

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES  
APPROPRIATIONS FOR 2014

HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
FIRST SESSION

SUBCOMMITTEE ON THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES

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**DEPARTMENTS OF LABOR, HEALTH AND  
HUMAN SERVICES, EDUCATION, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
2014**

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TUESDAY, MARCH 19, 2013.

**TOP MANAGEMENT CHALLENGES AT THE DEPART-  
MENTS OF LABOR, HEALTH AND HUMAN SERVICES,  
AND EDUCATION: PERSPECTIVE FROM THE INSPEC-  
TOR GENERAL**

**WITNESSES**

**ELLIOT P. LEWIS, ASSISTANT INSPECTOR GENERAL FOR AUDIT, OF-  
FICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR**

**KATHLEEN S. TIGHE, INSPECTOR GENERAL, U.S. DEPARTMENT OF  
EDUCATION OFFICE OF INSPECTOR GENERAL**

**DANIEL R. LEVINSON, INSPECTOR GENERAL, U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES**

Mr. KINGSTON. Good morning.

Today we will hear from three of our inspectors general about top management challenges facing the Department of Labor, Health and Human Services, and Education. Taken together, these agencies oversee more than \$700 billion in taxpayer funding every year. Obviously, this includes mandatory payments in Medicare and Medicaid. And our focus here today is on discretionary programs.

But since you have so much of the tax dollar at your disposal, any ideas you have on the mandatory we are certainly open to. But in addition to catching fraud, uncovering waste, your offices makes recommendations to improve the effectiveness, efficiency, and integrity that Americans rely on every day.

I think most members of Appropriation always like to hear IG reports. One of frustrating things, though, is you hear about, you know, unbelievable waste. And then it always seems like there is a 2-year lag from the report of it to the correction of it. And often you wonder, well, did it actually get corrected or will we be sitting here again next year hearing another report that, you know, says that it is still going on.

So I look forward to your testimony. And I will yield to the Ranking Member, Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Thank you, Mr. Chairman.

And welcome to the witnesses. And thank you for all the work that you do.

Our subcommittee ranking member, Rosa DeLauro won't be with us today because she has the honor of participating in the official House delegation to the inauguration of Pope Francis. And she has asked me to take the lead for our side in her absence.

In these times of shrinking budgets, it is very important that we all do our best to make sure that public funds are used effectively and that fraud and waste are reduced as much as they possibly can be.

As we talk about fraud, waste, and abuse, though, we should remember that a broad range of things fall into those categories. It is not just individuals trying to get benefits they aren't entitled to, though so often that is what we hear the most about in Congressional debates. As the inspector general report reminds us, we also have problems with hospitals overcharging Medicare; drug companies improperly marketing their products; for-profit companies in the higher education business taking advantage of student aid programs, and so on. As we go after fraud and abuse, we should be going after all of it, whether it is perpetuated by ordinary people or by large corporations.

This hearing is also about management challenges more generally. Keeping people from stealing from—stealing from or abusing government programs is an important part of that, but it is just one part. I hope we will also talk today about other kinds of management challenges identified by the IGs, challenges of trying to make sure programs do what they are supposed to do and in protecting and assisting people and helping solve national problems. All of these challenges get more difficult as budgets shrink.

On top of past budget cuts, we now have sequestration. The budget resolution the House will consider this week would impose another round of even deeper cuts as well as calling for long-term reductions in the Federal workforce. The reality will be that we will have fewer and fewer people to do all the reviewing and monitoring and scrutinizing that the inspector generals are recommending. In short, we have lots of issues for today's hearing.

Thanks to the three IGs for being here, and I look forward to hearing your testimony.

Mr. KINGSTON. And as I understand it, we will start with Mr. Lewis. Is that correct?

Floor is yours.

Mr. LEWIS. Good morning, Chairman Kingston, Ranking Member Roybal-Allard. Thank you for the opportunity to discuss the functions of the Department of Labor that we have identified in our Top Management Challenges Report as particularly vulnerable to mismanagement, waste, or abuse.

As requested, I will focus my testimony on those challenges related to various employment and training programs and the Foreign Labor Certification Program. Over the past several decades, the OIG has reported on the department's challenges to ensure that its grant programs are successful in training and placing workers in suitable appointment. Specifically, the department had difficulties in actively overseeing the grant-making and execution process, securing quality employment and training service providers, ensuring that performance expectations are clear, obtaining accurate and reliable data to measure grant and program success,

and, most critically, ensuring that training leads to placements and related jobs that also pay a living wage.

Audits to major grant programs over the past 5 years illustrate these difficulties. For instance, our audit of the High Growth Job Training Initiative, designed to help workers acquire needed skills for jobs in industries, such as healthcare, biotechnology showed for these mostly noncompetitive grants that performance expectations were unclear, and in many cases, we could not determine whether goals were met. Even when grantee agreements had more clarity, we determined that grantees did not meet objectives with respect to training and placement goals, product completion and delivery, and they did not track outcomes.

The lack of clarity in these grants called into question the rigor of DOL's review and merit of the department's decision to award the grants, particularly, those which were awarded noncompetitively. In another example, our audit of the Recovery Act Green Jobs Program found that with 88 percent of the extended grant periods expired, only 38 percent of those trained were placed in jobs, and only 16 percent of the collective job retention goal was met by grantees. Notably, almost half of the training provided consisted of only one to 5 days of training. We have also found limited information regarding the value of most of the 70,000 credentials participants received, 92 percent of which were classified simply as certificates.

Another challenge of the department is to ensure the success and financial stewardship of the Jobs Corps program. As the subcommittee is aware, most recently, Jobs Corps has been addressing budget overruns that are impacting operations and which are the subject of an ongoing audit. Our audit is looking at why these budget overruns occurred, what financial control weaknesses allow them to happen, what changes the department has made, and what changes may still be needed to ensure this does not happen again. Barring any unforeseen circumstances, we expect this audit to be completed in May.

As detailed in my full statement, our top management challenges report has consistently document the department's difficulty in ensuring Job Corps' quality of residential life and in measuring and obtaining desired outcomes. We have also reported that procurements are not always properly competed to ensure best value to Job Corps. For example, recent audits of their procurement activities at seven centers operated by five different contractors found that none of the centers consistently ensured best value to the Federal Government when awarding subcontracts and purchase orders totaling \$17 million.

The OIG has also reported on the department's challenge in administering its Foreign Labor Certification Programs, which has been an ongoing concern of the OIG since the mid-1990s. Our latest audit work continues to identify the need for a more active, meaningful role for the department in ensuring the integrity of these programs. Most recently, we have identified systemic weaknesses in the H-2B program self-attestation system used by employers in support of their labor certification application requests. In many cases, employers could not document their recruitment efforts to hire U.S. workers, that workers were paid the wages set that em-

employers agreed to pay, and that they notified the department of immigration-related matters, such as foreign workers' departure prior to the end of employment period.

Our audit also showed the department conducted only limited-scope audits of applications after they were approved, and they did not begin the audits until 6 months after the foreign workers' employment period ending, thus limit accident the value of these audits.

Finally, my full statement also details some of the concerns we have raised with the department's administration of the programs designed to assist veterans in transitioning from the military to the civilian workforce.

Mr. Chairman, thank you for the opportunity to testify on the department's top management challenges. This concludes my statement. And I would be pleased to answer any questions that you or members of the subcommittee may have.

[The information follows:]

**WRITTEN TESTIMONY OF  
ELLIOT P. LEWIS  
ASSISTANT INSPECTOR GENERAL FOR AUDIT  
OFFICE OF INSPECTOR GENERAL  
U.S. DEPARTMENT OF LABOR**

**Before the House Committee on Appropriations; Subcommittee on Labor, Health and  
Human Services, Education and Related Agencies  
March 19, 2013**

Good morning, Mr. Chairman, Ranking Member, and Members of the Subcommittee. Thank you for the opportunity to discuss those functions of the Department of Labor we have identified in our Top Management Challenges Report as particularly vulnerable to mismanagement, waste, or abuse. As requested, I will focus my testimony on those challenges related to employment and training programs including the Workforce Investment Act (WIA), Job Corps, and Veterans' Employment and Training programs, as well as management issues related to foreign labor certifications. The views expressed today are of the OIG as an independent entity within DOL, and may not reflect the Department's position.

**Employment and Training Grants Management**

Over the past several decades the OIG has reported on the Department's challenge in ensuring that grant programs are successful in training and placing workers in suitable employment to reduce chronic unemployment, underemployment, and reliance on social payments by the population it serves. Our audit work has documented the difficulties encountered by the Department in providing active oversight of the grant making and grant execution process; obtaining quality employment and training service providers; ensuring that performance expectations are clear to grantees and sub-grantees; obtaining accurate and reliable data to measure grant and program success; and, most critically, ensuring that training provided by grantees leads to placements in training-related jobs paying a living wage.

Three comprehensive audits of major grant programs over the past five years are illustrative of the Department's challenges in this area. Our audit in 2008 of the High Growth Job Training Initiative to help workers acquire necessary skills for jobs in high growth industries such as health care and biotechnology disclosed that the Employment and Training Administration (ETA) awarded most grants non-competitively and that grantee performance expectations were unclear. In many cases, we could not determine whether grantees met their goals. Even when the agreements had more clarity, we determined that grantees did not meet objectives with

respect to training and placement goals, product completion, product delivery, and required tracking of outcomes. The lack of clarity in grant proposals that were approved by ETA called into question the rigor of their review of the proposals and the merit of their decision to award the grant and to do so non-competitively.

Another example involves the Recovery Act Green Jobs program which was designed to train those most affected by the recession for jobs in "green" industries. Our October 2012 audit found that only 38 percent of those trained were placed in jobs and that, based on the data available at the conclusion of our field work, only 16 percent of the collective job retention goal was met by grantees. We also noted that 47 percent of those served already had a job and while we were told the training was necessary for them to retain or advance their careers; we found no evidence that they needed Green Jobs training for any of these purposes. Additionally, we found that almost half of the training provided consisted of 1 to 5 days of training and that 92 percent of "credentials" reported as a training outcome were "certificates," many of which were merely certificates of completion. Further, our audit noted significant disparities in job retention goals proposed by grantees and approved by ETA without any sort of justification. Likewise, a 2011 audit of the WIA Adult and Dislocated Worker program found that 37 percent of program participants either did not obtain employment or their employment was unrelated to the training that they received. A finding common in all three audits, was the difficulty in obtaining accurate, reliable, and detailed performance data from grantees, sometimes requiring us to reconstruct records in order to be able to make assessments to determine what was actually accomplished.

Given that we have continuously identified grant management and program performance issues over the years, we made specific recommendations for ETA to utilize lessons learned from the Green Jobs Training Program to ensure WIA grant programs are successful in training and placing workers in suitable employment. Our recommendations centered on improving grant making, ensuring funds are only expended on those who are eligible and most in need of services, assessing and defining the value of "credentials," clarifying grantee data collection and reporting expectations, and monitoring grant performance and financial data.

#### **Job Corps Program**

Another DOL management challenge is ensuring the success and financial stewardship of the Job Corps program, the Department's premier education and job training program for

disadvantaged youth. As the Subcommittee is aware, most recently, Job Corps has been addressing budget overruns that are affecting program operations, and which are the subject of an on-going audit. Our audit is examining whether Job Corps' internal control processes related to funds management and expenditures, including contracting activities, have been properly designed and implemented. Specifically, the audit will determine why the budget overrun happened, what control issues allowed this to happen, what changes the Department has made, and what additional changes may still be needed to ensure this does not happen again. We expect the work to be completed in May, barring any unforeseen issues encountered.

With respect to those issues that affect program success, and as we have reported in our Top Management Challenges Report, our audits have consistently documented the Department's difficulty in ensuring the quality of residential life, measuring and obtaining desired outcomes, and achieving best value to the government through center procurements.

Residential life is a critical component of the Job Corps student experience and an important factor in successfully assisting at-risk, disadvantaged youth in turning their lives around. Our audits have disclosed safety and health hazards, physical maintenance needs, and a lack of enforcement of disciplinary policies at various centers. While Job Corps has a Zero Tolerance Policy against violence and drugs, we have identified the need for Job Corps to ensure that contractors consistently enforce student disciplinary policies. In a series of audits covering 10 centers run by 6 contractors, we found that centers did not always address suspected serious misconduct of students, allowing them to remain at the centers. While maintaining their on-board strength is an important performance measure for contractors, not enforcing disciplinary policies, to include removing students as warranted, potentially places other students and staff at risk.

Job Corps also faces difficulties in measuring and obtaining desired program outcomes. For example, a 2011 audit documented problems with job training matches. Specifically, we found that 3,226 (18%) of the 17,787 placements reported for the periods reviewed either did not relate, or were poorly related, to the vocational training received (e.g., students trained in office administration placed in fast food restaurants) and another 1,569 (9%) students were placed in jobs that required little or no previous skills or experience, such as parking lot

attendants, janitors, and dishwashers. As a result of these findings, we are conducting follow-up work in this area.

Our audits have also documented that procurements are not always properly competed to ensure best value to the program. For example, we recently issued a series of audit reports on the procurement activities at seven centers operated by five different contractors. We concluded that none of the seven center operators consistently ensured best value to the Federal government when awarding sub-contracts and purchase orders totaling \$17.1 million.

### **Veterans' Employment and Training Service Programs**

We have also included as a challenge the Department's programs which provide services to veterans to prepare them for the civilian job market. These programs are administered by the Veterans' Employment and Training Service (VETS). Grants under the Jobs for Veterans State Grant (JVSG) program provide funding to State Workforce Agencies to assist veterans in obtaining and maintaining gainful employment. Past audits have found that JVSG staff needed to do a better job of accurately assessing the needs of veterans and documenting service activities - particularly for homeless veterans with disabilities.

Veterans are also served under VETS's Transition Assistance Program (TAP), currently known as Transition GPS, which provides a three-day workshop offering job search assistance and related services and information. Our 2010 audit found that VETS did not have the necessary management controls and policies to document and substantiate that participants reported as served were actually served. We also found that VETS did not use measurable performance goals and outcomes to evaluate program effectiveness and lacked adequate contracting oversight for TAP workshop services. These deficiencies undermined VETS's ability to ensure that it was providing a high-quality program to assist veterans in their transition from military to civilian employment.

Mr. Chairman, because of the magnitude of the Department's employment and training programs and the related public investment, the OIG continues to initiate audits to identify and recommend necessary improvements and cost efficiencies.

### **Foreign Labor Certification Programs**

The OIG has also reported on the Department's challenge in administering the foreign labor certification process, which permits U.S. businesses access to foreign workers to meet

their workforce needs, while protecting the jobs and wages of U.S. workers. This process has been a concern the OIG has raised since the mid-1990's.

Our latest audit work continues to identify the need for a more active, meaningful role for the Department in ensuring the integrity of its foreign labor certification programs. Collectively, two audits of the H-2B program issued in 2011 and 2012 identified systemic weaknesses in the self-attestation system used by employers in support of their labor certification application requests. For example, our 2012 audit revealed that 27 of the 33 employers in our sample could not prove they abided by one or more attestations made on their applications. In many cases, employers could not document: (1) their pre-application recruitment efforts to hire U.S. workers, (2) that workers were paid the wages promised in employer applications to protect wage rates of U.S. workers, and (3) that they reported immigration-related matters such as a foreign worker's departure prior to the end of the employment period. Our audit also disclosed that the agency's post-adjudication audit process was deficient. Among our findings was that these audits were conducted six months after the H-2B employment period ended, which did not allow for any sort of corrective action and, in effect, nullified protections for U.S. workers. We also found that ETA did not validate foreign worker employment eligibility. It is our opinion that, collectively, the systemic issues identified in our audits resulted in employers avoiding the recruitment and employment of qualified U.S. workers, depriving domestic workers of employment opportunities, as well as allowing the abuse of foreign workers with respect to wage violations.

The Department issued a new Final Rule in early 2012, which included comprehensive reforms for the H-2B program, some of which may address deficiencies we have identified over the years. However, the rule is under legal challenge and therefore has not been implemented. Until such time as a final decision is reached on the implementation of the Final Rule, the OIG believes that the agency must do more to ensure the integrity of the program.

#### **Conclusion**

Mr. Chairman, thank you for the opportunity to testify on four of the ten challenges we have identified for the Department of Labor. This concludes my statement and I would be pleased to answer any questions that you or any Members of the subcommittee may have.

Mr. KINGSTON. Thank you, Mr. Lewis.

Ms. Tighe.

Ms. TIGHE. Mr. Chairman, Ranking Member, thank you very much to inviting me here today. For more than 30 years, the Office of Inspector General has worked to promote, efficiency, effectiveness, and integrity in the Department of Education's programs and operations.

An integral part of our work includes helping the department address management and performance issues. One of the ways we do this is by issuing our annual report on the management challenges facing the department.

For this year, we have identified four major challenge areas. The first management challenge is improper payments, particularly in regards to Federal student aid programs. These programs have long been a major focus of our work. They are inherently risky because of their complexity, the significant amount of funds involved, and the number of program participants. The department estimated that the Pell program had \$829,000,000 in improper payments this past year. Although the department is making progress, must intensify its efforts to successfully identify and prevent improper payments associated with the Pell and other student loan programs.

The second management challenge is information technology security. The department collects, processes, and stores a large amount of sensitive, personally-identifiable information regarding employees, students, and other program participants. We have identified repeated problems in information technology security and increasing threats and vulnerabilities to department systems and data.

The third challenge is the area of oversight and monitoring. This is a significant responsibility for the department, given the vast number of different entities and programs that require monitoring and oversight, the amount of funding that flows through the department, and the impact that ineffective monitoring could have on stakeholders.

There are four specific areas within this challenge: Federal student aid program participants; distance education; grantees; and contractors. Our work has identified weaknesses in each of these areas, including inadequate fiscal and internal controls; noncompliance with statutes regulations; and waste, abuse, and theft of department funds.

Our fourth and final area is data quality and reporting. The department, its grantees, and its sub-grantees must have controls in place and effectively operating to ensure that accurate, reliable data is reported. Our work has identified a variety of weaknesses in the quality of reported data and has recommended improvements at the State and local levels, as well as actions the department can take to clarify requirements and provide additional guidance.

I appreciate the opportunity to be here today, and I am happy to answer any questions.

[The information follows:]

**Testimony of Inspector General Kathleen S. Tighe**  
**U.S. Department of Education Office of Inspector General before the**  
**Subcommittee on Labor, Health and Human Services, Education, and Related Agencies**  
**Committee on Appropriations, U.S. House of Representatives**  
**March 19, 2012**

Chairman Kingston, Ranking Member DeLauro, and members of the Subcommittee, thank you for inviting me here today to discuss the management challenges facing the U.S. Department of Education (Department). For fiscal year (FY) 2013, the Office of Inspector General (OIG) identified four management challenges facing the Department: (1) improper payments, (2) information technology security, (3) oversight and monitoring, and (4) data quality and reporting.

**Management Challenge—Improper Payments**

In FY 2010, the Office of Management and Budget designated the Federal Pell Grant (Pell) program as a high-priority program. The Department estimated that the Pell program had \$993 million in improper payments in FY 2011 and \$829 million in FY 2012. The Department also identified the William D. Ford Federal Direct Loan (Direct Loan) program and Federal Family Education Loan (FFEL) program as susceptible to significant improper payments in FY 2012. Our recent work has found that although the Department is making progress, it must intensify its efforts to successfully prevent, identify, and recapture improper payments. For example, our March 2013 audit of the Department's compliance with improper payment requirements found flaws in the Department's methodologies for the Pell, Direct Loan, and FFEL programs.

**Management Challenge—Information Technology Security**

The Department collects, processes, and stores a large amount of sensitive personally identifiable information, such as names and social security numbers of employees, students, and other program participants. OIG has identified repeated problems in the Department's information technology

security and its ability to combat threats and vulnerabilities to its systems and data. For example, OIG's FY 2012 report on the Department's compliance with the Federal Information Security Management Act of 2002 noted that 6 of the 11 security control areas reviewed contained repeat findings from OIG reports issued during the prior 3 years. Further, the last three audits of the Department's financial statements identified information technology controls at the Department as a significant deficiency. Although the Department has provided corrective action plans to address the recommendations in our audits and has reported that some corrective actions are completed, vulnerabilities continue to exist.

### **Management Challenge—Oversight and Monitoring**

Effective oversight and monitoring is a significant responsibility for the Department given the number of different entities and programs requiring monitoring and oversight, the amount of funding that flows through the Department, and the impact that ineffective monitoring could have on stakeholders. Four areas included in this management challenge are (1) Student Financial Aid (SFA) program participants, (2) distance education, (3) grantees, and (4) contractors.

#### **Student Financial Aid Program Participants**

The Department must effectively oversee and monitor SFA program participants to ensure that SFA programs are not subject to fraud, waste, abuse, or mismanagement. The Department estimated that \$193.5 billion will be used for Federal student aid in FY 2013. We completed several reviews in FY 2011 and FY 2012 that identified weaknesses relating to the Federal Student Aid office's (FSA) oversight and monitoring activities. Additionally, our external audits of individual SFA program participants have frequently identified noncompliance, waste, and abuse of Federal student aid program funds. OIG investigations have identified various schemes by SFA program participants to fraudulently obtain Federal student aid funds. Although the Department is working to address

weaknesses and deficiencies in SFA oversight and monitoring, our work continues to identify serious problems.

### **Distance Education**

Management of distance education programs presents a challenge for the Department and school officials because of limited or no physical contact to verify the student's identity or attendance. OIG audit work has found that for distance education programs, schools face a challenge in determining when a student attends, withdraws from school, or drops a course. These factors are critical because they are used to determine the student's eligibility for Federal student aid and to calculate the return of funds if the student withdraws or drops out. Another area of concern involves distance education "fraud rings"—large, loosely affiliated groups of criminals who seek to exploit distance education programs in order to fraudulently obtain Federal student aid. Because all aspects of distance education take place through the Internet, students are not required to present themselves in person at any point, and institutions are not required to verify prospective and enrolled students' identities. As a result, fraud ringleaders have been able to use the identities of others (with or without their consent) to target distance education programs. Fraud rings mainly target lower cost institutions because the Federal student aid awards are sufficient to pay institutional charges, such as tuition, and the student receives the award balance to use for other educational expenses, such as books, room and board, and commuting. In 2011, we issued a report on fraud rings that offered nine specific actions for the Department to take to address this type of fraud. Although the Department has taken some action to mitigate fraud rings, work still remains. In January 2013, we provided the Department with the results of our risk analysis related to student aid fraud rings, which estimated a probable loss of more than \$187 million in Federal student aid funds from 2009 through 2012 as a result of these criminal enterprises.

*Grantees*

The Department's early learning, elementary, and secondary programs annually serve nearly 16,000 public school districts and 49 million students attending more than 98,000 public schools and 28,000 private schools. The Department is responsible for monitoring the activities of grantees to ensure compliance with applicable Federal requirements and that performance goals are being achieved. OIG audit and investigative work has identified a number of weaknesses in grantee oversight and monitoring. These involve weaknesses in fiscal and internal controls at State and local educational agencies and in the Department's oversight processes. The OIG also identified fraud perpetrated by officials at State and local educational agencies and charter schools.

*Contractors*

The value of the Department's active contracts as of November 30, 2012, was about \$5.3 billion. Once a contract is awarded, the Department must effectively monitor performance to ensure that it receives the correct quantity and quality of products or services for which it is paying. OIG has identified issues relating to the lack of effective oversight and monitoring of contracts and contractor performance, including the appropriateness of contract prices and payments and the effectiveness of contract management. In 2012 we found that the Debt Management Collection System 2 (DMCS2), FSA's system for managing defaulted student loans that was updated by a contractor, was unable to accept transfer of certain defaulted student loans from FSA's loan servicers. Since DMCS2 was implemented in October 2011, the entities that service Federal student aid loans have accumulated more than \$1.1 billion in defaulted student loans that should be transferred to the Department for management and collection. Because DMCS2 has been unable to accept transfer of these loans, the Department is not pursuing collection remedies and borrowers are unable to take steps to remove their loans from default status. The inability of DMCS2 to accept these transfers also contributed to a material weakness in internal control over financial reporting

that was identified in FSA's FY 2012 financial statement audit. Based on our interaction with FSA officials to date, FSA has yet to implement effective corrective action to bring these affected loans into collection, correct the problems with DMCS2, and pursue contractual remedies.

**Management Challenge—Data Quality and Reporting**

The Department, its grantees, and its subgrantees must have controls in place and effectively operating to ensure that accurate, reliable data are reported. The Department uses data to make funding decisions, evaluate program performance, and support a number of management decisions. State educational agencies annually collect data from local educational agencies and report various program data to the Department. Our work has identified a variety of weaknesses in the quality of reported data and recommended improvements at the State and local level, as well as actions the Department can take to clarify requirements and provide additional guidance. Ensuring that accurate and complete data are reported is critical to support effective management decisions.

**Conclusion**

Each of the management challenges listed above is discussed in more detail in our FY 2013 Management Challenges report, which is available on our Web site (<http://www2.ed.gov/about/offices/list/oig/misc/MgmtChall2013a.pdf>). We believe that this report is a valuable tool for Department officials to use in their efforts to address the management and performance issues identified, and we are committed to helping them do so. This includes conducting additional work in these challenge areas throughout FY 2013. You will find detailed information on these and our other high-priority efforts in our FY 2013 Annual Plan, which is available on our Web site (<http://www2.ed.gov/about/offices/list/oig/misc/wp2013.pdf>). This concludes my written statement. I am happy to answer any of your questions.

Mr. KINGSTON. Mr. Levinson.

Mr. LEVINSON. Good morning, Chairman Kingston and Ms. Royal-Allard.

Thank you for the opportunity to testify about top management challenges in HHS' public health and human services programs.

Excluding Medicare and Medicaid, HHS programs expend more than \$100 billion and touch the lives of virtually every American. With a discretionary budget of about \$50 million, our office is charged with overseeing more than 300 programs.

My testimony today focuses on five key management challenges.

One, administration and oversight of grants and contracts: HHS is the largest grant-making agency and third largest contracting agency in the Federal government. With over \$344 billion in grants and over \$19 billion in contracts, HHS must improve its oversight, not only to safeguard program dollars but also to ensure safety and quality of care. My office has found improper funding of contracts, inconsistencies in grants management, and alarming violations of health and safety requirements, such as toxic chemicals and even a machete within reach of children at Head Start centers.

Two, security and integrity of data systems and technology: My office continues to find vulnerabilities relating to weak passwords, outdated software, and patch management that could allow unauthorized access to HHS systems and sensitive data. We have also raised concerns about HHS' oversight of hospitals' network security.

Three, reduce and report improper payments: HHS reported \$500 million in improper payments for three programs relevant to today's hearing, foster care, child care development fund, and Head Start. In 2012, HHS met its goal to reduce its error rate for the latter two programs. The challenge remains to further reduce improper payments and report an error rate for the Temporary Assistance for Needy Families program as required.

Four, prevent, prepare for, and respond to public health emergencies: My office has identified opportunities for better coordination among Federal, State and local partners for public health emergencies, such as pandemic flu, hurricanes, and radiological and nuclear incidents.

And, five, effectively manage public health programs: OIG has identified the need for better management of the Vaccines for Children program, the 340B drug discount program, and community health centers to meet their missions effectively.

As oversight budgets are shrinking, my office has responsibility for overseeing HHS programs that account for \$0.24 of every Federal dollar. I thank the committee for its commitment of our shared goals of efficiency, effectiveness, and integrity in these programs. Happy to answer your questions.

[The information follows:]



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
OFFICE OF INSPECTOR GENERAL

Testimony of Daniel R. Levinson  
Inspector General  
U.S. Department of Health and Human Services

"Top Management Challenges at the Department of Labor, Health and Human Services and Education: Perspective from the Inspectors General"

Before the  
United States House of Representatives  
Committee on Appropriations  
Subcommittee on Labor, Health and Human Services, Education, and  
Related Agencies

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With a discretionary budget of approximately \$50 million in Fiscal Year (FY) 2012, the Office of Inspector General (OIG) is charged with overseeing more than 300 Department of Health and Human Services (HHS) programs, accounting for more than \$100 billion (excluding Medicare, Medicaid, and the State Children's Health Insurance Program).<sup>1</sup> These 300-plus public health and human services programs touch the lives of virtually every American. Today, I focus on HHS management challenges related to grant and contract administration, data security, improper payments, emergency preparedness, and management of public health programs.

### **EFFECTIVELY ADMINISTER GRANTS AND CONTRACTS**

HHS is the largest Federal grant-maker and the third largest Federal contracting agency. Effective management of these outlays must be a priority. OIG has identified vulnerabilities at HHS grantees that could be mitigated by improved HHS oversight. These include deficiencies in grantees' internal controls, financial stability, organizational structures, procurement and property management policies, and personnel policies and procedures. And HHS has improperly funded certain contracts, resulting in appropriations violations.

Ineffective grants administration can put vital Federal funds at risk. For example, OIG's post-award reviews of Recovery Act grantees identified instances when grantees claimed unallowable costs, indicating that better oversight was needed. OIG also conducted numerous pre-award reviews of Recovery Act grant applicants. OIG recommended and HHS implemented front-end controls to mitigate grantees' risks and better protect these funds. In another example, OIG found inconsistencies in the Centers for Disease Control and Prevention's (CDC) oversight of grants authorized under the President's Emergency Plan for AIDS Relief (PEPFAR), and most of the awards files lacked evidence to demonstrate that CDC performed required monitoring. OIG follow-up work looks at selected CDC local offices abroad and PEPFAR recipient organizations in

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<sup>1</sup> Through separate funding under the Health Care Fraud and Abuse Control (HCFAC) Program, OIG oversees Medicare and Medicaid. HCFAC funding constitutes about 80 percent of OIG's total budget.

Namibia, South Africa, Vietnam, Ethiopia, and Zambia. Initial findings have identified opportunities to improve compliance but not widespread problems overseas. Across HHS, OIG has investigated specific cases of grant fraud and other criminal and civil violations.

Ineffective oversight can also put people at risk. For example, during site visits to high-risk Head Start facilities, OIG found alarming violations of health and safety requirements, such as toxic chemicals, dangerous tools, and even a machete within reach of children. The Administration for Children and Families (ACF) has taken actions to remedy problems or terminate problematic grantees and needs to ensure that all Head Start grantees provide safe environments for the children they serve.

Ongoing OIG reviews include work underway for this Committee to examine HHS oversight of grantees' compliance with lobbying prohibitions, including reviewing HHS guidance and monitoring of grantees. We are also conducting a systemic Department-wide review to assess agencies' ability to mitigate the risks of grant fraud and mismanagement. OIG experts have trained grants officers across HHS about effective oversight and grant fraud risks to help HHS prevent vital funds from being stolen or misused.

With respect to contracts, OIG has found instances of improper funding, leading to potential violations of the Antideficiency Act, in 11 of 18 completed audits of National Institutes of Health (NIH) contracts. OIG is assessing the effectiveness of remedial actions taken by HHS to properly fund its contracts and prevent future violations of the Antideficiency Act.

#### **PROTECT SECURITY AND INTEGRITY OF DATA, SYSTEMS, AND TECHNOLOGY**

As reliance on information technology and data grows, so do the challenge and importance of ensuring the security and integrity of systems and data. Each year, OIG assesses information security controls in various HHS networks and systems. While HHS has addressed many deficiencies identified by prior audits, we continue to identify findings that put HHS systems, data,

and operations at risk. These include deficiencies in computer inventory management; logical access controls (e.g., weak passwords); outdated software; and patch management that could allow unauthorized access to HHS systems and sensitive data. Also, some HHS laptops lacked whole disk encryption, which put data at risk if laptops are lost or stolen. OIG recommended fixes for specific problems as well as a greater management focus on strengthening information security across HHS. Looking ahead, OIG is assessing security controls for the Data Services Hub being developed by HHS for the Health Insurance Exchanges.

Further, the security and integrity of health care providers' systems and data are essential to protect patient privacy, prevent and detect fraud, and improve quality of care. OIG raised concerns about HHS's oversight of hospitals' network security and has also noted the lack of general information technology (IT) security controls that would protect sensitive health data. Health IT holds promise of benefits for patients and providers; however, continued oversight is needed to guard against misuses that could result in improper payments or poor quality of care.

#### **REDUCE AND REPORT IMPROPER PAYMENTS**

HHS should make every reasonable effort to ensure that vital Federal dollars are spent for their intended purposes and in accordance with program requirements. In FY 2012, the Department reported \$64.8 billion in improper payments across eight programs deemed as high risk by the Office of Management and Budget. Three of these are relevant to today's hearing – Foster Care, Head Start, and the Child Care Development Fund (CCDF) – and accounted for about \$0.5 billion of those improper payments.<sup>2</sup> The positive news is HHS achieved improper payment rates below 10 percent for all three of these programs, and Head Start's improper payment rate was less than 1 percent. HHS met its error rate reduction goals for Head Start and CCDF.

The challenge remains for HHS to meet error rate reduction goals for Foster Care and to

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<sup>2</sup> The other five programs were Medicare Fee-for-Service, Medicare Advantage, the Medicare Prescription Drug Program, Medicaid, and the Children's Health Insurance Program (CHIP).

further lower CCDF's improper payment rate from 7.9 percent. In addition, HHS did not meet its requirement to report an improper payment rate for the ninth high-risk program, Temporary Assistance for Needy Families, citing limitations in its authority to require States to provide the requisite information.

#### **PREVENT, PREPARE FOR, AND RESPOND TO PUBLIC HEALTH EMERGENCIES**

HHS is integral to preventing, preparing for, and responding to public health emergencies resulting from a wide spectrum of natural and man-made disasters. Adding to this management challenge is the need to coordinate effectively with a myriad of Federal, State, local, private, and international entities. In recent years, OIG has recommended management improvements in planning, coordination, and communication during pandemic influenza and hurricanes. Most recently, OIG reviewed local public health preparedness for radiological and nuclear incidents and recommended that CDC enhance its guidance and coordination with other entities involved in preparedness and response. Looking ahead and building on lessons learned from Hurricane Katrina, we will review HHS's internal control plans for overseeing funds for Hurricane Sandy relief and will conduct audits and evaluations based on identified risks.

Ensuring the security of toxins known as "select agents" and the Strategic National Stockpile is paramount to preventing and responding to public health disasters. OIG investigates violations of HHS rules for the handling of select agents and imposes financial penalties as appropriate. OIG has identified deficiencies in laboratory security over select agents and plans to review exports and imports of select agents. We are also assessing CDC's safeguards to ensure that the Stockpiles for pharmaceuticals are secure from theft, tampering, or other loss.

#### **EFFECTIVELY MANAGE PUBLIC HEALTH PROGRAMS**

Effective oversight and management of public health resources is essential to ensure that

vulnerable populations receive the full benefit of public health programs. OIG has identified the need for increased oversight of certain public health programs to meet their missions effectively. For example, CDC's Vaccines for Children program provides free vaccines to millions of eligible children at a cost of almost \$4 billion. However, my office found that providers too frequently stored vaccines at inappropriate temperatures, potentially reducing their effectiveness to protect against diseases. CDC agreed with and is implementing our recommendations, including working with State health officials and medical organizations and changing its vaccine ordering and inventory systems.

The Health Resources and Services Administration's (HRSA) community health centers are on the front lines of providing primary care to underserved populations. Yet, we found that HRSA provided limited oversight of the extent to which patients receive required services. OIG will continue our oversight of community health centers, including reviewing their use of the Affordable Care Act (ACA) grant funds. Likewise, the 340B Drug Discount Program is intended to increase access to prescription drugs for underserved and vulnerable populations. Prior OIG reviews have uncovered systemic problems with HRSA's oversight of the program, including problems with accuracy and reliability of data. HRSA is implementing improvements, and we will continue to monitor HRSA's management practices.

### CONCLUSION

OIG will continue our vigilant oversight of HHS's management of these challenges, including increased responsibilities to oversee new programs created by ACA and the growing complexity and importance of existing HHS programs. I thank this Committee for its commitment to our shared goals – ensuring efficiency, effectiveness, and integrity in HHS programs and operations – which remain paramount in the current budget environment.

Mr. KINGSTON. Thank you very much.

Let me ask all three of you a question. I want to empower you to be members of the Presidential Blue Ribbon Congressional Bipartisan Cut Out the Waste and Silliness Committee. And what I would ask you is what would be two things or three things that you have seen in your audits that you would recommend that we could go after on a bipartisan basis to eliminate some waste and just commonsense recommendations? Because one of the frustrations that I have, and getting back to my opening statement, is one pattern in IG reports is that you have identified problematic areas and you have made recommendations. But it is never, you know, we found it, we—we said get rid of it, and they did get rid of it. And I know that is not your power to say, “Get rid of it.” But it is always sort of recommendations that seem to be dismissed as suggestions more than really hardcore, “Okay, this is outrageous. Let’s quit doing it.”

So let’s just pretend you are on this committee. Whoever wants to go first. And if we run out of time, I will ask you in the next round, too.

Ms. TIGHE. I am happy to go first.

I would point to two things. I think what I would call have low-hanging fruit in the department’s programs is an area we pointed to over the last couple years that relate to our so-called fraud rings or people who prey on the student loan programs in an online environment to pretend as if they are going to school and get disbursements of Federal student aid and then do not attend or use that aid for anything but their own personal benefit. We did a report making a number of recommendations a couple of years ago. The department is certainly proceeding on some of them. But I think that more attention—you know, the cycle of their implementation, I think, is hampered a bit by resources and other things. But I—there is one change you could do, which would be to change the cost of attendance for how that is calculated by institutions with distance education. Do students need payment for room and board in a distance environment?

We have been pushing for that for the last couple—for actually a long time. And it is really a very easy fix to a problem. Some fraud is hard to put a finger on. This is an area that can be fixed. The department is doing some things to the verification process to enhance how they target who—what the schools—who they have to verify during the application process. And that is a good thing. We have also suggested they do changes to the PIN delivery system, which they are working on, but are a little bit slow out of the box. Cost of attendance is an easy one and I think in your control to do if you so choose.

The other area I was going to point to, and I think it is a little harder to say with certitude where to point you, but the department has 200 programs under its auspices and under its oversight and monitoring responsibilities. It is responsible for getting money out and for overseeing those. Some holistic look across those programs I think is warranted. I think there are some programs that seem to—I know GAO has done some work on the duplicate program work in the area of early childhood education, which I think we share some programs with HHS, and the STEM work, the

science and technology teaching work. You know, if we could, GPRA Modernization Act that passed a couple years ago is requiring agencies to look more broadly at their programs and come up with recommendations where they overlap with other agencies and where you can really achieve some efficiencies, I think, in effectiveness. I think that is an area that I think shows promise for looking at cost reductions and waste.

Mr. KINGSTON. As a follow up, could you give us little bit more specifics? Because that would be helpful. And when you say "cost of attendance," you mean that there is a room and board component—

[The information follows:]

MS. TIGHE: That is correct, Chairman Kingston. Since 2001, OIG has recommended that the HEA be amended to address cost of attendance (COA) calculations for on-line learners. Currently, students in on-line programs and residential programs can be eligible for the same amount of Federal student aid based on the same COA. The COA as defined by the HEA primarily includes: tuition and fees; an allowance for books, supplies, transportation, and the purchase of a personal computer; and an allowance for room and board costs for students without dependents residing at home with parents and for all other students an allowance based on the expense reasonably incurred for room and board.

The HEA limits the COA for students engaged in correspondence courses to tuition and fees, and, if required, books, supplies, and travel. There is no similar limitation for on-line students. With the explosion of on-line education in recent years and the number of full-time working individuals that take these courses, a COA budget that includes an allowance for room and board for on-line learners may not be in the best interest of American taxpayers and may allow students to borrow more than is needed. We also note that under the Post-9/11 Bill, Congress has already determined that active duty personnel and veterans enrolled exclusively in on-line programs should receive reimbursement only for tuition and fees and not receive a housing allowance. Congress should reconsider the COA calculation for distance education programs, which could reduce loan borrowing, decrease loan debt, and reduce the amount of funds available above tuition and thus obtainable by individuals who seek to defraud the Federal student aid programs through on-line fraud schemes.

Mr. KINGSTON. Okay. Thank you.

Ms. TIGHE. You are welcome.

Ms. ROYBAL-ALLARD. Since 2009, the Obama Administration has been making a major effort to identify and reduce the rate of improper payments. OMB estimates that the governmentwide improper payment rate has decreased from a high of 5.4 percent in 2009 to 4.35 percent in 2012. The Pell Grant program seems to offer a good example of how improper payments often reflect payments that are either too low as well as payments that are too high.

Inspector Tighe, in your testimony, you specifically refer to improper payments affecting Pell Grants. And I would like to ask you a little bit more about that.

Ms. TIGHE. Sure.

Ms. ROYBAL-ALLARD. I understand that the official estimate of improper payments under the Pell Grant program in 2012, which is \$829,000,000, actual consists of \$599,000,000 in overpayments combined with \$230,000,000 in underpayments. Is that correct?

Ms. TIGHE. Yes, that is correct.

Ms. ROYBAL-ALLARD. So has the department made progress over the last few years in reducing Pell Grant improper payments as a percentage of Pell spending? And, if so, what—or how was that re-

duction achieved and what do you think needs to be done to further reduce the improper payment rate?

Ms. TIGHE. The department certainly has made progress over the last couple years in the Pell improper payment rate. It has gone down by a couple, a half a percentage point, every year. I think the primary reason that has happened is, in 2010, they instituted a mechanism called the IRS Data Retrieval Tool where applicants can volunteer to have their data loaded from their tax return onto their financial student aid application. They have achieved, as of last year, about 26 percent of applicants use this. And it has reduced, certainly, administrative error in reporting income.

The problem is, what it doesn't do is tackle the other areas where you can have misreporting, either accidental or on purpose, such as number of dependents and other areas like that. And we have urged the department to do some analysis in those areas also. The department, as I mentioned earlier, is trying to strengthen processes for what students get verified by—their information gets verified by institutions. And they could do a little more there. But they are certainly taking steps.

One of the things we have pushed for a long time—that would certainly help is to allow a match, a direct match for individual applicants with the IRS on not only income but also number of dependents and dependency, marital status, things like that. The Higher Education Act has been amended already to allow for that kind of match, but the IRS Code and the IRS rules are not yet there.

Ms. ROYBAL-ALLARD. Would it take legislation—

Ms. TIGHE. It would take legislation to do that. But short of that, the department needs to focus on those who don't use the IRS DRT, the data retrieval tool, which is only voluntary. And the problem is, I think if you are intending to defraud the government, you are not going to volunteer to have your income downloaded from your IRS form, probably. So I think they really need to sort of tackle not only that problem, which they are in some ways, but also the area just other areas where you see administrative errors, number of dependents, and things like that.

Ms. ROYBAL-ALLARD. Okay. Go ahead.

Mr. KINGSTON. On the follow up, if you could let us know what the DOE could do on their own and what would take legislative action or report language or whatever, that would be helpful to us.

Ms. TIGHE. Absolutely.

[The information follows:]

In 2010, the U.S. Department of Education implemented the Internal Revenue Service Data Retrieval Tool (IRS DRT), which allows Federal student aid applicants and, as needed, parents of applicants, to transfer certain tax return information from the IRS Web site directly to their online Free Application for Federal Student Aid (FAFSA). However, only 26 percent of all FAFSAs submitted for the 2012–2013 academic year used the IRS DRT. Use of the tool is optional, so people intent on defrauding the program by providing false income information likely would not select the IRS option. Because the IRS DRT is not mandatory, institutions retain the burden of verifying an applicant's income.

Since 1997, we have recommended implementation of an IRS income data match that would allow the Department to match the information provided on FAFSAs with the income data the IRS maintains. While the Higher Education Act of 1965 has been amended to reflect this requirement, the Internal Revenue Code has not been similarly amended. Amending the Internal Revenue Code to permit this match

could help identify income inconsistencies and eliminate an area of fraud and abuse within the student financial assistance programs.

Mr. KINGSTON. Mr. Levinson.

Mr. LEVINSON. Mr. Chairman, as a general matter, it is very important to pay attention to the internal controls that should exist across the department. And many of our reports speak to those problems. I share your frustration that there is too much of a lag of time between where we are able to identify a problem and what happens as a result of that identification and follow up. Every year we publish a compilation of unimplemented recommendations to share with the department what is still outstanding, what we believe can be resolved or, to a certain degree, cured by administrative action, and what perhaps needs legislative action.

As a specific matter, if I were sitting on the council that you described, I would continue to be concerned about an issue that you have identified, the Antideficiency Act problems at NIH. And this, of course, is extremely important to vindicate the authority of Title 31, the power of the purse, the importance of making sure that money is appropriated at the right time and the right amount, for the appropriate year. And every year, GAO issues a report, invariably there will be a broad swath of agencies and departments that are reporting ADA issues.

Historically, HHS has not been a very common department in those reports. The military departments more often have appeared. But the collection of issues that were raised at NIH occurred not too much after a significant increase in funding for NIH. You may recall that there was a decision made in the late 1990s to double the budget of NIH from about \$15,000,000,000 to nearly \$30,000,000,000 in the course of 5 years. And I think it is a reminder certainly to me, and I would share it, that when Congress does decide to ramp up a program, it is so important to be thinking about the infrastructure that accompanies that kind of dramatic increase, the importance of making sure that both technically and in terms of human capital, there is an understanding that if there is going to be that kind of significant increase, you need appropriate focus on matters like the Antideficiency Act, making sure that the dollars are appropriated correctly.

Mr. KINGSTON. Well, okay. They had \$1,400,000,000 in ADA violations in 2002. Correct? That was identified in July 2011?

Mr. LEVINSON. Yes, we are talking about the 2011 series of reports, really.

Mr. KINGSTON. Then there is another ADA violation relating to Title 42 hiring authority restrictions. I guess what I don't understand is how do these go on without them knowing what the legal limits of Federal contracts are and what is supposed to be delivered over a 7-year period of time? How is it that that is not getting caught, somebody is not saying, hey, wait, ADA violation?

Mr. LEVINSON. I share that concern. There is systemic guidance that needed to be changed, and that ultimately was. But the department actually had been operating under the kind of guidance that we don't publish, we don't actually produce work between the program people and the General Counsel's Office that on reflection back some years ago it was concluded did not reflect accurate law.

Mr. KINGSTON. Uh-huh.

Mr. LEVINSON. And as a result, it took a period of time within which to identify this period that, as you noted, actually goes back to 2002 and as recently as 2006 or 2007. It is not the only instance. You will see departments and agencies reporting matters that go back even farther, back to the 1990s. So the ability to catch up with problems of this magnitude, of this size present really significant challenges.

Mr. KINGSTON. Thank you.

I guess what frustrates me is no one ever seems to get fired or demoted or anything. And it is always, as you say, 7 years later that we find out about it and there are already other issues.

Dr. Harris.

Mr. HARRIS. I thank you very much, Mr. Chairman.

And I want to thank the IGs for appearing today. Mr. Levinson, I have a couple of questions about some things that are going on in HHS. One is that I hear very frequently from health providers as well as institutions are these—the RACs audits, the recovery—the Recover Audit Contractor practices. And I don't know whether you have looked into these in particular, heard some of these complaints. But the complaints are that although we want to certainly root out fraud and abuse, that the way it is set up, it is basically a bounty system. The RAC gets a per-violation bounty and, you know, in—I don't know if you know this, but, you know, a large number of the appeals actually are successful and at great expense to the institution or practitioner. But the contractor just loses the contingency fees. I mean, it is, you know, well—you know, "My bad." But there is no penalty other than just returning the actual contingency fee, not taking into account that they are faulty actions. Because, again, these are adjudicated against the finding of the auditor of the audit contractor that these costs are just borne by healthcare. And we wonder why our healthcare costs are so high. Well, you know, these institutions and practitioners have built in huge reserves in some cases because the RACs findings appear to be so incorrect that they have to count on appealing a lot of things and pulling the records and all the rest. Is this something that the IG's office has looked at, this RAC program?

Mr. LEVINSON. Yes, Dr. Harris. We have started to develop a body of work looking at RACs. It is limited in nature at this point. And I would be happy to share that with you. We are focused with respect to the discretionary funding this morning, I am not really prepared to talk in depth about our work with respect to the RACs. We are looking at RACs and that is a very important part of the mandatory part of our jurisdiction.

Mr. HARRIS. And I am sorry that I was in another subcommittee hearing. I take it that you are concerned that the sequester cuts might, in fact, eat into your ability to look into some of these?

Mr. LEVINSON. Well, indeed. Actually, we have been shrinking since before the sequester. We have had a freeze since early 2012. We are actually in the process of reducing our office by about 20 percent as a result of the end of several important funding streams for us. So, yes, we are getting smaller as our responsibilities are indeed getting larger.

Mr. HARRIS. Let me follow up with that. Because maybe there is some money rattling around HHS somewhere. You know, in a—

well, I will be very specific. In the hearing 2 weeks ago, I asked the director of the CDC about the 317 vaccine program, where he basically admitted that they basically have \$58,000,000 more than they need. That the President's budget for 2013 called for \$58,000,000 reduction, they were able to vaccinate all the children they could with \$58,000,000 less. So my question to the IG is what does the IG do when we uncover that \$58,000,000 is being spent in—is being sent to the CDC? Because of the continuing resolution, they continue to get the money, yet they say they don't need it. And, you know, you don't vaccinate children twice with the same vaccine. So I am assuming that money goes somewhere. I mean, does the IG's office ever look into—you know, in the era of continuing resolutions when these agencies come and literally testify that they don't need the money, but they are getting it anyway. And you come and testify, "Well, you know, we need the money. We are not getting it." What is going on with these dollars? I mean, how would I find out? And you might know best—how would I find out where those \$58,000,000 have gone?

Mr. LEVINSON. Well, it certainly would be appropriate to ask specifically the agency that is in charge of those dollars. But, of course, it would also be appropriate to ask us to do work on it as well.

Mr. HARRIS. Okay. Thank you very much.

Thank you, Mr. Chairman.

Mr. KINGSTON. Mr. Joyce.

Mr. JOYCE. Not at this time. Thank you.

Mr. KINGSTON. Mr. Lewis, again to my question.

Mr. LEWIS. Yes, a couple of areas in Department of Labor. The first one I will start with is our unemployment insurance program because that is one of the largest programs in the government for improper payments, unfortunately, running now around \$10,000,000,000 or more a year. We have reported on that program for—going back at least 10 years looking at that improper payment rate and noting to the department that it is doing a pretty good job of measuring what their improper payments are for the program. But we saw little change in the rate. As you say, you keep bringing the issue, and then nothing changes with it. But we have been recently encouraged with this passage of the improper payments act, the IPERA Act and the executive order the year before that. That we see the department really now starting to get engaged with the State partners on strategies to bring down that number.

Unfortunately, I think it is going to take a little time for that to kick in and see the results of it. What we are trying to stress with the department now is they have put a number of strategies in place that they don't just put them in place and let them run and not really evaluate how those different strategies are working. They should redouble their efforts on the ones that are working and scale down the investments on the ones that are not getting the return for. They should share information among 50 State partners involved in this, and the territories, on what is working in their State to reduce these. But we are at least encouraged on that.

The other area of concern not necessarily a direct savings, per se, or reduction in cost. But in all of our training programs we look at, I think across the board, we constantly uncover areas where we certainly think we could probably get more for the money that we

are spending. That it is not necessarily spent improperly or that we could do it at a lower cost, but we think we could get more results, better results than what we are achieving in some of the programs.

Mr. KINGSTON. Well, we often cite, is it 44 Federal job training programs?

Mr. LEWIS. That sounds correct.

Mr. KINGSTON. How many of those and have you ever looked at combining some of them?

Mr. LEWIS. We have not assessed that at Labor in terms of combining them or combining them across agencies. I know GAO has looked at that. But that is not something we have assessed.

Mr. KINGSTON. Okay. Now, on \$10,000,000,000 in improper payments. That is an outrageous number of—so big. But you seem somewhat relaxed about that they are making—

Mr. LEWIS. I am not relaxed about it. But I am encouraged that they have put some strategies in place to tackle that. The U.I. program is a particular challenge in terms of the improper payments because of the nature of the program. You are putting out a lot of very small—weekly payments to a large number of individuals. The goal of the program is to get them a check as quickly as you can. They could certainly bring that number way down, but we would partly defeat the purpose of the program because it would take weeks or months for someone to get a single unemployment check.

Mr. KINGSTON. And when they get a job, what is the trigger that stops the unemployment check?

Mr. LEWIS. Well, that is one of the more recent tools they have. One trigger in the past has been—one of the biggest areas of improper payments because it was a lot of self-reporting that you have returned to work. Now all States have access to the National Directory of New Hires. That database includes reporting from most employers within, I believe, about generally 20 days of someone being hired, they report that that individual has been hired. The States can match with that and detect that someone has returned to work and start actions to follow up with that claimant and discontinue their benefits.

Mr. KINGSTON. But if—well, let me—I am about out of time. So go ahead.

Ms. ROYBAL-ALLARD. I would just like some clarification because I do share the concerns of the chairman in terms of some of the findings with regards to problems within the various departments. And—Inspector General Levinson, you—you mentioned the fact that there is a lag time or things move very slowly within a department once a problem has been identified in terms of rectifying whatever that may be. Is it that the departments are ignoring those findings or are there reasons why things are moving—move slowly in terms of trying to correct the deficiencies and the problems that you have identified?

Mr. LEVINSON. Ms. Roybal-Allard, it is very difficult to produce a generalization about the cause. At least with respect to our department, we are dealing with a uniquely large set of programs, especially Medicare and Medicaid. CMS alone is the largest—financially, CMS is the largest Federal agency, period. And as a result of the size of the program and the complications, the complexity of healthcare, which is also, I think, a uniquely complicated subject,

I think HHS and CMS, in particular, I think do present administrative challenges and difficulties that may not necessarily exist elsewhere.

It really requires focused attention by CMS management, and there are efforts underway through a Program Integrity Council now at HHS that intends to try to marry up with program evaluation and performance, which we would like to think will be an encouraging sign of being able to better grade the programs at CMS, so there can be more of a rapid turnaround with respect to the issues and the problems that we have identified. I am pleased to say that we have regular meetings at the senior level. And when I say the "senior level," with the acting administrator of CMS and me every 3 weeks with our senior staff to talk about the half dozen or so most significant systemic issues that are of concern either to CMS or to us. And I think it is a very important human capital issue as well to make sure people are involved from top to bottom in trying to solve it.

Ms. ROYBAL-ALLARD. Are the problems that you have identified, are these technical violations? Do they involve the spending of the appropriated moneys?

Mr. LEVINSON. Well, I mean, very often it is a matter of making sure that we are able to take advantage of the kinds of efficiencies that should exist with respect to, whether it is coding, or simply how to arrange programs most efficiently. But, as I say, we have a collection of recommendations which we are very careful about sharing with the department and with CMS on a very regular basis. And I think the relationship is actually better than it has been in the past.

Ms. ROYBAL-ALLARD. Go ahead.

Mr. KINGSTON. Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

Apologize to all of you for being late. I also had another meeting. I would like to ask you, Inspector General Levinson, obviously, you have done a lot of investigation into fraud, abuse, and waste of past activities. One, what, if anything, are you doing about those that are coming forward with the Affordable Care Act? And what are you doing to make sure that some of the abuses that you have seen in the past with systems won't occur as you roll out the Affordable Care Act?

Mr. LEVINSON. Well, there has been some important ramping up of work under the Affordable Care Act. The act itself actually included a title, Title 6, that spoke specifically to increased and enhanced anti-fraud measures. It included some extra dollars, and it included some extra authorities. And most valuable in the short term, it strengthened the controls over enrollment in Medicare. Because so much of the healthcare fraud that we have been trying to tackle, has to do with the relaxed standards for being able to enroll in Medicare, that allowed too many folks masquerading as healthcare providers to get a Medicare number, open up a phony operation, and take advantage of Medicare dollars. It really was overdue to create far stricter standards for being able to enroll as a provider in the program in the first place. The ACA builds on that by being able to provide further kinds of protections, including the ability to suspend enrollment and to basically suspend privi-

leges for being able to bill Medicare when there is a suspicion that there may be fraud involved.

I think this is really making a very important difference. As the Affordable Care Act rolls out, we will continue to the extent that our resources allow, to be as aggressive as possible in making sure that the new models that are being talked about under the Affordable Care Act have the kinds of controls built in that will, to the greatest extent possible, diminish and hopefully eliminate the potential for fraud.

Mr. JOYCE. Expanding on that just a little bit, what triggers an investigation into a provider? Is it just the complaints, or is it some in-house software program that shows rates increasing, or what would initially trigger an investigation in the past for a provider?

Mr. LEVINSON. It certainly can be any of those. It can be a broad range in terms of the origins. We do have a hotline. And people certainly take advantage of that by calling and letting us know that they suspect something is running afoul. Very often, there will be insiders, kind of the whistleblower issue, if you will, in which those within a healthcare enterprise will see or believe they see something that is illegal and report it to us. And other times, it can be self-generated just in terms of looking at the numbers CMS suggests based on billing, the way billing has unfolded in a particular scenario that there is certainly the potential for fraud, and will contact our office of investigations to look further into it. So it really can come from a variety of sources.

Mr. JOYCE. Thank you. I yield back.

Mr. KINGSTON. Thank you.

Ms. Lee.

Ms. LEE. Thank you very much.

I apologize for being late. But I have your testimony. It is good to see you and thank you all for being here.

Let me ask you, earlier in your testimony, you mentioned that unemployment payments, there are some unemployment insurance improper payments that happen primarily because of the nature actually of the program. But I guess I would like to know what steps the DOL has taken really to address this, and how is the overall program working? And, of course, are we seeing more unemployment compensation claims? Less?

I know there have been reductions in the number of weeks for unemployment compensation. And so how does that match with the overall program in terms of the improper payments?

Mr. LEWIS. Yes. The program is dropping now because the temporary programs are expiring, so you are seeing less benefits. However, whether the benefits are on the high side or the low side, we see a rather constant if not increasing in the past few years rate of overpayments. A number of years ago, it probably ran 9 percent a year, but more recently, it has been pushing 12 percent. This program in the past has been a largely paper-based program in terms of communicating with the employers, communicating with the laid-off employee. The department has taken a lot of steps just in the last couple years to automate a lot of this, which is one of the reasons I said earlier that we are encouraged in terms of the things they are doing to tighten up the system. But, as I said, it is a challenge because of the nature of the program is that you want to get

a timely, weekly benefit to someone. You can't do that if you do a hundred percent verification before the check went out. You would defeat the purpose of getting them their unemployment benefits. But a lot of issues have to do with initially setting up the claim, which used to be a pretty manual process in terms of mailing information to an employer. That employer, by the time they could mail something back that may contradict the claim, we had already paid several weeks to this individual. Now the department or the State is in a position to try to collect that improper payment back. We want to avoid that. They are putting in place some electronic communication with the employer so they get that information faster. We can still get a benefit out timely, but we can get faster information to cut off a problem.

Then at the other end of the program, when people return to work, that had been in the past largely a self-certification, self-reporting that you had returned to work. Now with the new hire database that all employers report to generally within 20 days when someone is hired, which was used to go after child support payments initially, a number of other programs are using it. All the States have access so they can learn much quicker that someone has returned to work and they can start investigating to determine that benefits should be cut off.

Ms. LEE. So about what percentage, though of the overall program, would you say could be characterized as improper payments?

Mr. LEWIS. It is running just under 12 percent, around 11 and a half percent for this past fiscal year.

Ms. LEE. Okay. And what—and you—how are you dealing with correcting it, though?

Mr. LEWIS. As I said, they are automating a lot of process.

Ms. LEE. Yeah.

Mr. LEWIS. That had been the problem, the time it took to learn the events that would affect the claim. That was probably the biggest thing that was creating these improper payments. So we believe that—

Ms. LEE. So you think the automating—

Mr. LEWIS. What the department is doing to automate that is going to have an impact to bring that down.

Ms. LEE. Okay. So you don't think a lot of it has to do about fraudulent claims?

Mr. LEWIS. There are certainly fraudulent claims in there. I don't have an estimate from my office. The department does. When it measures the improper payments, it does classify them as potentially fraudulent. But there has not been a determination of that. We don't really have one from the IG's office in terms of how much of it is fraud.

Ms. LEE. So it would be 12 percent—

Mr. LEWIS. There is clearly fraud as a part of that. But the lion's share of it is not fraud.

Ms. LEE. So it would be within that 12 percent. It wouldn't be above the 12 percent.

Mr. LEWIS. Correct.

Ms. LEE. Okay. Thank you very much.

Mr. KINGSTON. Mr. Lewis, you had testified before the Senate committee about a shortfall of the Job Corps has—is facing \$61,000,000, I think.

You highlighted a review of seven centers and questioned the expenditure of \$17,000,000 at these seven. Just seven centers alone with a \$17,000,000 questionable expenditure. But there are 118 centers. It is possible that you could—we could recapture the shortfall just with better systems.

Tell me the nature of those \$17,000,000 in questionable payments and what is the likelihood that the other 101 centers might have similar problems.

Mr. LEWIS. We classify those as questionable. Those were procurements at those seven centers. And we have found this kind of problem across the board in Job Corps, whether it is in Job Corps itself or as its operators and contractors. They are not doing everything they need to do to ensure the procurements are made properly, competed properly. We see a lot of sole-source awarding. So we don't believe that amount is entirely wrong. But, by the same token, the department and the contractors can't demonstrate to us that they got the best amount; that they couldn't have gotten a lower cost for that contract they awarded. To the extent that if they did these procurements properly, you got a lower cost, which we won't know until they properly bid them, you won't know how much you could potentially save on those.

Mr. KINGSTON. What is the operating budget of a typical Job Corps center?

Mr. LEWIS. Well the whole program is around \$1,700,000,000 and there are 125 centers.

Mr. KINGSTON. It just seems unbelievable that you got \$2,000,000 in improper payments per Job Corps and you could pick up the slack on that if you wanted to. Or the shortfall. Do you feel like you have gone after that \$17,000,000 vigorously enough to set examples for other Job Corps centers that might have the same problem?

Mr. LEWIS. Those audits certainly got the attention of the Job Corps community as well as the department in terms of correcting the problems the department had in terms of its oversight and ensuring that these centers understood and had the proper procurement rules in place at the contractor and center level. I think we have gotten that attention now. But, of course, takes some time to see if it really has the impact. But I do think it got attention.

Mr. KINGSTON. Okay. Then another question is that the DOL has said that job training programs are not yielding the results that we would expect from the \$3,000,000,000 that we are investing. Fresno, California, it was reported by the Washington Post that, in 2011, the city actually had a surplus of available jobs, but the local workforce boards were unable to adequately train workers for those available jobs. And that was one of the complaints from the board itself.

What do we do to make sure that the training is tailored for the jobs available?

Mr. LEWIS. Well, I think what we have seen in the discretionary grants that we have looked at is that the better job we see in terms of the grant agreement or the plan for that grant on how they are

analyzing the local job market and what are the demands for jobs, what are the high-demand jobs, the greater extent you see them partnering with employers so that you know they are designing training, that there is a job waiting when you finish that training, we certainly see better results in those.

Mr. KINGSTON. Yeah, but, you know, that is nothing new. I mean, why weren't they doing that 10 years ago, 15 years ago? I mean, nothing you have said is unusually creative. It is common sense.

Mr. LEWIS. No, it is common sense.

Mr. KINGSTON. So why weren't they doing it?

Mr. LEWIS. It is a lack of oversight and a lack of emphasis from the department. The department is not measuring, certain things like how well do we do in terms of placing someone in a job for which we train them. That is not one of the measures they focus on.

Mr. KINGSTON. Do you rate the job training centers on effectiveness? Are there any metrics on job placement?

Mr. LEWIS. There are metrics, but we don't rate them. There are metrics by State. If you are talking about Job Corps, the Job Corps program rates and ranks each center on a number of metrics.

Mr. KINGSTON. I am really thinking more of job training just in general.

Mr. LEWIS. There are the measures that the department has nationwide that are for every State.

Mr. KINGSTON. Okay.

All right. Thank you.

Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Inspector General Levinson, since the 1990s, funding has been provided specifically for healthcare fraud and abuse control with funds being shared between the HHS Inspector General, the Centers for Medicare and Medicaid Services, and the Department of Justice. Originally, all funds were provided through authorizing law. But in 2009, we began making discretionary appropriations as well, starting at \$198,000,000 and rising to \$311,000,000 in 2010.

The amount has been stuck at about \$310,000,000 since then, despite requests from the administration for increases each year. The Budget Control Act actually allows increases in HCFAC funding to \$610,000,000 in 2013 outside the overall caps, recognizing that this activity returns far more to the government in savings than it costs. So far, however, none of these increases allowed by BCA have been provided, largely, as I understand, because of strong opposition from the House majority.

In your—I lost my place here. I have apologize.

Mr. KINGSTON. Take your time.

Ms. ROYBAL-ALLARD. Do not deduct this from my time. Okay. I have it here. I have it here.

I turned to the wrong page.

Can you please tell us what the HHS Office of Inspector General has been doing with its share of the HCFAC funds and what results have been achieved and what more could you accomplish if HCFAC received the funding level allowed by the Budget Control Act?

Mr. LEVINSON. Thank you very much for the question.

As you said, this program does return a great deal more back to the Treasury than is required to expend in order to enforce the program, somewhere between \$7 and \$8 come back for every dollar that is expended. So it is a good investment, we believe to the taxpayer.

The HCFAC program has been expanded over the last few years to create special HEAT teams that have existed in many of most important healthcare fraud cities. Based on our own demographics and our own understanding of billings, our investigators are able to work with prosecutors, both Federal and State, in cities like New York, Miami, Houston, Los Angeles, and elsewhere to focus on significant healthcare fraud scams that are costing taxpayers a great deal of money and obviously jeopardizing the health of beneficiaries. There has been significant returns to HCFAC in the last few years. \$4,200,000,000 was actually returned over the course of the last year. Receivables have gone up since the program was established by the 104th Congress back in the mid-1990s. There has been a steady increase in the returns.

Frankly, I would hope that those numbers would go down because there would be less healthcare fraud. And it is extremely important as we go toward new pay models and delivery models that we tackle more effectively the healthcare fraud problem. Because if we are going to move away, as we seem to be doing both in the public and private sector, away from fee for service towards a pay for performance where we are looking at value, that is going to create some opacity with respect to being able to follow the dollars. In other words, we need to make sure that there is a high level of trust that really can serve as a foundation in our new healthcare environment.

So having a robust anti-fraud environment combined with the new data technologies that are going to allow for new measurements combine to make a very compelling case for continued robust funding of HCFAC.

Ms. ROYBAL-ALLARD. I understand that your office not only has a hiring freeze and it has been reducing staff not only through attrition, but also by offering buyouts and early retirement to encourage voluntary departures, all of this was going on before sequestration was implemented. How large is the reduction and why is it required, what is the effect on your operations, and could the reduction be avoided by enactment of the President's budget request for the healthcare fraud and abuse control program in 2013?

Mr. LEVINSON. Well, we are in the process of reducing our workforce by about 20 percent. As you said, a hiring freeze has been in place since February of 2012. So we were at about 1,800 earlier in 2012. We are heading down towards somewhat closer to about 1,500, which is where the office would have been about the time that we were ramping up for part D back in 2005, 2006.

The 2013 budget request is for \$370,000,000. With the additional \$73,000,000 that would be given to HCFAC and the \$8,000,000 increase in the discretionary accounts, we would be able to halt that shrinkage of our office and actually be able to devote significantly more resources to tackle both the existing portfolio that we have been talking about mostly this morning as well as the increasing

portfolio like the health insurance exchanges that are coming down the road. We hope to have the kind of resources necessary to ensure effective oversight of the new programs. It will be very challenging to do that effectively if we are in the process of actually shrinking.

And the early outs do present a very helpful way of being able to reduce our FTEs and increase our resources, but by the same token, we are losing a considerable amount of our institutional expertise that will be difficult to be made up. We really are a human capital operation, and as skilled as our investigators, evaluators and auditors are, they can only cover so much territory. At this point it is about a half million dollars per FTE in terms of oversight coverage. We really need people who can help reinforce this diminishing workforce and bring in the new skills that are necessary in order to handle the kind of big data demands that we are going to have with a department the size of HHS, which is, as you know, in excess of 6 percent of the gross domestic product of the country.

Mr. KINGSTON. Mr. Joyce.

Mr. JOYCE. Thank you. Inspector General Tighe, thank you for appearing here today, but in the Pell Grant, I notice that the program had \$933,000,000 in improper payments in 2011 and \$829,000,000 in the year 2012.

As the costs continue to grow with the program, what, if anything, is the Department of Education doing to address the improper payments? And you may have spoke to this a little earlier, and I apologize, I wasn't here.

Ms. TIGHE. Oh, that is all right. I am happy to talk about it again. The Department's most significant initiative in this area that started in about 2010 is the IRS data retrieval tool, which allows applicants for Federal student aid to download information directly from their tax returns, income information and a couple other things, and that basically, for those who use it, deals with sort of administrative errors and fingering, income and things like that.

It does not deal with a couple of things that the Department still needs to focus on, which is other areas that the tool isn't used for, such as numbers of dependents and other things where there can be problems. And also—it is voluntary, so if you are really intent on defrauding the government, you are probably not going to volunteer to use the tool. So the Department still has some challenges in the area.

Mr. JOYCE. What, if anything, are you doing to address those?

