NATIONAL TAXPAYERS UNION

March 16, 2021

The Honorable Ron Wyden
Chairman, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mike Crapo
Ranking Member, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Wyden, Ranking Member Crapo, and Members of the Committee:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I wish to submit this letter for the record ahead of your March 16 hearing, "Made in America: Effect of the U.S. Tax Code on Domestic Manufacturing." Thank you for your attention to these critical issues and your consideration of NTU's views.

For decades, NTU has been invested in a tax code that is simple, fair, and oriented towards economic growth, a federal budget that is responsible, restrained and—when possible—balanced, and a U.S. economy that affords the most opportunities and rewards to the largest possible group of Americans.

To that end, we would like to share our thoughts with the Committee on how lawmakers can best position U.S. manufacturers for success on a domestic *and* global scale in the post-COVID economic recovery, with some recommendations for policies to promote and for policies to avoid in the months and years ahead.

First, Do No Harm

Like many stakeholders, we are deeply concerned by the following proposals from lawmakers and Biden administration officials in the tax space that would actively *harm* domestic manufacturing efforts in the post-COVID economy.

Increasing the corporate tax rate to 28 percent: On the campaign trail, President Biden pledged to raise the corporate rate by a third, from its current 21-percent rate to 28 percent.[1] It is hard to imagine a policy that could make the U.S. *less* globally competitive in the short and long term than a corporate rate hike, and policymakers should abandon any efforts to raise the corporate rate—especially during a fragile economic recovery.

In 2020, the 21-percent U.S. corporate tax rate ranked tied for 16th-lowest among 36 Organisation for Economic Co-Operation and Development (OECD) nations.[2] While our corporate rate is not in an ideal competitive position when compared with our economic peers, it is in a much better position than when the corporate rate was 35 percent in 2017—at the time the second-highest among OECD nations.[3] A 28 percent corporate rate would give the U.S. the third-highest rate in the OECD (along with New Zealand), but an average state corporate tax rate of 6.03 percent would actually bump the U.S. above France for the highest combined corporate tax rate (national and sub-national) among highly developed economies.

As global and domestic businesses look to recover and invest in growth in a post-COVID world, the U.S. would put itself in a severely uncompetitive position by raising its corporate rate by more than 33 percent. It is also worth noting that a significant portion of the tax hike would be borne by workers—between 50 and 100 percent, according to experts at the Tax Foundation.[4] Even alternative estimates from the Tax Policy Center, which assume that shareholders in a company bear a majority of corporate taxes (around 80 percent), find that workers bear 20 percent of the corporate tax.[5] Regardless of the wide range of estimates here, it is clear that a corporate tax hike is, in part, a tax hike on workers as well.

"Buy America" and Protectionism: Though "Buy America" initiatives are often politically popular, they are neither an efficient use of taxpayer dollars nor the most effective way for American businesses large and small to purchase goods. With "Buy America" directives popular in the COVID-19 context, NTU led more than 250 economists last year in writing to former President Trump, Speaker Pelosi, and Leader McConnell:

> Diversifying supply sources and increasing inventories will be costly, but a broad Buy America regime will be more costly. The variety, supply, and price of goods available to Americans will suffer under a broad Buy America regime. Taxpayers and patients will pay more for drugs and medical supplies. Smart policies such as federal government stockpiling look more promising.
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> A Buy America directive can also hamstring the ability of U.S. pharmaceutical and medical equipment manufacturers to meet our future needs if firms are denied access to essential foreign supplies.

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[1] Biden-Harris. (September 2020). "The Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It In America." Retrieved from: https://joebiden.com/the-biden-harris-plan-to-fight-for-workers-by-delivering-on-buy-america-and-make-it-in-america/ (Accessed March 11, 2021.)

[2] OECD.Stat. "Table II.1. Statutory corporate income tax rate." Retrieved from: https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1 (Accessed March 11, 2021.)

[3] *Ibid.*

[4] Entin, Stephen J. "Labor Bears Much of the Cost of the Corporate Tax." Tax Foundation, October 24, 2017. Retrieved from: https://taxfoundation.org/labor-bears-corporate-tax/#:~:text=Indeed%2C%20Mnuchin%20has%20said%20that,tax%20is%20borne%20by%20workers. (Accessed March 11, 2021.)

