Cities and Immigration

Local Policies for Immigrant-Friendly Cities

COWS
center on wisconsin strategy

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About COWS

The Center on Wisconsin Strategy (COWS) is a nonprofit, nonpartisan "think-and-do tank" dedicated to improving economic performance and living standards in the state of Wisconsin and nationally. Based at the University of Wisconsin-Madison, COWS works to promote "high road" strategies that support living wages, environmental sustainability, strong communities, and public accountability.

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1 Introduction

Over the last two decades or so, immigration has become a prominent political and policy issue at the federal, state, and local levels. In large part, the rising concern follows from changes in the magnitude and nature of immigration flows. Reactions to these changes have been quite varied, especially at the state and local levels. While the federal government has passed increasingly hostile legislation toward immigrants, the stances of states, counties, and cities have ranged from unsympathetic, unwelcoming, and even antagonistic to very supportive and welcoming.

Our focus here is on helping elected officials, policy-makers, activists, community-based organizations, and others who want to move their cities to the latter end of the spectrum or to keep them there. More precisely, this report aims at helping individuals and organizations advocate for, design, and implement progressive policies toward immigrants at the city level as well as address, with immigrant-friendly, city-level policies, the problems that large inflows of immigrants sometimes generate for the communities receiving them. These goals have become particularly important given the recent failures of comprehensive immigration reform initiatives at the federal level.

Building on policy experiments and experiences from all around the country, and also from the knowledge and ideas of policy experts and activists whom we interviewed or consulted for this report, we offer a menu of local policies aimed at creating immigrant-friendly cities.[1] This menu of policies will be presented in detail in Sections 2-5. In this introductory section we begin by identifying six socio-demographic facts that help explain why immigration issues have become so important. Next, we review the federal, state, and local policy reactions to them and discuss some of the various reasons that make immigration-friendly policies normatively appealing for many people.

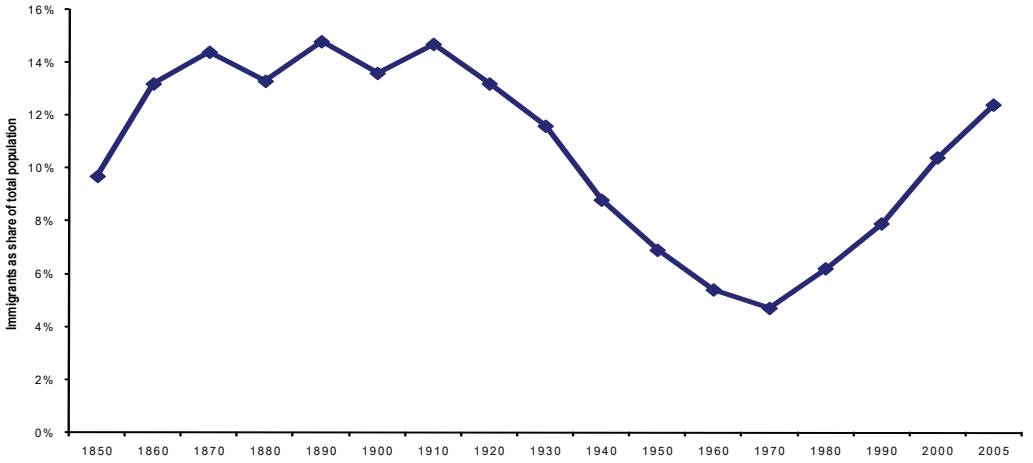
1 For the list of people interviewed, see our acknowledgments.

1.1 A new socio-demographic reality

A number of socio-demographic changes help explain why immigration has become such a contentious and central political issue. First, in absolute terms, the three decades between 1970 and 2000 each saw larger net inflows of new foreign immigrants than any previous decade in U.S. history. Between 1990 and 2000 alone, about 13.7 million new immigrants entered the United States; this is the largest contingent to ever come to the country during a given decade (Sum, Fogg et al. 2002:27).

Second, since 1970 immigration to the United States has grown rapidly in relative terms. As shown in Figure 1, the share of foreign born in the population has risen continually, from a historically low 4.7 percent in 1970 to 12.4 percent in 2005.[2] Moreover, the acceleration of immigration flows has driven the share of foreign born in traditional immigration destinations to notable highs — e.g., 58 percent in Miami, 40 percent in Los Angeles, and 37 percent in New York City in 2005. In that year immigrants accounted for at least 20 percent of the population in 15 metropolitan areas, and at least 25 percent in eight.[3]

Figure 1
Immigrant Population of the United States, 1850-2005



Source: U.S. Census Bureau - Censuses 1850-2000 and American Community Survey 2005

Third, unlike in the past, when most immigrants were concentrated in a few states (California, Florida, Illinois, New Jersey, New York, and Texas), today we find significant concentrations of immigrants all over the country (see Figure 2). This growth in the share of foreign born in states that previously were not important immigrant destinations has been explosive. Between 1990 and 2005 the growth rate was at least 90 percent in 23 such states. Arkansas, Georgia, Nebraska, North Carolina, South Carolina, and Tennessee all saw growth rates of at least 200 percent during that period.[4]

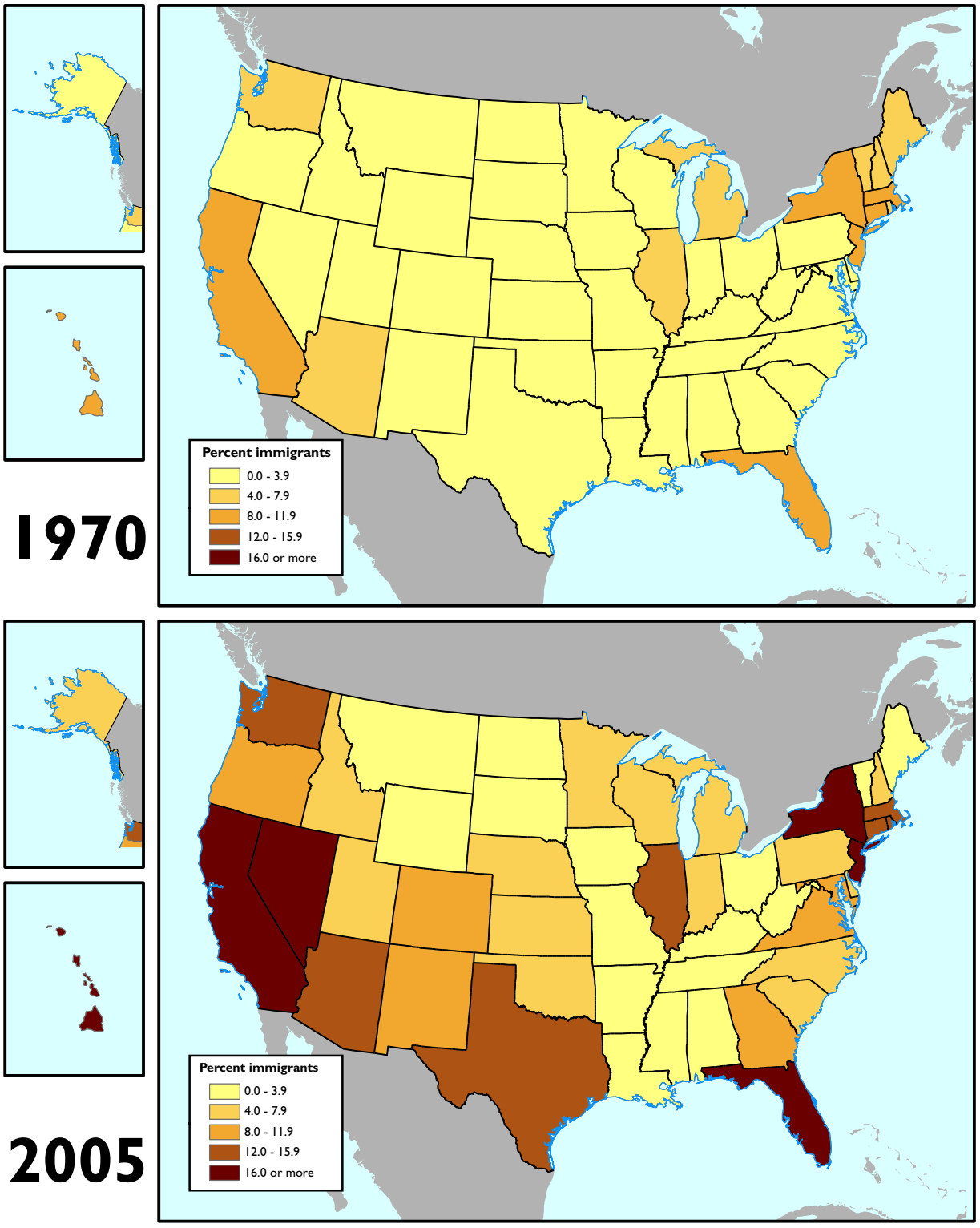
2 Note, however, that the share of immigrants in the United States is not unprecedentedly high. As Figure 1 shows, the current level is slightly lower than in 1870-1910.

3 Data for 1970 are from Census 1970; those for 2005 are from the American Community Survey.

4 Authors' calculations. Data for 1990 are from Census 1990; those for 2005 are from the American Community Survey.

Figure 2

Immigrants as a Share of the Population by State, 1970-2005

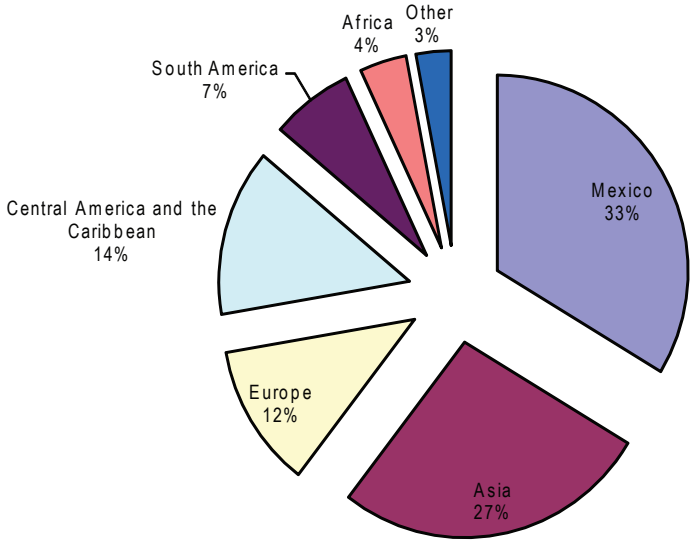


In 1970 there were only 16 states with at least four percent of immigrants, seven with at least eight percent, and only one (New York) with more than eight percent. However, by 2005 there were 35 states in which the share of foreign born was at least four percent, 20 in which it was at least eight percent, 14 in which it was at least 12 percent, and four in which it was at least 16 percent (including California and New York, with more than 21 percent of immigrants each).

Source: U.S. Census Bureau - Censuses 1850-2000 and American Community Survey 2005

Figure 3

Geographic Origin of Immigrants Who Entered the Country Between January 1990 and March 2000



Source: U.S. Census Bureau - 2000 Census

A fourth factor that has contributed to making immigration a central issue is that today's immigrant population is extraordinarily diverse. An indicator of this diversity is the varied origin of those who entered the country between 1990 and 2000, shown in Figure 3. The ethnic and cultural (including linguistic) diversity associated with this geographic diversity is significant. Today almost 20 percent of the U.S. population speaks a language other than English at home, while close to 9 percent do not speak English very well. Of course, these average figures hide marked disparities across states, counties, and cities. For example, in Los Angeles, a traditional immigration destination, 60 percent speak a language other than English at home, while in Las Vegas and Atlanta, both of which are new destination cities, the corresponding figures are 30 and 11 percent.[5]

A fifth reason for the importance of immigration in the public arena is the high participation of immigrants in the labor force. Between 1990 and 2001, more than 50 percent of the growth in the country's labor force was due to the arrival of new immigrants (Sum, Fogg et al. 2002). In 2005 immigrants represented 12.1 percent of the population but 14.7 percent of the civilian labor force. In some states their share of the labor force was considerably higher—34.5 percent in California, 24.5 in New York, 23.9 in New Jersey, 22.9 percent in Florida, and 22.5 in Nevada.[6]

A final reason has to do with immigrants' legal status. One recent study (Passel 2006) estimated that in March 2006 around 30 percent of foreign-born residents were unauthorized, or between 11.5 and 12 million. This is compared to only 3 million unauthorized residents in 1980.[7] The same study reported that in March 2005

5 Data from the 2005 American Community Survey. Percentages for those speaking a language other than English at home are among residents 5 years old and over.

6 Information provided by the Migration Policy Institute. (See http://www.migrationinformation.org > GlobalData > U.S. Historical Trends > Share of the Foreign Born in U.S. Labor Force. This figure has a link to the data.) The underlying source is the March 2006 Supplement of the Current Population Survey. The slight difference between the share of foreign born reported here (12.1 percent) and the share reported in Figure 1 (12.4 percent) is due to the use of different data sources.

7 Today's proportion of undocumented immigrants is most likely the highest since 1965. Before 1965 there were no numerical limitations to the annual number of immigrants from the Western Hemisphere who could enter the country.

unauthorized immigrants accounted for almost 5 percent of the civilian labor force and that four out of five unauthorized immigrants were Latin American.

1.2 Federal, state, and local reactions

The federal government has largely reacted to this new socio-demographic reality by imposing greater constraints to the entry of immigrants and by narrowing their political and economic rights. The first move in this direction was the Immigration Reform and Control Act of 1986 (IRCA), which responded to concerns about the "growing number, illegality, poverty, and Third World origins" of new immigrants by criminalizing the act of knowingly hiring unauthorized immigrants, and by establishing financial and other penalties for those knowingly employing aliens not authorized to work in the country (Wells 2004:1308).[8]

Ten years later, at a time when immigrants were being blamed for "taking jobs from legitimate residents, depleting social welfare coffers, increasing crime, causing political turmoil, and engendering state fiscal shortfalls and the sustained downturn of the economy," Congress passed three additional immigrant-restrictive bills (Wells 2004:1309). The first was the Antiterrorism and Effective Death Penalty Act, which greatly reduced the rights of individuals suspected of criminal activity or terrorism, and which put in place an alien terrorist removal court that accelerated the process of removing criminal aliens. The second was the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which restricted unauthorized immigrants' access to essential public services. The last was the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which expanded the range of offenses for which immigrants could be deported and increased penalties for violations, curtailed immigrants' due-process rights, further reduced immigrants' access to public services, and increased resources for the control of illegal immigration at the U.S.-Mexico border.

Due to higher wages generated by low unemployment rates of the late 1990s, the Bush administration considered a softening of immigration policies in 2001. However, the Sept. 11, 2001, attacks and the 2001-2002 recession led to "new immigrant-constraining policies, administrative practices, and court decisions" (Wells 2004:1309).[9] They also led to the proposal of a number of bills aimed at further limiting immigrants' rights and at fully involving states and local government in the enforcement of civil immigration law, including the Clear Law Enforcement for Criminal Alien Removal Act (H.R. 3137), or CLEAR Act, and the Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437), which was passed by the House of Representatives in 2005.[10]

Because of pressure from both ends of the political spectrum for a total system overhaul, during the last two years several bills for "comprehensive immigration reform" have been discussed, beginning with the Secure America and Orderly Immigration Act (S. 1033, referred to as the "McCain-Kennedy Bill") (cf. Terrazas 2007). This eventually

8 The IRCA, however, also provided a one-year amnesty program for certain immigrants who had worked in the United States since January 1982, ultimately legalizing nearly 3 million immigrants.

9 One of the most important of these court decisions is the March 2002 U.S. Supreme Court decision in Hoffman Plastic Compounds v. National Labor Relations Board, which held that an undocumented worker who is illegally fired for his or her union activity is not eligible for back pay. Following this decision, employers have begun to argue that undocumented workers are not protected by labor and employment laws; lower state and federal courts have varied on whether this decision applies in contexts other than the original back pay issue (Sugimori N.d.).

10 Other such bills were the Homeland Security Enhancement Act (S. 1362); the Illegal Immigration Enforcement and Empowerment Act (S. 1823); the Unsafe Streets and Government Unfettered Authority Act (H.R. 6095); and the Anti Right to Association and Government Unaccountability Act (H.R. 6094). The latter two passed the House. The Comprehensive Immigration Reform Act (S. 2611), passed by the Senate in 2006, was more ambiguous in its content (see the analysis in National Immigration Law Center 2006).

led to the proposal of the Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007, better known as the Comprehensive Immigration Reform Act of 2007. Among other purposes, this legislation aimed at providing a pathway to legal status for most undocumented immigrants who had been in the country since before January 2007.[11] The bill contained a long list of controversial measures, but its legalization component was the most hotly debated, drawing criticism from both pro-immigrant rights groups, who contended that the requirements for obtaining permanent residency were onerous, unrealistic, and unjust, and conservatives, who viewed the reform as a widespread amnesty for individuals who had violated U.S. law. The bill was defeated on the Senate floor on June 28, 2007. According to Rep. Zoe Lofgren (D-CA), chair of the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, and Border Security, the vote effectively ended efforts for comprehensive immigration reform in the 110th Congress (Terrazas 2007).

