. transit infrastructure.

Under Donald Trump, FRA safety regulation recommendations were withdrawn for the transportation of hazardous materials like ethanol. Trump’s FRA head Ronald Batory, who previously served as chief operating officer of the Consolidated Rail Corporation, also oversaw the deregulation of pressurized railcars. Trump’s corporate-captured FRA prioritized the profits of consolidated railroad companies at the cost of both rail efficiency and public safety.

Labor standards impacting both rail workers and the communities that trains operate in were also attacked through the Trump Administration’s efforts to abolish minimum crew sizes for trains. This pursuit was met with resounding opposition from organized labor. Trump-era rulemaking not only attempted to cease the FRA’s enforcement of crew size regulation, but also sought to nullify state laws mandating the number of workers required to operate a train.

Batory’s deregulatory efforts led to the elimination of requirements for updated braking systems on oil freight, and also resulted in a proposal to test train operators for sleep apnea being shelved. The Trump FRA’s efforts created cascading hazards in the oil freight industry, while also reducing the quality and size of the workforce, further damaging supply chain efficiency. Meanwhile, as private equity firms continue rail streamlining to boost profits, rail efficiency, labor standards, and safety have all suffered.

II. FORGING A POSITIVE FUTURE FOR THE FRA

Given the damage done to the FRA’s functions under Trump, initiating strong rulemaking will be crucial to reversing the damage of the last four years to chart a positive course for the agency. By slashing tens of thousands of workers, nearly a fifth of the workforce over the past four years, rail companies have jeopardized the communities their trains travel through with fewer and fewer conductors and engineers on any given train. Meanwhile, railroad behemoths have also pursued Precision Scheduled Railroading, the freight equivalent of Walmart’s just-in-time shipping.

Indeed, both systems purge essential redundancies like warehouses and railyards that eat into corporate profits, while leaving companies less resilient in times of supply chain crises like the one America is now experiencing. Workforce reduction has also led to fewer railyard inspectors, and longer hours for those still employed. While rail-related fatalities have decreased, metrics like derailments and amputations have climbed, providing ample justification for any safety-based rules also affecting the labor market.

During the Biden Administration, the FRA has taken steps to increase rail safety and labor standards. To lead the agency, Biden nominated Amit Bose, a former New Jersey state transportation official who served as the FRA's deputy during the Obama Administration. Bose was confirmed to lead the agency on January 12, 2022, and began his tenure by pursuing a rule to increase train crew sizes and replace the current patchwork of relevant state laws with a federal standard. In doing so, the FRA has signaled that it will pursue a baseline of safety regulation.

Deregulation in the private rail system has proven disastrous for American riders and individuals in communities that trains pass through. The Biden Administration should instruct the FRA to expand its civil sanctions through safety-based rulemaking that would force American railroad behemoths to hire more workers and invest in rail infrastructure. In doing so, the FRA would be able to assist in creating adequate staffing levels to combat the supply chain crunch. This would result in lowering prices for consumers by forcing corporations to invest profits in resilience instead of actively making the supply chain crisis worse. Potential rulemaking to address this problem would use safety studies focused on companies with inadequate facilities, inspectors, and equipment stockpiles.

Even when presented with arguments for and against a potential decision by federal regulators to block railroad company mergers, blocking mergers receives a +16-point margin of support among all likely voters. A majority of Democrats (59 percent) support blocking rail mergers, with a +34-point margin of support. A plurality of Independents also back railroad company mergers with a +11-point margin of support. Republican voters are more split with 41 percent saying they would support such a decision and 42 percent saying they would oppose it.