Ms. TIGHE. Well, we have, made recommendations through our work, through both our improper payments work and work we have had related to our so-called fraud ring investigations, which are our groups that prey on Federal student aid. We have made recommendations to enhance student identification verification processes, which the Department is doing in part.

We have also advised that they do some analysis of the groups who do not use the data retrieval tool and who also aren't being verified by universities when they apply. And they need to sort of focus on the groups who aren't being looked at, so—

Mr. JOYCE. And I don't mean to imply that you weren't doing anything. I guess it is 25 years as a prosecutor that you get used to a line of questioning, and if anything always comes up as I say that, so I wasn't saying you weren't doing anything. And I appreciate your testimony here today.

Ms. TIGHE. Thank you.

Mr. KINGSTON. Thank you.

Ms. Lee.

Ms. LEE. Thank you. Let me ask Mr. Levinson a question as it relates to the executive summary that you provided, or at least that we have from the CDC, in terms of the PEPFAR program. I think the administration requested that HHS look at Namibia, Vietnam and South Africa to determine each CDC office monitoring of those PEPFAR funds in each country, in each country. And South Africa was not always actually in the report. You had some recommendations to bring South Africa into compliance with certain procedures of the expenditure of PEPFAR funds, so I just wanted to kind of get a handle on how we are doing in terms of South Africa.

And then secondly, as PEPFAR transitions from an emergency response to one of country ownership, how can we make sure that the transition goes smoothly, because, as the chairman knows, PEPFAR has saved millions of lives and we want to see this program move forward and not get bogged down by certain administrative problems that you listed in this report?

Mr. LEVINSON. Thank you very much, Ms. Lee. Our auditors have been traveling abroad, something that historically they did not do, over the course of the last year or so as a result of PEPFAR and reimbursements that we are getting in order to do the work. OIG reports did find some inconsistencies with respect to oversight of PEPFAR grants in Namibia, South Africa, Vietnam, Ethiopia and Zambia. I don't have details to share with you this morning about the nature of those reports, but we certainly can get them to you with a fuller explanation, but I am encouraged by the fact that our auditors came back and found generally that there was a fairly sound regime in place in virtually all of those countries. Yes, there was room for improvement, but actually no major problems were really identified in terms of how the funding was actually being purposed and who was generally receiving that kind of funding.

I don't really have a specific recommendation for you in terms of the work of our office on how transition may go. That is probably something that would be more under the jurisdiction of AID and the State Department, but to the extent that our work can inform how they are viewing it, I really view the beginning of our international work in this area as very important, not just for the Department but for exercises like this, which involve cross-agency, cross-department activities internationally.

Ms. LEE. Right. I guess with regard to, going back to South Africa, in your report there were some recommendations in terms of procedures, like review of progress reports, review of expenditures, review of audit reports, site visits, discussions and meetings with recipients.

So I just want to make sure that where you found that there was room for improvement, because I agree, I have been to most these of these countries and looked at what was taking place, and it is really phenomenal with regard to how they have managed the programs, but I don't want to see a situation that sort of builds up where—

Mr. LEVINSON. Yeah.

Ms. LEE [continuing]. You know, they are not given clear kind of instructions or requirements that CDC would want to see, and then kind of set them up to not be in compliance in the future.

Mr. LEVINSON. Absolutely.

Ms. LEE. Okay. Thank you very much, Mr. Chairman.

Mr. KINGSTON. Thank you.

Mr. Alexander.

Mr. ALEXANDER. Thank you, Mr. Chairman.

Mr. Lewis, right now the Department of Labor has two rules pending that would devastate employers who are forced to utilize the H2B program, and one of these rules is being blocked by Congress, the other by the courts. And it is obvious that there are members here and court officials that feel like those rules are not acceptable. That is because if they were to go into effect the cost to use the H2B program would be so high that many employers would be unable to use the program.

Now, in your report and testimony, you cite evidence, in your words, of fraudulent application, falsified documents and wage violations. You also cite that some employers avoid recruitment and employment of qualified U.S. workers.

Now, clearly there are dishonest people out there that want to abuse the system, but the question is, why doesn't the Department of Labor just strive to enforce the current laws that are being broken instead of imposing new rules that make the entire H2B program unaffordable?

Mr. LEWIS. Yes, sir. We have not—evaluated the entire final rule that is out there. In the work we have done, and in fact, the majority of our findings and issues are things that the Department can and should do without any change to the rules.

The things you mentioned, such as employers not paying proper wages, et cetera, that they had agreed to pay, and working conditions, that is the kind of thing that has to be verified, once the application has been approved and the employee is here working. The Department does go out and do audits of those, but we realize that, they are not doing timely enough. In many cases they are out long after the person's temporary employment had ended and sometimes after that employer has submitted and been approved another application before the Department finds that they weren't playing by the rules on the earlier application. So that is not something the rule needs to address.

The one issue the Department has raised the rule in response to our findings has been the issue about what work the employer has done to properly recruit U.S. workers. And we do find issues with, how that recruitment was done, how the job announcement was done. Did it include all the key facts about the employment that could influence someone's decision to apply or, more importantly, not apply for the job, did they advertise as they were supposed to,

et cetera. And that is something the employers are already required to do, and that, we think, could be improved if the Department. They don't get that information up front, but rather just get a self-attestation that the employer has done that properly. If they did submit that documentation, which they would already have at the time of the application, that could improve that, but that is the only aspect of that that we have really looked at.

We have not evaluated—there are a lot of other things in that final rule that could have the impact that you are referring to that we have not assessed.

Mr. ALEXANDER. Okay, sir.

Mr. KINGSTON. Okay. Mr. Levinson, on healthcare fraud, your job is to recommend systems, right, and not just reactively but proactively? Is that correct?

Mr. LEVINSON. Well, we certainly are involved in individual cases and larger kinds of operations, but, yes, we certainly look towards being able to exercise some influence on how controls will be done as well.

Mr. KINGSTON. Well, with the enactment of the new healthcare law, are you making recommendations for controls that would prevent fraud, and are those recommendations something that this committee needs to be aware of and to emphasize that we want them implemented?

Mr. LEVINSON. Well, we are certainly trying to provide whatever technical assistance we can with respect to the Department as it begins to roll out or think through various kinds of pilot or demonstration projects where the potential fraud vulnerabilities might be. We have lawyers who are well versed in the anti-kickback statute, physician self-referral law and other technical statutes available so that they can provide perspective on what is more likely to be a better control than perhaps something else.

I am not sure this really necessarily produces particular paperwork at this point, but that is an ongoing process. And to the extent that Members of Congress are interested in thinking this through, I am sure that our staff would be happy to talk with members and staff as well.

Mr. KINGSTON. Okay. And I have an unrelated question, but as you know, this committee, with bipartisan majorities, have supported a provision to prevent wasteful studies with tax dollars on gun control. The idea is we do not want to see the CDC take an advocacy stand on gun control. The President, though, through his directives has put in \$10,000,000 to research the causes and prevention of gun violence.

We are not certain if that violates this longstanding provision or not, but if it does, how do you make sure that the law is not violated? Where is your role in that in terms of monitoring the violation of it?

Mr. LEVINSON. Well, in the course of our review of whether it is contracts or grants, and this is throughout the Department, we, and I believe we have done a much better job of it over the last few years, really try to integrate our look among all of the disciplines within the Inspector General's Office. So if it is an audit or evaluation responsibility, we also view it as a counsel's responsibility as well. We have an Office of Counsel to the Inspector Gen-

eral, as required by the IG Reform Act of 2008, and very often there will be questions about whether a particular matter that auditors or evaluators come across is appropriate given the legal parameters. And what we do is we make sure that the counsel's office is involved in providing advice and counsel. And quite frankly, if our counsel is unsure or has questions, who in turn will share them either with the general counsel's office, which is indeed the chief legal officer of the Department, and with GAO.

Mr. KINGSTON. On something as high profile as this, which came directly from the White House, though, if there is a violation of that provision, are you guys looking at it and are you there up front to make sure that it is not violated?

Mr. LEVINSON. Well, we certainly don't exercise any oversight with respect to what is happening down Pennsylvania Avenue, but once something is in the process of being implemented or administered, within the framework of the Department, we certainly try to stay as much on top of both high profile as well as things that are not necessarily high profile but wind up being very important, we certainly try to do that as much as we can.

Mr. KINGSTON. So would you keep the CDC from erring and straying on what this committee has put in the law and what the President wants?

Mr. LEVINSON. Well, I know that there is a systemic review that is proceeding at the CDC to make sure that the CDC is operating within legal parameters, so anything that might have an impact or an effect on that is likely to be part of that.

Mr. KINGSTON. Okay. All right. Thank you.

Ms. ROYBAL-ALLARD. I want to briefly return to an earlier statement about the 317 program, because I believe the public health community would highly disagree that the money is not needed. While it is true that the fiscal year 2013 President's budget recommended a \$58,000,000 cut in the 317 funding, primarily because it is thought that the ACA will address some of those issues, I am pretty sure that during the hearing, Dr. Freiden never said that he had no use for that 317 money. In fact, I believe that the IG report on vaccinations points to a need for adequate 317 program funding to support program infrastructure in the VFC program.

Inspector General Levinson, in your June 2012 Vaccines for Children report, you found that 76 percent of the surveyed sites had vaccines that were exposed to inappropriate temperatures, which can reduce vaccine potency and efficacy. You also found that VFC sites had expired vaccines stored alongside good vaccines and that the selected providers did not meet vaccine management requirements or maintain required documentation.

Can you update the committee on corrective actions that have been taken to ensure vaccine safety and proper documentation? And since some of the section 317 immunization program funding supports program infrastructure and essentially gives State health departments the staffing resources needed to ensure VFC providers are following Federal program guidelines, how would potential cuts to this program impact the States' ability to ensure vaccine efficacy and Federal management requirements?

Mr. LEVINSON. Ms. Roybal-Allard, my office will endeavor to keep you fully informed of the progress that is being made with respect

to the deficiencies that were found as a result of our June 2012 report. I don't have anything immediately to report as a result of those findings, but I do know that remains a current open file for us to make sure that indeed corrective action is undertaken.

It was received with seriousness certainly by CDC, and my understanding is that there is follow-up action that has been taken, that is being taken, and that will be taken to try to avoid that series of serious issues in the future.

Ms. ROYBAL-ALLARD. Because it is very serious.

Mr. LEVINSON. Absolutely.

Ms. ROYBAL-ALLARD. And I would appreciate receiving that information.

Assistant Inspector General Lewis, in looking at the OIG listing of the top 10 management challenges at the Department of Labor, I was interested to see that the first two items on the list both involve protection of worker safety and health, one involving worker safety in general and the second involving the safety of minors in particular.

Could you please tell us about the OIG concerns in these areas, what you see as the problems and what needs to be done to address them?

Mr. LEWIS. Okay. Well, Ms. Roybal-Allard, generally with occupational safety and health, our concern is that the Department does not have good mechanisms to really focus and target on the employers, because they can only look at so many employers. We want to make sure that they have good systems to really go after the employers that represent the biggest problem in terms of health and safety, and we are not sure that they have the means to really target that.

We realize it is a difficult area to evaluate, and that is why it is considered a challenge, but we have recommended that they try to develop a way to measure and evaluate what they are targeting and how what payoff they are getting for how they are targeting.

They have implemented a pilot program, a multi-year program to try to do that, a demonstration for how that might be done, so that is one bit of encouraging news on that.

With mine safety, we have had a number of issues over the years of lax systems in terms of how the Department goes about doing the mine inspections: whether they are thorough and complete; whether they do all the mandatory inspections that are required; what they do to follow up on issues in those inspections, what they do to follow up on complaints they get; and, how they are following up on currently internal and independent reviews they had done after the last large disaster at the Upper Big Branch mine. We are currently looking at what actions the Department is taking to implement all the recommendations out of that report. And we expect to have that in the next month or two.

Ms. ROYBAL-ALLARD. And when you say you don't have the means, you mean staff and resources? Is that what—

Mr. LEWIS. Well, I don't know that they don't have, the total staff, but they certainly have a lot of challenges in terms of inspections and approval of the mine plans that do compete for resources.

Ms. ROYBAL-ALLARD. Okay.

Mr. LEWIS. So they do have to determine how best to deploy those resources.

Ms. ROYBAL-ALLARD. Okay. Thank you.

Mr. JOYCE [presiding]. Thank you. Although the chair would technically be next, I defer to Representative Fleischman.

Mr. FLEISCHMAN. Thank you, Mr. Chairman.

Mr. Levinson, in your 2012 top management and performance challenges report, you identified implementing the affordable insurance exchanges, the exchanges as a key issue for HHS. Many States, including my home State of Tennessee, have expressed deep concern over the additional financial burdens these exchanges will place on States and have chosen not to establish an exchange.

Could you please elaborate on the concerns you have about implementing the exchanges and share what recommendations you have—recommendations you have made regarding HHS establishment of exchanges in States like Tennessee, and what the Secretary and CCIIO—I am sorry, CCIIO are doing to prepare for the January 1st deadline?

Mr. LEVINSON. Certainly, Mr. Fleischman. In our 2013 work plan, we have included a series of activities geared towards the CCIIO—that is a mouthful—oversight of the health insurance exchange establishment grants, including CCIIO's procedures for determining grant compliance. CCIIO's oversight of the accuracy of information reported to the healthcare.gov plan finder will also be reviewed. CCIIO's process for identifying, selecting and overseeing co-op funding recipients will also be looked at, as well as HHS and State controls to prevent fraudulent claims under the preexisting insurance plans program.

So the idea is to build a robust agenda within which to, in effect monitor and see how this series of very important work actually rolls out and to make important recommendations and to follow, in effect, the money as these exchanges are established to see where there may be fraudulent vulnerabilities.

Mr. FLEISCHMAN. Thank you. Mr. Lewis, I understand you have identified job training programs as an area within the Department of Labor that could be better managed to produce more of a return on the Federal dollars being spent on these programs, and there has been some discussion about tailoring these programs to fit workforce needs.

Could you pinpoint some key training programs, aside from those you have highlighted in your testimony, that are most in need of legislative action to reduce wasteful spending on mismanaged or duplicative initiatives?

Mr. LEWIS. Well, in terms of Department of Labor's programs, I think what is covered in my written testimony really covers the major programs. In the WIA program, we have recently looked at adult and dislocated worker program, which are major streams of money, and the Job Corps program. We have also looked at various discretionary grant programs under WIA. We see a common problem of not achieving results, and particularly investing money and training and then we place people in another job from what we trained them for.

As I was discussing in an earlier part of the testimony, what we have found in terms of ones that are more successful in placing

people in jobs that they train them for, had better information to begin with in terms of their local market, economy, relationships with employers. But we see a lot of grant agreements that don't have this information or it is not done as well. Nonetheless, those plans, and those grants have been approved. We don't see the appropriate information being measured on particularly placing people in a job you train them for. That is not one of the focuses of the program in terms of measurement, so, what you measure gets managed.

We also see a problem with the quality of data where results are overstated, particularly on this match placement issue. If you are overstating the results and masking the lack of performance, then, you are not as likely to improve that performance if you are reporting that you are already achieving a level of performance.

So I think those are the key things from our work that we see need to be addressed.

Mr. FLEISCHMAN. Thank you, Mr. Chairman. And I yield back. Incidentally, Mr. Chairman, my apologies. I was at a previous hearing. That is why I was delayed in my showing up here. Thank you.

Mr. KINGSTON [presiding]. Thank you.

Ms. Lee.

Ms. LEE. Yes, I would like to, Mr. Lewis, pursue the whole issue with regard of Job Corps specifically, because in my area, you know, the Job Corps Center at Treasure Island, they actually, well, do phenomenal work with their trainees, they train them for the jobs that exist in the Bay Area. And so I wanted to kind of find out just in terms of compliance, are you talking about all Job Corps centers, some of them, and what we need to do to make sure the Job Corps survives, because they are doing really a great job?

Mr. LEWIS. Well, I don't have an assessment, for each individual center, and certainly they are not all the same. So our results are, across the board what we see in general from the sampling of centers that we go out to in different years.

Job Corps, we do see probably a better rate of placing individuals in jobs they were training them for in that program compared to some other programs. And that is probably attributable to, more intense involvement with those individuals than you have in some other job training programs. But we still have a number of issues that we see across the board kind of no matter what sampling of centers we go to in terms of: safety issues on center; a lack of performance in some programs; and a lack of oversight by the Department where they have been out to the center, they have done reviews, and should have identified certain training programs within a center weren't performing and they are supposed to put in place certain corrective action plans with that center that are not happening. So we still believe there is a greater level of performance we could get out of Job Corps despite what level of performance it already has.

Ms. LEE. And are these contractor violations specifically or lack of understanding of what the requirements are?

Mr. LEWIS. That is certainly part of it. Part of it is contractors not following the rules or not clear on what they are or just simply, what is a better way to do this that, AOL is not sharing informa-

tion between centers, between contractors, which really falls back to the Department of Labor and the Employment and Training Administration and their oversight role of the entire program.

Ms. LEE. Okay. I am sorry if this question is redundant. Has anybody asked about the veterans, the services for veterans healthcare, assessing the needs of returning veterans?

Mr. LEWIS. Oh.

Ms. LEE. Could you, then, kind of let us know—

Mr. LEWIS. For healthcare or—

Ms. LEE [continuing]. What you are doing? Healthcare, uh-huh, as it relates to the veterans that are experiencing all of the challenges now that we recognize.

Mr. LEWIS. We don't have a role in terms of their healthcare. The Department does have a program that is designed to help transition them back into civilian employment. We have looked at that and found that is pretty much run by contractors. We found a number of issues with how that program was run. The Department has just recently done a major redesign of that, so we will be reevaluating that this year to see if that remains in our top management challenges for vets.

Ms. LEE. Well, again, learning some of the lessons from Job Corps, in terms of the training for veterans, are we making sure that they are being trained for the sectors of our industry that are hiring?

Mr. LEWIS. Again, we have looked at the training programs they do run for them as well, and we have similar issues that we have seen, whether it is Job Corps or the other WIA programs that we don't think there is enough focus by the States, by the Department on, are we doing the best job we can in terms of the types of training we are providing and that we are providing training that is going to lead to a job, or not unnecessarily providing training when that individual, whether they are a vet or anyone else that comes into a one-stop center could get a job—is going to get a job on their own or by other means without having additional training? Why invest in training.

Ms. LEE. Okay. I guess in closing, I have just a couple more seconds. I guess for the life of me, I have never—I had actually in the day ran a community mental health center that I founded, and we had then CETA trainees, and this was in the 1970s, and one of the requirements then was that the training would be specific for the professions that they were going to enter and that the jobs existed. We had to have what we called positive permanent placements.

I can't figure out why Department of Labor can't do that. I mean, we know what job—you have the sector analysis where the jobs are, so why can't they be matched with the training programs? I just can't understand that.

Mr. LEWIS. It is not a new issue.

Ms. LEE. No. We should have learned by now. Doesn't make any sense, but anyway. Okay, Mr. Chairman. Thank you very much, but we need to get to the bottom of this and try to figure that out.

Mr. KINGSTON. Yeah. I think we would like to know what we can do as a committee to get to that, because Ms. Lee, I don't know if you were in the room earlier when I was talking about the mismatch in Fresno, California, up the road from you where there

were jobs available, but the job training programs did not train for any of them.

Ms. LEE. Yeah. Mr. Chair, I think we should, because like I say, the 1970s? I mean, we need to figure this out. It doesn't seem like rocket science, but I hope this committee can really take a serious look at that this year. Thank you.

Mr. KINGSTON. Sure. I think, Mr. Lewis, if you could follow up with us on that.

Mr. LEWIS. I would be happy to.

[The information follows:]

The key elements of a successful job training grant program include picking the best service providers, making expectations clear to grantees, ensuring that success can be measured, providing active oversight, evaluating outcomes, and disseminating and replicating those strategies and programs that have been proven to be successful. While there may be other ways to improve grant performance, our audits over the years have found that the Department was not taking these basic, fundamental actions, or was not doing them as well as it could.

The Department needs to improve the grant writing, solicitation and award process by developing a process that ensures that grant agreements delineate clear, concise, and measureable objectives that can be used to measure the success of grant performance. For example, our 2010 audit of the Department's High Growth Job Training Initiative found that grant objectives were often not clear and as a result we could not determine whether some grantees in our sample delivered the performance they were funded to produce. The lack of clarity of the grant objectives called into question the rigor of the Department's review and assessment of the proposals, and the merit of its decisions to award the grants.

The Department needs to develop criteria for determining acceptable performance for grant programs that lack such criteria. Our 2011 audit of the WIA Adult and Dislocated Worker Program found that ETA is unable to report if the training services provided by these programs are achieving intended results and at what cost, and needs to develop performance measures for training outcomes. More recently, ETA has begun to emphasize to its grantees the importance of providing training that leads to "industry-recognized" credentials. Our 2012 audit of the Department's Green Jobs Program found that grantees reported "credentials" ranging from a certificate of completion for a one-day training course to a bachelor's degree. The range of credential types and their relationships to the participant securing employment makes it even more challenging for ETA to evaluate the value of these certifications in assessing the success of the Green Jobs or any job training program.

The Department also needs to monitor the financial and program performance of its grantees throughout the grant life cycle. When poor performance or other problems are identified, it needs to ensure grantees take timely corrective actions. Our 2009 audit of a WIA grantee questioned \$11.3 million of grantee expenditures. The Department had raised concerns regarding the grantee's financial management system during its oversight visits but failed to follow up on those concerns.

Finally, the Department needs to implement a process that captures grantee performance results for use in future grant investments. Our 2012 audit of the Department's performance evaluation process for discretionary grantees found that grantees' overall performance was not always evaluated and documented, and the Department could not demonstrate that final performance results were used in the pre-award phase for future grants.

Mr. KINGSTON. And I would also like to get back with the veterans program, that TAP, the Transition Assistance Program, we just want to know what reforms you recommend to make sure that that can be run better. And you can submit those for the record.

[The information follows:]

The Department has recently conducted pilots of its revamped Transition Assistance Program Employment Workshops. Components of the revised Employment Workshop include: translating military experience into equivalent civilian language; enhanced resume development; and increasing skills in interviewing techniques. The Department reported that 91 percent of participants believe the course improved their confidence in successfully planning for their transition.

The changes the Department has made to the Program are promising, but we believe the findings and recommendations from our 2010 audit remain applicable. Our audit found that the Department did not use performance goals and outcomes, as required by the Government Performance and Results Act, to evaluate program effectiveness to determine whether participants applied the skills learned to obtain meaningful employment. Instead, the Department referred to the Department of Defense's goal of providing TAP workshops to 85 percent of separating military personnel, and reported only the total number of TAP workshops conducted and participants served in its annual report to Congress. Furthermore, the Department did not retain the participant information needed to measure and report outcome goals. We recommended that the Department develop and implement procedures to report and document participant attendance, and retain participant information needed to measure and report outcomes goals.

Mr. LEWIS. Certainly.

Mr. KINGSTON. Mr. Alexander.

Mr. ALEXANDER. Yes, sir. Thank you. Mr. Lewis, how familiar are you with the acquisition management system in the Department of Labor?

Mr. LEWIS. In the Department? We have done a number of audits on procurement in the Department of Labor.

Mr. ALEXANDER. Okay. Well, it is my understanding that since 2008, the Department has been attempting to purchase a new acquisition management system to replace the procurement system, and after initially deciding to set aside this work for small businesses, the Department reversed that decision and subsequently awarded a \$20,000,000 contract to a large business for the implementation of a brand-new AMS, and this award was \$10,000,000 higher than the next fully qualified competitor's price and it was a small business.

So my question is, can you explain the decision to go with the contractor charging twice as much for negligible differences in the proposed solution?

Mr. LEWIS. Mr. Alexander, I can't explain that. We have not looked at the acquisition of their acquisition management system itself. That is not something I have looked at.

Mr. ALEXANDER. So you don't know who made the decision to set aside the proposal that a small business——

Mr. LEWIS. No, I do not.

Mr. ALEXANDER. Well, for the record, I would just like to ask you to check into this matter and let the——

Mr. LEWIS. Certainly.

Mr. ALEXANDER [continuing]. Committee—okay.

Mr. LEWIS. Certainly.

[The information follows:]

The decision to award Departmental contracts rests with the Department. Once this matter was raised at the March 19, 2013, hearing, in our independent audit

oversight role, we began to review procurement documentation and interview Department officials regarding this procurement action. We will provide the committee with any findings or recommendations we may have as a result of our review.

Mr. ALEXANDER. Thank you, sir.

Mr. KINGSTON. Mr. Fleischman.

Mr. FLEISCHMAN. Mr. Chairman, I am fine. I have asked my questions. Thank you, sir.

Mr. KINGSTON. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Inspector General Levinson, I have been concerned about reports coming from your office about the quality of care in nursing homes and skilled nursing facilities. Your February 2013 report found problems in surveyed SNFs with wound care, medication, management and inadequate discharge planning.

Even more disturbing were the July 2012 findings of inappropriate and overuse of anti-psychotics drugs in elderly nursing home patients.

What progress has been made in holding nursing homes accountable for unnecessary drug use, what steps is CMS taking to improve the State survey and certification process so SNFs that do not meet care and discharge planning requirements are held accountable, and has CMS established any incentive programs to promote nursing home and SNF compliance with quality and safety standards?

Mr. LEVINSON. Thank you, Ms. Roybal-Allard. All of these are relatively current reports. The antipsychotics report in which we found that nursing homes failed to comply with Federal regulations designed to prevent overmedication, giving patients anti-psychotic drugs in ways that violate Federal standards the skilled nursing facilities report in which we indicated that there were failures to meet care planning and discharge planning requirements for 37 percent of skilled nursing facilities; and, emergency preparedness, where there were gaps in nursing homes' plans and response during disasters are all recent reports.

To share with you, we do have ongoing work examining adverse events in nursing facilities. This study will report on the incidents, preventability, and costs to Medicare for patients experiencing an adverse event while receiving care at a skilled nursing facility and will describe factors contributing to the events such as problems in the transition from a hospital to a skilled nursing facility.

I summarize all of these reports because this is obviously a growing portfolio of our work, and in light of the demographics that indicate that this will continue to be a large and growing population, a significant industry, it is even more important that we devote resources to ensuring that there is the kind of quality of care that Congress, the taxpayers, that we all should expect for those who wind up in these kinds of facilities.

So we will be doing follow-up work, but as you indicated, this work has actually been published only in the last year, year and a half. We will continue to do follow-up work in really all of these areas.

Ms. ROYBAL-ALLARD. All right. On another subject, in 2010, the GAO issued findings from an investigation of the Head Start program, indicating that some centers had been found to be signing up ineligible children, perhaps deliberately.

Your semi-annual report indicates that your office has done some follow-up work to see what the Department had done to prevent these problems in the future. What did you find, and has HHS improved its monitoring and oversight of Head Start?

Mr. LEVINSON. Thank you. Actually, we have found that there has been a very encouraging, I would say, a strengthening of the preaward process for ACF. The preaward audits of applicants now has a far more established kind of routine and there is certainly progress that is being made with respect to the review of ACF grantees.

Ms. ROYBAL-ALLARD. Okay. Thank you.

Mr. KINGSTON. Does anybody have any more questions?

Mr. ALEXANDER. Mr. Chairman, if you don't mind.

Mr. KINGSTON. Mr. Alexander.

Mr. ALEXANDER. Just one for all of you. The Oversight and Government Reform Committee held a hearing a little earlier; this month, in fact. During that hearing, the Oversight Committee pointed out that in 2012, there were more than 16,000 open and unimplemented recommendations across agencies that came from the inspector generals, and these recommendations were largely identifying improvements in agency management, but more importantly, they help reduce costs, saving taxpayers a lot of money. According to the Oversight Committee, if these recommendations were implemented, it would save the taxpayers more than \$67 billion.

So what we would like is for each of you to at some point in the future provide to the committee what recommendations that you have made within your agencies.

And, finally, if you would tell us from start to finish, when you recognize a problem and you make a recommendation, the length of recognizing the problem and finding a solution to that recommendation or an implementation of that recommendation, can you give us an idea of what the time frame there might be?

Ms. TIGHE. I would be happy to.

[The information follows:]

The Office of Management and Budget A-50 Circular, *Audit Followup*, requires agencies to establish systems to assure the prompt and proper resolution and implementation of OIG audit recommendations. The Circular states, “Resolution shall be made within a maximum of six months after issuance of a final report...Corrective action should proceed as rapidly as possible.” The Circular provides definitions as follows:

- Audit Resolution – the point at which the audit organization and agency management or contracting officials agree on actions to be taken on reported findings and recommendations.
- Corrective Action – measures taken to implement resolved audit findings and recommendations.

The U.S. Department of Education tracks audit resolution and implementation of corrective actions related to OIG products in its Audit Accountability and Resolution Tracking System (AARTS). The Office of the Chief Financial Officer maintains this system, which includes input from OIG and responsible program officials. AARTS includes recommendation-level detail for all reports where the Department is directly responsible for implementing corrective action (internal audits). AARTS generates a resolution due date of 90 days from the report issuance date for OIG internal audits. The system includes less detailed information on the status of individual recommendations made to non-Federal entities, such as State educational agencies, local educational agencies, institutions of higher education, contractors, or other grantees (external audits.) Information we provided to the House Oversight and Government Reform Committee, as well as in response to a recent request from the Senate Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, focused only on internal audit reports—reports that include recommendations for which the Department is directly responsible for implementing corrective action.

From April 1, 2009, through April 17, 2013, OIG issued a total of 71 internal audit products that contained 564 recommendations. For those 564 recommendations, the data in AARTS shows that:

- 466 recommendations have been resolved, with all corrective actions completed.
  - 356, or about 76 percent, of these recommendations were resolved timely.
    - 393, or about 84 percent, of these recommendations were resolved within 6 months.
    - 16, or about 3 percent, were resolved within 12 months.
    - 22, or about 5 percent, were resolved within 24 months.
    - 35, or about 8 percent, were resolved in more than 24 months.
- 80 recommendations have been resolved, but corrective actions not yet implemented.
  - 63, or about 79 percent, of these recommendations were resolved timely.
    - 73, or about 91 percent, were resolved within 6 months.
    - 0 were resolved within 12 months.
    - 4, or about 5 percent, were resolved within 24 months.
    - 3, or about 4 percent, were resolved in more than 24 months

- 18 recommendations have not yet been resolved. Those 18 recommendations are categorized as follows:
  - 8 of the recommendations were included in audit products issued within the last six months (November 1, 2012, through April 17, 2013). These recommendations are not considered overdue for resolution.
  - 9 of the recommendations were included in audit products issued between 6 and 12 months ago (April 1, 2012, through November 1, 2012). These recommendations are considered overdue for resolution.
  - 1 of the recommendations was included in an audit product issued more than 12 months ago. This recommendation is considered overdue for resolution.

From October 1, 2007 through March 31, 2013, we issued 334 reports containing 1,841 recommendations to the Department.

Of the 1,841 recommendations issued, 1,260 have been closed. 230 were closed within 6 months of issuance, 611 within one year, 945 within 18 months, 1,020 within 2 years, and 240 took two years or longer to implement.

581 of the 1,841 recommendations issued since FY 2008 remained open as of March 31, 2013. 94 had been open for 6 months or less, 149 for one year or less, 224 for 18 months or less, 273 for 2 years or less, and 308 for 2 years or longer.

*Q. Provide what recommendations that you have made within your agencies. Tell us from start to finish, when you recognize a problem and you make a recommendation, the length of recognizing the problem and finding a solution to that recommendation or an implementation of that recommendation. Can you give us an idea of what the timeframe is?*

A. The Department of Health and Human Services (HHS) Office of Inspector General (OIG) annually publishes the Compendium of Unimplemented Recommendations,<sup>1</sup> which summarizes significant monetary and nonmonetary recommendations that, when implemented, would result in cost savings and/or improvements in program efficiency, effectiveness, and integrity.

Implementation generally requires one or more of three types of actions: legislative, regulatory, or administrative. Some issues involve more than one type of action. OIG relies on policy makers such as HHS and its operating and staff divisions, the Administration, Congress, and States to take the necessary steps to achieve optimal outcomes.

To ensure accountability in the implementation of OIG's recommendations after issuance of final reports, OIG's requests that the relevant Departmental Operating Division (OpDiv) provide a final management decision to OIG within 6 months of report issuance. Actions should generally be completed within 1 year of issuance of the final report, although some exceptions apply, such as actions requiring legislative change or actions against providers that are under appeal. For recommendations that the OpDiv concurred with or otherwise agreed to take action on, the OpDiv sends notification and documentation of final action to OIG. If the OpDiv does not complete all planned actions on a recommendation within one year, it must provide an Annual Status Update on the status of recommendations that remain unimplemented. From 1/1/2011 to present, OIG has made over 900 recommendations to HHS. More than 700 of those remain unimplemented and almost 200 of those have been implemented

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<sup>1</sup> Available online at: <https://oig.hhs.reports-and-publications/compendium/index.asp>

Mr. LEVINSON. Yes.

Mr. LEWIS. Yes.

Mr. ALEXANDER. Thank you.

Mr. KINGSTON. Well, thank you very much. This concludes the hearing. And we certainly appreciate your testimony. We look forward to the follow-up on some of these questions.

Mr. LEVINSON. Thank you.

Ms. TIGHE. Thank you.

Department of Labor, Health and Human Services and Education and Related Agencies  
Oversight Hearing: Top Management Challenges at the Departments of Labor, Health and  
Human Services and Education: Perspectives from the IGs

March 19, 2013  
Questions for the Record – Chairman Kingston

**Inspector General, U.S. Department of Health and Human Services**  
Questions for the Honorable Daniel R. Levinson  
Inspector General  
Department of Health and Human Services

**1. Do you agree that the Office of the Inspector General is obligated to investigate the use of federal funds by HHS officers, employees, and grantees to lobby state and local governments to change its laws and regulations, in violation of the Anti-Lobbying Act, 18 U.S.C. § 1913? If so, please describe the steps that the Office has undertaken to discharge this obligation.**

Under the Inspector General Act, the HHS Office of Inspector General (OIG) is authorized to investigate, audit, or evaluate, as appropriate, the expenditure of HHS funds by grantees, contractors, and other recipients. This would include the authority to investigate expenditure of HHS funds in violation of 18 U.S.C. § 1913, the “Anti-Lobbying Act” (§ 1913 or the Act). As discussed in detail in response to Question 2, below, there is some ambiguity as to whether § 1913 applies to non-Federal entities.

You have also asked whether OIG is obligated to investigate alleged violations of § 1913. OIG receives thousands more complaints each year than we can feasibly investigate. Too, our funding structure dictates that only a portion of our funding is available for investigations unrelated to Medicare and Medicaid. Within these constraints, OIG necessarily weighs the thousands of allegations to identify those we can undertake within available resources. Many considerations contribute to this decision, including: Does the allegation implicate a criminal law? Is there likelihood of prosecution? What is the financial impact on HHS’s programs? Are there potential safety issues or harm to patients or beneficiaries? Are there other available options for addressing the allegation (e.g., an audit or systemic evaluation, referral to management officials or to another law enforcement entity)?

**2. For purposes of conducting investigations into violations of the Anti-Lobbying Act, do you believe that the Act prohibits HHS grantees from expending grant funds to urge state and local governments to adopt new laws and regulations? If not, why not?**

The application of the current provisions of the Act to non-Federal entities has not been settled by a court and some ambiguity remains. The Act prohibits the use of appropriated funds “to influence in any manner a Member of Congress, a jurisdiction, or an official of any government” with respect to “any legislation, law, ratification, policy or

appropriation.” Before 2002, the statute also provided that “[w]hoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section,” is subject to criminal fines and imprisonment. Relying on this language, a court concluded in 1982 that the Act applied only to Federal officers and employees. *Grassley v. Legal Services Corp.*, 535 F. Supp. 818, 826 n.6 (D.C. Iowa 1982). In 2002, § 1913 was amended to replace the criminal sanction with civil monetary penalties; no court has yet interpreted whether these new penalties apply to non-Federal entities.

We believe that there is some uncertainty here. The provision remains in the Chapter of Title 18 of the U.S. Code that is applicable to “Public Officers and Employees.” Of more significance, the 2002 amendments left in place an exception in the Act that permits Federal employees only to engage in routine communications with Congress without running afoul of lobbying prohibitions. There is no exception that would cover identical communications between State executive officials and state legislatures. Arguably, this indicates that the 2002 amendments were not intended to broaden the Act beyond Federal employees. Also, we understand HHS is of the view that § 1913 continues to apply only to executive agencies, and was not affirmatively extended to grantees, contractors, or other recipients of funds from agencies. Thus, agency notices to grantees concerning lobbying do not advise them that § 1913 is or may be applicable to their expenditures of grant funds.

Certainly, OIG is not the arbiter of the scope of a Federal enforcement statute; ultimately, the reach of the Anti-Lobbying Act must be decided by the Department of Justice (in fact, the Act gives the Attorney General discretion to exempt “any communication whose prohibition . . . might, in the opinion of the Attorney General, violate the Constitution...” ) and the courts. In the meanwhile, if an OIG investigation presents the issue of application of § 1913 to a State or grantee, we will present the matter to the Department of Justice.

Regardless of whether the Act is held to apply to non-Federal entities, grantees would still be prohibited from lobbying with Federal funds in accordance with restrictions in appropriations acts and OMB cost principles.

**3. Has the Office of Inspector General developed guidance for its investigatory personnel on the meaning of the Anti-Lobbying Act? If so, please describe that guidance and provide a copy to the Committee?**

No, OIG has not issued guidance to its agents on application of § 1913.

**4. If an HHS grantee had spent HHS grant funds to hire personnel and prepare materials for advocating that a state or local government impose a tax on a consumer product, would such expenditures violate the Anti-Lobbying Act? Would the expenditure separately violate Section 503 of the Consolidated Appropriations Act of 2012, Pub. L. No. 112-74 § 503?**

As discussed in response to Question 2, serious questions remain as to the application of the Act to non-Federal entities. If the Act does apply under such circumstances, then grantees lobbying for the imposition of taxes on consumer products by a State or local government would appear to fall within the meaning of the Act. These are fact specific determinations, however, and we are mindful that not all statements or communications about public policy issues constitute “lobbying” and “influencing legislation.” We also note that even if OIG were to conclude that a possible violation of the Act had occurred, the matter would only be pursued if the Department of Justice agreed with our conclusion that the Act had been violated and determined to initiate action against the grantee. (See the GAO-04-261SP, Appropriations Law (“GAO Redbook”), Vol. I, p. 4-195, n.114: “A conclusion by the Justice Department that section 1913 was violated would not have automatically resulted in a prosecution. The Attorney General has what is known as ‘prosecutorial discretion,’ wherein a great many factors influence the decision whether to prosecute”).

You have also asked whether Federal grant expenditures incurred by a grantee for advocating for a tax on a consumer product would violate Section 503, Title V, Division F of the Consolidated Appropriations Act, 2012. As mentioned above, these are fact-specific determinations, but based on this brief description, OIG would be authorized to audit the expenditures. If we determined that the specific costs were not allowable, we would recommend that HHS recover the improperly used grant funds (See GAO/HRD-93-100, B-248812.2 (May 4, 1993).

**5. CDC grantees across the country appear to remain unaware that using federal funds to carry out lobbying campaigns is unlawful. For example, the State of Minnesota advised its Community Transformation Grant (CTG) grantees that their CTG funds could be used to make changes to state ordinances. A Q & A document available on the State’s website reads “...a CTG strategy could include updating the ordinance to increase the price of tobacco retail licenses to pay for the program...” Houston/Harris County, Texas encouraged their CTG sub-grantees to “limit density of fast food outlets and other outlets featuring high calorie, high sodium, and low nutrition foods” through “zoning: regulate the number of fast food restaurants in a given area”. These and other examples of lobbying campaigns continue to be funded by CDC through the Community Transformation Grant (CTG) program. As part of your investigation into lobbying activities carried out with CDC funds, are you specifically looking into activities carried out by CTG grantees? What sources of information/documentation are you utilizing to identify potential violations of anti-lobbying restrictions by CDC grantees?**

OIG is not currently investigating lobbying activities by specific CDC grantees. There is, however, other ongoing work. We are completing our fieldwork on an evaluation regarding the use of HHS grant funds for lobbying activities; the study explores the extent to which HHS agencies have mechanisms in place to identify and address lobbying violations. We anticipate that the final report will be issued by the end of the year. In addition, our work plan contains a proposed audit regarding CDC grantees and their use of funds for authorized purposes, including the lobbying restrictions. As you likely

know, the Government Accountability Office will also soon release a report on CDC's lobbying policies and monitoring specifically addressing Communities Putting Prevention to Work (CPPW) awards.

To identify potential violations of CDC grantees, we look at the applicable statutory law, appropriations, regulations, Federal cost principles, OMB Circulars, Grants Policy Statements, Federal court and GAO decisions, and any official interpretive source of the above (e.g., legislative history, Federal Register notices, Office of Legal Counsel opinions).

With respect to the two instances of possible lobbying you have identified, we request that you please forward information you have with respect to these allegations for our review. It would be helpful to know the source documentation for the above quotes, the grant year of the awards, and any other information pertinent to the two allegations.

**6. In the OIG work plan it notes it will review CDC—Grantees' Use of Funds (New) to determine the allow ability of costs funded with FY 2012 HHS appropriations and claimed by Centers for Disease Control and Prevention (CDC) grantees using the funds to reduce chronic disease and promote healthy lifestyles. Grantees receiving such funds must ensure that the funds are used for authorized purposes, including whether funds were spent on lobbying, and in compliance with the purposes outlined in Federal laws, Office of Management and Budget (OMB) circulars, and other directives. (OAS; W-00-13-59014; expected issue date: FY 2013; new start). Given the annual funds are new each year grantees and contractors are subject to the annual availability of funds and corresponding restriction. Please explain why the most current restriction would only apply to new funds and not to any organization or individual receiving new funds in the current year, even if it is only continuation funding. It seems to follow that if Congress makes an action legal or illegal that the law would apply equally to everyone getting funding as compared to making two classes of awardees.**

This proposed audit would examine certain expenditures made by grantees using FY 2012 appropriated funds awarded by CDC. We read the restrictions in that Act as applying only to funds specifically appropriated or incorporated there. Thus, the scope of this audit could include CDC grantees receiving continuation grants, as long as the funds are FY 2012 funds. The purpose of this review is to examine whether grantees are complying with the lobbying restrictions contained in the FY 2012 HHS appropriation.

**7. In the hearing you noted the decrease in staff. To help us understand the details of the reduced staffing issues better please provide the following information.**

-- A table that shows the various annual funding sources and for each the number of FTE supported per year for each specific funding source.

-- The IG mentioned noted several sources are drying up or reducing. Therefore, include in the table all specific funding sources regardless of mandatory, discretionary, or other.

-- Identify for the past ten fiscal years up through fiscal year 2013 at the CR level with the Sequester and the FY 2014 budget request details for this table.

Attached are the tables showing 1) the various annual funding sources and for each, the number of FTEs supported per year for each specific funding source; and, 2) all specific funding sources regardless of mandatory, discretionary, or other. We also identified, for the past 10 fiscal years up through fiscal year 2013 at the CR level with the Sequester and the FY 2014 budget request, details for this table.

**8. A number of funding restrictions exist in various laws, to include this committee's annual appropriations act. For example, for years our bill has carried a restriction to prohibit the use of taxpayer funds on lobbying activities.**

- **Using the lobbying restriction as an example, please explain the process each of your agencies use to monitor funding restrictions, changes, and how your work plan and audit activities are refined to ensure that these restrictions are enforced and that no violations occur?**
- **If you were to identify a funding violation, what does your agency do, and what type of follow-up is conducted to ensure the reporting of anti-deficiency act violations are followed by the offending agency?**

Generally, OIG understands that HHS's Office of Grants and Acquisition Policy and Accountability (OGAPA) reviews annual legislation for provisions and funding restrictions that apply to grants and contracts. OGAPA produces and circulates policy guidance to the various operating and staff divisions. Internally, OIG also reviews legislation to identify restrictions related to its own appropriation as well as directives for OIG work.

A recent example of our work with HHS on a new reporting requirement is the requirement contained in the FY 2013 full year continuing resolution that mandates agencies report conference spending to OIG. HHS has consulted with OIG on a policy statement to be sent to its operating and staff divisions regarding required reporting of conference spending. OIG has established an email address and a protocol for reviewing reports to identify potential areas for future audit work.

General or overarching restrictions such as the restrictions on lobbying would be considered in most of the grant work that we perform. In each grant audit, OIG generally would test to determine whether the grant was awarded for an appropriate purpose and in accordance with appropriations laws and funding restrictions. In addition, grant expenditures are examined to determine whether the grant recipient spent the money for allowable costs. If the grant review determined that the grant was awarded for an improper purpose, OIG would recommend an investigation to determine whether the award violated the Antideficiency Act, remedial action, and reporting, as necessary. If the grant was awarded for a proper purpose but the grant recipient used funds for unallowable costs, OIG would recommend that HHS recover the funds spent on unallowable items or services.

**9. Based on your observations, what are the top five actions HHS can take or change, which would improve the Department's overall efficiency and effectiveness?**

The top five actions HHS can take or change, which would improve HHS's overall efficiency and effectiveness are as follows:

**1. Effectively Administer Grants and Contracts**

HHS is the largest Federal grant-maker and the third largest Federal contracting agency. Effective management of these outlays must be a priority. OIG recommends improved HHS oversight of grantees, particularly with respect to deficiencies we have identified in grantees' internal controls, financial stability, organizational structures, procurement and property management policies, and personnel policies and procedures. OIG has also recommended improvements to HHS's internal oversight of its contract funding to avoid Antideficiency Act violations, based on problems we identified with certain contracts at the National Institutes of Health (NIH). OIG is assessing the effectiveness of remedial actions taken by HHS to properly fund its contracts and prevent future violations of the Antideficiency Act.

**2. Protect Security and Integrity of Data, Systems, and Technology**

As reliance on information technology and data grows, so do the challenges and importance of ensuring the security and integrity of systems and data. We recommend that HHS address the deficiencies in information security controls, which we have identified through our annual audits. These include deficiencies in computer inventory management; logical access controls (e.g., weak passwords); outdated software; and patch management that could allow unauthorized access to HHS systems and sensitive data. In addition to correcting specific weaknesses, we also recommend a greater management focus on strengthening information security across HHS.

**3. Reduce and Report Improper Payments**

HHS should make every reasonable effort to ensure that vital Federal dollars are spent for their intended purposes and in accordance with program requirements. In FY 2012, HHS reported \$64.8 billion in improper payments across eight programs deemed as high risk by the OMB. Three of these were relevant to the focus of this Committee's hearing on March 19, 2013 – Foster Care, Head Start, and the Child Care Development Fund (CCDF) – and accounted for about \$0.5 billion of those improper payments.

**4. Prevent, Prepare for, and Respond to Public Health Emergencies**

HHS is integral to preventing, preparing for, and responding to public health emergencies resulting from a wide spectrum of natural and man-made disasters. OIG recommends that HHS continue its focus on fulfilling this responsibility effectively and that HHS implement the specific management improvements that we have identified. In recent years, OIG has recommended management improvements in planning, coordination, and communication during pandemic influenza and hurricanes. Most recently, OIG reviewed local public health

preparedness for radiological and nuclear incidents and recommended that CDC enhance its guidance and coordination with other entities involved in preparedness and response.

## 5. Effectively Manage Public Health Programs

Effective oversight and management of public health resources is essential to ensure that vulnerable populations receive the full benefit of public health programs. OIG recommends increased oversight of certain public health programs to meet their missions effectively. For example, we recommended that CDC take several actions, including working with State health officials and medical organizations and changing its vaccine ordering and inventory systems, to address problems we identified with providers inappropriately storing vaccines. CDC agreed with and is implementing our recommendations. We have also recommended that the Health Resources and Services Administration (HRSA) strengthen its oversight of community health centers' provision of required primary care services. In addition, we have recommended numerous actions to HRSA to strengthen oversight of the 340B Drug Discount Program, including improving the accuracy and reliability of program data.

## **10. In your view, is HHS doing enough to eliminate waste, fraud, abuse, or duplication? And, what are the top few ways the each Department can eliminate such waste or duplication?**

OIG works with our HHS colleagues in many ways to fight fraud, waste, and abuse. For example, through the HEAT initiative we have collaborated closely with the Centers for Medicare & Medicaid Services (CMS) to prevent, identify, and remediate health care fraud, especially in fraud "hot spots." We are also working with HHS to better protect departmental programs from grant and contract fraud and waste, including by conducting training for grants officers across HHS. We make hundreds of recommendations to HHS each year about specific actions the programs should take to reduce fraud, waste, and abuse and increase efficiency and effectiveness. HHS has implemented many of these recommendations.

Of course, more can always be done to eliminate waste, fraud and abuse. Many OIG recommendations remain unimplemented, and we continue to follow up with HHS on those issues. Further, new OIG work uncovers new or evolving vulnerabilities to fraud, waste, and abuse. Please see our response to Question 9 for more information on the top ways that we think HHS can reduce fraud, waste, and abuse.

## **11. What can Congress do to help improve the rate and pace of HHS adopting recommendations from the various reviews conducted by your office?**

We appreciate Congress's support for OIG's recommendations. Congress has used numerous tools to advance our shared goals of reducing fraud, waste, and abuse and improving the efficiency and effectiveness of HHS programs. Oversight hearings such as this one and other congressional oversight activities are great examples of how Congress can bring attention to both problems and solutions and help ensure transparency and accountability. Sometimes OIG identifies the need for legislative changes to program

requirements or new authorities to address program vulnerabilities, and we appreciate Congress considering these legislative recommendations as well.

**12. In July 2011, Congress was notified by HHS of a \$1.4 billion Anti-deficiency Act (ADA) violation dating back to the year 2002. Many of these violations related to the application of general appropriations law and accepted contracting principles. I understand HHS is working on another ADA violation related to title 42 hiring authority restrictions. Given all the financial audits that your agency performs, how was this not noticed for so many years? What lessons learned has your agency developed to identify such violations in the future and how have you incorporated these lessons into improved fiscal oversight?**

The Antideficiency Act violation reported by HHS in July 2011 identified a systemic problem with the basic understanding of appropriations particularly as those provisions apply to multi-year or multiple year contracts. HHS admitted that for years it had an errant policy in place. However, HHS amended its policy to address the problematic interpretation of appropriations law. As late as 2008, HHS officials discovered that certain divisions of HHS had not implemented the changed policy. OIG believes that its targeted work in reviewing contracts and grants, not the annual financial statement audit, will be the key to identifying individual as well as systemic appropriations violations in the future.

The annual audit of HHS consolidated financial statements is an audit in which Antideficiency Act violations are generally reported by the Department. The audit's objective is a broad one: to issue an opinion on whether the amounts and balances reported in the HHS consolidated financial statements are fairly presented. Thus, they may not initially detect violations of the Antideficiency Act. However, OMB Bulletin No. 07-04, Audit Requirements of Federal Financial Statements, requires Federal financial statement audits to include a report on compliance with laws and other matters. In this report on compliance, auditors report on the agency's failure to comply with laws and regulations, including the Antideficiency Act. Ernst & Young, LLP, the independent public accounting firm that audits the annual HHS consolidated financial statements under contract with the HHS Office of Inspector General, obtains a legal representation letter from the HHS Office of the General Counsel (OGC) in order to comply with the audit standards and its contractual requirements. The auditors do perform tests using this letter to determine the agency's compliance with laws and regulations, including budgetary and appropriations provisions.

Nonetheless, over the past several years, the audit of HHS consolidated financial statements has covered the following issues related to compliance with financial provisions, including the Antideficiency Act:

- In FY 2012, the legal representation letters stated that OGC was continuing its review to determine if two circumstances constituted violations of the Antideficiency Act. The first potential violation related to scientists and researchers at the CDC, the Food and Drug Administration and the National

Institutes of Health being paid rates that exceed those allowable under the Title 42 hiring authority. The second potential violation related to a change in statute that required NIH to use grants, rather than contracts to administer and allocate funds for Diabetes research.

- In the FY 2012 agency financial report for HHS, the Secretary disclosed an Antideficiency Act violation that occurred in April 2010 when the Indian Health Service made obligations that exceeded the amounts appropriated for Contract Support Cost associated with self-determination contracts, grants, self-governance compacts, or annual funding agreements. This violation was also reported as a part the report on compliance and other matters in the FY 2012 audit of HHS consolidated financial statements. This violation was reported to Congress and the President on September 12, 2012.
- In the FY 2011 agency financial report for HHS, the Secretary disclosed a prior report of multiple violations of the Antideficiency Act. These reports were related to a systemic problem with funding contracts at HHS. The violations were reported to Congress and the President on July 14, 2011.

OIG also conducts targeted audits of suspected Antideficiency Act violations or contract and grants that may reveal such violations. For example, OIG has been engaged in audits of 21 contracts awarded by NIH that were identified during the investigation that led to the Secretary's 2011 Antideficiency Act violation report. In those audits, we examined whether those contracts were funded in accordance with Federal law, including whether proper fiscal year funds were obligated and outlaid for contract activities. Where violations or potential violations were discovered, OIG reported its findings and recommended that HHS make adjustments to correct the improper obligations and expenditures and to determine the actual amount of deficiency, if any. Upon the completion of this series of audits, OIG will compile and analyze the findings of the individual report and assess the need for additional corrective actions beyond those already taken by the Department. In 2010, OIG also completed a series of audits of five CDC contracts in which we discovered that CDC did not always comply with appropriations laws in contract funding.

In addition, in FY 2013, OIG has two Antideficiency Act audits in our work plan. The first audit is of the contracts awarded by the HHS Program Support Center to determine whether HHS has strengthened its fiscal oversight, complied with Federal appropriations law, and implemented the procedures it agreed to put in place when the violations of Antideficiency Act were reported in July 2011. The entrance conference for this audit was held in April 2013. The second audit is of the Indian Health Service and covers whether IHS violated the Antideficiency Act in its obligations for contracted health services. Any findings stemming from these audits will be handled in the same way that the NIH audits were handled. HHS is responsible for the investigation and reporting of Antideficiency Act violations. Our audit reports will focus on identifying potential violations and recommending investigation, reporting, and remedial action.

- 13. To elaborate on the discussion in the hearing. For two decades, bipartisan majorities on this committee have supported a provision to prevent wasteful studies with taxpayer dollars on gun control. The very foundation of the provision is to prevent tax payer funds from painting legitimate gun ownership as a public health hazard. Recently, the President directed HHS, more specifically CDC, to provide \$10 million to research the quote “causes and prevention of gun violence” end quote. Please describe what you agency is doing to monitor this apparent violations and explain how you can take actions to halt on-going violations of this nature.**

Your question turns on a legal interpretation of the bar on using appropriated funds to “advocate or promote gun control.” The White House has reached the conclusion that the prohibition on gun control advocacy and promotion does not include the conduct of scientific research into the public health consequences of gun violence. In accordance with this reading of the law, by memorandum of January 16, 2013, the President directed CDC to “conduct or sponsor research into the causes of gun violence and the ways to prevent it,” beginning with those issues with the greatest potential impact on public health. We do not believe that OIG has the ability to countermand an order of the President. Further, an audit could do no more than verify that funds were spent on the disputed research and would not resolve the underlying legal question. Where, as here, there is a disagreement in legal interpretation between the Executive and Legislative Branches, it seems that the question of the proper reach of a statute must be resolved by a Federal court.

#### **Questions for the Record Congresswoman from Barbara Lee**

##### **Question for the Record: Health and Human Services IG**

You cite in your testimony “IG found inconsistencies in the CDC oversight of grants authorized under the President’s Emergency Plan for AIDS Relief (PEPFAR), and most of the awards files lacked evidence to demonstrate that CDC performed required monitoring.”

**Question 1: PEPFAR is transitioning from an emergency response to one of country ownership. What kinds of support mechanisms or indicators do you think are needed so that we can continue to achieve the remarkable progress and protect the gains that have been made?**

In 2013, we issued a series of reports that demonstrated further improvements are needed at CDC for monitoring PEPAR funds (see attachment 1 for a listing of FY 2013 reports). Our work included audits at selected CDC local offices abroad and PEPFAR recipient organizations in Namibia, South Africa, and Vietnam. Our findings have identified opportunities to improve compliance and monitoring of recipient organizations to ensure proper management of PEPFAR funds and that program goals are met in accordance with award requirements. From our audits, we found that CDC offices did not always monitor the use of PEPFAR funds in accordance with HHS and other Federal requirements. Many offices did not have the required documents or evidence to show that CDC had performed monitoring of its cooperative agreements. Generally, CDC offices did not have policies and procedures to help ensure consistent monitoring of its

recipient organizations or to ensure that PEPFAR funds were used properly. Based on the results of our audits, we recommended that CDC implement standard operating procedures for monitoring recipient's use of PEPFAR funds. CDC has taken steps to draft standard operating procedures and has established a multi-disciplinary team from CDC headquarters to conduct reviews at its offices in various countries. These are important first steps for effective monitoring of PEPFAR funds.

**Question 2: What more can we be doing to ensure PEPFAR recipient countries have what they need during this transition process?**

Continued congressional oversight hearings—such as the hearing held on March 19th—raise the awareness of grant management weaknesses, identify resources needed to address these weaknesses, and ultimately foster better stewardship of federal funds. Further, CDC should help to ensure that funds are awarded to recipients with adequate internal control and accounting systems. Most of our recipient reviews have found that grantees lacked supporting documentation for expenditures of federal funds, inaccurately reported costs on financial status reports, and submitted progress reports that were not timely or accurate. Our recommendations aim to improve recipients' progress and financial reporting and to establish formal policies and procedures for carrying out grant administration activities.

**Questions for the Record to all Inspector Generals**

**Question 1: As you all know, for a number of fiscal years, we have been operating under continuous Continuing Resolutions. CR after CR, this Committee has slashed the budgets of important programs within the Departments of Labor, Health and Human Services, and Education, over my many objections. We have increasingly been asking each Department to do more with less and less, and in fact now federal workers are facing furloughs due to the effects of sequestration.**

**Can you describe the impact, if any these budgetary constraints have had on the administration of the programs described in your testimony?**

While OIG has not conducted an audit or evaluation on this specific topic, HHS faces many significant management and performance challenges while operating in an environment of continuing resolutions, sequestration and the risk of furloughs. Recent vulnerabilities and management challenges identified in the 2012 Top Management & Performance Challenges include the implementation of the Affordable Care Act (ACA); identifying and reducing improper payments; and grants management and the administration of contract funds (see 2012 Top Management & Performance Challenges for a complete list).

**Question 2: Please describe the impact sequestration will have on your office's ability to carry out auditing responsibilities, if any.**

Sequestration has had a significant impact on HHS OIG's ability to oversee HHS's programs. In FY 2013, Sequestration reduced OIG's budget by approximately \$15 million and exacerbated its existing funding situation. Over the past two years, OIG has significantly reduced costs due to expiring funding. Under current funding levels OIG must reduce its workforce by approximately 400 staff, or 20%, which takes OIG down from 1,800 to 1,400 employees. This will result in

fewer employees to investigate fraud and provide recommendations for improving HHS operations, in a time when new programs are coming on line, and enrollment is expanding. The enactment of the FY 2014 President's Budget will address OIG's funding shortfall. The FY 2014 President's Budget will support OIG's program integrity efforts by: fully funding Medicare Fraud Strike Force efforts in nine existing cities and related program integrity efforts; expanding capacity to oversee the implementation and operation of the health care Marketplaces and other ACA programs; and conducting audits and evaluations that provide recommendations and solutions to HHS and Congress for addressing program and operational vulnerabilities.

**Question 3: We know there continues to be issues of fraud, including cases of identity theft and Medicare fraud. Are your offices adequately trained and prepared to get ahead of what are sometimes very organized fraudulent activities?**

OIG has seen an increasing volume of organized fraudulent activity in healthcare in recent years. These activities range from the recruitment of patient co-conspirators by street criminals to the involvement of organized criminal syndicates. Many of these cases involve 100% fraud, where the only intent of the criminal is to defraud Medicare and/or Medicaid, and often involves medical identity theft. Certainly, OIG could benefit from additional staffing and financial resources to combat this growing problem. However, we are well-prepared to address organized fraudulent activity in healthcare. OIG utilizes state-of-the-art data analytic techniques to detect and investigate this fraud, and in May 2009, partnered with the U.S. Department of Justice (DOJ) to create the Health Care Fraud Prevention and Enforcement Action Team (HEAT). HEAT has created multi-agency Medicare Strike Force teams of federal, state and local investigators who utilize high-level data analytics with an increased focus on community policing to effectively and efficiently detect, investigate and prosecute organized criminal activity and other types of healthcare fraud. OIG is seen as an industry leader in addressing this type of fraud and provides both national and international training on the topic of organized criminal activity in healthcare.

**Attachment 1**

**HHS Office of Inspector General FY 2013 PEPFAR Reports**

- The Centers for Disease Control and Prevention's Namibia Office Did Not Always Properly Monitor Recipients' Use of the President's Emergency Plan for AIDS Relief Funds (A-04-12-04020);
- Centers for Disease Control and Prevention's South Africa office's monitoring of recipients' use of the President's Emergency Plan for AIDS Relief Funds (A-04-12-04022);
- Review of CDC's Oversight of PEPFAR Funds for FY 09 – Vietnam (A-04-12-04023);
- Review of Namibia Ministry of Health & Social Services FY 09 PEPFAR Cooperative Agreement 5UGP5001094-2 (A-04-12-04019);
- The Southern African Catholic Bishops' Conference AIDS Office Generally Managed President's Emergency Plan for AIDS Relief Funds and Met Program Goals in Accordance With Award Requirements (A-05-12-00023);
- National Health Laboratory Service Did Not Always Manage President's Emergency Plan for AIDS Relief Funds or Meet Program Goals in Accordance With Award Requirements (A-05-12-00024);

- Aurum Institute for Health Research Did Not Always Manage President's Emergency Plan for AIDS Relief Funds or Meet Program Goals in Accordance With Award Requirements (A-05-12-00021);
- The South African National Department of Health Did Not Always Manage President's Emergency Plan for AIDS Relief Funds or Meet Program Goals in Accordance With Award Requirements (A-05-12-00022)

**Inspector General, U.S. Department of Labor**  
**Questions for the Honorable Elliot P. Lewis**  
**Assistant Inspector General, Office of Audit**

**Congresswoman Barbara Lee – Questions for the Record**

**Question for the Record: Department of Labor Acting IG**

**Job Corps**

Mr. Lewis, the Employment and Training Administration (ETA) is, as mentioned in your testimony, taking actions to bring the Job Corps program into budgetary compliance.

**Question 1: Are the challenges outlined with regard to this program a result of contractor violations, lack of oversight at the ETA, or a need for more guidance to contractors and the ETA?**

The root causes of the budget overrun were inadequate policy guidance and a lack of ETA oversight over its appropriated budget levels and their expenditures.

**Question 2: With the understanding that your audit is ongoing, what are some of the steps that can be taken to ensure adequate oversight of the Job Corps program?**

We have completed our audit and issued our report on May 31, 2013. We found that a number of programmatic, budgetary, and managerial factors caused Job Corps' PY 2011 cost overruns. Job Corps could not demonstrate that it (1) established a sound budget or spending plan, (2) reconciled all Job Corps financial systems to ensure financial data was complete and accurate, and (3) routinely monitored budgeted costs to actual costs.

ETA reported that it implemented a number of oversight and cost-savings measures once it became aware of Job Corps' PY 2011 funding problems. Among these is a management oversight process to provide advice on short term and long-term planning and established the Office of Financial Administration (OFA), which was tasked with strengthening and coordinating existing internal controls and with creating new controls to monitor costs. OFA, in coordination with ETA's Office of Contracts Management, was also tasked with ensuring that Job Corps more timely and accurately accounted for costs incurred in its cost-reimbursement contracts.

During the first five months of PY 2012, Job Corps, ETA, OCFO, and other DOL offices held frequent meetings to address PY 2012 potential cost overruns and other matters.

However, while this oversight structure was necessary to resolve the immediate Job Corps funding issues, the Department, at the time of the audit, did not have established criteria and policy requiring notification of cost overruns to appropriate management, including to the agency head and the Chief Financial Officer, to allow senior management maximum flexibility and options to address them. We alerted the Department that these control weaknesses, if not adequately addressed, could result in the reoccurrence of cost overruns, which would in turn require actions such as another moratorium on student enrollments.

We made six overall recommendations for ETA to take 13 specific corrective actions to improve internal controls over Job Corps funds and expenditures, including to: establish necessary criteria and thresholds for detecting potential financial and program risks to be routinely documented and communicated, conduct a formal assessment of human capital resources needed for processes and internal controls over Job Corps funds, periodically review and update the cost model policy to incorporate the use of more current guidance and assumptions, and formally reconcile data on a routine basis between Job Corps-related systems.

ETA agreed with the recommendations. In response to our follow-up efforts, ETA has reported completing some corrective actions and has other actions underway. Significant actions are summarized below.

- ETA is testing a process for identifying and communicating financial risk in the Job Corps program. ETA is currently evaluating the draft processes it has developed for potential changes before they finalize them as Standard Operating Procedures.
- ETA reported that it has completed an effort to standardize Regional Office procedures and define roles and responsibilities among the Office of Job Corps, the Office of Contract Management, and the Office of Financial Administration.
- ETA has developed and is using draft reports to help it monitor budgeted contract costs to actual contract costs at the National Office using established variance thresholds. These reports are to be finalized after ETA obtains feedback from users and makes any needed improvements.
- To improve its Independent Government Cost Estimates for proposed contract actions, ETA is doing further research on how it can improve its cost model tool. These research efforts have included meeting with experts from the Government Accountability Office (GAO) and using a GAO audit tool to evaluate its current Independent Government Cost Estimate methods.
- To better ensure the completeness and accuracy of Job Corps' financial information and minimize the need for manual reconciliations, ETA has issued contracts to build an automated interface between the various financial systems that track Job Corps' financial data.

The OIG will continue to follow up on ETA's efforts to implement its planned corrective actions to address the programmatic, budgetary, and managerial factors that caused Job Corps' PY 2011 and PY 2012 cost overruns.

### **Veterans Employment and Training Service Programs**

**Your audits reveal that Department of Labor staff must better assess the needs of veterans served in the Veteran's Employment and Training Service Programs. We know that more veterans will return from Afghanistan, many of which will experience mental health challenges and live with post traumatic stress disorder and traumatic brain injuries—conditions that can greatly impact an individual's ability to maintain gainful employment.**

**Are these programs adequately able to meet the needs of veterans who will soon return home?**

The OIG has not studied the Department's capability to address the needs of veterans who will soon return home. DOL's Veterans' Employment and Training Service estimates that the U.S. military discharges about 270,000 service members annually. The public workforce system overall and VETS specifically will be challenged to meet the employment needs of this expected influx of veterans. DOL projects that approximately 90 percent of future Jobs for Veterans State Grant (JVSG) participants will require intensive services, such as career planning and counseling, skill assessment, referral to training and support services, and post-transition follow-up, to overcome significant barriers to employment. Given these projections, VETS will be challenged to meet this increased demand for services. Prior audits have found that JVSG staff needed to do a better job of accurately assessing veterans' barriers to employment and documenting the services provided to help them overcome those barriers.

**If not, could you explain what steps may be taken to ensure that they are?**

While we have not looked at the Department's capability as a whole to address the emerging employment assistance needs of service members who are transferring from active duty to civilian life, but are currently not receiving the services they need, at a minimum VETS needs to ensure it provides adequate policy guidance and oversight to the State Workforce Agencies administering the JVSG program. We have been informed that VETS has started working with State Workforce Agencies to convert Local Veterans Employment Representatives to Disabled Veterans Outreach Program (DVOP) specialists in response to the increased demand for intensive services. VETS has also directed states to provide more oversight of DVOP services to ensure that veterans with significant barriers to employment are getting the assistance they need. In addition, VETS has requested an increase of 500 outreach specialists in FY 2014. However, as our audit of the DVOP program in Texas illustrated, VETS needs to closely monitor the program to ensure states can demonstrate that the program is operating as intended. VETS must also evaluate the effectiveness of the DVOP program and use evaluation results to modify and improve it.

**Questions for the Record to all Inspector Generals**

**Question 1: As you all know, for a number of fiscal years, we have been operating under continuous Continuing Resolutions. CR after CR, this Committee has slashed the budgets of important programs within the Departments of Labor, Health and Human Services, and Education, over my many objections. We have increasingly been asking each Department to do more with less and less, and in fact now federal workers are facing furloughs due to the effects of sequestration.**

**Can you describe the impact, if any, these budgetary constraints have had on the administration of the programs described in your testimony?**

The OIG has not conducted audit work to determine the impact of Continuing Resolutions or sequestration on the administration of DOL programs. As such, the Department would be in a better position to provide information that would be responsive to this question.

**Question 2: Please describe the impact sequestration will have on your offices' ability to carry out auditing responsibilities, if any.**

As the committee is aware, the OIG provides oversight of DOL programs that are essential to American workers and retirees, including the multi-billion dollar Unemployment Insurance program, worker safety and health programs, worker and retiree benefit programs, and the multi-billion dollar WIA and Job Corps employment programs. As highlighted by the challenges and recommendations discussed during the hearing, our work continues to identify opportunities to improve the economy, efficiency and effectiveness of DOL programs. During the past five years, we issued over 370 audit reports that questioned approximately \$140 million in costs, and recommended that more than \$4.6 billion be put to better use. In addition, our labor racketeering and program fraud investigations resulted in a total of 2,437 indictments, 2,106 convictions, and more than \$1 billion in monetary accomplishments, including court-ordered fines, penalties, restitutions, and asset forfeitures; as well as administrative cost avoidances.