[5] Tax Policy Center. "Who bears the burden of the corporate income tax?" Retrieved from: https://www.taxpolicycenter.org/briefing-book/who-bears-burden-corporate-income-tax (Accessed March 11, 2021.)

> Moreover, we can expect our trading partners to adopt retaliatory "Don't Buy American" barriers targeting U.S. exports as this type of retaliation is already occurring between other countries.[6]

Similarly, NTU has encouraged lawmakers and the Biden administration (and, previously, the Trump administration) to exercise significant caution when utilizing the Defense Production Act (DPA):

> The DPA, which allows presidents to mandate and prioritize manufacturing of certain goods in service of the "national defense," is a 70-year-old law that NTU believes should be used sparingly. NTU and its sister organization NTU Foundation have regularly urged the federal government to exhibit significant caution when invoking the DPA, because "in areas where [the Trump administration] did use the DPA to intervene in the economy [during COVID], the results were predictably disastrous." We have also seen proposals to use the DPA to protect certain parochial interests and favored industries (unrelated to COVID) and we have seen DPA money wasted at the Pentagon in the past year.[7]

Misplaced and Costly Surtaxes: NTU is also significantly concerned with a proposal that President Biden released on the campaign trail last year to attach a "10% Offshoring Penalty surtax ... on profits of any production by a United States company overseas for sales back to the United States," effectively bringing the corporate rate for those business profits to 30.8 percent.[8] Though some details of the proposal are unclear, we worry that President Biden's surtax idea denies the economic reality of global supply chains, and could harm some of the American companies and workers that the President is trying to support.

Consider some of the several U.S. companies that created and are producing COVID-19 vaccines, including Pfizer, Moderna, Johnson & Johnson, and Novavax. All four companies have global manufacturing partners at various stages of vaccine development, production, and distribution, in several countries across Europe, Asia, and Africa.[9] While it is unclear based if any of these companies would be subject to President Biden's offshoring surtax, on their inputs or finished products, we raise the example of these manufacturers to demonstrate that supply chains are and will continue to be global—for many U.S. industries that employ Americans in high-quality, well-paying jobs—and punishing these companies for simply having global supply chains and a global presence will also punish the American workers employed by these businesses.

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[6] National Taxpayers Union. (May 13, 2020). "More than 250 Leading Economists Warn Trump Administration: "Buy America" Provision Would Harm American Response to Coronavirus." Retrieved from: https://www.ntu.org/publications/detail/more-than-250-leading-economists-warn-trump-administration-buy-america-provision-would-harm-american-response-to-coronavirus (Accessed March 11, 2021.)

[7] Lautz, Andrew. "A Taxpayer- and Market-Oriented Path Forward for Federal Prescription Drug Policy." National Taxpayers Union, February 25, 2021. Retrieved from: https://www.ntu.org/publications/detail/a-taxpayer-and-market-oriented-path-forward-for-federal-prescription-drug-policy (Accessed March 12, 2021.)

[8] Biden-Harris. (September 2020). "The Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It In America." Retrieved from: https://joebiden.com/the-biden-harris-plan-to-fight-for-workers-by-delivering-on-buy-america-and-make-it-in-america/ (Accessed March 12, 2021.)

[9] Kansteiner, Fraiser, and Sagonowsky, Eric. "What does it take to supply COVID-19 vaccines across the globe? Here's how the leading players are working it." *FiercePharma*, March 3, 2021. Retrieved from: https://www.fiercepharma.com/special-reports/vaccine-supply-chains-holding-line-against-covid-19 (Accessed March 12, 2021.)

In summary, sweeping, top-down industrial policy will only raise costs for taxpayers in the long run, while potentially propping up industries, sectors, or businesses that might be less than efficient for a robust 21st-century American economy. “Buy America” and the DPA both risk falling into this trap, by failing to acknowledge the reality that not every good and input used in America will be made in America. Tax hikes like a corporate rate increase and an “Offshoring Penalty surtax” will also harm economic growth and recovery efforts, especially since workers and consumers bear significant portions of the taxes levied on businesses. Instead, policymakers should pursue simple incentives for multinational and U.S.-based businesses to invest in America, with a particular focus on accelerating cost recovery for companies that make the investments that will drive economic, job, and wage growth.