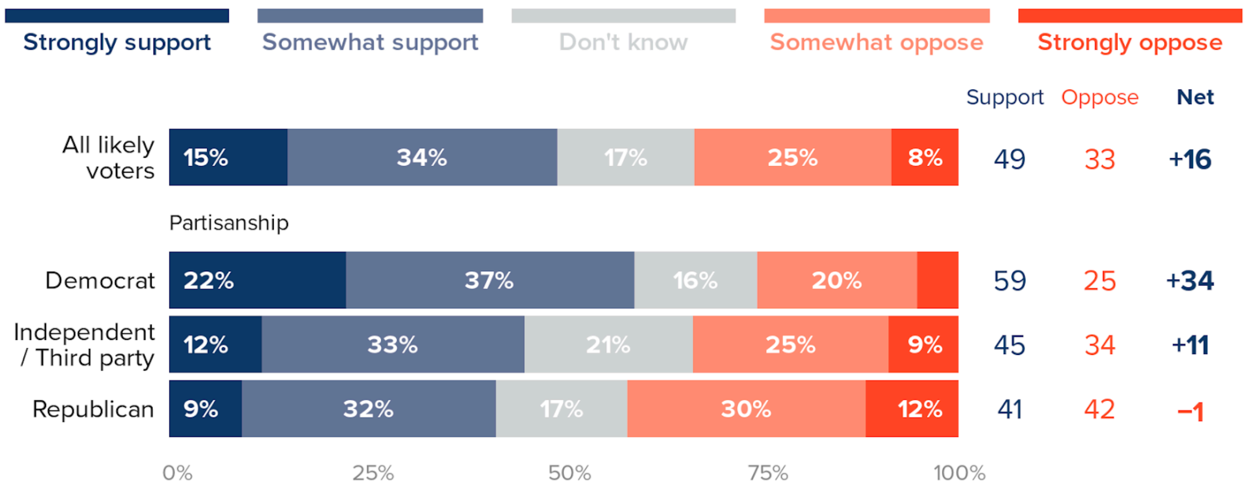
Voters Support Blocking Railroad Company Mergers

Federal regulators are considering blocking major railroad companies from merging.

Those who support blocking mergers say this would prevent railroad companies from charging high fees due to lack of competition, just like airlines.

Those who oppose blocking mergers say that this is an overreach of government and imposes burdens on the dealings of private railroad companies.

Based on what you know now, do you support or oppose regulators from blocking railroad company mergers?



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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

I. ASSESSMENT OF FUNCTIONS

The Federal Aviation Administration (FAA) of the DOT is responsible for the enforcement of all regulations on civil aviation. Functions of the FAA include reviewing aviation safety, regulating commercial airspace, and developing aviation technology. Through the agency's Enforcement Division, the FAA is empowered to issue orders that assess civil penalties to address relevant violations of federal law.

Under the Trump Administration, the FAA was roiled by its massive failure to prevent catastrophic design flaws in Boeing's 737 Max aircraft. Dan Elwell, Trump's appointee to lead the agency, resigned amid the crisis. Prior to the announcement of the Boeing news, the Trump Administration halted a slew of regulations and eliminated several existing FAA oversight mechanisms. These actions included delaying an aircraft safety standard overhaul, stalling regulations that would have increased safety measures at airports, and, critically, grinding to a halt the process that aviation companies rely on to receive FAA guidance and approval on new technologies.

Under Trump, U.S.-based airlines received over $50 billion in taxpayer-funded bailouts in the midst of the pandemic. But as airline CEOs continue to reap tens of millions of dollars in annual bonuses and compensation, flights continue to climb in price while workers in the industry face increasingly aggressive passengers and unsafe work environments. Despite these challenges, the FAA wields rulemaking power to combat price gouging and worker safety, and was instructed to enforce a number of directly-related rules per relevant provisions of the 2018 FAA Reauthorization Act.

II. FORGING A POSITIVE FUTURE FOR THE FAA

Under the Biden Administration, Trump appointee Stephen Dickson continues to lead the FAA for a term that runs through 2025. Dickson, a former Delta Air Lines executive, has overseen the Biden Administration's modest regulatory initiatives at the FAA, including targeted low-cost carrier expansion at Newark Liberty International Airport, regulation of hidden fees imposed by airline carriers, and increased penalties for unruly passengers.

In the case of both hidden fees and low-cost carrier expansion, the Biden Administration can further pursue orders increasing competition at airports and lowering prices for consumers. Already, low-cost carriers are adjusting to the pandemic landscape by expanding their destinations to accommodate a new mobile workforce. Biden could further incentivize lower-cost alternatives for consumers by ordering the FAA to expand requirements for low-cost carrier prioritization at airports nationwide.

Low-cost carrier expansion is widely supported by voters, with 69 percent saying they support it, even with support and oppose messaging. Democrats, Independents, and Republicans all back expanding consumer access to budget airlines by +59-point, +41-point, and +36-point respective support margins.