On Aug. 10, 2007, the Bush administration announced its intention to implement, without action by Congress, a package of immigration measures that includes increased resources for border enforcement and increased civil fines for employers who knowingly hire undocumented workers. Although it is still unclear exactly what form the measures may take, one critic suggests that "the administration . . . appears poised to move forward with this new get-tough and solve-nothing agenda" (National Immigration Law Center 2007d).

In sum, at the federal level the reaction to the new socio-demographic reality has been to pass laws increasingly restrictive of immigrants' rights, while attempts at comprehensive reform have failed. Below the federal level, however, reactions to immigration have been very heterogeneous. States, counties, and cities have expressed varied sentiments regarding both immigrants and the federal policies toward them.

Some states and counties have decided to formally participate in the enforcement of immigration law's civil provisions. Although the enforcement of these provisions has always been a federal responsibility (charged, since March 2003, to Immigration and Customs Enforcement, or ICE), IIRIRA made it possible for state and local governments to play an active role as well. By December 2006, two state and six county agencies had chosen to play such a role by partnering with ICE to perform immigration law enforcement functions, while another 30 agencies were moving in that direction (U.S. Immigration and Customs Enforcement 2006).

IIRIRA also forbade state and local governments from barring their officers from sharing information with the federal immigration agency. Related provisions that would require local agencies to assist in enforcing immigration law, or that would prohibit municipalities from enacting or maintaining ordinances preventing local agencies from engaging in the enforcement of immigration law, were introduced in 2006 in a number of states (National Employment Law Project 2006), but so far none has passed.

Even without any formal agreement with the federal government, state and local law enforcement agencies have often participated in raids and information-gathering activities conducted by federal officials or even delivered potential violators to them, while officials from city or state agencies have often tipped off federal agents about the presence of potential violators.

Apart from this collaboration with the federal government, hostile reactions to

11 The Comprehensive Immigration Reform Act of 2007 would have created a "Z visa" for all individuals living in the United States illegally before January 2007. After eight years, individuals with a Z visa would have been eligible to apply for a permanent resident card (green card).

immigrants are seen in bills, recently proposed in 13 states, that would impose fines or other penalties to employers who hire undocumented immigrants, and bills, proposed in five, that would exclude injured undocumented workers from coverage under workers' compensation law (National Employment Law Project 2006). Likewise, some cities have proposed and some have passed ordinances expressing anti-immigrant sentiments, such as fining employers who hire undocumented immigrants; prohibiting companies from getting business permits if they employed or helped illegal immigrants within the past five years; making English the city government's official language; denying housing to undocumented people; and banning immigrants' access to city-provided social services.[12]

However, in many other cases state and local elected officials have embraced immigrants and have worked with them in ways that are humane, inclusive, and conducive to the harmonious development of their communities. We will have much more to say in the next sections about the policies implemented by these governments, but here is a quick overview to give the reader a sense of their scope.

First, three states (Alaska, Maine, and Oregon), a few counties, and several dozen cities (or the corresponding police departments) prohibit their resources and institutions from being used to enforce civil immigration law and make it as difficult as possible for agency officials to share information on people's immigration status with the federal government, either by legislative act or by issuing executive orders.[13]

Second, several mayors from high-migration cities have strenuously lobbied Congress against the CLEAR Act; the Border Protection, Antiterrorism, and Illegal Immigration Control Act; and similar proposed legislation. And many counties and cities have expressed, through resolutions, their opposition to national legislation that would require or compel local governments to participate in the enforcement of civil immigration law, and their support of comprehensive immigration reform.[14]

Lastly, many states, counties and cities have implemented policies that help newly arrived immigrants to get settled in their new communities; reduce their risk of being exploited by unscrupulous employers; give them access to social services; promote social integration; and generate an overall climate of trust, respect, and welcoming.

1.3 Reasons for immigrant-friendly policies at the local level

The reasons immigrant-friendly stances and policies are appealing are many and varied. First, there are reasons related to legal tradition. These include the case-law-based notion that "all individuals who are territorially present in the country have equal personhood and deserve equal rights;" the Yick Wo tradition (for the line of juridical thought based on the Supreme Court ruling in Yick Wo v. Hopkins), "which holds that the treatment of aliens in the interior should be essentially equivalent to that accorded citizens;" the powers that the Constitution gives states and their subdivisions "to provide police protection and ensure the health, safety, and well-being of their

12 The Puerto Rican Legal Defense and Education Fund compiles a list of cities that have considered or passed this type of ordinance (see www.prldef.org). There were 57 cities in this list after an early December 2006 update, of which 13 had effectively passed such ordinances (including two cases in which their application had been blocked by temporary restraining orders). Some of the best-known cases in this list are those of Avon Park, FL; Hazelton, PA; Kennewick, WA; Palm Bay, FL; Riverside, NJ; San Bernardino, CA; and Valley Park, MO.

13 Indeed, according to the National Immigration Law Center, by July 2004 at least 42 cities and two counties had done this (see www.nilc.org > Immigration Law and Policy > Major Issues > Local Law Enforcement Issues > Table: Laws, Resolutions and Policies Instituted Across the U.S. Limiting Enforcement of Immigration Laws by Local Authorities).

14 For partial lists, see reference in previous footnotes, and www.cirnow.org > City and County Pro-Immigrant Resolutions.

residents;" and the 14th amendment's guarantee that "no state shall . . . deny any person within its jurisprudence the equal protection of the laws" (Wells 2004:1313-1314).

There are also ideological-historical reasons. Giving ample opportunities to anyone willing to work hard and to participate in the social and civic life of his or her community is considered one of the achievements of the United States and a major element of its identity. It has been argued that because almost every U.S. citizen can trace her or his origin to other countries, it would be morally wrong not to ensure that today's immigrants have the same opportunities those coming before them had.

Questions of moral responsibility are also at stake. For two decades the federal government carefully avoided enforcing with any rigor the law that makes it illegal to hire undocumented immigrants, in large part to cater to business interests who benefited from low-paid workers. It has been argued that the federal government has implicitly welcomed immigrants into the workforce, and therefore that it would now be morally wrong not to help them stay and flourish in the country.

Humanitarian reasons play a role as well. Many people are simply appalled by the conditions in which a good share of new immigrants live, horrified by the poverty wages and the despotic and unhealthy working conditions of their jobs, indignant at the discriminatory treatment they sometimes receive, and moved by the sacrifices they often make in order to attain a better life for themselves and for their families. These facts alone may justify immigrant-friendly stances and policies.

Reasons related to our common notion of how the U.S. political system should operate may also be relevant. Immigrant-naturalized citizens and citizens who share immigrants' dominant ethnicities constitute today an important share of the electorate. In 2000 there were 30 million voting-age citizens, or 15 percent of the electorate, who were either immigrant-naturalized citizens or citizens-by-birth of Latino, Asian, or Pacific Islander origin (Center for Community Change 2004). In high-migration areas this share is, of course, much higher, and so these individuals constitute "pro-immigrant" voting blocs whose preferences political candidates should not—and probably cannot—ignore.

There are, finally, pragmatic reasons. First, collaboration with the enforcement of civil immigration law taxes police resources and impairs their capacity to ensure the public safety of their communities. Moreover, it has proved difficult for law-enforcement agencies to provide such collaboration without violating the civil rights of law-abiding residents.

Second, undocumented immigrants, in particular those that have been in the country for some time, often have spouses, partners, or children who are citizens or legal residents, and they almost always have many other relatives and friends who are citizens or legal residents. Thus, it is virtually impossible to crack down on the undocumented without inflicting great suffering on many people who are not violating the law and without throwing broad segments of the communities where undocumented immigrants live into disarray.

Third, some state and many local economies depend on immigrant workers, both documented and undocumented, to function, and this may make immigrant-friendly policies that help retain existing and attract new immigrant workers appealing. As state and local government revenues depend on the health of the state and local economies, implementing immigration-friendly policies may simply be a *sine qua non* for state and local governments in high-migration areas.

1.4 A menu of local policies for immigrant-friendly cities

As immigrants spread beyond traditional city hubs, many cities that would like to adopt welcoming policies towards them find themselves in unfamiliar territory. Similarly, cities with longstanding immigrant populations, many of which have already implemented immigrant-friendly policies, would like to do more as well as make their policies more relevant and effective in the context of an increasingly hostile national climate towards immigrants.

We offer in the following sections a detailed menu of progressive policies for cities interested in dealing in humane and effective ways with the country's new socio-demographic reality in the 21st century. The policies described are local in nature; aim at using the always-scarce material resources and political energy of cities in an efficient manner; in most cases are meant to benefit natives, directly or indirectly, as much as immigrants; and have the ultimate goal of contributing to the development of cities of shared prosperity.

Some very general principles underlying the menu of policies are the following. First, all other things being the same, universal policies are preferred over particularistic or categorical policies. Second, all other things being the same, policies that are potentially appealing to broadly based political coalitions are preferred to policies that are not. Third, policies involve working with and empowering existing community-based organizations that immigrants already know, trust, and respect whenever possible. Last, policies address as much as possible legitimate concerns about the effects of new immigrants on other residents' quality of life.

The report examines policies in four key policy areas:

- The enforcement of immigration law's civil provisions
- Employment
- Health care
- Other basic services

This report does not address other important policy areas, key among them education (including English as a second language) and housing. These two areas are undoubtedly central to any comprehensive approach to improving immigrant integration for the benefit of immigrants and the communities in which they reside. However, given the expansive nature of these topics, we do not cover them here.

Throughout this report we refer to many city ordinances and resolutions, to proposed legislation, and to numerous other texts. Many of these documents can be consulted online at www.cows.org/citiesandimmigration.

2 The Enforcement of Immigration Law's Civil Provisions

2.1 Background

Under the dominant and, until recently, uncontroversial interpretation of current federal law, agencies at the state and local level lack statutory or constitutional authority to enforce immigration law's civil provisions, with the exception of those that have entered into a formal agreement with the Department of Homeland Security (Seghetti, Viña et al. 2005).[15] Even more important, state and local agencies and officials are not legally required to collaborate with Homeland Security's Immigration and Customs Enforcement (ICE) in finding or arresting unauthorized immigrants, or even to report to ICE information about a person's unauthorized presence in the country, unless that person has committed a crime. Nevertheless, city agencies and officials often play an important *de facto* role in the enforcement of the civil provisions of immigration law. This not only leads to community mistrust, racial profiling, and civil rights violations, but it also jeopardizes the achievement of city agencies' primary goals (e.g., the papers in King 2006; Waslin 2003).

Public safety is the most often cited example. If police officers ask questions about immigration status to those they suspect to be in the country without documentation but are not suspected of any crime, or if the police collaborate in any way with ICE in the enforcement of immigration law's civil provisions, unauthorized immigrants will not report to the police crimes they suffer or witness, nor in general will they cooperate with the police. Moreover, legal immigrants and citizens of the same ethnicity as that of unauthorized residents also tend to distrust the police and therefore limit their interactions with them—both to avoid being interrogated about their own legal status and because of fears associated to their family and friendship bonds with unauthorized immigrants. Of course, all this makes providing for the general safety of city residents much more difficult, in particular in cities with many immigrants (e.g., Khashu 2006).

Public safety is not the only goal jeopardized by city collaboration with ICE. For fear of having to reveal their immigration status, immigrants may avoid using city services or calling city agencies, including public schools, fire departments, and emergency ambulance services.

Due to its deleterious effects on cities' ability to provide for the health, safety, and well-being of their residents, and due to other reasons already discussed in the introduction, many cities have opposed collaborating with the enforcement of civil immigration law, either by passing ordinances or resolutions, or by issuing executive

15 Before 2002 there was broad agreement that local police did not have general authority to enforce civil immigration laws. However, on June 5, 2002, U.S. Attorney General John Ashcroft announced that, based on a new legal opinion, state and local police had "inherent authority" to enforce federal civil immigration laws (National Immigration Law Center 2004:2-3).

orders, general or special orders, or policy procedures or directives.[16]

Los Angeles was the first city to officially withdraw cooperation. In 1979 the police chief issued the now-famous Special Order 40, which remains in force. SO 40 establishes that "officers shall not initiate police action with the objective of discovering the alien status of a person" and "shall not arrest nor book persons for" illegal entry. The city of Takoma Park, MD, in 1985, and the cities of Chicago, San Francisco, and New York, in 1989, went much further and passed ordinances or issued executive orders prohibiting city employees from gathering, keeping, or sharing with ICE's precursor, the Immigration and Naturalization Service (INS), information on the immigration status of their residents, and establishing that neither city personnel and facilities, nor any other city resources, would be employed in the enforcement of civil immigration law.

Bans on sharing information with the federal government, however, were outlawed in 1996. Section 642(a) of IIRIRA established the following:

> "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

Because of this provision, most of the cities that expressly limited cooperation with immigration authorities now have established that local resources or institutions cannot be used to enforce civil immigration law, that they will not arrest people for violations of civil immigration law, or that the police will refrain from enforcing civil immigration law—or have passed other provisions with similar content.[17]

More recently, cities have found ways of dealing with the issue of information sharing while still complying with IIRIRA. Several cities have forbidden city agencies and officials from collecting information about immigration status, unless required by law.[18] Cities that have since 2002 passed ordinances or issued executive orders, policy directives, etc., to this effect include Seattle; Portland, ME; Minneapolis; New York; Durham, NC; Philadelphia; and St. Paul, MN.[19] This is legal. Section 642(a) of IIRIRA establishes that cities cannot prohibit agencies or officials from exchanging information about people's citizenship or immigration status with the federal government, but it does not require them to collect such information and says nothing about prohibiting its collection.

Two cities have gone further. New York and Philadelphia both have prohibited not only the collection of information about immigration status when it is not required by law but also the disclosure of any information on that matter that city agencies or officials may possess. To this end they have embedded this prohibition in broad privacy or confidentiality provisions (via an executive order in New York, and via a city resolution,

16 In the early 1980s, several cities passed mostly symbolic "sanctuary resolutions" stating their disagreement with the U.S. policy *vis-à-vis* Central American refugees. More recently, the term "sanctuary" has been used to refer to cities opposing local participation in the enforcement of civil immigration law. To avoid confusion, we do not use these expressions in this report.

17 Cities passing or issuing this type of ordinance, executive order, etc. include the following: In 1997: Salem, OR, and Austin, TX. In 1998: Cicero, IL, and Katy, TX. In 1999: Chandler, AZ, and Santa Fe, NM. In 2001: Albuquerque, NM. In 2002: Cambridge, MA; Detroit; Gaston, OR; and Madison, WI. In 2003: Anchorage, AK; Fairbanks, AK; Sitka, AK; Fresno, CA; Boise, ID; Evanston, IL; Baltimore; Brewster, MA; Orleans, MA; Ann Arbor, MI; Syracuse, NY; Ashland, OR; Portland, OR; and Talent, OR. In 2004: Durango, CO. (Data on cities adopting this policy and those discussed in the next two paragraphs are from the National Immigration Law Center; see reference in footnote 13.)

18 Access to some federally funded social programs mandates the collection of this information.

19 Takoma Park, MD; San Francisco; Chicago; and New York had done the same in the 1980s, as part of their broad limited cooperation policies.

a Police Department Memorandum, and a City Solicitor Memorandum in Philadelphia), which ban the disclosure of information about a broad range of confidential issues, including immigration status. So far, neither of these broad confidentiality provisions, nor a similar executive order issued by Maine's governor in 2004, has been challenged in court.

IIRIRA and federal legislation proposed in recent years aim not only at making it more difficult for local governments to prohibit or impede cooperation with ICE but also at fully involving local governments in the enforcement of civil immigration law. Section 287(g)(1) of IIRIRA made it possible for any sub-national government, including cities, to formally cooperate with the enforcement of civil immigration law:

> "Notwithstanding section 1342 of title 31, United States Code, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law."

To enter into an agreement to perform the enforcement functions just described, a state or local agency must sign a "memo of understanding" with the Department of Homeland Security; after that, ICE trains and certifies state and local officers to conduct investigations and arrests (Carafano and Keith 2006).

Recently proposed legislation (e.g., the CLEAR Act and the Homeland Security Enhancement Act) go further than IIRIRA in pushing cities into immigration law enforcement. This legislation includes provisions that would:

- Establish that states have inherent authority to enforce immigration law.
- Require that the federal government either take custody of aliens arrested by state or local law enforcement officials and suspected of being in the country without authorization within a few days of their arrest, or reimburse the corresponding state or local governments for their expenses in detaining and transporting the aliens to federal custody.
- Require that all aliens who violate immigration law—even those that have simply overstayed their visas—be entered into the FBI-run National Crime Information Center database, which would greatly increase the ability of state and local police to arrest them.
- Encourage state and local governments to provide information and other types of assistance to the Department of Homeland Security in the enforcement of civil immigration law by reimbursing or otherwise compensating them for their costs.
- Compel state and local governments to change laws or policies that prohibit their police from cooperating with the enforcement of civil immigration law by otherwise cutting off funds these governments currently receive to offset the costs associated with the incarceration of illegal aliens who commit crimes.

- Give state and local police officers the same level of immunity from personal liability for enforcing immigration laws that federal officers enjoy.

- Require DHS to train state and local police in the enforcement of immigration law.