For Businesses, Focus on Simplicity, Cost Recovery, and Incentives for Investment

To better help U.S. manufacturers recover in the post-COVID economy, lawmakers should focus on simple changes to the tax code that reward investments in economic, job, and wage growth. To that end, we recommend four ideas that may seem obscure but are nonetheless critical to helping businesses recover the costs of their investments in growth.

Undo five-year R&D amortization, which begins Jan. 1, 2022: According to the National Center for Science and Engineering Statistics (NCSES), businesses performed a “total [of] $441 billion [in] R&D” in the U.S. in 2018, 86 percent of which ($377.8 billion) was “funded primarily by the performing companies.”[10] More than half the $441 billion total ($274 billion, or 62 percent) was in manufacturing industries.

Immediate and full cost recovery for businesses’ R&D expenditures is an important principle of the U.S. tax code, since R&D investments will spur innovation and growth in the technologies and sectors that will dominate the global economy in the coming decades. Unfortunately, a looming change to the tax code could threaten that progress.

As NTU wrote in a recent issue brief:

> The Tax Cuts and Jobs Act (TCJA), which passed in 2017, made several positive and pro-growth changes to the U.S. tax code. One provision of the law that Congress should repeal, though, is the shift in how the code treats businesses’ research and development (R&D) expenditures. Under current law, U.S. companies can immediately write their R&D costs off their tax bill, which provides a major incentive for businesses to invest in innovations that grow the U.S. economy and create jobs. Under TCJA, though, businesses must amortize their R&D costs beginning in 2022—spreading the tax benefit out over five years instead of one. This will crib U.S. efforts, including those in the R&D-intensive biopharmaceutical industry, to dig out of the COVID economic hole and innovate in the years to come. Fortunately, the American Innovation and Competitiveness Act (AICA) from Reps. John Larson (D-CT)

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[10] Shackelford, Brandon. “Health-Related Applications Account for One-Quarter of 2018 U.S. Business R&D; Most Pharmaceutical R&D Focused on Biotechnology.” NCSES, January 6, 2021. Retrieved from: https://ncses.nsf.gov/pubs/nsf21316 (Accessed March 12, 2021.)

> and Ron Estes (R-KS) is a popular, bipartisan bill in Congress that would repeal R&D amortization. Congress should pass it in 2021.[11]

Extend full and immediate expensing for short-lived assets: A separate provision of TCJA is critical to businesses' ability to quickly recover the costs of their investments, and Congress should extend this full and immediate expensing provision of the law before it begins to phase down in 2023. Legislation in the Senate and the House last year, the ALIGN Act from Sen. Pat Toomey (R-PA) and Rep. Jodey Arrington (R-TX), would accomplish just that.

As NTU wrote of the legislation at the time:

> While lawmakers recognized the benefits of full expensing by including a 100-percent first-year expensing allowance for qualified assets like machinery and software in Section 168(k) of the TCJA, up from a 50-percent expensing allowance under prior law, they phased out the 100-percent allowance starting in 2023.2 This phase-out could have the effect of decreasing business investment, blunting the positive effects the TCJA has had on the American economy. The ALIGN Act would solve this problem by making the 100-percent allowance permanent.[12]

Both the ALIGN Act and the aforementioned AICA would fit well with President Biden's focus on revitalizing domestic manufacturing and would help companies more confidently invest in American workers and American ingenuity as the country emerges from the COVID-19 crisis.

Explore full and immediate expensing for structures: The final piece of our focus on cost recovery is a more expensive proposition for lawmakers, in terms of foregone revenue, but would nonetheless significantly help businesses open and expand the kinds of facilities that will employ Americans in domestic manufacturing for decades to come.