Given that over 90 percent of the OIG's budget is largely allocated for mandatory expenses, including personnel costs, rent, working capital fund, and statutorily-mandated audits, our options to absorb a 5 percent sequestration cut were limited. Accordingly, once the sequestration order was issued on March 1, 2013, we implemented a number of cost-saving measures to enable us to continue to carry out our mission at the reduced funding level, while minimizing the likelihood of staff furloughs as our mission is overwhelmingly carried out by Federal staff. For example, we instituted a modified hiring freeze covering most positions in the OIG except for certain expert-level, highly-specialized positions that if left vacant would compromise agency operations. We also modified several contracts and eliminated all bonuses and monetary performance awards. In addition, we reduced IT expenditures by approximately 30 percent, travel and transportation costs by 22 percent, and training by over 12 percent.

The sequestration cuts have had a significant impact in the OIG's overall operational capacity. For instance, reductions in our travel and transportation budget impact our ability to provide adequate audit and investigative coverage in key areas, forcing us to consider whether to open

investigations based on geographic location rather than investigative merit. In FY 2013, the OIG will experience one of its lowest staffing levels in more than 10 years, from a high of 439 FTE in FY 2005 to 398 FTE at the end of FY 2013. Funding resources were also reduced 12.5% (adjusted for inflation) from 2010 to 2013. This reduction in staff diminishes the scope of the OIG's capability to provide audit and investigative oversight of DOL programs. As a result, we have been forced to eliminate, delay the timing, and/or reduce the scope of several audits. We have also reduced the coverage we provide in certain program areas, and limited other investigative efforts, including those involving multi-agency law enforcement task forces.

Based on reduced levels of operational capacity, in FY 2013 the OIG will experience a 43,200 hour (13 percent) reduction in commensurate reduction in our audit products and 46,800 reduction in investigative capacity.

The OIG continues to refocus its efforts to emphasize high priority, high impact audits and investigations, and maximize its oversight of DOL programs and operations. However, we are very concerned with the impact of reduced levels of funding on our operations if those levels are carried over in FY 2014 and beyond. Unless the OIG's funding is restored to pre-sequestration levels, audit and investigative capability will continue to erode, and that will greatly impact our ability to identify the types of savings and efficiencies in DOL programs that we have highlighted in this document.

**Question 3: We know there continues to be issues of fraud, including cases of identity theft and Medicare fraud.**

**Are your offices adequately trained and prepared to get ahead of what are sometimes very organized fraudulent activities?**

DOL-OIG special agents are adequately trained to investigate cases involving identity theft, particularly as it relates to the Unemployment Insurance (UI) programs operated by state workforce agencies. Identity theft investigations in the UI program include both individuals and groups that create fictitious employers and/or file fraudulent claims using the names and Social Security numbers of individuals without their knowledge.

DOL-OIG special agents complete basic criminal investigator training at the Federal Law Enforcement Training Center. In addition, special agents attend other advanced fraud training to further enhance their skills and aptitude to investigate various types of organized fraud schemes against DOL programs or organized crime and labor racketeering in employee benefit plans, internal union affairs, and labor-management relations.

**Inspector General, U.S. Department of Education**  
**Questions for the Honorable Kathleen S. Tighe**

**Questions for the Record to all Inspector Generals**

**Question 1:** As you all know, for a number of fiscal years, we have been operating under continuous Continuing Resolutions. CR after CR, this Committee has slashed the budgets of important programs within the Departments of Labor, Health and Human Services, and Education, over my many objections. We have increasingly been asking each Department to do more with less and less, and in fact now federal workers are facing furloughs due to the effects of sequestration. Can you describe the impact, if any, these budgetary constraints have had on the administration of the programs described in your testimony?

The U.S. Department of Education (Department) Office of Inspector General (OIG) highlighted four specific management challenges facing the Department: (1) improper payments, (2) information technology security, (3) oversight and monitoring, and (4) data quality and reporting. Although we have not reviewed the impact of sequestration on the Department's administration of the programs associated with these areas, it appears that the Department faces similar challenges that OIG faces as a result of sequestration: a reduction in appropriated funding leads to a reduction in staff and a reduction in resources for staff to conduct their work, which can impact the Department's ability to provide adequate management and oversight.

**Question 2:** Please describe the impact sequestration will have on your offices' ability to carry out auditing responsibilities, if any.

Sequestration has and will continue to limit our ability to conduct audits. The reduction in our appropriated funding has reduced our staffing levels considerably and we will soon make even more staff reductions through a buyout/early out offer to OIG employees. We also have significantly reduced spending on resources, such as audit-related travel. Both the reduction in staff and reduction in resources to support their work impacts the breadth and scope of our audit work. For example:

- We must first complete our statutory audit assignments that we are required to conduct each year, followed by only our highest priority audit work. This limits our ability to audit other programs and operations and to identify waste, fraud, or abuse.
- Nationwide projects have been scaled back to cover fewer sites as a result of reduced travel funds.
- Reductions in staff will reduce the number of audit-related assignments we can conduct in a year and staff furloughs will affect the timeliness of our work.
- It will be much more difficult to find staff or other resources to conduct unplanned, non-priority work that is often requested by our stakeholders, including the Department and members of Congress.

**Question 3: We know there continues to be issues of fraud, including cases of identity theft and Medicare fraud. Are your offices adequately trained and prepared to get ahead of what are sometimes very organized fraudulent activities?**

Identity theft and fraud involving the Department's programs and operations are constantly evolving, particularly in the area of Federal student aid as a result of the explosion in on-line and distance education programs. Because all aspects of distance education take place through the Internet, students are not required to present themselves in person at any point, and institutions are not required to verify prospective and enrolled students' identities. As a result, criminals have been able to use the identities of others (with or without their consent) to target distance education programs and fraudulently obtain Federal student aid.

To carry out the bulk of the work that OIG conducts requires specialized and knowledgeable professionals, a good number of whom must maintain specific certifications in order to perform that work. Additionally, in order to maintain our law enforcement authority, our investigators are required to receive specific quarterly firearms training and other training as mandated by the Attorney General. Our staff, however, also benefit greatly by taking additional training courses in order to effectively enhance their professional skills, to learn new techniques and best-practices, and, perhaps most importantly, to keep pace with developing forms of fraud, waste, and abuse in government programs. Further, our auditors are required to comply with a Federal Government auditing standard requirement that they receive 80 hours of professional training every 2 years. In FY 2013, we reduced our training budget by 61 percent, eliminating all training except for mandatory training, other training to support professional certifications, and law enforcement training. With level funding or further reductions in our annual appropriations, we expect this to continue throughout FY 2014.

Office of Inspector General  
FY 2004 - FY 2014 Pending Table  
(dollars in millions)

Program	Authority	Availability	FY 2004 Enacted	FY 2005 Enacted	FY 2006 Enacted	FY 2007 Enacted	FY 2008 Enacted	FY 2009 Enacted	FY 2010 Enacted	FY 2011 Enacted	FY 2012 Enacted	FY 2013 Enacted	FY 2014 Request 1/
Discretionary Budget Authority	Annual Appropriations Disaster Relief Appropriations Act of 2013 (P.L. No. 113-2, Title X, Chapter 9)	1-Year	38,691	39,537	39,415	39,808	43,231	45,279	50,279	50,178	50,083	47,463	68,879
Disaster Relief Appropriations Act of 2013	American Recovery and Reinvestment Act of 2009 (P.L. No. 111-5, Division A, Title VIII)	3-Year 2013/2015	--	--	--	--	--	--	--	--	--	5,000	--
Recovery Act		4-Year 2009/2012	--	--	--	--	--	17,000	--	--	--	--	--
Subtotal, PHHS Oversight BA			38,691	39,537	39,415	39,808	43,231	62,279	50,279	50,178	50,083	52,463	68,879
HCFAC Mandatory	Social Security Act As Amended, Section 1817(k)	1-Year from 2004-2006 2-Year from 2007-2012 which was 1-year	160,000	160,000	160,000	165,920	169,736	177,203	178,705	197,998	196,090	186,288	278,030
HCFAC Discretionary	Annual Appropriations Deficit Reduction Act of 2005 (P.L. No. 109-171, Title VI, Section 603)	X-Year	--	--	--	--	--	18,867	29,790	29,730	29,674	28,122	29,790
Medicaid Integrity Program (D8A)	American Recovery and Reinvestment Act of 2009 (P.L. No. 111-5, Division B, Title V, Section 5007)	X-Year	--	25,000	25,000	25,000	25,000	25,000	25,000	--	--	--	--
Recovery Act - Medicaid Supplemental	Act of 2009 (P.L. No. 111-5, Division B, Title V, Section 5007)	3-Year 2009/2011	--	--	--	--	--	31,250	--	--	--	--	--
Medicaid Oversight Supplemental	Supplemental Appropriations Act of 2008 (P.L. No. 110-252, Title VII, Section 7001(d)); authorized but not appropriated for subsequent years	X-year	--	--	--	--	--	25,000	--	--	--	--	--
Trust Fund (MBMA)	Medicare Prescription Drug, Inflation Reduction, and Modernization Act of 2008 (P.L. No. 108-173, section 1015), as amended	3-year, 2004/2006	--	25,000	--	--	--	--	--	--	--	--	--
Never Events	2006 P.L. No. 109-432, Title II, Section 203	4-Year 2007-2010	--	--	--	3,000	--	--	--	--	--	--	--
Subtotal, CMS Oversight BA			160,000	185,000	185,000	193,920	194,736	277,023	233,495	227,728	235,764	214,410	307,820
HCFAC Collectors (obligations)	Social Security Act As Amended, 1128C(b)	1 year from date of deposit	3,663	7,316	9,620	10,335	5,100	5,847	5,856	11,340	9,409	11,388	12,000
Subtotal, CMS Oversight PL			163,663	192,316	194,620	204,255	199,836	283,169	239,351	239,068	245,173	225,798	319,820
Reimbursable (PL Obligations)	Various	N/A	20,197	20,799	16,522	18,386	17,669	16,808	17,209	17,241	19,408	29,000	24,000
ACA Implementation Fund (PL obligations)	Patent Protection and Affordable Care Act (P.L. No. 111-148)	N/A	--	--	--	--	--	--	0,201	1,124	--	--	--
Subtotal, Other PL			20,197	20,799	16,522	18,386	17,669	16,808	17,410	18,365	19,408	29,000	24,000
Total BA			198,691	224,537	224,415	233,778	237,567	319,701	333,774	377,904	374,847	364,873	576,699
Total PL			231,551	252,652	250,597	262,449	260,156	302,365	307,940	307,431	304,664	307,201	412,093

1/ FY 2013 and FY 2014 figures are estimates.

Office of Inspector General  
FY 2004 - 2014 FTE

Program	FY 2004 Actuals	FY 2005 Actuals	FY 2006 Actuals	FY 2007 Actuals	FY 2008 Actuals	FY 2009 Actuals	FY 2010 Actuals	FY 2011 Actuals	FY 2012 Actuals	FY 2013 Estimate 1/	FY 2014 Request 1/
Discretionary Budget Authority.....	284	263	264	258	257	266	247	255	262	248	332
Disaster Relief Appropriations Act of 2013.....	0	0	0	0	0	0	0	0	0	7	14
Recovery Act.....	0	0	0	0	0	11	26	36	37	0	0
HCFAC Mandatory.....	1143	1088	1087	1036	1026	926	1056	988	1209	1169	1524
HCFAC Discretionary.....	0	0	0	0	0	142	0	193	139	225	139
Medicaid Integrity Program (DIRA).....	0	0	0	185	203	137	0	90	105	0	0
Recovery Act - Medicaid Supplemental.....	0	0	0	0	0	0	130	173	0	0	0
Recovery Act - Medicaid Supplemental.....	0	0	0	0	0	0	12	0	0	0	0
Trust Fund (MMMA).....	0	47	68	0	0	0	0	0	0	0	0
Never Events.....	0	0	0	1	8	11	1	0	0	0	0
HCFAC Collections.....	15	15	15	15	10	11	11	0	0	0	0
Reimbursable.....	58	39	13	18	14	8	10	10	21	21	21
ACA Implementation Fund.....	0	0	0	0	0	0	1	8	0	0	0
<b>Total.....</b>	<b>1500</b>	<b>1452</b>	<b>1447</b>	<b>1513</b>	<b>1518</b>	<b>1512</b>	<b>1582</b>	<b>1753</b>	<b>1773</b>	<b>1670</b>	<b>2030</b>

1/ FY 2013 and FY 2014 figures are estimates.

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U.S. Department of Labor

Office of Inspector General  
Washington, D.C. 20210

JUN 27 2013

The Honorable Rodney Alexander  
Appropriations Committee,  
Subcommittee on Labor, Health and Human Services,  
Education and Related Agencies  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Alexander:

On March 19, 2013, the Appropriations Committee, Subcommittee on Labor, HHS, Education and Related Agencies held a hearing regarding the top management challenges facing the Department of Labor. At that hearing, you requested that the Office of Inspector General (OIG) provide information regarding the process the Department used to arrive at its decision to award a contract for a new acquisition management system to a large business (Compusearch) whose bid was \$10 million higher than the price proposed by a small business competitor (DSI).

It is important to note that the legality of the Department's award decision was adjudicated subsequent to the subcommittee's hearing. On March 28, 2013, the U.S. Court of Appeals for the Federal Circuit affirmed the Court of Federal Claims' judgment for the Government and dismissed DSI's protest.

Notwithstanding the dismissal of DSI's protest, the OIG still reviewed how the Department arrived at its decision to award the contract to a contractor with a much higher dollar bid, to provide you the information that you requested. As part of the review, the OIG reviewed relevant documents and our findings are as follows:

#### SMALL BUSINESS SET-ASIDE

During the acquisition planning process, the Department had internal discussions regarding whether to conduct the Acquisition Management System procurement as a small business set-aside, but the procurement was never advertised as a small business set-aside and there was no reversal of a small business set-aside by the Contracting Officer.

The Contracting Officer determined that in accordance with the Federal Acquisition Regulation (FAR) Part 8.4, Federal Supply Schedules, Subpart 8.405-5, Small Business, the mandatory preference programs of Part 19 (i.e., Small Business Set-asides) did not apply to purchases made from GSA's Federal Supply Schedule. Nonetheless, DSI was a Federal Supply Schedule contract holder at the time the RFQ was issued, and participated in the procurement competition for the new acquisition management system.

*Working for America's Workforce*

## REQUEST FOR QUOTES

In its July 2010 Request for Quotes (RFQ), the Department stated its need to procure a new contract writing system to replace the existing system (Electronic Procurement System, or EPS). The Department stated that it required an Acquisition Management System that fully met all the Financial Systems Integration Office (FSIO) Acquisition System mandatory requirements and would integrate with the Department's New Core Financial Management System. It was also expected that the new system would streamline the acquisition processes, reduce program office and administrative processing burdens, ensure reliable and accurate procurement-related financial information, lower purchasing costs, further lower the amount of time to award contracts and improve customer service. The contractor operating the new system was expected to provide the personnel, hardware, software and other products and services needed to successfully manage, implement, integrate and maintain the Acquisition Management System throughout the relevant agencies and offices of the Department.

DSI was the incumbent contractor and it responded to the RFQ with a proposal to upgrade its system, including the development of a new requisitioning module. Compusearch proposed a new software system based on the latest version of its own "PRISM" software product. The price quoted in the proposal submitted by DSI was about \$10 million less than the bid of Compusearch.

The RFQ provided that quotes would be evaluated based on technical approach, product demonstration, past performance and price.

## TECHNICAL APPROACH

To evaluate each offeror's technical approach, the Department formed a Technical Evaluation Panel (Panel). The Panel identified various issues with the proposal offered by DSI, including:

- inadequate responses to the functionality requirements listed in the solicitation;
- lack of a detailed Work Breakdown Structure, or roadmap of the project, which signaled poor upfront definition and planning; and
- failure to address how it would manage, track and communicate project risks.

## PRODUCT DEMONSTRATION

Each of the offerors conducted a live product demonstration of its proposed system. Contracting personnel from several agencies in the Department attended the demonstrations and tested the proposed systems for look, feel, logic, flow and robustness of reporting function.

A summary of the product demonstrations recorded that while attendees found DSI's proposed system "very difficult to understand," they found the Compusearch product easy to use.

## PAST PERFORMANCE

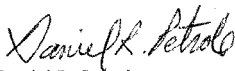
For the past performance factor, each firm submitting a proposal identified at least three references for similar work completed within the past five years. Each reference received and answered an e-

mail questionnaire. Additionally, a DOL reference with "firsthand knowledge" of the procurement and implementation of DOL's current Electronic Procurement System received a questionnaire. DOL also searched through the Contractor Performance Assessment Reporting System for additional past performance information. Based on all of the above factors, Compusearch received a "very good" past performance rating, and DSI received a "satisfactory" rating from the panel.

Based on the above results, the Department awarded the contract to Compusearch, as allowed by the best value clause under Section 8.405-2(d) of the FAR. This clause allows an award to a higher priced proposal when that proposal represents the best value overall. FAR 8.405-2(f)(5) requires the agency to document the rationale for any tradeoffs in making the selection, which in our estimation DOL did adequately to justify its decision.

Please contact me at (202) 693-5100 if you have any questions. Alternatively, your staff may contact Christopher Seagle, Acting Director, Division of Congressional Liaison and Communications at (202) 693-5231.

Sincerely,



Daniel R. Petrole  
Deputy Inspector General

Cc: The Honorable Jack Kingston, Chairman  
The Honorable Rosa DeLauro, Ranking Democratic Member

WEDNESDAY, APRIL 10, 2013.

## **REGULATORY APPROACHES TO FOSTER ECONOMIC GROWTH**

### **WITNESSES**

**DOUGLAS HOLTZ-EAKIN, FORMER DIRECTOR, CONGRESSIONAL BUDGET OFFICE, PRESIDENT, AMERICAN ACTION FORUM**

**GEOFFREY BURR, VICE PRESIDENT, FEDERAL AFFAIRS, ASSOCIATED BUILDERS AND CONTRACTORS, INC., CHAIRMAN, COALITION FOR A DEMOCRATIC WORKPLACE**

**EUGENE SCALIA, PARTNER, GIBSON, DUNN, & CRUTCHER, ON BEHALF OF THE RETAIL INDUSTRY LEADERS ASSOCIATION**

**DAMON A. SILVERS, DIRECTOR OF POLICY AND SPECIAL COUNSEL, AFL-CIO**

Mr. KINGSTON. The committee will come to order.

Today's hearing is on regulatory approaches to foster economic growth. We have a very distinguished panel. Mr. Douglas Holtz-Akin. Even though I asked Kevin if it was Eakin or Akin, I still blew it. I had to work really hard on that. Former director of the CBO and president of American Action Forum. Geoffrey Burr, vice president, federal affairs, for the Associated Building and Contractors. He is chairman of the Coalition for a Democratic Workplace. And Eugene Scalia, partner of the Gibson, Dunn & Crutcher law firm, and he will be on behalf of the Industry Leaders Association. And Damon Silvers, director of policy and special counsel for the AFL-CIO.

And we look forward to your testimony.

I will abbreviate my opening remarks, but I think that the concerns we hear back from employers is regulatory overreach and regulatory stifling of initiative and that it is driving down the labor numbers. Last week's labor report showed a very weak growth of 0.4 percent, and I think the most disturbing thing is that there are only 63 percent of workers in the labor force right now. It is at a 34-year low the discouraged worker syndrome.

So often I hear from employers that, well, we all agree that there is a place for reasonable and rational regulations to protect employees, employers and consumers, that sometimes we do have regulatory overkill. And I heard a term that I had never heard before, but it is agenda-based or agenda-driven inspections from regulators, from all different agencies, who come in and basically already have in mind what they want to catch somebody doing or not doing, and they keep looking and looking on a fishing trip until they find something that they can justify their inspection about.

So we will look forward to a good discussion today and lots and lots of different issues. So I am very glad you are here. And, again, we all want to figure out what is balance, what does do the intended purpose, but when does it start getting to be an overreach.

With that, I will yield the floor to my friend and ranking member, Rosa DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman, and let me welcome and thank our witnesses for being here today. I look forward to your testimony.

The majority has called this hearing to discuss Federal regulations involving workers and employment and their effects on the economy. I think it is important to remember that the regulations being considered today involve longstanding fundamental rights and principles, some of which have been established in U.S. law for more than 70 years. For example, the principle that we do not use child labor in this country except with appropriate limits and safeguards; the principle of the 40-hour workweek with premium pay for overtime above that norm; the right of workers to organize, to join unions without fear of being fired or retaliated against; the right to equal pay for equal work regardless of race or gender; and the right to a workplace free of major preventable hazards to life and health.

Rules like these do more than just protect workers. They also create a level playing field for businesses who want to treat their employees fairly and decently. Without government establishing and enforcing basic standards, employers would find themselves at a competitive disadvantage relative to those who seek to profit by endangering and cheating workers. We would have a race to the bottom.

From some we hear complaints about the cost of regulation, but what costs are they referring to? The cost of maintaining a safe workplace so that workers are not disabled or killed by their jobs? The cost of payroll taxes that support basic protections like unemployment insurance and workers compensation? The cost of paying the same wages to women and minorities that are paid to white men? I would not call those, quote, "cost of regulation," but rather part of doing business in a country that cares about its people.

There seems to be a view among many in the majority that the Labor Department damages the economy by enforcing labor standards required by law. This is simply not plausible. For one, according to the Economic Policy Institute analysis of government data, the share of corporate profits in our gross domestic product increased to 25.6 percent in 2012, the highest in any year since 1950 to 1951. Meanwhile, wages have fallen to a record low of 43.5 percent of GDP. In fact, the average real weekly earnings have increased by just 2 percent—not just 2 percent in a year, but it is 2 percent over the past 10 years.

Meanwhile, according to the Bureau of Labor Statistics, 103,318 layoffs in the 4th quarter of 2012 were attributed to poor business demand, while only 965 were attributed to government regulation. And according to a survey of small business owners conducted last year by the American Sustainable Business Alliance, Main Street Alliance, and the Small Business Majority, the most important problem for businesses right now is weak consumer demand.

Stagnant wage growth is a big part of our economic problem today. People cannot afford what they produce and demand is weak, and without demand, there is no investment. And only 14 percent mentioned government regulations. Yet over the last 2

years the House majority has made it a priority to bring bills to the floor seeking to overturn regulations or to block them before they have even been finalized. These include bills to prevent the EPA from moving forward with regulations that have been mandated by the courts or rules we will hear about today like those governing NLRB elections or addressing legally required disclosure of arrangements between employers and labor-management consultants.

This week we are continuing down the same path, considering a bill on the floor of the House to stop the NLRB from enforcing labor law. If anything, current rules and enforcement may not be strong enough. For example, Labor's Wage and Hour Division does the best job that they can, but they have less than 1,800 staff to cover the entire country, and there are reports of widespread violations of the Fair Labor Standards Act, violations that tend to cheat the most vulnerable workers.

I was glad to see the administration take action to battle pay discrimination by rescinding the voluntary guidelines and compensation standards that hamstrung the Department of Labor's attempts to ensure equal pay in President Bush's years. But we are still waiting for a coal dust standard to be finalized and for a new standard addressing the serious health hazards of silica to even be formally proposed. We are also still waiting for final action on modernization of the fair labor standards rules for home health workers.

There are many more examples I could cite, but the belief that this administration has unleashed an unprecedented wave of new regulations is simply not substantiated by the facts. In any case, I expect to have an interesting discussion today. I look forward to your testimony and thank you.

And thank you, Mr. Chairman.

Mr. KINGSTON. Thank you, Ms. DeLauro.

Do any other members wish to be heard? If not, Mr. Holtz-Eakin.

Mr. HOLTZ-EAKIN. Chairman Kingston, Ranking Member DeLauro and members of the committee, thank you for the privilege of being here today. I have submitted a written testimony that has a fairly extensive documentation of the American Action Forum's efforts at measuring the impact of Federal regulation on the U.S. economy. I will not go through the tedious act of reciting it all to you, but we particularly focused on those areas, Department of Labor and National Labor Relations Board, which are under the jurisdiction of this subcommittee. I want to devote my oral remarks to talking about the broader scope of regulatory initiatives in the United States.

There has been a fairly dramatic increase in the regulatory burden in the past 4 years, \$521,000,000,000 of new regulatory costs in those 4 years. A little noticed feature of the end of 2012 when we experienced some relatively slow economic growth was a post-election regulatory cliff that was comparable in magnitude to the so-called fiscal cliff, where regulations had been deferred to past November and they had to be finalized and this was a substantial final rulemaking regulatory imposition on the economy.

Those regulations hit some particularly important sectors. There has been nearly \$360,000,000,000 in new regulatory burdens on

manufacturing, something I think there is a great consensus that the United States needs to focus on and increase our manufacturing base and its international competitiveness. And these are significant burdens because they come at a particularly crucial juncture for the economy. It is no news to anyone on this committee that the recovery, which is dated to June of 2009, has been one in which the overall economy has grown at less than 2 percent, not a record that the United States aspires to, and one in which job creation on a monthly basis has yet to approach even 180,000 jobs per month. And those are not standards to which I think we want to settle, I think we want to do better, and the regulatory burden is part of looking at a better climate for economic growth.

It is not particular to the Federal Government. If you look across the globe, there has been an OECD initiative to reexamine regulatory burdens in their member countries. Great Britain has adopted a new standard known as one-in, one-out as an attempt to come to grips with the overall regulatory burden. When new regulations are proposed, another regulation has to be eliminated so that the net burden is not going to rise.

In the United States, the State of Indiana just passed a new regulatory review initiative in which not only is there a cost-benefit analysis for new regulation, something that I think everyone agrees is a sensible step, but there is a universal retrospective review of existing regulation to make sure that things which were a good idea at one point in time do not stay on the books without review and thus accumulate costs that exceed their benefits, and only those that continue to serve society as a whole remain in place. And those initiatives I think are reflective of the importance of getting a balance in the regulatory process.

For this committee, there really are not a lot of options for getting that balance right. There would be the possibility of passing targeted legislation over particular rules. I do not think the politics of that are overwhelming. It would be difficult to imagine any President signing into law something that overturned a regulation promulgated by his own administration or her own administration, so that does not look promising.

There is the Congressional Review Act, but it is of limited effectiveness, and I think historically that has been proven to be true. Been effective exactly one. There is the ability of members to weigh in with OIRA and point out the burdens associated with regulation. And then there is the regular legislative process, in particular the appropriations process, in which the Congress can actually remind agencies that there is the possibility to look at these regulations in light of new settings and new circumstances and see whether they still pass a social benefit cost test, and in many cases they may not.

And so the idea that the regulatory process is something that should exist solely in the executive branch I think misses the point of the opportunity for ex-post review of these regulations.

This committee is well positioned to do this. I mean, with the Department of Labor and the National Labor Relations Board, it is right at the heart of the jobs issue, which I think has to be the top priority for the country. And as I mentioned in the written testimony, there are 10 regulations with about \$10,000,000,000 of regulatory costs and something on the order of 40 million hours of pa-

perwork compliance necessary that have big impacts on employers and could affect the jobs outlook.

I think it is a very important thing for everyone to recognize that there is more to the jobs picture than just taxes, more to the jobs picture than just spending, more to the jobs picture than any single magic bullet. There is a broad comprehensive Federal impact on the jobs picture. Regulation is part of that. And I look forward to the committee's discussion on this important issue, and I am pleased to be here today. Thank you.

Mr. KINGSTON. Thank you very much.

[The information follows:]

Regulatory Approaches to Foster Economic Growth

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Labor, Health and Human Services, Education and Related Agencies

Douglas Holtz-Eakin, President<sup>\*</sup>  
American Action Forum

April 10, 2013

<sup>\*</sup>The views expressed here are my own and not those of the American Action Forum. I thank Sam Batkins for his assistance. All errors remain my own.

Chairman Kingston, Ranking Member DeLauro, and Members of the Subcommittee, thank you for the opportunity to appear today. In this testimony, I would like to make three main points:

- Although the Department of Labor (DOL) is not the most active regulator, it has published 47 economically significant rules during the last ten years, with an estimated cost of \$26.5 billion, and approximately 73.9 million paperwork burden hours.
- Legislative provisions to address certain regulations remain one of the few viable options for Congress. The Congressional Review Act (CRA) has been used successfully only once, and there are still regulations that members of both parties oppose.
- Regulatory reform is a local, national, and international priority, as many countries are reforming their administrative procedures. Presidents of both parties have tried to reform the regulatory state, but substantive reform requires input from the legislative branch.

### **Regulation in Perspective**

Policymakers and analysts from across the ideological spectrum concede that they would like to make changes to the regulatory process. Reducing costs and paperwork burdens routinely receives the most legislative attention (Paperwork Reduction Act and the Unfunded Mandates Reform Act for example), and of course, costs do matter.

The American Action Forum (AAF) has compiled and analyzed more than 2,500 regulations, dating back to 1999. During the past four years, we found more than \$520 billion in regulatory costs, based on estimates provided by the relevant agencies. During the past ten years, regulators have published more than \$721 billion.

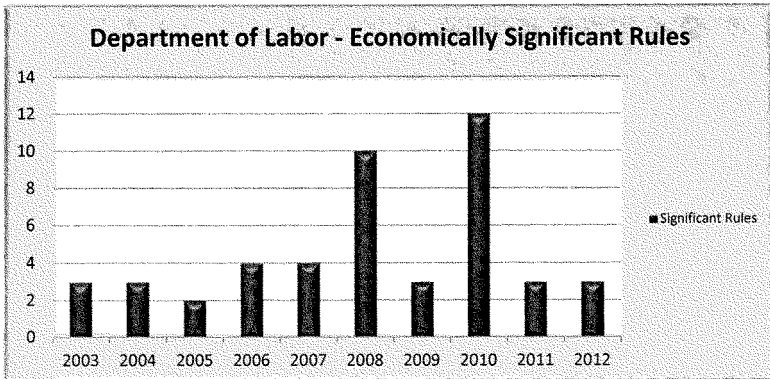
These are not trivial numbers, and they are certainly not without attendant benefits for workers, the environment, and consumers. However, there are countless instances of “significant economic” implications for small businesses attempting to comply with thousands of new rules each year.

Reforming this system is just as important as ensuring the health and safety of Americans. Too often, regulators publish rules and then leave them in place indefinitely, without reviewing their actual merits after implementation. Local governments and our international competitors constantly measure the effectiveness of regulatory programs, and both parties should endeavor to do no less on the federal level.

### **Labor Regulation**

The Department of Labor and the National Labor Relations Board (NLRB) are generally not considered active regulatory agencies, at least as compared to Health and Human Services (HHS) and the Environmental Protection Agency. Currently, DOL has nine regulations under review at the Office of Information and Regulatory Affairs (OIRA), and NLRB, according to a recent court case, “readily acknowledges that it lacks ‘roving investigatory powers’ and instead traditionally functions as a reactive agency.” However, DOL and NLRB can still affect the business environment, and are active players in the regulatory state.

The chart below details the number of economically significant DOL regulations OIRA cleared during the past ten years. The total alone is not spectacular, compared to other agencies, but there were large spikes in 2008 and 2010, years with significant regulatory activity.



President Obama attempted to address regulatory reform in Executive Order 13,563, designed to promote “economic growth, innovation, competitiveness, and job creation.” There have been major cost reductions and reforms from some agencies, but the pace has been slow and many agencies have failed to turn their retrospective review plans into concrete regulatory language.

For example, according to AAF records, DOL has published four regulations in the Federal Register pursuant to EO 13,563. Although some costs were reduced, the net effect is actually higher burdens. Compare the four rules designed to improve the regulatory system from DOL during the past three years, with the final rules from the Department: 20. According to its retrospective review plan, DOL outlined 11 possible rules to reform regulations, and many affected businesses would like to see those proposals expedited.<sup>1</sup>

For NLRB, an agency not primarily tasked with regulating, the only evidence of review is the Board’s May 23, 2011 letter.<sup>2</sup> The initial plan simply described procedures to allow NLRB “to periodically review its existing significant regulations and determine whether any such regulations should be modified, streamlined, expanded, or repealed.” However, according to White House records, the Board has not submitted a final plan, and AAF has not recorded significant regulatory reform measures from NLRB published in the Federal Register.<sup>3</sup>

It is incumbent on the agencies to fulfill the spirit of the President’s orders, and presently, the pace of review is slow. Budget and legal concerns certainly weigh on the ability of agencies to

<sup>1</sup> Agency Retrospective Review Plan Reports, available at <http://1.usa.gov/YU4Mhn>.

<sup>2</sup> National Labor Relations Board, NLRB Preliminary Plan to Review Significant Regulations, available at <http://www.whitehouse.gov/files/documents/2011-regulatory-action-plans/NationalLaborRelationsBoardPreliminaryRegulatoryReformPlan.pdf>.

<sup>3</sup> 21st Century Government: Campaign to Cut Waste, Regulation Reform, available at <http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system>.

review and streamline their existing rules. HHS, for example, has already published billions of dollars in possible burden reductions. The Consumer Financial Protection Bureau (CFPB), while it has added burdens during its existence, recently reduced more than eight million hours of paperwork. Other agencies have taken the lead on reform, and businesses across the country seeking to hire and expand could benefit from more rational labor regulations.

### **Legislative Provisions to Control New Regulations**

Presently, the legislative branch has few options for addressing regulations with which it has serious policy objections. Of the four options for reform: 1) appropriations provisions, 2) the Congressional Review Act, 3) individual legislation, and 4) lobbying OIRA, the appropriations route is the most practical.

The Congressional Review Act has been used successfully only once and is a blunt instrument to confront regulation. If Congress does act, the rule “may not be reissued in substantially the same form,” a term that has generated substantial legal debate. If Congress uses the CRA to rescind a rule that is perceived as onerous, could an agency issue an “improved” version of the regulation that generates substantial benefits?

Individual legislation is an unlikely option, namely because few can contemplate a scenario where any president would sign a specific bill to rescind a regulation from his administration. The OIRA review process offers President Obama the ability to delay or “return” certain rules, and it is improbable OIRA would approve a rule, only to have the President rescind it through specific legislation.<sup>4</sup>

Lobbying OIRA exists as an option for Members of Congress and their staff to air concerns about certain regulations directly with White House staff. According to former OIRA Administrator Cass Sunstein, OIRA’s doors are always open when a rule is under consideration. However, records reveal few instances when Members of Congress or their staff visited OIRA to discuss a specific regulation.

The only pragmatic option to control situations of regulatory overreach is an annual legislative provision, namely from the Appropriations Committee. These legislative measures have had some limited success in recent years. The evidence on costs reveals, if implemented, Congress could generate significant savings for businesses.

The table below details ten regulations from NLRB and DOL that this subcommittee could address. Combined, these ten regulations have generated more than \$10.4 billion in costs, with 41.4 million paperwork burden hours. To put these hours in context, assuming that an average employee worked 2,000 hours a year, it would take 20,700 employees working full-time to comply with one year of these burden hours.

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<sup>4</sup> OIRA Return Letters, available at <http://reginfo.gov/public/do/eoReturnLetters>.

**Notable Labor Regulations**

<b>Rule</b>	<b>Cost (in millions \$)</b>	<b>Paperwork Hours</b>
Notification of Employee Rights	386	12,000,000
Hazard Communication	4,054	11,300,000
Investment Advice-Participants, Beneficiaries	5,100	8,805,000
Reasonable Contract: Section 408(b)(2)	404	4,932,000
Occupational Injury and Illness Prevention	13	3,355,105
Application of FLSA to Domestic Service	27	987,778
Temporary Employment of H-2B Aliens	14	26,151
FMLA Amendments	420	17,892
Persuader "Advice" Proposal	0.8	9,430
Definition of the Term "Fiduciary"	17	N/A
<b>Totals: \$10.4 Billion and 41.4 Million Burden Hours</b>		

In addition, agencies themselves provided the cost estimates, and many do not capture the macroeconomic costs and benefits of implementation. For example, the NLRB's union notification requirement did not contain a Regulatory Impact Analysis (RIA), but it did contain an estimate of possible costs, in footnote 212. Obviously, recent court cases have put this rule on the sidelines, but the regulation is a case study on rules with limited regulatory analysis.

One rule on the list above, "Definition of 'Fiduciary,'" reported only \$17 million in possible costs, although it is an "economically significant" rule. However, an Oliver Wyman report on the impact of the rule found 7.2 million IRAs could lose investment services, and more than 90 percent of IRA investors would be affected.<sup>5</sup> The broad impact of the rule is likely one reason why DOL informally withdrew the proposal, although it reappeared in the most recent Unified Agenda.

There are other reasons to prefer legislative provisions targeted at certain regulations. From 2002 to 2011, the federal government published more than 38,000 final rules, but Congress did not rescind any through the Congressional Review Act. This fact does not assume Members of Congress agreed with all 38,000 rules, only that there were few legislative vehicles available.

For example, in 2012 the administration published a rule requiring reporting of interest from nonresident aliens. The relatively innocuous-sounding proposal generated intense bipartisan objection. Every member of the Florida delegation, including Representative and current DNC Chair Debbie Wasserman Schultz, wrote the White House objecting to the rule. They wrote, "We ask that you withdraw this proposed regulation and send a clear message to existing and potential depositors that the U.S. encourages such deposits and believes America's best interest is served by maintaining current policy."

Despite the letter and significant bipartisan opposition to the rule, the administration finalized it, and the timeline for Congressional Review Act recourse has lapsed.

<sup>5</sup> Oliver Wyman, Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers, available at <http://www.dol.gov/ebsa/pdf/WymanStudy041211.pdf#page=1&zoom=146,0,797>.

Finally, with so many rules issued each year, some regulations become the object of intense “rent seeking.” The public policy problem of diffused costs with concentrated benefits is especially pervasive in the regulatory world. The FLSA exemption for domestic service and the recent biomass-based diesel rule are two examples.

The proposed FLSA exemption, the so-called “companionship” rule, would generate significant wage benefits for homecare employees, and some labor unions. SEIU, for example, urged supporters to contact Secretary Hilda Solis to finalize the regulation. These concentrated benefits for some (more than 500,000 SEIU homecare members), lead to diffused costs for many others.

The regulation even conceded it would generate deadweight losses (a rare admission for a RIA) and impose close to a million paperwork burden hours. Perhaps more troubling, the regulation admitted that it could “disemploy” more than 2,700 workers, the very employees the rule was designed to aid.

Concentrated benefits and diffused costs are not limited to the labor sphere alone. In EPA’s biomass-based diesel rule, it increased the volume beyond the statutory baseline, leading to environmental “disbenefits” of \$53 million, meaning more particulate matter, more sulfur dioxide, and higher levels of nitrogen oxides. The rule will also increase fuel prices by up to \$381 million this year, and the overall renewable program will lead to a “\$10 per person per year increase in food costs in the U.S.” Who benefits? The rule will lead to \$1.2 billion in additional revenue for the soybean industry, at the price of more pollution from an Environmental Protection Agency rule.<sup>6</sup>

Surely, many Members of Congress take their oversight role seriously, and using appropriate legislative tools to address burdensome rules should be a first step toward broader regulatory reform.

### **Economic Implications of Possible Regulation**

During the past four years, the cumulative regulatory cost burden has increased by more than \$520 billion. Put differently, the regulatory initiatives of the past several years have imposed a nearly half-trillion dollar tax on economic expansion. This has an unambiguously negative impact on economic growth. There are several perspectives from which to view this.

The first is to acknowledge that regulatory initiatives are not born in a vacuum; they instead stem from a desire to seek environmental, financial stability, social welfare, or other policy objectives. From this perspective, the regulatory costs reflect a decision to put these objectives above the goal of more rapid economic growth – a decision that is part of a fair debate over policy priorities.

Second, these regulatory initiatives can have a profound impact on U.S. competitiveness, namely for our manufacturing sector. In a report issued earlier this year, AAF identified at least \$359

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<sup>6</sup> Miller, Sofie, Crony Environmentalism, *Regulation Magazine* (forthcoming), available at <http://www.cato.org/regulation>.

billion in regulatory burdens imposed on manufacturers during the last ten years.<sup>7</sup> In addition, there were nearly 100 economically significant regulations issued during that time from EPA, and the Departments of Energy and Labor alone, chief regulators of the manufacturing sector. The recent Unified Agenda offers little hope for relief, as regulators have outlined an additional \$9.2 billion in costs for manufacturers.

From another perspective, the regulatory initiative is of a scale comparable to the tax increases in the recently enacted “fiscal cliff”. There has been deserved concern over the wisdom of a sharp tax increase in the midst of a recovery that has failed to attain even near-trend economic growth, but advocates have argued that the progressive nature of the tax increases provides income distributional gains that outweigh the negative growth consequences. It is harder to advocate for the regulatory burden that both harms growth and imposes the greatest economic burden on workers.

### **A Consensus on Reform**

Every President since Jimmy Carter has signed an EO promoting fundamental regulatory reform. Perhaps that speaks to every president’s unique view of the regulatory state, or that each preceding EO failed to achieve its objective. It is clear that states and other countries are moving forward with ambitious regulatory reform, and the U.S. has every reason to codify the best ideas that promote economic growth and protect Americans.

On the local level, Indiana recently passed legislation to measure costs and benefits of all significant regulations at the time of promulgation (Senate Enrolled Act No. 311).<sup>8</sup> With the exception of independent agencies, the U.S. currently attempts to measure the burdens and benefits of new rules but the Indiana legislation adds an important step: universal retrospective review.

In addition to measuring the possible outcomes of a regulation during promulgation, the Indiana method reviews the effects of a rule three years after implementation, and costs are not the only metric for review. Indiana examines the impact on consumer protection, worker safety, the environment, and business competitiveness. It then compares the benefit-cost analysis from three years of implementation to the original analysis.

Whether the issue is legislation or regulation, measuring the effectiveness of policy should be a hallmark of good governance. We have an informal version of the Indiana legislation in EO 13,563, but codifying these orders and applying them to independent agencies would ensure we are not simply implementing regulation and then ignoring possible adverse consequences.

On the international level, the United Kingdom has led the way on regulatory reform. Implementing its One-In, One-Out system; the government removes a previous regulation whenever it seeks to impose a new rule. To date, this system has saved more than \$1.3 billion.

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<sup>7</sup> American Action Forum, The Intersection of Regulation and Manufacturing, available at <http://americanactionforum.org/sites/default/files/AAF%20Regulation%20and%20Manufacturing.pdf>.

<sup>8</sup> Indiana Senate Enrolled Act No. 311 (2012 Session), available at <http://www.in.gov/legislative/bills/2012/SE/SE0311.1.html>.

Implementing a true One-In, One-Out system in the U.S. would raise legal and political concerns, but there are more practical options that could control burdens and avoid a complex new system. For example, the federal government currently collects more than 9,100 forms under the Paperwork Reduction Act; combined these forms generate 81.6 billion responses from businesses and individuals, and impose more than 10.2 billion hours of paperwork.<sup>9</sup> To put this paperwork burden in perspective, it would take 5.1 million full-time employees working year-round to comply with the current federal red tape, to say nothing of state and local requirements.

One proposal, which AAF has advanced in the past, would implement a One-In, One-Out system for paperwork: the total number of forms, and the aggregate paperwork burden. Thus, if an agency sought to impose a new collection, it would have to remove an existing collection of an equal or greater burden, or merge requirements to achieve neutral growth.

This proposal has two beneficial aspects: 1) it addresses one of the root causes of many regulatory burdens: paperwork, and 2) does nothing to fundamentally undermine health and safety regulation. Agencies, including DOL, have proven that they can cut paperwork, aiding business. A neutral paperwork budget does not undermine the protections that Congress and agencies have codified in the past. In sum, it imposes few costs for society while truly managing red tape and protecting businesses and individuals from more paperwork.

### **Conclusion**

Our regulatory system generates an incredible amount of new rules each year and Congress has few options to address certain burdensome rules. Using targeted legislative provisions can enhance Congress's oversight authority and reduce the impact of regulations that curtail the incentive to invest and hire.

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<sup>9</sup> Office of Information and Regulatory Affairs (OIRA), Inventory of Currently Approved Information Collections, available at <http://www.reginfo.gov/public/do/PRAREport?operation=11>.

Mr. KINGSTON. Mr. Burr.

Mr. BURR. Chairman Kingston, Ranking Member DeLauro, members of the subcommittee, good morning and thank you for the opportunity to testify before you today.

Like many other industries, construction was particularly hard hit by the recession and its recovery has been slow. Post-recession growth has been impeded by a number of obstacles, including unnecessary Federal regulations and the uncertainty surrounding them.

Of particular interest to ABC and CDW are regulations promulgated by the National Labor Relations Board and the U.S. Department of Labor designed to neutralize employers' voices on worksite labor issues and policies that restrict access to Federal projects for the vast majority of firms in the construction industry.

Regarding the NLRB, the board has recently issued controversial rulemakings, expanded its enforcement authority, and issued scores of precedent-reversing legal decisions impacting workplaces in nearly all industries, and has been doing so under questionable authority.

In January 2012 the White House ignored the Constitution by appointing individuals to the NLRB while the Senate was in session. Legal challenges were filed against the appointments and recently a Federal appeals court ruled that the President's appointments were unconstitutional. Despite the appeals court ruling, the unlawful appointments continue to raise questions about the NLRB's authority as it applies to recently decided cases, as well as pending and future board actions, but the NLRB has refused to address the uncertainty of its legitimacy in its current form and has continued to issue decisions even as it seeks Supreme Court review from the D.C. Circuit.

It is clear that the NLRB is unwilling to impose any kind of restraint on itself. Therefore it is up to Congress to intervene to ensure that the Board does not make an already bad situation worse.

In addition to the NLRB's refusal to resolve lingering uncertainties in the wake of the recess appointment ruling, the Board is also engaged in controversial rulemakings that trample employers' and employees' rights while promoting union organizing. You may refer to my full written testimony for a detailed discussion of these rules.

Turning to the Department of Labor, ABC and CDW are concerned about the agency's regulatory changes to how it interprets and enforces Federal labor law covering persuaders, entities hired by employers to communicate with employees regarding their rights to organize. For decades these entities and the employers that hire them have filed public reports with DOL. However attorneys, trade associations, and other third-party advisers have long been exempt from these rules if they do not discuss labor issues directly with employees.

Under DOL's proposed rule, the protection of this advice exemption will no longer extend to most advisers or their employer clients. What is worse, it is currently unclear exactly which situations and activities will trigger the new reporting requirements. The proposal guts the attorney-client privilege and restricts a longstanding and widely accepted definition of advice. It also infringes on employers' rights to free speech, freedom of association, and legal

counsel, and it will eviscerate employees' collective right to obtain balanced information about joining a union.

The desired net effect of these new requirements is not to ensure transparency, as is claimed. Instead, it is the achievement of a profound chilling effect on employers in need of advice on labor relations matters and on entities dispensing such information. Many of the advisers that would become persuaders already expressed a reluctance to continue offering their expertise to employers. I urge Congress to join ABC, CDW, and others in opposing these unjustified changes to an area of long-settled Federal labor law.

Another issue that should be of concern to this subcommittee involves the implementation of the President's 2009 executive order on project labor agreements which encouraged agencies to require PLAs on Federal construction projects exceeding \$25,000,000. ABC is strongly opposed to Federal PLAs because they deny the vast majority of qualified contractors the opportunity to fairly bid on taxpayer-funded construction projects.

PLA mandates funnel work to the union sector of the construction industry, which accounts for less than 14 percent of the overall workforce. PLAs also result in needless litigation, delays, and increased costs to Federal taxpayers.

DOL's planned construction of a Job Corps center in Manchester, New Hampshire, is a perfect example of this. In 2009 the Labor Department mandated a PLA on that project despite the fact that only 11 percent of the construction industry in New Hampshire belongs to a union. After more than 3 years of PLA-related delays, the Labor Department was forced to remove the agreement and rebid the project without it. When that happened, the number of qualified companies bidding on the project increased threefold. The low bidder, a local firm, submitted an offer that was more than 16 percent less than the lowest bid submitted by an out-of-state firm under the PLA mandate. The New Hampshire Job Corps center illustrates that PLAs discourage competition, impose a regulatory impediment to growth for our members and others in the construction industry.

On behalf of ABC and CDW I would like to again thank you for holding today's hearing. I hope our concerns are shared by the subcommittee. We look forward to working with you to help eliminate the uncertainty caused by these harmful policies.

Mr. KINGSTON. Thank you very much.

[The information follows:]



# Statement for the Record for Associated Builders and Contractors

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*Testimony of*  
Geoff Burr

*Before the*  
House Committee on Appropriations  
Subcommittee on Labor, Health and Human Services,  
Education, and Related Agencies

*On*  
“Regulatory Approaches to Foster Economic Growth”

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April 10, 2013

**The Voice of the Merit Shop®**

Chairman Kingston, Ranking Member DeLauro, and members of the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies:

Good morning and thank you for the opportunity to testify before you today on “Regulatory Approaches to Foster Economic Growth.”

My name is Geoff Burr. I serve as vice president of federal affairs for Associated Builders and Contractors (ABC), a national trade association with 72 chapters representing nearly 22,000 construction and construction-related firms in the commercial and industrial sectors of the industry. ABC’s membership is bound by a shared commitment to the *merit shop philosophy*, based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through competitive bidding. We help our members win work and deliver it safely, ethically and profitably for the betterment of the communities in which they do business.

I also appear today as chairman of the Coalition for a Democratic Workplace (CDW), a broad-based coalition consisting of more than 600 member organizations, which in turn represent millions of employers concerned with labor policy issues.

### **The Impact of Federal Labor Rules on Economic Growth and Job Creation**

The construction industry was particularly hard hit by the recession and, like many other industries, its recovery has been slow. Post-recession growth has been impeded by a number of obstacles, including limited access to capital and increased costs resulting from unnecessary federal regulations with uncertain fates.

For the last four years, the Obama administration has driven an aggressive rulemaking agenda. Many of these regulations have been promulgated hastily with limited stakeholder input and questionable legal authority. Some of these regulations are in effect now and impacting employers in the field. Many more are slated to go into effect in the next few years, which creates significant uncertainty for businesses. Clearly, this is not an environment conducive to growth.

As builders of our nation’s communities and infrastructure, our members understand the value of regulations based on solid evidence and findings, with appropriate input from affected stakeholders. However, when regulations are unjustified or improperly promulgated, they often

translate into needlessly higher costs, which are then passed along to the consumer or lead to construction projects being priced out of the market. This chain reaction ultimately results in fewer projects, and hinders businesses' ability to hire and expand.

The uncertainty surrounding employers today makes it difficult to adequately plan for the future, and is an even greater concern in an industry experiencing both high unemployment<sup>1</sup> and skilled labor shortages. Of particular interest to ABC and CDW are regulations promulgated by the National Labor Relations Board (NLRB) and the U.S. Department of Labor (DOL) that are designed to neutralize all employers' voices in worksite labor matters, as well as policies that restrict access to federal projects for the 86.8 percent of the construction industry that does not belong to a labor union.<sup>2</sup>

### **National Labor Relations Board (NLRB)**

The NLRB is tasked with interpreting and enforcing the National Labor Relations Act (NLRA). The Board—which normally consists of five members—was meant to serve as a neutral arbiter of federal labor law. Recently, however, the NLRB has abandoned this role in an effort to unabashedly promote union organizing without regard to the impact on employers, employees and economic growth. The Board has issued controversial rulemakings, expanded its enforcement authority and issued dozens of precedent-reversing legal decisions impacting American workplaces—all under questionable authority.

On Jan. 4, 2012, the White House ignored constitutionally established separation of powers and the rules of the U.S. Senate by appointing three individuals to the NLRB while the chamber was in session. Several legal challenges were filed against the appointments, including *Noel Canning v. NLRB*, in which CDW was involved. On Jan. 25, 2013, a three-member panel of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) unanimously ruled that the president's recess appointments were, in fact, unconstitutional. ABC and CDW strongly supported the D.C. Circuit's decision, affirming the Senate's responsibility to provide advice and consent on presidential appointments.

Uncertainty surrounding the unlawful appointments continues to raise questions regarding the NLRB's authority as it applies to recently decided cases, as well as pending and future

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<sup>1</sup> See: <http://l.usa.gov/dRbkuz>.

<sup>2</sup> See: <http://l.usa.gov/tEgi>.

enforcement actions and adjudications. The uncertainty created by this situation is imposing tangible time and resource costs on employers and other parties involved in pending Board actions.

Neither the administration nor the NLRB has appropriately addressed the uncertainty created in the wake of the *Noel Canning* decision. In fact, both have doubled down on their respective positions. In February, the White House re-nominated two of the controversial recess appointees for consideration by the Senate, and on the same day the D.C. Circuit issued its ruling in *Noel Canning*, NLRB Chairman Mark Pearce stated that the Board “will continue to perform [its] statutory duties and issue decisions,” even as it formally seeks Supreme Court review.<sup>3</sup>

It is clear the NLRB is unwilling to impose any kind of restraint on itself. Therefore, it is up to Congress to intervene to ensure the Board does not make an already unfortunate situation worse. Action is needed immediately to limit the NLRB’s power to issue new decisions, prevent it from enforcing decisions that date back to the president’s unlawful appointments, and guarantee such restrictions stay in place until a definitive Supreme Court ruling is issued or a constitutionally valid quorum can be confirmed by the Senate.

In addition to the NLRB’s refusal to mitigate the uncertainty created by the recess appointments in the wake of the *Noel Canning* ruling, the Board also is responsible for two controversial rulemakings that seek to promote union organizing in the construction industry and elsewhere.

#### **“Ambush” Elections Rule<sup>4</sup>**

In December 2011, the NLRB issued a final rule to overhaul its procedures for dealing with union representation elections. The rule was an expedited portion of a larger plan, which first was proposed in June 2011, and limits the issues an employer can raise at a pre-election hearing and significantly curbs the employer’s opportunity for appeals. Experts estimated the rule will shorten election timeframes from approximately 40 days to as few as 17. The rule will deny employers their right to due process and prevent them from presenting facts and information to their employees regarding union representation.

In May 2012, the U.S. District Court for the District of Columbia (D.C. District Court)

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<sup>3</sup> See: <http://l.usa.gov/XdwRQ3>.

<sup>4</sup> The full June 2011 proposal available at: <https://federalregister.gov/a/2011-15307>. As noted in ABC’s testimony, portions of this proposal were finalized in December 2011 (available at: <https://federalregister.gov/a/2011-32642>), which was ultimately invalidated by a U.S. District Court.

deemed the rule invalid and no longer in effect because it was adopted without the statutorily required quorum of three Board members. The NLRB subsequently appealed that decision. CDW recently amended its arguments in the case to point out that under *Noel Canning*, former Board Member Craig Becker received an unconstitutional 2010 recess appointment, which would reinforce the invalidation of the Board’s adoption of the rule. In response to CDW’s filing, the appeals court has suspended the NLRB’s appeal, pending an outcome in the *Noel Canning* case.

#### **“Employee Rights” Notice Posting Rule<sup>5</sup>**

In November 2011, the NLRB issued a final rule requiring employers to display a poster—twice the size of most other federal notices—in their workplace that contains an unbalanced and incomplete list of employee rights under the NLRA. Among the omitted rights are the right to decertify their union and the right to pay only the portion of union dues attributable to collective bargaining, contract administration and grievance adjustment. The rule has been subject to several legal challenges, all asserting that the NLRB lacked the requisite authority to issue the rule.

In March 2012, the D.C. District ruled the NLRB could mandate the notice posting, but could not impose automatic sanctions for failure to post. The following month, the U.S. District Court for South Carolina ruled in a separate case that the notice posting requirement exceeded the Board’s statutory authority. Both cases have been appealed, and a formal injunction was granted by the D.C. Circuit in April 2012, preventing the Board from implementing the rule pending appeal.

Unfortunately, uncertainty continues to plague employers and human resource professionals alike regarding the notice posting rule. Despite the best efforts of ABC, CDW, and other organizations to inform employers of the legal hold on the NLRB’s requirements, we have learned that many employers still believe they must post the Board notice right now. This confusion has been reinforced by the availability of “all-in-one” federal notice posters, available from third-party vendors, which have prematurely incorporated the NLRB notice into their latest versions. Such confusion over critical compliance requirements could have been avoided if the Board had waited to set its initial effective date until after the legal questions surrounding the rule—and the Board itself—were resolved.

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<sup>5</sup> See: <https://federalregister.gov/a/2011-21724>.

## U.S. Department of Labor

### **“Persuader” Reporting Rule<sup>6</sup>**

In June 2011, DOL proposed drastic regulatory changes to how it interprets and enforces Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), which covers federal reporting and disclosure requirements for entities hired by employers to communicate to employees regarding their right to organize. For decades, both employers and “persuaders” have been obligated to file public reports with DOL, disclosing finances and other information if they engage in such activity.

Section 203(c), better known as the “advice exemption,” has long exempted attorneys, trade associations and other third-party advisors from these reporting requirements when they discuss labor issues with an employer but do not engage in direct contact with employees. Currently, employers that engage in these protected activities also are exempt.

Under DOL’s proposed rule, the “advice exemption” will no longer extend to most advisors or their employer clients, who could be required to start filing persuader reports as well. Any activity in which DOL deems an advisor planned (or orchestrated) a campaign or program to avoid (or counter) a union organizing or collective bargaining effort will now be reportable. This means that some communications between attorneys and their clients that were previously deemed to be privileged will now trigger the Section 203 reporting requirements. One of only a handful of examples provided in the proposal indicated that some advisors could become persuaders merely by hosting conferences or meetings that focus on labor relations. For the most part, though, it is unclear exactly which situations and activities will trigger the new reporting requirements. These ambiguous procedures are alarming—especially considering criminal penalties could be imposed for non-compliance.

DOL’s proposal is concerning for several reasons. It guts the underlying statute’s protection of attorney-client privilege, improperly restricts the definition of “advice,” blurs the line defining true persuasion, and conflicts with attorney ethics. In addition, the proposal infringes on employers’ rights to free speech, freedom of association and legal counsel. For employees, their collective right to obtain balanced information about joining a union will be all but

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<sup>6</sup> See: <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=1245-AA03>.

eviscerated. In turn, competitors, union organizers and others stand to benefit from having access to previously confidential information.

DOL's proposal runs contrary to the congressional intent behind the LMRDA, and is not supported by any compelling justification for such extreme changes. However, the agency tentatively plans to finish its rulemaking soon. If implemented, the new requirements will have a profound chilling effect on employers in need of advice on labor relations matters, as well as the parties from which they seek advice. Small businesses will be unquestionably discouraged from using outside legal assistance, and newly minted "persuaders" also will be more reluctant to offer what previously constituted as advice due to the unreasonable burdens that could be placed on them and their other clients. It is essential that employers in the construction industry, many of which do not have in-house attorneys or advisors, retain the ability to receive expert counsel.

ABC supports the preservation of the current interpretation of the LMRDA's Section 203(c) "advice exemption" provision, and urges Congress to join ABC, CDW and others in opposing these unjustified changes to an area of long-settled federal labor law.

### **Project Labor Agreements**

A project labor agreement (PLA) is a project-specific collective bargaining agreement with multiple unions in which project construction contracts can be awarded only to contractors and subcontractors that agree to its terms and conditions. These agreements force contractors to recognize unions as the representatives of their employees on a job; use the union hiring hall to obtain workers; hire apprentices exclusively through union apprenticeship programs; pay fringe benefits into union-managed benefit and multi-employer pension programs; and obey the unions' restrictive and inefficient work rules and job classifications. PLAs needlessly increase construction costs, discourage competition and stifle job creation that would benefit workers in the construction industry.

On Feb. 6, 2009, President Obama issued Executive Order 13502, which strongly encourages federal agencies—including DOL—to require PLAs on a case-by-case basis on federal construction projects exceeding \$25 million in total cost. When federal agencies mandate PLAs, they effectively end open competition on public works projects, denying the vast majority of qualified contractors the opportunity to fairly bid. Contracts subject to government-mandated

PLAs amount to special interest carve-outs designed to funnel work to the small number of unionized contractors and workforces.

Qualified merit shop contractors, their skilled employees, and many communities and states strongly oppose government-mandated PLAs because they discourage fair and open competition and impose a regulatory impediment to new jobs for firms in the construction industry.

Taxpayers also lose with government-mandated PLAs. In a September 2009 study, the Beacon Hill Institute (BHI) predicted government-mandated PLAs would add 12 percent to 18 percent in federal construction costs without providing corresponding benefits to taxpayers or construction owners. To determine this cost increase, BHI used the results of three previous studies measuring the effect government-mandated PLAs had on school construction projects subject to prevailing wage laws in Massachusetts, Connecticut and New York.

#### **New Hampshire Job Corps Center**

One example of a government-mandated PLA resulting in needless litigation, delays, reduced competition and increased costs to federal taxpayers involved DOL's construction of a new Job Corps Center in Manchester, N.H. In September 2009, DOL mandated a PLA on the project, despite the fact that approximately 11 percent of the construction workforce belongs to a union in that state.

Facing a bid protest filed at the Government Accountability Office (GAO) by a New Hampshire contractor opposed to the PLA mandate, DOL canceled the Job Corps Center solicitation in November 2009. But rather than remove the controversial PLA mandate and proceed with the procurement process using fair and open competition, DOL waited more than two years to issue a new solicitation, which still contained a PLA mandate. Public record requests revealed that the agency spent almost \$430,000 for a consultant (Hill International) to complete two studies to evaluate the use of PLAs on federal contracts and justify DOL's use of a PLA on the Manchester Job Corps Center. Federal contractors, with the assistance of ABC, filed another GAO protest against DOL's PLA. As a result, last summer GAO forced the agency to take corrective action and the agency once again canceled the solicitation in the face of the bid protest. However, DOL only did so after it had already received and publicly unsealed bids.

Last fall, DOL finally issued a solicitation without a PLA mandate. In February, DOL opened

the bids, which provided for the first time an “apples to apples” comparison of the same federal project being bid with and without a PLA mandate.

When the PLA mandate was removed, the number of pre-qualified companies bidding on the project increased threefold. The low bidder, a local firm from New Hampshire, submitted an offer that was approximately 18 percent less than the lowest bid submitted by an out-of-state firm during the first round of bidding in 2012.

The results in the Manchester Job Corps Center example demonstrate government-mandated PLAs reduce competition, increase costs and harm local businesses. PLA mandates are one of many examples of ill-conceived government regulations advanced by the White House that serve special interests while punishing job creators and taxpayers.

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On behalf of ABC and CDW, I'd like to again thank the subcommittee for holding today's hearing. These sustained efforts to silence employers in labor relations, and the administration's de facto exclusion of 86.8 percent of the U.S. construction industry from winning federal work, are top concerns for our members. We hope the issues raised today also are of significant concern to this subcommittee, which is responsible for appropriating the taxpayer funds used by the NLRB and DOL to implement these harmful and counterproductive policies. We look forward to working with you to find ways to help employers during this time of economic and regulatory uncertainty.

Mr. Chairman, this concludes my formal remarks. I am prepared to answer any questions you and the other members of the subcommittee may have.

Mr. KINGSTON. Mr. Scalia.

Mr. SCALIA. Mr. Chairman, Ranking Member DeLauro, and members of the committee, thank you for the opportunity to testify today on behalf of the Retail Industry Leaders Association, RILA. RILA is an association of the world's largest retail companies. It includes more than 200 retailers, products manufacturers, and service suppliers who together account for millions of American jobs. RILA shares this subcommittee's interest in sound regulatory approaches that free employers to build their businesses, create jobs, and grow the economy.

I will focus my remarks this morning on a development of special concern to the retail industry. It is a line of decisions by the National Labor Relations Board beginning with specialty health care in 2011. These cases have to do with the standard the Board uses to determine the appropriate unit or group of employees at a company for purposes of election and bargaining.

RILA supports legislation to overturn specialty health care and to restore the traditional presumption in the retail industry in this area that is in favor of a wall-to-wall unit or a store-wide unit of employees for union elections. I will make two basic points this morning, and I have got lengthier written testimony I have already submitted.

First, specialty health care constitutes a significant change in Board precedent that cannot be reconciled with the National Labor Relations Act. The act says explicitly that in determining whether a unit is appropriate, quote, "The extent to which the employees have organized shall not be controlling," end quote. But in specialty health care the Board adopted a new test under which a proposed unit will be certified if it constitutes an identifiable group of employees unless the employer comes back and shows what the Board called an overwhelming community of interest between that initial group of employees and others who are left out of the unit. That is a low bar for the union and it is a high hurdle for employers and it gives the unions a control over the process that Congress did not intend.

Ranking Member DeLauro, you referred to longstanding principles of law, and this in fact was one that was suddenly reversed by the Board in 2011. It is inconsistent with how units had been determined in the retail industry literally for generations. As far as back as 1957 the Board said that it has long regarded a store-wide unit of all employees as a basically appropriate unit in the retail industry.

In that case, and this is important and I will come to it in a moment, in that case the Board rejected a unit that had been proposed of shoe salespeople—shoe salespeople—in a department store. The Board has also said that, quote, "A high degree of compartmentalization is incompatible with retail," because, quote, "retail needs flexibility of job functions to support its sole objective."

Well, that was then. Since the specialty health care decision, units have been approved that are flatly inconsistent with this precedent and with these principles. One unit was women's shoe associates in the second floor, designer shoe department in the fifth floor, and in the fifth floor contemporary shoe department. Those

were put together to create a unit at a store in New York. That is essentially the same unit that the Board rejected in that 1957 shoe salesperson case I mentioned a moment ago. Another decision approved a unit of cosmetics and fragrance salespersons at a Macy's store.

The second point I would like to make is that in the retail sector specialty health care will result in a proliferation of micro-unions that frustrate customers, raise employer costs, and disserve employees. Unions have a strong incentive to propose fractured units to maximize their chances of election. Once they are elected, unions typically insist that their members have exclusive rights to perform the work of the unit. They establish work rules to determine what unit members can and cannot do, and by the same token that determines what employees outside the unit can and cannot do.

As a result of this, depending on the agreement that you end up with from one of these micro-unions, you could have employees in women's clothes suddenly barred from taking a customer to the shoe department to help there. An employee who works in household appliances might be barred from taking a temporary assignment to get added voluntary overtime in electronics or to cover short staffing. Employees would have fewer opportunities to develop knowledge and skills, and rigid contract rules could prohibit promotions and transfers. Employees seeking additional hours could be prohibited from doing so because they would be barred from rotating to other departments.

All of these constraints would increase costs for retailers, ultimately for their customers, and they would adversely affect customers' experience at the store. A proliferation of bargaining units would also create tension among workers. For example, a unit of cashiers at a store might have the capacity to shut the entire store down and put everybody out of work.

Mr. Chairman, members of the committee, these were not the results intended under the act. In fact, the legislative history to the NLRA shows concern that employees, here is a quote, "that employees could by breaking off into small groups make it impossible for the employer to run his plant," end quote. An approach to determine the bargaining unit that causes conflict among employees, that hampers customer service, and that reduces productivity is not appropriate in any sense of the word.

Thank you.

Mr. KINGSTON. Thank you very much.

[The information follows:]

**STATEMENT OF EUGENE SCALIA  
BEFORE THE  
HOUSE APPROPRIATIONS SUBCOMMITTEE  
ON LABOR, HEALTH AND HUMAN SERVICES,  
EDUCATION, AND RELATED AGENCIES**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Retail Industry Leaders Association (“RILA”) at this hearing on “Regulatory Approaches to Foster Economic Growth.” RILA shares the Subcommittee’s commitment to fostering sound regulatory approaches that free employers to build their businesses, develop and implement new ideas, and create jobs and grow the economy. There is, of course, an important role for the federal government in regulating employment and other economic activities. However, as a former Solicitor for the U.S. Department of Labor and as an attorney in private practice with substantial experience advising clients on regulatory compliance and the labor and employment laws, I have witnessed first-hand the ways in which federal regulatory overreach can impose unnecessary costs and stifle economic growth.

RILA, a trade association composed of the world’s largest and most innovative retail companies, has long been at the forefront in advocating a pro-growth regulatory agenda. RILA’s members include more than 200 retailers, product manufacturers, and service suppliers, who together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA promotes consumer choice and economic freedom through public policy initiatives and by participating as a party or “friend of the court” in litigation that has a direct impact on its members. I am honored to have the opportunity to speak on RILA’s behalf today.

I would like to focus my remarks on a legal development that poses a significant threat to the American retail industry—a development embodied in a series of decisions issued over the past two years by the National Labor Relations Board. In the lead case, *Specialty Healthcare & Rehabilitation Center of Mobile*,<sup>1</sup> the Board abandoned the traditional “community of interest” test that it previously used to determine whether two groups of employees were sufficiently distinct to permit one of them to seek union representation separately, as a distinct bargaining unit. In its place, the Board adopted a test whereby a proposed unit will be certified as long as it constitutes an identifiable group of employees, unless the employer demonstrates an “overwhelming” community of interest between excluded employees and employees within the unit. This new test has since been applied to permit individual departments or loosely-affiliated departments within large retail stores to form their own bargaining units, in direct conflict with a half-century of Board precedent that has consistently recognized a presumption in favor of a whole-store or “wall-to-wall” unit.