Cities have reacted negatively to these proposals. Not one city has signed a memo of understanding since that became possible in 1996 (U.S. Immigration and Customs Enforcement 2006), while many have passed resolutions and actively lobbied against these initiatives.[20] Perhaps no mayor has been so active in this area as New York Mayor Michael Bloomberg. In testimony before the Senate Judiciary Committee on July 5, 2006, he contended that believing border patrols alone will stop undocumented immigrants is "either naive and shortsighted, or cynical and duplicitous." Bloomberg has argued that for decades "the Federal government has tacitly welcomed [undocumented immigrants] into the workforce," and that both New York's and the nation's economy would be a shell of themselves without them. And he has advocated for the legalization of undocumented immigrants already in the United States.[21] Dozens of police agencies and several police associations have also voiced their opposition to the proposed federal legislation.[22]

2.2 Policies

Taking stock, four strategies exist for cities that oppose collaboration with immigration law authorities and, more generally, the direction in which proposed new legislation would take immigration policy:

- Prohibiting the participation of city officials in, and the use of city resources for, the enforcement of civil immigration law unless required by federal or state statute or court. *(A fortiori,* this means that city agencies cannot enter into a formal agreement with DHS.)

- Prohibiting the collection of information on immigration status, or instructing officials not to do so.

- Prohibiting the sharing of information with ICE by embedding this prohibition in broad privacy or confidentiality ordinances, executive orders, etc.

- Passing position-taking resolutions and lobbying against the CLEAR Act and similar legislation, and for comprehensive immigration reform.

Various legal instruments have been used to put these strategies into action. Scope, language, and justification vary greatly across the many ordinances, resolutions, executive orders, policy procedures, etc., that cities have passed or issued. Most importantly, over time, there has been a marked improvement in the sophistication and quality of the legal instruments used to implement these strategies.

The National Immigration Law Center (NILC) has recently proposed sample language for provisions implementing the first three strategies, incorporating the lessons learned

20 See footnote 14 for partial lists of cities passing resolutions against the proposed legislation.

21 See text of Bloomberg's testimony at www.nyc.gov/portal/site/nycgov > News and Press Releases > 2006 Events > July 2006.

22 For police agencies and police associations opposed to the local enforcement of civil immigration law, see www.immigrationforum.org > The Debate > Enforcement – Local Police > Resources. See, in particular, the link "Proposals to Expand the Immigration Authority of State and Local Police: Dangerous Public Policy According to Law Enforcement, Governments, Opinion Leaders, and Communities."

from previous law-making on this topic. This language can be directly used in ordinances or easily adapted for other legal instruments (executive orders, police policies, legal opinions or memoranda, etc.). The following sub-sections present the key provisions proposed by the NILC. Those interested in the full sample language, which includes language for sections on purpose and policy statement, definitions, complaints and discipline, and civil remedy for violation, as well as the detailed legal rationale for each provision, should consult the NILC's document directly, which is available online.[23] After presenting this sample language, we briefly discuss the nature of position-taking resolutions and refer the reader to some useful examples.

2.2.1 Non-participation in the enforcement of civil immigration law

The language proposed by the NILC:

- Unless otherwise required by law or court order, city agents shall refrain from the enforcement of federal immigration laws. No city agents, including agents of law enforcement entities, shall use city monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.
- Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.
- City agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity, or immigration status.

2.2.2 Not collecting information on immigration status unless required by law

The key language suggested by the NILC:

City services

- No general city service or public safety service shall be denied on the basis of citizenship. City agents shall not inquire into the immigration status of any individual, nor shall city agents enforce federal civil immigration laws.
- Exempting city services that require immigration information for eligibility purposes. City agents shall follow general city, state, and federal guidelines to assess eligibility for services. A city agent shall not inquire about a person's immigration status unless: (1) such person's immigration status is necessary for the determination of program, service, or benefit eligibility or the provision of city services; or (2) such agent is required by law to inquire about an individual's immigration status.

Victim and witness protection

- It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach city agents seeking assistance.

23 See www.cows.org/citiesandimmigration. The documents prepared by the National Immigration Law Center are also available at www.nils.org > Immigration Law and Policy > Major Issues > Local Law Enforcement Issues. See Sample Language for Policies Limiting the Enforcement of Immigration Laws by Local Authorities and the Appendix to this document.

- A city agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

2.2.3 Establishing broad privacy or confidentiality protections

The language proposed by the NILC stipulates that confidential information comprises information related to sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, immigration status, and tax records, and includes the following provision:

> No city officer or employee shall disclose confidential information, unless:
> (1) Such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
> (2) Such disclosure is required by law; or
> (3) Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
> (4) In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any city agency; or
> (5) In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.

2.2.4 Position-taking resolutions against proposed federal legislation, and for comprehensive immigration reform

Resolutions of this type vary in motivation and content. In terms of motivation, supporters may aim at exerting pressure on legislators and other elected officials at the state and federal levels; at countering anti-immigrant frames, movements, and proposals at the local level; or at reassuring local immigrant residents that the city is on their side. Also, because these non-binding position-taking ordinances are, by design, interventions in the discursive realm, their specific content is closely associated with the ebb and flow of political events. Moreover, due to their position-taking nature, the preambles to these resolutions, which are quite city- and time-specific, are always as important as the resolution statement itself. Interested readers should look at the language in the resolutions. The resolutions passed by or proposed in the following cities are available on-line at www.cows.org/citiesandimmigration.

- Boston, on March 8, 2006.
- Borough of Princeton, NJ, on Nov. 9, 2004.
- Cleveland, on Feb. 27, 2006.
- San Rafael, CA, on Sept. 23, 2003.
- Seattle, on March 13, 2006.
- Sonoma, CA, on July 5, 2006.
- Watsonville, CA, on April 24, 2004.

3 Employment and Self Employment

3.1 Background

Immigrants fill many jobs in the United States: Nearly one of every seven people in the civilian labor force in 2005 was an immigrant. Immigrants' share in the low-wage workforce is even higher. In 2002, there were 8.6 million low-wage immigrant workers—one out of every five U.S. low-wage workers—and almost half of all immigrant workers were low-wage (Capps, Fix et al. 2003).

Foreign-born workers are employed in a broad range of occupations, but in 2002 39 percent of all foreign-born and over half of those born in Mexico or Central America worked as operators, fabricators, and laborers, or in service occupations, compared to only one-quarter of native workers. Workers born in Mexico or Central America also exhibit a distinctive pattern of industrial participation, with a much smaller share of them in professional and related services than native and other immigrant workers, and a larger share in agriculture, forestry and fisheries, construction, retail trade, and personal services in private households (Migration Policy Institute 2004).

Undocumented immigrants, most of whom are from Mexico and other Latin American countries, constituted an estimated 4.9 percent of the labor force in 2005. They made up a large share of all workers in several occupational categories: farming (24 percent), cleaning (17 percent), construction (14 percent), and food preparation (12 percent). Within these occupational categories, they were an even larger share of all workers in some very specific occupations: insulation workers (36 percent), roofers and drywall installers (29 percent), and butchers and other food processing workers (27 percent). Twenty percent of undocumented workers held jobs in the construction industry, while 17 percent had jobs in the leisure and hospitality industry; in contrast, fewer than 8 percent of natives held a job in each of these industries during this time (Passel 2006).

Immigrants not only have a much higher probability of holding low-wage jobs, but they also are very likely to be the subjects of employment and labor law violations, including wage and hour, health and safety, and workers' compensation violations; retaliation and violation of the right to organize; independent contractor misclassification; employer tax violations; and discrimination on the basis of country of origin (Bernhardt, McGrath and DeFilippis 2007). In 2002, 2 million immigrants were paid less than the minimum wage (Capps, Fix et al. 2003).

Immigrants are overrepresented among the self-employed. Immigrants have been more likely to be self-employed than natives in every Census from 1880 to 1990 (Beeler and Murray 2007). An important group of self-employed immigrants are street vendors, who tend to confront all kinds of difficulties making a living.

The bad quality of immigrants' employment has important effects on immigrant families' welfare. In 2001, 12 percent of working immigrant families were poor, and fully 42 percent were low-income. Moreover, children of immigrants were far

more likely than children with U.S.-born parents to be poor and to have inadequate alimentation, housing, and health-care (Capps et al. 2005).

3.2 Policies

Because immigrants, especially undocumented immigrants, are so likely to be low-wage and highly vulnerable workers, they would benefit enormously from the implementation of policies aimed at improving wages at the bottom of the labor market and curbing employment- and labor-rights violations. The vast majority of such policies that cities can implement are not directed specifically at immigrants, and they have been discussed in detail in a related report.[24] Here we summarize these general policies' main elements, and refer to several other policies that are more immigrant-specific in their content. The many policies that cities can implement to improve employment outcomes of immigrants are discussed under the following headings:

- Using a city's regulatory power to establish wage floors and other employment standards.
- Using a city's proprietary interests as a basis for public policy.
- Helping enforce federal and state employment regulations.
- Regulating domestic-employee placing agencies.
- Implementing Equal Opportunity Employment policies and disseminating information on good jobs.
- Curbing employers' misuse of "no-match letters."
- Curbing employers' misuse of DHS' Basic Pilot Program / E-Verify.
- Supporting worker centers for day laborers.
- Combating independent contractor misclassification.
- Supporting minority entrepreneurs and street vendors.

3.2.1 Using a city's regulatory power to establish wage floors and other employment standards

In many states, cities may have the legal authority to establish wage floors and other employment standards. Even though immigrant workers' rights are often violated, mandated wage floors do help them (e.g., Cortes N.d.); it is likely that the same benefit holds with other employment standards. Here we discuss minimum wages (both citywide and targeted) and other employment standards that cities may be able to mandate. Then we briefly refer to the thorny legal issues involved in determining whether a city is likely to have the powers required to impose employment standards.

Citywide minimum wages

Five cities have minimum-wage laws in force: Albuquerque, NM ($6.75/hour); Baltimore ($5.15/hour); the District of Columbia ($7/hour); San Francisco ($9.14/hour); and

24 See the report "Cities and Jobs: Local Strategies for Improving Job Quality and Access," available at http://www.cows.org/citiesandjobs.

Santa Fe, NM ($9.50/hour). Studies of the economic effects of minimum wages in San Francisco and Santa Fe indicate that they have achieved their purpose of substantially boosting wages at the bottom of the labor market, with negligible negative effects.[25] In the case of San Francisco, a study of the restaurant industry—the industry with the greatest proportion and absolute number of minimum wage workers—showed that the introduction of a citywide minimum wage greatly reduced the share of poverty-wage workers, increased the average job tenure and the proportion of full-time workers in limited-services restaurants, and had no effect on employment growth or store closures (Dube, Naidu et al. 2005, 2006; Reich, Dube et al. 2006). In Santa Fe, the city minimum wage also reduced the share of people in poverty-wage jobs, without having any discernible negative effect on employment, store closures, or tax revenue receipts (Reynis and Potter 2006; Reynis, Segal et al. 2005; Potter 2006). In neither city has the introduction of a citywide minimum wage led to the departure of big box retailers (Dube, Kaplan et al. 2006), an important concern of policy-makers given its potential effect on sales tax revenue.

City minimum wage legislation may have a broader coverage and include stronger enforcement mechanisms and harsher penalties for noncompliant employers than its federal and state counterparts. This is particularly important for immigrant workers, who are often reluctant to report noncompliance for fear of retaliation by employers.

Establishing a citywide minimum wage may thus help disadvantaged populations, including immigrants, in two ways. On the one hand, it may provide a wage floor better aligned with the cost of living. Given the secular decline in the real value of the federal minimum wage since the late 1960s (Mishel, Bernstein et al. 2007:190 and ff.), a city can compensate by introducing its own minimum wage, something particularly important if the city is in a state that has not taken this task in its own hands, or has done so but without fully compensating for the federal decline.[26]

On the other hand, city minimum wage legislation may help immigrants and other vulnerable groups by expanding coverage to workers left out in federal and state legislation, and by ratcheting up enforcement resources and mechanisms, e.g., strengthening penalties for violations; giving city agencies the authority to investigate and order relief; allowing unions, community-based organizations, immigrant worker centers and other third parties to file complaints; staffing enforcement agencies with bilingual employees; and forbidding these employees from interrogating workers about their immigration status. Thus, expanding coverage and improving enforcement constitute important and independent reasons for cities to pass minimum-wage legislation of their own, even if they consider that the current wage floor in their jurisdictions is appropriate.

Targeted minimum wages

In some cases, economic and political considerations may make it more feasible or desirable for a city to mandate minimum wages in particular industries, types of establishments, or geographic areas rather than citywide. These reasons may include:

25 These are the only cities for which studies of actual effects exist. Studies for other cities focus on the expected effects of introducing citywide minimum wages.

26 By January 2007, 29 states had established minimum wages higher than the then prevalent federal minimum wage (information provided by the Department of Labor at http://www.dol.gov/esa/minwage/america.htm). However, few of them have been set high enough to fully or almost fully compensate for the decline in the real value of the federal minimum wage since 1969, or even since its lower 1979 level.

- **Mobility.** Some industries are much less mobile than others. In some industries sunk costs are so large and location is so essential that it is very unlikely that employers will leave a city or move to a non-covered region of the city, or even credibly threaten to do so, if required to pay higher wages.

- **Capacity to pay.** Industries and types of establishments differ in their profit margins. Those with healthy profits are more likely to be able to absorb wage increases. Moreover, it is much easier to garner support for a minimum wage targeted at employers with high profits, which are likely to be seen as exploiting their low-wage employees.

- **Labor-intensity.** Low labor-intensity employers are less affected by wage increases than high labor-intensity ones.

- **Geographic scope of markets.** While wage increases might affect the competitiveness of companies competing in regional, national, or international markets, those competing in local markets are all subjected to the same standards, and thus wage increases would not affect their competitiveness.

- **High concentration of low-wage workers.** Targeting industries and employers with high concentrations of bad jobs may be politically more viable than targeting those offering mostly good-quality employment.

Three California cities—Berkeley, Emeryville and Los Angeles—have in the last decade established targeted minimum wages with the support of the worker advocacy groups East Bay Alliance for a Sustainable Economy, in the first two cities, and Los Angeles Alliance for a New Economy, in the third.

In June 2000 Berkeley passed a living wage ordinance requiring that city contractors and employers receiving financial assistance from the city pay a minimum hourly wage of $9.75 if they provided health benefits and $11.37 otherwise, and stipulating that these rates be adjusted annually (as of April 2008, they have been raised to $11.77 and $13.73, respectively). In doing this, the city did not use its regulatory powers but simply invoked its "proprietary interests" (see discussion of proprietary-interest based policies below). However, the ordinance was amended in October of the same year to extend it to the employers in the city's Marina Zone with six or more employees and $350,000 or more in annual gross receipts—a hotel and three large restaurants located west of the city's Marina Boulevard. This amendment was predicated on the regulatory powers of the city, and thus established a geographically-targeted wage floor within the city limits. A series of legal challenges to the ordinance by a national restaurant chain, RUI One Corp, which had a pre-existing lease with the city to operate a restaurant in the Marina Zone, did not prosper—the United States Supreme Court closed the issue definitely when it declined to hear the challenge by RUI in January 2005. The ruling forced RUI to pay its workers at the Marina Zone hundreds of thousands of dollars in owed back wages.

In 2005 Emeryville passed "Measure C," which regulates minimum compensation for all employees in hotels with more than 50 guest rooms and, indirectly, work conditions for room cleaners. Here "employee" is defined broadly to cover all "persons regularly engaged on the premises in providing services to hotel guests," but excludes highly-paid managerial or administrative employees. Measure C includes provisions that:

- Mandate a minimum compensation of $9 per hour, including the value of health benefits, to be adjusted annually for inflation.

- Mandate an average compensation for all employees of $11 per hour.

- Protect employees from unjust discharges when a new employer takes over a hotel.

- Mandate that employees required to clean rooms amounting to more than 5,000 square feet of floor space in an eight-hour day, be paid at least 150 percent of the minimum compensation.[27]

- Determine that the hotels to which the ordinance applies have to pay to the city an annual permit fee to cover the costs of enforcing it.

- Establish very strong enforcement mechanisms.

In February 2006 Woodfin Suites requested a preliminary injunction against Emeryville's ordinance in a federal court, but this request was rejected. In November 2007 Woodfin challenged the ordinance in a state court. Although final ruling is pending, this court has already issued a tentative ruling in favor of the city.

The most recent city to establish a targeted minimum wage is Los Angeles. In February 2007 the city passed an ordinance regulating minimum compensation and other aspects of employment conditions for hotel employees in a corridor situated immediately adjacent to Los Angeles International Airport, which the ordinance designated as the Airport Hospitality Enhancement Zone. The ordinance mandates that hotels located in this Zone and with 50 or more guest rooms or suites of rooms pay a minimum hourly wage of $ 9.39 if they provide health benefits and $10.64 otherwise, not including gratuities, service charge distributions, or bonuses. It covers any nonsupervisory worker whose primary place of employment is at a hotel subject to the ordinance, regardless of whether he or she is employed directly by the hotel or by a contractor providing services at the hotel—a total of about 3,500 workers at thirteen hotels.

Seven hotels challenged the ordinance in the Los Angeles Superior Court, which ruled in their favor. However, the city appealed this ruling to the California Court of Appeal, which overturned the lower court's ruling in December 2007. In April 2008 the California Supreme Court declined to hear the case, thereby upholding the right of the city to implement this geographically and industry targeted minimum wage.