Experts at the Tax Foundation have pointed out that "when a business purchases a structure, it has to deduct the cost over a period of up to 27.5 years (for residential buildings) or 39 years (for nonresidential buildings)."[13] At NTU, we have noted that:

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[11] Lautz, Andrew. "A Taxpayer- and Market-Oriented Path Forward for Federal Prescription Drug Policy." National Taxpayers Union, February 25, 2021. Retrieved from: https://www.ntu.org/publications/detail/a-taxpayer-and-market-oriented-path-forward-for-federal-prescription-drug-policy (Accessed March 12, 2021.)

[12] Arnold, Brandon. "Toomey Bill to Make Full Expensing Permanent Would Fuel Economic Growth." National Taxpayers Union, February 13, 2020. Retrieved from: https://www.ntu.org/publications/detail/toomey-bill-to-make-full-expensing-permanent-would-fuel-economic-growth (Accessed March 15, 2021.)

[13] York, Erica, and Li, Huaqun. "Reviewing the Economic and Revenue Implications of Cost Recovery Options." Tax Foundation, April 28, 2020. Retrieved from: https://taxfoundation.org/full-immediate-expensing/#:~:text=An%20alternative%20to%20full%20expensing,the%20tax%20treatment%20of%20structures. (Accessed March 15, 2021.)

> This greatly reduces the value of investments in structures, due to inflation and the time value of money. [We support] allowing businesses to fully and immediately deduct the value of their investments in structures in the year they make the investment.
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> ...Some critics of full and immediate expensing point out (correctly) that expanding this treatment to structures would result in significant lost revenue for the federal government. Tax Foundation has a thoughtful alternative addressing those concerns, called neutral cost recovery [NCR].[14]

Under NCR, businesses would still deduct the cost of investments in structures over 27.5 or 39 years, but the value of the deduction would increase over time to account for inflation and the time value of money. Therefore, total deductions over the life of the asset would equal the first-year value of the investment.

NTU continues to prefer full and immediate expensing for structures, and we believe it could help manufacturers more quickly and confidently build and expand new facilities for American workers. NCR for structures, though, could be a point of potential compromise for members of Congress who are concerned about expensing's deficit impact but still want to help reduce the cost of domestic investments for businesses.

Extend the EBITDA definition in Section 163(j): A final measure Congress should consider—somewhat unrelated to cost recovery but important for the American manufacturing sector regardless—is the pending expiration of a certain method businesses use to calculate their income for the purposes of deducting interest payments from their tax bill. This provision, Section 163(j) of the tax code, allows businesses to deduct interest up to a certain limit, which includes 30 percent of adjusted taxable income (ATI). Under current law, ATI is calculated by taking a business's earnings before interest, taxes, depreciation, and amortization (EBITDA). Starting in 2022, ATI is limited to 30 percent of earnings before interest and taxes (EBIT), which reduces the amount of interest deductions some businesses in some sectors can take.

According to the Joint Committee on Taxation (JCT), the U.S. manufacturing industry was the top industry (among C corporations) to take advantage of the interest deduction in 2016, with interest deductions valued at more than $180 billion.[15] A separate JCT estimate finds the changes will more than double the tax revenue brought in by the federal government from these businesses, from $4.8 billion in 2021 to $11.4 billion in 2022, escalating to $15.9 billion in 2023 and $18.1 billion in 2024.[16] That tax revenue could be put to better use by these businesses investing in their workers, new equipment, R&D, and more, and Congress should consider extending the EBITDA definition in Section 163(j) beyond 2021.

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[14] Lautz, Andrew. "How Improving the Tax Code's Treatment of Structures Could Help Aid America's Economic Recovery." National Taxpayers Union, June 30, 2020. Retrieved from: https://www.ntu.org/publications/detail/how-improving-the-tax-codes-treatment-of-structures-could-help-aid-americas-economic-recovery (Accessed March 15, 2021.)

[15] Joint Committee on Taxation. (March 2019). "Overview of Limitation on Deduction of Business Interest: Section 163(j)." Retrieved from: https://www.jct.gov/publications/2019/overview-of-limitation-on-deduction-of-business-in/ (Accessed March 15, 2021.)

[16] Joint Committee on Taxation. (November 5, 2020). "Estimates Of Federal Tax Expenditures For Fiscal Years 2020-2024." Retrieved from: https://www.jct.gov/publications/2020/jcx-23-20/ (Accessed March 15, 2021.)