RILA supports legislative efforts—such as H.R. 3094, which passed the House last Congress—to overturn *Specialty Healthcare* and restore the traditional presumption in favor of the whole-store unit. Apart from being inconsistent with the text of the National Labor Relations Act and Board precedent, the Board’s *Specialty Healthcare* decision threatens a proliferation of so-called “micro-unions” that comprise small and arbitrarily-drawn portions of an employer’s workforce, with adverse effects for customers, employers, and employees. Recognition of micro-unions makes it more difficult for employees who oppose unionization efforts to have their voices heard, and risks a balkanization of the retail workforce, whereby employees working

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<sup>1</sup> 357 NLRB No. 83 (2011).

side-by-side in similar positions could earn different wages and benefits and have widely divergent relationships with their employer—producing distrust and discord. It will also increase costs for employers, who may have to deal with multiple bargaining units in the same store. Finally, micro-unions will almost certainly adversely affect customer service at retail stores, as unionized employees may be limited by the terms of collective bargaining agreements from assisting customers outside of their specific departments.

In short, *Specialty Healthcare* risks making retail stores less friendly for consumers, more costly for employers, and less fair for employees. The decision is mistaken as a matter of law and policy, and should be overturned.

**1. *Specialty Healthcare* Cannot Be Reconciled With The National Labor Relations Act**

As an initial matter, the Board’s *Specialty Healthcare* decision cannot be reconciled with the text of the National Labor Relations Act, and legislative intervention is warranted for that reason alone.

In section 9(b) of the Act, Congress provided that the Board (not a petitioning union) is to select “the unit appropriate for the purposes of collective bargaining.”<sup>2</sup> *Specialty Healthcare*, however, grants unions broad discretion to organize any portion of the employer’s workforce as they define it. An approach to selecting “the” appropriate unit for collective bargaining that approves virtually any configuration proposed by a union cannot be squared with the language of the statute.

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<sup>2</sup> 29 U.S.C. § 159(b).

Such a unit also cannot be squared with Congress's direction, in section 9(c)(5) of the Act, that "[i]n determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling."<sup>3</sup> The U.S. Court of Appeals for the Fourth Circuit made this very point the last time the Board attempted to replace its longstanding approach to unit determination with an "overwhelming community of interest" standard.<sup>4</sup> The court explained that, "[b]y presuming the union-proposed unit proper unless there is 'an overwhelming community of interest' with excluded employees, the Board effectively accorded controlling weight to the extent of union organization," in violation of the Act.<sup>5</sup>

The Board is required to approve a unit that is "appropriate" in light of the employer's organization. In requiring selection of the "appropriate" unit, Congress intended to prevent artificial units of the sort that have been approved following *Specialty Healthcare*. Unless Congress or the courts act to overturn that decision, the Board will continue to approve units that lack operational significance and make sense only as a subset of employees likely to vote for unionization. That is not what Congress intended and, as I will explain, it conflicts both with the Board's prior case law and with sound public policy.

## 2. *Specialty Healthcare* Departs From Longstanding Precedent

Under its longstanding approach toward determining the proper bargaining unit, the Board considered it paramount that proposed units not unduly fragment the employer's workplace. The Board explained that defining the appropriate unit "necessarily" involves the

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<sup>3</sup> 29 U.S.C. § 159(c)(5).

<sup>4</sup> *NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1581-82 (4th Cir. 1995).

<sup>5</sup> *Id.* at 1581.

question “whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.”<sup>6</sup> And in the retail context, the Board consistently applied that test to invalidate units that would fragment a single store into multiple units. Thus, for instance, as early as 1957, the Board rejected a proposed unit limited to a department store’s shoe salespeople, explaining that the Board “has long regarded a storewide unit of all selling and nonselling employees as a basically appropriate unit in the retail industry.”<sup>7</sup> Other cases have likewise rejected units consisting of a small subset of employees at a retail location, including proposed units for back-office “operations” employees,<sup>8</sup> “warehouse” employees,<sup>9</sup> and even for truck drivers who transport merchandise from a retail store.<sup>10</sup> The Board explained that, in the retail industry, “employees in different departments assist[ ] each other and overlap[ ] in their job functions in order to serve the customers.”<sup>11</sup> And, the Board found, “a high degree of compartmentalization” is incompatible with a “viable” retail operation, which instead requires “flexibility of job functions in support of a sole objective.”<sup>12</sup>

The *Specialty Healthcare* decision upset these longstanding precedents by providing that, so long as the employees within a proposed unit share a minimal community of interest, the proposed unit will not be rejected unless the employees in the unit share an “*overwhelming*

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<sup>6</sup> *Newton-Wellesley Hospital*, 250 NLRB 409, 411 (1980).

<sup>7</sup> *I. Magnin & Co.*, 119 NLRB 642, 643 (1957).

<sup>8</sup> *Charrette Drafting Supplies Corp.*, 275 NLRB 1294 (1985).

<sup>9</sup> *Sears Roebuck & Co.*, 191 NLRB 398 (1971).

<sup>10</sup> *Levitz Furniture Co. of Santa Clara, Inc.*, 192 NLRB 61 (1971).

<sup>11</sup> *Charrette Drafting Supplies*, 275 NLRB at 1296.

<sup>12</sup> *Sears Roebuck & Co.*, 191 NLRB at 404.

community of interest” with excluded employees.<sup>13</sup> This is a demanding standard for employers, and the Board and its Regional Directors have applied it to approve a number of units that would be unimaginable under prior law. In one recent case, a Regional Director applied *Specialty Healthcare* to approve a unit consisting of “full-time and regular part-time women’s shoe associates in the 2nd Floor Designer Shoe Department and in the 5th Floor Contemporary Shoes Department” at the Bergdorf Goodman in New York—effectively the same unit the Board *rejected* in 1957.<sup>14</sup> And another recent decision approved a unit limited to cosmetics and fragrances employees at a Macy’s location, but excluding all other store employees.<sup>15</sup> *Specialty Healthcare* has been applied to approve dubious and artificial units in other industries as well; for example, one Board decision used the “overwhelming” community of interest test to approve a unit consisting of only a small subset of employees at a shipyard where the employer constructs, overhauls, and refuels nuclear-powered submarines and aircraft carriers for the Navy.<sup>16</sup> These cases all represent an about-face from the precedents that previously informed the Board’s unit determinations.

### 3. *Specialty Healthcare* Will Result In A Damaging Proliferation Of Micro-Unions

The practical effect of *Specialty Healthcare* will be to encourage a proliferation of micro-unions, as unions have a strong incentive to propose fractured bargaining units in order to maximize their chances of winning elections. The recent Regional Director decision approving a

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<sup>13</sup> *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 1 (emphasis added).

<sup>14</sup> *Bergdorf Goodman Group, Inc.*, No. 02-RC-076954 (R.D. May 4, 2012).

<sup>15</sup> *Macy’s, Inc.*, No. 01-RC-091163 (R.D. Nov. 8, 2012).

<sup>16</sup> *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011); *see also* *Huntington Ingalls Inc.*, No. 358 NLRB No. 100 (2012).

unit of cosmetic and fragrances employees at a Macy's store illustrates the point: The union had previously petitioned to represent the whole store, but employees voted to reject unionization.<sup>17</sup> The union *only then* determined that employees in the cosmetics and fragrances departments ought to be carved out from the entire store. The possibilities for similar manipulation of the election process are endless: A union that believes it has the votes to organize greeters, but not cashiers, might only seek to organize the greeters. A union may limit a proposed unit to labor-enthusiasts in 2nd floor designer men's clothing, or 3rd floor televisions. Or, a union might simply try to organize the entire 3rd floor of a store, merely because that is where it enjoys its strongest support. Under *Specialty Healthcare*, unions face little obstacle to organizing by cherry-picking a small subset of employees with little regard for whether those employees constitute a practical bargaining unit, and with little regard to whether the designated subset of employees has organizational significance within the employer's business.

While this will be an effective organizing strategy for unions in many instances, it will not further the interests of retailers or their employees and customers.

The workforce in a typical retail store is highly integrated, with employees working under common management, common policies, and similar working conditions. A single store is typically an open environment, where even backroom employees come into frequent contact with sales employees as they move inventory into the store. Sales employees from different departments work in even closer proximity, and necessarily have frequent contact and interaction with each other throughout the day. Retail employees also generally have similar skill sets and

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<sup>17</sup> *Macy's*, slip op. at 8.

training; although some employees may have more experience in a particular role or with certain products, few if any have special education directed to their job, and all are ultimately exercising the shared skills of salesmanship and customer service.

The fragmentation of retail employees into micro-unions not only runs counter to these business realities, but also conflicts with the overriding purpose of a retail establishment, which is to provide seamless and effective customer service throughout the store. A retail employee must be able to respond to questions outside her particular area of expertise, and cannot effectively operate within an artificial bubble, isolated from coworkers. For this reason, the Board has long understood (prior to *Specialty Healthcare*) that a unit smaller than a single store is generally inappropriate because it creates barriers within a group of employees that naturally function as a single unit.

It is a basic feature of unionization that unions insist on their members having exclusive rights to perform the work of the unit, and establish work rules that determine what tasks bargaining-unit members can and cannot perform. This, in turn, affects the work that employees outside the unit can perform. These rules and practices would hamstring retail employers who benefit from a flexible workforce, with employees filling in for coworkers in other departments or rotating as necessary to fill pressing or unexpected needs. Small units would also hurt the employees who could benefit from the opportunities (such as additional shifts or overtime) that arise when rotation and reassignment are possible. Depending on the terms of a micro-union's bargaining agreement, an employee in women's handbags might not be able to walk a customer to her next destination in designer shoes and help her make a purchase in that area. An employee in household appliances might be prohibited from accepting a temporary reassignment to

electronics to cover a short-term staffing need or to earn additional wages. Limited to their own departments, employees would also have fewer opportunities to develop their knowledge and skills; rigid terms of employment could limit promotions and transfers. Employees seeking additional scheduled hours may be unable to do so, because they would be barred from rotating into other departments.

RILA believes that all of these constraints would increase costs for retailers and ultimately for their customers, and would negatively affect customers' experiences at retail stores. The cost of doing business would rise in other ways as well. Managers of a single store could conceivably be required to administer separate collective bargaining agreements with cashiers, greeters, backroom employees, men's casualwear, women's business attire, dishware, sporting goods, or baby products—to name just a few possibilities. These agreements could impose different or conflicting work rules, pay scales, benefits, bargaining schedules, grievance procedures, and layoff and recall procedures. Tracking and adhering to these varying requirements would be an immense, and costly, administrative undertaking.

A proliferation of bargaining units would also create tension among workers. A unit of cashiers, for instance, might shut down an entire store by going on strike, leaving the rest of the employees temporarily unemployed. Rolling work stoppages in various departments would make running the business more difficult, and would impose economic hardship on workers in non-striking departments.

These were not the results Congress intended when it instructed the Board to determine “the . . . appropriate” unit for collective bargaining.<sup>18</sup> To the contrary, the legislative history of the Act reflects Congress’s concern that employees could, “by breaking off into small groups, . . . make it impossible for the employer to run his plant.”<sup>19</sup> An approach to determining the bargaining unit that threatens to spark conflict among employees, erode morale, hamper customer service, reduce productivity, and raise administrative costs does not further the Act’s purpose of advancing the “friendly adjustment of industrial disputes” and the “free flow of commerce,”<sup>20</sup> and is not “appropriate” in any sense of the word.

Thank you again for extending me this invitation to testify on behalf of RILA. I would be happy to answer the questions of the Members of the Committee.

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<sup>18</sup> 29 U.S.C. § 159(b).

<sup>19</sup> Hearing on S. 1598 Before the S. Comm. on Educ. & Labor, 74th Cong. 82 (1935) (testimony of Francis Biddle, Chairman, NLRB).

<sup>20</sup> 29 U.S.C. § 151.

Mr. KINGSTON. Mr. Silvers.

Mr. SILVERS. Thank you, and good morning, Chairman Kingston, Ranking Member DeLauro, and members of the committee. I am Damon Silvers. I am the policy director and special counsel to the AFL-CIO, and like my fellow witnesses, I and the AFL-CIO very much appreciate being invited to testify at today's hearing.

This hearing subject, regulatory approaches to foster economic growth, requires first addressing what our Nation's strategy for fostering economic growth should be. Now, between the Great Depression and roughly 1980 America's economic strategy under both political parties was centered on policies designed to ensure a virtuous cycle of rising productivity, rising real wages, and increased public and private investment that fed productivity.

Regulatory policy and the jurisdiction of this committee during this period of unprecedented economic growth was critical to this strategy. However, since 1980 the United States has moved in a different direction and adopted a different economic strategy, and, frankly, an incoherent and destructive one. We have sought to maintain our status as the world's largest consumer market while at the same time seeking to compete globally by lowering our labor costs. This contradiction has fueled repeated asset bubbles and credit bubbles of greater and greater magnitude that essentially sought to replace wages with consumer debt.

As part of this overall approach, the direction of regulatory policy, of labor regulatory policy since 1980 has been to weaken regulation in the workplace. Of course, the world has changed since 1980. The United States now operates in a globalized economic environment, an environment that requires we have both healthy domestic demand and that we be able to export successfully.

Now, the key ingredients in an economic strategy that seeks to encourage both healthy domestic consumption and robust exports must begin with a productive and empowered workforce. The productive and empowered workforce is the central strategic asset of any advanced economy seeking to compete in the global marketplace today. Such a workforce requires that workers have a voice on the job and it requires that workers have effective access to lifelong learning on the job. Across all of the developed world, voice and access to education and training in the private sector and the high productivity that goes with it are inextricably associated with workers having an effective right to organize and bargain collectively.

Second, employers must be incentivized to invest in the capital goods that enable employers to make best use of a skilled workforce. This requires a variety of public policies in finance and other areas beyond the jurisdiction of this committee, but it also requires that the door to the low road be slammed shut by enforcing the minimum wage and the 40-hour workweek across the labor market.

Third, we have to have regulatory structures that effectively internalize externalities in the workplace. This means that there are real costs when workers are injured, killed, or made sick on the job. If those costs are essentially pushed off onto the workers themselves or not recognized in the pricing process, there are profound inefficiencies in the economy and those costs turn out to be ultimately borne by somebody, and the somebody is usually is the pub-

lic. In contrast, internalizing externalities in the form of effective health and safety regulation has been shown to have significant collateral competitiveness benefits. It drives innovation and capital investment in employers.

Seen in this strategic context, recent rulemaking efforts of the Department of Labor and the National Labor Relations Board in areas such as the silica dust exposure rule, minimum wage and overtime protections for home health aides, and the improvements to the NLRB's election processes are long-overdue contributions to a broader effort to improve the sustainability of the United States as a high-wage economy. This is even more true of the regulatory efforts by the NLRB to ensure that workers are informed of their rights under the National Labor Relations Act.

In contrast, efforts to dismantle worker protections, such as those that have been urged by my fellow witnesses, threaten two seriously negative consequences for our economy.

First, they threaten to contribute to further downward pressure on wages and thus on aggregate demand and on GDP. And as Ranking Member DeLauro mentioned, the evidence is overwhelming that the downward pressure on wages and the lack of aggregate demand is the cause of the economic performance numbers that are so troubling that the chairman opened with.

Second, and in a long-term strategic sense, this type of approach to regulation, the deregulatory approach urged by my fellow witnesses, undermines key drivers of the types of physical and human capital investments necessary to sustain and propel a modern high-wage economy.

So in conclusion, the AFL-CIO is grateful for the opportunity to appear before this committee on such a critical subject for our Nation's future, and I look forward to the questions and discussions. Thank you.

Mr. KINGSTON. I thank the panelists.

[The information follows:]

**TESTIMONY OF DAMON A. SILVERS  
POLICY DIRECTOR AND SPECIAL COUNSEL  
AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS ON  
REGULATORY APPROACHES TO FOSTER ECONOMIC GROWTH  
HOUSE LABOR, HHS AND EDUCATION APPROPRIATIONS SUBCOMMITTEE  
APRIL 10, 2013**

Good morning, Chairman Kingston, Ranking member DeLauro and members of the Committee.

I am Damon Silvers, and I am the Policy Director of and Special Counsel to the AFL-CIO.

This hearing's subject, Regulatory Approaches to Foster Economic Growth, requires first addressing what our nation's strategy for fostering economic growth should be.

Between the Great Depression and 1980, America's economic strategy was centered on policies designed to ensure a virtuous cycle of rising productivity, rising wages, and increased public and private investment that fed productivity. Regulatory policy in the jurisdiction of this Subcommittee was critical to this strategy—including a strong minimum wage, enforcement of wage and hour regulation, and the enforcement of the National Labor Relations Act, giving workers the right to organize and bargain collectively. This national strategy led to the period of highest sustained economic growth in American history, and gave birth to the modern American middle class.

Since 1980, the United States has embraced a different economic strategy—and frankly an incoherent one. We have sought to maintain our status as the world's largest consumer market, while at the same time seeking to compete globally by lowering our labor costs. The result has been, not surprisingly, a series of financial bubbles and skyrocketing consumer debt. As part of

this approach, the overall direction of regulatory policy since 1980 has been to weaken regulation of the workplace with the aim of lowering labor costs.

As a result, there were substantially fewer wage and hour inspectors at the Department of Labor in 2007 than there were in 1979, although our economy and our workforce are substantially larger.<sup>1</sup> During the post war era, the United States helped other countries adopt labor laws that protected workers' right to organize. By contrast in recent years the global organization Human Rights Watch has cited the United States' labor laws as actually enforced as violating international norms of human rights.<sup>2</sup> And this was before the effort to deny workers the protection of the law entirely by paralyzing the National Labor Relations Board.

Of course the world has changed since 1980. The United States now operates in a globalized economic environment. So what should our strategy be for growth in this environment, and what role should labor regulation play?

We could seek to be a low wage producer of consumer goods—seeking to compete in global markets on the basis of absolutely low labor costs with poor developing countries like Bangladesh or human rights violators like Burma. There is simply no way to do this other than to further dismantle workers' regulatory protections, drive American wages to poverty levels and leave our people prey to events like the recent fires at Walmart suppliers in Pakistan and Bangladesh that killed hundreds of garment workers.

Or we could seek to be a purely export oriented country, like Germany or China has been over the last fifteen years. But these countries' experience is that export oriented strategies, when practiced in isolation by large economies like the U.S., lead to trade and investment imbalances that can destabilize the world economy—as the Germans are currently discovering. This is

partly why China now is engaged in a debate over whether to adopt regulatory policies designed to encourage wages to rise with productivity.

The point is that a low wage strategy is a recipe for national decline, and an export only strategy for growth is not sustainable when the world's other major economies are all pursuing the same strategy. The United States needs both a healthy domestic economy and robust export markets to prosper. To have a healthy domestic economy, the United States needs labor regulation that promotes wages for America's workforce that keep pace with our workforce's productivity. Stagnant wages and rising economic insecurity means weak consumer demand. Weak consumer demand means business is reluctant to make capital investments.

We as a nation have tried to make up for this fundamental set of facts about our economy in every possible way other than actually addressing the problem through labor regulations that encourage rising wages. And so in almost every day's news for the last five years we have seen the consequences of weakening labor regulation in terms of mass unemployment, falling wages, and reduced investment in capital, plant and equipment.

To be clear—America's workers have lived with stagnant wages for decades. And this has gone on while the productivity of our workers keeps rising. See Exhibit A. Without an effective National Labor Relations Act, without a minimum wage indexed to inflation, without effective and comprehensive FLSA enforcement—America's workers simply have not and will not receive a fair share of the value they are creating. For example the minimum wage in real dollars was its peak in 1979, and is now more than \$1 an hour lower.<sup>3</sup> This is unfair, but it is at the heart of why our economy is not functioning properly. Wage stagnation is a key cause of our economy's chronic shortage of aggregate demand—the key fact about our economy that is preventing us from achieving healthy growth rates.

What are the key ingredients in an economic strategy that seeks to encourage both healthy domestic consumption and robust exports? First, we must have a productive and empowered workforce. That requires workers have a voice on the job and it requires they have effective access to lifelong learning on the job. Across all of the developed world, voice, access to training in the private sector, and the high productivity that goes with it are associated with workers having an effective right to organize and bargain collectively.

Second, employers must be incentivized to invest in the capital goods that enable employers to make best use of a skilled workforce. This requires a variety of public policies in finance and other areas beyond the jurisdiction of this committee, but it also requires that the door to the low road be slammed shut by enforcing the minimum wage and the forty hour work week.

Third, we have to have regulatory structures that effectively internalize externalities in the workplace. This means that there are real costs when workers are injured, killed or made sick on the job. In the absence of effective regulation of these long term health hazards, the costs are borne in the first instance by workers and their families, and in the long run in a variety of ways by society as a whole. The costs associated with sick, injured and dead workers are not priced into the cost structure of the products whose production generates these negative health outcomes. The results of regulatory failure in areas like asbestos and silicon dust exposure are large health costs borne by workers and the general public and highly inefficient economic outcomes.

Internalizing externalities in the form of effective health and safety regulation has significant collateral competitiveness benefits. Multiple studies have shown that “safety and operating performance measures should be viewed in as in concert with each other rather than as competing entities.”<sup>4</sup> In particular, health and safety and environmental regulation has a

demonstrated positive interaction with technological change, spurring change that has broader positive competitiveness implications, and directly reduces the cost of compliance with health and safety regulations themselves.<sup>5</sup>

Seen in this strategic context, recent rulemaking efforts of the Department of Labor and the National Labor Relations Board in areas such as the silica dust exposure, minimum wage and overtime protections for home health aides, and the improvements to the NLRB's election processes are long overdue contributions to a broader effort to improve the sustainability of the United States as a high wage economy. This is even more true of the regulatory efforts by the NLRB to ensure workers are informed of their rights under the National Labor Relations Act.

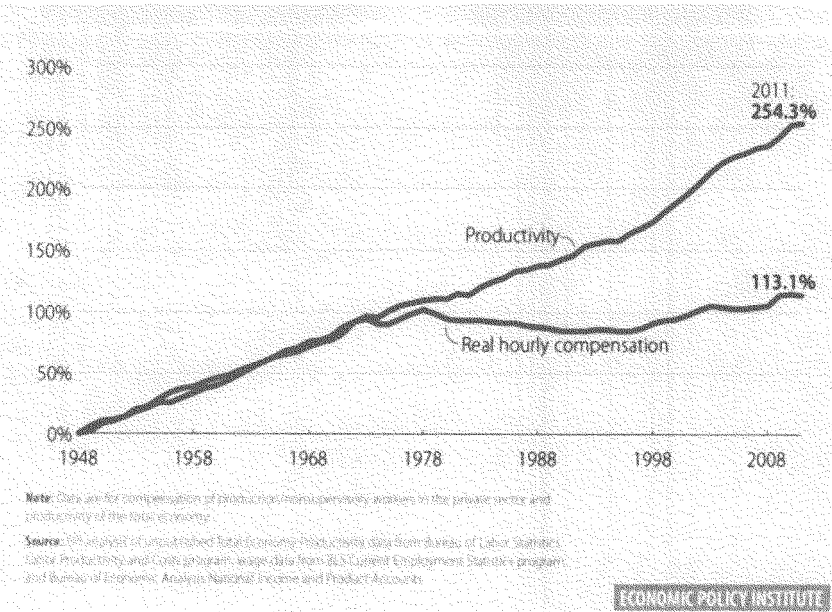
In contrast, efforts to dismantle worker protections threaten two seriously negative consequences for our economy. First, they threaten to contribute to further downward pressure on wages and thus on aggregate demand and on GDP. Second, in a longer term strategic sense, this type of approach to regulation undermines key drivers of the types of physical and human capital investments necessary to sustain and propel a modern high wage economy.

In conclusion, the AFL-CIO is grateful for the opportunity to appear before this Committee on such a critical subject for our nation's future, and I look forward to your questions. Thank you.

EXHIBIT A.

#13 EPI'S TOP CHARTS OF 2012

**Most Americans are not benefiting from increased productivity**  
Cumulative change in total economy productivity and real hourly compensation of production/nonsupervisory workers, 1948–2011



<sup>1</sup> National Employment Law Center, “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities, p. 52 (Sept. 2009)

<sup>2</sup> Human Rights Watch, The Employee Free Choice Act, A Human Rights Imperative, pp. 5-6 (January, 2009).

<sup>3</sup> Economic Policy Institute, “Declining Value of the Minimum Wage is a Major Factor Driving Inequality,” Issue Brief #351, Feb. 21, 2013, at <http://www.epi.org/publication/declining-federal-minimum-wage-inequality/>.

<sup>4</sup> Anthony Veltri, Mark Pagell, et al., “A Data-Based Evaluation of the Relationship between Occupational Safety and Operating Performance.” The Journal of SH&E Research, Spring 2007.

<sup>5</sup> Congress of the United States, Office of Technology Assessment, “Gauging Control Technology and Regulatory Impacts in Occupational Safety and Health: An Appraisal of OSHA’s Analytic Approach,” September, 1995, and Nicholas A. Ashford, “The Importance of Taking Technological Innovation into Account in Estimating the Costs and Benefits of Worker Health and Safety Regulation,” in *Costs and Benefits of Occupational Safety and Health: Proceedings of the European Conference on Costs and Benefits of Occupational Health and Safety 1997*, Mossink and Licher, eds. 1998, pp. 69-78.

Mr. KINGSTON. You have some really good testimony, and I think we will have a good meaty discussion here.

I wanted to start, Mr. Holtz-Eakin, with the chart that you have in your written testimony called notable labor regulations. And, Mr. Silvers, what I wanted to do was give him a few minutes to talk about these and then maybe have you respond. You do not have a copy of his testimony, though, do you? You do?

What I was wanting to ask you is, of these examples that you list, \$10,000,000,000 in costs and 41 million burden hours, why are these not good regulations, and maybe just a few examples with them. And then either, Mr. Silvers, if there is common ground or if there is areas of great dispute on these. I only have about 2 minutes each, so welcome to Washington.

Mr. HOLTZ-EAKIN. In an effort to be more fair than I am on average, I will not filibuster this and give Damon a shot.

What we did was, you know, in the interests of the committee, look at the areas that are under the jurisdiction of the committee, look at those which have higher reported costs. And remember, these are costs that are not our estimates, these are as reported by the agencies, what these will cost, the paperwork burdens, and which involve the kind of judgment calls that are at the heart of regulation. And bad regulations are ones where costs exceed benefits. There is not the absence of benefits. No one proposes regulations in a vacuum. You do them with objectives, obviously.

And so we looked at these, and our concern was that either because of this issue with new precedents in the persuaders rule, that this imposed very large costs across the economy and set precedents we did not like, or with the home health aides, actually has self-reported disbenefits in that people will lose jobs because of the rule itself. And as you go through this list, you find situation after situation in which it would be reasonable to ask the question, gee, does this really pass the benefit-cost test? That if we really scrubbed this carefully and looked at the impacts on people losing jobs, look at the impacts broadly by precedents being set, we would come to the conclusion we do not want to do that.

So this list was included for that reason. I will be happy to engage in a regulation-by-regulation debate at the right moment with Mr. Silvers. I do not think this is it. But this is the nature of the list and these are ones that I wanted to bring to your attention.

Mr. KINGSTON. Just give me one that you think is an overreach.

Mr. HOLTZ-EAKIN. I think the overreach on the home health thing is pretty clear, period. I mean, people are going to lose jobs because of this. We need jobs. This is the kind of regulation whose enforcement is going to be extraordinarily costly. It is going to raise questions going forward about whether, if it is home health, is it then going to spill over into home what-else?

In the future of an economy like the United States, we are going to deliver a lot of home-based services. We have an aging population. People like to have services in their home. It is an innovative economy. We are developing new services. What precedent are we setting when we do this, because we should be careful about that.

Mr. KINGSTON. Mr. Silvers, how would you respond to that?

Mr. SILVERS. Well, first I want to acknowledge the graciousness of my fellow witness.

Mr. KINGSTON. You all are as bad as we are.

Mr. SILVERS. Mr. Chairman, we are learning.

Mr. KINGSTON. No, you wrote the book on it.

Mr. SILVERS. I have got really two comments on this. I think that Doug's comment illustrates the nature of the debate we are having here. You can look at a rule, and I will go right to the home health aide rule, you can look at the fact that home health care, health care provided in the home is going to be a larger part of what our workforce does as our population ages, and you can look at that and you say, well, what we ought to do is make sure that those people are paid as little as possible, because that is going to save costs in our economy. And that, I think, has been the sort of the prevailing intellectual structure for labor market policies over the last 30 years, that is the substance of my testimony, and that that is a mistake, it is the wrong way to look at it.

The right way to look at it is, if that is what a lot of Americans are going to do, what do we need to do to ensure that those are middle-class jobs? And there is no question that the first step, it is not sufficient, but the first step has got to be to make sure those jobs are covered by the Fair Labor Standards Act—minimum wage, 40 hour workweek, and the like. If we are not doing that, there is no way those jobs are going to be middle-class jobs. And I think that that is the fundamental nature of the debate that is in front of this committee this morning.

Mr. KINGSTON. Well, thank you.

Mr. HOLTZ-EAKIN. Congressman.

Mr. KINGSTON. I am actually out of time, but we will yield back in a minute, unless you have 3 seconds.

Mr. HOLTZ-EAKIN. Three seconds. Here is the concern, literally. The most important thing facing this country is long-term care services. They are provided largely and donated by family members, typically females, they are a rising burden in the population, and the future is going to be more of that, not less. Is that a home health service or not? Where is the line between paid and unpaid? What will be the innovations necessary to meet those needs as we go? Because those women are going to be working. They are not going to be providing on a volunteer basis. If we freeze it at 2013 standards with his vision of what the middle-class should look like in 2013, we will have made a dreadful policy error.

Mr. KINGSTON. Ms. DeLauro.

Ms. DELAURO. Having a mother who is 99 years old with workers who are coming in and out, I watch the job that they do. They need to be paid for their job. And if they are there more than the workweek, they ought to be paid for it. And I might add that this is a proposed rule. Certainly with the proposal, as we know what the process is, we will see that that often gets refined, there will be public comment, et cetera, and move forward. A proposed rule. The point I tried to make in my opening, that we are now getting into proposed rules and trying to just dismiss them.

Just a couple of points and I want to get to a question on the NLRB. But I would just say, Mr. Holtz-Eakin, that your table includes a mix of regulations, regulations that have been proposed

for public comment, regulations not even in the proposal stage, and the table shows \$10,000,000,000 in potential costs, but no mention of associated benefits.

And you talked about cost-benefit. The investment advice to participant beneficiaries, that is a provision of the Pension Protection Act of 2006 designed to expand availability of advice to participants in 401(k) and IRAs. The Labor Department says the cost is between \$2,000,000,000 and \$5,000,000,000, you use the high end at \$5,000,000,000. The Department also estimated benefits, \$7,000,000,000 to \$18,000,000,000 per year, far outweighing the cost. Presumably the belief that this legislation was beneficial is why the Republican Congress passed it and President Bush signed it. I have got other examples, but we will go from there.

Let me just talk about the NLRB and obstacles in getting nominees to the NLRB confirmed by the Senate. And that goes back to Presidents from Ronald Reagan to Barack Obama. They have had, all of them, repeatedly had to resort to making recess appointments to the Board. The Court of Appeals questioned the validity of the recess appointments under which two of the three current Board members are serving. The decision is contrary to long-standing practice by numerous administrations.

I want to get to the consequences of shutting down the NLRB due to a lack of a quorum. My understanding is that the only mechanism for enforcing rights guaranteed by the Labor Relations Act, the right to organize, to join a union without being fired or retaliated against, is through the NLRB. There is no provision for private lawsuits to enforce these rights. I think I am correct about that.

Then, if you have no Labor Board, what is the protection in this country for basic rights to participate in union activity? Or, for that matter, let's take it from the other side of the coin. What about misconduct by unions that are prohibited by the act? Secondary boycotts, unlawful picketing. Should we then just move forward? How do those get adjudicated?

Final point on this, and I would like to hear from folks on this, is that the Court of Appeals did not order these two members to stop performing duties, and, you know, we have had several courts who have entered this effort. One court has made this determination. I believe three other courts have come to another conclusion. What happens without a Labor Relations Board? Go ahead, Mr. Burr.

Mr. BURR. Thank you. I want to first take exception with one of the things you said with regard to the recess appointments. What President Obama did in this circumstance is not like what previous presidents have done. The Senate was in session when these appointments were made. That is—

Ms. DELAURO. I am sorry, I am sorry, Mr. Burr, that is one of the issues to be determined. It is a question of whether or not the session is between, like, the 101st and the 102nd Congress. Because if we go with what you are talking about today, let us go all the way back, and I will get you the citations of all of the activities of both Democrat and Republican presidents who then we would have to reverse their decisions. This is a much broader interpretation. We also know that between January whatever that date was

and the end of the month, that the Senate was not doing any business.

Mr. BURR. Respectfully, Congresswoman, there is a difference here. The Senate passed during that same session an extension of the payroll tax cut which President Obama signed into law. So for the purposes of that, he believes that the Senate was in session, but for the purposes of recess appointing he did not. This is very different than the secondary issue of the difference between an inter-session recess appointment and an intra-session recess appointment, which is what you are talking about.

There were two chief legal arguments in this case. The first was with regard to the Senate being in session, in a pro forma session. The second was the inter-session/intra-session issue that you are talking about. And I understand what you are saying there. That is consistent with practice going back many, many years.

Ms. DELAURO. President Reagan would have violated the Constitution in that case in making four intra-session recess appointments to the NLRB.

Mr. BURR. But not during a pro forma session.

Ms. DELAURO. President George Bush would have similarly violated the Constitution with his four intra-session recess appointments to the Board. And wouldn't all of these appointments be equally invalid under the D.C. Circuit ruling in Noel Canning? They would all be illegal in those terms.

Mr. BURR. And a reading of the Constitution leads you to believe that the court may have been right in this case and for 150 years it has not been done correctly. But with regard to the Senate being in session, there is a difference between what President Obama did——

Ms. DELAURO. It is still under dispute. It is going to the Supreme Court. Why are we going to deal with this in shutting down the Labor Relations Board prior to a decision by the Supreme Court?

Mr. BURR. We absolutely want a functioning Board. We want a functioning Board with legitimately appointed Board members.

Ms. DELAURO. As we do. And if the Senate would move to pass and act on those appointments, we would have a legitimately appointed Board.

Mr. BURR. Not when the President appoints people that have already been serving illegal appointments.

Mr. KINGSTON. I take you wanted unanimous consent for a little bit more time, which we have handled.

Ms. DELAURO. I always appreciate that, Mr. Chairman, on your part. Thank you.

Mr. KINGSTON. Mr. Simpson.

Mr. SIMPSON. I appreciate the fact that we are not going to solve the problems of the United States Senate here. Obviously there is a question about whether those appointments were legal or not. But I do not really want to talk about those or really any specific rules.

My problem is, and I will tell you what it is, is that we have the inability almost to pass any appropriation bills anymore because of the riders that are put on them because of trying to reverse rules and regulations and so forth and so on, and it has become a real

problem. That is not our job. Our job is the appropriation process and getting the appropriations done.

But the way we function in Congress, the only or last option to address some of these concerns that people have is to put funding limitation provisions on appropriation bills. I would be the first to suggest that is not the right way to do it, but like I say, because of the way we operate here, we do not really have many other options. So Members of Congress look to the Appropriations Committee to add all of these things on there.

The concern I have, and this is not Republicans versus Democrats or anything else, to me this is the legislative branch versus the administrative branch. And you oftentimes find the administrative branch, Republican or Democrat, stepping outside the realm of what was intended when we passed a statute to write a regulation that is sometimes just tangentially associated with the statute that was passed. And when that happens, all of a sudden they look to the Appropriations Committee to try to reverse it.

Obviously, the Congressional Review Act has not been effective in trying to address this. Is there a way that Congress—and you mentioned this, Doug, in your testimony—that a President is unlikely to sign a statute rejecting a rule and regulation that his administration wrote.

I will tell you what we did in Idaho when I was the speaker, is we actually passed and the Supreme Court in Idaho upheld the provision, it is the only State in the Nation that courts have ruled on our side, or the legislature's side, is that we can reject a rule and regulation written by the administration, by the Governor, by concurrent resolution, which means it does not require the Governor's signature. And the theory behind that is if they have written a rule and regulation that is just out there and we do not think that our statute applied to it, that is all we say, is that this fails to follow the statutory scheme passed by the legislature for this reason and pass a concurrent resolution to reject it. We do not have that here or in the other 49 States.

Is there a scheme that Congress could have to review rules and regulations? Before we did this, I will tell you there was always conflict between the regulating agency who had the big hammer and the regulated industry, and we used to get in big fights about this. All of a sudden when we got this authority what we found out is that the regulating industry and the regulated industry decided that they did not want to fight before the legislature, so they better start working together to come up with a rule to regulate whatever that they could both agree on. And all of a sudden we found them coming before the legislature when we review rules and regulations agreeing that, yeah, we can live with this, yeah, this will do the job of regulating the industry.

Is there a scheme that we can come up with that gives us the authority to review rules and regulations that we think go beyond the scope of what was intended by the legislature's actions that will address this?

Mr. SCALIA. If I could briefly address that, Mr. Simpson, the problem in some ways begins even earlier with attempts to circumvent the legislative process. Remember that there was a very aggressive attempt to substantially change the union organizing

rules at the beginning of this administration in Congress, and that failed. And so an important part of what we have observed over the last 5 years is an attempt to achieve through agencies what really is the province of Congress. So, for example, the specialty health care decision is a really good example of an agency reversing long-standing precedent as a way of sort of nibbling at the edges, but having a substantial effect in retail of the Employee Free Choice Act.

In terms of the oversight role, the process that you described in Idaho probably could not constitutionally be done under the Supreme Court's *Chadha* decision, but hearings such as this are very important for the agencies.

The last thing that I would mention is legislation that has been introduced requiring cost-benefit analysis up front of all agencies, not merely those that are within the executive branch.

Mr. SIMPSON. Well, the other one that you did not mention is when Congress failed to pass a cap and trade legislation, and as soon as we failed, when the EPA director comes out and says we will just do it through rules and regulations if Congress will not pass this. I was offended by that. I would have been offended if it would have been Bush's EPA. We have got to change this somehow, because this is probably more important than the overall tax debate that we have.

Mr. KINGSTON. Ms. Lee.

Ms. LEE. Thank you very much. Let me first thank all of you for being here and thank our chairman and ranking member for this very important hearing.

I want to ask you a couple of things with regard to the whole issue of the minimum wage versus a living wage. I founded and chaired the Congressional Out of Poverty Caucus, as well as our Democratic Whip's Task Force on Poverty and Opportunity. Addressing the issue of poverty has been a big issue that many of us have been addressing.

In order to revitalize our economy we need to prioritize the creation of opportunities that will lift people out of poverty and those aspiring to the middle class and into the middle-class. Of course, the working poor now is really beginning to get on our radar here in Congress. But I want to ask you an issue that relates to the working poor, because so many people who are part of the working poor are on food stamps. They need housing subsidies. They have very low wages.

For instance, in my State of California, fair market rate for a two-bedroom apartment, without paying more than the recommended 30 percent of their income, the wage for Californians would be about \$25.78 an hour. That is just a living wage. Right now in California we are around \$8.

So I would like to ask you, starting I guess with Mr. Silvers, how you see the difference between a living wage and an increase in the minimum wage and what that would do in terms of our economy and what this would mean in terms of keeping pace with worker productivity?

Mr. SILVERS. Congresswoman, that is a very critical question. In my written testimony there is a chart that I think you are referring to that shows the way in which over the last generation median

wages in the United States have stagnated while the productivity of our workforce has grown dramatically. Underneath that, as I think everyone is aware, is a growing economic divide in our society, so that for more and more Americans the minimum wage is a highly relevant fact of their economic life.

As you point out, the minimum wage is not a living wage, and as I said in my written testimony, the real value of the minimum wage is today substantially lower than it was in the 1960s, whereas the productivity of our workforce, what people create who are working for the minimum wage, has grown dramatically.

Now, most developed societies in this world deal with this problem in a two-step way. Most societies have a minimum wage, although not all, most societies have a minimum wage which is designed to set a floor, an absolute floor on poverty. And then you have a robust system of collective bargaining that ensures that the median wage is a living wage. It is very difficult to set for the whole economy for every sector, every job, what the right wage is administratively. Some people have tried that. It has not worked out too well.

Collective bargaining, by industry, by workforce, by industry, by employer, in some cases by parts of employers, is the way in which most advanced societies address the problem you are talking about. And as we all know, the effective right to organize and bargain collectively, a worker's right to do that in the United States has eroded dramatically, so much so that Human Rights Watch views the United States as in violation of the norms of international human rights on this subject.

Now, one of the great ironies of this, and I will stop on this point, one of the great ironies of this discussion is that you have heard about the business community's concern in this hearing that the current state of labor law promotes fragmentation in the workforce. There is a deep irony in that, because the entire nature of the way the business community has managed labor relations over the last few years in the American workforce has been to subcontract and outsource work in the same workplace. So that if you walk into a place of business in this country, you do not know who is actually an employee of whom even though everyone is all working together. And it is very ironic that in the conversation we have just had the business community now objects to, shall we say, labor law following that trend.

Ms. LEE. Okay. Thank you, Mr. Chairman. I would like to ask others on our panel for a response, but I will wait until our second go around. Thank you.

Mr. KINGSTON. Thank you.

Mr. Fleischmann.

Mr. FLEISCHMANN. Thank you, Mr. Chairman.

My first question is for Mr. Scalia. And I kind of want to take more of a practical approach.

In your opening statement you touched upon some of the issues with this new standard, but can you expand on how detrimental this would be on your industry? I am sure the NLRB has theoretical reasons why this is great, but can you touch upon the practical, day-to-day, real implications of this case decision, specifically what does it do to the customer experience? And then I have a fol-

low-up question to that. Does this decision just impact stores or does it impact other aspects of retail as well, sir?

Mr. SCALIA. Yes. Well, in terms of the effect on the customer experience, Mr. Silvers a moment ago mentioned shoppers' seamless experience at stores. That is critical. When shoppers come into stores they do not want to have to be run up directly against rigid work rules where employees are saying, I am sorry, I can help you in this department, you are on your own now. And whether it is through subcontracting or not—which is not, by the way, a prevalent practice in the stores we are talking about—whether through subcontracting or not, that is a very important part of the customer store experience which would be changed by the rule that is being implemented here. This rule, by the way, was reiterated by a Board dominated by Democrats as recently as 2010, but was reversed in 2011.

Mr. Fleischmann, in terms of the effect for outside of the store, yes, this would affect the retail industry as a whole, not merely the customer's experience, not merely employees' opportunities, and not merely the efficiency for the employer. I can give you an example of that later perhaps. But could also, for example, affect back store operations, the use of drivers and the like, who would also be subject to this new rule which reversed a rule that had been longstanding and, again, reiterated as recently as a year before.

Mr. FLEISCHMANN. Thank you.

I have a question for Mr. Burr. This is in regard to the NLRB ambush elections rule. How are employers impacted by the NLRB ambush elections rule and does it also negatively impact employees?

Mr. BURR. It is a great question. I will refer back to something that Mr. Scalia said earlier. When you look at the ambush election rule and you look at that in concert with the persuader proposal, it is an attempt to achieve the goals of the Employee Free Choice Act via regulation.

The ambush election rule is going to take what is currently about a 30-day process from when an employer is made aware that there is an organizing campaign going on, and then on average about 30 days pass before there is an actual election. This would cut it down to about 17 days.

And so what is going to happen there is that the employees that are making what is a pretty substantial decision about whether or not we want to create a union, whether or not we want our company to be unionized, this is a decision that probably warrants some serious consideration by employees, they are going to have a truncated period of time and they are not going to hear both sides of the story. Because of the chilling effect of the persuader rule and the truncated time period, they are probably only going to hear one side of the story. We do not think that 30 days to make that substantial of a decision is an unreasonable amount of time.

It also is worth noting that right now in the construction industry, in those elections, unions are winning 81 percent of those elections under the current law.

Mr. FLEISCHMANN. Thank you.

Another question, Mr. Burr. It is my understanding that the NLRB received more than 70,000 comments regarding the pro-

posals, many of which strongly oppose these changes. Has the NLRB provided a reasoned justification for issuing such controversial proposals?

Mr. BURR. Certainly not to our satisfaction. It is worth noting that those 70,000 comments were received and then they held a hearing and forced this rule through less than a month later. It is hard to imagine that they reviewed all 70,000 comments in that period of time. And then, of course, when they did push it through they did not have a quorum because only two members voted, and that is part of the reason that that has been reversed by the courts.

Mr. FLEISCHMANN. Thank you, Mr. Chairman. I yield back.

Mr. KINGSTON. Thank you.

Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Thank you, Mr. Chairman. I want to change the subject to project labor agreements and I want to direct my question to Mr. Silvers, but, you know, if time allows, I would like to also hear from the other members of the panel.

In Mr. Burr's testimony, we heard that project labor agreements increase construction costs, discourage competition and stifle job creation. And that caught my attention, because right now we are looking forward to the building of the Los Angeles Federal Courthouse, and we were just recently informed that a project labor agreement is a part of this large scale construction. And, frankly, I was very pleased, because I have always believed that they have been an effective tool in managing large scale projects, not only in what I have seen in Los Angeles, but throughout the country.

So can you elaborate on the role of project labor agreements, what they play in coordinating large scale construction projects? And is there evidence that suggests that PLAs necessarily increase costs or stifle job creation, as has been stated?

Mr. SILVERS. Project labor agreements really have two purposes. One is to ensure that on a large scale construction project where there are—I am sorry.

They have two purposes. One is to ensure that there is not any disruption due to labor disputes on a large scale construction project where time is generally of the essence, but at least in my view, from the perspective of the analysis in my written testimony, the more important feature of a project labor agreement is as part, together with the Davis-Bacon Act, of an overall system of managing large scale public construction projects that ensures that the public is getting the benefit of properly trained labor and that that workforce is sustainable at that skill level. All right. And this goes back to the issue of externalities that I mentioned in my written testimony. All right.

The fundamental challenge in having a competitive construction workforce is proper training, but there is a huge incentive on the part individual contractors not to provide it, not because they are bad people, but because the workforce is mobile. All right. And it is an incentive, frankly, to bid jobs without including the training cost in the bid. All right. And if you allow that to occur, particularly on large scale projects, given the large role of government as an ultimate construction employer, all right, two things happen: one is your training system deteriorates and the second is that you incur much larger costs on the back end, because you have got

poorly skilled workers on the job. That is what it is really about. And so the sorts of data cited by my fellow witnesses that people without project labor agreements, people are willing to come in and low bid jobs, all right, is not evidence that the public is being well-served, it is in fact suggestive of the dynamic I am describing, which leads to projects coming in ultimately over cost, poor quality, and the long-term deterioration of our construction workforce.

And if you look over time, and I am not—there is neither time nor am I, frankly, prepared to do it, if you look over time at the record of the nonunion construction contractors on training and the seriousness with which they do it and the record of the union construction contractors who participate in project labor agreements on training, all right, you will see it is not a pretty story in relation to the folks who are promising your low bids.

Ms. ROYBAL-ALLARD. Anybody else want to comment?

Mr. BURR. You know, our objections to PLAs are that they are fundamentally unfair and discriminatory. Eighty-six percent of the construction workers in this country are not represented by a union. They should not be disenfranchised. They should have the opportunity, and the employers that employ them should have the opportunity to bid for projects that are funded by their tax dollars.

With respect to the Davis-Bacon Act argument that was made, if it is a Federal project, Davis-Bacon is required. If its valued at over \$3,000 in this day and age that is every project, that is the law of the land. So PLAs do nothing in that instance to guarantee Davis-Bacon. Davis-Bacon is simply what is the law of the land, and our members comply with that.

And with respect to training, private sector construction companies make significant investments in training and they have done large scale projects that have been extremely successful. You can pick out PLA projects that went awry and had safety problems. You look at the big dig in Boston is probably the most notorious one. That was a PLA; billions of dollars over budget, lots of safety problems.

At the end of the day, there are high performing union contractors, high performing nonunion contractors, and also ones that aren't doing as good of a job. The union affiliation is not what determines who is a quality contractor.

Ms. ROYBAL-ALLARD. Do you have a response to that?

Mr. SILVERS. My fellow witness has sort of blended things in a way that I think is not accurate. What I was saying—I don't—you know, the point that Davis-Bacon applies uniformly is accurate. Now, of course not if they had it their way; but what PLAs do, right, is reinforce the ways that Davis-Bacon ensures that workers on Federal projects are properly trained, all right, because—and I would be happy to provide the committee, you know, with the numbers that support this, because there is a quality premium on union construction particularly in the higher skilled crafts. All right. And that is, I am afraid—that is the—and the reason why that is is because of the greater investment in training.

Ms. ROYBAL-ALLARD. Okay. I know my time is up, but could you please submit whatever information you have?

Mr. SILVERS. Okay. And by the way, let me just give you an example of that. All right. Toyota, which is ferociously nonunion, all

right, in its manufacturing operations and which the labor movement has a lot of problems with in terms of manufacturing, Toyota builds union. All right. And Toyota builds union, to my understanding, because of the very issues we have just been discussing. They don't have to. They are not subject to Davis-Bacon, they are not—and they certainly don't do it because they have an affection for us.

Mr. KINGSTON. Dr. Harris.

Mr. HARRIS. Thank you very much, Mr. Chairman. And I thank the members of the panel for being here to testify on an important subject. Let me just ask a couple things.

Mr. Holtz-Eakin, you had said that you had said that regulations are a problem, and we have just been talking about Davis-Bacon. And my understanding is Davis-Bacon also overlays regulatory as well as increasing wage. Is that correct?

Mr. HOLTZ-EAKIN. Yes.

Mr. HARRIS. So there is an additional cost in addition to the wage?

Mr. HOLTZ-EAKIN. Yes.

Mr. HARRIS. That is what I thought.

Okay. Mr. Burr, let me just concentrate on your very fascinating testimony you submitted, because you actually submitted an actual case of the Manchester Job Corps Center. Now, let me get it straight here. This thing was bid several times. First couple times, it was PLA, then without a PLA, and when it was bid with or without a PLA all comers, there were 10—is that correct? There were 10 bids actually as opposed to three?

Mr. BURR. That is correct.

Mr. HARRIS. So obviously you opened the field, as your testimony suggests, since the vast majority of companies are not unionized companies in the industry, but the low bid of \$31,635,000, now, that was fully subject to Davis-Bacon.

Mr. BURR. That is correct.

Mr. HARRIS. So that had nothing to do with wages. The wages were going to be identical, because the wages are not really higher in the PLAs except—well, they really aren't higher, but you are limiting the free market bidding process.

Mr. BURR. Because it is a Federal project Davis-Bacon applies.

Mr. HARRIS. Okay. So Davis-Bacon applies. And correct me if I am wrong, I mean, the estimates range from, you know, 5 to 38 percent increase. Most people believe it is roughly 20 percent. But let me put it in everyday dollars, because, you know, we just had the President submit a budget today that never balances, and I don't think it suggests that, well, maybe we could save, you know, 22 percent plus on the costs of all Federal projects, building projects if we just suspended Davis-Bacon in a period of economic crisis, or we could be a little less dramatic and just say, you know, maybe we should suspend PLAs because PLAs don't affect wages in and of itself, because people are going to pay Davis-Bacon wages anyway, but we could save 12 to 18 percent. In fact, in this project, this would save the American taxpayer, doing the quick math, \$6 million, which in the greater sense of things is—you know, I hate to say \$6 million is not a lot of money, because it sounds like Washington talk, but it is 20 percent—almost 18 percent of this

project, and 18 percent of money is money that we could use to making sure that we have our social safety net fully funded, that we don't have to propose, you know, cuts in Social Security like the President proposed today. We could look in other areas that would directly affect—and these are all middle class wages, I take it, middle class workers.

Mr. BURR. Yep.

Mr. HARRIS. What is, in your mind—is this the correct range of what we are seeing the savings that we could generate in the Federal Government if we would take a second look in a period of economic problems, like we are having now, at the use of project labor agreements and Davis-Bacon?

Mr. BURR. I do. I think that these savings with respect to this particular project are consistent with what studies have shown up until now. And that, you know, it is important to remember, you know, the construction industry is in tough times, the unemployment rate is 14.7 percent, and our largest customer by far is the Federal Government. So when these projects are set aside for one particular group, that is pretty harmful to the 86 percent of contractors that employ a nonunion workforce. They are not going to bid on this project when they can't use their guys.

Mr. HARRIS. And let me get it straight. The estimated increase, that 12 to 18 percent, is above the increased costs under Davis-Bacon? So when we go to build a VA Hospital, for instance, okay, so we want to give our veterans the best, most modern, you know, healthcare in a modern facility. We could build—by my rough estimate, we could build three hospitals instead of two hospitals if we just built the way every family builds. You know, if they put an addition on their house or if they are building a home or they are going to—most home builders aren't subject to Davis-Bacon, are they, or PLAs, right?

Mr. BURR. No.

Mr. HARRIS. And most home improvements are not subject to Davis-Bacon or PLAs?

Mr. BURR. Let us hope not.

Mr. HARRIS. And most people, I think, if they went out and got a contract and one bid came in 33 percent higher than the other bid, they would ask around, they would ask for reputation, they would put protections in the contract for quality, which I assume are in every Federal contract, and they would usually go with the lower bidder that has adequate protections, right?

Mr. BURR. One would think.

Mr. HARRIS. So actually, we are just doing business a whole different way than the average American thinks about how you should actually buy things.

Mr. BURR. When you engage in an anticompetitive policy, you are likely going to increase costs.

Mr. HARRIS. Like the project labor agreement, again, which blocks out over 80 percent of the industry.

Mr. BURR. That is right.

Mr. HARRIS. Eighty percent of American workers employed in those industries are basically blocked from those contracts?

Mr. BURR. Funded with their own tax dollars.

Mr. HARRIS. With the Federal Government, right. That is what I thought.

Mr. Chairman, I yield back.

Mr. KINGSTON. Thank you, Dr. Harris. So as you can see, we are interested in the subject matter today.

Mr. SILVERS, I wanted to ask you a question. It is not really a throw-away question, but I know the AFL-CIO has raised some concerns about labor standards in Bangladesh in the ready-made garment industry. And I was wondering if you have ever looked at what we have to pay for construction in European military bases. For example, if we are building a hospital over there, an American hospital on a base, we, I believe, need to use German labor, which is extremely expensive, and I was wondering if the AFL-CIO ever was concerned about that?

Mr. SILVERS. Well, Mr. Chairman, I confess I tried to prepare for this hearing. I did not prepare for that question, but I can say something about the subject matter more generally. One of the most promising things about the United States' competitive position, we think, is the fact that we have—in our heavy construction, we have an extraordinarily qualified heavy construction workforce, and union members are—American union members are working all over the world under union contracts.

Mr. KINGSTON. Well, let me hold you here, because, Mr. Burr, I want to bring you in on this. Am I correct, but when we do a construction project on a base in Germany, for example, we are required to use German contractors?

Mr. BURR. You know, much like my friend over here, I also did not prepare for questions on international construction, and I am really focused on domestic, so I honestly do not know the answer to that.

Mr. KINGSTON. It might be of interest to the committee, because, you know, Bangladesh is an impoverished country, but an important country to us, and they are bringing a lot of people out of poverty because of ready-made garment, and I certainly know that the flags you guys have raised, but I think about what goes on in military construction overseas, and I wonder if that isn't something that we should be discussing in terms of American tax dollars going into projects but European labor benefiting from it.

Mr. SILVERS. Mr. Chairman, maybe it was taking me too long, but I was winding up to say I think you raise a very interesting and valid point, which I am happy to follow up with and we would be happy to work with you on.

Mr. KINGSTON. Okay. And then I had another question for you. On the question of worker rights, and we often hear that theme in your testimony, worker rights, but one of the things is I don't think workers are equally told about their Beck rights to not join the union. Do you feel that the Beck rights are pushed equally as much as the rights to join a union?

Mr. SILVERS. Well, Mr. Chairman, as you may know, during the Bush administration this is all they were told about in terms of government postings, and it created a peculiar environment in which you were told that you only had the right not to exercise your rights.

And so our view is, is that a more balanced approach, which actually informs workers of what their rights to act are, which are the rights that matter in this life—the right to be passive is kind of, I think, understood by most people in the workplace. The right to act is not, and that, I am afraid, is unfortunately today awaiting the judgment of the litigation process.

Mr. KINGSTON. And on that litigation process, I am wondering if we could not agree on a standard, you know, that it doesn't swing back and forth depending on the administration and then a court decision.

Mr. Scalia.

Mr. SCALIA. Yeah. Just a brief comment on the Beck postings. I was at the Labor Department when that was put in place. And, of course, there are many, many different postings that are put up in employer's workplaces to advise employees of their rights as employees. And as to their union rights, employees are able on a daily basis to learn from unions themselves. Unions are there coming to the workplaces or otherwise interacting with employees saying what their rights are there.

What they seldom get is notice about individual rights that they have as against the employer and as against the employee, and that is why the Beck posting was so important, because it is something the union is not going to tell you, sometimes it is something the employer is not going to tell you, but the posting gives you that advice.

Mr. SILVERS. Mr. Chairman, if you don't mind, I think you make a valid point that it should be possible, all right, to see to it that workers are informed of their rights in the workplace, and that is something that people of good will could agree upon. I think that my friend Gene has given the justification that the DOL had in the Bush administration for the unbalanced approach. I am just amazed that we have to have this conversation. You know, the right to organize has been guaranteed by the law of this country for 75 years. It shouldn't be controversial to tell people that that is the case.

Mr. KINGSTON. It would appear to me that there could be a standard notification form that all parties would agree on without seeking to address the pendulum swing from a different view every 4 years.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman. Just a couple points and then my question. With regard to the PLAs, project labor agreements, I may have misunderstood this, but I thought I heard someone say that they were mandated, but the fact of the matter is the Federal Government does not mandate PLAs. The executive order states that the Federal agencies may, not shall, require them to be used on construction projects where the total cost to the Federal Government is \$25 million or above. So there is no mandate or requirement in that effort.

Let me move to this area which I would love to get some viewpoints on. This is the effect of the Occupational Safety and Health Act. A few years ago we celebrated the 40th anniversary of OSHA. It may be worthwhile to use that milestone to take stock of what has been achieved. We still have a long way to go, in my view. We

have got more than 4,600 workers who were killed on the job in 2011 and more than about 3.8 million reported work-related injuries and illnesses, but OSHA, I think, reminds us how much those figures have come down since the act was passed in 1970. Workplace fatalities reduced by more than 65 percent, occupational injury-illnesses rates have declined 67 percent, U.S. employment has doubled in that amount of time.

So as people criticize or complain about OSHA, EPA, other regulatory agencies, I think we need to remember what the regulations have accomplished as well. For OSHA, that probably includes tens of thousands of on-the-job deaths and millions of injuries and illnesses that have been prevented.

I would like to ask our witnesses, any of who would like to comment, on the record of OSHA over the past 4 decades. Mr. Silvers.

Mr. SILVERS. I will make one very specific point in response to your question and then one more general one. In my written testimony, there are citations to both academic work and analyses by the Federal Government of the way in which the improved safety record of U.S. employers regulated by OSHA that you described has not just made Americans' lives better who work in the workplace in terms of what happens to people, but has driven competitiveness in American industry. It has led to new capital investment, better organized work processes. It is a win-win for the American economy and the American people.

And let me contrast it with what happens when you don't have effective health and safety regulation in the workplace. Our economy has been severely burdened on multiple occasions by the consequence of exposing workers to hazards in the workplace, whose health impact appears over time and ends up being devastating both to the workers, to the healthcare system, and to the employers who in the end are enmeshed in litigation because they did not provide a safe workplace: coal dust—

Ms. DELAURO. Silica.

Mr. SILVERS [continuing]. Cotton dust, silica, asbestos. It is a roll call of not just human disasters, but of economic disasters. That is the other way we could do business. And if we move in that direction, right, it is not just wrong, it is a recipe for national decline, it is a recipe for moving away from being an advanced economy.

Ms. DELAURO. Yes, Mr. Scalia.

Mr. SCALIA. If I could briefly address that. OSHA has saved lives. There is no disputing that. And I am certainly not aware of people in the employer community looking, for example, to repeal the Occupational Safety and Health Act. But note that many of the more important OSHA regulations, I believe, were adopted since 1980. Mr. Silvers has said that the trend since 1980 has been away from employment regulation, but by my own rough count while sitting here, we have had since 1980 not only OSHA regulations and ERISA regulations, but we have had passage of the Family Medical Leave Act, we have had passage of the Americans with Disabilities Act, we have had passage of new Civil Rights Act amendments, and then we have had amendment of the Americans With Disabilities Act. Those are just Federal statutory changes. So we are actually in an era of great continued regulation of the workplace. And which brings you to Mr. Holtz-Eakin's point: every now and then

you need to look back. Do we need all these regulations still? That is part of what makes it so remarkable, that the Labor Relations Board in this area have increased regulation is itself stepping in and trying to increase even further the regulation of the workplace even when all these other Federal agencies and statutes are now in place.

Ms. DELAURO. Well, but I might add that, once again, there hasn't been much of a discussion about what the benefits are, and the fact that you have an OSHA, what are the benefits to those regulations. And I think that one has to create that balance and understand that before out of hand you just dismiss them as being a burden or overregulation. And I think, quite frankly, in a lot of the public discourse, there isn't a balance in that debate, and it is mostly on the side of we are overregulated, and not looking at what the purpose of what the regulation is. And I am out of time, but we are going to continue to——

Mr. KINGSTON. Mr. Burr looks very anxious here. Do you want to——

Mr. BURR. I want to take advantage of an opportunity to agree with the ranking member.

Ms. DELAURO. Amen, brother. Amen.

Mr. BURR. I think a couple—yeah. I will stop right there.

Mr. KINGSTON. Do you want to——

Ms. DELAURO. I don't want any more than that on the record, my friend. Your friends will read it.

Mr. HOLTZ-EAKIN. I miss the Budget Committee and I miss Rosa DeLauro so much, I want to agree too. But here is my—the point, and——

Mr. KINGSTON. Now you are going too far.

Mr. HOLTZ-EAKIN. Here is the quick part. I believe the regulatory review and identifying benefits as well as costs, costs are easy to measure, that is in fact why we started the forum, we can have a long discussion about that. Benefits are harder, but policy review of regulation hasn't happened enough. And in the end, benefits are often difficult to adjudicate, they are different between people and across employers, employees, where people live, things like that. That is why we have a Congress, to adjudicate difficult questions in the evaluation of benefits, and that is why I want Congress more involved in this in a realistic way, not less. And I think that is the——

Ms. DELAURO. Well, Mr. Simpson is not here, but we have gotten to the point here where a way to get engaged in the appropriations process is just to attach a rider to a bill that would just undo something willy-nilly without any debate and, quite frankly, without any jurisdiction.

Mr. HOLTZ-EAKIN. Since Mr. Simpson used to be my boss when I was at CBO, I am not going to outlive my welcome here either, but, you know, I don't think the rider process is the best solution. It is what you are left with. I would think hard about a better solution.

Ms. DELAURO. Thank you for your——

Mr. KINGSTON. Dr. Harris.

Mr. HARRIS. Thank you very much. Mr. Scalia, I was going to ask you about—no. I am sorry. I guess Mr. Burr's testimony—the per-

suader reporting rule. So up until 2011, obviously if you communicated directly with employees regarding these issues, you had to report. And the change is now that anything that someone deems to be associated with that process is now subject to reporting.

Mr. BURR. Current law is that if you hire an outside entity to come in and try to persuade your employees, then you must report, and that is current law and that is what is going on now. But, yes, you characterized it correctly. If you are an employer and you try to contact an attorney and try to have what would have been an attorney-client privileged discussion about what are my rights, what can I and can't I say, that would now be reportable both for you and the attorney, and the attorney would also have to report all of its other clients and all of its other professional arrangements. And that is why the American Bar Association has even come out against this proposal, because they are very concerned that attorneys are not going to be willing to disclose that information.

Mr. HARRIS. So wait a minute. If an attorney—let us say only one person in the firm handled labor. That whole firm would have to report—

Mr. BURR. I think that—

Mr. HARRIS [continuing]. The partners in the firm, or is it unclear?

Mr. BURR. My understanding is that that attorney would have to then disclose all of his or her other clients.

Mr. HARRIS. That individual attorney. Okay. But let's say that that—and it has to be reported by both. So let's say an attorney holds kind of a lunchtime conference, invites local business leaders, you know, let them know what they do, and that is why one of the aspects, they say, well, we actually advise clients on this, and these are the reasons why they might need advice. That interaction becomes reportable?

Mr. BURR. That is our understanding of the proposed rule.

Mr. HARRIS. What was the logic behind including—I am just not clear about this.

Mr. BURR. You know, I think it was made clear when the LMRDA became law that they wanted this advice exception. That was part of the discussion, if you look at the record on the matter. And I am not sure what the intent is other than, as I referenced earlier and as Mr. Scalia referenced earlier, an attempt to achieve the goals of the Employee Free Choice Act, to chill employer speech so that employees only hear one of the side of the story when this is going on.

Mr. HARRIS. And what is the criminal penalty?

Mr. BURR. You know, I apologize. I don't know off the top of my head.

Mr. HARRIS. Okay. But it is a criminal penalty—

Mr. BURR. Yes. It is a criminal penalty.

Mr. HARRIS [continuing]. Not just administrative?

Mr. BURR. That is correct.

Mr. HARRIS. Okay. Mr. Scalia—

Mr. SCALIA. In terms of—

Mr. HARRIS [continuing]. You want to add to that?

Mr. SCALIA. Yes. Just in terms of the rationale for this enhanced reporting requirement, the Labor Department was unusually frank when it put the rule out. It said that lawyers had a, quote, deleterious, quote, effect, which I thought was very unusual, because usually the government wants companies to seek counsel to know what their duties are, yet here they were close to saying that they didn't want companies to consult counsel to ensure adherence to the law, which is unusual for the government.

Mr. HARRIS. Be careful. I am a physician. When you talk about lawyers have a deleterious effect, I might agree with the Department.

Mr. SCALIA. There is a lot of consensus for that. That is why I took it so personally.

Mr. HARRIS. Let me ask, in your industry, Mr. Scalia, this could affect small businesses as well, I take it. I mean, any business that would be subject to organizations, right?

Mr. SCALIA. That is right. There is no small employer exemption to this kind of requirement. And small employers, I think, in some instances may have particular concerns, because, again, they may for other reasons have less access to counsel to understand how they respond. But, yes, no small retailer exemption. And those may be the companies that end up being particularly vulnerable to organizing campaigns, although you have certainly seen decisions such as a couple that I mentioned in very large stores where members of the board have permitted unions to come in and really carve up the store so they can organize the union that they recognize as most friendly and vulnerable, and carve them out from the rest of the employer workforce.

Mr. BURR. And what is important to remember is that labor law in its nature is really counterintuitive. And someone who has never gone through this sort of experience before is not going to understand what their rights are, and that is really important. We don't want rampant unfair labor practices by innocent ignorance, and I think that would be the result of this.

During an organizing campaign, a union can make promises to workers, promises they can't guarantee they can keep, but they can absolutely make them. But if an employer were to make a promise to workers during a campaign and say, listen, you know, we will give whatever benefit, that is against the law. And I am not sure immediately employers would understand that unless they were able to access counsel and say, okay, what are my rights, how do I stay legal, what can I say, what can't I say when I am trying to give my employees all the information.

Mr. HARRIS. And that access becomes reportable, that access act?

Mr. BURR. Under this proposal, having that conversation with your attorney would become reportable.

Mr. HARRIS. With a criminal penalty—

Mr. BURR. That is correct.

Mr. HARRIS [continuing]. For not reporting it.

Mr. BURR. For failure to report.

Mr. HARRIS. Failure to report. Wow. Okay. I think it get it. Thanks, Mr. Chairman.

Mr. KINGSTON. Thank you, Dr. Harris.

Ms. Roybal-Allard? Although Ms. Lee was actually here first.

Ms. ROYBAL-ALLARD. Yes.

Ms. LEE. Thank you very much. Let me go back to the initial point I raised and I want to ask Mr. Scalia, Burr and Holtz-Eakin to respond to this. First of all, low wage workers and the working poor, they are not represented by labor unions. Wage stagnation is a real issue. The only path to the middle class has been really through collective bargaining and oversight and regulatory oversight by the NLRB, the right to organize.

I want to just ask you, given the fact that we have so many people now who are part of the working poor and then, of course, we have the Ryan budget, which has cut the safety net that the working poor rely on just to supplement their survival, how do you all view raising the minimum wage, first of all, and secondly, moving toward a living wage, because we know what is taking place in our country now, given the huge budget cuts and given the decimation of the safety net and given the fact that low wage workers don't have representation and have no path to the middle class?

Mr. Holtz-Eakin.

Mr. HOLTZ-EAKIN. A couple of things. First, the minimum wage is not a good tool for antipoverty efforts. Poverty is a serious problem, but the minimum wage is very poorly targeted. My children, children of an affluent American who are very well off, receive the minimum wage when they go work. And raising the minimum wage helps them in ways that have nothing to do with poverty. And so if you have got a concern about poverty, which is legitimate, the minimum wage is not your tool. That is sort of point number one.