There have been two other attempts to use the regulatory powers of a city to establish targeted minimum wages, which fell just short. In July 2001 the city council of Santa Monica, CA, passed an ordinance mandating a geographically and economically targeted minimum wage. Among other things, it required private employers located in two tourist areas and with gross receipts of over $5 million per year to offer their employees, by July 2002, a total hourly compensation package of at least $12.25.[28] The minimum compensation package was set to be adjusted annually by indexing it to inflation. However, businesses opposed to the ordinance launched a successful initiative to put it to referendum in November 2002, and thus stopped it from taking effect until the matter was decided by popular vote. Although pre-election polls had predicted an easy victory for those in favor of the ordinance, voters rejected it by a 51.7 percent to a 48.3 percent margin, in part because the events of 9/11 "had led to a significant downturn in the local tourist trade, making business seem more vulnerable than before" (Sander and Williams 2005:27).

27 If the employee has to clean more than six check-out rooms or rooms with extra beds, the threshold for kicking-in this higher rate of pay is reduced by 500 square feet for each such room.

28 The ordinance also established that the same minimum compensation package had to be offered by the city to all its employees, and by any contractor or subcontractor working for the city on a service contract to the workers performing the work on that contract. This part of the ordinance does not involve the use of the city's regulatory powers but is based on its proprietary interests (more on this below). Also, the ordinance allowed for exceptions, the most important for unionized firms and for firms undergoing severe economic hardship.

In July 2006 the Chicago City Council passed an industry and firm-size targeted minimum wage. It required large retailers in the city (companies with annual gross revenues of at least $1 billion and indoor premises of at least 75,000 feet) to provide employees a total hourly compensation package of $13.60, of which at most $3 could be provided as nonwage benefits. This compensation package was to be indexed to the cost of living in the Chicago area. The ordinance defined "employees" in a very encompassing way: any person performing in a particular week at least five hours of work on the premises of a large retailer for any large retail employer. This covered persons performing work on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing, or employment agency or similar entity.

In September of the same year Chicago's Mayor Richard Daley vetoed the bill, arguing that it would have driven jobs and businesses from Chicago. Although the supporters of the ordinance were close to the two-thirds City Council majority needed to override the veto, they fell a few votes short. The ordinance is likely to be considered again by the city's council in the near future.[29]

Employment standards other than minimum wages

Cities can use their regulatory powers to regulate aspects of employment relations other than minimum wages. For instance, Baltimore's minimum wage law mandates that employers pay overtime at 1.5 times the employee's usual wage. It also establishes that no employer may withhold any wages or salary, except for deductions in accordance with law, without signed authorization of the employee. And it forbids employers from refusing to pay, on the next regular payday, all due wages to an employee who resigns, retires or is fired. These are not secondary additions to the minimum wage provision of the law: Noncompliance with the overtime provision and the lack of wage payment, especially after termination, are much more common violations in Baltimore than the payment of sub-minimum wages.[30]

Employment standards other than minimum wages have also been enacted in many other cities (e.g., the District of Columbia; San Francisco; Kansas City, MO; and New York). New York City, in particular, has a comprehensive anti-discrimination employment law that protects immigrants from discrimination based on national origin or citizenship status. This prohibition is embedded in a broad provision stating that it is illegal for "an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, or alien or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions, or privileges of employment."

Cities can also help vulnerable workers, including immigrants, by doing the following:

- Combating the practice of improperly classifying workers as independent contractors to avoid compliance with employment law (more on this below).
- Making employers responsible for the workplace standards of subcontractors they control.

29 For more information on Chicago's proposed ordinance and campaign, see the Brennan Center for Justice's web site, http://www.brennancenter.org > Wages, Jobs & Strong Economy > Living Wage and Minimum Wage Laws.

30 Personal communication from Sheldon Shugarman, executive director of Baltimore's Wage Commission, April 5, 2007. These data, of course, reflect only violations of which the Wage Commission knows.

- Establishing meal breaks, sick leave, maternity and paternity leave, paid vacations, and other employment standards that improve the quality of jobs.

- Establishing workplace safety and health regulations, where permitted by federal law. New York City, for instance, is considering three measures to regulate work on suspended scaffolds, as part of a comprehensive plan to improve safety for scaffold workers.

Legal issues

Cities do not have inherent sovereign powers. Whatever powers they have are powers delegated by states. State constitutions and statutes frequently specify these powers in a very imprecise way, so exactly which powers are delegated to cities often must be settled by courts or by new state legislation. Thus, not only there is great variability across states on this front, but very often the question of whether particular cities even hold the legal authority needed to set minimum wages and other employment standards remains contentious.

In the case of city minimum wages, it is clear that cities have the power to impose them in California, Maryland, and New Mexico, the three states in which such minimum wages exist (in the case of California, both city-wide and targeting particular industries and geographic areas). California law explicitly grants cities the power to establish minimum wages, while in Maryland and New Mexico the courts have upheld cities' rights to do so. In addition, a 2006 referendum in Arizona gave counties, cities and towns the authority to establish wage floors higher than the state minimum wage. In contrast, in Colorado, Florida, Louisiana, Oregon, Texas, Utah, South Carolina, and Wisconsin, local minimum wages have been banned by statute or by the courts.

It is not feasible to further discuss, without a detailed state-by-state analysis that would go well beyond the scope of this report, whether cities in the remaining states are likely to have the powers required to regulate employment relations, including the imposition of city minimum wages. Nevertheless, we can point out some general factors that should be considered in such analysis (cf. Dalmat 2005; Sonn 2005):

- Whether cities enjoy "home rule powers." Those without home rule powers would be able to regulate any particular aspect of employment relations only if the corresponding state has expressly delegated to cities the powers to do so.

- The type of home rule regime. Cities in states with legislative home rule regimes are likely to be in a better position that those in *imperio* regimes, because the former generally accord somewhat broader powers to cities.

- Whether there are state statutes pre-empting cities from regulating employment relations. Even if there is no existing pre-emption, cities need to take into account that opponents to the regulation of employment relations by cities will likely try to pass state legislation banning cities' action as soon as they begin to consider such regulation.

- Whether the state Supreme Court is likely to uphold cities' power to regulate employment relations, given its track record and ideological makeup.

3.2.2 Using a city's proprietary interests as a basis for public policy

So far we have focused on cities in their capacity as regulators. However, because cities are also "financial entities and market participants with expenses, assets, and incomes,

as well as rights and responsibilities to their investors [that is, the citizenry]" (Wells 2002:124), cities can also act as proprietors. When a city acts in this capacity it may decide, for example, that it will only interact with—contract with, give financial aid to, rent property to, etc.—firms that pay "a living wage," that is, a minimum wage specified by the city. In doing so, it does as all people and firms do, that is, choose with whom to do business. A city passing a living-wage ordinance based on its proprietary interests does not mandate that firms under its jurisdiction pay a minimum wage, which would involve regulatory powers. Instead, it chooses to do business only with firms paying living wages. The same principle also applies to conditions other than wages. This has not been missed by activists, community organizers, and policy makers; over time, living-wage ordinances have tended to expand their scope, from focusing exclusively on wages to include benefits and working conditions.

Here we describe four ways cities may use their proprietary interests to improve the situation of the disadvantaged, including many immigrants: pushing wage floors up; inducing employers to meet employment standards other than living wages; supporting workers' right to organize; and securing good job opportunities for the disadvantaged. After that we briefly discuss some relevant legal issues.

Living wages

The first living-wage ordinance, passed in Baltimore in 1994, specified that city service contractors had to pay their employees at least $6.10 per hour ($8.20 in 2006 dollars). Since then, living-wage ordinances have been passed and implemented in more than 100 cities, and many other cities are discussing similar legislation.[31] In 2005, the minimum wages required by already implemented living-wage ordinances, which are frequently indexed to inflation, averaged more than $9 per hour (Fairris and Reich 2005).

There are many disadvantaged immigrants working for city service contractors that tend to pay poverty wages (e.g., in services like facility and building maintenance, janitorial, landscaping, laundry, pest control, tree trimming, and security). Likewise, sometimes cities have proprietary interests in businesses such as hotels and restaurants, which hire a large number of immigrants at similarly low wages. Hence, although living-wage ordinances in general cover a relatively small fraction of employees within a city, they disproportionately benefit immigrants.

Other employment standards

Living-wage ordinances often address issues beyond wages, while a few cities have passed separate legislation conditioning financial support for economic development projects on employment standards other than wages as well. Most living-wage ordinances require a higher minimum wage if employers do not provide health-care benefits, while a few cities require all covered firms to provide health-care benefits. Several cities require the provision of vacations or sick leave. Others allow retirement and childcare benefits to count as part of the minimum compensation they demand. A few require that the jobs created with the help of public money be full-time or almost full-time. The use of cities' proprietary interests to induce firms to provide health-care benefits is further discussed in Section 4.2.1.2.

31 For a full list of local governments that have passed living-wage ordinances, see http://www.livingwagecampaign.org > Living wage wins. For a full list of living wage campaigns under way, see http://www.livingwagecampaign.org > Current campaigns.

Workers' right to organize

Unions push wages up and improve benefits, both directly (due to their bargaining power) and indirectly (by pressuring non-union firms to offer better compensation to avoid unionization). Moreover, unions tend to improve wages and other forms of compensation the most at the bottom of the labor market (Mishel, Bernstein et al. 2007:181-189), thus greatly benefiting immigrants. Supporting workers' right to organize is thus an important means to help immigrants and their families. Cities can do this in various ways, but the most important is by inducing firms to enter into neutrality agreements and to accept card-check recognition.

Workers' right to organize is nominally protected by the provisions of the National Labor Relations Act (NLRA) and the agency it created, the National Labor Relations Board (NLRB). However, it is well known that in election campaigns supervised by the NLRB, employers use their disproportionate power and resources, and engage in a myriad of seldom-punished but indisputably unlawful practices, including firing union supporters, to resist unionization—and that they very often succeed (Bronfenbrenner 1994, 2000; Brudney 2005; Freeman and Kleiner 1990; Kleiner 2001; Mehta and Theodore 2005).

Another way for unions to obtain recognition, which has been quite effective, is by negotiating neutrality and card-check recognition commitments from employers. The former "provide for employers to remain neutral during an upcoming union organizing campaign," while the latter specify that "the employer will not exercise its right to demand a Board-supervised election, but will instead recognize the union as exclusive representative, and participate in collective bargaining, if a majority of its employees sign valid authorization cards" (Brudney 2005). In most cases, neutrality agreements are signed together with card-check recognition agreements.

Cities can use their proprietary interests to help unions negotiate such agreements by adding "labor peace" or related provisions to their living-wage ordinances, or by passing separate legislation to the same effect. Labor peace provisions specify that "in return for financial assistance in the form of grants, loans, contracts, or rent, or as part of a procurement policy, the governmental entity requires that employers sign a labor peace agreement with any union that requests it, thereby protecting the government's proprietary interest by minimizing the probability of labor disruptions" (Logan 2003:184). Cities often contract for millions of dollars in services or invest millions of dollars in development projects, so they have a vested interest in the existence of harmonious labor relations; in either context, a work stoppage or other actions directed at employers could have serious negative economic effects for cities.

Securing good job opportunities for the disadvantaged

Cities can use their proprietary interests to secure for the disadvantaged some of the good job opportunities generated by the wage floor provisions of their living-wage legislation. They can do so in at least four ways. First, a city may require that firms receiving economic assistance or service contracts adopt the city's equal opportunity or affirmative action policies; one city that has adopted this policy is Lansing, MI. Second, a city may require that firms receiving economic assistance or service contracts meet certain hiring goals. The city of Cleveland, for instance, demands that at least 40 percent of those newly hired to work on service contracts or contracts receiving assistance be city residents. Detroit has a similar requirement. Nothing would prevent a city from also requiring that some proportion of the newly hired to positions covered by its living-wage

ordinance be low-income people, or that covered employers attempt to hire low-income people for new positions.

Third, cities may require that those covered by their living-wage legislation give priority in hiring to job candidates referred by community-based hiring halls or other organizations serving the disadvantaged. For instance, the city of New Haven, CT, demands that any firm receiving a city contract for more than $25,000 agree to inform each local job agency in the city of any opening it intends to fill from the external labor market, and give first consideration for these positions to referrals from these hiring halls. A community hiring hall is defined as a nonprofit or governmental job registry and referral service that has a record of conducting outreach in low- and moderate-income

communities and in underserved minority neighborhoods, and which has been designated as such by the city controller.

Finally, cities can link their support for economic development projects to the existence of community benefits agreements (CBAs). A CBA is "a legally enforceable contract, signed by community groups and by a developer, setting forth a range of community benefits that the developer agrees to provide as part of a development project." Such an agreement results from "a negotiation process between the developer and organized representatives of affected communities" and often includes the establishment of a first source hiring system "to target job opportunities in the development to residents of low-income neighborhoods" (Gross, LeRoy et al. 2005:9-10). A city can link its economic support to a development project with the existence of a CBA in several ways. However, the legally simpler and safer way may be to signal its preference to developers during negotiations for economic assistance from the city, and to implement it by using the discretion it has when making decisions about such assistance.

Legal issues

Living-wage legislation requiring that contractors and those benefiting from economic assistance pay their employees a minimum wage should be legally unproblematic in most states—cities are not very likely to be challenged in court, and they are likely to prevail if challenged. Exceptions include Utah and Georgia, which have prohibited local governments from requiring contractors, vendors, service providers, etc., to pay wages above the federal minimum wage, or even from giving any preferential treatment to those firms that do. Likewise, Virginia's attorney general has issued an opinion arguing that the Virginia Public Procurement Act does not authorize local governments to require private contractors and vendors to pay a minimum wage. Even in these three states, however, it seems that cities may safely condition the award of economic assistance on the payment of living wages.

The same reasoning applies to almost all other employment standards. With the exception of health-care benefits, conditioning city contracts or assistance on such standards (paid vacations, sick leave, parental leave, etc.) should be generally unproblematic. Georgia's prohibition, however, expressly covers employment benefits, and according to the logic of Virginia's attorney general's opinion, the Public Procurement Act would forbid Virginia cities from requiring that contractors and vendors meet such standards. Utah's prohibition applies only to wage floors and not to benefits.

In the case of health-care benefits, to avoid potential conflicts with federal law most cities require vendors to pay a higher living wage if health benefits are not offered, rather than requiring the benefits outright. Conflict with federal law is less of an issue

when cities award economic assistance, and some do require health-care benefits for recipients' employees.[32]

Labor peace and related provisions have been explicitly prohibited in at least one state, Louisiana. This is, however, an uncommon situation—we are not aware of any other state where this is the case. In general, provisions in living-wage ordinances or in other laws aimed at protecting workers' right to organize are legally viable but must be carefully crafted in order to avoid pre-emption by federal law. Although the National Labor Relations Act "contains no explicit provision preempting state and local labor laws, these laws are potentially vulnerable to the broad doctrine, created by the federal courts between the late 1950s and early 1970s, that upholds federal supremacy in questions of labor-management law" (Logan 2003). However, beginning with the 1993 U.S. Supreme Court decision in the Boston Harbor case, courts have consistently ruled that local legislation in this area is not pre-empted as long as the local government acts as a market participant and not as a regulator (Wells 2002:125 and ff.). This is clearly the case when a city participates in a development project as landlord, proprietor, lender, guarantor, or grantor, but it is not as apparent when it contracts out services. In this context, for a city to be safely covered by the so-called proprietary exemption, labor peace and related provisions have to be carefully targeted at workers for whom the city can demonstrate a direct proprietary interest as the user of the services (Reynolds and Kern 2003:41-42).

Targeted-hiring conditions need to be written so as to avoid conflicts with the many federal and state laws that govern the hiring process. If this is done correctly, however, a city should be able to prevail in the event of a legal challenge.

Last, giving preference to economic development projects that include good CBAs should be completely unproblematic, as long as this preference is implemented in the way suggested above.

3.2.3 Helping enforce federal and state employment regulations

Cities that lack the powers required to enact citywide legislation regulating employment relations, or lack the political support needed to do so, may still help enforce federal and state employment standards and regulations. The likelihood that workers whose labor rights have been violated will exert their private right of action is a function, in large part, of the information and resources they possess and of the risks they face if they do act. Similarly, the likelihood that employers will violate those rights in the first place is mainly a function of the information they have about their legal obligations, the probability that they will be caught if they violate the law, and the magnitude of the costs associated with being caught. Cities can thus reduce the incidence of labor law violations and increase the probability that workers, in particular immigrant workers, will file complaints when their rights are violated, by using their resources and regulatory powers to influence employers' and workers' actions.

A city can provide information and educate workers about their labor rights under state and federal laws. To this end, it can use mass media and print or broadcast outlets directed at specific groups (from radio or TV stations with programming dedicated to broad ethnic groups, to small community-specific magazines or newsletters). It can do outreach and provide know-your-rights materials in multiple languages; to this end, it can harness its often extensive network of service providers (Bernhardt, McGrath et al. 2007:41). It can inform workers of the organizations that are available to help them make claims regarding workplace-law violations. It can support community-based organizations and worker advocacy groups, in particular those working with immigrants,

32 More on this in section 4.2.1.2.

by funding, training, and helping them form associative structures, so that they can more effectively inform and educate their constituencies about their workplace rights. Finally, it can help organize, in partnership with unions, religious organizations, community-based organizations, etc., citywide worker's rights information campaigns aimed at obtaining synergistic effects.