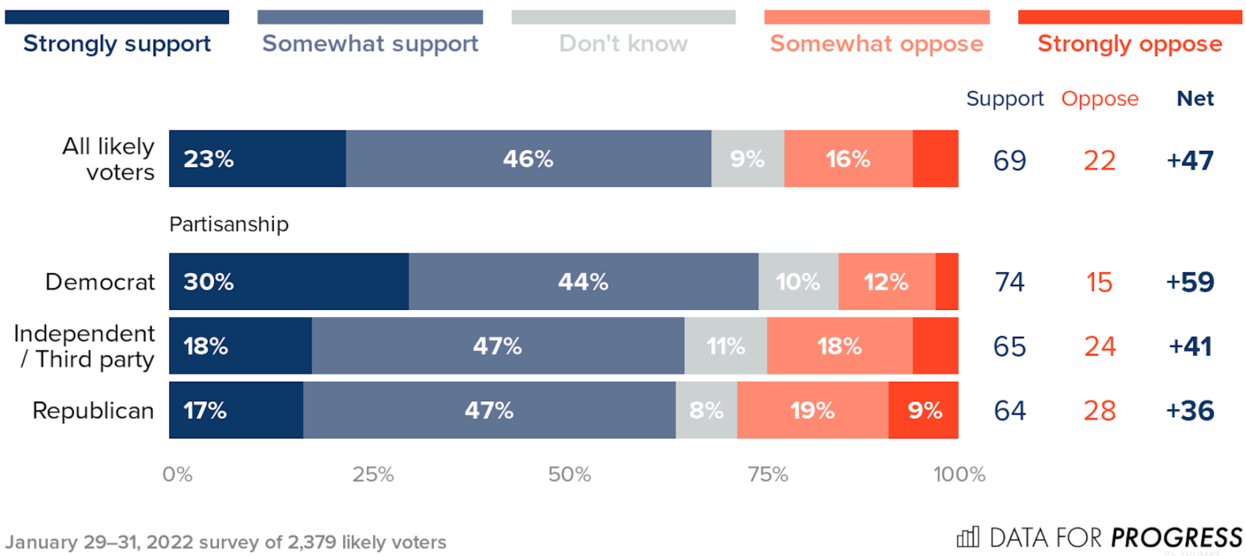
Bipartisan Majority of Voters Support Expanding Low-cost Flights

Federal regulators are considering expanding consumer access to budget airlines, like Spirit or Southwest Airlines, by allotting a certain number of flights per day to low-cost flights.

Supporters say this would make travel more affordable and accessible for average Americans.

Opponents say that adding cheaper flights will cause airports to be more congested and flights to have more delays.

Based on what you know now, do you support or oppose expanding budget airlines?



At the same time, the rulemaking required by the 2018 FAA Reauthorization Act has continued at a crawl, failing to advance the full range of rules dictated over four years ago by Congress. Despite the FAA's congressional mandate, new regulations on issues ranging from increasing minimum seat-size requirements to expanding sanctions against airline employee assaults have been slow to actualize. Accordingly, the FAA must make fulfilling these statutory responsibilities a top priority for the agency going forward.

One of the rules that has made it to public comment is an extension of the required rest time for flight attendants between flights. This would have a significant effect for one of the hardest-hit workforces during the pandemic, and provide a much needed buffer for non-unionized attendants at Delta, which sent a letter to the Centers for Disease Control and Prevention (CDC) in favor of reducing the recommended number of days to safely quarantine after testing positive for the coronavirus.

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

I. ASSESSMENT OF FUNCTIONS

The Maritime Administration (MARAD) of the DOT is responsible for oversight of American waterways and waterborne transportation. MARAD's mission statement is "To foster, promote and develop the maritime industry of the United States to meet the nation's economic and security needs." MARAD staff are involved in writing and enforcing safety regulations in conjunction with other federal agencies, such as the Occupational Safety and Health Administration and the Coast Guard. Accordingly, MARAD staff actively provide the secretary of labor with recommendations on maritime employment standards through the Maritime Advisory Committee on Occupational Safety and Health.

While responsibilities are headlined by promoting the development of maritime infrastructure, maintaining emergency cargo capacity to respond to disasters, and overseeing the U.S. merchant marine, MARAD jurisdiction extends well beyond that. There are also dedicated divisions of MARAD that regulate domestic shipping (also referred to as Jones Act shipping), port development, maritime industry regulation and safety standards, and environmental regulation compliance. While MARAD has a broad scope in monitoring maritime activities, communicating and coordinating with industry stakeholders, and making policy recommendations, it has little oversight authority outside of its role in employment and safety law.