Point number two, measurement of poverty and getting people out of poverty are intimately related, and we measure poverty poorly. The most recent and best research on poverty suggests that when you look at how people actually live, not sort of these different measures of earnings, minimum wages, living wages, transfer programs, food stamps, but look at how they live, there are two programs that have had dramatic impacts on poverty in the United States. One is the Social Security program. We had a great many elderly Americans who were very poor prior to the adoption of Social Security. And the second big success is the earned income tax credit. And I think that is a real lesson, because it is an instrument that is not one-size-fits-all like the minimum wage. It is targeted, it rewards work and it fits family circumstances. And strategies that focus on that I think will be far more successful.

Mr. SCALIA. I confess that I am not versed in the literature on the minimum wage, but there are ways to succeed and advance in our society that don't necessarily involve a labor union; sometimes they do. But just to take retail as an example, since I am here for the retailers. Retail jobs are often entry level jobs that bring people to higher paying jobs over time and even into management. And one of the reasons that our members are concerned about the tack that has been taken by the Labor Board in this area is that it makes it harder for employees to get training in new jobs so they can move into higher paying jobs. Instead, it traps them in one particular job, whereas mobility in the workforce is over time one of the most important ways that people are able to improve their earning power.

Mr. BURR. And with respect to the construction industry, minimum wage is not really an issue. All of our trades pay significantly higher than that, so I am not sure this question necessarily applies. We are obviously dealing with other challenges, a 14.7 percent unemployment rate, but with respect to minimum wage it doesn't really have an impact on our industry.

Ms. LEE. Mr. Silvers.

Mr. SILVERS. I don't know if my fellow witness has been to a Home Depot parking lot. Minimum wage is a huge issue in the construction industry. He is right that it is not a huge issue in licensed crafts, right, that we know where it is rather difficult for undocumented workers to get work because of the licensing issues, but if you are talking about the home building industry, right, if you are talking about carpentry, if you are talking about the people who are lined up in a Home Depot parking lot, all right, the minimum wage is a huge issue in the construction industry.

Mr. BURR. And I would remind my fellow witness that ABC members participate in the commercial construction industry, and I assure that the commercial construction industry is not engaging in going to Home Depot parking lots to pick up workers.

Ms. LEE. Then how do any of you account for the huge numbers of people now who are part of the working poor, who have to rely on the safety net that the Ryan budget cuts?

Mr. BURR. I am not sure I understand that question. Could you repeat that?

Ms. LEE. People who work—

Mr. BURR. Yes.

Ms. LEE [continuing]. Who make such a small wage that they can't afford to feed their families and they have to go to apply for food stamps, how do you account for that?

Mr. BURR. With respect to the construction industry or—

Ms. LEE. Any industry, just generally.

Mr. BURR. I believe that our industry offers good careers with competitive wages and that those situations aren't occurring with people employed in our industry. If we could employ more people and get some of those people that are struggling into the construction industry, get them with the appropriate skills, help us fill the 1.5 million worker skills gap that we think we are going to confront when the construction industry comes back, if we can do that, if we can have a more effective workforce investment system, then I think we can truly deal with that problem.

Ms. LEE. Can Mr. Scalia respond for a minute, please, Mr. Chairman?

Mr. KINGSTON. Do you want another round or is this—

Ms. ROYBAL-ALLARD. I will hold.

Ms. LEE. Thank you very much.

Just quickly, could you respond, Mr. Scalia.

Mr. SCALIA. Yes. Thank you. I was just going to say that unnecessary regulatory burdens are a burden on the working poor. So workplace regulation is important, it is necessary, but part of what I think we have been trying to say is that when agencies overstep their bounds and impose costs that are too great, that is bad for the employer, but it also can hurt employee wages. That is one of the ways in which employers have to deal with those costs.

Ms. LEE. Thank you for the time.

Mr. KINGSTON. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Okay. I have a question for Mr. Silvers, but Mr. Burr, you mentioned that out of the 80 percent of contractors are shut out because of the PLAs. Is that—

Mr. BURR. 86 percent of construction workers nationally.

Ms. ROYBAL-ALLARD. Okay. So—no, I understand it is not a mandate.

But I guess the question I have, out of that 80 percent, if you have this information to submit, how many actually have the capacity to complete a large project with just the employees that they have, or do they have to hire out? And I didn't want to take up my time for the question that I have, but if you have those statistics, I would—

Mr. BURR. Sure.

Ms. ROYBAL-ALLARD [continuing]. Appreciate if you could submit it.

Mr. BURR. There are many. And with respect to the mandate question, my testimony made clear that the President's executive orders encouraging that practice, it does not mandate it. Where the mandate was was on the New Hampshire Job Corps Center. That was in the bid specs. That was a mandated project labor agreement.

[The information follows:]



May 9, 2013

The Honorable Lucille Roybal-Allard  
2330 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Roybal-Allard:

During a hearing April 10, 2013, *Regulatory Approaches to Foster Economic Growth*, held by the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, you requested I provide you with data on the capacity of contractors that hire nonunion construction workers to perform large-scale federal construction contracts.

My written testimony stated that the Bureau of Labor Statistics' (BLS) most recent report found that 86.8 percent of the U.S. private construction industry workforce does not belong to a union.<sup>1</sup>

My written testimony also explained how government-mandated project labor agreements (PLAs) in federal contracting serve as a "regulatory impediment to growth for our members and others in the construction industry:"

"On Feb. 6, 2009, President Obama issued Executive Order 13502, which strongly encourages federal agencies—including DOL—to require PLAs on a case-by-case basis on federal construction projects exceeding \$25 million in total cost. When federal agencies mandate PLAs, they effectively end open competition on public works projects, denying the vast majority of qualified contractors the opportunity to fairly bid. Contracts subject to government-mandated PLAs amount to special interest carve-outs designed to funnel work to the small number of unionized contractors and workforces."

Unfortunately, the government does not track the number of contracts or the value of contracts won by firms employing nonunion construction workers. Nor does the government track the number of man hours performed by construction workers by their union or nonunion status. However, ABC is able to provide some data-driven estimates about the ability of firms employing nonunion workers to perform large-scale federal construction projects by identifying ABC members who were recently awarded such contracts.

According to [www.usaspending.gov](http://www.usaspending.gov), during FY2009 to FY2012,<sup>2</sup> there were 707 contracts performed in the United States exceeding \$25 million worth a total of \$47,534,648,382.<sup>3</sup> Of this population of contracts, 381 contracts (52.89 percent) valued at \$27.9 billion (58.61 percent) were performed by ABC member contractors.

In addition, a number of firms won large-scale federal construction contracts and employ nonunion construction workers but are not ABC members. So the share of federal contracts won by firms employing nonunion workers is likely higher.

Sadly, PLA advocates often erroneously claim nonunion firms are too small and too inexperienced to deliver contracts exceeding \$25 million. They contend government-mandated PLAs protect the public by ensuring the use of unionized

<sup>1</sup> See BLS.gov *Union Members Summary*. Published 1/23/13.

<sup>2</sup> President Obama signed Executive Order 13502 Feb. 6, 2009. Most large-scale projects from FY2009 through FY2012 were subject to Executive Order 13502, allowing federal agencies to require PLAs on such federal contracts, if appropriate. The Obama order arbitrarily designated projects exceeding \$25 million in total costs as "large-scale."

<sup>3</sup> See [this link](http://this.link) at [Usaspending.gov](http://Usaspending.gov), which lists all federal contracts exceeding \$25 million in total costs performed in the United States from FY2009 through FY2012 for "Construct of Structures/Facilities." Accessed 5/7/13.

firms and union labor that can exclusively handle large-scale complex projects. This data obviously debunks this meritless argument used to justify anti-competitive and costly PLA schemes.

The number of large-scale federal contracts won by firms employing 86.8 percent of the U.S. private construction workforce would be higher, if not for President Obama's pro-PLA Executive Order 13502.

We do not know how many large-scale federal projects have been subjected to government-mandated PLAs and discriminatory PLA preferences. ABC has filed Freedom of Information Act (FOIA) requests to obtain the quarterly reports federal agencies are required to file with the Office of Management and Budget (OMB) about the use of PLAs on large-scale federal projects.<sup>4</sup> However, to date, the OMB has not provided this data.

### **Negative Impact of Obama Executive Order Extends Beyond Federal Contracting**

Finally, the negative impacts of the Obama Administration's discriminatory pro-PLA regulations ripple beyond the federal contracting segment of the industry. Executive Order 13502 allows the use of government-mandated PLAs on federally assisted projects. Federally assisted projects compose a much larger segment of the construction economy<sup>5</sup> than the estimated \$30 billion per year worth of construction put in place by federal agencies.<sup>6</sup> Federally assisted projects are procured by private, local or state entities receiving federal grants, tax breaks and other forms of federal assistance.

From February 2001 to February 2009, executive orders by President George W. Bush prohibited the federal government and recipients of federal assistance from requiring or prohibiting contractors from using PLAs.<sup>7</sup> In short, firms were allowed to voluntarily use PLAs but government could not force them to if there was federal money involved in the project. Neutrality in federal and federally assisted contracting saved taxpayers billions of dollars and created opportunity for the entire construction industry instead of the well-connected.

Unfortunately, that era of neutrality changed under President Obama. While we do not know the total value or number of federally-assisted contracts subjected to government-mandated PLAs from FY2009 to FY2012, we estimate hundreds of contracts totaling tens of billions of dollars have been impacted by this harmful regulation.

### **Subcontracting**

In the construction industry, it is common practice for both union and nonunion general contractors to subcontract work to union and nonunion specialty trade subcontractors for different types of work contained in both small and large-scale construction projects. Unfortunately, the federal government does not meaningfully track the number or value of federal subcontracts in the construction industry, let alone by the union status of a subcontractor. However, we estimate the percent of federal subcontracts performed by ABC member subcontractors to be similar to the percent of work awarded to ABC member prime contractors.

The majority of ABC member prime contractors and subcontractors, known as *merit shop contractors*, are not signatory to a construction trade union and they employ a core workforce of experienced and qualified employees who do not belong to a construction trade union. However, many ABC members work for unionized prime contractors, hire unionized subcontractors, and work harmoniously with unionized subcontractors and union tradespeople on jobsites without the need for a PLA mandated by a government agency. Some ABC members are even signatory to unions and oppose PLA mandates because they interfere with existing union collective bargaining agreements.

<sup>4</sup> See attached July 10, 2009, *Memorandum for the Heads of Executive Departments and Agencies: Implementation of the President's Executive Order on Project Labor Agreements (PLAs)* (M-09-22) from OMB Director Peter Orszag and the attached April 13, 2010 *Memorandum for Chief Acquisition Officers and Senior Procurement Executives: Implementation of New Regulatory Coverage on Project Labor Agreements* by Office of Federal Procurement Policy Administrator Daniel Gordon.

<sup>5</sup> See U.S. Census, *Jointed Value of Construction Put in Place 2002-2012*.

<sup>6</sup> See U.S. Census, *Jointed Value of Federal Construction Put in Place 1993-2012*.

<sup>7</sup> In February 2001, President George W. Bush issued Executive Orders 13202 and 13208 prohibiting government-mandated PLAs on federal and federally funded or assisted construction projects. It was repealed by President Obama's Executive Order 13502 on Feb. 6, 2009.

### **No Record of Strikes or Labor Disputes on Recent Large-Scale Federal Projects Built Without a PLA**

Data demonstrates the White House's justification for government-mandated PLAs has no basis in fact.

Section 1 of Executive Order 13502 asserts the following justifications—and *only* these justifications—for believing PLAs will achieve greater “economy and efficiency” in federal construction procurement.

As stated in the Federal Acquisition Regulation (FAR) Council's final rule implementing Executive Order 13502:<sup>8</sup>

The E.O. explains that a “lack of coordination among various employers, or uncertainties about the terms and conditions of employment of various groups of workers, can create friction and disputes in the absence of an agreed-upon resolution and mechanism.” The use of PLAs may “prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts.”

While we don't know how many recent large-scale federal projects were subject to PLA mandates or preferences, we can confidently estimate at least 52 percent of large-scale federal construction projects awarded to firms from FY2009 through FY2012 were not subject to a government-mandated PLA.

On these contracts there have been no publicly reported delays or cost overruns resulting from any “lack of coordination” among employers on labor issues, nor any reported labor disputes that have caused significant delays or cost overruns. In other words, none of the claimed labor problems—which are the sole stated justifications for federal PLAs referenced in the final rule—have arisen on any of the recent large-scale federal projects awarded without government-mandated PLAs.

In addition, investigations by ABC and other groups indicate there have been no significant labor-related problems on any large federal construction projects since President George W. Bush issued a 2001 executive order prohibiting the use of government-mandated PLAs on federal and federally assisted projects. Thousands of federal contracts (totaling \$147.1 billion)<sup>9</sup> built between 2001 and February 2009 experienced no problems despite the outright prohibition of government-mandated PLAs on any small or large-scale federal construction projects.

OMB essentially admitted the complete absence of any factual support for Executive Order 13502 and the FAR Council final rule in response to a FOIA request filed by ABC, which asked for all documents identifying any federal construction projects suffering from delays or overruns as a result of labor-related problems of the sort identified in Section 1 of Executive Order 13502. OMB failed to identify any federal project that has suffered from a labor “challenge” due to the lack of a PLA.

ABC submitted similar FOIA requests to every federal agency that has engaged in a significant amount of construction since 2001, and *no* agency identified any large federal construction project suffering significant cost overruns or delays as a result of any of the labor-related issues cited in Executive Order 13502 or the final rule.

ABC also surveyed its members, receiving responses from contractors that have performed billions of dollars worth of large federal construction projects during the past decade. These contractors uniformly confirmed the absence of any of the labor “challenges” identified in Executive Order 13502 as the sole justification for encouraging federal agencies to impose PLAs on future federal construction projects. In addition, a study of this issue conducted by the Beacon Hill

<sup>8</sup> See Federal Acquisition Regulation, FAR Case 2009-005, *Use of Project Labor Agreements for Federal Construction Projects*, 4/13/10.

<sup>9</sup> See U.S. Census, *Annual Value of Federal Construction Put in Place 1993-2012*.

Institute revealed no evidence of any significant labor problems on federal construction projects in the absence of PLA mandates or preferences.<sup>10</sup>

Thus, the entire factual premise underlying President Obama's Executive Order 13502, the FAR's related final rule, and the need for government-mandated PLAs, is demonstrably false.<sup>11</sup>

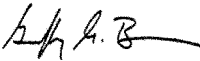
### **Conclusion**

ABC appreciates the opportunity to share its perspective on government-mandated PLAs and provide you and the committee with factual information to debunk common arguments used by PLA proponents to justify the use of discriminatory PLA schemes on federal and federally assisted projects.

We believe these anti-competitive and costly agreements should not be mandated on federal construction projects via regulations. The federal government should proceed with construction projects free from PLA mandates and in the spirit of fair and open competition. Doing so will help provide taxpayers with the best possible construction product at the best possible price.

Please do not hesitate to contact me if you have any questions or comments.

Regards,



Geoffrey Burr  
Vice President, Federal Affairs

Enclosures: July 10, 2009, *Memorandum for the Heads of Executive Departments and Agencies: Implementation of the President's Executive Order on Project Labor Agreements (PLAs)* (M-09-22) from OMB Director Peter Orszag

April 13, 2010 *Memorandum for Chief Acquisition Officers and Senior Procurement Executives: Implementation of New Regulatory Coverage on Project Labor Agreements* by Office of Federal Procurement Policy Administrator Daniel Gordon.

cc: Members of the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies

<sup>10</sup> See Tuerck, Glassman and Bachmann, *Union-Only Project Labor Agreements on Federal Construction Projects: A Costly Solution In Search of a Problem*. Beacon Hill Institute of Suffolk University, Boston, (August 2009), available at [www.TheTruthAboutPLAs.com](http://www.TheTruthAboutPLAs.com), *New Study Calls Federal Project Labor Agreements a Costly Solution in Search of a Problem*, 9/24/09.

<sup>11</sup> In 2009, ABC National, ABC members and construction industry stakeholders sent hundreds of regulatory comments in opposition to the FAR Council's proposed rule implementing Executive Order 13502. Comments from ABC National and members, available at [www.abc.org/plastudies](http://www.abc.org/plastudies), illustrate how the anti-competitive and discriminatory effect of government-mandated PLAs on merit shop businesses and their employees lead to waste and inefficiency in federal procurement.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

July 10, 2009

M-09-22

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag  
Director

A handwritten signature in dark ink, appearing to read "P. Orszag".

SUBJECT: Implementation of the President's Executive Order on Project Labor Agreements (PLAs)

On February 6, 2009, the President issued Executive Order 13502 (the Order). In the Order, the President announced that it is the Federal Government's policy "to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects [i.e., projects where the cost to the Federal Government exceeds \$25 million] in order to promote economy and efficiency in Federal procurement." By its terms, the Order applies "to all solicitations for contracts issued on or after the effective date of the action taken" by the Federal Acquisition Regulatory Council (FAR Council) to implement the Order.

This week, the FAR Council transmitted for publication in the Federal Register two notices that (1) repeal, effective immediately, a rule prohibiting agencies from requiring PLAs (this rule had implemented a prior executive order on PLAs that the President revoked), and (2) propose for public comment a new rule to implement the President's Order.

The Administration is committed to implementing the President's Order without delay, and the FAR Council will move expeditiously to review and consider the public's comments that it receives on the proposal and to prepare a final rule.

With the revocation of the prior executive order that had restricted the use of PLAs and with the FAR Council's rescission of its prior implementing rule restricting the use of PLAs, agencies are no longer prohibited from requiring the use of a PLA when permitted by law and when the agency determines that it is appropriate to do so. Accordingly, in light of the benefits that PLAs may offer to Federal agencies in construction projects, agencies are encouraged, during this interim period prior to the FAR Council's issuance of its final rule, to consider the value of PLAs on a project-by-project basis, and to require the use of PLAs in appropriate circumstances and to the extent permitted by law.

As noted above, the Administration seeks to implement the new FAR rule and the President's Order in a timely and effective manner. Therefore, please direct your agency to take all necessary actions so that, when the FAR Council issues its final rule, your agency will be prepared to promptly implement both the rule and the Order.

Finally, in order to gather information on how agencies use PLAs under the Order, agencies are asked to submit quarterly (on February 1, May 1, August 1, and November 1) a report indentifying all contracts awarded in connection with "large-scale construction projects," as defined in the Order, including the contract number, dollar value of the total contract award, and the product and service code describing the project. For each such contract, agencies should indicate whether a PLA was required in the solicitation, provide a brief explanation of the considerations in deciding whether a PLA was appropriate for the project, and specify at what organizational level the decision was made. Agencies should submit this information to [PLA-Activity-Report@omb.eop.gov](mailto:PLA-Activity-Report@omb.eop.gov).



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D. C. 20503

April 13, 2010

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM:

Daniel I. Gordon  
Administrator

SUBJECT:

Implementation of New Regulatory Coverage on Project Labor Agreements

Last summer, the Director of the Office of Management and Budget (OMB) requested that agencies prepare to promptly implement the final rule that amends the Federal Acquisition Regulation (FAR) to address Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. See OMB Memorandum M-09-22, *Implementation of the President's Executive Order on Project Labor Agreements (PLAs)*, available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-22.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-22.pdf). E.O. 13502 encourages agencies to consider requiring the use of project labor agreements in connection with "large-scale construction projects," which are defined as those construction projects where the cost to the Federal Government is \$25 million or more, in order to promote economy and efficiency in Federal procurement.

Today, a final FAR rule implementing E.O. 13502 has been published in the Federal Register (75 Fed. Reg. 19168). In accordance with the Director's request, I ask that you take all necessary actions to support the effective and timely implementation of this rule and E.O. 13502, including the specific steps described below.

First, please make sure the rule is disseminated to any acquisition office within your agency that is responsible for construction contracting, especially large-scale construction projects, so that they may begin to take advantage of its guidance. You should point out the following provisions of the rule, in particular:

- FAR 22.503(c) identifies a number of factors that agencies may consider to help them decide, on a case-by-case basis, whether the use of a project labor agreement is likely to promote economy and efficiency in the performance of a specific construction project. This discretion will help to ensure that agencies have the opportunity to bring their relevant experiences to bear on circumstances particular to a project.
- FAR 22.504(c) states that an agency may, as appropriate to advance economy and efficiency in the procurement, "specify the terms and conditions of the project labor agreement in the solicitation and require the successful offeror to become a party to a project labor agreement containing these terms and conditions as a condition of receiving a contract award. An

agency may seek the views of, confer with, and exchange information with prospective bidders and union representatives as part of the agency's effort to identify appropriate terms and conditions of a project labor agreement for a particular construction project and facilitate agreement on those terms and conditions." The preamble explains that "[e]xperiences of entities that have successfully used project labor agreements suggest that, in some cases, an agency may be able to more effectively achieve economy and efficiency in procurement by specifying some or all of the terms and conditions of the project labor agreement in the solicitation. Their experiences also suggest that, if the agency specifies some or all of the terms and conditions of the project labor agreement in the solicitation, contractors not familiar with project labor agreements may be better able to compete."

- FAR 22.505 provides standard and alternative clauses that support various approaches for timing the submission of an executed project labor agreement on a particular project – namely, with the initial offer, after offers are submitted but before award, or after award. This flexibility allows agencies to select the alternative that makes the most sense for a particular project and best fits with their mission.

Second, encourage your acquisition offices to reach out to the Project Labor Agreement Technical Assistance Team. This team, established last summer under the auspices of the Vice President's Middle Class Task Force, includes representatives from agencies with project labor agreement expertise, including the Department of Energy and the Tennessee Valley Authority, as well as representatives from contracting, legal, and program offices. The team provides a venue for sharing experiences and identifying best demonstrated practices. To participate on the team, or to take advantage of its resources, contact Jason Kuruvilla at the Department of Labor (email: [Kuruvilla.Jason@dol.gov](mailto:Kuruvilla.Jason@dol.gov); tel: 202-693-6048).

Third, remember that, pursuant to Memorandum M-09-22, your agency is responsible for submitting quarterly reports to OMB identifying all contracts awarded in connection with large-scale construction projects. The guidance requires reporting on the following information for each project: the contract number, dollar value of the total contract award, and the product or service code describing the project, whether a project labor agreement was required in the solicitation, a brief explanation of the considerations in deciding whether a project labor agreement was appropriate for the project, and the organizational level at which the decision was made. The information should cover a fiscal quarter (e.g., July 1- September 30) and be reported to [PLA-Activity-Report@omb.eop.gov](mailto:PLA-Activity-Report@omb.eop.gov) within 30 days after the completion of the fiscal quarter.

General questions regarding this memorandum may be referred to Mathew Blum (email: [mblum@omb.eop.gov](mailto:mblum@omb.eop.gov); tel: 202-395-4953). Thank you for your attention to this matter.

Ms. ROYBAL-ALLARD. Okay. Mr. Silvers, recently the Department of Labor's inspector general testified before the subcommittee that there are systemic weaknesses in the H2B visa program, and these weaknesses include problems of protecting foreign workers from abuse and deficiencies and ensuring that domestic wages and jobs are not undermined. In early 2012, the Department of Labor published a new rule to address these issues; however, due to legal challenges, the rule has been delayed. And I also want to point out that even if it had not had legal challenges, last year the bill that was approved by the subcommittee prohibited the use of funds to implement these rule changes.

So could you please tell us why these regulations are needed and how they can be implemented to protect H2B workers while at the same time protecting job opportunities for American workers?

Mr. SILVERS. Well, Congresswoman, let me first say that I am not an expert on the H2B program. I would be happy to supplement what I am going to say with written testimony fully informed by the AFL-CIO's knowledge in this area.

Ms. ROYBAL-ALLARD. Appreciate it.

Mr. SILVERS. But I will comment generally on the answer to your question. I think people are well aware that there has been a conversation between the AFL-CIO and the Chamber of Commerce over immigration in the low skilled area, not in the H2B area, but that conversation, which has reached a successful result is really about the same issue that you are raising, which is that in the mind of an employer that doesn't wish to meet the market price for labor there is always a labor shortage. All right. And if that fact about life is allowed to drive U.S. immigration policy, all right, then U.S. immigration policy will contribute to a downward spiral in American wages, in the wages of the people who work in this country.

Now, there is also in the view of the AFL-CIO, immigration is an important part of what this country is. All right. There are legitimate times when there are shortages of skilled labor. All right. And these two things have to be harmonized through data-driven processes, but the critical thing, and this is what the H2B fight is in large part about, there are two critical things here. One is that using the immigration process generally as a means of lowering wages, intentionally doing so, is not in the public interest, and two, one of the key ways in which that happens is by making people come to this country to improve their lives, essentially indentured servants to their employers, all right, so that their presence in this country becomes completely dependent on the goodwill of their employer. That creates a circumstance in which—that creates a two-tiered society, it creates a society where some of us have rights in the workplace and others of us are here at the sufferance of our employer and our lives are completely hostage to our employer's goodwill. All right. That is the circumstance that millions of undocumented workers live in in the United States today. All right? It is profoundly wrong. It is an offense to the basic nature of what our society has always promised, what we have always promised each other we are. All right. And that is why the AFL-CIO is so strongly supportive of comprehensive immigration reform with a path to citizenship for all who work in America, and that is why

we think the H2B visa program cannot be a program for driving down wages or for creating a class of skilled but indentured servants.

Ms. ROYBAL-ALLARD. Thank you.

Mr. KINGSTON. Mr. Burr, I want to ask you about the 8A program as respects military bases in America. Is it abused, in your opinion? And the reason I ask this question is we often hear from local contractors that they can't get work on a local base, and often there is an Alaskan company that is anything but impoverished, but I also hear of minority-owned contractors who have substantial net worth who are participating in the program. And I think we all support 8A as in its pure form and in its intention, but is it abused and gamed? And also, are minorities often used as fronts so that nonminority people participate in it?

Mr. BURR. You know, this is an issue that is much discussed when our members get together, when contractors get together about these particular programs and whether or not they are abused. Unfortunately, I don't think—all I have is anecdotal stories, much like you probably have heard from people that are saying this abuse is going on. And really we need to gather data and figure out if this is truly taking place, but that is something very concerning. Whenever local contractors feel as if they are being disenfranchised so that people are manipulating the law, that is something that concerns us greatly. And we look forward to learning more about that process, but the concerns that you raise are concerns that my members have raised to me anecdotally from time to time, and often more recently I have been hearing more and more of those concerns expressed.

Mr. KINGSTON. Thank you.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman. Let me just, if I can, just correct the record for a moment, or offer a clarification. This is on the persuader reporting. The fact is that under proposed rules, advice, quote, would be defined as oral or written recommendations regarding a decision or course of conduct, but activities designed to actually persuade would be covered by reporting requirements.

Now, let me just put this in perspective. You can get all the advice that you need from your attorney in this effort. It is a proposed rule, let us keep that in mind—but this is happening. If anybody denies this, they don't have their eyes open. If you hire a labor management consultant that prepares materials and trains managers, and runs the campaign against the union, as long as they say they have no contact with employees, and that is what is going on now, there is no disclosure about that. And what this proposed rule is saying is, is that we must have disclosure of that. It is not just ordinary run-of-the-mill conversation and getting information from your attorney.

I would like to move to worker misclassification, if I can. We hear a lot about this effort. By misclassifying workers as independent contractors, even when they are not an independent business, employers can save a lot of money: no payroll taxes, no worker protection laws, workers are disadvantaged, they lose access to unemployment insurance, Workers' Compensation, lose protection

of wage and hour laws, other labor standards, and Social Security, Medicare, the Unemployment Trust Fund loses revenues that are due to those entities.

The Labor Department, as I understand it, is developing a regulatory proposal that would require businesses to tell workers when they are being treated as independent contractors rather than employees and to provide the pay stub showing whether the payroll taxes and contributions are being paid by an employer. Quite frankly, I was surprised by the proposal, because I assumed these requirements were already in place.

Would any of our panelists want to comment on the proposal? What possible reason could anyone have for opposing it? Why shouldn't businesses tell someone working for them whether they are being treated as an employee or an independent contractor and whether or not their Social Security taxes and Workmen's Comp premiums are being paid on their behalf?

So I would love to hear from our witnesses on that. Mr. Silvers.

Mr. SILVERS. I will speak briefly, because I believe the bulk of what you are asking was to my fellow panelists. This issue is about the erosion of the regulatory and legal framework designed to ensure we are a high wage society. All right. It is modest. It is very—as you point out, it is very, very modest steps, but if we don't take them, we shouldn't kid ourselves that we are doing anything other than driving our economy towards a condition of profound inequality and profound dysfunction as we undercut the economic basis of consumer demand.

Congresswoman, if you don't mind, I would also like to just say a word about persuaders, because I have lived this. Workers who exercise their rights under law to organize and speak as a group are subject to an overwhelming onslaught in the workplace of professionally orchestrated coercion. All right. And what hasn't been mentioned in this hearing is, is that the first place that starts is with the employer being able to require workers who wish to organize, which should be their decision, to require them, all right, to attend a meeting in which they are read scripts prepared by an invisible unknown expert. And if the worker wishes not to be lectured from the script by the individual unknown expert, the employer is entirely within their rights to fire them. All right. That is the reality of the American workplace right now, and that is why Human Rights Watch says that American labor law today violates the international norms of human rights.

Ms. DELAURO. I want to hear about the worker misclassification, and if we can, I will be happy to—we are running out, so—

Mr. SCALIA. Just briefly on the script that Damon was just referring to, that is otherwise known as the employer's First Amendment right to speak to the employees, that script, Ranking Member, is something that right now the employer can write, send to the lawyer for advice, and the lawyer can say, well, don't say that, that runs afoul of the law. That kind of communication now is being captured by the persuader rule. That is one of the concerns.

But on independent contractors, I am not aware that independent contractors don't know if their employees are independent contractors. I think they do know. That proposal, and, as you said, it is just a proposal, but it goes actually much more broadly and

would make it hard for employers to treat employees as exempt from overtime requirements. Even when they clearly are, they nonetheless have to engage in a paperwork, record-keeping exercise that is pointless.

Mr. KINGSTON. Dr. Harris.

Mr. HARRIS. Thank you very much. We are going to return, I guess, to the topic of regulatory problems. One of the other things that this subcommittee deals with, of course, is the HHS Department. And in my dealings with employers over the past year, it has become increasingly clear that the regulatory environment surrounding the Affordable Care Act is becoming increasingly untenable for employers and leading to some just amazing distortions in the job market. For instance, you know, in February's job—yeah, we added about a quarter of a million jobs. They were all part-time it turns out. Last month's obviously anemic jobs, I haven't seen the part-time/full-time breakdown, but we obviously aren't creating full-time jobs, and I think part of that might be due to the environment surrounding the Affordable Care Act, which strangely enough encourages employers to actually limit people to 29 hours of work a week, exactly what you don't want, especially in entry level jobs, entry level positions for people who want to try to climb the economic ladder.

I am just going to ask you briefly, Mr. Scalia and Mr. Burr, is that what you are hearing from people in your—that their hesitation to hire—pending this, you know, final outcome of what the regulatory environment on Affordable Care Act is going to be, this hesitation to actually hire full-time people or the tendency to create part-time jobs instead of full-time? And just briefly, because I have another question.

Mr. BURR. I have not heard that specifically. I have heard a tremendous amount of angst about trying to understand what the rules and regulations are as they continuously change going into the next several years, but I have not heard anybody express that particular concern.

Mr. HARRIS. Mr. Scalia.

Mr. SCALIA. And I can't speak to any particular retailer, but I do know that that is a concern in the retail industry. And, you know, I mentioned earlier that costs on employers often end up being costs on employees. And that is an example where if you trip that wire, all of a sudden all these requirements apply to you, so there is an incentive under that law to restrict employees' hours—

Mr. HARRIS. Sure.

Mr. SCALIA [continuing]. Which is going to hurt, among others, the working poor.

Mr. HARRIS. And for small businesses to join the 49ers club, which is limit your employee workforce to 49, God help you, you hire that 50th person and become subject to all those rules.

Mr. Holtz-Eakin, you know, one of your points was that it appears that perhaps the appropriations process is the way around some of the regulations. Specifically with the Affordable Care Act, what would you recommend to the committee to consider with regards to the most harmful regulations with regards to economic growth and the hindering of economic growth that I believe is going

to occur with the regulatory uncertainty around that Affordable Care Act?

Mr. HOLTZ-EAKIN. I would focus on the labor market impacts. You have mentioned two things that I think can't be overstated. The full-time, part-time line, I have heard employers say that they are worried about this and moving in that direction. There is some evidence in the data, not definitive, but suggests that we are starting to see the number of part-time workers up, and I worry about this going forward.

The second is it is a very antigrowth statute, and the regulatory impact hitting at 50 and employer mandates and the penalties that come with that are at the heart of that.

Third thing that I worry about is this is a particularly pernicious law for the minimum wage workers. You have got employers who have low wage workers, and they are at the margin of profitability and the Affordable Care Act hits, the employer is not going to be able to make it and the workers are going to go away and they are going to lose jobs as a result of this. They can't adjust the wage mix, because they are already at the minimum wage, can't go down, costs are up, somebody loses. This is Mr. Scalia's point.

I would focus on those industries that are characterized by more minimum wage workers, by small employers and part-time employment, and we are going to see big impacts in those areas.

Mr. HARRIS. So I met yesterday with some of the, you know, fast food franchisees, which is a—

Mr. HOLTZ-EAKIN. That is them.

Mr. HARRIS [continuing]. The industry, right, where you are providing entry level jobs. You know, if you get the job, you work hard, you hope to be an assistant manager, manager, and maybe even own your own business one day. And they tell me that they have just stopped hiring full-time, basically.

Mr. HOLTZ-EAKIN. Yeah.

Mr. HARRIS. And worse than that, under the Affordable Care Act, they will not, even if they wanted to provide a low cost health insurance product to that employee, they can't.

Mr. HOLTZ-EAKIN. They can't.

Mr. HARRIS. So those employers who want to be good citizens are faced by the economics of these regulations might end up—I mean, the kind of double-barreled adverse effect on those employees is you are going to come in for only 29 hours next week and, oh, by the way, I really can't even give you a minimalist or catastrophic health insurance policy because it doesn't qualify. Is that my correct reading of the regulatory environment that way it exists right now?

Mr. HOLTZ-EAKIN. Absolutely. I mean, you know, when you look at the essential benefits package, it is richer than was the industry norm in many cases, and that upward increase in cost has to show up somehow.

Mr. HARRIS. All right. Well, thank you very much, Mr. Chairman.

Mr. KINGSTON. Thank you.

Ms. Lee.

Ms. LEE. Yesterday was Equal Pay Day, and Congresswoman DeLauro, of course, has our Paycheck Fairness Act that would

begin to address wage discrimination in the workplace as it relates to women. Of course, we all know the statistics. Women earn, what is it, about \$0.77 for every dollar of a man, which a man earns? African-American women are at about \$0.64. And Latinas are nationally about \$0.55.

Let me just ask you in terms of—and I guess, Mr. Silvers, I want to ask you first. In terms of labor unions and collective bargaining, do you know how this wage gap plays as it relates to workers who belong to a union versus workers who do not?

I know in my community people of color have primarily benefited, and this gap has closed some because they are part of a labor union, and I want to see if you have any information as it relates to this pay equity for those who belong to a labor union versus those who don't, especially as it relates to women and people of color.

MR. SILVERS. Congresswoman, as you point out, there is—when workers organize, they generally are able to get themselves paid better than when they don't, they are able to bargain on a more level playing field with their employers, and so for workplaces where employees are predominantly women or predominantly women of color, that effect is particularly pronounced, because it is a way of counteracting in many cases generations of discrimination in the workplace. So there is a group effect, you know, as between workplaces where they have collective bargaining, where the workforce is predominantly women and people of color, and then there is an internal effect within the firm, all right, which is that under a collective bargaining agreement typically there are some rules about how compensation is set, all right, and those rules operate across the board. All right. And there are mechanisms for adjudicate, you know, through grievances if people are treated unfairly. All right. Outside of collective bargaining, basically people are stuck with the courts. All right. There is nothing between zero and 60, so to speak.

Those two mechanisms, as you suggest, have significantly addressed pay equity issues in the context of collective bargaining. Now, of course, union density has declined in our society, and so the ability of those mechanisms to work for many Americans just isn't there. I didn't come here with all the numbers in my head, but I can provide you with the numbers that support what I just said.

[The information follows:]

The pay gap between Black women who are members of unions and white men who are members of unions is 0.74 cents on the dollar, while for Black women and white men outside of unions the pay gap is 0.69 cents on the dollar. For Latinas, the figures are 0.75 cents on the dollar and 0.60 cents on the dollar. So, the pay gaps are much smaller for Black women and Latinas comparing unionized to non-unionized workers. (<http://www.bls.gov/news.release/pdf/union2.pdf>)

MS. LEE. Mr. Scalia and Burr and Mr. Holtz. How do pronounce your name again, please?

MR. HOLTZ-EAKEN. Holtz-Aiken.

MS. LEE. Holtz-Eaken. I am sorry. Could you respond to that, please?

MR. SCALIA. I will just say briefly that unions do at times raise wages. They also at times do put companies out of business, and

we need to bear that cost in mind as well. During the EFICA debate, I was always interested to hear proponents of EFICA talk about the heyday of the labor movement. They would talk about the 1960s and 1970s and they would talk about the steel and the auto industry, and they were making the point, and I kind of thought they were making my point, which is that if we are not careful in aggressively pressing unions' rights at the expense of employers, then those rights are also being advanced actually at the expense of employees, who sometimes simply get put out of work. And that is not pay equity for anybody.

Ms. LEE. Mr. Burr.

Mr. BURR. You know, ABC provides resources to our members to make sure that they have everything they need to ensure that they are not engaging in any discriminatory practices. There is a 16-point test that DOL suggests that we provide free resources to our members to make sure that they are in compliance with that.

We also think that any reforms need to take into consideration things like experience and that different shifts have a premium that should be paid for them and things such as that, and reforms that don't take that into consideration are of concern, but absolutely we oppose discrimination based on race, gender or anything else when it comes to pay.

Mr. HOLTZ-EAKIN. Economists have engaged, in many industry, of trying to figure out how much wages are related to basic education, job skills, and tenure on the job, experience, and then maybe industry-specific skills, and then what is left over for gender, for race, and because they are an imaginative crowd, height, bad for me, weight, bad for me, and even attractiveness. And there is a literature on this stuff. And my reading of it is that once you control for those key first things, these pay gaps go away, by and large, not zero, but go away. That suggests if you—

Mr. KINGSTON. I hate to cut you off. I am going to let Rosa—

Mr. HOLTZ-EAKIN. Can I just finish? I think it is very important.

Mr. KINGSTON. Well, if you will do it on her time.

Mr. HOLTZ-EAKIN. Can I do it on your time, because it is in your interest. It is in your interest.

Ms. DELAURO. On my time I will say that the fact of the matter is, is that if you hold those constant for education, skills training, all of those things, the wage gap still exists for women at 77 cents on the dollar. You have got studies.

Mr. HOLTZ-EAKIN. I will disagree.

Ms. DELAURO. I have got studies. There are studies.

Mr. KINGSTON. You can submit it for the record, though.

Mr. HOLTZ-EAKIN. I would be happy to do that.

[The information follows:]

#### STUDIES ON GENDER WAGE GAP

- Blau and Kahn (1997) find that after several controls the wage ratio was 88.2 percent in 1988.
- Waldfogel (1998) finds that the single-woman, single-man pay ratio is 88 percent.
- O'Neil (2003) finds that the pay ratio in 2000 for people ages 35–43 was 97.5 percent after adjusting for schooling, ability, experience, and occupational characteristics (<http://www.tmbc.com/newsletters/tweets/wagesGap.pdf>, p. 313).
- Blau and Kahn (2006) found that when controlling for human capital variables, industry, occupation, and collective bargaining coverage, the gender wage ratio in-

creased from 81.6 percent in 1979 to 91.0 percent in 1989 and remained at 91.0 percent in 1998 ([http://www.nber.org/papers/w10853.pdf?new\\_window=1](http://www.nber.org/papers/w10853.pdf?new_window=1), p. 14).

Ms. DELAURO. Yes, do that, and I would like to see that information, and I will get to you the data that is out there. It is across the board, it does not make any difference if you are a waitress, if you are a bus driver, if you are a civil engineer, if you are a news anchor, whatever it is, women—men in the same job, unlike the Congress and the military, are not being paid the same amount of money.

Let me move to I guess where I started, only on this. Mr. Scalia, I had access and received a copy of the training manual that Yale University, who I support overwhelmingly whatever they want to do in an effort, but I saw their training manual when they were engaged in the debate around the healthcare workers and unions. I read the language, even the language that said let people know that these folks are Mafia-oriented and that they are thugs.

Now, Yale was fined heavily for what they did there. But I have seen the training manuals that exist. And that ought to be disclosed, not just the advice of my lawyer that said you can do this, that, or the next thing.

I want to go back to my first question. This is about the NLRB. Without a functioning NLRB board, is there any protection in this country for basic rights to participate in union activity? Is there any protection against the kinds of misconduct by unions that is prohibited by the National Labor Relations Act? What do we do in the absence of a functioning NLRB since in fact there is no provision for private lawsuits to enforce workers' rights, et cetera. Let me just ask you that question.

Mr. SCALIA. Well, first of all, with all respect, I am not going to defend Yale University. But I will say that I will defend their right to get legal counsel to tell them that they should not be putting that kind of stuff in their materials.

Ms. DELAURO. What is your view with regard to the NLRB, the absence of an NLRB, a functioning NLRB? Where are the protections?

Mr. SCALIA. I favor a functioning NLRB, but a properly constituted, properly functioning NLRB.

Ms. DELAURO. What does that mean?

Mr. SCALIA. It means an NLRB whose members have not been deemed illegally appointed by the court of appeals here in Washington unanimously. It means members who have been subjected to the advice and consent process and confirmed, and then who are adhering to the National Labor Relations Act and showing some respect for their precedents. So I think that is where the concern lies. I do not think that the endgame is to prevent a properly functioning board. It is rather to ensure that is what we have.

Ms. DELAURO. I think at this juncture it is important to note for the record that the D.C. Court decision is at odds with previous rulings by at least three other courts of appeal. So I will leave that there. This is not the only case that is out there. There is disagreement within the legal community about this effort.

Anyone else on a nonfunctioning NLRB?

Mr. BURR. I think we would very much like a functioning NLRB. I think that if you look back to some of the things that I know you

have said during the Bush administration about your concerns when you felt very strongly that the NLRB was broken, and the problem that you found with it was and that we find with the current board is it is not impartial, that they are not neutral arbiters of labor law.

And so if you set aside for a second the problem of the illegally appointed board, we need people that can get confirmed to the Board, people that can get well over 60 votes in the Senate, that people can agree on. And people have been confirmed this year. It has happened.

Ms. DELAURO. Whoa.

Mr. BURR. But those people are not being nominated.

Ms. DELAURO. Where have you been in the 60 vote, on the—

Mr. BURR. Brian Hayes was confirmed with well over 60 votes.

Ms. DELAURO. Listen, right, and how many others have just fallen by the wayside because we cannot? Mr. Holtz-Eakin?

Mr. HOLTZ-EAKIN. I have no opinion.

Ms. DELAURO. Okay. Mr. Silvers? And thank you for your work on infrastructure. Thanks.

Mr. SILVERS. In case my fellow witnesses have not made this clear, if the legal arguments they are proposing to you were upheld, workers' rights in the United States would have no way of being enforced, those rights under the National Labor Relations Act. No way.

Ms. DELAURO. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. KINGSTON. We will be adjourned until 10 o'clock tomorrow morning with the Department of Education, but I wanted to thank the panelists today for engaging and answering good questions. You are obviously very substantial people and you have done a great job today. So we can all agree on that.

And also I wanted to invite you to send us additional information on whatever questions.

Mr. KINGSTON. And, Mr. Holtz-Eakin, one of the questions that Dr. Harris had asked about the part-time workers and you had mentioned about the minimum wage workers losing out on the implementation of Obamacare, I would like to know more about that and what could be done about that.

Mr. HOLTZ-EAKIN. Happy to do that, Mr. Chairman.

Mr. KINGSTON. Thank you very much.

[The information follows:]

*Testimony*

# **How the Affordable Care Act and the Employer Mandate Impacts Employers: An Overview**

July 23, 2013

Chairman Roe, Chairman Walberg, Ranking Member Courtney, Ranking Member Andrews and members of the committee, thank you for the opportunity to testify today regarding the labor market impacts of the Affordable Care Act's (ACA's) employer mandate. The American Action Forum tracks closely ACA implementation, and I am pleased to share an overview of how this provision, along with other key legislative and regulatory burdens, impacts the American workforce and the economy.

I hope to convey three main points:

The ACA will contribute to slower job growth. The employer mandate is a disincentive for hiring; combined with regulatory burdens and new taxes the net effect will be to limit the ability for firms to grow;

The law will lead to a greater reliance on a part-time workforce, as companies will not be mandated to provide health insurance benefits to part-time workers. These workers will thus have to make do with a reduced income or balance multiple part-time jobs; and

The law will change how employees are compensated. Both the rising cost of insurance premiums (including the taxes on those insurance plans) and the availability of subsidized coverage will make employers more likely to forgo health benefits and raise monetary compensation.

Let me discuss these in turn.

### **Introduction**

The 2010 Affordable Care Act contains a number of provisions that will greatly impact the labor market, the workforce, and employers of all sizes. In general, the impacts derive from the overall effects on the pace of economic growth, as well as the specific incentives deriving from taxes, subsidies, and regulations. These factors will influence the overall pace of job growth, the mix of full-time and part-time workers, and the form of compensation for workers.

### **Affordable Care Act Provisions that Impact Jobs and Compensation**

At the broadest level, the ACA is anti-growth policy. It creates a new, large mandatory spending programs, exacerbating the projected debt burdens. Along with this, the ACA contains over \$1 trillion in new taxes and an array of costly regulations. The overall impact is to impose new drag on economic growth and job creation.

Turning to specific provisions, the employer mandate impacts hiring and employees' hours because it requires employers with 50 or more full-time employees to provide health insurance and carries a specific, per-employee fine for noncompliance. The financial impacts to those that do not provide coverage or for firms that are looking to hire the 50th worker are clear. For example, a 49-employee firm that does not provide coverage and elects to hire their 50th employee now faces a fine of \$40,000 per year, which is the \$2,000 per employee penalty above the first 30 employees. A small firm can skirt this requirement by switching to part-time workers.

In addition, complex reporting requirements exist that are less obvious, but add paperwork and costs nonetheless. Even for companies that currently provide coverage

and will continue to do so, the mandate requires disclosure of their employees' salaries and health insurance coverage; including the names and Social Security numbers of employees and family members who are eligible, what the insurance covers, and the cost to the employee of the different plans offered. While employers are reporting relief that the mandate will begin in 2015 rather than 2014, a one-year delay only temporarily lessens the burden of health reform. It does however, make it more likely that employers who were already contemplating dropping health insurance benefits and shifting employees onto the exchanges will do so, which is, in essence, additional advertising for the exchanges. The Department of Health and Human Services (HHS) does not have the budget they would like to promote the exchanges, and a delay in the mandate has the potential to serve as free marketing.

Despite a mandate to offer coverage, financial incentives are embedded in the ACA that encourage employers to drop health benefits and shift workers onto the health insurance exchanges; as virtually all employers and some low and moderate income employees would be financially better off for doing so. If the exchanges are implemented on time and become a viable market for health insurance, firms may drop benefits, pay the fine, and give employees additional wage compensation in lieu of their health insurance.

Furthermore, the law includes a health insurance tax on all plans, an excise tax beginning in 2018 on plans deemed overly generous (the "Cadillac tax"), and mandates that small group plans cover a comprehensive list of "essential benefits". All of these will result in higher benefit costs for employers. This reduces firms' ability to pay adequate wages, increase their labor force, and invest in their business; adding yet another reason firms may stop providing benefits and instead increase monetary compensation.

It is clear that the law is having a negative impact on employers already and when employers are either reluctant to hire or reducing employee hours, the labor market suffers. This is particularly concerning at a time in our economy when 1 out of 7 Americans are receiving food stamps and unemployment is stagnant at 7.6 percent, a time when we need policies that increase the full-time workforce.

The suspension of the employer reporting requirements makes the individual mandate and application process for exchange subsidies dependent upon the honor system in 2014. The Administration is optimistically assuming that the public will understand the complicated exchange application's questions about their income, employer sponsored insurance options and employee portion of such insurance, and then, even more

optimistically, assuming applicants will answer every question correctly and honestly. In reality this is likely to result in significantly more federal spending on exchange subsidies, and less individual mandate penalty revenue than previously expected.

While some provisions in the ACA that apply to employers are already in force, such as the requirement to cover employees' dependents up to age 26 and the prohibition of annual or lifetime coverage caps, the major reforms begin in 2014, and now 2015. As a result much of the writing about the ACA's impact is speculation from anecdotal reports of employers' benefit decisions and modeling of the economic impacts of the various policies. However, we also have valuable data from annual employer surveys, several of which will be detailed in this testimony.

The surveys were conducted prior to the July announcement of the employer mandate delay, but the delay is unlikely to change the overarching conclusions. Employers are reacting to the uncertainty by studying their options, limiting hiring and reducing hours in anticipation of the ACA. For those firms leaning toward dropping coverage, having the penalties delayed for one year will only accelerate their doing so; for firms set on continuing coverage for the immediate future, the mandate delay is unlikely to cause a change of course.

An April 2013 Gallup poll of small business owners found that the ACA is impacting their health care costs, hiring decisions, and benefit plans. Key findings include:

- Of those surveyed, 41 percent held off hiring new employees,
- 19 percent of those surveyed reduced employees, and
- 18 percent of firms reduced employee hours to part-time status.

The International Foundation of Employee Benefit Plans conducted a survey in March 2013 of 966 individuals, each representing an employer-sponsored plan from a variety of large and small firms. The survey found that employers are feeling the cost impact of the ACA, and making health insurance and hiring decisions that reflect their concern about the law. Key findings include:

- Of those surveyed only 12 percent responded that costs had stayed the same or decreased; of the 88 percent that reported a cost increase, the respondents were about evenly split between costs directly attributed to the ACA increasing fewer than 5 percent and more than 5 percent,
- 17 percent have begun to change their plans in order to avoid the Cadillac tax in 2018,

19 percent of small employers (under 50) are reducing hiring to avoid being subject to the employer mandate, and 15 percent plan to adjust hours so fewer employees are covered under the employer mandate.

A survey conducted by Towers Watson found that companies are likely to continue offering coverage in the near term, but only 26 percent of survey respondents were confident that their firm would be offering health benefits in 10 years.

It is clear from the results above that employers are studying their options, watching cost growth, and making small changes to their business practices to reduce their health insurance liability.

### **Regulatory Burden**

It is relatively easy to estimate the amounts in penalties, taxes, and health insurance costs that employers face. While more difficult, it is important to recognize as well the costs imposed by the ACA's massive regulatory burden and the uncertainty inherent in sweeping reforms. Estimates from the American Action Forum indicate that the ACA imposes \$30 billion in regulatory compliance costs, as the result of 80 billion paperwork hours, on states and private entities.

In the process of implementing the ACA, the Department of Health and Human Services has violated the Paperwork Reduction Act a massive 154 times since 2009, which represents over 30 percent of the total violations in that time period, and nearly double that of any other administrative agency.

When the Congressional Budget Office (CBO) reviewed the ACA under the Unfunded Mandates Reform Act (UMRA), it acknowledged the law "would greatly exceed" statutory cost thresholds (\$70 million for local governments and \$141 million for the private sector) "in each of the first five years that the mandates would be in effect." After approximately three years of implementation, ACA's regulatory burdens have greatly exceeded UMRA's thresholds. These regulatory costs will place tremendous pressure on doctors, hospitals, health issuers, and particularly small businesses.

For example, ACA's 80 million hours of paperwork is the equivalent of 39,822 employees working an entire year filling out the law's new paperwork (assuming a 2,000-hour work year). We can conceptualize paperwork burdens by examining gross domestic product per hour worked. According to the Bureau of Labor Statistics, that figure was \$61.59 in 2011. Thus, ACA's red tape alone costs the U.S. approximately

\$4.9 billion annually, a figure that will grow as the pace of implementation quickens this year.

Clearly the regulation is damaging enough, but it is also difficult for businesses to comply with and manage their new responsibilities under the ACA when the Administration is not releasing rules in a timely manner in accordance with their own deadlines. We estimate that the Administration has missed half of their self-imposed deadlines for proposed and final rules related to the ACA. Even the latest delay, which employers welcome, is leaving people wondering what else will be delayed prior to 2014. The uncertainty makes it difficult for companies to make business decisions and do cost-benefit studies regarding their health insurance plans and hiring decisions.

### **Conclusion**

The ACA will continue to have a damaging impact on the American economy, as it imposes both a financial and paperwork burden on employers, creates uncertainty about labor costs, and has clear disincentives for hiring full-time workers. The employer mandate is a key failing of the law, as it will not actually compel employers to add coverage, and it depends on a complicated reporting and information system that the Administration was unable to implement in the three years since the law passed. While firms are waiting to understand how this law will impact their business, they are making decisions now to limit their future financial liabilities, and thus hiring less than they would in the absence of the law.

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### **Douglas Holtz-Eakin**

*President*

Douglas Holtz-Eakin has a distinguished record as an academic, policy adviser, and strategist. Currently he is the President of the American Action Forum and most

recently was a Commissioner on the Congressionally-chartered Financial Crisis Inquiry Commission. Since 2001, he has served in a variety of important policy positions.

**Related testimony**

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By Douglas Holtz-Eakin on March 17, 2011

THURSDAY, APRIL 11, 2013.

## SECRETARY OF EDUCATION

### WITNESS

HON. ARNE DUNCAN, SECRETARY OF EDUCATION, UNITED STATES  
DEPARTMENT OF EDUCATION

### CHAIRMAN'S OPENING REMARKS

Mr. KINGSTON. Well, let me welcome everyone to the hearing today, and I will just abbreviate my opening statement and say welcome, Mr. Secretary, and Mr. Skelly. I appreciate your being here. We look forward to a good discussion with you. We appreciate the background that you have in education, and all of the many accomplishments that you have, and appreciate the sincerity and enthusiasm in which you have thrown yourself into this job, and probably, if I am not tracking it, but I would say maybe the most nonpartisan office in this administration. Would you agree with that, or—

Ms. DELAURO. Oh, I do not know.

Mr. KINGSTON. That would not be a compliment.

Ms. DELAURO. I do not know that the others are partisan, Jack.

Mr. KINGSTON. There is nothing partisan going on at EPA. We know that.

Ms. DELAURO. No partisanship.

Mr. KINGSTON. Or the Department of Labor.

Anyway, we are glad to have you here. The President's budget has come out. There is a \$3 billion increase in it. The budgets, I think, have become suggestions in this town whether they are the House, Senate, or the White House, but we are going to work through it. We look forward to your questions. So let me yield to my friend, the ranking member, Ms. DeLauro.

### RANKING MEMBER'S OPENING REMARKS

Ms. DELAURO. Thank you very much, Mr. Chairman, and I want to welcome you and thank you, Mr. Secretary. Tom, it is always great to see you. And to you, Mr. Secretary, I just want to applaud you. You really are a tireless advocate for public education, and it is a pleasure to be able to spend time with you. I also wanted to comment on your statement. I want to say thank you for your poignant words on a safer world for our children. And we would do well to listen to those words. So many, many thanks.

Everyone in this room knows that broad access to education is crucial to the proper functioning of American democracy, and it is only by delivering quality education for all of our citizens from their earliest years to their college years, can we ensure freedom, equality, and social mobility, to make opportunity real for each and

every American and continue to lead the world to economic security and lasting prosperity.

Especially in this tough economy, families turn to education because they know that is the future for them and for the country. That is the deal in America, and without broad access to education, there is no middle class in this Nation. The compact is broken that allows hard work to pay off and for future generations to be able to do better.

#### FEDERAL SUPPORT FOR EDUCATION

And yet, despite all of this, our Federal support for education has not kept pace with population growth and inflation over the past decade. As of last year, when you exclude Pell Grants, per capita and inflation adjusted discretionary spending of the Department of Education has been cut by approximately 14.2 percent, or \$7.5 billion. That is since 2002.

Let me be clear, the reduction was in place even before the sequester was implemented. This has happened even as the number of children living in poverty grew from 16.3 percent to almost 22 percent over the last decade.

#### SEQUESTER IMPACT ON EDUCATION

And now, we have deep, indiscriminate cuts known as the sequester that have slashed an additional \$2.5 billion from education programs. A couple of examples: Sequestration cut \$730 million from Title I, \$580 million from IDEA, and \$58 million from after-school programs, and the list could go on and on.

What does it mean? It means that millions of disadvantaged students suffer from reduced educational services. That means Federal support diminishes for hundreds of thousands of children with special needs. It means 86,000 students will lose access to after-school, and summer school programs. Again, here, I could go on all day.

The States, unfortunately, are not in a position to take up the slack. In fact, per-pupil spending has been reduced below 2008 levels in 37 States all across the country.

Sadly, in this environment, I believe and it is my view that the House majority has consistently demanded that we drive down the Federal investment in education. In fact, the appropriations bill last year tried to cut \$1.2 billion from education, eliminate programs, including school improvement grants, investing in innovation, and the mathematics and science partnerships.

The 2014 budget from just last month tries to cut education programs by 20 percent. It is wrong. It does not make sense to roll back critical investments in education, particularly at this delicate economic moment. And turning to the budget that has been put forward by the President, from a top-line view, I am delighted to see increased investment made toward furthering both access to, and the quality of, public education.

I am glad to see this proposal reverses the sequestration cuts, funds some programs above the fiscal year 2013 pre-sequester level. I regret that the current budget environment does not allow for much-needed increases to Title I, and IDEA, that I think we can all agree are necessary.

## EARLY CHILDHOOD EDUCATION

That being said, this budget proposal does include a welcome expansion of high quality, early childhood education, which studies show time and again is a wise investment in our national economy that will produce returns for children, for families, and for our entire country.

## SCHOOL SAFETY AND AFTER-SCHOOL PROGRAMS

I am supportive of the President's school safety initiative which, among other things, helps schools to develop and implement emergency preparedness plans, and creates a safer and more nurturing environment; thrilled that the budget request increased the Promise Neighborhoods program by 400 percent. It helps more children and communities overcome the challenges of poverty. And I am pleased to see that the budget requested a 9 percent, or \$100 million, increase for the 21st Century Community Learning Centers.

I also, and Mr. Secretary, you know some of my concerns in these areas, I am concerned that the Department's policy seems to place an emphasis on extended learning time programs over traditional after-school programs, which is not what Congress authorized this program to do. I am concerned that the request eliminates the current formula funding to States in favor of a national competition.

## FORMULA VERSUS COMPETITIVE-FUNDED PROGRAMS

The emphasis on competitive funding, I find troubling. While the overall request increases education spending by 4.5 percent over the 2012 level, most of the increases are to competitive grants. And oftentimes, competitive funding seems to reward a State's grant writing ability rather than the actual school system. In my view, what is needed is steady, secure funding for all of our schools to move towards improvement.

If we want to create jobs and grow the economy, we have to work to ensure educational opportunity for all, and that means recognizing the profound impact that poverty has on learning, investing in early childhood education, and after-school programs, and ensuring that kids have access to good nutrition, good health, and good counseling.

Education is the great equalizer in American life. It opens doors of opportunity to jobs, higher wages, and a better life. My hope today is that we can discuss how to best ensure all of our students have access to these opportunities. I thank you, and I look forward to your testimony.

Mr. KINGSTON. Mr. Secretary.

## OPENING STATEMENT OF SECRETARY DUNCAN

Secretary DUNCAN. Thank you so much, Mr. Chairman, and members of the subcommittee. I am really pleased to be here today, and happy that the President's 2014 budget was submitted to Congress yesterday. And, I look forward to discussing the President's priorities for our Department of Education.

## PAY OFF FROM INVESTMENTS OF PAST 4 YEARS

The good news today is that the investments we have made in education over the past 4 years are starting to pay off. Students made important progress during the President's first term. The on-time high school graduation rate hit its highest rate over the past three decades; and about 700,000 fewer teenagers are trapped in "high school dropout factories" where 40, 50, 60 percent of the students or more drop out; 700,000 fewer children were in those schools in 2011 than just a couple of years ago in 2008.

Instead of dumbing down standards to make politicians look good, almost every single State across the country is supporting higher standards to show that students are truly both college- and career-ready. And the number of Pell Grant recipients increased by more than 50 percent. That is the biggest expansion of educational opportunity in higher education literally since the GI bill, and that was done without going back to taxpayers for a nickel.

Because of public investment, and public education and lots and lots of hard work from great teachers and principals, and parents, and students themselves, millions of Americans today have a better chance of getting a good job, owning their own home, and supporting a family. And I document these improvements in my formal statement which we have submitted for the record.

## EDUCATIONAL CHALLENGES REMAIN

On the flip side, though, the bad news, and I call it the brutal truth, is that the urgent educational challenges absolutely remain. Just one generation ago, America led the world in college attainment. Today, we are actually 14th, 14th internationally among young adults in college completion rates. And many of our economic competitors are making educational progress more rapidly. They are getting better faster than we are here in the United States.

Simply put, they are out-educating us, and that means if something does not change they will soon be out-competing us. Education has to be more than a set of numbers on a ledger. It is an investment and it is a statement about what we value. In fact, it is one of the most critical investments in the future that we as a Nation can make. High-quality education, I am convinced, is the surest path to building a thriving and expanding middle class.

This is obviously a time of real fiscal challenges, but as the President said in his State of the Union address, it is also a time to work for smarter government.

Unfortunately, sequestration is not an example of smarter government. Frankly, I think it is dumb government. Indiscriminate cuts to education, the military, and other critical public investments are a step backwards. The President's budget would reverse sequestration. You do not see any of our high performing international competitors funding education or trying to drive innovation through sequester. In a knowledge-based globally competitive economy, our competitors are determined to invest in education, and in training their workforce.

For example, in South Korea, which is a very high performing nation—their investment in education as a percentage of the GDP—gross domestic product—increased by nearly a third from

the year 2000 to 2009, while our investment increased by just 6 percent. Education spending as a percentage of GDP rose at more than twice the U.S. rate in many countries across the globe.

So I think the question we should be asking is not whether to invest in education, but what are the smartest, what are the best investments in education that we can make? How do we invest not in the status quo, but in a vision of reform and increased student success and achievements.

And that is why ROI, the return on investment, was a huge factor in developing our 2014 budget request. The ROI for attending college, as we all know, is absolutely crystal clear. The average college graduate earns \$2.3 million over the course of his or her lifetime. That is \$1 million more than the average high school graduate.

#### BUDGET REQUEST FOR EARLY LEARNING

Our focus on ROI and closing achievement gaps is a key justification for the President's landmark Preschool For All proposal. Contrary to what you may have heard, the President's plan absolutely would not be a new Federal entitlement program. Instead, his plan would create a new Federal/State partnership to enable States to provide universal, high-quality preschool for 4-year-olds, from low- and moderate-income families. States could use Federal funds to create or expand high-quality State-run preschool programs.

For the younger children, those children ages 0 to 3, the President's budget would launch a new early Head Start child-care partnership at HHS and expand the administration's evidence-based home visiting initiative. HHS has been a great partner to us through the Race to the Top—Early Learning Challenge, and our budget request reflects an ongoing commitment to that partnership, and continues support of Head Start at HHS.

The urgent need for high-quality preschool today is simply not in dispute. Fewer than three in 10 4-year-olds are enrolled in high-quality preschool programs, and we know that on average, children from low-income families start kindergarten behind. They enter kindergarten already 12 to 14 months behind their peers in language development and prereading skills. That deficit represents a staggering opportunity gap that collectively we must close.

#### U.S. INVESTMENT IN EARLY LEARNING

The U.S. devotes less public spending to early learning as a percentage of GDP than 24 of 29 industrial countries. That is not a badge of honor. For example, the Czech Republic and Chile invest proportionately more in their 4-year-olds than we do. High-quality preschool reduces grade retention, and it boosts graduation rates. It increases the odds of holding a job and decreases rates of crime.

Rigorous longitudinal studies by people like Nobel laureate economist James Heckman found a return of \$7 for every \$1 of public investment in high-quality preschool programs. A longitudinal study in Chicago also found an ROI of 7:1. That is a much better return on investment than many of us get from the stock market. High-quality early learning is the best, smartest investment we can make in our children.

Now, it is a real challenge to dramatically expand high-quality preschool, but I take real confidence from the leadership that I already see across the country from both Republican and Democratic governors. States like Oklahoma and Georgia, are leading the way in creating universal preschool programs, and numerous States led by GOP governors, including Alabama and Nevada, and Michigan, are investing in quality and expanding coverage to more 4-year-olds.

In Georgia, Mr. chairman, your home State, the National Institute for Early Education awarded Georgia's preschool program a 10 out of 10 for meeting measures of high quality. And for fiscal year 2014, Governor Deal has requested and the legislature has approved a \$13 million increase in pre-K funding to add 10 days to lengthen the preschool year. The President's Preschool For All plan would help ensure that children, regardless of ZIP Code or family income, are actually ready for kindergarten, prepared to learn to higher academic standards, and on track to be successful.

In America, education must fulfill its role, its promise as the great equalizer. It should be the one force that overcomes differences in race, in privilege, in national origin. Preschool For All is an essential investment to help our Nation fulfill that American promise of equal opportunity.

Thank you so much and I look forward to your questions.

Mr. KINGSTON. Thank you, Mr. Secretary.

[The prepared statement of Secretary Duncan follows:]

**DEPARTMENT OF EDUCATION****Statement by****Arne Duncan  
Secretary of Education****on the  
U.S. Department of Education Fiscal Year 2014 Budget Request****April 11, 2013**

Good morning Mr. Chairman and Members of the Subcommittee. I'm pleased to be here today to talk with you about President Obama's priorities and plans for the Department of Education.

I'm happy that the President's 2014 Budget was submitted to Congress yesterday—as you know, the budget situation has been exceptionally complicated this year—and I look forward to discussing the details of some of the President's keystone proposals.

I've come before you in years past to ask you to invest significantly in our schools and our students, and those investments are beginning to pay off—but we have a lot further to go.

This morning I'll sketch out some important progress made in the President's first term. I will highlight urgent educational challenges that remain, not only for our Nation as a whole but in every congressional district and community in the country. And I will talk about the ROI—the return on investment in education spending—with special emphasis on the President's landmark preschool plan. Finally, I want to close by summarizing a number of additional, core elements of the President's education 2014 budget.

The big takeaway message here is that education is more than a set of numbers on the ledger line. Education is not just an expense—it's an investment. In fact, it is one of the most critical investments in the future that we, as a Nation, can make. America cannot win the race for the future without investing in education—it's that simple.

Budgets entail value choices. They reflect the aspirations of our citizens and leaders. And I am glad to say that, for the most part, Federal education funding has enjoyed bipartisan support, even in tough times. In America we invest in the future, not just in spite of challenges, but as the means of overcoming them.

Dating back to even before the States ratified the Constitution, the fledgling Continental Congress passed the Land Ordinance of 1785 and the Northwest Ordinance

of 1787, granting Federal lands to States to create and support public schools. In my hometown of Chicago, one Federal land grant for schools is now Midway Airport.

In the midst of the Civil War, President Lincoln signed the Morrill Act, creating our Nation's land grant colleges. Six members of this committee, half of them Democrats, half of them Republicans, earned their degrees at land grant colleges.

FDR signed the GI Bill during the midst of the epic battle of Normandy, expanding not only the opportunities for returning veterans but those of their children for generations to come.

Fortunately, our Nation is not in the midst of World War II or the Civil War, and we are not in the midst of the Depression. But this is a time of fiscal challenges. And as President Obama said in his State of the Union address, it is a time to work for "smarter government." We don't always live up to this goal in Washington. But I've yet to meet a lawmaker who has stated a preference for dumber government.

Unfortunately, sequestration, with its indiscriminate cuts to education, the military, and other critical public investments, is not an example of government at its finest.

You won't see our high-performing competitors funding education by sequester. In a knowledge-based, globally-competitive economy, our competitors are determined to invest in education. They want to accelerate their progress, not cut back on public education.

South Korea's investment in education, as a percentage of GDP, increased by nearly a third from 2000 to 2009, whereas our investment, as a percentage of GDP, increased by just 6 percent. Education spending as a percentage of GDP rose at more than twice the U.S. rate in many other countries as well during the last decade, including Australia (up 15 percent), Denmark (18 percent), and the Netherlands (21 percent).

Today, the U.S. is one of only four Organization for Economic Co-operation and Development — OECD — countries where students in low-income schools have to cope with higher student-to-teacher ratios than their peers in more advantaged schools.

But the question is not just whether we should continue to invest in education, but how can we make smarter investments in education? How can our education system become more productive? One way to answer these questions is to look at the return on investment in our education policies.

### **Progress During President Obama's First-Term**

During the President's first term, the Administration worked hand-in-hand with the Congress to make critical new investments education. We launched new programs like Race to the Top and Promise Neighborhoods, redesigned the School Improvement

Grants (SIG) program, and dramatically expanded the Pell Grant financial aid program for low-income students. All of those efforts expanded educational opportunity and challenged the status quo where it had become unproductive.