A city can also educate employers about their legal responsibilities. One possible strategy is to send to employers, in industries in which workplace-law violations are widespread, information regarding employers' legal obligations and the monetary and reputation costs incurred by non-compliant firms in selected cases. A second strategy is to have the mayor or other high-ranking city officials address the issue at public events or in meetings with industry associations, signaling that the city condemns workplace-law violations and is watching the issue closely. A city can also partner with advocates to educate employers, as New York City has started to do in the restaurant industry, one of the industries in which low-wage immigrants are concentrated (Bernhardt, McGrath et al. 2007:41).

Lack of information is probably not the most fundamental reason why low-wage workers seldom file complaints or go to court. Lack of resources and fear of retaliation by employers are likely to play a crucial role. This is certainly true for immigrant workers. Low-wage immigrants, in particular those that are undocumented, lack resources to pay attorney fees and often have difficulties interacting with the staff of enforcement agencies and filing out required forms in English. They also may fear that employers will fire them or, worse, turn them over to immigration authorities.

Likewise, the fundamental reason why many employers violate employment and safety and health regulations is unlikely to be their lack of information. It is rather that the chance that they will be caught, especially if they have a mostly immigrant workforce, and the penalties for being caught are both very small. Some employers find it profitable to keep violating the law, because the savings in wages and in other areas way outstrip the costs of non-compliance. Hence, cities need to find ways of making workers much more likely to file complaints and of substantially increasing the costs that non-compliant employers pay.

Cities can move in this direction by creating or expanding agencies that provide legal services to low-income residents, including advice in employment law. However, cities will likely help immigrants the most by directing funding for employment-law advising to three types of civil society organizations: providers of legal services to low income families or communities; community-based organizations that want to hire lawyers to start providing such services; and immigrant worker centers and other organizations working with immigrants. Supporting the latter may be a particularly effective policy. Some worker centers have proved not only very efficient at helping workers with their individual claims, but they have also developed more comprehensive strategies for combating wage, hour, and other forms of labor law violations. These strategies (e.g., the targeting of standard-setting, high-profile firms) are often designed to have multiplier effects at the industry level or to set new juridical precedents (Fine 2006).

Cities can also make violation of workplace laws much more costly for employers. One way is by denying or revoking city licenses to businesses, if they or their owners, directors, shareholders, or managers have a track record of demonstrated employment-law violations. In most cities, establishments such as restaurants, bars, and taverns need city licenses to operate. Helping to enforce employment law in this part of the economy alone would boost the earnings and improve the working conditions of a large number of workers, including many immigrants.

In most cities there are many other industries in which businesses need a city license to operate as well. For instance, Milwaukee requires licenses for 45 types of businesses, apart from restaurants and businesses selling alcoholic beverages. In New York City, the Department of Consumer Affairs requires licenses for 41 types of businesses, while the department of Health and Mental Hygiene requires licenses for restaurants and other food vendors and several other types of business. Some cities, including Chicago and Durango, CO, require that all or almost all businesses located within their boundaries get a city license or permit.

Some cities may not need to enact any new law in order to use their licensing power to help enforce state and federal workplace regulations. Some cities already have laws on the books specifying that they can deny or revoke business licenses based on their evaluation of the "moral character" of those requesting or holding them, while other cities could pass new legislation to the same effect. In addition, in at least one state, New York, the courts have held that cities have inherent powers to deny or to revoke a license for good cause, which includes the moral character of the licensee or potential licensee. Repeated violation of employment or workplace safety and health law provisions could be used to reject an application or to revoke a license on these grounds.

3.2.4 Regulating domestic-employee placing agencies

House-cleaners and other domestic or household employees—a large proportion of whom are immigrants—are often subject to exploitative working conditions, including the violation of the most basic workers' rights. In addition to making sure that legal information specifically directed to domestic employees and their employers is included in the educational and outreach activities described above, another way cities can tackle this problem is by regulating intermediary placement agencies, which frequently contribute, by commission or omission, to the generation of those exploitative working conditions.

Cities can follow the lead of New York City, which in 2003 passed model legislation. New York requires, first, that employment agencies provide to each applicant for employment as a domestic employee, and to his or her prospective employer, a written statement indicating the employee's rights and the employer's obligations under state and federal law. The statement has been prepared and distributed by the city to all licensed employment agencies. It describes laws regarding minimum wage, overtime and hours of work, record keeping, Social Security payments, unemployment insurance coverage, disability insurance coverage, and workers' compensation.

Second, New York requires that employment agencies provide to each applicant for employment as a domestic employee a written statement of the job conditions of each position for which the agency recommends that the applicant apply. Each statement must describe the nature and terms of employment, including wages, hours of work, kind of services to be performed, agency fee, and the name and address of both the person to whom the applicant is to apply and of the person authorizing the hiring.

Finally, the ordinance requires employment agencies engaged in the placement of domestic employees to keep on file, for three years, a copy of the written statement of job conditions provided to each applicant placed by them, and a statement, signed by the employer of each agency-placed domestic employee, indicating that the employer has read and understands the statement of rights and obligations he or she received.

3.2.5 Implementing EOE policies and disseminating information on good jobs

Many immigrants confront one or more of the following immigrant-specific barriers in their quest for good jobs: lack of documentation, lack of a good command of English, and discrimination based on national origin or citizenship status. Many immigrants share with other disadvantaged people barriers such as the inability to read well, lack of high-level education and job training, and lack of good information about employment opportunities or of network-mediated access to them. This section addresses some things cities can do to help disadvantaged immigrants get access to good jobs or to the job-training opportunities leading to them.

One Stop Centers and other similar public agencies offer information on vacancies and short-term classes, workshops and materials—not only in English but often also in other languages, mainly Spanish—aimed at improving job-search and job-application skills. Many community-based organizations offer training, placement, and related support services, and often are more successful than the public workforce development system at helping low-wage workers get better jobs. Cities can do outreach and provide information in multiple languages about all these services and programs. They can post information at their own facilities, and disseminate information through mass media, through more specific print or broadcast outlets directed at ethnic groups or low-income neighborhoods, and through their networks of service providers. Cities can also support the community-based organizations that provide training, placement, and related support services to low-income communities, in particular those working with immigrants, by funding, training, and helping them form associative structures leading to economies of scale and mutual learning.

Some of the best jobs available for people with low education are offered by cities themselves, directly or through city contracts subject to living-wage legislation. Cities can thus pass legislation establishing equal opportunity or affirmative action policies, or give priority in hiring to people from low-income communities. And, as discussed previously, there are several policies that cities can implement to boost the access of the disadvantaged to good jobs generated by city contracts subject to living-wage policies.

In the private sector, many of the best jobs available for people without high education are in construction and manufacturing. Jobs in construction's skilled trades pay quite well. Immigrants, however, have difficulties entering them. Although this is in large part a consequence of the trades' skill requirements, it also is a result of a confusing and complicated application process. Application procedures vary substantially from trade to trade and geographically, and they involve a substantial commitment by applicants, including enduring long waiting periods. For this reason, programs have been developed throughout the country to help minorities enter the trades. Cities can direct some of their efforts to disseminating information and doing outreach in multiple languages in low-income communities, both regarding the existence of good careers in construction for people without high education, and about the available programs that help minorities get into those careers.

Finally, many manufacturing firms have been experiencing skill scarcities, and they have become open to filling vacancies with immigrants. To this end, some manufacturing firms have developed, often with public funds and in partnership with community colleges, workforce intermediaries, and other civil society organizations, training programs that combine English language classes and training in the specific skills they need (The Manufacturing Institute and Jobs for the Future 2006). Cities can do outreach and disseminate information along the lines suggested in the previous paragraph, to help

minority groups and immigrants get into these training programs and, more generally, to induce them to apply for the good manufacturing jobs that firms have difficulties filling.

3.2.6 Curbing employers' misuse of no-match letters

When the Social Security Administration (SSA) finds inconsistencies between the name and Social Security number (SSN) in its records and those in a wage and tax statement (Form W-2) issued by an employer, it sends a letter to both the employee and the employer notifying them of the situation. These "no-match" letters are intended to protect the employee's contribution to Social Security. The SSA does not put the earnings on an employee's Social Security record until both name and SSN reported in the W-2 agree with those in its records.
There are many reasons why such a discrepancy may exist, including typographical errors, the report of an incomplete or blank name or SSN, name changes (for instance, due to marriage or divorce), and the use of a false SSN or an SSN assigned to someone else by an immigrant not authorized to work in the United States.

Until 2007, nothing in federal law required employers to do anything when they received a no-match letter. They could check whether the discrepancy was due to a clerical error; ask workers to make sure that the information on file for them was correct and encourage them to verify their SSN directly with the SSA; and explain the meaning of the no-match letter to affected employees. However, they could not ask workers to re-verify their employment authorization, nor fire, suspend, demote, or retaliate against workers named in a no-match letter.

On Aug. 10, 2007, the DHS announced a change in the rules regarding employers' legal obligations, to become effective Sept. 14, 2007. Under the new rule, employers would have been required to re-verify the status of the worker named in a no-match letter if the discrepancy was not resolved within 90 days. If the re-verification failed, employers would have been forced to choose between firing the employee or being attributed "constructive knowledge" that the employee was unauthorized to work, thus violating immigration law (National Immigration Law Center 2007e).

However, on Aug. 31 the U.S. District Court for Northern California temporarily blocked the government from implementing the rule by issuing a temporary restraining order. This order resulted from a lawsuit filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the American Civil Liberties Union, the National Immigration Law Center (NILC), and the Central Labor Council of Alameda County, in addition to other local labor organizations (National Immigration Law Center 2007c). On Oct. 10 the court granted a preliminary injunction against the rule, prohibiting "DHS from implementing the final no-match rule until the court makes a final ruling, after trial, on whether or not the rule is legal" (National Immigration Law Center 2007f).

Even without the new DHS rule, issuance of no-match letters often puts immigrant workers in a very vulnerable position. Although employers are not allowed to fire an employee solely on the basis of a no-match letter, in practice employers often do fire them. Sometimes employers fire all named employees, assuming they are undocumented immigrants and that keeping them in their payrolls would violate immigration law. In other cases they fire them selectively, using no-match letters strategically as an excuse to get rid of workers who complain about workplace conditions or participate in union activity. Other employers keep all the workers identified in such letters but reduce their wages or cut their benefits. In addition, many undocumented immigrants receiving no-match letters quit their jobs out of fear that immigration authorities will investigate their

employers (Mehta, Theodore et al. 2003).

Given this scenario, there are a handful of things that cities can do. First, they can pass a resolution declaring a policy of non-discrimination upon receipt of a no-match letter from the SSA. This would establish that the city will neither take adverse action against any city employee listed on the letter, nor ask any employee to provide documentation to re-verify immigration status unless required by law. Both Santa Fe, NM, and San Francisco have passed such resolutions.

Second, cities can use their proprietary interests to make other employers adopt this non-discrimination policy. The easiest move in this direction is requiring employers receiving economic assistance from the city to adopt the aforementioned policy. This can be done formally, by passing legislation, or by signaling the city's preference during negotiations for such assistance. Extending the policy to service contractors in a way that is robust to legal challenges may be more difficult. However, given the documented strategic use of no-match letters by employers to curtail workers' right to organize, it is likely that this can be done along the lines used to justify labor peace provisions.

Third, a city can use its regulatory powers to mandate that all employers adopt this policy. The most viable strategy would seem for a city to include language in anti-discrimination legislation—which lists immigration status (other than unauthorized alien) as an attribute that employers have to ignore in making hiring, promotion, firing, and related decisions—barring the use of no-match letters to infer undocumented status. Given that the SSA explicitly asserts in every no-match letter it sends to employers that "this letter makes no statement about your employee's immigration status," including such a clause in anti-discrimination legislation would seem to be easy to defend in court.

Finally, cities can educate employers regarding the legal meaning of no-match letters, the ways they may help employees named in those letters get their contributions to Social Security credited to them, and courses of action that are forbidden by law. In addition, cities can inform employers of all the potential liabilities they face if they take adverse action against employees based only on a no-match letter (assuming the new rule is not implemented). Such action may violate, for example, the national origin antidiscrimination provision of the Immigration Reform and Control Act; Title VII of the Civil Rights Act of 1964; and provisions of the NLRA, the Occupational Safety and Health Act, the Fair Labor Standards Act, and equivalent state statutes.[33] Also, given recent developments, cities can educate employers about the legal status of the new rule proposed by DHS. In particular, they can stress that the implementation of the rule has been suspended indefinitely and that the court order applies to the whole country, not just to California.

3.2.7 Curbing employers' misuse of the DHS Basic Pilot Program/ E-Verify

DHS' Basic Pilot Program (BPP) has been, until now, a mostly voluntary Internet-based program allowing employers to check their employees' employment-authorization status with the SSA and the DHS.[34] Participating employers obtain some benefits in the form of extra legal coverage in the case an employee is found by a DHS investigation to be unauthorized to work in the country. To participate, employers must sign a memorandum of understanding with the SSA and the DHS agreeing to use the program to verify the employment eligibility of all new employees (regardless of nationality) shortly after they hire them, and only with that purpose. Using the program selectively,

33 See www.nilc.org > Employment Issues > Social Security Administration (SSA)-related Information > Social Security Administration "No-Match" Letters > Employer Education Materials > Potential Liability That Employers Face If They Take Adverse Action against Employees Based Solely on a No-Match Letter.

34 Participation is voluntary in most cases—a few employers may be required to participate.

to screen applicants, or to re-check the eligibility of previously hired employees are not allowed. Employers also have to agree not to discriminate against any person in their hiring, firing, or recruitment practices because of his or her national origin or citizenship status, and to refrain from taking adverse action against employees challenging tentative work-authorization non-confirmation results. By March 2007, the BPP was being used by 15,000 employers representing approximately 56,000 work sites in all 50 states (National Immigration Law Center 2007a).

On Aug. 10, 2007, the Bush administration said it would rename the BPP as E-Verify and mandate its use by more than 200,000 federal contractors and vendors. In addition, it plans to encourage states to require all businesses to use the program (National Immigration Law Center 2007d).

There have been serious documented problems with the BPP (National Immigration Law Center 2007b):

- Inaccurate and outdated federal databases prevent many eligible individuals from being approved for work.
- Employers and workers easily circumvent the program by using false documents, or simply by not using the program when the employer knows the employee is not authorized to work and wants to hire him or her anyway.
- Employers use the program to discriminate against workers, engaging in prohibited practices such as selective application of the program, using it for pre-employment screening, and taking adverse actions against employees based on tentative non-confirmation notices.
- Workers' privacy is compromised because the information in DHS and SSA databases is not protected.

Given these problems, cities should avoid participating in the BPP / E-Verify themselves, unless mandated by law. In addition, they can attempt to curb the misuse of the program by employers in at least three ways.

First, they can use their proprietary interests to discourage some employers from participating in it, following the model suggested previously for no-match letters.

Second, cities can pass legislation that effectively takes into their own hands the enforcement of some of the provisions of the memoranda of understanding that participating employers sign with the DHS but that the federal government routinely fails to enforce. Specifically, they can prohibit participating employers from engaging in the actions that the memo of understanding already prohibits and rigorously enforce these prohibitions.

Finally, cities can pass legislation establishing that private employers within city limits are not allowed to enter into a memorandum of understanding with DHS until the BPP / E-Verify is certified to be reliable (e.g., confirms correctly the employment eligibility status of 99 percent of those non-citizens legally authorized to work). A city might embed this prohibition within broad anti-discrimination legislation, including discrimination based on people's national origin or citizenship status.

In addition to employers' misuses of the program, immigrant workers also suffer because the BPP makes it their responsibility to challenge any discrepancy between government records and their own, even in cases where the federal government or the employer is

responsible for the discrepancy, and it gives them little time to do so. These workers need to know what to do to protect their rights in the event of a non-confirmation by the BPP / E-Verify, and often would benefit greatly from help. Cities can help them through legal outreach and education efforts, as discussed in a previous section.

3.2.8 Supporting worker centers for day laborers

Many immigrants seek employment on the day-labor market, often congregating daily at informal hiring sites such as home improvement stores or in front of other businesses. Based on the National Day Labor Survey, on any given day more than 100,000 workers are looking for day-labor jobs or working as day laborers in the United States (Valenzuela Jr., Theodore et al. 2006). The day-labor workforce is overwhelmingly Latino and immigrant—and 75 percent of immigrants are undocumented. Many day laborers are married, and most have children. Seventy percent of day laborers work day-labor jobs five or more days per week, and more than 80 percent rely on day labor as their sole source of income. Day laborers are mainly employed by homeowners, renters, or contractors; their top five occupations are laborer, gardener and landscaper, painter, roofer, and drywall installer. The median hourly wage for day labor is $10, but the instability of day labor work (including many slow months) means that annual day labor income is unlikely to exceed $15,000. Moreover, workers' rights violations are rampant in the day labor market, with day laborers being subject to employer abuse, wage theft, and workplace injuries (Valenzuela Jr., Theodore et al. 2006).