As the Congressional Research Service notes, many critical enforcement powers, including regulating Jones Act compliance, rest with the Coast Guard or Customs and Border Protection (CBP), where MARAD plays a secondary role providing information and support. In its report, CRS also describes the programs that MARAD has in place to foster domestic shipbuilding and shipping through subsidies and compensating shippers for competitive disadvantages incurred by registering vessels domestically. Title XI provides funding for modernization loans and small shipyard grants. Additionally, the "Maritime Security Program offsets competitive disadvantages facing ship owners engaged in international trade who register their vessels in the United States."

II. FORGING A POSITIVE FUTURE FOR MARAD

MARAD is currently overseen by acting administrator Lucinda Lessley, a former staffer to the late Representative Elijah Cummings and senior investigator for the House Committee on Homeland Security. Biden has nominated Rear Admiral Ann C. Phillips to serve as permanent MARAD administrator. During the Biden Administration, MARAD has focused primarily on reacting to supply chain disruptions caused by the pandemic, and on helping to coordinate funds from the IIJA to upgrade ports and marine highways. Once confirmed, MARAD under Phillips must push ahead with efforts to react to the supply chain crisis in conjunction with other relevant agencies.

MARAD also took part in produing a DOT report released in November 2021 that highlighted long-standing reports of sexual harassment and assault in the United States Merchant Marine Academy, and presented plans for addressing those issues. At the end of December 2021, DOT announced that MARAD would be overseeing the distribution of two large sets of grants. MARAD will be disbursing $12.6 million toward maritime highways, in addition to the $25 million earmarked for the waterways under the IIJA. The second set of grants will be administered through MARAD's Port Infrastructure Development Program and represents over $241 million divided between 25 port projects.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration (FMCSA)

I. ASSESSMENT OF FUNCTIONS

The Federal Motor Carrier Safety Administration (FMCSA) of the DOT is responsible for the enforcement of safety regulations on commercial trucks moving across state lines. FMCSA tracks trucking firms' compliance with safety regulations, records accident history, and generally works to reduce the perils of big rig trucking. The FMCSA is empowered to ensure that truck, bus, and motorcoach companies meet Federal Motor Carrier Safety Regulations through issuing civil penalties against violators.

Under the Trump Administration, FMCSA moved to privatize the commercial drivers license certification process and deregulate the commercial busing industry. In both cases, these actions reduced safety and weakened the government's ability to shape efficiency in the trucking industry. Trump's pick to head the agency, Raymond Martinez, came to the FMCSA after decades traversing the public and private sector, including a stint as the New Jersey Motor Vehicle Commission's chief administrator under then-Governor Chris Christie.

Under the FMCSA's rulemaking mandate, hourly work and rest limits have been targeted for both increases and scale-backs depending on the regulatory temperament of the secretary of transportation. The Trump-era FMCSA also declared state laws that afforded truckers meal breaks were null, and initiated new rulemaking that increased truckers' maximum hourly drive time. These policy objectives not only hurt workers, but also incentivized trucking practices that reduced efficiency and competition in the industry.

II. FORGING A POSITIVE FUTURE FOR THE FMCSA

The FMCSA under Biden has similarly focused on easing barriers to licensing and training truckers, using fixed span waivers and apprenticeship initiatives tied to the coronavirus pandemic. The FMCSA is currently overseen by acting administrator Robin Hutcheson, a former deputy assistant secretary for safety policy. Though Meera Joshi had been nominated to serve as permanent FMCSA administrator, she ultimately removed herself from consideration in order to serve as a deputy mayor in New York City.

While the approach taken by the Biden Administration's FMCSA differs from the deregulatory rulemaking of the Trump Administration, it has yet to confront the underlying problems of inadequate labor protections in the trucking industry. Additionally, this approach follows a long-standing prioritization of labor pool expansion over increased labor protections and worker retention initiatives. This same rulemaking approach — opposed by safety and labor groups under Trump for increasing competition from non-union contractors — has unfortunately been upheld during the Biden Administration. These rules altering rest breaks and extending drive times allow for contract operators to drive down prices, while reducing the rates and standards of full-time employees.