In a development that none of the experts foresaw, 46 States, plus the District of Columbia, came together to design and adopt the Common Core standards. For the first time, almost every State is supporting higher standards that show if students are truly college- and career-ready—whether they are from Mississippi or Massachusetts. This was a sharp change from what we saw in the 4 years from 2005 to 2009, when 19 States actually lowered their academic standards for students. We can thank courageous State leadership for stopping this insidious dummyming down of standards.

Today, we are starting to see the payoff of those first-term investments and setting higher expectations for our students. In 2010, the on-time high school graduation hit its highest level in 3 decades. In 2008, less than two-thirds of Hispanic students graduated on time from high school. Today, about three in four Hispanic high school students graduate with their class.

Because the graduation rate of Latino students rose from 2008 to 2011, an additional 164,000 Latino students graduated on time. That is 164,000 people with a better chance of getting a good job, owning their own home, and supporting a family.

On-time graduation rates for African-American students are up, too. In 2008, only about three in five black students graduated from high school on time. Today, two in three do so, resulting in an additional 83,000 African-American students graduating on time in 2011.

These gains are due in part to a sharp drop in the number of high school dropout factories—schools where fewer than 60 percent of ninth graders graduate 4 years later. Since 2008, the number of high school dropout factories has dropped by almost 20 percent, from about 1,750 high schools to roughly 1,425 high schools.

For our families, that means nearly 700,000 fewer teenagers are trapped in those high schools today than in 2008. That is a big step in the right direction.

In higher education, we're seeing substantial increases in college enrollment, too, especially for Hispanic students. More than half-a-million additional Hispanic students—about 550,000 in all—are now enrolled in college today than were enrolled in 2008. That is 550,000 more people who are getting their shot at the American dream and the opportunity to thrive in a globally competitive world. And overall, the number of Pell Grant recipients has increased more than 50 percent, from 6.2 million in 2008 to more than 9 million 3 years later. That is the biggest expansion of educational opportunity in higher education since the GI Bill.

In a knowledge-based economy, the ROI--the return on investment--for many of the strategies the Administration has pursued is huge. We believe our efforts to support

and strengthen the teaching profession through improved teacher evaluation, better professional development, and the RESPECT program will pay large, long-term dividends for our children and our communities.

Economists at Harvard and Columbia have documented that having a good teacher rather than an ineffective one can increase the lifetime earnings of a class of students by over \$260,000. Multiply that by the number of classes a teacher would instruct over the course of her career, and it is clear that even a single good teacher can have a multi-million dollar effect on the economy.

The ROI for attending college is huge, too. Unlike when I and many members of the Committee were growing up, there are no good-paying jobs anymore for high school dropouts—and even those with a high school diploma struggle to make a living, with the average high school graduate making \$1.3 million during his or her lifetime, compared to \$2.3 million for the average college graduate.

Our focus on ROI is a key justification for President Obama's groundbreaking preschool proposal.

### **The Theory of Action for the President's Preschool Plan**

The President's Preschool for All proposal would create a new Federal-State partnership to enable States to provide, universal high-quality preschool for four-year olds from low- and moderate-income families, up to 200 percent of the poverty line.

Contrary to what you may have heard, the President's plan would not be a new Federal entitlement program. States would use Federal funds to create or expand high-quality preschool programs in partnership with local school-based and community providers. States would provide an increasing match for the program, and every cent of the \$75 billion provided by the Federal government over the next 10 years would be paid for by increases in taxes on cigarettes and tobacco products.

Our theory of action in expanding high-quality preschool is going to be the same as it was in the first term. The Federal role in public education is to support and partner with States, incentivize innovation, and help identify what works to strengthen education and accelerate achievement.

That means that at the Federal level, we should be tight on ends but loose on means. The Department should set a high bar for quality in preschool programs. But it should leave it up to State and local leaders to choose the best means for reaching that bar.

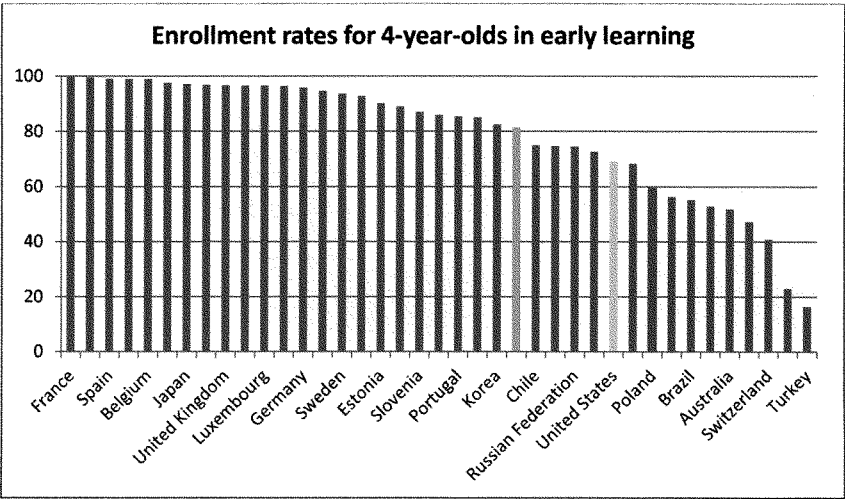
Under the President's plan, States would be required to meet quality benchmarks linked to better outcomes for children—like having high-quality State-level standards for early learning; qualified and well-compensated teachers in all preschool classrooms; and a plan to implement comprehensive assessment and data systems.

The urgent need today for greater access to high-quality preschool for children from low- and moderate-income families is not really in dispute. Fewer than 3 in 10 4-year-olds today are enrolled in high-quality preschool programs. And we know that, on average, children from low-income families start kindergarten 12 to 14 months behind their peers in language development and pre-reading.

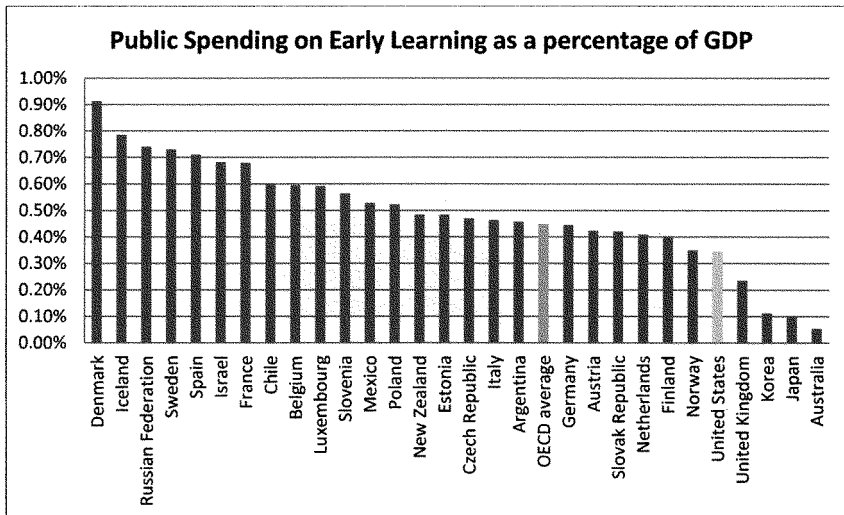
I would ask permission to place in the record an article from the April 3rd *New York Times* that summarizes how the U.S. lags behind other nations in supporting early learning.

As the charts below demonstrate, out of 29 industrial nations, the U.S. devotes less public spending to early learning as a percentage of GDP than 24 of the countries. The Czech Republic and Chile devote more government spending to early learning. So do Iceland and Italy. And the United States ranks 28<sup>th</sup> among OECD nations in our enrollment of 4-year-olds in early learning.

**THE UNITED STATES RANKS 28<sup>th</sup> IN THE WORLD IN ENROLLMENT**



### THE UNITED STATES RANKS 25<sup>TH</sup> IN PUBLIC FUNDING FOR EARLY LEARNING



### The ROI on High-Quality Early Learning

In an era of tight budgets, it's essential that we ask ourselves, what is the smartest use of our education dollars? The answer, I believe, is that high-quality early learning is the best education investment we can make in our children, our communities, and our country. As President Obama has said, "if you are looking for a good bang for your educational buck," high-quality preschool is the place to look.

In the near-term, high-quality preschool reduces placements in special education. It reduces grade retention. It boosts graduation rates. In the long-term, high-quality preschool both increases the odds of holding a job and decreases crime and teen pregnancy.

Rigorous, longitudinal studies by Nobel laureate James Heckman of the Perry Preschool project found a return of seven dollars to every one dollar of public investment in high-quality preschool programs. A longitudinal study of the Chicago Child Parent Centers also found an ROI of seven to one. That is a much higher return on government investment than one would typically get in the stock market.

States like Oklahoma and Georgia know about these data and are leading the way in creating universal preschool programs. In fact, numerous States led by GOP

governors—including Alabama and Michigan—are investing in quality and expanding coverage to more 4-year olds.

In Georgia, Chairman Kingston’s home State, the National Institute for Early Education awarded Georgia’s preschool program a ten out of ten for meeting measures of high quality. Georgia is only one of five States in the country to achieve that honor. And in the budget for fiscal 2014, Governor Deal has requested and the legislature has approved a \$13.1 million increase in pre-K funding to add 10 days to the pre-school year and increase the salaries of deserving teachers.

Not only are States investing in high-quality preschool, voters are approving sales tax and property tax increases to fund preschool initiatives. Last November, voters in San Antonio, Denver, and St. Paul, Minnesota, all approved tax increases to support preschool programs in their communities.

Voters and parents understand that in today’s global economy, ensuring access to high-quality preschool is not a luxury but a necessity. They understand that investing in high-quality preschool is a win-win proposition, with a big economic return. And they understand that we have to stop playing catch-up in education. We have to level the playing field for young children, so everyone can begin kindergarten at the same starting line.

This is why the centerpiece of President Obama’s education budget for fiscal year 2014 is a pair of major new investments in early learning: a \$75 billion mandatory request, over 10 years, to support the Preschool for All initiative; along with a \$750 million discretionary request for Preschool Development Grants.

Preschool for All would create a new Federal-State cost-sharing partnership aimed at making high-quality public preschool available to all 4-year-olds from low- and moderate-income families while also providing incentives for States to serve additional children from middle-class families. The companion Preschool Development Grants proposal would help build State capacity to implement the high-quality preschool programs required by Preschool for All.

#### **Other Priorities in the President’s 2014 Request for the Department of Education**

These preschool proposals are part of an overall request of \$71.2 billion in discretionary appropriations for the Department of Education in fiscal year 2014, an increase of \$3.1 billion, or 4.5 percent, over the fiscal year 2012 level.

In addition to early learning, this request is focused on strengthening K-12 education, making our schools safer and creating positive learning environments, supporting career-readiness for all, improving affordability and quality in postsecondary education, and supporting the Administration’s Ladders of Opportunity initiative for high-poverty communities.

### **Strengthening K-12 Education**

The 2014 request provides essential funding for traditional State formula grant programs that are the foundation of Federal support for State and local efforts to ensure that all students meet college- and career-ready standards, including a \$14.5 billion request for the Title I Grants to Local Educational Agencies program and \$11.6 billion for the Individuals with Disabilities Education Act Grants to States program. At the same time, we would continue our emphasis on creating meaningful incentives to leverage more effective use of Federal education funding in key areas such as putting a great teacher in every classroom and a great leader in every school; building local capacity to support successful school turnarounds; and improving teacher preparation and classroom instruction in science, technology, engineering, and mathematics (STEM).

### **Reforming Federal Support for Effective STEM Education**

The Administration is proposing a comprehensive reorganization of Federal STEM education programs as part of a Governmentwide realignment that would reorganize or restructure 114 programs across 13 agencies.

Reforming Federal support to support an effective, cohesive national STEM education strategy is a top Administration priority. Scientists and engineers are key innovators in our society. They play an essential role in developing new industries and opportunities that create jobs and spur economic growth. Our Nation depends on an innovation economy, and America's capacity to build and create should never be limited by a shortage of talent in the STEM fields.

At the core of this strategy for improving K-12 STEM education is a \$150 million request for STEM Innovation Networks, which would support creating partnerships among school districts, institutions of higher education, research institutions, museums, community partners, and business and industry. These networks would develop comprehensive plans for identifying, developing, testing, and scaling up evidence-based practices to provide rich STEM learning opportunities in participating local educational agencies (LEAs) and schools. They also would work to leverage better and more effective use of the wide range of STEM education resources available from Federal, State, local, and private entities, including federally supported science mission agencies.

Other key elements of the Department's STEM request include \$80 million for STEM Teacher Pathways to support the President's goal of developing 100,000 new effective STEM teachers by recruiting, training, and placing talented recent college graduates and mid-career professionals in the STEM fields in high-need schools; and \$35 million to establish a new STEM Master Teacher Corps, which would identify teacher leaders in STEM fields who would take on leadership and mentorship roles in their schools and communities aimed at improving STEM instruction and helping students excel in math and science.

### **More Effective Teachers and School Leaders**

Consistent with the Administration's proposal to reauthorize the Elementary and Secondary Education Act (ESEA), the President's budget would provide \$2.5 billion for Effective Teachers and Leaders State Grants to provide flexible, formula-based support for States and LEAs that commit to improving their teacher and principal evaluation systems and to ensuring that low-income and minority students have equitable access to teachers and principals who are effective at raising student achievement. We also would renew our request for a 25 percent national activities set-aside totaling nearly \$617 million that would allow the Department to build evidence on how best to recruit, prepare, and support effective teachers and school leaders and to invest in efforts to enhance the teaching and leadership professions.

In addition, the budget includes \$400 million for the reauthorized Teacher and Leader Innovation Fund, an increase of \$100 million over 2012, to help States and LEAs improve the effectiveness of teachers and leaders in high-need LEAs and schools, in particular by creating the conditions to identify, recruit, prepare, support, retain, and advance effective and highly effective teachers, principals, and school leadership teams in those schools. We also are asking for \$98 million to support a redesigned School Leadership Program that would more than triple the Federal investment in training for principals. This proposal would promote evidence-based professional development for current school leaders aimed at strengthening essential leadership skills—such as evaluating and providing feedback to teachers, analyzing student data, developing school leadership teams, and creating a positive school climate.

### **Supporting School Turnarounds and Data-Based Innovation**

We would expand our commitment to helping States and school districts turn around their lowest-performing schools through a \$659 million request for the reauthorized School Turnaround Grants (STG) program. The request includes an increase of \$125 million that would be used for competitive awards to help school districts build their capacity to implement effective interventions in persistently lowest-achieving schools or priority schools, and to sustain progress in schools that have successfully completed a 3-year STG project. In addition, the Department could use up to \$25 million of these funds to build district capacity by expanding the School Turnaround AmeriCorps initiative, a new partnership with the Corporation for National and Community Service that places AmeriCorps members in low-performing schools to support their school turnaround efforts.

The request also would strengthen K-12 education through a \$215 million proposal for Investing in Innovation (i3), an increase of \$66 million, to expand support for using an evidence-based approach to test new ideas, validate what works, and scale up the most effective reforms. Up to \$64 million would be available for the Advanced Research Projects Agency for Education (ARPA-ED), an initiative modeled on similar entities at the Departments of Defense and Energy that would aggressively pursue technological breakthroughs with the potential to dramatically improve the effectiveness

and productivity of teaching and learning. And an \$85 million request for statewide longitudinal data systems (SLDS) would provide an increase of \$47 million to support the development of P-20 reports and tools to inform policy-making at the State and local levels, as well as the development of in-house analytic capacity for States and school districts.

### **Supporting Career-Readiness for All**

To out-innovate and out-compete the rest of the world, secondary schools and postsecondary institutions need to strengthen the links in our education system to better support career training and skills. The President's 2014 budget seeks to promote career-readiness for all, in large part through a \$1.1 billion request for a reauthorized Carl D. Perkins Career and Technical Education (CTE) program. The reauthorized CTE program would strengthen alignment among secondary and postsecondary CTE programs and business and industry, and create a better accountability system for improving academic outcomes, technical skills, and employability outcomes.

We also are proposing \$300 million for a new High School Redesign program, which would support partnerships of school districts, employers, and postsecondary institutions that would redesign high schools in innovative ways to ensure that all students graduate from high school with (1) college credit, earned through dual enrollment, Advanced Placement courses, or other postsecondary learning opportunities; and (2) career-related experiences or competencies, obtained through organized internships and mentorships, structured work-based learning, and other related experiences.

In addition, we are asking for \$42 million to fund a demonstration and evaluation of Dual Enrollment programs. This proposal would establish or expand dual enrollment programs, aligned with career pathways and local workforce needs, that offer high school and adult students the opportunity to earn college credits while enrolled in a high school or GED program. Research has shown that participation in dual-enrollment programs is linked to increased high school graduation, higher rates of college enrollment and persistence, and higher college credit accrual rates.

### **Affordability and Quality in Postsecondary Education**

The 2014 request continues to support the President's ambitious goal that America will once again have the highest proportion of college graduates in the world by 2020. The urgent and growing need for higher education reflected in the 2020 goal comes at a time when paying for college is a challenge for many American families. As a consequence, the President's budget proposes comprehensive reforms to increase affordability and quality in higher education, including \$1 billion for a new Race to the Top-College Affordability and Completion competition. That competition would drive change in State higher education policies and practices to improve college access, affordability, completion, and quality. The request also includes \$260 million for a First in the World fund, modeled after the Investing in Innovation (i3) program, that would make

competitive awards to encourage innovation in higher education to tackle and improve college completion rates, increase the productivity of higher education, build evidence of what works, and scale up proven strategies.

In addition to promoting systemic reforms in higher education, the President's 2014 request includes student aid proposals that would make college more affordable, including linking student loan interest rates to market rates and preventing a scheduled July 1, 2013, doubling of Subsidized Stafford Loan rates from 3.4 percent to 6.8 percent. The President's budget would expand repayment options to ensure that loan repayments for all student borrowers do not exceed 10 percent of a borrower's discretionary income, and significantly increase aid available under the Campus-Based Aid programs. For example, the request includes a \$150 million increase for the Work-Study program as part of an effort to double participation over 5 years, as well as reforms to the Perkins Loans program that would expand loan volume by some eight and one-half times, up to \$8.5 billion, while making Perkins Loans available at up to an additional 2,700 college campuses.

### **Building Ladders of Opportunity—and Promise Zones**

The President's 2014 Budget for education would help directly address the growing concern that too many communities in America—urban, rural, and, increasingly, suburban—suffer from the negative effects of concentrated poverty, including developmental delays among young children, poor educational outcomes, high rates of crime and incarceration, health problems, and low employment. One new strategy for addressing the challenges of concentrated poverty is the Promise Zones initiative, which will revitalize high-poverty communities across the country by attracting private investment, increasing affordable housing, improving educational opportunities, providing tax incentives for hiring workers and investing in the Zones, and assisting local leaders in navigating Federal programs and cutting through red tape.

This interagency effort will explore opportunities to make better use of all available resources—Federal, State, and local—to address the negative effects of concentrated poverty. The President's budget would support Promise Zones through significant requests in his signature place-based programs, including \$300 million for the Department of Education's Promise Neighborhoods, a \$400 million request for the Department of Housing and Urban Development's Choice Neighborhoods program, and \$35 million for the Department of Justice's Byrne Criminal Justice Innovation Grants program, in addition to tax incentives to promote investment and economic growth.

### **Making Schools Safer**

In January of 2013, President Obama released his plan to reduce gun violence, make schools safer, and increase access to mental health services. The 2014 request supports this plan's common-sense proposals with new investments designed to improve school emergency plans, create positive school climates, and counter the effects of pervasive violence on students. For example, we are asking for \$30 million in one-time

emergency management planning grants to States to help their LEAs develop, implement, and improve emergency management plans designed to enable districts and schools to prepare for, prevent and mitigate, respond to, and recover from emergencies and crisis events.

The request also includes \$50 million for School Climate Transformation Grants, to be coordinated with related proposals at the Departments of Justice and Health and Human Services. These grants would help create positive school climates that support effective education for all students through the use of evidence-based behavioral practices. Funds would be used to scale up a multi-tiered, decision-making framework that has been shown to reduce problem behaviors, decrease bullying and peer-victimization, improve the perception of school as a safe setting, and increase academic performance in reading and math. In addition, \$25 million for Project Prevent grants would help school districts in communities with pervasive violence break the cycle of violence through the provision of mental health services to students suffering from trauma or anxiety (including PTSD), conflict resolution programs, and other school-based strategies to prevent future violence.

I want to close by talking briefly about school safety and gun violence. This issue is very personal for me. Frankly, it's something that has haunted me from the time I was a little boy, growing up on the South Side of Chicago.

I grew up playing basketball on the streets in many of Chicago's inner-city communities. I had older teenagers who looked out for me and who helped protect me. Far too many of them ended up being shot and killed. After graduating from college and playing ball overseas, I came back to Chicago to run an "I Have a Dream" program for a class of sixth graders. One of my first memories was of one of our young men, Terriance Wright, whose teenage brother was shot one afternoon.

Going to that funeral, and trying to help that family through that process, was brutal. We have far too many parents burying their children—that is not the natural order of life. When I led the Chicago Public Schools, we lost one child due to gun violence every 2 weeks. That is a staggering rate of loss. In Chicago, we took steps that no public school system should ever have to take. We created burial funds for families that couldn't afford to bury their children.

So, I absolutely refuse to accept the status quo. And I have two simple goals for change that everyone can agree on: first, that many fewer of our Nation's children die from gun violence; and second, that many more children grow up free from a life of fear.

If we refuse to act now, if we refuse to show courage and collective will in the aftermath of the Sandy Hook massacre, I think we will never act.

Sometimes the time picks you; sometimes you pick the time. Today, sadly, the time has picked us. If we don't move forward now in a thoughtful way to protect our

children, then we, as adults, as parents, as leaders, have broken a trust with children to nurture them and keep them safe from harm.

On my wall in my office in Chicago, I kept a picture that one of our teenagers had drawn for me. It was a picture of him as a fireman. And the caption that he wrote to go along with it was: "If I grow up, I want to be a fireman." That's a deep statement about this young man's world. Think about what it means that so many of our youth today think about "If I grow up," not "When, I grow up."

Everything we are preaching to young people about going to college, building careers, deferring gratification, and planning for the future, is all undermined when a child is afraid they will get caught up in the craziness of gun violence. We need all our children, whether it is in Newtown, Connecticut, the South Side of Chicago, or Aurora, Colorado, to think of themselves in terms of "when I grow up."

And when children do have that confidence, our opportunity gaps, our achievement gaps, will shrink. When that day comes, education will fulfill its role in America as the great equalizer. It will truly be the one force that overcomes differences in race, privilege, and national origin.

### **Conclusion**

The need is urgent. And I say to the committee, whether you are Republican or Democrat, our children and our country cannot wait. We cannot postpone providing every child with a world-class education.

I look forward to working with you to develop and implement a fiscal year 2014 budget for education that reflects the needs of our children and our Nation. And I would be happy to take any questions now that you may have.

**Arne Duncan**  
**U.S. Secretary of Education**

**Biography**

Arne Duncan was nominated to be Secretary of Education by President-elect Barack Obama and was confirmed by the U.S. Senate on Inauguration Day, Jan. 20, 2009.

Prior to his appointment as secretary of education, Duncan served as the chief executive officer of the Chicago Public Schools, a position to which he was appointed by Mayor Richard M. Daley, from June 2001 through December 2008, becoming the longest-serving big-city education superintendent in the country.

Prior to joining the Chicago Public Schools, Duncan ran the non-profit education foundation Ariel Education Initiative (1992-1998), which helped fund a college education for a class of inner-city children under the I Have A Dream program. He was part of a team that later started a new public elementary school built around a financial literacy curriculum, the Ariel Community Academy, which today ranks among the top elementary schools in Chicago.

Duncan formerly served on the boards of the Ariel Education Initiative, Chicago Cares, the Children's Center, the Golden Apple Foundation, the Illinois Council Against Handgun Violence, Jobs for America's Graduates, Junior Achievement, the Dean's Advisory Board of the Kellogg School of Management, the National Association of Basketball Coaches' Foundation, Renaissance Schools Fund, Scholarship Chicago and the South Side YMCA. He also served on the Board of Overseers for Harvard College and the Visiting Committees for Harvard University's Graduate School of Education and the University of Chicago's School of Social Service Administration.

He has been honored by the Civic Federation of Chicago and the Anti-Defamation League. In 2007, he received the Niagara Foundation's Education Award, the National Foundation for Teaching Entrepreneurship Enterprising Educator Award and the University High School Distinguished Alumni Award. He also received honorary degrees from the Illinois Institute of Technology, Lake Forest College and National-Lewis University. In 2006, the City Club of Chicago named him Citizen of the Year. He was a member of the Aspen Institute's Henry Crown Fellowship Program, class of 2002, and a fellow in the Leadership Greater Chicago's class of 1995.

From 1987 to 1991, Duncan played professional basketball in Australia, where he also worked with children who were wards of the state.

Duncan graduated magna cum laude from Harvard University in 1987, majoring in sociology. He was co-captain of Harvard's basketball team and was named a first team Academic All-American. He credits basketball with his team-oriented and highly disciplined work ethic.

Duncan is married to Karen Duncan; they have two school-aged children, a daughter, Clare, and a son, Ryan.

**The New York Times**

## **Investments in Education May Be Misdirected**

By EDUARDO PORTER April 2, 2013

James Heckman is one of the nation's top economists studying human development. Thirteen years ago, he shared the Nobel for economics. In February, he stood before the annual meeting of the Nebraska Chamber of Commerce and Industry, showed the assembled business executives a chart, and demolished the United States' entire approach to education.

The chart showed the results of cognitive tests that were first performed in the 1980s on several hundred low-birthweight 3-year-olds, who were then retested at ages 5, 8 and 18. Children of mothers who had graduated from college scored much higher at age 3 than those whose mothers had dropped out of high school, proof of the advantage for young children of living in rich, stimulating environments.

More surprising is that the difference in cognitive performance was just as big at age 18 as it had been at age 3.

"The gap is there before kids walk into kindergarten," Mr. Heckman told me. "School neither increases nor reduces it."

If education is supposed to help redress inequities at birth and improve the lot of disadvantaged children as they grow up, it is not doing its job.

It is not an isolated finding. Another study by Mr. Heckman and Flavio Cunha of the University of Pennsylvania found that the gap in math abilities between rich and poor children was not much different at age 12 than it was at age 6.

The gap is enormous, one of the widest among the 65 countries taking part in the Program for International Student Achievement run by the Organization for Economic Cooperation and Development.

American students from prosperous backgrounds scored on average 110 points higher on reading tests than disadvantaged students, about the same disparity that exists between the average scores in the United States and Tunisia. It is perhaps the main reason income inequality in the United States is passed down the generations at a much higher rate than in most advanced nations.

That's a scandal, considering how much the government spends on education: about 5.5 percent of the nation's economic output in total, from preschool through college. And it suggests that the angry, worried debate over how to improve the nation's mediocre education — pitting the teachers' unions and the advocates of more money for

**The New York Times**

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public schools against the champions of school vouchers and standardized tests — is missing the most important part: infants and toddlers.

Research by Mr. Heckman and others confirms that investment in the early education of disadvantaged children pays extremely high returns down the road. It improves not only their cognitive abilities but also crucial behavioral traits like sociability, motivation and self-esteem.

Studies that have followed children through their adult lives confirm enormous payoffs for these investments, whether measured in improved success in college, higher income or even lower incarceration rates.

The costs of not making these investments are also clear. Julia Isaacs, an expert in child policy at the Urban Institute in Washington, finds that more than half of poor 5-year-olds don't have the math, reading or behavioral skills needed to profitably start kindergarten. If children keep arriving in school with these deficits, no amount of money or teacher evaluations may be enough to improve their lot later in life.

Much attention has focused lately on access to higher education.

A typical worker with a bachelor's degree earns 80 percent more than a high school graduate. That's a premium of more than \$500 a week, a not insubstantial incentive to stay in school. It is bigger than ever before. Yet the growth of college graduation rates has slowed for women and completely stalled for men.

The Economic Report of the President released last month bemoaned how the nation's college completion rate had tumbled down the international rankings, where it now sits in 14th place among O.E.C.D. countries.

The report restated the president's vow to increase the number of college graduates by 50 percent by 2020, and laid out how the federal government has spent billions in grants and tax breaks to help ease the effects of rising tuition and fees. Last year the government spent almost \$40 billion on Pell grants, more than twice as much as when President Obama came to office.

Mr. Heckman's chart suggests that by the time most 5-year-olds from disadvantaged backgrounds reach college age, Pell grants are going to do them little good.

"Augmenting family income or reducing college tuition at the stage of the life cycle when a child goes to college does not go far in compensating for low levels of previous investment," Mr. Heckman and Mr. Cunha wrote.

Mr. Heckman and Mr. Cunha estimated that raising high school graduation rates of the most disadvantaged children to 64 percent from 41 percent would cost 35 to 50 percent more if the assistance arrived in their teens rather than before they turned 6.

**The New York Times**

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Erick Hanushek, an expert on the economics of education at Stanford, put it more directly: “We are subsidizing the wrong people and the wrong way.”

To its credit, the Obama administration understands the importance of early investments in children. The president has glowingly cited Mr. Heckman’s research. In his State of the Union address, the president called for universal preschool education.

“Study after study shows that the earlier a child begins learning, the better he or she does down the road,” Mr. Obama said at a speech in Decatur, Ga., in February.

But the fresh attention has not translated into money or a shift in priorities. Public spending on higher education is more than three times as large as spending on preschool, according to O.E.C.D. data from 2009. A study by Ms. Isaacs found that in 2008 federal and state governments spent somewhat more than \$10,000 per child in kindergarten through 12th grade. By contrast, 3- to 5-year-olds got less than \$5,000 for their education and care. Children under 3 got \$300.

Mr. Heckman’s proposals are not without critics. They argue that his conclusions about the stupendous returns to early education are mostly based on a limited number of expensive experiments in the 1960s and 1970s that provided rich early education and care to limited numbers of disadvantaged children. They were much more intensive endeavors than universal preschool. It may be overoptimistic to assume these programs could be ratcheted up effectively to a national scale at a reasonable cost.

Yet the critique appears overly harsh in light of the meager improvements bought by the nation’s investments in education today. A study by Mr. Hanushek found that scores in math tests improved only marginally from 1970 to 2000, even after spending per pupil doubled. Scores in reading and science declined.

“Early education is an essential piece if we are going to have a better education system,” Barbara Bowman, an expert on early childhood education in Chicago who has advised the Education Department. “We’re inching in that direction.”

Education is always portrayed in the American narrative as the great leveler. But it can’t do its job if it leaves so many behind so early.

## DEBATE OVER SUCCESS OF HEADSTART

Mr. KINGSTON. One of the questions that always comes up is on Head Start, and that Head Start participants do not have any appreciable difference down the road. What do you have on that?

Secretary DUNCAN. Yes, I think there are multiple studies here we can sort of walk through in detail off line. I think many studies have shown real benefits. There have been some shorter term studies that show what people call a fade-out, and I think there are two things that you have to look at.

One is, you have to make sure that these are high quality programs and there is variation around the country. And again, if this is glorified baby-sitting, that is not good enough. And one thing my partner, Secretary Sebelius, I think has showed real courage on, is that when programs are not effective, she is going to start moving slots from less effective to more effective providers. And then, you have to make sure they are going to high-performing elementary schools, and with the raising of standards, and all of the work that is going on around the country, I feel much more confident there.

But at the end of the day, I think there have been numerous, numerous studies, and you know, longitudinal, long-term work, showing the tremendous dividends, the tremendous benefits to society of high-quality early intervention. And if we are serious about closing what I call, the achievement gap, we have to close the opportunity gap.

Mr. KINGSTON. I am not aware of hard core nonpartisan objective tests on Head Start that show great strides.

Secretary DUNCAN. I mean, there is a huge amount of documentation. Again, some showing real movement, some showing the fade-out effect that you talk about. But where there is high-quality programming, over the long haul, I think there is a gain. I just am firmly convinced this is the best investment we can make. We can share with you a series of, again, some data on this.

[The information follows:]

## STUDIES SHOWING POSITIVE IMPACTS OF HEAD START

Studies of Head Start programs have shown positive impacts in child health and mortality and school readiness, as well as long-term benefits. In terms of child health and mortality, Head Start has been shown to reduce childhood obesity in African-American participants (Friswold, 2007), reduce child mortality rates, particularly for problems addressed by the program's health services (Nisbett, 2010; Ludwig & Miller, 2007), and improve children's dental health (National Impact Study). Studies have also shown that Head Start improves children's school readiness, particularly in language and literacy (National Impact Study; Currie, 2001). Head Start's positive impact on long-term outcomes has been documented as well. Head Start graduates are less likely to be retained in grade and be arrested as young adults (Garces, Thomas, & Currie, 2002), and have improved adult outcomes relative to their siblings who did not attend Head Start, including health status and educational attainment (Deming, 2009). These benefits are more lasting if children attended high-quality elementary schools after attending a Head Start program (Magnuson, Ruhm, & Waldfogel, 2007; Reynolds & Hayakawa, 2010).

## DEFENDING HEAD START FUNDING

Mr. KINGSTON. I think that would be of great interest, because inevitably, should this bill get to the floor, there will be an amendment to reduce Head Start funding, and then the committee always

gets in an awkward position of having to defend it when the critics are piling on with stats showing that there is not much change.

Secretary DUNCAN. But you have to look at the preponderance of evidence, and I think the preponderance of evidence is pretty strong here.

Mr. KINGSTON. And I think one of the questions would be, in an area where it shows that it does make a difference, the trend of the elementary school being a better school and what constitutes that would be very helpful to know. Okay. Well, these are the circumstances in which you get the best results. And these are the circumstances in which you do not.

Secretary DUNCAN. Yeah.

Mr. KINGSTON. It is very perplexing for somebody who has been to many Head Start programs, and you see the good things that are going on there, and you wonder how is it not beneficial?

Secretary DUNCAN. Well, I think it generally is, but I think it is a really important question. I just keep coming back to this return on investment. We do not want to invest for investment sake. We want to invest to make a difference in kids' lives.

Mr. KINGSTON. Although I know Governor Deal has been supportive of the early education program, I have also heard the statistics are not there quite yet. Do you have other—

Secretary DUNCAN. I do not have the Georgia-specific numbers. I have looked more at the national studies.

Mr. KINGSTON. Well, actually, it was interesting after the State of the Union in which the President referred to it, I immediately heard the next day well, the stats are not quite there for Georgia—what is the other State? Is it Michigan or Louisiana?

Secretary DUNCAN. Oklahoma.

#### PER PUPIL EDUCATION SPENDING IN THE U.S.

Mr. KINGSTON. Oklahoma, yeah. And another question, do you know how much we spend per student in America? Your charts show we do not spend much on early education compared to the OECD states, countries. I know that we are in the top of the pack on spending per child.

Secretary DUNCAN. On average, we spend more than most countries per child, and it is interesting, we do that, but we are at almost the bottom internationally on what we spend on the most disadvantaged kids. So we have huge inequities in how we spend. In some States, I come from Illinois, disparities are staggering, where wealthy kids are having as much as \$20,000 to \$22,000 spent on them each year, and in poor communities, \$4,000, \$5,000, \$6,000 or \$7,000.

Mr. KINGSTON. When you see those statistics that say we spend, you know, \$7,000 a year per child, or \$15,000, whatever it is, does that separate out the private school kids?

Secretary DUNCAN. Yes, sir. I am almost sure it does.

Mr. KINGSTON. So it is generally public school kids?

Secretary DUNCAN. I think it is comparing public to public.

Mr. KINGSTON. How are the advantaged kids in a public school system having that big of a disparity?

Secretary DUNCAN. Because sir, you know so much of the funding in our country comes from local property taxes. Traditionally, the

level of Federal funding is 8 to 10 percent. Usually half comes from the State and 40 percent is local. And I can just tell you, you know, coming from Chicago, versus wealthier suburbs, just a couple miles north of us along Lake Michigan, they were literally spending double, double each year per pupil, more than what I could afford, and the poor south suburbs were even less than what I was able to spend.

And so there are tremendous inequities, and so the children who need the most, far too often in our country get the least, and then we wonder why we have these staggering achievement gaps.

Mr. KINGSTON. Okay. Ms. DeLauro.

Ms. DELAURO. I will then refer you to an article, Jack, by the Center on Budget and Policy Priorities where it does talk about two-thirds of the States, 35 are providing less per student funding for K–12 education in 2013. One-third 17, and 10 percent below. In any case, I will get that for you, where they talk about the spending per pupil. You also need to know that in other countries, they have high spending on health care, daycare, nutrition, and housing. Those figures are not captured in the per-pupil spending.

Let me ask a question to you, Mr. Secretary, about the budget, because it reflects a level of discretionary resources available Governmentwide under the President's budget.

#### SEQUESTER IMPACT ON EDUCATION

Under the plan, sequestration now scheduled for 2014 would be turned off, replaced with alternative deficit reduction measures. As a result, your budget is able to maintain core programs at pre-sequester levels as well as some increases in new items. Good thing, we favor, I do, I know many of us do, favor eliminating sequestration and replacing it with a more balanced and equitable deficit reduction package.

But let's be clear, if we are not successful in this, the education budget would look different from what is being proposed. Let me ask, in the absence of a broader budget deal, the levels that you are proposing in this budget are completely impossible. Correct?

Secretary DUNCAN. Absolutely correct.

Ms. DELAURO. Okay. Can you give us a sense of what kind of choice we would face at the Department of Education under those circumstances, and that is, if the total discretionary caps are not raised above their current ceiling?

Secretary DUNCAN. Well, I mean, I have here news stories I just brought from yesterday. This is what is happening around the country. These are just two items. I did not look at today's clips, but one says, Sequester Takes Deep Bite Out of Fond du Lac School.

The other, in Maine, Upcoming Cuts to Maine Head Start a Big Hit for People Who Cannot Afford It. Every single day we are getting stories of what is happening right now due to the sequester.

Teachers are being laid off. Head Start programs, again serving the kids most at need, are being shut down early so they have a shorter school year. And this will just continue. And as you know, the vast majority of our money goes to children most at risk, so our two big pots of money, as you know better than anyone, are IDEA for special needs kids, and Title I for poor kids.

People say, well, if you have more choice, what would you choose? Do I want to help more poor kids and fewer special needs kids or vice versa? There is no right answer there.

And so, if this does not get reversed, we will see lots of teachers, thousands and thousands of teachers, laid off. We will see school days, school years shortened. We will see less after-school programming, and again, I just want to be really clear. I think our kids are as smart, as hard working, as talented as children anywhere in the world. I just want to give them a chance to compete on a level playing field and a sequester is not how South Korea, and India, and Singapore, are managing their education portfolio.

Ms. DELAURO. Thank you very much, Mr. Secretary.

#### SCHOOL SAFETY

Let me ask now a question about school safety, and it is obviously a real concern of mine and to all of us, and for me in particular with Sandy Hook.

The tragedy there, and the Federal cutbacks in education have made the job harder for educators today. The Sandy Hook tragedy in our State has elevated the challenges associated with school safety.

I met with my superintendents last week and their one concern that is at the top of their list is they want to modernize their facilities to meet new security needs and from the Northeast, we have a very old infrastructure. We are looking at some very old facilities and buildings. These were built before any recent increase in gun violence, so they are outdated. They need to be retrofitted.

The budget includes about \$85 million for new school safety initiatives. Those are largely focused on mental health issues and emergency preparedness, and I understand that. Let me ask you: How do our schools cope with this, without significant new resources to help with repair and modernization—it does not necessarily have to be full construction of our school facilities—given our resource-drained budgets? How do we expect our schools to modernize? Have you been hearing about that in order to meet the security demands?

Secretary DUNCAN. I have been travelling the country talking about this. I have spent a lot of time with the family members and teachers from Sandy Hook, from Newtown. We did a town hall last night in Baltimore County on school safety. Unfortunately, Sandy Hook brought this to the Nation, to the forefront of the Nation. Quite frankly, this is not a new issue for me. When I led the Chicago Public Schools, we buried a child on average every 2 weeks due to gun violence. It was a staggering rate of loss.

The vast majority were not gangbangers. These were innocent kids that at 7:30 in the morning in their living room, were shot from 100 yards away with an AK-47, or a girl at her birthday party shot through a window.

So I hate that it took Sandy Hook to bring this to the Nation's consciousness, but this has been an issue that many communities have been dealing with a long time.

I did a meeting with a number of middle school students here in D.C. a couple of weeks ago, six kids sitting around a table. Every

single one, every single one knew someone who had been shot, and several had had family members killed.

So this is an issue that is very personal for me. The President, the First Lady, the Vice President are doing everything they can. Again, I hope—we had some movement in a bipartisan way yesterday that was very encouraging. I just hope that that conversation continues.

I will talk not just about our budget but across the administration, and much of what we are doing is not just through the education budget.

Mr. KINGSTON. If you could save it for the second round.

Secretary DUNCAN. Sorry. Yes, sir.

Mr. KINGSTON. We are going to give everybody a chance to have many rounds.

Secretary DUNCAN. I will be more succinct. That is my fault.

Mr. KINGSTON. We like to pontificate before we ask questions. That is what we do.

Ms. DELAURO. Nobody I know does that.

Mr. KINGSTON. Mr. Alexander.

Mr. ALEXANDER. Good morning, Mr. Secretary. Lauren, the young lady sitting behind me, and I were walking over. She runs pretty much everything in our office, and I was telling her that I enjoy your visits before the committee, because you always make us comfortable and feeling like you know what you are talking about. We do not have any way of knowing that, but you make us feel that way.

Secretary DUNCAN. I try and fake it. Tom really knows what he is talking about, so—

#### ENTITLEMENT PROGRAMS AND EARLY LEARNING REQUEST

Mr. ALEXANDER. You said something about, talking about Preschool For All not being a new entitlement program. So is Head Start an entitlement program?

Secretary DUNCAN. I think Head Start creates opportunities that are really important, but the way this would work, this would simply provide matching money to States who want to—

#### HEAD START PROGRAM

Mr. ALEXANDER. But do you consider Head Start to be an entitlement program? And if so, why would this not be one?

Secretary DUNCAN. It is a discretionary program.

Mr. ALEXANDER. Okay, but most of the time we will classify it as being an entitlement program. So I am trying to understand why this one would not be.

#### HHS AND EDUCATION PRESCHOOL PROGRAMS

Secretary DUNCAN. So let me explain how Preschool For All would be set up. This would simply be matching money to States that are already investing, so for States that want to invest in early childhood we would match money. If they do not want to invest, we would not. Head Start is run federally. This would not be run federally. This would be money that would go to States for States to run programs. It is a 10-year program, a \$75 billion pro-

gram. We would start off with a very hefty investment, \$0.90 on every dollar, \$0.10 at the State level. Our Federal investment would go down over time if States picked up more of the share, to about 75/25. But this is not a mandate. It would be absolutely optional.

And again, the fact that we see so many governors, Republican and Democrat, invest in early learning, that to me is a really big deal. That is a breakthrough. But the fact of the matter is, Congressman, that again, less than three in ten poor kids have access to high-quality pre-K. And they enter kindergarten a year, 2 years behind. How does the best kindergarten teacher in the world cope with that deficiency? Think how challenging that is when you have that wide discrepancy coming in. We are always, in education, always playing catch-up. We are always trying to play catch-up. I want to get us out of the catch-up business. That is why I think this is such a big deal.

Mr. ALEXANDER. And you said from 0 to 3?

Secretary DUNCAN. So our focus would be on the 4-year-olds, on pre-K. HHS, our partner, would focus more on the babies, on the 0 to 3. Yes, sir.

Mr. ALEXANDER. Okay, but you are not trying to lead the committee into believing that a 3-month-old baby could be prepared for kindergarten?

Secretary DUNCAN. No, sir. I am trying to get our 4-year-olds prepared for kindergarten, but we do know that the home visiting program, again, we can give you evidence where you have a teenage mom who is 15 or 16 and does not have support and does not have skills. If we just leave that mother to her own devices, that baby is going to struggle. But if we can get in there and help on parenting skills and vocabulary and the word deficit, the lack of words some children have heard or not heard coming into kindergarten is pretty staggering.

So again, I am just a big believer that an ounce of prevention is worth a pound of cure, you know, at the back end. And I would much rather we get to these babies early.

Mr. ALEXANDER. Please do not consider that I am criticizing the program. I frustrate many on the right side and mainly because I visit Head Start schools and programs, but anyway, thank you. I yield back.

Mr. KINGSTON. Thank you. Mr. Honda, I think you are next, but the ranking member has arrived, so you know what to do.

Mrs. LOWEY. Mr. Chairman, you are very kind, and I have sneakers on, but I could use a pair of roller skates.

Mr. HONDA. I had early childhood education, too.

Mrs. LOWEY. But I did want to welcome you, Mr. Secretary, and of course, your agenda is so very, very critical. I appreciate your leadership. And I personally would like to thank Chairman Kingston, Chairman Rogers, who is across the hall, Ranking Member DeLauro, and Secretary Duncan.

#### FY 2014 EDUCATION BUDGET REQUEST

As the subcommittee readies its fiscal year 2014 bill, it is imperative to keep in mind that we have passed and President Obama has already signed \$2.5 trillion in deficit reduction into law, the

vast majority of which is the result of this committee's work. Even without sequestration, discretionary spending is on a path to be at its lowest percentage of GDP in the last 45 years.

We cannot afford further cuts to critical initiatives, and if we want to remain a global economic leader, we need to make greater investments in specific programs that will grow the economy and create jobs. At the top of this list, is education. While we have not had time to fully dissect the Secretary's budget proposal, I strongly support your goal of prioritizing early childhood and STEM education.

I also support the Administration's efforts to improve school safety, and mental health services in the schools. That said, I do have concerns including Race to the Top, which has hampered high-performing schools in my district, and I was disappointed that there were not proposed increases for Title I, or IDEA.

#### FULL-SERVICE COMMUNITY SCHOOLS

I want to address an issue that has been very important to me. I have been a strong supporter of full-service community schools. I remember Joey Dreyfus and based on the experience of the Edison Elementary School in Port Chester, New York, and the community schools movement and it is growing across the country, including in Chicago. I am encouraged and impressed by these efforts to move effectively, to address the comprehensive needs of children, including social, emotional, and physical challenges, and provide them with the opportunities they deserve so they learn and develop.

The Full-Service Community Schools Program has helped numerous school districts and their communities deepen and scale up the community school strategy across multiple school sites in the past 5 years.

So my question to you, as a strong supporter of these schools, is how can the Department do more to incentivize States and districts to tackle these challenges in ways that are substantive and sustainable, and how do you intend to support that work?

#### 21ST CENTURY COMMUNITY LEARNING CENTERS

Secretary DUNCAN. So, that is obviously near and dear to my heart. As you probably know, I got my start in education running an after-school program, and grew up as part of my mother's program. So I just think our schools should be open, 12, 13, 14 hours a day. I think we should have a wide variety of after-school programming for kids, their parents, and the community.

In tough economic times, we have 100,000 buildings, rich neighborhoods, poor neighborhoods, black, white, Latino; does not matter. They all have classrooms. They have computer labs. They have libraries. They have gyms. Some have pools. They should be open to the community.

So we have proposed a \$100 million increase in our 21st Century Community Learning Centers money. We have not talked today yet about our School Improvement Grants to turn around low-performing schools. Almost every single one is doing creative things to extend hours and to bring in the community and open their doors longer. There are a number of States and districts working with an

outside nonprofit—I can get you additional information—that are really trying to build an evidence base around what this is doing to improve student achievement, so there is some outside leverage we are getting there.

And particularly in disadvantaged communities, sometimes you have to serve kids three meals a day. School is a great place to do that. And so please challenge me and push me to find more ways to be creative to do that, but it is a movement that I think is making a real difference in the students' lives.

Very quickly, that push is very hard in Chicago. One of the benefits I did not fully realize was that we saw mobility go down. So these are very poor kids who are moving and often every month staying one step ahead of the landlord. But because those schools are open longer hours, their families found a way to give back because it was making a difference. And in many of the urban areas, mobility is very high, unacceptably high. So there are lots of benefits, not all of which are obvious.

[The information follows:]

## SCHOOL IMPROVEMENT GRANTS AND 21<sup>ST</sup> CENTURY COMMUNITY LEARNING CENTERS

The Department has supported efforts to creatively and constructively engage local communities to help expand learning time in our nation's schools. Two key Federal programs in this area have been School Improvement Grants (SIG) and 21<sup>st</sup> Century Community Learning Centers (21<sup>st</sup> CCLC). States, school districts, and nonprofit organizations are beginning to build an evidence base around how these activities help drive gains in student achievement.

The Department has released an early snapshot of student performance data at schools that have received SIG program funds, a key component of the Department's blueprint for helping states and districts turn around the nation's lowest-performing schools.<sup>1</sup>

These early findings showed positive momentum and progress in many SIG schools:

- Schools receiving SIG grants are improving. The first year of data show that two-thirds of schools showed gains in math. And, two-thirds of schools showed gains in reading. Another third of SIG schools had declines in achievement, a not surprising finding given the steep institutional challenges that these schools face.
- A larger percentage of elementary schools showed gains than did secondary schools, suggesting that it is easier to improve student performance at a young age than to intervene later. Seventy-percent of elementary schools showed gains in math, and seventy-percent showed gains in reading.
- Some of the greatest gains have been in small towns and rural communities.

The Department, through the Institute for Education Sciences (IES), is also conducting a long-term, rigorous evaluation that will compare schools receiving SIG funds to similarly situated schools that did not receive SIG funds. Moreover, at least one rigorous study, by Professor Thomas Dee at Stanford University, has already found

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<sup>1</sup> *U.S. Department of Education Releases Early Snapshot of School Improvement Grants Data*, November 19, 2012. <http://www.ed.gov/news/press-releases/us-department-education-releases-early-snapshot-school-improvement-grants-data>. The SIG snapshot focuses on proficiency rate changes in the first year of SIG implementation, from 2009-10 to 2010-2011 in SIG-awarded Tier I and Tier II schools. It covers just over 730 (approximately 90 percent) of the 831 SIG-awarded Tier I/II schools in the program's first cohort. Not included were fall-testing states and the very small number of closed schools. However, because this snapshot covers only a single year of SIG implementation, and because many factors contribute to student proficiency rates, it is too early to establish a causal connection between SIG funds and school performance.

positive results in SIG schools as compared to similarly situated schools that did not receive SIG funds.<sup>2</sup>

The literature on expanded learning time (ELT) also suggests that it can be an effective strategy to help improve student achievement, particularly where it is implemented well.

Dobbie and Fryer (2011),<sup>3</sup> for example, found that New York City charter schools that added 25 percent or more instructional time compared to traditional public schools have annual gains that are higher in mathematics than those that did not add instructional time. Similarly, Hoxby, Murarka, and Kang (2009)<sup>4</sup> found a significant positive association between charter school effectiveness and a longer school year. In an earlier report from the same study, Hoxby and Murarka<sup>5</sup> estimated “that schools with years that are 10 days longer are associated with average student achievement that is 0.2 standard deviations greater.” The authors noted that longer school year policies tended to go along with longer school days and Saturday school, so the gains couldn’t necessarily be attributed to the longer school year alone. Fryer (2011)<sup>6</sup> also found that Houston’s ELT initiative (which included a high dosage of tutoring, among other components) had positive effects on student achievement in mathematics and reading in nine of the lowest-performing schools in the city.

In a comparison across countries, Lavy (2010)<sup>7</sup> found that differences in instructional time were closely associated with students’ achievement on the 2006 Program for International Student Assessment (an international test of 15-year-old students conducted by the Organization for Economic Cooperation and Development). The author also indicated that additional instructional time was more effective in countries that implemented school accountability measures or that gave schools autonomy in budget and personnel decisions. (An earlier study by Baker et al. (2004)<sup>8</sup>

<sup>2</sup> Dee, T., *School Turnarounds: Evidence from the 2009 Stimulus*, National Bureau of Economic Research Working Paper 17990, April 2012. <http://www.nber.org/papers/w17990.pdf>.

<sup>3</sup> Dobbie, W., and R. Fryer Jr., *Getting Beneath the Veil of Effective Schools: Evidence from New York City*, National Bureau of Economic Research Working Paper 17632, December 2011. <http://www.nber.org/papers/w17632.pdf>

<sup>4</sup> Hoxby, C., S. Murarka, and J. Kang, *How New York City’s Charter Schools Affect Achievement*, New York City Charter Schools Evaluation Project, September 2009. [http://www.vanderbilt.edu/schoolchoice/documents/092209\\_newsitem.pdf](http://www.vanderbilt.edu/schoolchoice/documents/092209_newsitem.pdf)

<sup>5</sup> Hoxby, C., S. Murarka, *New York City Charter Schools: How Well Are They Teaching Their Students?*, Education Next, Summer 2008. [http://educationnext.org/files/ednext\\_20083\\_54.pdf](http://educationnext.org/files/ednext_20083_54.pdf)

<sup>6</sup> Fryer, R., *Injecting Successful Charter School Strategies into Traditional Public Schools: Early Results from an Experiment in Houston*, National Bureau of Economic Research Working Paper 17494, October 2011. <http://www.nber.org/papers/w17494.pdf>

<sup>7</sup> Lavy, V., *Do Differences in Schools’ Instruction Time Explain International Achievement Gaps? Evidence*

*from Developed and Developing Countries*, National Bureau of Economic Research Working Paper 16227, July 2010, Revised September 2012. <http://www.nber.org/papers/w16227.pdf>.

<sup>8</sup> Baker, D.P., R. Fabrega, C. Galindo, and J. Mishook, *Instructional Time and National Achievement: Cross-National Evidence*, Prospects 34(3), pp. 311–334 (2004). A research brief about this article is available online at <http://www.ascd.org/publications/researchbrief/v3n10/toc.aspx>.

had found no significant relationship between differences in instructional time across countries and students' performance on international assessments.)

It is clear, however, that more experimental research is needed to build evidence about best practices in implementing ELT programs. The Department, through IES, is conducting an evaluation on the implementation of ELT programs in States that received the authority, under ESEA flexibility, to use 21<sup>st</sup> CCLC funds to support ELT during the school day. This IES study, which began in fall 2012, will look at how States are planning to use 21<sup>st</sup> CCLC funds to support ELT, how States define eligible ELT programs, what process States use for awarding 21<sup>st</sup> CCLC funds to districts, and how States plan to monitor districts' use of funds. Interviews of the 21<sup>st</sup> CCLC State coordinators will occur in summer 2013.<sup>9</sup>

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<sup>9</sup> The descriptive report on States' ELT plans will be announced on <http://ies.ed.gov/ncee/>.

## FULL-SERVICE SCHOOLS AND ACADEMIC ACHIEVEMENT

Mrs. LOWEY. Well, I just want to thank you so much, and I see my time is almost up, because this program is not provided with dedicated funding in the President's budget and I would love to bring you to Port Chester, New York, to see what these kids are doing because of Joey Dreyfus and the community schools, and this is a great thing.

Secretary DUNCAN. It is great stuff. Again, just do not look at one line item. Look across the budget to see what we are doing in after-school, Promise Neighborhoods School Improvement Grants. There are lots of ways in which people are getting at this.

Mrs. LOWEY. Well, good, and I thank you very much, and I also know that the red light is on, that you have focused on STEM education, and that to me is vital as well. And thank you, Mr. Chairman, and Madam Ranking.

Mr. KINGSTON. Dr. Harris.

## PRESCHOOL FOR ALL AND EARLY CHILDHOOD STUDIES

Mr. HARRIS. Thank you very much, Mr. Chairman, and thank you, Secretary Duncan for coming before the committee. I have a question about a couple of the programs in the education budget. Let me just follow-up with some of the Head Start issues, because, you know, I sat on the Education Committee in the State Senate of Maryland for 12 years, so I am pretty familiar with studies and what they show and what they cannot.

Most of the studies you have mentioned are the Heckman study, for instance, clearly, builds this foundation on the Perry study, and the Abecedarian study, both of which are under 100 people, you know, in the control group, 100 people in the experimental group. Obviously, both studies, I do not think the Perry study was only for 4-year-olds. And I know the Abecedarian study was not. It was at birth. And actually, it was a much more intensive study. It funded a much higher level than you are suggesting here.

So you know, extrapolating that information to the—the core of the President's proposal in this budget I understand is 4-year-old Head Start. Is that right?

Secretary DUNCAN. Yes, sir, absolutely.

Mr. HARRIS. Where—

Secretary DUNCAN. I am sorry, pre-K. Pre-K. It is not Head Start. It is pre-K, 4-year-olds.

Mr. HARRIS. Okay, and that is substantial, and you are talking about increasing the funding for that for 4-year-olds?

Secretary DUNCAN. Yes, sir.

Mr. HARRIS. But when you explain that you base it on, you know, the Heckman study, which is not about 4-year-olds. It is about studies that involve younger children, decades-old studies, much higher expenditures, the Chicago study I take it is the—what is the Chicago study? Is that the one that wasn't even randomized, 1,500 students not randomized.

Secretary DUNCAN. Yes, sir.

Mr. HARRIS. That is not even a randomized study. So how do you, you know, these are huge increases, and correct me if I am

wrong, you said when I read the budget proposal, these are mandatory expenditures. Is that right?

Secretary DUNCAN. Yes, sir.

Mr. HARRIS. You say it is not an entitlement because I think your testimony was that we should not consider them entitlements. A mandatory expenditure is not really an entitlement. You know, this is what people hate about Washington. You know, we try to convince them that something that we put in the budget that has to be spent is somehow not something that is, you know, it is not an entitlement. I do not understand that.

Huge expenditure. You are justifying the expenditure on 4-year-old education, based on studies that were either not randomized or did not deal with 4-year-olds predominantly.

#### PRESCHOOL FOR ALL AND STATE MATCHING REQUIREMENT

Secretary DUNCAN. So just to be clear. So just on the funding side to be clear, if no States want to participate we will spend zero dollars. So there is no mandate—it is as simple as that.

Mr. HARRIS. Well, Mr. Secretary, you have worked in this business long enough to know, as I have, that when you offer money to the States, the States tend to create programs because there is the promise of, correct me if I am wrong, 90 percent Federal funding in the first year?

Secretary DUNCAN. Yes, sir.

Mr. HARRIS. Why would you think a State would not want to take 90 percent of the Federal funding?

Secretary DUNCAN. I hope they do, but they have got to have skin in the game. Again, that is 1 year. This is a 10-year plan that goes from 90 percent down to 25 percent. So they have to be in it for the long haul. And I just think, again, where you have so many children coming to kindergarten a year, a year-and-a-half behind, is that acceptable to us as a society if we are serious about giving children a chance to be successful?

And if we can have them enter kindergarten at a much more level playing field, I think they have this extraordinary opportunity to be successful. And if not, our dropout rate, which is going down, but it is still unacceptably high, that is just going to go on in perpetuity.

Mr. HARRIS. Mr. Duncan, but you know there are many studies that show that if you just do this with 4-year-olds that the benefit is evanescent?

Secretary DUNCAN. So to be the clear, our budget is focused on 4-year-olds. HHS's budget under the Administration's plan is focused on ages 0 to 3. So we are trying to take this comprehensively, and again, trying to get to the kids who are the most underserved, the most deprived entering kindergarten and say, "can we do something radically different to give them a chance at life?"

#### STUDIES ON BENEFITS OF PRESCHOOL PROGRAMS

Mr. HARRIS. And I am going to ask you to submit to my office the studies that show that doing this for 4-year-olds has lifelong benefits. Because the studies I find show that these are transient. And I want to help because I am telling you when you sentence someone to a poor school who is already disadvantaged when they

come to that school in an inner city, that is a travesty in this country. But for heaven's sake, we have to have some evidence. And I would be much happier had you proposed a prospective randomized study in some States, a large study to answer exactly that question before we create yet another new large entitlement program. Because although a billion dollars is not a whole lot in some areas, it is still a lot of money. I thank you, Mr. Chairman.

[The information follows:]

## STUDIES SHOWING THE LIFELONG EFFECTS OF ATTENDING A PUBLIC 4-YEAR-OLD PRESCHOOL PROGRAM

The collective body of evidence is compelling – that there are significant, long-term effects of high-quality preschool. The best studies showing the lifelong effects of early childhood education are based on the Perry Preschool<sup>i</sup> and the Abecedarian Project<sup>ii</sup>, both of which were multiyear interventions (though the first cohort of Perry children attended for just 1 year). These randomized studies clearly show the benefits of preschool, but they were targeted interventions conducted on small samples.

However, the Chicago Longitudinal Study followed a cohort of 989 children who attended a publicly funded early childhood program (the Chicago Child-Parent centers) for either 1 or 2 years. These children showed (relative to peers matched on age, family and neighborhood poverty, and participation in government programs) higher rates of high school completion (49.7 percent vs. 38.5 percent), more years of completed education (10.6 years vs. 10.2 years), lower rates of school dropout (46.7 percent vs. 55.0 percent), lower rates of juvenile arrest (16.9 percent vs. 25.1 percent), and lower rates of violent arrest (9.0 percent vs. 15.3 percent).<sup>iii</sup> Additionally, an analysis of the program's effects from kindergarten through sixth grade on achievement, grade retention, and special education placement found that children who had attended preschool for 1 or 2 years consistently outperformed comparison children on all of these indicators, and further, that most effects (with the exception of special education placement and kindergarten achievement) were not different for children who had 1 versus those who had 2 years of preschool.<sup>iv</sup>

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<sup>i</sup> Heckman, J. J., Moon, S. H., Pinto, R., Savelyev, P. A., Yavitz, A. (2009). The rate of return to the High/Scope Perry Preschool Program. *National Bureau of Economic Research Working Paper 15471*.; Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). Lifetime effects: The High/Scope Perry Preschool study through age 40. *Monographs of the High/Scope Educational Research Foundation*, 14. Ypsilanti, MI: High/Scope Educational Research Foundation.

<sup>ii</sup> Campbell, F.A., Pungello, E. P., Burchinal, M., Kainz, K., Pan, Y.; Wasik, B.H., Barbarin, O.A., Sparling, J.J., & Ramey, C.T. (2012) Adult outcomes as a function of an early childhood educational program: An Abecedarian Project follow-up. *Developmental Psychology*, 48(4), 1033-1043.

<sup>iii</sup> Reynolds, A. J., Temple, J. A., Robertson, D. L., & Mann, E. A. (2002). Age 21 cost-benefit analysis of the Title I Chicago Child-Parent Centers. (2002). *Educational Evaluation and Policy Analysis*, 24(4 24-267-303), 264-303.; Reynolds, A.J., Temple, J.A., Robertson, D.L., Mann, E. (2001). Long term effects of an early childhood intervention on educational achievement and juvenile arrest. *Journal of the American Medical Association*, 285 (18).; Reynolds, A. J., Temple, J. A., White, B. A. B., Ou, S., & Robertson, D. L. (2011). Age 26 cost-benefit analysis of the Child-Parent Center early education program. *Child Development*, 82(1), 379-404.

<sup>iv</sup> Reynolds, A. J. (1995). One year of preschool intervention or two: Does it matter? *Early Childhood Research Quarterly*, 10, 1-31.

Mr. KINGSTON. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman, and I thank you for doing this. Welcome. I guess I am going to go off my notes, just close it up. I guess we are talking about funding for early childhood education. And it sounds like we are just talking about half of what it is that we are really concerned about when we talk about the achievement of 4-year-olds, and I agree, that we should start very early, even before 4-year-olds, and you are saying that there is another program that starts 0 to 3, and then your Department will pick up 4 and above for early childhood education.

Research shows that early childhood education when it is done properly, has a lifelong impact. My question is that number one, the funding is at a matching grant between the Feds and the States, so they do not have to do it, but if they want to do it, like you said, they have to have skin in the game, so they have to put up money for a matching grant. That is one.

#### BETTER OUTCOMES WITH CREDENTIALLED PRESCHOOL TEACHERS

Two, in the research, or in the court case of *Abbott v. New Jersey*, New Jersey was required to have preschool, is that correct?

Secretary DUNCAN. I think that is right.

Mr. HONDA. Okay. And part of their research and part of their effort was they found in the year 2000, that only 15 percent of those who are dealing with young kids, preschool, were well educated for that, well-suited for that. So part of the plan was to make sure that by 2004, there would be a greater number, which was about 95 percent now. They had degrees, bachelor's degrees, and specialization in preschool, which I think is good.

And I think that your Department is also saying that we should have a recommendation, should have training for teachers or credentialed teachers specializing in P-3, which means preschool to third grade. As an elementary school principal, administrator, and teacher for 30 years, I subscribe to, I think it is about time we start looking at specialization because children grow up differently at different stages. And we should be prepared for their development, both physical and neurological.

And we know that social and environmental impacts are also important. But I think that when we talk about entitlement, we just have to be clear, this is a grant program.

Number two, there is more to it than just saying you have got money for a certain age group. There are some requirements, I think, that the local folks have to have, like New Jersey was required to do. So is there any data from New Jersey in terms of the outcomes of youngsters since 2004, where they have achieved 95 percent teachers being credentialed for that age group? What kinds of achievements have occurred across the ZIP Codes?

Secretary DUNCAN. So I need to check that one specifically, but I think the fair question is, does just access change kids lives, or does high quality change kids lives? And we want to have a very honest conversation that we think it has got to be not just access. It has got to be high quality. There have to be standards for teachers. There have to be standards for training and professional development. We have to be looking at outcomes. And to be clear, we are not looking to invest in a status quo that is not changing chil-

dren's lives. The goal here is not to invest. The goal here is to give kids a chance in life and that is what we are committed to doing.

Mr. HONDA. Through the chair, can your department provide us information that is researched and evidence-based based, on the questions I have asked?

Secretary DUNCAN. Yes, sir.

Mr. HONDA. I think that that would be very helpful for us both in all of our States. Thank you, Mr. Chairman.

[The information follows:]

## DATA SHOWING THAT CHILDREN HAVE BETTER OUTCOMES WHEN PRESCHOOL TEACHERS ARE APPROPRIATELY CREDENTIALLED

Research suggests that preschool programs with credentialed teachers lead to better outcomes for kids. The specific effect of teacher credentials is difficult to isolate, because most programs with higher credential requirements also have better quality in other areas, including teacher-child ratios, facilities, and curricula.<sup>i</sup> However, programs that have shown positive impacts on child outcomes (i.e., Perry Preschool, Oklahoma's universal pre-k, New Jersey's Abbott preschool, and Boston's preschool program) require a BA.<sup>ii</sup> Some research on child care centers has concluded that having teachers with more education results in higher-quality care, and in some cases, better child outcomes, though these studies are correlational and therefore, do not identify the unique impact of having a BA.<sup>iii</sup>

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<sup>i</sup> National Institute for Early Education Research (NIEER), (2011). Degrees in context: Asking the right questions about preparing skilled and effective teachers of young children.

<sup>ii</sup> Gormley Jr., W. T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Journal of Developmental Psychology*, 41(6), 872–884.; Gormley, W. T., Phillips, D., & Gayer, T. (2008). Preschool programs can boost school readiness. *Science*, 320(5884), 1723.; Weiland, C., & Yoshikawa, H. (2013). The impacts of an urban public prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development* (in press); Barnett, W.S., Jung, K., Youn, M., Frede, E. Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up (2013). *Rutgers, NJ: National Institute for Early Education Research*, 1-34; Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). Lifetime effects: The High/Scope Perry Preschool study through age 40. *Monographs of the High/Scope Educational Research Foundation*, 14. Ypsilanti, MI: High/Scope Educational Research Foundation.

<sup>iii</sup> Burchinal, M. R., Cryer D., Clifford, R. M., & Howes, C (2002). Caregiver training and classroom quality in child care centers. *Applied Developmental Science*, 6(1), 2-11.; National Institute for Early Education Research (NIEER), (2011). Degrees in context: Asking the right questions about preparing skilled and effective teachers of young children.

Mr. KINGSTON. Mr. Womack.

PRESCHOOL FOR ALL STATE FUNDING MATCH

Mr. WOMACK. Thank you Mr. Chairman, and thank you, Mr. Secretary. I want to go back very briefly to the Preschool For All program. And I do appreciate the reference to the term "return on investment." I think Washington needs a much better—needs to much better define our return on investment for the dollars that we are spending across the spectrum of Federal outlays. But as it concerns the State's escalating commitment, should it participate, and whether or not one agrees or disagrees with the mechanism in the Federal program, the tobacco tax, cigarette tax. We can leave that discussion for another day, but at least the Federal Government has a mechanism for funding. What is the overall fiscal commitment, State and Federal funding combined, for this program? And then as a follow-up, can you give me an annual breakdown of the costs and explain why, and by how much the cost sharing shifts primarily to the States?

Secretary DUNCAN. Yeah. And we can submit this for the record, but we start at sort of this 90/10 split. We ratchet down, States ratchet up, and then in year 10, it is 75 State, 25 us. We can give you a chart that walks that through, and shows each year what our expenditure is, versus what the State's would be. Again, we do not know how many States would buy in, so we do not know what the total cost would be. None of this is set in stone, so we are happy to have conversations about whether there is, you know, a better match or a different way to do it.

But the goal is to, repeating myself, to have States in this for the long haul, focused on quality, and us trying to get from this three out of ten children, poor children having access to high quality to a much, much higher number.