In part because of inaccurate portrayals of day laborers as delinquents, the growth in day labor work has generated tensions in many cities. The most comprehensive response to the challenges of day-labor markets, from community tensions to workers' rights violations, has been the development of worker centers. Worker centers are community-based organizations created by other CBOs, municipal governments, faith-based organizations, and other local stakeholders to serve low-wage workers. Most worker centers are geared toward immigrants. Most are gateway organizations that reach out to immigrants where they are located and provide them with information and training. They have become a central component of the immigrant-community infrastructure.

Worker centers generally combine service delivery (legal representation, English classes, other education, and counseling) with advocacy (research, lobbying, etc.) and organizing (leadership development, organization building). The services they provide range from one-on-one assistance for walk-ins with employment problems, to mounting campaigns aimed at improving employer, industry, or government policies and practices (Fine 2006). They often partner with municipal and other government agencies to enforce existing laws and regulations; they also advocate for legislation regulating wages and working conditions.

Worker centers provide a formal location for day-labor markets, alleviating community tensions. They are typically located close to informal day-labor hiring sites. The location of a center can be a key determinant of its success—to be successful, a worker center needs to provide ready access for workers and employers (Valenzuela Jr., Theodore et al. 2006). In addition to making available a formal hiring site, worker centers provide basic amenities for workers and employers, including places to sit, restrooms, drinking water, telephones, and classrooms. By establishing a permanent presence and rules governing employment search and hiring, worker centers are a substantial improvement over informal sites. Most important, they constitute a basic form of regulation of the day-labor market. Key regulations that centers can implement include a job allocation system to impose a hiring queue (with a lottery or some other fair selection mechanism);

the requirement that job seekers and employers register with center staff; the setting of minimum wage rates; and the monitoring of labor standards, employer behavior, and worker quality (Valenzuela Jr., Theodore et al. 2006).[35] Because most day laborers do not know their rights as workers or even where to report violations, worker centers provide an essential means to regulate the informal economy by safeguarding, enforcing, and improving labor standards.

Worker centers may be able to provide many other services to immigrants. The National Day Labor Organizing Network, for instance, advocates a model of worker center that helps with the recovery of unpaid wages; provides orientation on "immigration, labor, civil and human rights"; "creates a network of resources for medical and psychological attention"; "establishes a system of reference to available services in the community"; "looks for a system to obtain medical insurance for workers"; "provides classes and orientations regarding the systems of mobilization in the city"; connects day laborers with "housing programs that give emergency shelter" to homeless people; "helps tenant day laborers in their problems with their landlords"; and "works to obtain access to new technology," including computers and the internet (National Day Labor Organizing Network N.d.). In addition, worker centers could provide financial advice regarding the banking system and bank accounts, savings and remittances, and business advice for small business owners.

Worker centers can benefit job seekers, employers, and the community by bringing order to an otherwise exploitative and chaotic labor market. They can also provide a variety of additional services to immigrant workers. Cities, in turn, can play a key role by providing funds to help set up worker centers, and by supporting their operation in many other ways. However, they may need to overcome resistance, including legal challenges. Opponents may contend that worker centers are breaking the law, given that many day laborers are undocumented immigrants. Worker centers, however, have no legal obligation to verify the immigration status of those seeking work (Sugimori 2006). As community-based organizations that are neither employers nor "recruit or refer for a fee," worker centers are not required to verify work authorization or immigration status. Moreover, in certain cases day laborers are truly independent contractors. While an individual cannot contract with someone known to be undocumented, an individual using an independent contractor is not required to verify the contractor's immigration status (Sugimori 2006).

3.2.9 Combating independent contractor misclassification

In order to reduce payroll costs, low-wage employers often misclassify their employees, many of whom are immigrants, as "independent contractors." As a consequence, these misclassified workers are not covered by most employment and labor laws. They miss out on "minimum wage and overtime requirements, workers' compensation, unemployment insurance, the right to form a union and bargain collectively, and other workplace protections like the right to safe and healthy worksites and to be free from discrimination in employment" (National Employment Law Project 2005a). In addition, they pay more taxes that they would pay as employees.

Historically common in agriculture and day-labor jobs, misclassification "can now be seen in nearly every sector of today's economy, in particular in the low-wage immigrant dominated sectors of home health care, construction, delivery services, and janitorial" (National Employment Law Project 2005a). Moreover, misclassification not only affects misclassified workers. To compete, firms that do not misclassify their workers may be

35 For other best practices, see "The Components of a Day Labor Worker Center Model" and other resources on the NDLON website: http://www.ndlon.org > Program Areas > Worker Centers and Corners.

forced into a race to the bottom, which often means cutting wages and benefits.

Several states are combating employee misclassification, with measures from establishing commissions to study misclassification, to developing uniform definitions of "employee," to developing laws to cover specific industries where misclassification is frequent, such as day labor and construction (National Employment Law Project 2005b). A range of options are open to states, from enacting laws that presume employee status for those performing labor for a fee, to enhancing the data collection and audit capabilities of various state agencies.

Cities can combat misclassification in various ways. They can partner with unions, worker centers, and community and advocacy groups to publicize the problem and generate creative solutions (National Employment Law Project 2005a). Municipal agencies and local officials can help ensure such coalitions are effective. These coalitions can lobby for legislation at the state level to study and address the problem, advocate for inter-agency task forces to improve enforcement, and pressure the state attorney general to ratchet up efforts to enforce laws against misclassification. Cities can also educate workers on how to file claims with administrative agencies to challenge their classification as independent contractors.

In addition, cities can alleviate the negative effects of misclassification on workers. San Francisco, for instance, mandates that any person, firm, proprietorship, partnership, or corporation that in any month obtains 20 or more hours of personal services, from the same or from different persons, has to pay an hourly contractual rate at least equal to the city's minimum wage. This effectively extends the city minimum wage law to many independent contractors, regardless of whether they have been rightly or wrongly classified. It may also reduce employers' incentive to misclassify their workers.

3.2.10 Supporting minority entrepreneurs and street vendors

Immigrant entrepreneurs can create employment opportunities for other, often-vulnerable immigrants, and can also help to educate future minority entrepreneurs. The wider community also has an interest in supporting minority entrepreneurs and fostering the development of immigrant business communities. These have become tourist destinations in many cities, and they contribute to ethnic diversity, which is attractive to many city residents (Lewis and Paral N.d.).

A variety of government programs are available to small business owners, but most immigrant entrepreneurs are unaware of them (Beeler and Murray 2007). Many federal agencies provide some assistance for minority business owners. Local agencies and officials can educate immigrants about federal and state programs aimed at assisting small and minority business owners, provide additional information and support of their own, and help create intermediary organizations to connect immigrant businesses to broader networks for financing and professional expertise (Lewis and Paral N.d.).

Municipal agencies can finance startup or expansion, and local officials can help advocates get federal money for microenterprise development and related endeavors. An important source of capital for many immigrant communities is Rotating Savings and Credit Associations (ROSCAs), which pool the financial resources of a group of small investors and provide loans (with interest) so that capital can rotate among group members. Lewis and Paral suggest ROSCAs can play a larger role in the U.S. banking system, and government can find ways of strengthening them (Lewis and Paral N.d.). Cities can take a lead role in examining such issues as ROSCA enforceability, licensing, and the opportunity to use their transactions to establish credit histories.

Public policy should also aim at developing, maintaining, and strengthening ethnic business communities (Lewis and Paral N.d.). Municipal planners and local elected officials should support policies that encourage the growth of ethnic enclaves. Key tools in this regard are zoning to support local businesses, development and expansion of public open-air markets, preservation of affordable housing, use of tax incremental financing proceeds to preserve ethnic communities, and facilitation of community development corporations and ethnic chambers of commerce.

One of the more visible faces of immigrant self-employment is the street vendor. Street vendors are commonly characterized as dishonest, dirty, and unconcerned with city health codes. This traditional view, however, appears to be more myth than reality, rooted partly in racism and xenophobia. According to a comprehensive survey of the estimated 12,000 or more street vendors in New York City, street vendors are a diverse group of entrepreneurs. Interviews from this study find that vendors are "humble and resilient people who overwhelmingly sell legitimate goods and wholesome food" (Sluszka and Basinski 2006). In the New York survey, most street vendors were educated, legal immigrants, about half of whom were motivated by ambition and desire for self-reliance, and half of whom chose street vending out of necessity, that is, as work of last resort. In addition to regularly being harassed by police and businesses, New York vendors face a bewildering array of government regulations, often-arbitrary law enforcement practices, and expensive fines, making it hard for them to eke out even a modest living. It is likely that street vendors in other major cities face similar obstacles.

Noting that vendors are simply seeking honest work, the Street Vendor Project recommends the following five policy reforms to make street vending more open and less difficult, and to foster small business development (Food Vendors' Union Street Vendor Project N.d.):

- Reduce vending-related fines so that these small businesses are not crippled before they even have a chance to grow.
- Raise licensing caps so more people can vend legally; this would bring more vendors into the system and boost tax revenue.
- Open more public space to vending.
- Reform enforcement to ensure that vendors are treated fairly.
- Provide language access to help vendors understand the law and navigate the system.

The Project recommends that city agencies write a manual for street vendors to help them comply with regulations as well as provide small business assistance. In particular, rather than making licenses hard to obtain, cities should help street vendors comply with health code. In addition to making available more public space for vendors to sell, cities can improve the image and health practices of street vendors by creating spaces for safe food preparation, perhaps in collaboration with worker centers or other community-based organizations.

4 Health Care

4.1 Background

The most important health concern for immigrants is inability to access health care, most often due to lack of insurance coverage. Over half of non-citizens lack health-care coverage, compared to 15 percent of native-born citizens (The Kaiser Commission on Medicaid and the Uninsured 2004). There are several reasons for this disparity. First, immigrants are far less likely to have employer-based insurance, despite the fact that 81 percent of them are part of a family with at least one full-time worker (Alker and Urrutia 2004:2). This is primarily the result of most immigrants being employed in low-wage jobs that do not offer health insurance, but it is also a consequence of immigrants opting out of employer-based insurance because of high costs and of undocumented immigrants' fear that enrollment could alert ICE of their immigration status.

In addition to their lack of employer-based coverage, immigrants are also less likely to be covered by public programs like Medicaid or its state counterparts. Some immigrants are eligible for these programs but lack knowledge about how to access them. Although enrollment in Medicaid and the State Children's Health Insurance Programs (SCHIP) cannot be used against people in visa or citizenship procedures, fear that applying for public assistance will result in a change in status persists among immigrants. Further, many more immigrants became ineligible for any type of public health insurance because of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which linked eligibility for Medicaid and SCHIP directly to immigration status.[36]

Under the terms of PRWORA, most legal permanent residents are subject to a five-year bar on eligibility for Medicaid or SCHIP and almost all undocumented and temporary immigrants (on work or student visas) are ineligible for Medicaid or SCHIP regardless of length of residency. Only emergency Medicaid, which covers the cost of emergency medical treatment, is offered to all immigrants, regardless of status, who meet an income requirement. In 2004, 25 states offered some form of expanded coverage to immigrants ineligible for Medicaid and SCHIP, but in most cases this expansion was targeted at very specific subpopulations, leaving many immigrants without insurance (The Kaiser Commission on Medicaid and the Uninsured 2004:2).

Cities often bear the burden of this deficit in health-care coverage, both financially and in terms of public health. Residents without insurance are less likely to have access to health care and to seek preventative care, leading to more serious health problems and a greater number of emergency room visits, as well as to the potential spread of communicable diseases such as tuberculosis (Mohanty 2006:4). Thus, the system is not only inefficient but also harmful to the uninsured and to the broader communities in which they live.

Although cities have to deal with the consequences of a dysfunctional health-care

36 For SCHIP, this occurred in 1997.

system, their power to affect change in this arena is limited by the Employer Retirement Income Security Act of 1974 (ERISA), which prevents state and local regulation of employer benefits plans. The preemption clause of ERISA continues to be open to interpretation regarding how it applies to state and local regulation of business' provision of health insurance. In general, ERISA asserts that state and local governments are not allowed to mandate that private employers offer or pay for health insurance or to directly regulate private employer-sponsored health plans, but the debate about whether laws that indirectly affect or relate to these plans are preempted has not been resolved.[37]

Even among immigrants with insurance, non-citizens typically have less access to health care (Ku and Matani 2001:253). "Non-financial health-care barriers" apply to all immigrants seeking health services regardless of their legal status and whether they have insurance, thus posing a threat to public health.

Primary barriers immigrants face in accessing health care are linguistic, cultural, and informational. Nearly 14 million U.S. residents, including almost half of all adult immigrants, have limited English proficiency, and 40 percent of all adult immigrants have lived in the United States for fewer than 10 years (Petsod, Wang et al. 2006:118). Further, many immigrants come from countries that have a different understanding of how the health-care system works and what health care consists of, and thus they encounter difficulties getting appropriate treatment in the U.S. system. Linguistic and cultural barriers jeopardize the quality of immigrants' health care. The consequences of all of these barriers include "reduced access to health insurance, preventative care, and specialty services; compromised patient understanding of diagnosis and treatment plans; lower patient satisfaction; [and] lower quality of care" (Petsod, Wang et al. 2006:118). Even with the necessary translation services, many immigrants, and even some non-immigrants, find it difficult to get health care because the U.S. system is so complex. Understanding even the basics of how to use insurance plans and access the appropriate provider can be daunting, especially for those new to the United States.

Another serious obstacle is fear of the consequences of using public health services. Many immigrants are afraid that health administrators will report patients or family members to ICE; that the use of public programs such as Medicaid or Emergency Medicaid will be held against them when they apply for changes in their immigration status; and that their use of public programs will have them labeled a "public charge," leading to ineligibility for citizenship or deportation. [38] Because of these fears, immigrants often avoid seeking care at licensed facilities or applying for health-care coverage programs to which they may in fact be eligible (Alker and Urrutia 2004). This can lead people to turn to unlicensed doctors and smuggled prescription drugs, or to go without any care at all (Ku and Papademetriou 2007). This is not only detrimental to the health of individuals, but it also burdens public emergency care facilities and poses a serious public health risk to communities.

4.2 Policies

Because health-care problems affect cities in many ways, several approaches to addressing health-care concerns can be employed. We have identified three broad areas in which cities can take action:

- Expanding health-care coverage.
- Eliminating non-financial barriers to care.

37 For more information on ERISA protection, see the ERISA Preemption Manual for State Health Policymakers (Butler 2000).

38 See http://www.thenyic.org > Health Access > Concerns regarding immigrants and public benefits.

- Providing general health education and outreach.

4.2.1 Expanding health-care coverage

We discuss here a range of policy options for (a) maximizing the enrollment of people already eligible for health insurance, and (b) taking steps to expand access to health insurance and health care to those not eligible for existing programs. It is important to keep in mind, however, that designing local initiatives to expand access to health care is not an easy task. Because cities can vary dramatically in demographics and resources, any successful initiative will be unique, designed to meet a city's specific needs and effectively utilize its resources.

4.2.1.1 Maximizing enrollment of people already eligible for health-care programs

The first step in any attempt to increase health-care coverage should be identifying those who are eligible for existing federal, state, local, or employer-based health-care programs. Enrollment initiatives focused on Medicaid and SCHIP should primarily target low-income, legal permanent residents who have been so for more than five years as well as citizen children and pregnant women in low-income families.

To increase immigrant enrollment, policies that promote education and outreach about these programs, and coordination among them, are necessary to dispel myths and inform people of their rights as well as to help eligible people with the often-ominous application process. Cities can attempt to enroll people in health-care programs on their own, but previous experience has shown that a more effective way of doing so is by building partnerships with organizations well-established in low-income communities, particularly those working with immigrants. In the case of immigrants this is especially important because integrating them into the health-care system often requires overcoming their mistrust and cultural and linguistic barriers.[39]

We have identified two city-based approaches to maximizing enrollment in existing health-care programs: face-to-face outreach, and computer-based screening at health-care facilities.

Conducting face-to-face outreach

Face-to-face outreach requires a large number of knowledgeable and culturally sensitive organizers, but with enough support and planning this approach can have a significant impact. The key elements of this approach are:

- Combining door-to-door outreach campaigns designed to give individualized attention, with ongoing community support through a central, neighborhood-based, office.

- Organizers address the lack of knowledge and misconceptions about immigrants' options for enrolling in public programs, as well as about the consequences of doing so.

- Organizers screen for people's eligibility for programs during outreach campaigns and follow up by providing application assistance and support.

- Organizers are able to overcome cultural and linguistic barriers to

39 The National Immigration Law Center has published an issue brief with a detailed list of suggestions about how to create an immigrant-friendly application and enrollment process (National Immigration Law Center 2002).

Citrus Valley, CA's Get Enrollment Moving Plan

The Citrus Valley Get Enrollment Moving (GEM) plan was implemented in 2001 by the health-care provider Citrus Valley Health Partners, with funding from county and state health departments. It combats under-enrollment by addressing both lack of knowledge about health insurance options and fears about the consequences of enrolling in public programs. Although GEM is not city-run (Citrus Valley spans multiple cities in Los Angeles County), the model could be implemented by a city, or as a program supported by a city but led by community organizations or partnerships.