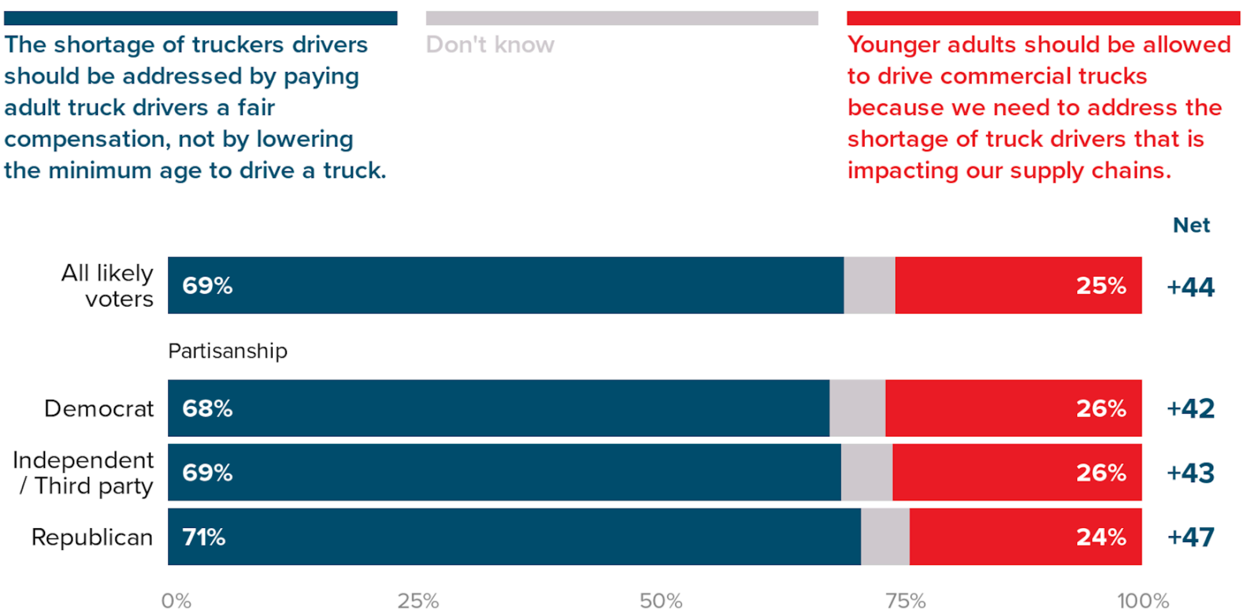
The FMCSA's changes to the age requirement for interstate truckers, now lowered to 18, was effectively a concession to the truck lobby's stance on labor pool shortages. While trucking companies have declared a labor shortage for the past 40 years, turnover rates in trucking tower over other industries due to terrible working conditions and abdication of government oversight. Going forward, Biden's FMCSA must make a clean break from Trump's failed strategy in favor of cracking down on predatory leasing firms and creating resources to shore up protections for contract truckers. Accordingly, the FMCSA must break from efforts to put teenagers behind the wheel, which would flood an already-crowded labor pool and exacerbate low wages and continued disruption in the process.

We asked voters how the so-called shortage of truck drivers should be addressed, by fair compensation of adult drivers or by lowering the minimum age to drive a truck. Among all likely voters, over two-thirds (69 percent) say that truck driver vacancies should be filled by paying adults a fair compensation, a +44 point margin over those who said vacancies should be filled by lowering the minimum age to drive a truck. Similar rates of Democrats (68 percent), Independents(69 percent), and Republicans (71 percent) hold this view that truck driving jobs should be filled by paying drivers fair wages, not by allowing teenagers and young adults to drive trucks.

Bipartisan Majority of Voters Believe Truck Driving Job Vacancies Should Be Filled Paying Fair Wages, Not by Lowering Minimum Age for Drivers

Currently, there are many vacant truck driving jobs. In response, some federal lawmakers are considering a new pilot program that would allow 18 to 21-year-olds to drive commercial trucks.

When thinking about this, which of the following statements comes closest to your view, even if neither are exactly right?



January 29–31, 2022 survey of 2,379 likely voters

DATA FOR PROGRESS

Surface Transportation Board (STB)

I. ASSESSMENT OF FUNCTIONS

The Surface Transportation Board (STB) is an independent federal agency responsible for regulating railroad mergers and setting policy for rail requirements and rates. The STB attempts to balance the interests of railroad owners, the shipping companies that use their routes, and the workers paid by both parties in the public interest. To ensure compliance with federal regulations, the STB is empowered to levy civil penalties upon violators.