[The information follows:]

**PRESCHOOL FOR ALL STATE MATCH RATE**

	<b>State Match</b>	
	<b>Regular Rate</b>	<b>Reduced (Incentive) Rate</b>
<b>Year 1</b>	10%	5%
<b>Year 2</b>	10%	5%
<b>Year 3</b>	20%	10%
<b>Year 4</b>	30%	20%
<b>Year 5</b>	40%	30%
<b>Year 6</b>	50%	40%
<b>Year 7</b>	75%	50%
<b>Year 8</b>	100%	75%
<b>Year 9</b>	150%	100%
<b>Year 10</b>	300%	250%

## EDUCATION SEQUESTER

Mr. WOMACK. To sequestration, the sequestration of funding for education-based programs is having quite an impact on local schools as they attempt to meet their student needs. Since the Department of Education can assign mandated spending restrictions in ways that will minimize universal impact on schools, there are some considerations that appear to be appropriate. For example, and this particular question was given to me by one of my, the superintendent of my largest—well, maybe not my largest district, but certainly in the largest community in my district. And it was the simple question of why does not the Department of Education take funds for sequestration mainly from competitive programs, not shared by all to save important instructional programs like Title I and IDEA which are important to almost all school districts? And if the bulk of funds for sequestration were taken out of competitive grants instead of hitting the big formula programs, it would help districts meet current challenges and impact the smallest number of districts. Your thoughts?

Secretary DUNCAN. A couple of thoughts. First of all, we do not have much flexibility under the sequester to move things. The overwhelming majority of our money is not in competitive programs. It is 84, 85, 86 percent is in formula-based, and what we have seen, again, is some legitimate debate of, is that the right percentage? I would just submit to you that we are seeing remarkable reform across the country, due in part to the chance to receive competitive resources, and many of those reforms that have taken root, have been solid in places that did not receive a nickel. So you do not want to lose that leverage. We do not have a lot of room to move. But again, as I started earlier, the vast majority of our money goes to Title I and to IDEA, and instead of saying, you know, pick one versus the other, to me that is just a no-win situation.

## SPECIAL EDUCATION MAINTENANCE OF EFFORT

Mr. WOMACK. I know my time is running out and I have got one final question. The sequester also causes problems with the maintenance of effort required with IDEA. Why not create an emergency regulation dealing with the problems of supplement, not supplant, and maintenance of effort in IDEA caused by sequestration?

Secretary DUNCAN. So I am happy to have that conversation, and the maintenance of effort—the MOE stuff around IDEA is one, it is a long conversation that I want us to be really thoughtful about, what we do not want just to look at maintenance of effort, but what we must do is to look at how our student outcomes are improving. And I think, you know, it is part of how we move from sort of a compliance mentality, to an outcome-based mentality. So a much larger conversation beyond that. But the IDEA, and MOE stuff is one that I have my team looking at pretty carefully.

Mr. WOMACK. Thank you, Mr. Secretary.

Mr. KINGSTON. Ms. Roybal-Allard.

## FUNDING FOR HISPANIC SERVING INSTITUTIONS

Ms. ROYBAL-ALLARD. Welcome, Mr. Secretary. I would like to begin by asking you to clarify something for me. It is my under-

standing that the Department of Education is slated to invest \$1 billion in America's Hispanic-serving institutions for the next 10 years. And while this sounds like a lot of money, when you spread it out over 10 years, it basically is flat funding of \$100 million for these institutions, and I am trying to understand the thinking behind it and how you would justify flat funding of HSIs for the next 10 years given the growing Latino population, and the fact that there are going to be increased numbers of Hispanic children that will be attending college, and will depend on access to HSI?

Secretary DUNCAN. So first, I think our investment is not \$100 million, but \$221 million, so it would be more than \$2 million over 10 years. And secondly—

Ms. ROYBAL-ALLARD. I am sorry, it is \$1 billion over 10 years?

Secretary DUNCAN. No, you said—I think our funding is \$221–\$220.9 million, so I was a little bit off. But \$221 million a year, this year, so over 10 years, that would be \$2.2 billion, not \$1 billion. So it is double what you said, just to be clear.

Ms. ROYBAL-ALLARD. Okay, no, that clarifies because when we called the office, we used the \$1 billion figure and we did not get that clarification. So that—

Secretary DUNCAN. It is in our budget document, page 60.

#### SAFE AND DRUG-FREE SCHOOLS PROGRAM

Ms. ROYBAL-ALLARD. Okay, thank you. As you know, current research shows that adolescents who abuse alcohol or drugs are at a greater risk of becoming both perpetrators and victims of violence. For example, one study shows that adolescents who abuse alcohol are three times more likely to commit violent offenses than those who do not drink to excess. As the original author of the Sober Truth on Preventing Underage Drinking Act, drug and alcohol use among teens is a very important issue to me. Therefore, I am concerned that your fiscal year 2014 budget, once again, eliminates the Safe and Drug-Free school program, which worked to prevent drug and alcohol use among teens.

In the absence of the Safe and Drug-Free Schools program what activities is the department funding to prevent underage drug and alcohol use, and how will you be working with other organizations or agencies such as SAMHSA, and the Office of Juvenile Justice and Delinquency Prevention to address this issue?

Secretary DUNCAN. No, it is a great question and what we tried to do was consolidate a number of small funding streams into one larger program. We have a phenomenal leader of that effort on our team, David Esquith, and I would be happy to have him follow up directly with you, but not just of our resources, but across agencies as you talked about. We have to take that very, very seriously. That ties to school safety. It ties to bullying. It ties to dropout prevention. There is lots of really important difficult issues that come up with the kinds of kids that you are concerned about.

And so I am happy off line to sort of walk you through what we are trying to do with our resources, but also what we are doing to partner with sister agencies to intervene with kids who are having problems, to try and prevent them from going down this path, and for me it sort of fits into this broader umbrella that Congresswoman DeLauro talked about, of what we are doing to make sure

our kids are safe; that they have a chance to be successful, and that their physical, and social, and emotional needs are being met.

Ms. ROYBAL-ALLARD. Well, I think the bigger issue is the fact that the money was targeted for youth in schools. And as you expand on this and make it broader, you are actually taking away moneys where it can be much more effective, because as you know, our youth spend most of their time, or the largest amount of time in the schools.

So it sounds to me that you are saying that you are no longer targeting the schools, but that it is becoming a broader program, which I would say is probably going to be less effective than the current program. And that is a big concern, given that alcohol contributes to the four leading causes of death among 15- to 20-year-olds through, motor vehicle crashes, homicides, suicides, and other injuries.

So I would like to maybe perhaps follow-up with you a little bit more on this, because I really do think it is a major concern for our youth that has to be addressed more directly.

Secretary DUNCAN. I am happy to do that and it is a huge important issue, and thank you for your pushing us on that.

Ms. ROYBAL-ALLARD. Okay, and I can see that my time is almost up, so I will wait.

Mr. KINGSTON. You have 20 seconds.

#### TRIO, HEP AND CAMP, AND RACE TO THE TOP SUCCESSES

Ms. ROYBAL-ALLARD. Okay, well then real quick, I think that we can agree that the increasing number of Latino students attending college is very exciting and encouraging. Part of this increase can be attributed to the success of programs that have been targeted to prepare students from low-income families to successfully complete high school and apply to college.

So we have programs such as TRIO and HEP and CAMP which are well-tested and have wonderful success rates of enabling students to secure financial aid and complete postsecondary degrees. However, they continue to be level funded while Race to the Top received a \$400 million increase in your fiscal year 2014 budget.

What research has the Department of Education completed that shows the equivalent success of the Race to the Top program as compared to TRIO and HEP and CAMP in minority communities?

Secretary DUNCAN. Those have been very effective programs, and obviously, it is still very early on for Race to the Top. So I do not want to make any, you know, false claims here, but what we have seen is 46 States raise standards because of what we did. The incentives we put out on the K-to-12 side. We have seen more than a dozen States do some really interesting work in the early childhood space, to increase access and raise quality due to our partnership with HHS there. And what we are proposing is to try on the higher ed side to try and get more States to invest in higher education and provide some incentives there.

And the children, the young people you talked about who have been served through, you know, TRIO, and GEAR UP and Upward Bound. We have had 40 States cut funding to higher education, and we know that the long-term costs there, so we are going to put some incentives out there that States continue to invest in higher

education so that young people are not being crushed by debt. We think that is the right thing to do.

We would love in a better budget climate to be putting a lot more money into everything, and that is not the reality of our situation, and we want to continue to drive systemic change around the country.

Ms. ROYBAL-ALLARD. Okay, well just in closing, if I could just say since you do not have the research showing the success rate, I would suggest that then maybe, we need to have a more balanced approach in investing between these programs until we do have the research and we do not disadvantage these other successful programs.

Secretary DUNCAN. I hear that, and just so everyone is very, very clear our budget is—

Mr. KINGSTON. Okay, the chair miscalculated that 20 seconds. Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

#### FUNDING FOR PROJECT SERV GRANTS

Secretary Duncan, first, thank you for the phone call yesterday, and it caught me off guard in that I was remiss in not thanking you exactly, because February 27th of last year I was a prosecutor in a school shooting, and my predecessor, Steve LaTourette, reached out to you directly, and you provided a grant to help with the school emergency response—

Secretary DUNCAN. SERV Grant.

Mr. JOYCE. SERV Grant, which is helping our school district this year for \$56,000 to have a law enforcement presence there, because as you know, it is not just the day of the shooting. It carries through, and it tore the fabric of the community and a county at one time. But also going to this year, getting the kids back to school, and I thank you for that personally because I did not have the opportunity yesterday.

In that light, can you tell me in your 2014 budget where we stand on that grant process? Is that funding going to be increased going forward?

Secretary DUNCAN. On SERV?

Mr. JOYCE. Yes.

Secretary DUNCAN. We keep discretionary resources there to make sure that where we have tragedies, we have the ability to help out, and we have always had the ability to help out. So we feel good about where that is at and a \$5 million increase.

Mr. JOYCE. And the ability to go forward, obviously, the concern was the school year 2012–2013, going forward.

Secretary DUNCAN. No, we are in it for the long haul. I would be happy to follow up with your superintendent, but where districts have gone through this kind of trauma, we try and stay with them.

#### FUNDING FOR SCHOOL SAFETY

Mr. JOYCE. Is there anything being done to create a grant or a program in which qualified law enforcement presence could be in school districts? Obviously, I am not in favor of arming teachers, while if they want to take on their second amendment rights and learn how to carry a firearm, that is up to them. I think a qualified

law enforcement presence is a much better position for us to be in every school, but I realize there is also a tremendous amount of costs, having been a prosecutor in a local school district and represented a local school district for many years.

Secretary DUNCAN. We haven't talked about this, but not just in our budget where there is a request for an increase of about \$100 million, to put more behind school safety, school climate, but across the Administration, it is more like \$667 million. And I think, Congressman, there is an honest conversation that needs to happen at the local level. Should it be an armed police officer, or a school resource officer? Should it be a social worker or a counselor, someone running the after-school programs? So, I think the answer is going to vary community by community. I do not think you or I in Washington should make those calls, but we are asking through the President's budget asking for significant resources to put behind places that are looking to meet, unfortunately, a really big need here.

#### REMEDIAL EDUCATION AT THE POSTSECONDARY LEVEL

Mr. JOYCE. Moving on to another question that I have. It has occurred to me whether it is a private, or a public, or community college president, everyone that I have talked to since I have taken over in this position have said that they have to provide remedial math, science, and English to the kids who are entering into college.

Secretary DUNCAN. Yes, sir.

Mr. JOYCE. Where is the disconnect?

Secretary DUNCAN. Well, I would say the disconnect, frankly, starts with our babies. The babies we have been talking about who enter kindergarten a year, year-and-a-half behind and fall further behind over time. And so there is no simple answer. It starts there, and so that is why we are pushing so hard on the high-quality early childhood piece, but I think the fact that so many States actually dummied—there is a long conversation—but dummied down standards under No Child Left Behind to make politicians look good. They were lying to kids, and lying to families saying they were prepared. They were not.

I have been to communities where 60, 70, 80 percent of high school graduates—this is not the dropouts—the graduates are taking remedial classes. They are not ready. And so the fact that 46 States, including your State, have raised standards, not an overnight fix, but over the long haul, I think for the first time in this country, we are going to start to tell children and families the truth about whether they are truly college- and career-ready. Our goal is to get out at every level, to get out of the catch-up business.

Mr. JOYCE. Well, following up on what Congressman Harris was talking about, what studies do you have to show that investing even more money at this level is going to produce a better outcome?

#### EDUCATIONAL PAY-OFF OF PRESCHOOL INVESTMENTS

Secretary DUNCAN. At the 4-year-old level, we will get you the data, but we have studies coming out of Tulsa, Oklahoma and Boston that focus not just on the 0 to 3s, but on the 4s. So I would be happy to share all of the data, all of the studies with you.

Mr. JOYCE. Thank you. No further questions. I yield back.  
[The information follows:]

## STUDIES SHOWING THAT INVESTING IN PRESCHOOL PRODUCES A BETTER OUTCOME

In addition to the long-term studies of early childhood interventions like Perry and Abecedarian, many studies of State preschool programs show impressive results. For example, children who attended Oklahoma's universal preschool program in Tulsa showed an additional 7 months of growth in literacy skills and 4 months in math skills relative to children who did not attend.<sup>i</sup> And children who attended Boston's program grew an additional 7 months in both literacy and math, in addition to making significant gains in important non-academic skills, including attention, inhibition, working memory, and emotion recognition.<sup>ii</sup>

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<sup>i</sup> Gormley Jr., W. T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Journal of Developmental Psychology*, 41(6), 872–884.; Gormley, W. T., Phillips, D., & Gayer, T. (2008). Preschool programs can boost school readiness. *Science*, 320(5884), 1723.

<sup>ii</sup> Weiland, C., & Yoshikawa, H. (2013). The impacts of an urban public prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development* (in press).

## SAFE AND DRUG-FREE SCHOOLS

Mr. KINGSTON. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. I apologize for being late. I am in a meeting of another hearing over in the Energy and Water Subcommittee, but it is interesting to sit here and listen to the debate between Ms. Roybal-Allard, and the questions about drug-free schools when we have communities and States out there trying to decriminalize the use of some drugs and so forth.

It has got to make you wonder what goes through a student's head. While on the one hand, we are teaching drug and alcohol-free schools, and on the other hand, communities are trying to legalize drugs. It is a fascinating discussion. But one question, and I think I brought this up last year or the year before when you were here.

## RURAL COMMUNITIES AND COMPETITIVE GRANT PROGRAMS

And that is a little bit of the question that Representative Womack was getting at, and that is, the formula versus competitive grants. During last year's competitions for Upward Bound and Upward Bound math, science students under the TRIO programs, your agency imposed several competitive preference priorities that had the substantive impact of disadvantaging applicants from rural States.

For example, no high schools in the entire State of Idaho qualified under the persistently low-achieving priority. Looking across the agency as you move toward, and I think your budget proposes that, we have only had 1 day to look at it, but moves to a more competitive grant—

Secretary DUNCAN. A tiny change.

Mr. SIMPSON. Tiny changes, but it is moving in that direction, looking across your agency, in what ways are you safeguarding against those initiatives that have the unintended consequences of hindering applicants from rural communities?

Secretary DUNCAN. It is a great question.

Mr. SIMPSON. That is why I asked it.

Secretary DUNCAN. We can walk through program by program, and we tried to work very, very hard here, and we haven't always done it perfectly. But I think I can show you what we have done through the Promise Neighborhoods initiatives, and through the Investment Innovation Fund. We are seeing some fantastic work going on there. I would be happy to sort of walk you program through program what we have done to incentivize rural participation.

And there is actually some pretty fascinating work going on, whether it is in Appalachia or whether it is on Native American reservations, that we feel proud to support. But please continue to hold us accountable for making sure, and we haven't talked about the PROMISE Zones. We want to do more of this. The President talked about it in the budget, talked about 20 communities. If we do 20 communities, those 20 communities have to represent the entire country. And please hold us accountable to making sure that at the end of the day they do.

## INDIAN EDUCATION

Mr. SIMPSON. One other subject and you just brought it up, I chair the Interior Subcommittee. We fund the Bureau of Indian Affairs and the BIE in that appropriation bill. Frankly, we do a terrible job in Indian education in this country. When you look at the number of schools that have been built and so forth, and the condition. I have been on some reservations where literally, and I do not mean this to sound as patronizing or anything, but I would not send my dog to some of those schools. They are in such disrepair, and in fact, dangerous situations.

I would hope you would be willing, and we have looked at, and talked about whether the BIE ought to be under the Department of Education, because Interior does not do a very good job, and I know that is a touchy subject. But we have got to do a better job and I know that my staff has been working with the Education and Workforce Committee staff trying to look at how we might be able to revamp. Any ideas you have on how we can improve the quality of education that our Native Americans receive would be vitally important?

Secretary DUNCAN. It is a travesty what we are doing for far too many of our Native American children. I have lots and lots of thoughts on this. We are all in. We will do whatever we can and would like to talk in a very substantive way with you. I have seen what you have seen. I have never seen that kind of desperation and poverty. I was at one native school where they literally cannot recruit enough teachers. They cannot get enough teachers, so half of their teachers come from the Philippines each year. And again, the kids who need the most help get the least qualified, the least experienced and we wonder why we have 50, 60, 70 percent dropout rate. So I would love to talk very seriously, and our team has lots of thoughts. We have worked with Interior, but are we doing the right thing for these children in these communities? Not even close.

Mr. SIMPSON. Well, I appreciate that and I will get our staff from the Interior Committee and come down to your offices and sit down, and maybe can we have a discussion about what we ought to do, what options we have of trying to improve the quality of education for these—

Secretary DUNCAN. It is not about who is in charge, or who is what; the question is, how do we do a dramatically better job of helping these young kids have a chance at life.

Mr. SIMPSON. I appreciate that. Thank you.

Mr. KINGSTON. Ms. DeLauro. Well, Mr. Fleischmann is not ready.

## ADMINISTRATION OF HEAD START PROGRAM

Ms. DeLAURO. Okay, fine, thank you. Thank you Mr. Chairman. Just to make a couple of points. First of all, the Department of Education, as I understand it, does not fund the Head Start program. That is under the jurisdiction of HHS.

Secretary DUNCAN. Yes, ma'am.

Ms. DELAURO. The other thing is, you did the after-school program. What did you teach? I taught modern dancing and calligraphy, Mr. Secretary. You were basketball, right?

Secretary DUNCAN. We tried everything. Reading, science, we had to do it all.

Ms. DELAURO. I want to talk about the early childhood proposal, but I do, at some point, want to get the answer to that question on how do we provide our schools with some wherewithal to be able to deal with the security issues that we now want them to do. But I do not want to run out of time on the proposal here.

Secretary DUNCAN. Quickly, \$112 million in our budget, \$667 million across the administration. I am happy to provide details on this, so a very significant ask.

#### PRESCHOOL DEVELOPMENT GRANTS

Ms. DELAURO. Let's talk about that. It was a big problem with our superintendents. Early childhood, applaud the Administration for a bold proposal, a wise investment in our economy, and for our kids. And but I have—what I want to do is I have got three questions. I am going to be succinct, and I want to kind of do them one at a time so that we get to it. This is about, the first one is about the \$750 million for Preschool Development Grants. This is discretionary?

Secretary DUNCAN. Yes, ma'am.

Ms. DELAURO. Now, the budget describes the purpose of the grants to build State capacity for actually standing up or significantly expanding pre-kindergarten availability and access.

Let me ask you about the ideas here. Do we assist States that are not yet prepared to meet the conditions for mandatory preschool funds helping them to get caught up so that they can take advantage of the grant program, or will the grant serve as complementary funding for States that are already in a position to qualify for the allocation? If it is the latter, why isn't it being funded on the mandatory side?

#### PRESCHOOL FOR ALL

Secretary DUNCAN. I think it is more of the former than the latter, but I would be happy to talk further about that.

Ms. DELAURO. Okay, fine. Second, 80 percent of parents of young kids are working or in school. Childcare and Head Start programs try to provide full-day educational care. Many State pre-K programs are offered for only 2 to 3 hours a day.

How will the needs of children and families for high quality full-day, full-year care be met by the pre-K for all initiative?

Secretary DUNCAN. Not only are we trying to do more full-day pre-K, what we haven't talked about is where States are doing a good job on the pre-K side. They could use some of their money to expand full-day kindergarten where kindergarten is half day. So we are trying to again link this, and whether it is, again, working families, or just having the kids who are the furthest behind have more time with professionals in front of them every single day, that is the goal. So high quality, a full-day pre-K and again, our resources can help States get full-day kindergarten as well.

Ms. DELAURO. Now, that leads me to the third piece because we know about how the early learning opportunities for 0 to 3, significantly impacts brain development, later academic success, and life success.

Now, do I understand that the Administration believes that the investment in the proposed pre-K initiative will enable the re-allocation of other Federal resources to high-quality programs focused on children 0 to 3?

How do you envision that transition unfolding, and over what timeline will it occur?

Secretary DUNCAN. So we should walk through those details, but this is, the goal is not to take from the age group 0 to 3 to help 4-year-olds. The goal is to dramatically expand 4, but also expand 0 to 3, and working with Kathleen Sebelius, she has been a great partner. We have a chance to dramatically expand access, particularly for families that have historically struggled to have these kinds of opportunities. So this is a rising tide lifts all boats. This is not robbing Peter to pay Paul.

Ms. DELAURO. Okay, thank you. And I am hoping that we will have further conversations on this.

#### SCHOOL IMPROVEMENT GRANTS

School Improvement Grants, increase of \$125 million for turn-around capacity. I have liked this focus because it goes to our lowest-performing schools. And we know that proving academic outcomes includes preparing all students for college and career. This question is on struggling school's ability to address noncognitive factors, engagement motivation, self-regulation, challenges with kids who experience a high stress of poverty. Has the Department examined these issues, these noncognitive factors, and what plans do you have to strengthen investments like the School Improvement Grants to address those high poverty, noncognitive needs?

Secretary DUNCAN. So what we try and do with the School Improvement Grants is give communities and schools a lot of discretion as to how to use those resources. And many of them are working, again, more social workers, more counselors, more mentors, but so lots of creativity there. We can give that to you. But this whole idea around noncognitive skills, resiliency, grit, long-term thinking. This is hugely important to young peoples' success and, you know, people come from difficult communities. Assess the kind of kids I worked for—

Ms. DELAURO. It is the same as assessing the academic, and assessing the noncognitive.

Secretary DUNCAN. Again, there is a ton of interest on our staff. There is lots of emerging interest around the country. Paul Tough has done some fantastic work here. We have brought in some outside experts to help inform us. You have some schools and some districts starting to do some really creative things and trying to measure this, and are they, you know, helping students improve these skills.

As a country, I think we are in our infancy and do not begin to understand how important this is, and we want to accelerate the information and the knowledge-gathering, the knowledge base in this area. It is hugely important.

Ms. DELAURO. Thank you. My time is up. Thank you, Mr. Chairman.

ESEA REAUTHORIZATION AND PROGRAM CONSOLIDATIONS

Mr. KINGSTON. Mr. Secretary, on the Elementary and Secondary Education Reauthorization Act, you have proposed a number of consolidations of duplicative programs, and that reauthorization has been outstanding since 2008. And I was wondering if you would submit those proposals to us and support an amendment to our bill that would consolidate those?

Secretary DUNCAN. On reauthorization, we, you know, stand ready, willing, and able to fix the law, and to fix it together, and we are meeting with Senate leadership next week actually.

Mr. KINGSTON. Well, no, that is not my question.

Secretary DUNCAN. Okay.

Mr. KINGSTON. Would you submit that list to us and support us putting it on this bill?

Mr. SKELLY. We certainly have the list, Mr. Chairman, of all of the programs that would be consolidated under the act, and if you wanted language, we could provide the best technical assistance on how to do that. We would certainly want to have all of the money retained in our programs and the flexibility to spend it in better ways.

[The information follows:]

**PROGRAMS PROPOSED FOR CONSOLIDATION IN  
THE FY 2014 PRESIDENT'S BUDGET REQUEST**

The Department of Education's budget request for fiscal year 2014 includes a number of proposed consolidations and eliminations of existing programs. Most of these programs would be consolidated under the Administration's proposal for reauthorization the Elementary and Secondary Education Act (ESEA), which is designed to reduce fragmentation in Federal education funding streams, eliminate duplicative authorities, lower administrative costs, improve management and program accountability, and provide States, local educational agencies, and schools with greater flexibility in the use of Federal education funds to meet State and local needs. The Administration's proposed consolidations of ESEA programs are contingent on the creation of a consolidated program structure that will enable the Department to better target Federal education dollars on the reforms that are needed to help improve student outcomes in the Nation's schools.

The 2014 request also would eliminate two programs authorized under the Rehabilitation Act (RA) and two authorized by the Higher Education Act (HEA). The following list shows the programs proposed for consolidation or elimination as well as the statutory authority and the fiscal year 2012 budget authority for each program.

Program (2012 BA in millions)

Advanced Placement (ESEA Title I, Part G) .....	\$30.1
Arts in Education (ESEA Title V, Part D, Subpart 15).....	25.0
Charter School Grants (ESEA Title V, Part B, Subpart 1).....	254.8
Credit Enhancement for Charter School Facilities (ESEA Title V, Part B, Subpart 2).....	—
Elementary and Secondary School Counseling (ESEA Title V, Part D, Subpart 2).....	52.3
High School Graduation Initiative (ESEA Title I, Part H).....	48.8
Impact Aid Payments for Federal Property (ESEA Title VIII, Section 8002).....	66.9
Improving Teacher Quality State Grants (ESEA Title I, Part A).....	2,466.6
Mathematics and Science Partnerships (ESEA Title II, Part B) .....	149.7
Vocational Rehabilitation Migrant and Seasonal Farm Workers (RA, Section 304).....	1.3
Model Transition Programs for Students with Intellectual Disabilities into Higher Education (HEA Title VII, Part D, Subpart 2).....	11.0
Physical Education Program (ESEA Title V, Part D, Subpart 10).....	78.7
Ready-to-Learn Television (ESEA Title II, Part D, Subpart 3).....	27.2
Safe and Drug-Free Schools and Communities National Activities (ESEA Title V, Part A, Subpart 2, Sections 4121 and 4122).....	64.9
Striving Readers (ESEA Title I, Part E, Section 1502).....	159.7
Supported Employment State Grants (RA Title VI, Part B) .....	29.1
Teacher Incentive Fund (ESEA Title V, Part D, Subpart 1) .....	299.4
Teacher Quality Partnership (HEA Title II, Part A) .....	42.8
Training for Realtime Writers (HEA Title VIII, Part S).....	1.1
Transition to Teaching (ESEA Title II, Part C, Subpart 1, Chapter B).....	26.1

## SCHOOL BREAKFAST AND LUNCH PROGRAM

Mr. KINGSTON. Well, I am glad you mentioned that. As you know, USDA operates two enormously expensive programs under your roof, the school lunch and school breakfast program. The school lunch program has a 16 percent error rate. Are you aware of that?

Secretary DUNCAN. Am I aware of 16 percent? I am very familiar with the program, but——

Mr. KINGSTON. Sixteen percent, a cost of \$1.7 billion, and a lot of it is clerical errors and qualifications. I mean, it is not even, it is just plain sloppiness, and incompetency. School breakfast, do you know what their rate is for that?

Secretary DUNCAN. I do not.

Mr. KINGSTON. What would you say would be acceptable, and this is not a trick question here. It is 25 percent.

Secretary DUNCAN. Whatever it is, I assume it is too high.

Mr. KINGSTON. Twenty-five percent. Now, you know, because it is a small program, it is only as Doc Harris said, \$705 million. But to me, as we talked about resources on two programs that are not in danger if you go after their error rate, it is just incredible to me that we are not going after it.

And yet, as Rose and I have served on the Ag Committee, we know that there has been resistance to it. I think, in my opinion, for political reasons, but I would think that that would be something that you would be able to join us in the effort to crack down on it. Because that is a big pot of money.

Secretary DUNCAN. I have a great working relationship with Secretary Vilsack, and there is no one more committed than he, and, you know, to make sure the kids that need to be fed are being fed, to make sure we are not wasting money. I think we can all share those. I do not know the details. I know our team has been working with his team on this, but I am happy to participate in any way. I just think, again, the idea of feeding kids breakfast, lunch, and frankly, not everyone would agree with me, I would add dinner for certain kids.

Mr. KINGSTON. That is not the discussion. The discussion is a 25 percent error rate should be an outrage when we have every dollar we spend, \$0.42 is borrowed and a national debt that is 100 percent of our GDP.

Secretary DUNCAN. We are happy to participate.

Mr. KINGSTON. And this administration is asking for more money. And so I mean, to me, it is, you know, we need to go after that. Let me ask you another question.

Ms. DELAURO. Let's add the crop insurance to that list as well, Jack.

## PAY FOR EDUCATORS AND TEACHER EFFECTIVENESS

Mr. KINGSTON. I would certainly look for your amendment on that. And here is my question to you. Should a kindergarten teacher with a Ph.D. or a Master's Degree get paid more than a kindergarten teacher without one? This is a very philosophical direction here.

Secretary DUNCAN. And the kindergarten part of it adds a level of nuance there. I think we need to have highly-educated, highly-trained teachers. I want to see what impact they are having on student learning. Are students improving? And if you have a Ph.D., but your kids are falling further and further behind, I am not interested in that. If you have a Ph.D. and your kids are improving every single year, that is very interesting to me.

Mr. KINGSTON. And then link it to that Ph.D. And the question, as the son of a college professor and the brother of one, knowledge-base remuneration, is a huge, almost esoteric science. And I know that on the Race to the Top, it is one of the things you have tried to figure out also. In 1985, Georgia passed quality basic education which actually provided teachers with a career ladder, and a lot of it was further education that you got paid more, but there is not necessarily a guarantee result difference.

And I know in college, I had a chemistry professor who was a Nobel Prize finalist. He was a horrible teacher. He could not get his head out of the protons and neutrons that he was so familiar with. And then I had another teacher who was just, you know, a regular guy, really great teacher.

Secretary DUNCAN. Yeah.

Mr. KINGSTON. And I know it is hard to put whether it is a teacher or a preacher, you know, a metrics on knowledge-based remuneration, but I know that you have been trying to do that, and I have run out of time, but I think it is something that I just want to pursue you to get the fog out of it, try to put some serious metrics in it, and I know that you have—this is not something you have not tried already.

Secretary DUNCAN. Just quickly, you have to look at multiple measures. You have to look at, are students improving? Just quickly, something that we do not do almost anywhere in the country, Mr. Chairman, is we do not identify that talent, and then we do not encourage the best talent to go to the most underserved communities. And that is a huge, huge inequity that is very concerning to me. And I do not think people are serious yet as a country about figuring out how the kids who need the most help get those superstars all the way through their academic career.

Mr. KINGSTON. Ms. Roybal-Allard.

#### FUNDING FOR HISPANIC-SERVING INSTITUTIONS

Ms. ROYBAL-ALLARD. Mr. Secretary, I would like to go back to our early exchange regarding HSIs. I have gotten clarification on where the discrepancy is.

As you know, our role on the Appropriations Committee is to deal with discretionary program funding. So that is where I am getting that figure of \$109 million per year. The figure that you cite of \$220 million includes \$110 million contribution from the mandatory side of the budget that is funded through SAFRA. So the question stands as to your proposal to freeze discretionary spending for HSIs at just \$109 million per year in light of the growing Latino population and the fact that more children, Latino children will be coming of college age.

Secretary DUNCAN. No, again, it is a fair question. To be clear, we are not looking to freeze it because of the 5 percent cut in se-

quester. We are trying to add that 5 percent back, so there has been a cut and we are trying to get that money back in.

But how we help minority serving institutions, the HSIs, and HBCUs, is something that is hugely important to us. Hopefully you have seen in the Pell Grants, we will get you the additional number of Latino students having access to Pell Grants, which is a really big deal, but we have to make sure that we are supporting our minority-serving institutions and we want to do everything we can to see them not just survive, but thrive.

Ms. ROYBAL-ALLARD. Right. And those institutions are also growing. So perhaps we can talk about this a little bit more after the hearing.

Secretary DUNCAN. Absolutely.

#### WAIVER FOR LOS ANGELES UNIFIED SCHOOL DISTRICT

Ms. ROYBAL-ALLARD. As you know, the State of California applied for a waiver to have more time and flexibility to appropriately meet the No Child Left Behind standards. Unfortunately, the request was rejected, so as a result, the Los Angeles Unified School District, along with eight other school districts, have formed a coalition which is called the California Office to Reform Education, or CORE. They believe that they meet the requirements and have applied for a waiver to the No Child Left Behind standards.

Granting a waiver to CORE would increase accountability and hold these districts to a higher standard than currently required. I know that historically, these waivers have gone to States. However, given that CORE collectively represents over 1.1 million children, which is larger than school districts in 24 States, will CORE's waiver be fairly reviewed, and when will you make your decision on whether to grant such a waiver?

Secretary DUNCAN. Yeah, myself and my team have had multiple conversations with the leaderships of CORE whether it is L.A. or whether it is Oakland. We have tremendous respect for that leadership; as you said, a million children collectively served. That is larger than some States combined, as you know.

I do not have a time frame in which we will make a decision, but I will give you every, 100 percent assurance that we will take a very, very, serious look at it and judge it on its merits.

#### MENTAL HEALTH AND TEACHER TRAINING PROGRAMS

Ms. ROYBAL-ALLARD. All right. A few weeks ago in the wake of the gun violence, Deb Delisle and Pamela Hyde testified on the President's Now is the Time Initiative that addresses mental health needs in schools. And we have heard that part of this effort will be the new White House project AWARE program, which is intended to identify and refer for treatment 750,000 young people in our public school system with mental illness.

I would like to revisit this topic with you a little bit, and ask you, what role will the Department of Education play in developing teacher training programs to help them detect and respond to mental illness?

Will the training be evidence-based and standardized, and will it take into account the unique needs of minority communities? Will

training funds be allocated through a competitive grant program, or will teachers and schools receive mandatory training?

HHS REQUEST FOR PROJECT AWARE

Secretary DUNCAN. Yes, so as you know, these funds will go through HHS, and Kathleen Sebelius has been an amazing partner. As you probably know, the President asked her and me to co-chair our Administration's work around the mental health piece of this, which is hugely important. So I do not know those details. I will get them to you, and any thoughts or input as to kind of the best way to set this up will be more than welcome.

Ms. ROYBAL-ALLARD. Okay, thank you.

[The information follows:]

## PROJECT AWARE

In an effort to support the Administration's response to the tragedy at Sandy Hook Elementary School, HHS has requested \$55 million to support Project AWARE (Advancing Wellness and Resilience in Education) to increase awareness of mental health issues and connect young people with behavioral health issues and their families with needed services. The following summary is from SAMHSA's 2014 Congressional Budget Justification.

Project AWARE proposes two components: Project AWARE State Grants (\$40.0 million) are intended to create safe and supportive schools and communities. These grants will be braided with funds from Education and Justice to support 20 grants to State Educational Agencies (SEAs) that will promote a comprehensive, coordinated, and integrated program with the goal of making schools safer and increasing access to mental health services. The SEAs will be required to partner with the State Mental Health and Law Enforcement agencies to establish Interagency State Management Teams, conduct environmental needs assessments, develop a State plan with an evaluation mechanism, and develop the mechanisms to coordinate funding, service delivery, systems improvement, and data collection. In addition, each SEA will be required to identify three high-need Local Educational Agencies (LEAs) as pilot communities that will receive sub-awards to implement comprehensive and coordinated school safety and mental health programs. SAMHSA expects that these 20 State grants will promote data driven models in 60 LEAs (reaching 1,000-1,500 schools).

The second component, Mental Health First Aid (MHFA) (\$15.0 million) proposes widespread dissemination of the Mental Health First Aid curriculum, which prepares teachers and others to help schools and communities recognize and respond to signs of mental illness, and supports training to reach 750,000 students to identify mental illness early and refer them to treatment. MHFA prepares teachers and other individuals who work with youth to help schools and communities to understand, recognize, and respond to signs of mental illness or substance abuse in children and youth, including how to talk to adolescents and families experiencing these problems so they are more willing to seek treatment. The Budget proposes that \$10.0 million of the Project AWARE – MHFA funds will be braided with Education's School Climate Transformation Grants (\$50.0 million), as well as funds from Justice, to support competitive grants to LEAs with the goal of making schools safer and providing mental health literacy training. Specifically, the School Climate Transformation Grants and related technical assistance will help 8,000 schools to train their teachers and other school staff to implement evidence-based behavioral practices for improving school climate and behavioral outcomes for all students. An Interagency Supervisory Team (IST) will work together to provide oversight and guidance to both the State and local initiatives. The additional \$5.0 million proposed for MHFA will be braided with the 20 SEA grants to support MHFA training in the 20 SEAs and 60 LEA sub-grantees implementing Project AWARE.

## PRESCHOOL FOR ALL

Mr. KINGSTON. Mr. Alexander.

Mr. ALEXANDER. Mr. Secretary, I started my comments awhile ago bragging about you making us feel comfortable and you turn right around and made some of us feel very uncomfortable. When Mr. Womack was asking about how much Preschool for All would cost, you said, we do not know how much this is going to cost. Can you raise our comfort level just a little bit?

Secretary DUNCAN. Sure. We have made projections, but to be very clear, we do not know if one State will apply, or whether 50 States will apply. So our sense is that it will cost \$75 billion, but again, it will depend on how many States come to the table.

Mr. ALEXANDER. Okay. Teach for America?

Secretary DUNCAN. That is our best projection.

Mr. KINGSTON. Will the gentleman yield?

Mr. ALEXANDER. Sure.

Mr. KINGSTON. \$75 billion over how many years?

Secretary DUNCAN. Ten years.

Mr. KINGSTON. Ten years. And what is your total annual budget?

Secretary DUNCAN. Well, the asking amount here is, it is just over \$70, \$71.2 billion.

Mr. KINGSTON. So it is the size of your annual budget?

Secretary DUNCAN. Over ten.

Mr. KINGSTON. Yes, over ten.

Secretary DUNCAN. Yes, sir.

## TEACH FOR AMERICA

Mr. ALEXANDER. Teach for America, how do you feel about it? And is there room for the role to expand?

Secretary DUNCAN. Teach for America, has actually received a \$50 million competitive grant from us to scale up what they are doing.

Mr. ALEXANDER. Okay. Thank you, Mr. Chairman.

Mr. KINGSTON. Would the gentleman yield just one second? On the Teach for America, you had mentioned when I was talking to you about getting the superstars into the higher-risk schools, that is one of the things Teach for America does. How many of those students, or how many of those young teachers stay in that environment, or do they? Okay, I have done my time now, I am going back to, you know, a more peaceful environment?

Secretary DUNCAN. Yeah, I do not have the exact numbers. Many do stay. Not as many as probably we would all like. Many stay in education in other forms. One thing I discovered in Chicago, did not anticipate it, is many of my really creative next-generation principals were TFA alums, so it was really a leadership pipeline. Again, I did not fully anticipate those benefits, but we can get for you from TFA exactly what—

Mr. KINGSTON. I think it would be interesting, because if the idea is we are trying to insert people on the front line of the, you know, the big battlefield, and they are not staying, I am not sure if, you know, is it a good idea or not. I do not know if there might be a better way to approach it.

Secretary DUNCAN. I think, again, just in any good team you have a mix of young, you know, young talent, and great veterans. And so if it is all of the young guns, I think that is not good. But if you have, you know, a good mix and any different environment of company or political leadership, so it is a piece of the puzzle that is helpful to be really clear. If we are asking TFA to solve the gap, we are kidding ourselves.

[The information follows:]

#### TEACH FOR AMERICA

According to Teach for America's (TFA) Alumni team, there are about 650 TFA alumni who have gone on to become school leaders. Of those, more than 500 are principals and nearly 100 are school system leaders (superintendents, district leaders, charter network managers, managers of principals, or chancellors).

Mr. KINGSTON. Ms. Lee.

#### MINORITY MALE DROPOUT RATE

Ms. LEE. Thank you very much, Mr. Chairman, and I apologize for being late. I was in the Budget Committee. And I think you know, Mr. Secretary, that many of us are concerned about education as one of the paths for lifting individuals and families out of poverty, for reducing crime, and really building strong communities and strong neighborhoods. And again, I am looking at the budget from that perspective as well as your budget here.

So thank you for being here. Let me ask you a couple of questions. One, as it relates—I hope these are not redundant. One, as it relates to African-American males, and the need for a real strategic plan that targets this pipeline to prison issue that is really plaguing the African-American community, and it is really resulting in young black boys being labeled, locked up, and disenfranchised at a very early age, and also a dropout rate among African-American males which is really unconscionable.

In my district, for example, I think we have about 43 percent of all high school dropouts in Oakland, you know, are African-American young boys. So I would like to know in your budget request, and I have been looking for line items that would really strategically address this issue, and what this committee can do to support these efforts, because these disparities have got to stop. And I know you are very committed to that.

#### PELL GRANT ELIGIBILITY

And secondly, just very quickly in terms of Pell Grants and community colleges, the Ability to Benefit program, students who had not obtained a high school diploma, but who show an ability to succeed in community colleges, they were eligible to receive Pell Grants. Now, I guess as of last July, these students are no longer eligible to qualify for Pell or Title, I guess it is Title IV student aid, so could you tell me what we are doing to restore this eligibility, and what students can do now so that they can continue with their education?

Secretary DUNCAN. Okay, the second one first. It is a hard one. We made some tough calls, as you know, and some tough tradeoffs to try and really expand Pell, and we went from 6 million Pell recipients, to about 9.5 million, so it is even more than a 50 percent

increase. But that was one thing that we had to trade off, unfortunately. So it is a real issue, and we have to continue that conversation and figure out how we help those young people.

#### IMPROVING MINORITY GRADUATION RATES

Ms. LEE. You know, 20 percent of the students at one of my community colleges now are ineligible to go to community college. You know, they just cannot go to school anymore, so where are they? You know, so I hope we can figure that out.

Secretary DUNCAN. No, I more than hear you. As you know, obviously, we set up the new White House initiative on the African-American male. So this was not just the Department of Ed's priority. This is Administration-wide.

There are a number of things that we are trying to do, as you know. Before you got here, I talked about, and we will get you the data, but we are seeing a reduction just in the past couple of years from 2008 to 2011, of 700,000 fewer children enrolled in "dropout factories."

Obviously, a lot of those, for better or worse, are African-American boys, young men, who are now in a better environment. So those dropout rates are going down. The School Improvement Grants are a very, sort of a direct way to address the problem. We are asking for a pretty significant increase there.

Ms. LEE. What is that?

Secretary DUNCAN. School Improvement Grants.

Ms. LEE. Okay, got you.

Secretary DUNCAN. About \$659 million is our request.

Ms. LEE. Okay.

Secretary DUNCAN. But the dropout rate is going down. African-American graduation rates are up. Real progress, but as you and I know, still unacceptably high dropout rates and the graduation rate is not where it should be. So a lot of hard work ahead of us, and we need to be thinking comprehensively and again, not to keep beating on this, but I think if we can go back to get those young boys off to a great start in high-quality early learning, then they will enter kindergarten ready to be successful. They will not be labeled and mislabeled as special education, and they will have a better chance at life. So no one answer, but I think this high-quality pre-K play can have huge benefits for our young boys of color.

[The information follows:]

#### IMPROVING MINORITY GRADUATION RATES

In 2010, the on-time high school graduation rate hit its highest level in 3 decades. Much of this improvement is due to improvement in graduation rates among minority students, as well as to a significant decline in the number of so-called "dropout factories:" high schools with graduation rates below 60 percent. Improved graduation rates also are contributing to increases in college enrollment.

- In 2008, less than two-thirds of Hispanic students graduated on time from high school. Today, about three in four Hispanic high school students graduate with their class. Because the graduation rate of Latino students rose from 2008 to 2011, an additional 164,000 Latino students graduated on time.

- In 2008, only about three in five black students graduated from high school on time. Today, two in three do so, resulting in an additional 83,000 African-American students graduating on time in 2011.

- Since 2008, the number of high school dropout factories has dropped by almost 20 percent, from about 1,750 high schools to roughly 1,425 high schools. As a result,

nearly 700,000 fewer teenagers are trapped in those high schools today than in 2008. That is a big step in the right direction.

- More than half-a-million additional Hispanic students—about 550,000 in all—are enrolled in college today than were enrolled in 2008.

#### PROMISE NEIGHBORHOODS PROGRAM

Ms. LEE. In addition to the grants, how does Promise Neighborhoods fit into this? Because as I look at the Promise Neighborhoods model, I would think that would somehow coordinate with the whole school effort on African-American males in certain communities.

Secretary DUNCAN. It is a really big piece, and again, we are asking for an increase of about \$240 million, from \$60 million, to \$300, so it is, you know, a big increase we are looking for there.

Going from \$60, up \$240, and then that is just our piece of it. HUD, Shaun Donovan is doing a lot of work. HHS is doing work, so this again, an Administration-wide priority, but we will focus on some of the Nation's most disadvantaged communities where there has been entrenched poverty, to see if we can fundamentally change the opportunity structure. So a direct result of our Promise Zone Initiative should absolutely be to have young, more young boys of color be successful and not be dropping out of school.

Ms. LEE. Okay, thank you very much. Thank you, Mr. Chairman.

Mr. KINGSTON. Dr. Harris.

Mr. HARRIS. Thank you very much. And again, I want to thank you for your dedication to, you know, helping our young folks learn and becoming great Americans.

#### FUNDING FOR D.C. OPPORTUNITY SCHOLARSHIP PROGRAM

I want to ask something that does not come under this budget. I think comes under the Department of Education budget, but not what this subcommittee is going to include, and that is the Opportunity Scholarship Program. That comes out of the Department of Education budget, is that right?

Secretary DUNCAN. That is my budget.

Mr. HARRIS. That is right. Because I looked through here—

Secretary DUNCAN. I am being corrected here. Tom will give you the right answer.

Mr. HARRIS. Go for it.

Mr. SKELLY. The budget contains enough money for D.C. Choice, the D.C. Opportunity Scholarships to continue. We think there is enough—

Mr. HARRIS. What level? What amount of money? It is authorized at \$20 million.

Mr. SKELLY. And there is \$17 million for the new grants. The budget includes a request in 2014 for an additional \$2 million for the evaluation and administration of the program.

Mr. HARRIS. So you could, you authorize, the authorization is up to \$20, but you are funding at \$17 million. What was it funded at last year?

Mr. SKELLY. It was approximately the same amount.

## STUDIES OF OPPORTUNITY SCHOLARSHIP PROGRAM

Mr. HARRIS. Okay, so it is the same amount, and that is exactly what I want to get to here. Now, Mr. Duncan, last year you made a comment that I am not sure I understand when it was left out of last year's budget, I think it was zeroed out, or 2 years ago, you made a comment that we were awaiting statistically valid data.

Now, I have done studies. I have never heard the term statistically valid. Exactly what does that mean?

Secretary DUNCAN. So let me, my understanding is that we needed to get to about 1,700 students, if that is correct, to have—maybe statistically valid isn't the right technical term. You might give me a better term. Fair.

Mr. HARRIS. Well, usually when we talk about scientific studies, I mean, we talk about statistically significant results you know, at a certain probability level, because I am reading from your report. The executive summary of the report does not hedge on it. And this is the report, you know, that was required to be done.

It does not hedge on it. And this is out of the Department of Education, is that right?

Secretary DUNCAN. Is that from IES?

Mr. HARRIS. Yeah. It says, the program significantly improves students' chances of graduating from high school. It does not say, maybe. It does not say—like it does above, it says, there is no conclusive evidence the OSP affected student achievement.

Secretary DUNCAN. We are talking apples and oranges. The goal was to get it to 1,700 students so there would be a fair control.

Mr. HARRIS. Wait, wait, hold on a second. You talked about the Perry study with 60 people. You talked about the other study with less than 100 people justifying a \$1 billion expenditure. We are talking about a relatively, not that large an expenditure, that your own document says significantly improved students' chance of graduating from high school. Now, I am going to assume that we think that is a good outcome. Are we going to agree? You will stipulate to the fact that—

Secretary DUNCAN. Absolutely.

Mr. HARRIS. Okay, and that, in fact, in the highest risk students, the outcome improvement was 20 percent more students. The ones from the SINI schools, the highest priority students, had a 20 percent increase in their high school graduation rate.

Now, that is astounding. Again, having sat on a State education committee, if we figured out a way to snap our fingers and say 20 percent or more of our students in our worst performing, you know, highest priority for help, and we could achieve a 20 percent increase, I mean, we would jump through hoops figuring out on you to expand that program. So it begs the question. Why are not you funding this at the maximum amount of \$20 million?

Secretary DUNCAN. Yeah, again, just to be really clear. I think you are confusing apples and oranges. I never said anything about the study being statistically valid. That is not what I was saying. I want to be clear, what I was saying is, we were trying to get to enough students so IES could do the study and that was to get it to 1,700.

Mr. HARRIS. You got to walk this through. Again, I have done scientific study. I know the power of studies. I understand. Was this a significant result or not, because it was reported in this report as a significant result, that 20 percent increase in students who eventually got scholarships versus the ones who lost the lottery. Was that statistically significant or not?

Secretary DUNCAN. I am happy to look at it. I do not know sitting here on that.

[The information follows:]

#### OPPORTUNITY SCHOLARSHIPS PROGRAM EVALUATION FINDINGS

The previous evaluation of the DC Choice program found that it had statistically significant positive impacts on high school graduation, both overall and for some subgroups of students. Using an OSP scholarship increased the graduation rate by:

- 21 percent, overall.
- 20 percent, for students from schools in need of improvement (SINI students).
- 25 percent and 28 percent, respectively, for females and students who applied to the program with relatively higher levels of academic achievement.

The program had no statistically significant impacts on high school graduation for male students, those who applied to the program with lower levels of academic achievement, and students who did not come from SINI schools.

#### D.C. OPPORTUNITY SCHOLARSHIP PROGRAM

Mr. HARRIS. Okay, I would love for you to get back to me, because if it was, but that is not the only effect, because if you look what happened in the public schools, which we are now competing with these, for these students, 24 percent reported they encouraged greater parental involvement in school activities. Now, that is a good thing, isn't it?

Secretary DUNCAN. Absolutely.

Mr. HARRIS. Okay, 20 percent added tutoring or other special services to help improve academic achievement. Now, that is a good thing, isn't it? And 17 percent increased school safety provisions.

Now, this does not deal with the students who left, who your study says had a 20 percent increase in the graduation rate. These are for the students who got left behind, had improvements in their schools. You do not get much more of a win/win than that. And you are only spending \$7,500, now it is \$8,000 a student on these "vouchers." And you are spending a whole lot more per pupil on the students who lost the lottery.

Now, Mr. Secretary, the President has said, implied, we should stop playing politics with education. And I truly think you agree. Why in the world isn't this program—why haven't you requested the maximum authorized amount for this program?

Secretary DUNCAN. A couple of things. First of all, I think our goal should be to make every single school a school of choice, every single public school. The vast majority of children will never have the opportunity to take advantage of those.

I have said very publicly that where the private sector, where philanthropy wants to help out, and the business community wants to help out, what you have seen here in D.C., is you are seeing public schools generally start to get better, but there is a long, long way to go. But I just say, I cannot sleep well at night if we are trying to help five kids and leaving 500 to drown.

Mr. HARRIS. What about those improvements in those schools where the children were "left to drown"?

Secretary DUNCAN. No, that is fantastic, but my point——

Mr. HARRIS. That is right, it is, Mr. Secretary. My time is up.

Secretary DUNCAN. Can I finish?

Mr. HARRIS. Please, please.

Secretary DUNCAN. Can I finish?

Mr. HARRIS. Sure.

Secretary DUNCAN. I think there was improvement. I would be very surprised if those improvements were very dissimilar to what is going on with the rest of the D.C. Public Schools. I think you have seen more safety, more after-school, more parental engagement across the system. A long, long way to go here, but the system is, I think, better. We can all say it is better than it was a few years ago.

Mr. HARRIS. Thank you very, very much. Again, thank you for what you do for education in the country. Thank you, Mr. Chairman.

Mr. KINGSTON. Ms. DeLauro.

#### IMPACT AID FUNDING

Ms. DELAURO. Thank you, Mr. Chairman. I would like to take a moment to discuss Impact Aid. Second year in a row, your budget has zeroed out the Federal property program. This is for districts that had taxed the land to provide a source of school revenue, and now due to a Federal presence, the revenue is lost. Rationale for zeroing out this program, and how do you see the districts impacted by the elimination of the program closing shortfalls without it adversely affecting the children attending their schools.

Also keep in mind, that these are schools that have also been impacted by sequestration, and that means Title 1, IDEA is going down. How are these schools going to continue to operate normally without any of the Federal sources?

Secretary DUNCAN. Let me have Tom walk through the technical side of this, and I will walk through where I want to go on it. So, Tom.

Ms. DELAURO. I am going to just ask you this because I know the chairman is looking at the clock, if we can move quickly, because I have got a Pell Grant question I want to get to.

Mr. SKELLY. The main difference is the program we are talking about cutting funding for is one that is not based on the number of students served in the district.

The other part of the Impact Aid Program, which the Budget continues to support at about \$1.2 billion, gives out money based on the number of kids who are actually in the districts. It is a smaller part of the program that has some different rules. So we are making——

Ms. DELAURO. The Federal property piece?

Mr. SKELLY. That is the property piece. There might be a district that had a national park or some kind of Federal facility 50 years ago, and it hasn't had a property tax base for that reason. It does not necessarily have kids in the school districts that are——

Ms. DELAURO. What about some of the military establishments where there are kids going to military schools?

Mr. SKELLY. And there are some of those, like West Point and other areas. But we are supporting, again, over \$1 billion, almost

\$1.2 billion for the Impact Aid Program that does provide money to the districts that have a huge Federal presence in their school districts, also.

Ms. DELAURO. So is it safe to say, because I would like to talk further with you about this to get clarity that if there are kids involved in this effort that there is no cutback there. It is on land that is no longer—

Mr. SKELLY. To be honest, there is still going to be a cutback. It is just making a choice that one piece of the Impact Aid Program tends to serve students more and have more of a focus on the number of students.

Secretary DUNCAN. I think quickly, Congresswoman.

Ms. DELAURO. Well, but as I pointed out, I mean, as I pointed out as well, and let me tell you about New Haven, Connecticut, and it is not military establishments. Let me tell you about loss of tax base, you know, for a whole variety of reasons, Yale University included, that people lose that tax base, that revenue from the tax base. What do they do to try to make up for it?

Secretary DUNCAN. I would love to continue the conversation further. I am, like you, very, very worried about those schools and communities that receive Impact Aid. They are getting devastated by the sequester. They are getting hit on Title I, and IDEA. So Tom's explanation is absolutely accurate. But I am happy to talk further about what we do to help these kids and communities.

Ms. DELAURO. Please, yes, I want to talk about Impact Aid.

Mr. KINGSTON. And on that follow-up, if you will yield for a second.

Ms. DELAURO. It is not my time. It is going to be your time.

Mr. KINGSTON. It is 20 seconds. There is another pot of money that comes from the Department of Defense, and I think that would be relevant to her question, which I know is not you guys, but there is another pot. So there is two main. Do you know how big that is?

Mr. SKELLY. They are Section 6 schools, but I do not know how much money they are getting.

#### FUNDING FOR PELL GRANTS

Ms. DELAURO. Okay, we should talk about this further. Pell. Pell was growing rapidly, height of the recession, growth is stopped, the program is costing less than it did 3 years ago. The budget resolution adopted by the House last month calls for a series of major cuts to Pell Grants. The proposal includes various changes such as reducing the "income protection allowances" used in computing grant amounts for working students. The majority's resolution also calls for funding Pell Grants entirely through discretionary appropriations which would create a very serious shortfall.

What would be the consequences for the Pell Grant program or for the students and families it assists if these proposals contained in the House budget resolution were to be enacted?

Secretary DUNCAN. I continue to ask the question, do we want to have the most educated workforce in the world, or are we happy being 14th in the world? I do not think any of us here are happy that we are 14th.

The fact of the matter is, if we cut back on Pell, we will have less students able to afford the chance to go to college. If we do that, we will ultimately have less college graduates. I do not think that is in any of our, that is not in our national interest.

Ms. DELAURO. I have one more question, which would be the last one. Okay, I will go for it.

Mr. KINGSTON. Okay. Clearly, I had taken 20 seconds from you. I am watching it very diligently.

#### SCHOOL TURN-AROUND MODELS

Ms. DELAURO. Okay, thank you very much. This is about what we were talking about before, about the SIG grants, but this is about poverty-related barriers to learning. You know, low-performing schools are in high poverty areas.

Does the Administration have a strategy for building schools, and educator's ability to address the readiness challenges of these schools, readiness challenges of children for learning, the challenges for teachers in the classroom around disruption, engagement, the readiness of leaders to act against the adversity built high performing learning environments?

You have these four models that deal with academic outcomes. Where is the room here, and they are prescriptive in terms of how low-performing schools have to move forward. What about the non-cognitive factors here, and those efforts in terms of the models for turning schools around?

Secretary DUNCAN. So, and again, I am happy to go visit schools where you see these schools being turned around, and there are many. And many folks thought this impossible, almost all of them are getting those noncognitive skills, and using our resources to do it. Social workers, counselors, mentors, longer hours, and so that is absolutely incorporated in the models and in our use of dollars.

Ms. DELAURO. Is that, because we talked the last time that there was going to be the allowance for the flexibility in the models that can turn these around. Is that still operative in allowing the area or the school district to be able to look at various—I have mentioned you talked about Pam Cantor's program and turnaround. That is one, but there are others in which we can take into account these noncognitive factors.

Secretary DUNCAN. I will have to continue with that, but just to be very clear, I do not think we have a successful turnaround that is not already taking into account those noncognitive skills. That is the only way you get to better student outcomes. So I think you are seeing tremendous work in that area. A fair question is, can we be doing more? But the turnaround schools I have visited, they are all taking this into account in a very serious—

Ms. DELAURO. And there are models that are currently there that are, I would argue, are prescriptive, allow for these noncognitive factors as well as the academic side of the coin?

Secretary DUNCAN. Unquestionably, absolutely. That is the only way you are getting better student results.

Ms. DELAURO. Thank you. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. KINGSTON. Ms. Lee.

## PELL GRANTS

Ms. LEE. Thank you, Mr. Secretary. I want to call your attention to, you have probably seen this, a Brandeis University report that recently was released that indicated between 2005 and 2009, net black wealth declined by 53 percent compared to a decline of 66 percent for Hispanics, and 11 percent for whites.

Much of the decline, of course, is attributable to the home foreclosure and mortgage debacle, but this development most certainly affected many black families' ability to leverage their home equity as a means of financing their children's education, and for other purposes.

So the increase of the maximum Pell award is really critically important to low-income families, but as we heard earlier in many ways, fewer families now because of this thing that, you know, because of what happened last year, are receiving Pell Grants. So in terms of just these trends then, are you looking at this unfortunate decline in net worth for families of color and trying to figure out how you can help them send their children to college?

Secondly, and I want to just get these questions in real quick. With regard to the administration's very clear vision of doubling college completion rates by 2020, I want to see to what extent HBCUs are engaged in this effort, and what resources are dedicated to help them help you achieve that goal in terms of are there any strategic plans in place, benchmarks?

Also, and I have heard a lot about what is happening to these young people, but in the Parent PLUS Loan Program, this represented a lot of challenges in terms of the modifications to this for children at HBCUs. Fourteen thousand children have not been able to attend college because they had insufficient resources as a result of changes to this program. That is for HBCUs.

And so I need an update on the status of this program, and are you addressing these issues in a big way? And then of course, the mechanism for capital improvement for HBCUs. What is going on with that in this budget, and what do we need to do to make sure that the capital improvements are fully funded?

Secretary DUNCAN. Yes, so a lot there, but just to go philosophically, I do not think that we strengthen the black community, the Hispanic community, America's middle class if we do not do it through high-quality education. I think that is the only way to get there, and it has to be cradle to career.

So if we want to reverse those devastating, those are devastating drops in net wealth, the only way to reverse that is to make sure that a lot more young people are graduating from high school, have the opportunity to go into higher education, and then get a good job, and support their family.

## PELL GRANTS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

The HBCUs are critical to hitting the President's 2020 goal of leading the world in college graduation rates, as is every institution of higher education. You have some who are seeing very significant increase in graduation rates. This is very encouraging. You have others that are struggling. So we want to do what we can to help. We can give you all of those benchmarks.

Ms. LEE. Are you putting resources into the HBCUs to help you achieve this goal?

Secretary DUNCAN. We have put significant additional resources from the start of the Administration to today, and we can walk you through where we were in 2008, versus where we are 2012. Pell, over the past couple of years has gone from 6 million recipients to close to 10 million, so it is more than a 50 percent increase. We can get you Pell recipients at HBCUs, but no how many African-American students that equates to, as there is no race indicator in recipient data. But, I think many would not be in school were it not for those resources.

And in the Parent PLUS, as you know, we continue to work through, met with the CBC yesterday. Thanks for your attendance there. We are working very hard to reach out directly to young people, and there has also been some other great ideas that have been generated by the CBC that we, or our staff is actively considering and we will come back to you very quickly on that as well.

[The information follows:]

**PELL RECIPIENTS AND PELL GRANT AID  
AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES  
COMPARED TO THE OVERALL PELL GRANT PROGRAM**

<b>Pell Recipients and Aid at HBCUs and Overall Program</b>						
<b>Award Year</b>	<b>Pell at HBCUs</b>			<b>Total Pell Program</b>		
	<b>Recipients</b>	<b>Aid (\$ in millions)</b>	<b>Average Grant (whole \$)</b>	<b>Recipients</b>	<b>Aid (\$ in millions)</b>	<b>Average Grant (whole \$)</b>
<b>2008-09</b>	168,761	\$563	\$3,336	6,155,277	\$18,284	\$2,970
<b>2009-10</b>	179,129	798	4,455	8,089,083	29,962	3,704
<b>2010-11</b>	204,974	940	4,586	9,305,091	35,666	3,833
<b>2011-12</b>	208,453	886	4,250	9,438,939	33,516	3,551
<b>2012-13</b>	197,986	867	4,379	8,965,000	32,798	3,658

**Note:** AY 2012-13 data are estimates.

## HBCU CAPITAL FINANCING PROGRAM

Ms. LEE. And capital improvements for HBCUs, the mechanism for financing these capital improvements. I want to make sure that—

Mr. SKELLY. The HBCU capital financing program, I have been working with a number of the schools that have loans there. I would also point out, in Pell Grants, the maximum grant has actually been going up the last couple of years. Not only did it go up \$95, from \$5,550, to \$5,645, in 2013, but the budget proposes an additional increase of \$140. Both of those are covered by the mandatory side of the ledger, and we do not have to appropriate.

Ms. LEE. So the funding request though for capital improvement in this budget, I have not had a chance to look at that. Do you know what this is? HCBUs?

Mr. SKELLY. No, that is a loan program, so we provide money sufficient for new loans to be made. The amount of loans you support—you do not have to provide it specifically.

## OUTREACH TO STUDENTS WITH FEW RESOURCES

Ms. LEE. Okay, I got you. Let me just conclude by saying, I have heard now of several students at some HBCUs, and I think I mentioned this to your staff, but they do not want, of course, their names released, but sleeping in cars, trying to get their education. They were part of the Parent PLUS loan program, and now they are still trying to go to school, but they do not have the resources.

Secretary DUNCAN. Let me be really clear. Where you have a young person or a family that we can reach out directly to, our staff is doing that. So saying that in aggregate, I hear you, but it does not help us solve the problem.

If you give me a name or a family, we have folks that spend 100 percent of their time working on this. So if you could go to an important next level of detail, please feed that to us and we will reach out and do whatever we can to be supportive.

Ms. LEE. Okay, I will contact them and see if they want to—

Secretary DUNCAN. I do not need to know stories. I need to know people.

Ms. LEE. Okay, I will do that. Thank you very much, Mr. Secretary.

## HBCU CAPITAL FINANCING PROGRAMS

Mr. SKELLY. There will be \$320 million in new loans provided by the HBCU capital fund in 2014.

Ms. LEE. Okay, \$320 million. Thank you very much. Thank you, Mr. Chairman.

Mr. KINGSTON. Ms. DeLauro.

## ADDRESSING NONCOGNITIVE BARRIERS TO LEARNING

Ms. DELAURO. The chairman has allowed me just to ask one more very small question which goes back to our prior conversation, and I think what I was trying to deal with here, is that we have prescriptive regulations in regard to, you know, turning the school around where there are serious requirements.

Are you open to requiring—it is not required now to deal with these noncognitive areas. In my view, it ought to be required, that that is part of what this effort is in terms of looking at noncognitive areas.

What are those, barriers to learning for kids, and to make that required as well as what is already in place in terms of requirements.

Secretary DUNCAN. That is an interesting thought. And It is the first time I heard that. Let me chew on it. Really, I have to consider that conversation.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Secretary DUNCAN. This is broader beyond the school improvement grants. This noncognitive piece is really a big deal and so that is a further conversation I want to have.

Ms. DELAURO. Yes, and requiring schools to be doing these kinds of things as well, and training teachers to be able to meet this kind of a demand in the low-performing schools, which are high-poverty areas with a whole different set of barriers to learning.

Thank you, Mr. Chairman.

#### CHAIRMAN'S CLOSING REMARKS

Mr. KINGSTON. Mr. Secretary, thank you very much. Mr. Fleischmann was in-between committees and he wanted to ask a question. I do not know what it is, but we will probably allow him to submit it to you. And if there is no other questions from the panel, we stand adjourned.

Thank you very much for your testimony, and you will probably have about 15 days worth of testimony submitted based on what we have heard. So the committee stands adjourned.

Secretary DUNCAN. Thanks for your leadership.

Mr. KINGSTON. Thank you.

[The following questions were submitted to be answered for the record:]

**Department of Labor, Health and Human Services and Education and Related  
Agencies**

**FY 2014 Budget Hearing – Department of Education**

**April 11, 2013**

**QUESTIONS TO BE SUBMITTED FOR THE PUBLIC HEARING RECORD**

**Chairman Harold Rogers – Questions for the Record  
Hearing: Secretary Arne Duncan - FY 14 Budget Request**

**UPWARD BOUND CRITERIA**

Mr. Rogers: In the 2012 round of Upward Bound grant awards, five programs in southern and eastern Kentucky were no longer funded. All of these programs had a long record of serving students under this program, including one which had been continuously funded since the program's inception. Reports have indicated that the Department used a new criterion when evaluating applications. This criterion gave extra weight to schools which are considered to be among the persistently lowest-achieving (PLA) Schools based on school evaluations under the Elementary and Secondary Education Act (ESEA). The Upward Bound program was designed to target low-income students with academic risk who could be first generation college graduates. Given the current educational attainment of the region, central Appalachia is undoubtedly a prime target for this program and it has been widely utilized in the area. However, the PLA criterion shifted Upward Bound grants away from programs in these rural areas in favor of students in urban areas. In Kentucky's Fifth District, the loss of these grants affected over 300 students directly, and could mean that nearly 33,000 current high school students who are potential first generation college graduates will not receive the same level assistance to prepare for higher education as they previously had.

Please explain the PLA schools criterion and reasons why this criterion was added into calculating an Upward Bound applicant's scoring.

Mr. Duncan: The Department used three competitive preference priorities in the 2012 Upward Bound (UB) competition: (1) Turning around persistently lowest-achieving schools, (2) Enabling more data-based decision-making, and (3) Improving Productivity. An applicant could earn up to 5 additional points for addressing each of these priorities, but no more than a total of 10 additional points. The priorities were drawn from the Secretary's supplemental priorities, which were previously established through rulemaking and published in final in the Federal Register on December 15, 2010. The Department used the PLA priority in this competition in order to help expand the reach of Upward Bound projects into the Nation's persistently lowest-achieving schools. Knowing that the expiration of the \$57 million mandatory appropriation for Upward Bound would significantly reduce the overall funding available for the program in fiscal year (FY) 2012, the Department designed the competition to maximize the number of students that

would be served per dollar of Federal assistance and to ensure that the funding was well-targeted on the neediest students.

Recognizing that some UB projects might be unable to operate in these PLA schools because of the location of the schools, the Department established a cap on the total number of points that could be earned from all three competitive preference priorities. That is, an applicant in an area with no PLA schools could still earn the maximum competitive preference points available (10) by addressing the other two priorities.

While it is unfortunate that some of the projects from your State did not successfully compete in the 2012 competition, there is no evidence that rural applicants were disadvantaged by our use of competitive preference priorities. In fact, 62 percent of successful applicants did not address the PLA priority at all.

An analysis of the competition results revealed that none of the prior UB grantees from Kentucky that were unsuccessful in the 2012 competition would have been funded by earning all 10 competitive preference points. These applicants lost because they received low scores from the non-Federal reviewers who reviewed their applications based on the selection criteria and/or failed to earn sufficient prior experience points.

Please know that, despite the expiration of the \$57 million mandatory appropriation for Upward Bound at the end of fiscal year 2011, which led to a 12 percent cut to overall Upward Bound funding in fiscal year 2012, we still managed to serve 97 percent of the total number of students served in the previous year.

### **UPWARD BOUND REGULATIONS**

Mr. Rogers: Was this addition the result of a change in the Upward Bound regulations in 34 CFR 645?

Mr. Duncan: The Persistently lowest-achieving schools priority is not part of the Upward Bound regulations. Rather, the authority to include this priority and the competitive preference priorities on Enabling more data-based decision-making and Improving Productivity lies in the "Notice of final supplemental priorities and definitions for discretionary grant programs," published in the Federal Register on December 15, 2010. The Department is authorized to include any priority from this list of supplemental priorities in any notice inviting applications for new awards in competitive grant programs, as long as the priority does not conflict with the statute or regulations for the program.