The foundation of GEM is the hundreds of volunteer health educators, the *promotoras de salud,* who go door-to-door in targeted areas to talk with people about their health-care options. They encourage enrollment by providing information about health care and identifying those eligible for some type of coverage. GEM follows up on these efforts by providing application assistance with multilingual staff members at the central office. Since it began, GEM has been able to enroll nearly 30,000 people in federal or California state public health programs. GEM reports that nearly 35 percent of those enrolled live in a household headed by at least one undocumented adult (Petsod, Wang et al. 2006:115).

GEM's success has been in large part due to the work of the *promotoras.* These volunteers are recruited from the communities targeted by GEM and trained by GEM staff in a way that fosters leadership and makes the promotoras partners in program development.

communication with immigrants in the targeted community and, ideally, are personally connected to the community.

This approach is labor-intensive. Although volunteers may conduct outreach, organizing and training hundreds of people is still quite expensive. On the plus side, additional benefits can be obtained by drawing volunteers from the targeted community, giving them training as well as professional development opportunities. Face-to-face outreach strategies can also be adapted to make them less expensive, for example, by implementing them in community festivals or neighborhood events.

Using software to screen for eligibility

Because public health programs vary greatly not only among states, but also among cities and counties, determining exactly who is eligible for which programs can be an onerous task, and very prone to errors. One way to address this is to use a computer-based tool that can quickly screen for an individual's eligibility for a number of programs, including federal programs like Medicaid but also state and local programs and charity-based health care. The key elements of this approach are:

- Customized software that receives personal information as an input and produces as an output a list of programs for which the person is eligible, if any.
- Personnel that conduct software-based screening and help with the enrollment process.

A natural place to conduct the screening is at health-care facilities. However, it can also be done at other places, such as community-based organizations and a city's network

The Indigent Care Collaboration in Central Texas

The Indigent Care Collaboration (ICC) is an alliance of health-care safety-net providers that came together in Travis County in 1997 and expanded to Williams and Hayes counties in 2000. Its goals are expanding access, improving quality, and increasing affordability of health care for the low-income and uninsured residents of Central Texas.[1] The coalition includes hospitals, health-care networks, clinics, government agencies, nonprofit organizations, individual providers, and others.

ICC uses a software tool called Medicaider that can quickly screen for an individual's eligibility for public programs. The original purpose of Medicaider was to determine eligibility for Medicaid, SCHIP, SSI, and other federal and state programs for the low-income uninsured, but the ICC contracted with Network Sciences LLC to customize the tool to also screen for local public programs and charity-care services.[2] Therefore, ICC directs each patient to the program he or she is eligible for, which entails the most efficient use of local, state, and federal resources. Additionally, ICC has organized an online database of patient medical records and makes this information available to regional health-care providers. As a result, ICC has been able to vastly improve both access to and quality of care in Austin, TX, and the surrounding region without significantly expanding care programs themselves.

1 See http://www.icc-centex.org/abouticc.cfm.
2 See http://www4.medicaider.com/medicaider.asp.

of social service providers. In any case, the use of software-based screening should be accompanied by outreach activities that encourage people to get screened.

4.2.1.2 Expanding access to health insurance and health care

A far greater problem than low enrollment for existing health-care programs is the lack of availability of any form of affordable health care for a large segment of the population. Cities can address this by expanding access to health insurance or developing other health-care programs for the uninsured. We discuss five approaches that cities can use to expand access to health insurance and health care.

Organizing a city/county-based universal health coverage plan

Though not a simple task, cities can expand access to health care by making it guaranteed for all who live or work in a city. One way to achieve universal health coverage at the city level is by offering a heavily-subsidized, universally-accessible program, funded using the county health-care budget and a minimum health spending requirement for large and medium-sized employers in the city.

The key elements of this approach are the following:

- Combining city and county money currently spent on the uninsured to fund the program.
- Establishing a minimum health spending requirement for employers.
- Subsidizing premiums heavily for lower-income individuals.
- Emphasizing preventative care.

Healthy San Francisco Program

San Francisco has pioneered the effort toward universal coverage with its Healthy San Francisco (HSF) program, which began on a pilot basis in July 2007 and is set to be fully implemented by June 2008. Created by the Health Care Security Ordinance (HCSO), HSF offers primary care, hospitalization services, specialty care, and prescription drugs for all uninsured residents of San Francisco, regardless of employment, immigration status, or medical condition. These services are managed through a "medical home" at the resident's primary care facility, which emphasizes preventative care. Individuals and their employers in San Francisco can enroll in the program for a sliding monthly fee, heavily subsidized for small- and medium-sized businesses and for low-income individuals. HSF is run by the San Francisco Department of Health and administered by the San Francisco Health Plan.

At full enrollment, the program is expected to cost about $200 million a year. About 82,000 people (15 percent of the population) are uninsured in San Francisco, and currently they cost the city/county $104 million for health care. This money will be redirected to finance most of the program. The remainder will be divided among individuals, businesses, and other public money. Premiums and co-payments from primarily higher-income individuals will make up about $60 million, business premiums will contribute $30-40 million, and $10 million is expected from increased federal cost-sharing. Because HSF maximizes access to health care without technically being classified as insurance, it maximizes the funds the city receives from state and federal programs, such as Medicare (UC Berkeley Labor Center N.d.).

The critical element of the Health Care Security Ordinance is the minimum health spending requirement. This provision is aimed specifically at the 15 percent of employers who do not offer health insurance, and it requires that all large and medium-sized businesses contribute a certain amount toward health care for each hour worked by employees covered by the ordinance. The contribution does not necessarily go to HSF; employers have other options as well such as providing insurance, contributing to health savings accounts, or directly reimbursing employees for health-care costs.

The HCSO attempts to avoid conflicting with ERISA in two ways. First, the coverage provided by HSF is not portable outside of San Francisco and therefore it is not technically health insurance. Second, the ordinance does not directly regulate employer spending on health insurance, offering instead multiple health spending options (one of which is the HSF). Still, the minimum health spending requirement has been actively resisted by the San Francisco business community, and the Golden Gate Restaurant Association filed suit against the HCSO on the basis that it is pre-empted by ERISA. Although a district court ruled in favor of the GGRA, the City appealed to the Ninth Circuit Court, which issued a preliminary decision allowing the San Francisco employer health care mandate to go into effect. The final result of this lawsuit will be important in determining how far cities can go in forcing employers to contribute to worker's health-care costs.[1]

1 This challenge is based on a ruling against Maryland's "Wal-Mart Law," which attempted to force retailers not paying 8 percent of employee wages towards health care to make up the difference to the state. The ruling in Retail Leader Associate v. Fielder (D. Md. 2006), which claimed that the law was preempted by ERISA by interfering with Wal-Mart's ability to create a uniform national benefits plan, was upheld in January 2007 by a federal appeals court (Barbaro 2007). The HCSA was designed with the challenge to the Maryland law in mind.

- Including provisions to avoid crowding out existing employer-provided insurance.

- Including provisions aimed at avoiding conflict with ERISA and maximizing federal funding.

The minimum health spending requirement would be by far the most controversial element of any universal health-care initiative, but it is also necessary for its success. If employers are not forced to bear some of the costs of their employees' health care under this type of plan, then they have little incentive to start or continue providing coverage, leaving many more to be covered by the public health system. To take into account businesses' differential capacity to pay, the minimum health spending requirement should be adjusted by business size.

Offering universal access to city employees' group plan

Insurance is significantly more expensive and difficult to obtain for individuals who do not have access to group-based plans. In order to provide better options to the uninsured, especially employees of small businesses and the self-employed, cities can extend their government employee health benefits plan to all who live, work, or attend school in the city, as well as to small employers. This policy pools all these individuals together as one group, allowing them to choose from a menu of portable insurance plans approved by the city. As a result, not only will more people get coverage, but those already insured through the city will have a wider range of plans to choose from and will pay lower premiums, because the average uninsured entering the pool is likely to be younger. Additionally, the city can create a reinsurance risk-transfer pool, an arrangement that spreads the costs for high-risk individuals across all carriers in the market, thus lowering the premium for high-risk individuals as well.

The key elements of this approach are:

- Expanding existing health plan for city employees to all who live, work, or go to school in the city.

- Allowing any city employer to designate the city's health benefits program as its "employer-group" health insurance plan.

- Creating a risk-transfer pool for all insurance providers so they can charge a standard rate regardless of health history.

- Making the plan portable, and allowing enrollees to change plans during an annual "open season."

- Allowing for the aggregation of health-care benefits across employers.

This policy does not conflict with ERISA because it does not regulate the provision of health-care benefits by employers, and it appears to be immune to other legal challenges as well. However, as a policy like this has yet to be implemented, there may be other unforeseen obstacles. The main drawback of this approach is that the cost of group-based health insurance would still be too high for many people. A solution would be for the city to subsidize premiums for low-income families.

Making health-care benefits a requirement for city subcontractors

As discussed in section 3.2.2, cities acting as proprietors can choose with whom to do business. A city passing a living-wage ordinance based on its proprietary interest will

Washington, DC, Health Benefits Program

In September 2004 a plan to expand access to the city employees' benefits plan was introduced in the District of Columbia City Council as the Equal Access to Health Insurance Amendment Act. The two main purposes of the act are to give anyone who lives, works, or goes to school in the district access to the District of Columbia Employees Health Benefits Plan, and to allow any district employer to designate the plan for its workers. Any enrolled person would thus have the option of choosing from a menu of health-care options, including HMOs, preferred provider organizations, and high-deductible plans, all offered at standard group rates. Any plan would be personal and portable. Because city employees would remain enrolled, the pool would start with a strong base, and it would be an attractive option for insurance providers (Haislmaier and Mirel 2006:3-4). To act as a central clearinghouse for these insurance coverage options, the legislation would also create the District of Columbia Health Benefits Program, which would be run as an entity independent from, but sponsored by, the city government, and regulated by the Department of Insurance, Securities, and Banking.

The act would also create a risk-transfer pool, which would allow providers to offer standard premiums for all individuals regardless of risk by sharing the costs of high-risk enrollees among providers. The pool would be funded primarily through premiums paid by carriers for risks ceded to the pool, investment income, and grants or fees collected by the board that operates the pool.

One aspect of the plan that marks it as distinct from some state-sponsored health insurance purchasing or pooling arrangements is that it allows employers to designate the Health Benefits Program as its "employer-group" health insurance plan for their workers. This means workers would be protected by federal law that applies to all covered by "employer-group" health insurance, and any contribution made by the employer toward the worker's premium would be tax-free for the worker (Haislmaier and Mirel 2006:3).

Further, the act provides for a "premium aggregating" mechanism, which would allow for the collection of multiple employer contributions toward each worker's premium. The effect of this would be that couples or individuals with more than one job would not need to choose between coverage options. Instead, they could combine any employer contributions to buy coverage (Haislmaier and Mirel 2006:8). Premium aggregating would make it easier for employers to contribute whatever they can afford, without necessarily covering the total costs of providing health-care insurance for their employees.

To determine the best plan for an individual and the best way for employers to contribute pre-tax premiums for workers, insurance brokers would be paid a commission to counsel both individuals and employers. Membership groups and social service entities (including business or professional organizations; and civic, religious, or social service organizations, such as clinics) that bring the populations they serve into the program would be compensated as if they were insurance brokers or subcontractors with the program (Haislmaier and Mirel 2006:9).

Currently missing from the Equal Access to Health Insurance Amendment Act are provisions to make the plan more affordable for low-income individuals.

do business only with firms paying living wages. The same principle is valid—with more limitations, given potentially pre-emptive federal statutes—for health-care benefits.

To avoid potential conflicts with ERISA, cities typically avoid requiring health-care benefits in their living-wage legislation. They demand, instead, a higher living wage if those benefits are not offered (Reynolds and Kern 2003:40). This is the case, for example, in Los Angeles; Detroit; and Sonoma, CA. The Association of Community Organizations for Reform Now (ACORN), which has been involved in successful living-wage campaigns across the country, recommends that in order to avoid pre-emption by ERISA cities do not require health benefits but simply require a higher wage from employers that do not provide benefits.

A few cities, however, require covered firms to provide health-care benefits. For instance, Davenport, IA, requires health-care benefits at firms receiving tax incremental financing; Des Moines, IA, at firms getting tax benefits through the Enterprise Zone Incentives for Business Expansion program; Houston at firms receiving tax abatements; and Missoula, MT, at firms in any of five programs aimed at economic development and job creation. These cities have enforced these requirements for several years (cf. the relevant endnotes in Purinton 2003), which suggests that cities are on firm legal ground when they attach a health-care benefit condition to economic assistance.

Although living-wage ordinances with health-care provisions have been successfully implemented in many cities, their limitations as an approach to expand health-care coverage should be kept in mind: They apply to a small segment of the population, and do not guarantee health benefits or insurance for those covered.

Providing subsidized health services through public safety net programs

A straightforward way for cities to address the problem of the uninsured is to directly provide health care through the city's public hospitals and clinics, partially or fully subsidizing provision. One approach has been to implement reduced-fee programs throughout the city's public health system. This has the potential for a widespread impact and avoids conflicting with ERISA in any way. However, care is needed in designing such a policy to ensure that it is accessible to undocumented immigrants. A 2001 study by the Kaiser Commission on Medicaid and the Uninsured found that immigrants were more likely to use nonprofit clinics, despite their more limited patient capacity and services. One of the main reasons was that public system facilities were more likely to ask detailed questions about immigration status, even if they had a confidentiality policy in place (Ku and Freilich 2001:14). Thus, it is extremely important for public programs to clearly communicate their policies regarding immigration status so that it is not an obstacle to receiving care.

The key elements of this approach are:

- Screening for eligibility for existing public programs.
- Fully or partially subsidizing health-care services, based on family size and income.
- Implementing a clear and explicit policy toward immigration status, and avoiding the collection of such information unless required by law.

New York City Health and Hospitals Corporation Options program

The New York City public health system, the Health and Hospitals Corporation (HHC), operates the HHC Options program, which offers subsidized health care for low- and moderate-income individuals utilizing the public system.[1] The program screens applicants for eligibility in other state and federal programs and encourages a preliminary health screening (Ku and Papademetriou 2007). Those eligible for HHC Options meet with a financial counselor at an HHC hospital or clinic to set up a payment agreement based on a sliding-scale fee, which can then be applied to any public system facility (Commission on the Public's Health System 2005). HHC keeps information on immigration status confidential and makes all services and information available in many languages.

1 For more information on HHC Options, visit http://www.nyc.gov/html/hhc/html/community/hhc_options.shtml.

Supporting free medical clinics and the community-based provision of health care

A final approach that cities can take to improve access to health care for the uninsured is to support the provision of health care by nonprofit organizations and community-based programs. One way cities can do this is by funding free clinics run by nonprofits. For instance, the Iowa City Free Clinic, a nonprofit organization, is funded by Iowa City, the city of Coralville, Johnson County, the United Way, and other private donors.[40] Cities can also partner with community-based organizations, local businesses, and health-care providers to provide health care for the uninsured. Funding can come from a variety of sources, including local, state, or federal governments; private foundations; and local businesses, in addition to donated services from health-care providers (Communities in Charge 2005:43).

Although city support for free medical clinics and community-based provision of health care can effectively tailor programs to a community's needs, these programs may be strongly affected by gaps and discontinuities in their funding. In addition, their capacity to serve large populations is likely to be limited compared to some of the other strategies considered in this report.

4.2.2 Eliminating non-financial barriers to health care

Besides the lack of health-care coverage, there are two non-financial barriers to health-care access that cities can help eliminate: 1) linguistic, cultural, and information barriers; and 2) fear of the consequences of using public services.

Linguistic, cultural, and information barriers

Regardless of legal status and whether they have insurance, immigrants often fail to access health-care services because of linguistic or cultural differences that make communication difficult, and because of lack of information about how to navigate the U.S. system. Federal law requires health-care providers that receive federal funding to offer language assistance to patients whose English is poor. The U.S. Supreme Court "has held that failure to provide language assistance to limited-English proficient persons violated the Title VI regulations when the failure had a disparate impact on a particular national origin group" (Moua, Guerra et al. 2002). Still, funding for translation services is not consistent, and many immigrants continue to face serious communication obstacles,

40 For more information on the Iowa City Free Clinic, visit http://www.freemedicalclinic.org/home.html.

including cultural differences in the understanding of health and health care, which can persist even if language is no barrier.

To promote implementation of language assistance, the Office of Minority Health (OMH) of the U.S. Department of Health and Human Services developed the National Standards on Culturally and Linguistically Appropriate Services (CLAS, see box below). According to the OMH, these standards are "primarily directed at health-care organizations," but individual providers are also encouraged to use them "to make their practices more culturally and linguistically accessible." OMH also points out that all culturally and linguistically appropriate services offered by health-care facilities should be undertaken in partnership with the communities being served (Office of Minority Health 2001).

Despite the rigorous standards for linguistic and culturally sensitive services set by OMH, for several reasons the CLAS standards have limited impact. First, they only apply to recipients of federal funds, leaving many other health-care facilities free to ignore them. Second, only a few of the standards are actual federal mandates; the others are only recommended for adoption as mandates for other agencies, or voluntary for health-care organizations. Finally, there is neither any mechanism for enforcement of the mandates nor provision for their implementation. Insurers usually do not pay for interpretation or translation services, and providers (on whom the obligation technically falls) are often unable to make them available in the absence of payment. Moreover, Medicare does not pay for interpretation, and only a few state Medicaid programs do (Ku and Flores 2005:436). Because of this, funding is generally the greatest obstacle to any initiative to expand interpretation services in health care.