In addition to rail, STB also has limited oversight on interstate moving companies, intercity busing, and water freight between the mainland and U.S. territories. Because of the STB's relatively small staffing capacity (under 200), its focus remains on regulating America's railroads. The STB is a bipartisan board consisting of five seats, led by a chair designated from among its membership. Following the departure of Republican Ann Begeman and the confirmation of Democrat Karen Hedlund at the beginning of January 2022, the STB is now controlled by a Democratic majority.

II. FORGING A POSITIVE FUTURE FOR THE STB

Under Biden, progressive STB chair Martin Oberman has demonstrated a penchant for effective regulatory oversight aimed at railroads that inflate the cost of goods while refusing to invest in infrastructure and security. The rulemaking pursued under Oberman will include pro-competition measures like reciprocal switching (forcing rail companies with sole access to a shipping location to bring cars to a junction with a competing railroad), penalties for delays caused by railroad inefficiencies, authorization for increased STB oversight on the rates charged by railroads, and greater transparency mechanisms for "first mile last mile" to shed light on where bottleneck issues caused by railroad companies exist.

Railroads are one of the most consolidated American industries; the number of Class I railroads in the U.S. plummeted from 33 in 1980 to just seven in 2022. Despite the STB's independent agency status, Biden can still make public appeals for the board to act, and with Oberman as chair, he will find a receptive and eager ally. By using its powers to regulate fees charged by shippers to railroad companies for delaying the return of railcars, the STB could create a financial cudgel to punish inefficient rail monopolies and increase supply chain efficiency.

The STB has also signaled that it will likely work to block mergers between rail companies that seek to consolidate further. In January, Oberman questioned an attempted takeover of the regional New England rail network Pan Am by the CSX Corporation; before that, he signaled opposition to a proposed merger between Canadian Pacific and Kansas City Southern, which would create the first single-track route linking Canada, the United States, and Mexico owned by a single corporation. An aggressive approach to tackling corporate concentration by the STB will be crucial to fulfilling the Biden Administration's articulated vision of a highly-competitive economy.

General Assessment: The Departments of Commerce and Transportation Under Biden

The detrimental impact of rising inflation and supply chain disruption necessitates a coordinated, "all-hands-on-deck" approach from the federal government. Going forward, the Biden Administration's efforts to reinvigorate the supply chain must include utilizing the full powers of both the Departments of Commerce and the Department of Transportation. Both departments retain the authority to overhaul long-standing precedents, increase regulatory enforcement actions, and penalize corporations that actively contribute to supply chain breakdown and related economic fallout.

As part of the administration's broader effort to tackle corporate concentration, it is imperative that the USPTO's role in enabling monopoly power doesn't go unchecked. To bridge the digital divide, it is crucial that the NTIA efficiently fulfills its responsibilities articulated in the IIJA in order to bolster U.S. broadband infrastructure. Efforts by the Biden Administration to realize a "worker-centered trade policy" must account for the activities of the ITA and BIS, not just the USTR. It must be noted that other crucial offices not included in the purview of this report, including the Economic Development Administration (EDA), are also constituted within the DOC and should not be neglected.

The FRA and STB's powers must be utilized in full to rein in railroad monopolies and reinvigorate U.S. rail infrastructure. It is crucial that the FAA fulfills its statutory duty to initiate rulemaking measures that are years overdue. Additionally, the unique role the MARAD can play in responding to the supply chain crisis should not be overlooked by the administration or policymakers. As such, the FMCSA must prioritize the interests of truckers, not the truck lobby, and crack down on predatory leasing firms in the sector. The activities of other DOT agencies not included in the purview of this report, such as the National Highway Traffic Safety Administration (NHTSA), also deserve full attention from the administration.

The fact of the matter is that any balancing act that tries to force industry and consumers to meet halfway inevitably ends with the former benefitting at the expense of the latter. The Biden Administration must utilize the full powers of these agencies to crack down on corporate impropriety and secure a fairer economy in the process. American workers, small businesses, and—as shown in this report—the general electorate are sure to welcome these efforts.

Authorship & Methodology

Daniel Boguslaw is a researcher at the Revolving Door Project. Boguslaw led the research process for portions of this memo concerned with the Department of Transportation and associated agencies.

Aidan Smith is a senior advisor at Data for Progress. Smith led the research process for portions of this memo concerned with the Department of Commerce.

Anika Dandekar is a polling analyst at Data for Progress. Dandekar led the polling process, which was conducted from January 29 to 31, 2022 through a survey of 2,379 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is ±2 percentage points. Toplines for this polling can be found here.