<u>For Workers, Focus on a Safe Return to High-Quality Jobs</u>

While it is critically important that policymakers make it easier and less expensive for businesses to quickly invest in the American economy in the months and years ahead, support for U.S. businesses—and for the domestic manufacturing sector specifically—should not be an end itself, but a means to an end or to several ends. One of those ends should be making it easier for workers to obtain high-paying, quality jobs in America. Americans are better off when the tax code *rewards* work, and when the tax code makes it easier for working adults to balance a number of priorities in their lives such as health care needs, child care expenses, and saving for retirement. To that end, NTU believes Congress should consider several of the succeeding policy proposals, and should *avoid* expensive, unlimited expansions of struggling taxpayer-funded legacy programs.

Consider a limited, temporary back-to-work bonus for workers coming off UI: Ten million Americans are still out of work from the COVID-19 recession.[17] Last year, when the unemployment situation was even worse, Sen. Rob Portman (R-OH) and Ways and Means Committee Ranking Member Kevin Brady (R-TX) suggested a "back-to-work" bonus that effectively rewards people for finding a job and coming off unemployment insurance (UI).

Congress should still consider such a proposal, given 10 million people are out of work, but the design and implementation of the proposal should be carefully considered. First, any proposal that rushes people back into work too quickly could run counter to public health advice and the pressing need to get the virus under control. Scientists and health experts should still be the first parties that policymakers are turning to for advice when it comes to safely reopening the economy. Second, a "back-to-work" bonus should be targeted at low- and middle-income workers who have been on the labor market sidelines for a significant amount of time. In other words, individuals who were making (and one day again will make) six figures per year do not need access to an additional federal benefit to return to work, nor does someone who experienced or experiences a temporary, two- or four-week long blip in their employment situation.

With proper targeting and continued vaccine distribution and the abatement of the virus, a back-to-work bonus could give low- and middle-income workers the additional resources needed to meet family needs during a transition to work, while also providing employers with a larger pool of applicants for in-demand positions.

Continue supporting working families through the Child Tax Credit, but offset the costs: The American Rescue Plan (ARP) expands the Child Tax Credit in a significant way, increasing the value of the credit by $1,000 per child per year (and $1,600 per child per year for children under six) while also making the credit a monthly benefit for the first time (rather than an annual lump sum).

According to reporting, the benefit may cut child poverty in half and could support millions of working families, but it is also expensive. JCT estimates that just one year of the expansion will cost taxpayers nearly

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[17] Bureau of Labor Statistics. (March 5, 2021). "The Employment Situation - February 2021." Retrieved from: https://www.bls.gov/news.release/pdf/empsit.pdf (Accessed March 15, 2021.)

$110 billion in foregone revenues.[18] Expanding the CTC permanently, as some policymakers now want to do,[19] is a trillion-dollar proposition each decade, and lawmakers serious about making the more generous CTC permanent should offset the costs to taxpayers.

Sen. Mitt Romney (R-UT) outlined a thoughtful CTC expansion plan earlier this year that would have fully offset the cost of expansion with changes to some social programs, duplicative tax credits, and more regressive tax expenditures like the state and local tax (SALT) deduction.[20] Congress should consider this plan, which could be improved by further offsetting its costs by reducing the amount of CTC benefits that flow to very high-income households (such as those making $150,000 or $250,000 or $400,000 per year).

Make it easier for workers to set aside tax-free dollars for health and child care needs: Many workers have access to tax-advantaged savings accounts for health and child care needs, such as health savings accounts (HSAs) and flexible spending arrangements (FSAs). Sometimes, though, workers are tied up by outdated or unnecessarily restrictive rules around contributing to and rolling over these funds from year to year. NTU supports bipartisan legislation from Reps. Brad Wenstrup (R-OH) and Cindy Axne (D-IA) to increase the HSA contribution limit (currently only $3,550 for individuals and $7,100 for families),[21] increase rollover limits for FSAs,[22] and bipartisan legislation from Reps. Katie Porter (D-CA) and Jamie Herrera Beutler (R-WA) to increase a contribution limit for dependent care FSAs that has not been updated since the 1980s.[23]

Any of these options would help workers save money on their health and child care expenses by making a larger portion of those contributions tax-free, and would also help employers by making these fringe benefit offerings more attractive to potential workers.