Additionally, the CLAS standards do not address the problem of information barriers. Therefore, a city's attempt to address the problem of immigrants' barriers to health care will require not only support of interpretation services but also the distribution of clear information about how to navigate the system and pay for care. This can be accomplished in three ways:

The National Standards on Culturally and Linguistically Appropriate Services (CLAS)

Standard 1: Health care organizations should ensure that patients/consumers receive from all staff members effective, understandable, and respectful care that is provided in a manner compatible with their cultural health beliefs and practices and preferred language.

Standard 2: Health care organizations should implement strategies to recruit, retain, and promote at all levels of the organization a diverse staff and leadership that are representative of the demographic characteristics of the service area.

Standard 3: Health care organizations should ensure that staff at all levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery.

Standard 4: Health care organizations must offer and provide language assistance services, including bilingual staff and interpreter services, at no cost to each patient/consumer with limited English proficiency at all points of contact, in a timely manner during all hours of operation.

(continued on next page)

Standard 5: Health care organizations must provide to patients/consumers in their preferred language both verbal offers and written notices informing them of their right to receive language assistance services.

Standard 6: Health care organizations must assure the competence of language assistance provided to limited English proficient patients/consumers by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services (except on request by the patient/consumer).

Standard 7: Health care organizations must make available easily understood patient-related materials and post signage in the languages of the commonly encountered groups and/or groups represented in the service area.

Standard 8: Health care organizations should develop, implement, and promote a written strategic plan that outlines clear goals, policies, operational plans, and management accountability/oversight mechanisms to provide culturally and linguistically appropriate services.

Standard 9: Health care organizations should conduct initial and ongoing organizational self-assessments of CLAS-related activities and are encouraged to integrate cultural and linguistic competence-related measures into their internal audits, performance improvement programs, patient satisfaction assessments, and outcomes-based evaluations.

Standard 10: Health care organizations should ensure that data on the individual patient's/consumer's race, ethnicity, and spoken and written language are collected in health records, integrated into the organization's management information systems, and periodically updated.

Standard 11: Health care organizations should maintain a current demographic, cultural, and epidemiological profile of the community as well as a needs assessment to accurately plan for and implement services that respond to the cultural and linguistic characteristics of the service area.

Standard 12: Health care organizations should develop participatory, collaborative partnerships with communities and utilize a variety of formal and informal mechanisms to facilitate community and patient/consumer involvement in designing and implementing CLAS-related activities.

Standard 13: Health care organizations should ensure that conflict and grievance resolution processes are culturally and linguistically sensitive and capable of identifying, preventing, and resolving cross-cultural conflicts or complaints by patients/consumers.

Standard 14: Health care organizations are encouraged to regularly make available to the public information about their progress and successful innovations in implementing the CLAS standards and to provide public notice in their communities about the availability of this information.

Standards 4, 5, 6, and 7 are federal requirements for all recipients of federal funds. Standards 1, 2, 3, 8, 9, 10, 11, 12, and 13 are recommended as mandates by accrediting agencies. Standard 14 is voluntary for health-care organizations.

- Establishing thorough cultural and linguistic translation services that follow the CLAS standards as well as clear information about the health-care system within all city-run facilities.

- Requiring that all facilities receiving city funding also adhere to the CLAS standards.

- Educating and encouraging other health-care facilities in the city to expand translation and information services through partnerships or special funding for such initiatives.

Fear of the consequences of using public services

A significant barrier to immigrants' access to health care is fear of the consequences of using public services. Many of these fears are not unjustified, particularly after the 1996 welfare reform implemented through PRWORA and more recent proposals for immigration reform. However, cities can reduce immigrants' risk by protecting immigrants' privacy within the health-care system. It is important for cities to thoroughly understand how federal immigration law relates to public services, so they can know how best to serve immigrants seeking health care and combat their misgivings.

One important concern of immigrants is that using or applying for benefits will cause them to be labeled a "public charge." Although this label has been misapplied in the past to unlawfully deny applications for permanent residency, in 1999 the INS clarified the public charge doctrine, specifying that "receipt of health care and other non-cash benefits will not jeopardize the immigration status of recipients or their family members by putting them at risk of being considered a public charge" (National Immigration Law Center 2005:2.5). Thus, while cash welfare such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), General Assistance (GA) as well as institutionalization for long-term care at government expense can all be factored in to determining public charge status, this does not apply for the following programs: Medicaid, Child Health Plus (CHP), Family Health Plus (FHP), prenatal care, other free or low-cost medical care including emergency care, Food Stamps, school meals and other food assistance, public housing, disaster relief, child care services, job training, transportation vouchers, and unemployment compensation.[41]

Another concern for immigrants using public benefits is sponsor liability. Following the passing of PRWORA in 1996, immigrant sponsors must meet strict income requirements and sign a legally binding affidavit of support deeming the income and resources of the sponsor those of the immigrant as well, until he or she has worked 40 quarters or becomes a citizen; and promising to maintain the immigrant at 125 percent of the federal poverty level and repay any means-tested public benefits the immigrant receives (National Immigration Law Center 2005:2.6). Although few immigrants have been affected by this policy, and exceptions are provided for emergency Medicaid, public health assistance for immunizations, and several other programs, the fear that using public benefits will leave sponsors with unmanageable financial obligations understandably persists (New York Immigrant Coalition).

Perhaps the greatest concern of immigrants is that health-care personnel will inquire

41 When determining whether an applicant for permanent residency should be labeled a public charge, the Bureau of Citizenship and Immigration Services takes into account immigrants' age, health (including HIV status), family status, assets, resources, financial status, education, and skills. Some specific circumstance must be present before the government can find that an immigrant will be a public charge, such as mental or physical disability, advanced age, or other evidence that the government would be responsible for supporting him or her. Information on determining public charge status comes from the New York Immigrant Coalition; see http://www.thenyic.org > Health Access > Concerns regarding immigrants and public benefits.

about their legal status or request their Social Security number, and then report undocumented patients or their relatives to ICE. This fear is legitimate, given the confusion that exists among both immigrants and government agencies about which agency is required to verify or report immigration status. The following overview of DHS verifying and reporting procedures clarifies the issue (Pendleton 2004):

- Nonprofit organizations that administer benefits and services have no obligation to check or report applicants' immigration status.
- Health-care providers have no obligation to report patients' immigration status.
- State and local agencies are not required to check immigration status for federal programs, except in those cases in which a federal agency has determined that a program is a public benefit for which immigrants of a certain legal status are ineligible.
- Verifying and reporting are not the same. Many agencies verify immigration status to determine eligibility for public programs, but this is not necessarily tied to any obligation to report that status to DHS. Although agencies use DHS's immigration computer system SAVE (Systematic Alien Verification for Entitlements) for verification, DHS may not use information in SAVE for immigration enforcement unless criminal activity is involved. Further, most agencies and programs are not required to report immigration status to DHS once it has been verified (see below).
- Benefits agencies inquiring about immigration status must verify only the status of the applicant and not that of other family members. Guidance from HHS limits state benefits program inquiries regarding immigration status and Social Security numbers.
- Reporting requirements are even narrower than verifying requirements. The only agencies required to report undocumented noncitizens to DHS, under very narrow circumstances, are those administering Supplemental Security Income, food stamps, TANF, and public housing. Health-care programs and most other public programs have no reporting requirements.

Cities can help clarify legal requirements for collecting and reporting information on legal status, and other concerns that immigrants have about using public health-care services, in three ways:

- Ensuring that no city-run or city-funded health-care facility or agency collects information that is not required by law, and making information collection, reporting, and verification policies clear to the public in all city-run health-care facilities.
- Educating other health-care providers about information collection and privacy protection.
- Educating the public about information collection, verification, and reporting procedures as well as clarifying other potential consequences of using public services.

4.2.3 General health education/outreach

Immigrants' health problems do not all stem from lack of access to care. Moving to a new country involves a change that creates new circumstances for individuals' health

risks, behaviors, and constraints. One example of this is dietary changes due to the cost or availability of certain foods. Cities can undertake outreach and education activities to address this problem either directly, through city-run campaigns or initiatives, or indirectly, by supporting the efforts of community-based organizations.

The following are several strategies that cities can employ in a health education outreach campaign (for more detail on these strategies see Petsod, Wang et al. 2006):

- Using market research, focus groups, and community discussions to develop relevant and culturally appropriate messages and messengers for health information.
- Utilizing mass media as well as ethnic or foreign language print and electronic media in campaigns.
- Distributing information at community events such as meetings or fairs.
- Going door-to-door in immigrant neighborhoods to distribute health information.
- Communicating with families who are using the healthcare system, and distributing information through schools and school programs (such as subsidized lunches).
- Collaborating with faith-based or community-based organizations to reach targeted communities.

In place of running a campaign directly, cities can support the health education and outreach work of community-based organizations, in particular those that work with immigrants or in health care. Cities can do this by providing funding or training, or by helping build partnerships with others in the city, so that organizations can be more effective at informing and educating their audiences.

Effective communication is crucial to the success of any local health-care initiative aimed at immigrants. City governments are often in a better position to accomplish this than the federal or state government because they have more direct access to immigrant communities as well as a vested interest in promoting immigrants' well-being for the sake of local public health.

5 Other Basic Services

5.1 Background

Various factors can integrate immigrants into the larger community: access to decent employment, availability of educational opportunities, avenues for participation in civic affairs, protection of workplace and civil rights, and access to health care, among others (Fix 2007). So all the policies discussed so far contribute, directly or indirectly, to social integration. In this section we refer to a few additional policies that cities can implement to support the social integration of immigrants. Their goals are that immigrants, both documented and undocumented, have the same access to basic public and private services as non-immigrants, have their specific needs addressed by city officials and agencies, and can more easily apply for permanent residency and citizenship, if they wish to do so.

5.2 Policies

We refer here to five policies:

- Developing immigrant-friendly communication.
- Establishing an office of immigrant affairs or other similar multipurpose agency.
- Offering municipal identification cards.
- Improving immigrants' access to the banking system and financial education.
- Providing information and legal advice on immigration status and citizenship.

5.2.1 Developing immigrant-friendly communication policies

One of the simplest ways for cities to promote immigrants' integration is by having all their agencies develop immigrant-friendly communication policies. This could involve, among other things:

- Translating key documents and forms into the main languages spoken by the city's immigrants.
- Offering translated versions of agencies' Web sites, or of parts of them.
- Translating signs in municipal buildings.
- Hiring personnel fluent in the immigrants' languages.
- Making interpreter services available *in-situ,* either permanently or on-request.

- Improving data collection to better understand public policy issues, and to build and sustain culturally competent strategies and services for immigrants. This requires providing training and standards to ensure that data collected across communities and departments are comparable.

A city's police department can go further. Immigrants tend to distrust the police. Apart from their fears related with immigration law enforcement, immigrant often report that they feel uncomfortable interacting with the police. In many cases, this has to do with immigrants' experience with the police in their native countries. In many countries, lack of resources for training and supporting a professional police force, and very low police wages, often fosters unprofessional behavior by the police and results in distrust and lack of confidence in their ability to combat crime. Many immigrants extend this distrust to the police in the United States. In addition, immigrants may have insufficient information about local laws and be unable to file complaints, because they do not know the procedures to do so or because of literacy or language barriers.

Police departments can do several things to try to improve this situation, in addition to the policies enumerated above. First, they can actively work with immigrant communities on traffic and safety education and on other projects directed at boosting compliance with local regulations. Second, the can pursue the hiring of officers of the same ethnicity as the major immigrant groups in the city, in order to build trust and improve communication. Third, they can create multi-lingual call centers to handle the reporting of crimes, the filing of complaints, and questions about procedures, and to provide interpreter back-up to officers.

5.2.2 Establishing an office of immigrant affairs or other similar multipurpose agency

One of the most comprehensive ways a city can contribute to the social integration of immigrants is by establishing a multipurpose office, agency, or department aimed at serving immigrants. The New York Mayor's Office of Immigrant Affairs (MOIA), for example, promotes the full and active participation of immigrant New Yorkers in the civic, economic, and cultural life of the city.[42]

New York's MOIA works with three groups: immigrants, community-based organizations serving immigrants, and New York City agencies and officials. It helps immigrants identify city services they can receive and community-based organizations able to address their needs. It also helps immigrants get information regarding citizenship and change of legal status applications and procedures and offers information regarding employment, housing, public schools, and small business services. The office has a Web site with information and links related to these topics, including information on the city's privacy policies, and distributes a guide for new immigrants published by the federal government.[43] MOIA works with community-based organizations to find city agencies that can assist them with resources or to which they can refer immigrants, and arranges meetings with appropriate city officials to address community-specific concerns. Finally, MOIA educates city agencies about best practices for reaching immigrant communities; identifies community-based organizations serving specific immigrant communities for these agencies to contact; teams with city agencies to provide bulletins and advisories in multiple languages and to assist them in accessing translation services; and offers expertise to the mayor regarding issues important for immigrants.

42 See http://www.nyc.gov/html/imm/html/about/about.shtml. Los Angeles also took some steps toward creating an office of immigrant affairs "to coordinate and promote the utilization of city services by immigrants, and to encourage their full and active participation in Los Angeles civic culture" (see Mayor Hahn's 2004 Executive Directive IC-2), but the project has not prospered.

43 For the MOIA website, see http://www.nyc.gov/html/imm/html/home/home.shtml.

Other cities could follow the lead of New York and launch offices of immigrant affairs or similar agencies. Many of the policies proposed in this report could be administered by or with the help of such an agency, increasing the efficiency of a city's varied efforts in favor of its immigrant residents. In addition, opening an office of immigrant affairs would also have an important symbolic value, highlighting the city's stance regarding immigration and immigrants' rights.

5.2.3 Offering municipal identification cards

New Haven, CT, recently became the first city to offer a multipurpose municipal identification card to all its residents, regardless of age or immigration status.[44] Recognized as official documentation within city limits, municipal IDs are a highly progressive means of facilitating social integration by allowing any city resident—in particular immigrants, elderly citizens, and young children—to easily access all city services and have legal documentation for use at hospitals, banks, public libraries, and stores. By providing legal documentation for immigrants, municipal IDs also improve public safety in two ways. First, immigrants can use these IDs to open bank accounts, which means that they will not have to carry cash and will become less likely targets for crime. Second, a municipal ID will make immigrants who otherwise have no proof of identification more likely to report crimes they may suffer or witness.

5.2.4 Improving immigrants' access to the banking system and financial education

Many immigrants, especially those with lower income and education levels, rely on the alternative financial sector—primarily check cashers—to cash checks, pay bills, and send remittances. Such reliance is not only a barrier to financial literacy, but it is also a direct cost to immigrants; immigrants pay about $2 billion annually in check-cashing fees (Paulson, Singer et al. 2006). A first step in improving the financial literacy of immigrants is financial education. Immigrants need access to advice on how to establish and use bank accounts effectively (e.g., to avoid overdraft fees and other charges), and education on principles of saving and sound investment. Many immigrants do not understand well even the basics of a bank account—for example, they may mistakenly believe that opening an account requires a Social Security number or driver's license, or that a bank account will be terminated when the documentation used to open an account expires (Paulson, Singer et al. 2006).

Cities should make financial advice to immigrants a priority. Municipal agencies and local officials can work with banks to conduct outreach to immigrant communities and develop financial seminars and literature designed specifically for immigrants. Worker centers are a natural partner in developing, and perhaps hosting, financial advice programs. Literature on financial advice can be printed in multiple languages and distributed at worker centers and banks. Local officials and immigrant advocates can also focus directly on changing bank practices to improve immigrant financial access. These improvements can involve, among others things, the following (Paulson, Singer et al. 2006):

- Making the main services that immigrants require—check cashing, bill payment, and remittance services—easily available and affordable.
- Making financial education and services accessible at immigrants' workplaces and in schools located in school districts with large immigrant populations.

44 For a fact sheet on the New Haven Municipal ID, see http://www.cityofnewhaven.com/pdf_whatsnew/municipalidfactsheet.pdf.

- Developing and marketing remittance products, accepting alternative forms of identification, and taking other measures to cater to immigrants' financial needs.

- Offering services at central locations in immigrant neighborhoods.

5.2.5 Providing information and legal advice on immigration status and citizenship

The most important obstacle to the social integration of many immigrants is likely to be their legal status. Cities can provide resources to help immigrants, and their families abroad, better understand how they can acquire legal status, permanent residency, and citizenship. First, cities can make available information on, for instance, U.S. immigration legislation and policies; types of visas and the procedures for obtaining them; requirements for permanent residency and citizenship and how to apply for them; and U.S. citizenship exams. Second, they can offer legal counseling on immigration issues, or refer immigrants to free or reduced-fee legal services. Third, municipal agencies can work with U.S. Citizenship and Immigration Services (USCIS) to provide forms and self-help kits on visas, green cards, and citizenship. Finally, cities can provide workshops and seminars on the U.S. government and history, which can be run in partnership with immigrant advocacy organizations and community-based organizations serving immigrants.

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