Follow up on the work of the SECURE Act: Key to a healthy and vibrant workforce is the option for workers to save for retirement, and Congress took a big step forward with its passage of the Setting Every Community Up for Retirement Enhancement (SECURE) Act in 2019.

NTU wrote of the SECURE Act at the time:

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[18] Joint Committee on Taxation. (March 9, 2021). "Estimated Revenue Effects Of H.R. 1319, The "American Rescue Plan Act Of 2021," As Amended By The Senate, Scheduled For Consideration By The House Of Representatives." Retrieved from: https://www.jct.gov/publications/2021/jcx-14-21/ (Accessed March 15, 2021.)

[19] Rubin, Richard. "Democrats Seek Temporary Expansion of Child Tax Credit, but Making It Permanent Is Real Goal." *The Wall Street Journal*, March 3, 2021. Retrieved from: https://www.wsj.com/articles/democrats-seek-temporary-expansion-of-child-tax-credit-but-making-it-permanent-is-real-goal-11614776401 (Accessed March 15, 2021.)

[20] Lautz, Andrew. "Romney Child Tax Credit Plan a Thoughtful Addition to COVID Relief Talks." National Taxpayers Union, February 9, 2021. Retrieved from: https://www.ntu.org/publications/detail/romney-child-tax-credit-plan-a-thoughtful-addition-to-covid-relief-talks (Accessed March 15, 2021.)

[21] Lautz, Andrew. "Bipartisan Bill Would Provide Needed FSA Flexibility for Millions." National Taxpayers Union, May 28, 2020. Retrieved from: https://www.ntu.org/publications/detail/bipartisan-bill-would-provide-needed-fsa-flexibility-for-millions# (Accessed March 15, 2021.)

[22] *Ibid*.

[23] Katie Porter. (February 4, 2021). "Rep. Porter Reintroduces Bill to Help Families Pay for Childcare." Retrieved from: https://porter.house.gov/news/documentsingle.aspx?DocumentID=280 (Accessed March 15, 2021.)

> ...the SECURE Act would increase the accessibility and affordability of retirement products for millions of workers, thereby making it easier for people to grow their savings. Specifically, the SECURE Act makes it easier for small businesses to band together to offer retirement plans, enables part-time workers to participate in 401(k) plans, and raises the required distribution age for individual retirement accounts from 70 ½ to 72. Additionally, the SECURE Act allows employers who offer retirement plans with automatic enrollment to be eligible for tax credits. These meaningful reforms will help families save more and earlier for their future.[24]
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> Important work remains to be done, including making it easier for small employers to offer retirement options, making it easier for low- and middle-income workers to save for retirement on their own, shoring up Social Security for the decades to come so that it is there for those who most need it, and ensuring that ARP's multiemployer pension plan bailout does not leave taxpayers on the hook for pension plan managers' mistakes for decades to come. NTU looks forward to working with members of both parties to achieve these goals.

Conclusion

America's economic recovery from COVID-19 is underway, and Congress has a unique opportunity to help pave the way for businesses and workers to participate in a manufacturing renaissance that bolsters America's position in the global economy for decades to come. It is clear to us that there are several policy proposals that would work actively *against* this goal, such as a corporate rate hike or top-down, inefficient federal government industrial policies like "Buy America" and aggressive use of the Defense Production Act.

Equally clear is the path forward for lawmakers: incentivize business investment in America by making cost recovery quicker and more efficient, and support workers with policies that make it easier for families to balance competing priorities with employment in the private sector.

We look forward to working with you and your colleagues on some or all of these priorities. We always welcome your feedback, and if we can answer any questions I am at your service. Thank you for your consideration and for your attention to these critical issues.

Sincerely,

Andrew Lautz
Director of Federal Policy

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[24] Aiello, Thomas. "NTU Urges Representatives to Support the SECURE Act of 2019." National Taxpayers Union, May 23, 2019. Retrieved from: https://www.ntu.org/publications/detail/ntu-urges-representatives-to-support-the-secure-act-of-2019 (Accessed March 15, 2021.)