### **CONSULTATION WITH EDUCATION STAKEHOLDERS**

Mr. Rogers: If so, what was the consultation with education stakeholders prior to changing the regulations and the length of the comment period before this change in scoring went into effect?

Mr. Duncan: The authority to use the PLA priority, in addition to the competitive preference priorities on Enabling more data-based decision-making and Improving Productivity, lies in the "Notice of final supplemental priorities and definitions for discretionary grant programs," published in the Federal Register on December 15, 2010. The Department did seek input from the public prior to establishing the final supplemental priorities. On August 5, 2010, the Department published in the Federal Register a "Notice of proposed priorities and definitions" that invited public comment on the priorities, including the three priorities used in the Upward Bound competition. We accepted public comment for 30 days and received comments from approximately 150 entities.

### **UPWARD BOUND GRANT AWARDS**

Mr. Rogers: Please explain in detail the changes in how grants were awarded after the Persistently Lowest-Achieving Schools criterion was added. Specifically, please identify the number of grants to rural programs and the number to urban programs before the change and the rural and urban grants awarded after the change.

Mr. Duncan: Our analysis indicates that, of the institutions of higher education that received Upward Bound grants from the 2007 competition, 24.9 percent were located in rural areas. Of the institutions of higher education receiving UB grants from the 2012 competition, 24.8 percent were located in rural areas. Furthermore, 62 percent of all successful applicants did not address the Persistently Lowest-Achieving Schools priority at all.

### **HIGH-QUALITY EARLY CHILDHOOD PROGRAM DEFINITION**

Mr. Kingston: The Department's Congressional Justification states that fewer than 3 in 10 4-year-olds are enrolled in "high-quality" early childhood education programs. What is the definition of "high-quality" in this context?

Mr. Duncan: The information that fewer than 3 in 10 4-year-olds are enrolled in high-quality early childhood education programs is derived from information in the 2011 Digest of Education Statistics, Tables 56 and 57. For those children enrolled in center-based care at the time, the quality rating measure is based on the Early Childhood Environment Rating Scale (ECERS).

### **HIGH-QUALITY EARLY CHILDHOOD EDUCATION**

Mr. Kingston: Please describe what studies or data support the assertion that the elements that make up "high-quality" early childhood education are linked with sustained improvements in academic outcomes.

Mr. Duncan: Decades of research have contributed to a body of work that has identified several common structural characteristics of quality programs, including highly

trained teachers, low child/staff ratios, and small class sizes. Model Pre-K programs such as the Perry Preschool and Chicago Parent Centers validate the benefits of hiring teachers with a strong background in education and training. Experts have emphasized the need for teachers with college degrees who can deliver educational programming and who are paid at sufficient levels that promote retention. In model programs such as the High/Scope Project and the Abecedarian study, a single teacher was responsible, on average, for less than seven children. These studies also had small class sizes, and provided comprehensive services to children and families.

## **DEPARTMENT COORDINATION WITH HHS ON EARLY CHILDHOOD PROGRAMS**

Mr. Kingston: The Administration's budget requests funding for a new initiative to expand early childhood education. However, some studies show that the Federal Government's track record for providing high-quality early childhood education at the nationwide level—through Head Start—has not been effective. What would the Department and HHS do differently this time around to ensure that the program effectively improves academic outcomes over a sustained period of time?

Mr. Duncan: We should not let the perfect be the enemy of the good. This Administration has taken bold steps to implement reforms to the Head Start program to improve quality and hold programs accountable. But let's be clear. We must do more to serve children, especially our most vulnerable children. Given the importance of early learning for the future of our children and our Nation, the status quo is not good enough. Currently, only three in ten children are enrolled in high-quality early learning programs. Nationally, only 40 percent of the children that are eligible for Head Start are served.

Preschool for All includes a high bar for quality that is based on nationally recognized standards. The elements of high-quality preschool include: (1) high staff qualifications, including a bachelor's degree for teachers; (2) professional development for teachers and staff; (3) low staff-child ratios and small class sizes; (4) a full-day program; (5) developmentally appropriate, evidence-based curricula and learning environments that are aligned with the State early learning standards; (6) employee salaries that are comparable to those for K-12 teaching staff; (7) ongoing program evaluation to ensure continuous improvement; and (8) onsite comprehensive services for children. We would work in partnership with States to provide high-quality preschool for all children, and the Department would monitor grantees to ensure that funds are used to support high-quality programs.

## **PRESCHOOL DEVELOPMENT GRANTS ACTIVITIES**

Mr. Kingston: What specific activities would the Preschool Development Grants program support?

Mr. Duncan: Preschool Development Grants would support the fundamental needs of States willing to create or expand preschool systems that can serve all 4-year-olds in the State. States could use Preschool Development Grant funds to support such quality improvement efforts as facility creation, workforce development, and scale-up of existing programs. For low-capacity States, activities could include developing the critical physical and program quality infrastructure needed to participate in the Preschool for All program. For higher-capacity States, activities could include improving the quality of existing programs and supporting the expansion of high-quality local programs that could serve as models for the Preschool for All initiative.

## **PROGRAM QUALITY INFRASTRUCTURE IMPROVEMENT**

Mr. Kingston: What will be involved in improving the "program quality infrastructure"?

Mr. Duncan: States would be allowed to undertake activities to improve the quality of preschool programs by supporting the development of the elements of a high-quality program, including (1) high staff qualifications, including a bachelor's degree for teachers; (2) professional development for teachers and staff; (3) low staff-child ratios and small class sizes; (4) a full-day program; (5) developmentally appropriate, evidence-based curricula and learning environments that are aligned with the State early learning standards; (6) employee salaries that are comparable to those for K-12 teaching staff; (7) ongoing program evaluation to ensure continuous improvement; and (8) onsite comprehensive services for children.

## **FUNDING FOR INFRASTRUCTURE IMPROVEMENT**

Mr. Kingston: How will the Department estimate how much funding a State needs to conduct these activities?

Mr. Duncan: The Department's current rough estimate is that Preschool Development Grants may range from \$45 million to \$90 million on average. The actual amounts awarded may be higher or lower and will depend on the scope of each winning State's plan.

## **GRANT RENEWAL UNDER PRESCHOOL DEVELOPMENT GRANTS**

Mr. Kingston: Will grantees have the opportunity to apply for grant renewal the following year?

Mr. Duncan: The Department expects that States would not need to apply for a second Preschool Development Grant.

## **PRESCHOOL DEVELOPMENT GRANTS OUTYEAR FUNDING LEVELS**

Mr. Kingston: How much outyear funding does the Department anticipate will be necessary to meet the need for Preschool Development Grants?

Mr. Duncan: Requests for additional funding for Preschool Development Grants in future budget requests will depend on how quickly all States are able to meet the eligibility requirements for Preschool for All.

## **FUNDING FOR KINDERGARTEN PROGRAMS UNDER PRESCHOOL DEVELOPMENT GRANTS PROGRAM**

Mr. Kingston: It is apparent that providing universal Pre-K education would require an enormous amount of resources. However, the Department's budget request would allow States that already provide Pre-K education for 4-year-olds to use this new funding for kindergarten education. Why are you proposing to allow these new funds to be used for kindergarten when there are already several other funding sources that support it?

Mr. Duncan: Investments in full-day, high-quality kindergarten can ensure that the benefits of high-quality preschool are sustained through the early elementary grades. Only a State that has made preschool universally available to all low- and moderate-income 4-year-olds would be able to use Preschool for All funding to expand access to full-day kindergarten and, if full-day kindergarten is already provided, to extend high-quality preschool to low- and moderate-income 3-year-olds.

## **EXPANSION OF PRE-K PROGRAMS UNDER PRESCHOOL DEVELOPMENT GRANTS PROGRAM**

Mr. Kingston: Why not first require States to use this funding to expand Pre-K programs to younger children instead?

Mr. Duncan: The Department believes that it is important for students to have access to full-day kindergarten to help ensure that gains made in preschool are sustained once children enter kindergarten.

## **ADVANCED PLACEMENT PROGRAM**

Mr. Kingston: Does the budget request for continuations for the Advanced Placement program support the entire \$7 million+ shortfall that has been identified? Please provide an analysis of the options the Department is considering to contain the costs of this program, including reducing the Department's per-test contribution, eliminating coverage of test registration fees, and further reducing or eliminating Incentive program continuations, and please include a description of the estimated impact on the number of low-income students taking AP tests.

Mr. Duncan: The President's fiscal year (FY) 2014 request for the proposed College Pathways and Accelerated Learning program, which would replace the Advanced Placement (AP) programs and other programs under current law that promote accelerated learning opportunities or seek to prevent students from dropping out of school, included \$53.2 million to pay for advanced course test fees for students from low-income families. Included in this amount was \$41.8 million to cover estimated demand for new test fee support in fiscal year 2014 and \$11.4 million to cover a cumulative anticipated shortfall in prior-year payments to States from fiscal years 2012 and 2013.

Subsequent to publication of the FY 2014 Budget, the Department has determined our policy for the use of the limited funding available in final fiscal year 2013 AP program appropriations (approximately \$28.5 million after sequestration). For fiscal year 2013, the Department is reducing the amount of our per-test subsidy under the AP Test Fee program. Specifically, in making grants to States, we will cover all but \$10 of the cost of each advanced course exam taken by low-income students in 2013, as opposed to paying the full cost of each exam as in prior years. Accordingly, States may use AP Test Fee program funds to cover a portion of the cost of each approved advanced course exam taken by low-income students as follows: (a) up to \$45 for each Advanced Placement test administered by the College Board; (b) up to \$94 for each Diploma Programme test administered by the International Baccalaureate Organization; and (c) up to \$43.50 for each Advanced Subsidiary test and up to \$71 for each Advanced test administered by Cambridge International Examinations. In addition, States will no longer be permitted to use AP Test Fee program funds to cover costs of test registration fees for low-income students. We are also eliminating the continuation funding that current AP Incentive program grantees would have received in fiscal year 2013 for the third and final year of their projects. Lastly, the Department currently does not plan to use funds to cover shortfalls in payments to States for test fee costs in fiscal year 2012.

These funding decisions, while difficult, are intended to achieve the twin goals of containing program costs and accommodating the significant increase expected in 2013 in the number of low-income students taking advanced placement exams. Over the past several years, the number of low-income students taking advanced placement exams across the country has increased annually at an impressive rate of approximately 20 percent. The Department's fiscal year 2013 AP program funding policy provides for the continuation of this trend with minimal impact, and initial reports from the College Board on test registrations by low-income students appear to validate our expectations.

Under our fiscal year 2013 funding policy, we expect program funds to cover most if not all State demand for new test fee support, and we have identified funds in the Innovation and Improvement account that we will reprogram to AP in the event funds prove insufficient. Thus, we no longer anticipate a shortfall in new test fee funding in fiscal year 2013. As a result of this and our current intention not to cover shortfalls in payments to States from fiscal year 2012, the Department expects to use fiscal year 2014 College Pathways and Accelerated Learning funds only to cover demand for new test fee support in fiscal year 2014.

### **LOW-INCOME STUDENT PARTICIPATION IN AP PROGRAMS**

Mr. Kingston: While funding for the Advanced Placement program decreased in fiscal year 2012, the number of low-income students taking AP tests went up dramatically. How much of an impact will the budget request for AP program continuations have on the number of low-income students taking AP tests?

Mr. Duncan: As discussed in response to the previous question, the number of low-income students taking advanced placement exams has increased annually by

approximately 20 percent over the last few years, and initial reports from the College Board suggest a similar increase for 2013. The Administration's fiscal year 2014 request for the proposed College Pathways and Accelerated Learning program, which includes \$41.8 million to cover estimated demand for new test fee support in fiscal year 2014, assumes for fiscal year 2014 another 20 percent increase in the number of tests taken and would fully subsidize the costs of these tests for low-income students.

### **PROMISE NEIGHBORHOODS COMPETITIVE PREFERENCE**

Mr. Kingston: Does the Department intend to award new Promise Neighborhood grants to all former planning grantees under its request?

Mr. Duncan: The Department does not intend to provide any competitive preference to implementation grant applicants that have received planning grants. Having received a planning grant seems to have provided applicants with the necessary time to plan and prepare for project implementation given that 10 of the 12 implementation grants awarded in fiscal year 2011 and fiscal year 2012 had received Promise Neighborhoods planning grants. We believe that there are many qualified communities that have not received planning grants due to the limited available funding and would not want to disadvantage those communities. At the Administration's fiscal year 2014 request level for this program, high-quality applicants will have a much greater chance of receiving awards.

### **PROMISE NEIGHBORHOODS PROGRAM PLANNING GRANTS**

Mr. Kingston: What is the basis for the number of new planning grants proposed for the Promise Neighborhoods program?

Mr. Duncan: The Department has estimated awarding approximately 30 planning and 35 new implementation awards in fiscal year 2014, based on the requested funding level. These estimates are based on the number of applications the Department has received for each of these types of grants and the number of high-quality applications the Department has not been able to fund due to the limited available resources. Additionally, as this program grows and is able to serve more communities, we want to ensure that there will be a good number of communities in the pipeline that have gone through the planning process and will be well positioned to implement high-quality, sustainable projects.

### **RACE TO THE TOP—COLLEGE AFFORDABILITY AND COMPLETION**

Mr. Kingston: Please provide some specific examples of how States might do the following things under RTT—College Affordability and Completion (RTT—CAC): 1) modernize funding policies to constrain costs and improve outcomes, 2) remove barriers preventing the creation of innovative methods of student learning and new degree pathways, and 3) smoothing transitions for students from high school into college.

Mr. Duncan: States seeking to modernize their higher education funding policies in connection with their RTT—CAC applications could pursue the following reforms, among others: establish a consistent financial commitment to institutions of higher education in their States; enact a performance-based funding system that allocates a significant portion of the funds appropriated to public institutions based on demonstrated student outcomes, particularly for low-income and other high-need students; and increase the share of student financial aid that is distributed on a need-basis.

States can remove barriers to innovation by, for example, removing State policies preventing institutions of higher education from developing degree pathways based on non-traditional forms of learning measurement such as competency-based, experiential, or prior learning.

Finally, States seeking to smooth transitions for students from high school into college could, for example, implement reforms that align standards on high school graduation and college entry requirements, provide for the expansion of dual enrollment programs, and promote the early identification of remediation needs.

### **RTT—COLLEGE AFFORDABILITY AND COMPLETION AND PRIVATE ACADEMIC INSTITUTIONS**

Mr. Kingston: Public academic institutions operated by States are only one part of postsecondary education. How will the reforms that could be supported by States under Race to the Top—College Affordability and Completion have an impact on the market for higher education when the initiative does not take private academic institutions into account?

Mr. Duncan: We anticipate that successful State applicants will partner with private institutions of higher education (IHE) in their States. For example, States may invite private IHEs in their States to participate in a consortium of schools to align standards for transitions into college from high school and between colleges, agree on common definitions, and provide transparent institutional data on student outcomes.

### **STEM MASTER TEACHER CORPS PARTICIPATION**

Mr. Kingston: What would be the specific responsibilities and advantages to participating in the proposed STEM Teacher Corps; and, what would be the criteria to participate?

Mr. Duncan: The STEM Master Teacher Corps provides an opportunity for school districts, in partnership with States, institutions of higher education, and non-profit organizations, to recognize, reward, and leverage the skills of exceptional STEM teachers. Teachers selected to become STEM Master Teacher Corps members would take on leadership and mentorship roles in their schools, communities, and the STEM teaching field as a whole. Teachers would be selected through a competitive process based on their demonstrated effectiveness as STEM teachers, their content knowledge, and their

demonstrated ability to lead other teachers. In return, these teachers would receive annual stipends in addition to their base salary.

### **STEM MASTER TEACHER CORPS IMPACT ON STEM TEACHER COUNT**

Mr. Kingston: How many teachers would be admitted; and, how will this proposal increase the number of STEM teachers?

Mr. Duncan: In year one of this program, the pilot year, the Department anticipates being able to support up to 1,000 STEM master teachers. With additional funding from the RESPECT initiative, the Department's goal is to increase that number to 10,000 master teachers over 4 years. The primary goals of the STEM Master Teacher Corps are to recognize and help retain the Nation's most talented STEM teachers, but the program will also help attract individuals talented in STEM fields to the teaching profession by providing opportunities for recognition, career advancement and leadership roles, and higher compensation. The STEM Master Teacher Corps program is also complemented by the proposed STEM Teacher Pathways proposal, which will support the President's goal to place 100,000 new effective and highly effective STEM teachers in America's classrooms over the next decade.

### **FUNDING FOR STEM MASTER TEACHER CORPS INITIATIVE**

Mr. Kingston: The Congressional Justification states that the \$35 million request for the STEM Master Teacher Corps would support a pilot for this initiative. How much funding would be necessary to fully scale up this initiative?

Mr. Duncan: The Department expects that the pilot projects will explore different mixes of incentives and other support for Master Teachers, and will use the results of the pilots to determine the process and costs of taking the program to scale nationwide.

### **IDEA GRANTS FOR INFANTS AND FAMILIES**

Mr. Kingston: How will the Department's request for \$20 million for the Grants for Infants and Families program improve access to early childhood education for very young children with disabilities?

Mr. Duncan: States use funding made available under Part C of the IDEA for both infrastructure to support the delivery of and direct services for infants and toddlers with disabilities and their families. According to the 2012 ITCA Finance Survey by the IDEA Infant and Toddler Coordinators' Association (<http://www.ideainfanttoddler.org/pdf/2012-Finance-Survey-Report.pdf>), over 75 percent of States use Part C funding to increase child find public awareness, support eligibility determinations, and support the development of Individual Family Service Plans (IFSPs), helping to ensure that eligible infants and toddlers with disabilities and their families receive the services they need. States also use this funding to support direct services to those infants and toddlers and their families, including audiology, family training and

counseling, nutrition, physical therapy, psychological services, special instruction, and speech language pathology. The President's request will support States in their efforts to both strengthen the infrastructure supporting infants and toddlers and their families, and provide high quality direct services to them. Ultimately, the Administration believes this will lead to improved outcomes for these children and their families.

### **SERVICES TO CHILDREN AGES 3 AND ABOVE**

Mr. Kingston: The Department's fiscal year 2014 request would increase funding for State Incentive Grants for States proposing to extend Part C services to children ages 3 and above. Given that resources are already available under the Preschool Grants program for this purpose, how will these additional funds be used in such a way that does not duplicate that program?

Mr. Duncan: While it is correct that funding under §619 of Part B of the IDEA is used to support children with disabilities ages 3 through 5, providing State Incentive Grants to States that opt to expand the provision of Part C services through entrance into elementary school is not duplicative. Currently, Maryland is the only State that is exercising the flexibility in §635(c) of the IDEA, providing early intervention services to 3- and 4-year-olds included in an IFSP — Individualized Family Service Plan — developed in accordance with Part C. They report that approximately 60 percent of families served in the Part C early childhood program opt to stay in the extended Part C option program. They report that the Part C option has expanded public and private community-based early intervention programs accessible for young children with disabilities, provided year-round developmental and educational services for 3- and 4-year-olds, enhanced families' capacity to advocate for their children, increased families' understanding of educational readiness skills, and continued the provision of service coordination to identify and support family outcomes. In short, the activities associated with the Part C option are unique and distinct from those offered under Part B, and have the potential to help numerous children with disabilities and their families seamlessly and effectively transition into elementary school.

### **HEA-TITLE VI AND FULBRIGHT-HAYS PROGRAM**

Mr. Kingston: How does the budget request for the Title VI/Fulbright-Hays program address the needs related to foreign languages and world regions identified in the Department's annual survey of Federal agencies, in particular at the three Title VI national resource center programs?

Mr. Duncan: Section 601(c)(1) of the Higher Education Act requires that the Secretary of Education consult annually with Federal agency heads in order to receive recommendations regarding areas of national need for expertise in foreign languages and world regions. The Secretary takes those recommendations into account when identifying areas of national need for the International Education Programs. The recommendations and a summary of the responses from those Federal agencies are posted each year on the

Department's Web site at  
<http://www2.ed.gov/about/offices/list/opec/iegps/languageneeds.html>.

The current areas of national need identified by the Secretary consist of 78 priority languages that are less commonly taught and the relevant world regions. The Department remains committed to further developing and maintaining a national capacity in teaching and learning these priority languages and in the associated area/international studies. Funds requested for a number of the International Education programs will support that objective.

### **INTERNATIONAL EDUCATION PROGRAMS IN FY 2014 BUDGET**

Most of the funds requested in fiscal year 2014 would be allocated to the National Resource Centers (NRCs) program and Foreign Language and Area Studies (FLAS) fellowship program. NRCs are the primary mechanism for developing U.S. language and area studies expertise. These grants help institutions of higher education to establish, strengthen, and operate advanced centers for the teaching and learning of foreign languages and area and international studies. FLAS fellowships support undergraduate and graduate training programs at many NRCs. They provide opportunities for intensive study of less commonly taught languages and world areas both domestically and abroad during the summer or the academic year.

Funding requested for the Language Resource Centers (LRCs) will help to strengthen the teaching and learning at all levels, including K-12, of languages, including those languages identified as vital or critical to our national interests by other Federal agencies.

The Budget would also continue support for the Centers for International Business Education (CIBEs), which serve as regional and national resources for businesses, students, and faculty at all levels. They meet the need for research and training in the international aspects of trade, commerce, and other fields of study. CIBEs prepare students for careers in global economy, including the learning of priority foreign languages in a business or professional context.

Funds are also requested for the Undergraduate International Studies and Foreign Language (UISFL) program. Grants would be made to colleges and universities, including community colleges, for projects aimed at strengthening undergraduate instruction in foreign languages and international studies, especially projects that focus on the less commonly taught languages.

Our request for the Overseas program includes funds for new awards under the Fulbright-Hays Doctoral Dissertation Research Abroad program, which provides opportunities for doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies, particularly in priority languages.

## **FEDERAL STUDENT LOAN REHABILITATION AND LOAN GUARANTORS**

Mr. Kingston: Please describe the budgetary assumptions, including the projected recovery rates, underlying the Department's estimates of the 10-year savings from the budget proposal to reduce what guarantors earn when they successfully rehabilitate defaulted student loans.

Mr. Duncan: The policy to change the fees charged to guaranty agencies, presented in the FY 2014 President's Budget, assumes that if this change were adopted, guaranty agencies would continue to rehabilitate defaulted loans at rates comparable with historical averages. This estimate is based on the assumption that the Department would be a potential transaction partner with agencies in the event there are no eligible lenders available to assume the rehabilitated loans, and that agencies are allowed to receive their payment from these transactions as a lump sum. As a result, guaranty agencies will have an additional market for the rehabilitated loans, and minimize their risk by receiving an upfront payment of their collection fee (as opposed to over the life of the loan's repayment period) regardless of whether the borrower re-defaults. Significantly, this policy would allow borrowers to benefit through a corresponding reduction in the principal balance they must repay.

### **LOAN DEFAULT RECOVERY RATES**

Mr. Kingston: There is evidence that lower fees paid for a certain type of default recovery lead to lower recovery rates. For example, when retention for cash recoveries was reduced in 2006, the recovery rate for cash collections dropped 34.2 percent over the 3-year period between 2007-2010, according to the Department's own data.

Why, given a much larger proposed cut in guaranty agency compensation for successful loan rehabilitation, does the Department expect the use of this recovery option to remain constant?

Mr. Duncan: The Department has found no evidence to prove that guaranty agency collections on defaulted loans were adversely impacted by the reduced retention rates that went into effect in 2007. From 2006-2011, collections remained steady - around 30 percent of the outstanding defaulted portfolio - with a slight increase in rehabilitated loans compared to one-time cash payments. This increase reflects efforts to get borrowers into normal repayment with a lender through the rehabilitation process and to assist them in clearing the record of the student loan default from their credit history.

### **RESPONSIBILITIES AND COSTS OF GUARANTY AGENCIES**

Mr. Kingston: Guaranty agencies use earnings from successful loan rehabilitation to support statutorily-required activities including access and outreach efforts, compliance reviews of lenders and postsecondary institutions, financial literacy programs and materials, as well as training of school financial aid professionals in the management of student aid programs. As you know, guaranty agencies receive no specific funding to

support these efforts. What do you project the impact of the loan rehabilitation cut will be on these efforts?

Mr. Duncan: The proposed change to guaranty agency compensation merely makes what they receive more consistent with comparable market rates for collection fees they receive on other collection activity, as well as the fees the Department pays its private sector contractors that rehabilitate defaulted loans under the Direct Loan Program. Additionally, guaranty agencies may also seek mandatory funding for their activities through the College Access Challenge Grant program. To date, this program has supported a number of agencies in providing information to students and families regarding postsecondary education, promoting financial literacy, and assisting with debt management and career preparation. Under the Department's proposal, retained revenue from collections in the declining FFEL — Federal Family Education Loans — program portfolio could continue to fund similar activities.

### **COMMON CORE STANDARDS INITIATIVE**

Mr. Fleischmann: The Common Core Standards Initiative sets one curriculum for all schools nationwide. The new standards are designed to be robust and relevant to the real world, reflecting the knowledge and skills that our young people need for success in college and careers. However, some parents and educators have expressed concerns with this program and what kind of recourse they would have if they wanted changes made to the curriculum being taught at their children's schools.

What leeway does Common Core give to State and local school districts as far as what they can teach in their schools; and, what recourse do these State and local districts as well as parents have if they disagree with the Common Core standards?

Mr. Duncan: The Common Core Standards Initiative is a State-led effort that established a single set of rigorous educational standards for students in grades K-12 in English language arts and mathematics. The standards describe what students should know and be able to do in order to be prepared for college and a career, but they do not prescribe the curricula that States and school districts adopt. Educational standards provide teachers, leaders, and parents with the skills and knowledge that students need to successfully achieve at each grade level; they are not the same as curricula, which is the learning materials and the means by which teachers help their students meet the State standards. Curricula will continue to be developed and driven at the State and district levels and parents and stakeholders should have an opportunity to engage in that process.

The Administration does not currently require States to adopt any particular set of standards and we do not propose to require States to adopt any particular set of standards. The adoption of State standards continues to be a State decision. Current law requires States to develop and adopt challenging standards. Our Elementary and Secondary School Act (ESEA) proposal for reauthorization and ESEA flexibility require all States to adopt standards in English and mathematics that ensure all students will graduate high school college- and career-ready. Under our reauthorization proposal and under ESEA

flexibility, States may adopt standards that are common to a significant number of States or they may adopt standards that have been approved and certified by a State network of institutions of higher education. States also have the option of adding additional standards that reflect specific State priorities.

### PRESCHOOL FOR ALL

Mr. Harris: As discussed during the Subcommittee hearing, please provide the scientific studies which were relevant to the Administration's decision to provide Preschool for All and that validate Pre-K for 4-year-olds has a life-long benefit.

The collective body of evidence is compelling — that there are significant, long-term effects of high-quality preschool. The best studies showing the lifelong effects of early childhood education are based on the Perry Preschool<sup>[1]</sup> and the Abecedarian Project<sup>[2]</sup>, both of which were multiyear interventions (though the first cohort of Perry children attended for just 1 year). These randomized studies clearly show the benefits of preschool, but they were targeted interventions conducted on small samples.

However, the Chicago Longitudinal Study followed a cohort of 989 children who attended a publicly funded early childhood program (the Chicago Child-Parent centers) for either 1 or 2 years. These children showed (relative to peers matched on age, family and neighborhood poverty, and participation in government programs) higher rates of high school completion (49.7% vs. 38.5%), more years of completed education (10.6 years vs. 10.2 years), lower rates of school dropout (46.7% vs. 55.0%), lower rates of juvenile arrest (16.9% vs. 25.1%), and lower rates of violent arrest (9.0% vs. 15.3%).<sup>[3]</sup> Additionally, an analysis of the program's effects from kindergarten through sixth grade on achievement, grade retention, and special education placement found that children who had attended preschool for 1 or 2 years consistently outperformed comparison children on all of these indicators, and further, that most effects (with the exception of special education placement and kindergarten achievement) were not different for children who had 1 versus those who had 2 years of preschool.<sup>[4]</sup>

[1] Heckman, J. J., Moon, S. H., Pinto, R., Savelyev, P. A., Yavitz, A. (2009). The rate of return to the High/Scope Perry Preschool Program. *National Bureau of Economic Research Working Paper 15471*.; Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). Lifetime effects: The High/Scope Perry Preschool study through age 40. *Monographs of the High/Scope Educational Research Foundation*, 14. Ypsilanti, MI: High/Scope Educational Research Foundation.

[2] Campbell, F.A., Pungello, E. P., Burchinal, M., Kainz, K., Pan, Y.; Wasik, B.H., Barbarin, O.A., Sparling, J.J., & Ramey, C.T. (2012) Adult outcomes as a function of an early childhood educational program: An Abecedarian Project follow-up. *Developmental Psychology*, 48(4), 1033-1043.

[3] Reynolds, A. J., Temple, J. A., Robertson, D. L., & Mann, E. A. (2002). Age 21 cost-benefit analysis of the Title I Chicago Child-Parent Centers. (2002). *Educational Evaluation and Policy Analysis*, 24(4 24-267-303), 264-303.; Reynolds, A.J., Temple, J.A., Robertson, D.L., Mann, E. (2001). Long term effects of an early childhood

intervention on educational achievement and juvenile arrest. *Journal of the American Medical Association*, 285 (18).; Reynolds, A. J., Temple, J. A., White, B. A. B., Ou, S., & Robertson, D. L. (2011). Age 26 cost-benefit analysis of the Child-Parent Center early education program. *Child Development*, 82(1), 379-404.

[4] Reynolds, A. J. (1995). One year of preschool intervention or two: Does it matter? *Early Childhood Research Quarterly*, 10, 1-31.

### **D.C. OPPORTUNITY SCHOLARSHIP PROGRAM**

Mr. Harris: Please provide the amount of carryover funds in the D.C. Opportunity Scholarship Program account and an explanation as to why these funds have not been allocated.

Mr. Duncan: The amount of funds for scholarships carried into fiscal year 2013 for which costs have not yet been incurred total \$17 million (the fiscal year 2013 appropriation includes another \$17 million for scholarships). The balance exists because the appropriation for the program regularly exceeds the cost of scholarships, leading to a large cumulative surplus.

Additionally, also from funds appropriated before fiscal year 2013, there is a balance of \$1 million reserved for evaluation. This amount remains primarily because the largest evaluation costs are associated with assessments of which the Department is about to begin year 1 testing for students assigned last year to the treatment and control groups.

### **PELL GRANT PROGRAM COSTS AND RECIPIENTS**

Ms. DeLauro: For the discretionary part of the Pell Grant program, what were the annual total program costs and number of recipients for each of award years (AY) 2006/07-2011/12, and what are your current cost estimates for AYs 2012/13- 2013/14?

Mr. Duncan: Discretionary program costs and the total number of recipients for award years 2006-07 through 2013-14 (estimated) are included in the table below:

<b>Award Year</b>	<b>Discretionary Cost (\$ in millions)</b>	<b>Recipients</b>
2006-07	\$12,833	5,161,450
2007-08	\$14,700	5,541,881
2008-09	\$16,060	6,155,277
2009-10	\$26,853	8,089,083
2010-11	\$30,563	9,305,091
2011-12	\$28,769	9,438,939
2012-13 (est.)	\$28,272	8,965,000
2013-14 (est.)	\$28,264	9,305,091

## **RECENT TREND IN PELL GRANT PROGRAM COSTS**

Ms. DeLauro: I understand that while Pell Grant costs grew rapidly between 2008/09 and 2010/11, that growth has now stopped and costs have actually decreased. What factors do you believe led to those recent cost decreases?

Mr. Duncan: Several factors have impacted the cost decreases seen recently in the Pell Grant program. The two Pell provision was eliminated in award year 2011-12, in part to rein in costs of the overall Pell program. For instance, this provision alone cost an estimated \$2.1 billion in the 2010-11 award year.

Subsequent to this, three program eligibility changes were also made to address cost concerns: the auto-zero expected family contribution threshold was decreased, the ability to benefit provision was eliminated, and the lifetime Pell eligibility was reduced from 18 semesters to 12 semesters. These changes became effective in award year 2012-13.

Besides these programmatic changes, FAFSA Free Application for Federal Student Aid— application submissions for award year 2012-13 have decreased 0.8 percent from the prior year. This leveling of Title IV participation is linked to the improving economy.

## **PELL GRANT PROGRAM CHANGES RESULTING FROM CCRAA ENACTMENT**

Ms. DeLauro: The committee report accompanying the House-passed budget resolution for fiscal year 2014 (H.Con.Res. 25; House Report 113-017) makes several recommendations for changes to the Pell Grant program. One of those recommendations is repeal of revisions to the needs analysis formula enacted in the College Cost Reduction and Access Act of 2007 (CCRAA). What revisions to the needs analysis were made by the CCRAA and what was their purpose?

Mr. Duncan: The College Cost Reduction and Access Act of 2007 (CCRAA) made several changes to the Pell Grant program. The CCRAA:

- increased the expected family contribution (EFC) auto-zero amount from \$20,000 to \$30,000 (and indexed it to inflation);
- raised the Income Protection Allowance, which is the amount of income withheld from the EFC calculation; and,
- removed several types of income from consideration, including the Earned Income Tax Credit, additional child tax credit, Temporary Assistance for Needy Families, and Social Security benefits received.

As stated in the House Education and the Workforce's committee report at the time of its passage, the purpose of these changes was to increase student eligibility for Federal student financial aid. We believe it was effective at doing that, as, collectively,

these changes to the Pell Grant program were one of the contributing factors to the program's increase in program costs from 2008 until recently.

### **EFFECT ON PELL GRANT PROGRAM IF CCRAA IS REPEALED**

Ms. DeLauro: What would be the effect of returning to the pre-CCRAA need analysis rules? To the extent possible, please provide an estimate of the number of students that would be likely to lose eligibility for Pell Grants under this recommendation and the number that would be likely to have their grant reduced, along with the estimated average reduction in grant amounts for both groups.

Mr. Duncan: Rolling back the CCRAA need analysis changes would eliminate approximately 480,000 recipients from the Pell Grant program in the 2014-15 award year. Those students would lose an average of about \$1,400. Additionally, 3,360,000 recipients would have their award reduced by an average of \$720. The total effect of this policy change would equate to an estimated \$3.087 billion less in Pell aid in award year 2014-15.

### **LESS-THAN-HALF-TIME STUDENTS AND PELL GRANT PROGRAM PARTICIPATION**

Ms. DeLauro: A second recommendation made by the committee report on the House budget resolution is to eliminate Pell Grant eligibility for students attending school less than half time. What would be the effect of that change? To the extent possible, please provide an estimate of the number of students that would be likely to lose eligibility.

Mr. Duncan: Under this proposal, approximately 134,000 Pell recipients would lose their grants in the 2014-15 award year. The average loss of grant funds would be \$985.

### **DISTANCE LEARNING AND FEDERAL STUDENT AID**

Ms. DeLauro: In her testimony to our subcommittee last month, Inspector General Kathleen Tighe described concerns about fraud in connection with Federal student aid for students in distance learning programs. Do you believe those concerns are valid and, if so, what steps is your Department taking to address them?

Mr. Duncan: Absolutely, I agree that fraud in any of the Department's programs is concerning. We want to ensure the timely, efficient, and fair delivery of financial aid, and be good stewards of Federal funds. Negotiated rulemaking sessions on this topic, which began shortly after the Office of Inspector General issued their report on fraud in distance education in late 2011, are continuing. These sessions are seeking input from the public specifically on fraud in distance education, as well as generally preventing fraud and otherwise ensuring proper use of Title IV Federal Student Aid program funds, especially within the context of current technologies.

## **LOAN REHABILITATION**

Ms. DeLauro: The FY 2014 President's Budget includes a proposal to modify the payments received by student loan guaranty agencies when FFEL loans are rehabilitated, and to use the resulting savings to reduce future-year shortfalls in the Pell Grant program. Please explain how the current system of payment for loan rehabilitation works, how the Administration proposes to change that system, and the rationale for the change.

Mr. Duncan: As part of the FY 2014 President's Budget, the Department has proposed to reform the way guaranty agencies receive collection fees from rehabilitated student loans. Specifically, this proposal would reduce the collection fee guaranty agencies charge students for rehabilitated FFEL loans from 18.5 percent of the original loan balance to 16 percent; and, require the guaranty agencies to return 100 percent of the Federal default insurance payment it received from the Department when the borrower of a rehabilitated loan originally defaulted on such a loan.

Adopting this reform makes sense for a number of reasons. First, it will save both borrowers and taxpayers money. Rehabilitated loan borrowers, who are currently charged an 18.5 percent collection fee which gets added to the principal balance of their loan, would now need to pay only a 16 percent collection fee, reducing the total amount they need to repay. These already at-risk borrowers do not need to be burdened with unnecessarily high fees, and should be helped - not hurt - by the very rehabilitation policies designed to benefit them. If this policy had been in effect in 2012, an estimated 355,000 borrowers could have benefited from these reduced fees. Meanwhile, this policy is estimated to save the Federal Government \$3.7 billion in fiscal year 2014.

Second, this is a commonsense change that will make guaranty agencies' compensation more in line with comparable market rate collection fees they receive on other collection activity, as well as what the Department pays its private contractors for Direct Loan rehabilitations.

## **PARENT PLUS LOAN POLICY CHANGES**

Ms. DeLauro: I have heard concerns from some of my colleagues about a change made last year in the Department's credit policies that appears to have led to an increased number of denials of applications for parent PLUS loans. What changes did the Department make in its credit policies for PLUS loans and what was the reason for those changes?

Mr. Duncan: As part of our commitment to integrity in the financial aid programs, as well as the proper delivery of taxpayer funds, the Department made changes to the PLUS loan program, effective October 2011, to strengthen the credit check process for these loans. These changes were announced at the 2010 and 2011 Federal Student Aid Conferences. The Department has also communicated with institutions about the change and continues to reach out to them and provide technical assistance.

Under provisions of the Higher Education Act of 1965 as amended (HEA), applicants for PLUS loans are not eligible if they have an adverse credit history, as defined in regulation 34 CFR 685.200(c)(1)(vii), including any debt that is 90 or more days past due. In order to ensure consistency among Federal programs and to strengthen the integrity of the PLUS loan programs, the Department implemented a more rigorous credit check which considers debts in collection (unpaid debts referred to a collection agency) and debts which have been charged-off (debts deemed uncollectable by a reporting firm and subsequently written off). Our latest data estimates that despite this change, approximately 80 percent of students whose parents were denied a PLUS loan ultimately enrolled in school.

### **PARENT PLUS LOANS**

Ms. DeLauro: What do you believe has been the effect of the availability of parent PLUS loans and other student loans, and what steps, if any, has the Department taken to mitigate any adverse effects?

Mr. Duncan: On April 21, 2013, the Department's Federal Student Aid office began contacting certain Direct PLUS applicants who have been denied a PLUS loan because of an adverse credit history. Applicants who are contacted have been selected because it is believed they will be likely approved if they request reconsideration of the initial denial. The reconsideration process is a standard feature of the PLUS loan application process for applicants denied on the basis of adverse credit. Reconsideration also allows an applicant to provide evidence of an incorrect credit report, and/or to present an extenuating circumstance relevant to the applicant that would warrant reconsideration of the denial. The total reconsideration process takes only a few minutes, and the Department's communication explains to applicants how to initiate this process.

### **TRIO AND MCNAIR POSTBACCALAUREATE PROGRAMS**

Ms. Lee: Last year, the Department of Education shifted \$10 million away from the McNair Postbaccalaureate program into another TRIO Program – Upward Bound Math-Science. As a result, 42 institutions lost their McNair programs during the grant competition, including more than half of the programs in California.

I did not see this change reflected in the fiscal year 2014 budget request; is it the intent of the Secretary to make such a transfer again in fiscal year 2014; and, are there any other Federal programs that fulfill the mission of the McNair program – in terms of preparing underserved students for PhDs?

Mr. Duncan: Under the President's budget request for TRIO in fiscal year 2014, the Department plans to maintain support for all McNair projects that were successful in the 2012 competition. Specifically, we plan to make 151 continuation awards totaling approximately \$36 million.

The McNair program is the only Department of Education program that supports projects that provide intensive support services designed to assist low-income and first generation college students to prepare for, and succeed in, doctoral programs.

### COMMUNITY COLLEGES

Ms. Lee: This Administration has placed a strong emphasis on community colleges – and I think we all agree that community colleges are very important in ensuring college affordability. For many students community colleges are the only option.

In California, which has the Nation's largest public higher education system, the community colleges have lost so many teachers and classes that students are being turned away. In fact, the number of courses available has fallen by around 20 percent since 2008.

With the strong push to have more students enrolled in community colleges, are there initiatives that the Department is proposing, or currently implementing, that would address the need to build capacity in community colleges?

Mr. Duncan: The Administration believes that, in order to meet the President's goal for the Nation to lead the world in college attainment, we need to invest in comprehensive reforms and a number of different programs and strategies to improve college access, affordability, and quality. Since about 59 percent of all Title IV degree-granting institutions are 2-year public institutions, addressing the needs of community colleges and building their capacity to effectively serve students must be part of any plan to achieve this goal. The President's fiscal year 2014 request includes the following proposals.

- \$1 billion for a new Race to the Top–College Affordability and Completion competition that would drive change in State higher education policies and practices. This initiative will be built on the success of the Race to the Top program that focused on both early education and K-12 education. With the funds requested for fiscal year 2014, the Department would support grants to States that can demonstrate the capacity and willingness to undertake reforms and innovations to improve college access, affordability, and quality, achieve better student outcomes, and increase institutional capacity to graduate more students from college with high-quality credentials.
- \$431 million in discretionary funding is requested for the Aid for Institutional Development programs authorized under Title III and \$109 million in discretionary funding is requested for the Hispanic-Serving Institutions programs authorized under Title V of the Higher Education Act, as amended (HEA). In addition, \$278 million is available in mandatory funding in fiscal year 2014 for programs authorized under Section 371, Section 897, and Section 898 of the HEA. Many of the institutions supported under these programs are two-year

institutions that serve high percentages of minority students and students from low-income backgrounds and that face challenges that threaten their continued operation and ability to provide a high-quality education. Grants awarded under these programs may be used for institutional capacity-building activities such as upgrades and renovations to academic facilities, classrooms, teaching labs, and student labs; and support for development and improvement of academic programs, faculty development, and funds and administrative management.

- In addition, the Administration is seeking \$4 billion in mandatory funds, beginning in fiscal year 2015, for a Community College to Career Fund that would support community college-based training programs and other activities that help prepare workers for jobs in high-growth and high-demand sectors. For example, funds could be used to (1) identify pressing workforce needs and develop solutions such as standardizing industry certifications, development of new training technologies, and competency-based assessments that can give credit for prior learning and accelerate time to credential; (2) expand work-based training and other “earn and learn” opportunities that allow students to earn credit while gaining relevant employment experience in a high-wage, high-skill field; and (3) promote the availability of and access to data on student outcomes, including employment and earnings, by program of study.

### **HBCU WHITE HOUSE INITIATIVE**

Ms. Lee: I applaud the President's Executive Order for Historically Black Colleges and Universities (HBCUs). Please describe for the committee the most notable successes that have resulted through the implementation of this Order?

Mr. Duncan: One of the primary purposes of the President's Executive Order was to renew the White House Initiative on Historically Black Colleges and Universities (Initiative) which is housed in the Department of Education. It is the Initiative that is charged with leading the Administration's work to promote partnerships among Federal agencies, as well as with other public and private organizations, to strengthen the capacity of HBCUs to provide the highest quality education to a greater number of students. The Initiative is also responsible for improving the availability, dissemination, and quality of information concerning HBCUs to inform public policy and practice; sharing administrative and programmatic practices within the HBCU community for the benefit of all; and exploring new ways of improving the relationship between the Federal Government and HBCUs. The Initiative has also collaborated with the President's Board of Advisors on HBCUs to advise our Department and his Administration on strategies to strengthen the educational capacity of HBCUs. In accordance with the Executive Order, the Initiative has led an interagency effort to annually assess the performance of Federal agencies in increasing the participation of HBCUs in Federal programs and initiatives. In addition, the Initiative has done extensive outreach to outside communities, including the academic, business, and philanthropic communities, to promote their involvement in improving the capacity of HBCUs.

## FUNDING LEVELS FOR HBCU WHITE HOUSE INITIATIVE PROGRAMS

Ms. Lee: Please also provide an analysis and agency summary of agency funding levels for fiscal years 2010, 2011, 2012 and 2013 of all HBCU programs covered by the Executive Order, noting the percentage of increase or decline in each account.

Mr. Duncan: The President's fiscal year 2010 Annual Report on the Participation of HBCUs in Federal Programs, which is expected to be posted on the Department's website later this year, will provide detailed information on funding for HBCUs from all Federal agencies. White House Initiative staff members are in the process of preparing the report for 2011 and have not yet collected the relevant funding information from all Federal agencies on 2012 spending. Since information on support to HBCUs from all Federal agencies is not available, we are providing a table that shows how much support has been provided to HBCUs for fiscal years 2010-2013 from Department of Education programs.

### Department of Education Support for Historically Black Colleges and Universities— FY 2010-2013

Type of Funding	FY 2010	FY 2011	FY 2012	FY 2013 Estimate
Federal Student Aid (FSA)	\$3.3 billion <sup>1</sup>	\$3.6 billion	\$3.7 billion <sup>1</sup>	Not available
Discretionary and Non-FSA Mandatory	\$750.5 million	\$705.9 million	\$686.2 million	\$582.9 million <sup>2</sup>

<sup>1</sup> Source: FSA Data Center

<sup>2</sup> Includes funding from programs authorized by Title III of the HEA and direct appropriations for Howard University. Does not include potential funding from other ED programs awarded competitively.

### HBCU WHITE HOUSE INITIATIVE FY 2014 PRIORITIES

Ms. Lee: What are the HBCU White House Initiative's top priorities for fiscal year 2014?

Mr. Duncan: In fiscal year 2014, the Initiative will continue to coordinate with the HBCU Board of Advisors; assist the Department as liaison between the executive branch and HBCUs; and work with Federal agencies as well as other public and private partners to strengthen the capacity of HBCUs, which we regard as central to meeting the President's goal on college attainment.



TUESDAY, APRIL 16, 2013.

## **BUDGET HEARING—DEPARTMENT OF LABOR**

### **WITNESS**

**HON. SETH D. HARRIS, ACTING SECRETARY, DEPUTY SECRETARY, DEPARTMENT OF LABOR**

### **INTRODUCTION OF WITNESSES**

Mr. KINGSTON. But I think we will go ahead and start, and let me just welcome you, and I will—we have talked privately, and certainly, there are some differences of what we have of where the administration is going on some things, and we will ask those questions. But I will submit most of my comments for the record and yield to my friend Rosa DeLauro.

### **RANKING MEMBER'S OPENING REMARKS**

Ms. DELAURO. Thank you very much, Mr. Chairman.

And Mr. Secretary, thank you for joining us today.

We are here today to talk about the budget for the Labor Department, an agency that carries out critical missions for working families from job training to workplace safety. So it is unfortunate that we have seen so many budget cuts for this agency in recent years. And I would have hoped that the President's budget would have provided more resources, more than roughly level funding for the Department of Labor, given its centrality to creating jobs and to rebuilding our economy.

But the largest part of the department's budget goes for job training, and there is no doubt that we need for there to be investment there. The future of the economy lies in jobs that require knowledge and skills and those that also offer the best chance for decent and livable wages and benefits.

As the economy recovers and grows, we need to be sure that companies can find workers with the skills and the credentials they need and that the workers have access to the education and training needed to fill those jobs. This is what job training programs do.

In my State, the WorkPlace, led by Joe Carbone, has taken advantage of these Department of Labor programs to help long-term unemployed residents find better, richer, and more fulfilling employment. Joe has now launched Platform to Employment, a public-private partnership, to help the long-term unemployed all across Connecticut gain skills and go back to work. It is now expanding to 10 cities and could be enhanced with Workforce Investment Act dollars.

This type of training and a broad array of other workforce investment initiatives not only helps to put workers back on the job, it

grows the economy. But despite the obvious need, Federal support for job training has actually gone down over the years.

Between 2002 and 2012, appropriations for these Labor Department programs decreased by \$749,000,000. Adjusted for inflation and population growth, that is a 30 percent reduction, and sequestration has added more than \$250,000,000 in additional cuts.

To compound these deep cuts, the House majority recently passed the so-called SKILLS Act, which would freeze investment in this area for 7 years. It would also adopt a one-size-fits-all approach by collapsing all existing programs into a single workforce investment fund, thus endangering important services for women, youth, disabled workers, the elderly, and veterans.

To make matters worse, the budget put forward by Chairman Ryan assumes this consolidation, and it keeps sequestration levels in effect. The National Skills Coalition has said that nearly 2 million individuals would lose access to employment and training programs as a result.

Clearly, the President's budget request before us today does move us in a better direction. I am pleased to see the proposal to increase veterans job training services by almost \$100,000,000. After our brave men and women have served this Nation, the least we can do is to ensure that they have the opportunity for a good career when they come home.

I also applaud the additional resources proposed for the Job Corps. All across the country, Job Corps centers provide critical support for young people to prepare for the job market and acquire the technical and vocational education that will help them to achieve their dreams.

With that in mind, I am pleased that the student enrollment freeze is being lifted and that we were able to get this program some much-needed transfer authority in the continuing resolution. I will continue to work with the department to put Job Corps on a sounder footing and moving forward.

#### NATION'S BASIC LABOR STANDARDS

Another important mission of the Labor Department is enforcing our Nation's basic labor standards. Wage and hour laws, for example, still have a very important role in preserving at least a minimal standard of living for people who work hard.

A recent survey of workers in low-wage industries in New York, Chicago, and Los Angeles found that 26 percent were paid less than the minimum wage and that overtime violations were widespread. So I am glad that the President's budget includes additional funding for enforcement of wage and hour and family medical leave laws.

Occupational safety and health laws are vital to trying to make sure that people's jobs do not threaten their lives or their health. A great deal of progress has been made since OSHA was created in 1970, but we still have a long way to go. In 2011, 4,609 workers were killed on the job, and there were 3.8 million reported workplace injuries and illnesses.

The President's budget includes at least a minimal, but important increase of 1 percent for OSHA and 2 percent for MSHA to better protect our workers. I am concerned, however, that those

dollars may not be enough. There is a great deal that needs to be done for mine safety and occupational safety.

While there is much to support in this budget, I do want to mention two particularly troubling aspects—to cut the Women's Bureau and the elimination of Women in Apprenticeship programs. Both these programs continue to serve important functions. They improve the work environment and opportunities for women. I hope that they can be maintained in their current form.

In any case, we have much to discuss today. The work that this department does is vital to strengthening and protecting our Nation's workers and to maintaining a strong middle class.

We thank you for joining us. I look forward to talking with you about how we can best create a budget that expands opportunities for people to succeed in today's economy and provides for an economically secure and safe workforce.

Thank you, Mr. Chairman.

MR. KINGSTON. Mr. Secretary.

#### ACTING SECRETARY OF DEPARTMENT OF LABOR

Mr. HARRIS. Thank you very much, Mr. Chairman.

Before I begin, let me say on behalf of all 17,000 employees of the U.S. Department of Labor that our thoughts are with the victims of yesterday's horrible, hateful attack at the Boston Marathon. And while our heads and hands will be dedicated to the mission of the Labor Department today, like every day, our hearts are going to be with the people of Boston.

With that, Mr. Chairman and Ranking Member DeLauro, members of the subcommittee, thank you so much for the invitation to testify about the President's fiscal year 2014 budget request for the U.S. Department of Labor. In his State of the Union address just over a month ago—or over 2 months ago. President Obama talked about his central goal, a thriving middle class with ladders of opportunity for everyone willing to work hard and lift themselves up.

He posed three questions that he said should guide all of our decision-making. First, how do we make America a magnet for jobs? Second, how we do equip U.S. workers with the skills to succeed in those jobs? And third, how do we make sure that workers earn a decent living from an honest day's work?

The Labor Department in our fiscal year 2014 budget proposal will play a critical role in answering each of those questions. This budget proposal would make investments to grow our economy, create jobs, and strengthen the middle class while contributing to a balanced approach to deficit reduction.

For those willing to work hard and play by the rules, it provides support to develop the skills they need to find good jobs with income security in fair, safe workplaces, and it does so while allocating resources responsibly.

As outlined in my written testimony, our budget makes smart, responsible investments in four main areas. First, turning our unemployment system into a reemployment system, with investments in reemployment assessments and services and a Reemployment Now initiative that will allow States to connect people receiving emergency unemployment compensation with job opportunities.

Second, building the skills of American workers with investments in innovation and evidence-based strategies for training and a new Universal Displaced Worker Program, which combines the best of two existing programs to accelerate the delivery of training and employment services to workers who lose their jobs through no fault of their own.

Third, helping veterans to find civilian jobs, with an increase of roughly \$100,000,000 more to improve employment services for those who have served our country so selflessly and courageously.

And fourth, protecting American workers and their benefits with important increases to bolster workplace safety enforcement and wage and hour overtime protection.

The economy has improved demonstrably in recent years. We have come a long way from the depths of the great recession, but our economy has not yet unleashed its full potential. The Federal Government, and the Labor Department in particular, has a critical role to play in catalyzing further growth and job creation and helping to build an economy that grows from the middle class out.

Our budget does exactly that, even as it also streamlines existing programs and recognizing that we must govern more efficiently. The President believes and his budget demonstrates that we don't need to choose between job creation and long-term deficit reduction. That is a false tradeoff. We can and must have both.

The Labor Department celebrates its centennial this year. For 100 years, through countless crises and economic transitions, we have risen to the challenge of empowering American workers and strengthening the U.S. economy. As we begin our second century, we are eager to cooperate with the members of this subcommittee and the Congress as a whole so that we may continue that important work.

Once again, thank you so much for the opportunity to testify, and I look forward to your questions.

[The prepared statement and biography of Seth Harris, Acting Secretary of Labor, follows:]

**STATEMENT OF SETH D. HARRIS  
ACTING SECRETARY OF LABOR  
BEFORE THE  
SUBCOMMITTEE ON LABOR,  
HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**April 16, 2013**

Chairman Kingston, Ranking Member DeLauro and members of the Subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to appear before you to discuss the Fiscal Year (FY) 2014 budget request for the Department of Labor.

The President's FY 2014 budget proposal invests in the things we need to grow our economy, create jobs and strengthen the middle class while further reducing the deficit in a balanced way. The Labor Department budget request ensures ladders of opportunity for Americans striving to enter and stay in the middle class. For those willing to work hard and play by the rules, it provides support to develop the skills they need to find good jobs with income security in fair, safe workplaces. It is possible – and, in fact, imperative – that we make these investments at the same time that we allocate resources responsibly and make tough choices to live within our means.

The economic situation has improved substantially, but we have a great deal more to do if our economy is to reach its full potential, particularly in relation to jobs. While the worst may be behind us, we are not out of the woods yet. The federal government, and the Labor Department in particular, has a critical role to play in catalyzing further growth and job creation by equipping workers and job seekers with the skills they need to succeed in a 21<sup>st</sup> century economy. The budget request protects key priorities, enhances our capacity in key areas, and streamlines existing programs while recognizing that we must govern more efficiently.

As outlined in the testimony, this budget invests in the future by working to make good jobs available for all American workers in a fiscally responsible manner through:

- Turning our Unemployment System into a Reemployment System,
- Building the Skills of American Workers
- Helping Veterans Find Civilian Jobs to, and
- Protecting American Workers and Their Benefits

**TURNING OUR UNEMPLOYMENT SYSTEM INTO A REEMPLOYMENT SYSTEM**

As we work to strengthen and rebuild our economy from the worst economic downturn since the Great Depression, it is critical to provide a helping hand and a viable path back to work for those who have had their lives disrupted by unemployment. The FY 2014 Budget proposes a set of aggressive strategies to reduce long-term unemployment and speed reemployment:

- **Universal Displaced Worker program.** The FY 2014 budget proposes a new Universal Displaced Worker program that will reach more than a million workers a year with a set of core services, replacing two more narrowly-targeted programs (Trade Adjustment Assistance and WIA Dislocated Workers) and ensuring that all dislocated workers receive high-quality job search assistance.
- **Reemployment Services.** To help workers receiving Unemployment Insurance (UI) get the assistance they need to find work, the budget proposes an additional \$30 million for the Employment Service Grants to States to fund reemployment services for UI claimants who are likely to exhaust their benefits. Employment services create a more efficient labor exchange that connects workers supply and job demand within local and regional economies.
- **Reemployment and Eligibility Assessments.** The Department will invest in research-proven methods by devoting \$80 million for Reemployment and Eligibility Assessments that review beneficiaries' efforts to find new employment, refer them to reemployment services or training, and provide labor market information in their job search. These services are projected to save the state accounts in the Federal Unemployment Trust Fund an estimated \$315 million by helping beneficiaries find jobs more quickly and eliminating payments to ineligible individuals.
- **Reemployment NOW.** Continuing efforts focused on helping the long-term unemployed get back to work, the Budget includes a legislative proposal for a \$4 billion Reemployment NOW program. States will receive flexible funding to implement a menu of innovative reemployment initiatives and design, develop, and implement their own strategies to help UI claimants and other long-term unemployed individuals get back to work more quickly.
- **Pathways Back to Work Fund.** Many Americans of all ages need further education and training and better access to job opportunities in order to succeed in today's economy. Building on successful Recovery Act programs that provided employment opportunities for the long-term unemployed and low-income adults and youths, the Budget includes a legislative proposal for a \$12.5 billion Pathways Back to Work Fund to make it easier for workers to gain new skills for long-term employment. This initiative will support various promising strategies designed to lead to employment for low-income youth and adults.
- **Unemployment Insurance.** The combination of chronically underfunded reserves and the economic downturn has placed a considerable financial strain on States' UI operations. The Department's FY 2014 budget request continues our commitment to strengthening the UI safety net by helping unemployed workers return to work as swiftly as possible while putting the UI system back on the path to solvency and financial integrity. The request continues the Administration's aggressive actions to help States combat improper payments in their UI programs with several additional proposals. Specifically, we provide funds for the recently established UI Integrity Center of Excellence and mandate State participation in the Treasury Offset Program, State

Information Data Exchange System, and the Prisoner Update Processing System. In addition, the Budget proposes legislative reforms to put state UI systems on the path to solvency.

### **BUILDING THE SKILLS OF AMERICAN WORKERS**

As job requirements change, training and employment programs must innovate and adapt to help American workers acquire needed skills for the increasingly knowledge-based economy. The following proposals will help strengthen American economic security by investing in innovation and skills for the American workforce:

- **Training and Employment Services.** The Budget continues the Department's commitment to those who are most vulnerable to economic distress. In 2014, it will be critical to continue to provide unemployed job seekers and underemployed workers the services they need to find new jobs. The recession was especially tough on disadvantaged and low-skilled adults, whose immediate employment and training needs must be addressed to prevent them from slipping further out of the middle class. An increase in the Workforce Investment Act set-aside for statewide activities to 7.5 percent from 5 percent will allow governors to increase oversight and accountability activities and help improve performance in targeted local areas. The Budget fully funds this in order to protect funding for locally provided services.
- **Disability Employment.** There are significant disparities between the labor market outcomes of people with and without disabilities. The FY 2014 Budget proposes \$42 million for the Office of Disability Employment Policy (ODEP). This includes \$5 million for a new Pathway to Careers Demonstration Project to evaluate the use of coordinated service delivery strategies that increase the number of youth and young adults with disabilities who enter community colleges and complete career and technical programs that provide industry recognized credentials. Also included is an increase of \$1 million to implement the Integrated Employment Policy Change Initiative, which will increase the capacity of federal staff, service providers, and states to implement integrated employment practices. These increases are fully offset by reallocating funds from the Disability Employment Initiative, which will have a minimal impact on the program.
- **Workforce Innovation Fund.** The workforce system is more important now than ever, but we need to make it more efficient, streamlined, and targeted to serve our growing customer base. To ensure that our investments in employment and training are focused on reform, the budget request provides \$150 million for a competitive Workforce Innovation Fund (WIF). The WIF helps States, regions, and localities to test and implement new and evidence-based strategies, with an emphasis on ideas that entail cross-program collaboration and bold systemic reforms. Of this funding, the Budget sets aside \$50 million to test approaches to help veterans and their families, as discussed further below; and \$10 million on strategies targeting disconnected youth.
- **American Job Centers.** The system of American Job Centers is the core delivery system for employment and training services. To strengthen this system, the Budget includes additional funds to promote co-location of services and programs, create better

online tools that offer convenient, personalized services, and increase public awareness and use of the American Job Center network.

- **Community College to Career Fund.** Community colleges play a unique role in creating a flexible, highly-skilled 21st-century workforce to help businesses meet the specific emerging needs in their regions. The Budget includes a legislative proposal for an \$8 billion fund administered by the Departments of Labor and Education to provide funding for community colleges, states, and the public workforce system to partner with businesses to train workers in a range of high-growth and in-demand areas, such as health care, transportation, and advanced manufacturing.
- **Builds Knowledge About What Works to Increase Employment for Ex-Offenders.** The Budget devotes \$50 million to test and replicate innovative and evidence-based strategies for young ex-offenders. In particular, the Budget seeks to test if non-violent youth will reap the same benefits from the Youth Challenge program that other at-risk youth do – such as higher rates of employment, high school or GED completion, and earning college credit. To further spur innovation and direct funding to effective programs, the Budget also dedicates \$10 million to Pay for Success programs designed to improve employment and reduce recidivism among ex-offenders.

### PUTTING VETERANS BACK TO WORK

Each year, the U.S. military discharges approximately 160,000 active duty service members and 110,000 Reserve and National Guard service members. The unemployment rate for these recently discharged veterans is much too high – we must ensure that they have access to the job opportunities that they have earned. Through the Veterans' Employment and Training Service (VETS), the Department of Labor helps service members and their spouses make the initial transition from military service to the civilian labor force by providing resources and expertise to assist and prepare them to obtain meaningful careers, maximize their employment opportunities and protect their employment rights. Our FY 2014 request provides improved reemployment services to newly separated veterans and focuses resources on veterans with disabilities or other significant barriers to employment. Some key investments in this area are:

- **Veterans' Employment and Training.** The Budget contains significant expansion of services to veterans totaling nearly \$351 million across two DOL agencies. Over the past 18 months, the President has announced a series of actions to combat the high levels of veterans' unemployment and to provide greater support for service members seeking to transition to civilian education and employment. Our request addresses the employment needs of veterans, improves employment services for their families, focuses resources on veterans with disabilities or other significant barriers to employment, and provides improved re-employment services that enable individuals newly separated from the military to successfully transition into civilian careers. The Budget includes \$14 million to ensure that our Transition Assistance Program (TAP) meets the estimated demand of our Nation's transitioning service members. We are also requesting an increase of \$38 million for additional Disabled Veterans' Outreach Program specialists to enhance

services to transitioning service members, wounded warriors and the spouses and family caregivers of the wounded warriors.

**Workforce Innovation Fund.** As mentioned earlier, \$50 million of WIF funding will be devoted to strategies targeting veterans, family members of active duty personnel, and members of the National Guard and Reserves. Examples of the type of innovative practices that might be supported by these grants include: closely assessing the gap between military training and experience and state licensure and other certification requirements and developing programs to provide early intervention to meet the employment needs of claimants in the Unemployment Compensation for Ex-Service members programs.

## PROTECTING AMERICAN WORKERS AND THEIR BENEFITS

Worker protection programs are crucial to protecting the health, safety, wages, working conditions, and retirement security of American workers, and it is essential that we take steps to bolster these protections to ensure that our workers are not permanently affected by economic distress. The Budget includes nearly \$1.8 billion for the Department's worker protection agencies, preserving recent investments in rebuilding our enforcement capacity and making strategic choices to ensure funding is used for the highest priority activities. Some of the highlights of our worker protection request include:

- **Employee Benefits Security.** To protect Americans' health and retirement benefits, the Department is requesting \$179 million for the Employee Benefits Security Administration. This money will protect more than 141 million workers, retirees, and their families who are covered by nearly 2.3 million health plans, a similar number of other welfare benefit plans, and nearly 701,000 private retirement plans, which all together hold combined estimated assets of \$7.1 trillion.
- **Mine Safety and Health.** The Mine Safety and Health Administration (MSHA) protects our miners from death, disease, and injuries. The \$381 million budget request for MSHA includes an increase of \$5.8 million for MSHA's Enforcement programs to enforce and promote mine safety and health laws. The request also includes an additional \$2.5 million to implement recommendations from the Internal Review conducted in the wake of the Upper Big Branch mine disaster.
- **Occupational Safety and Health.** The Occupational Safety and Health Administration (OSHA) must ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The Budget provides \$571 million for OSHA, allowing the agency to inspect hazardous workplaces and work with employers to help them understand and comply with safety and health standards. This includes an increase of \$5.9 million to bolster OSHA's enforcement of the many whistleblower laws that protect workers and others who face retaliation for reporting unsafe or unscrupulous practices.

- **Wage and Hour.** It is imperative that we maintain investments in the enforcement of key laws that protect our workers' wages and benefits. In FY 2014, the Department is requesting \$243 million for the Wage and Hour Division (WHD), including an increase of \$3.4 million for increased enforcement of the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA), two laws that provide important protections to workers, including women, who are struggling to balance work and family. Of this increase, \$2.5 million will be reallocated from the Department's Women's Bureau. The WHD request also provides an additional \$5.8 million to develop a new integrated enforcement and case management system. This would allow investigators to capture and use higher quality data, conduct more efficient and effective investigations, target compliance assistance and investigations, evaluate the effectiveness and impact of enforcement, and more easily share information and data with the public.
- **Employee Misclassification.** When workers are misclassified as independent contractors, they are deprived of minimum wage, overtime, unemployment insurance, and anti-discrimination protections to which they are legally entitled. Misclassification, together with the underreporting of cash income for those paid as independent contractors, also costs taxpayers money in lost funds for the Treasury, Social Security, Medicare, the state accounts in the Federal Unemployment Trust Funds, and State programs. The FY 2014 Budget proposes nearly \$14 million to combat misclassification, including \$10 million for grants to states to identify misclassification and recover unpaid taxes within the unemployment insurance system and \$3.8 million for the WHD to investigate misclassification.
- **Federal Contract Compliance.** Pay discrimination is a historically under-investigated personnel practice but a critical issue for women and minority workers -- according to the latest Census statistics, fulltime working women earn 77 cents for every dollar earned by men, and the gap is significantly more for women of color. The FY 2014 Budget requests \$108 million for the Office of Federal Contract Compliance Programs (OFCCP) and makes important investments -- including an increase of \$1.1 million to strengthen discrimination enforcement efforts -- to help ensure that women receive equal pay for equal work.
- **Defined Benefit Pension System.** The Budget proposes to strengthen the defined benefit pension system for the millions of Americans who rely on it by giving the board of the Pension Benefit Guaranty Corporation (PBGC) authority to adjust premiums to take into account the risks that different sponsors pose to their retirees and to the PBGC itself. This action will both encourage companies to fully fund their pension benefits and ensure the continued financial soundness of the PBGC. In order to ensure that these reforms are undertaken responsibly during challenging economic times, this proposal, estimated to save \$25 billion over the next decade, will require a year of study and public comment before any implementation and the gradual phasing-in of any premium increases.
- **State Paid Leave.** Too many American workers must make the painful choice between caring for their families and earning a paycheck they desperately need. While the FMLA allows many workers to take job-protected, unpaid time off, millions of families cannot

afford to take advantage of this unpaid leave. The Department's budget request includes a \$5 million proposal for a State Paid Leave Fund to provide technical assistance and support to states that are considering paid-leave programs.

In addition, the budget request includes legislative proposals to modernize two workers' compensation programs. Both reforms would produce Government-wide savings, and improve the operation of these programs for workers and families who suffer injuries and fatalities in the line of duty:

- **Federal Employees' Compensation Act (FECA)**: The 2014 Budget proposal incorporates longstanding Government Accountability Office, Congressional Budget Office, and Labor Inspector General recommendations to reform FECA. The proposal would amend FECA to establish a single benefit level, convert prospectively retirement-age beneficiaries to a retirement annuity-level benefit, establish an up-front waiting period for benefits for all beneficiaries, permit concurrent receipt of schedule awards and wage-loss compensation and expand assisted reemployment authority. It would also permit the Department of Labor to recapture the entire amount of compensation costs from responsible third parties, authorize the Department to cross-match FECA records with Social Security records to reduce improper payments, and make other changes to improve and update FECA. The reform legislation will also include a provision to allow the Department to add an administrative surcharge to the amount billed to Federal agencies for their FECA compensation costs, thereby shifting FECA administrative costs from the Department to Federal agencies in proportion to their usage. If enacted, the surcharge would not be applied until FY 2015 to give agencies an opportunity to plan for the change. This legislation is projected to save the Department more than \$460 million (and the entire government more than \$500 million) over 10-years.
- **Defense Base Act (DBA)**: The growth in Federal contractors working overseas has brought into sharp focus the need for a more efficient approach to the Defense Base Act. The budget proposes a new Government-wide fund to replace the patchwork of contract coverage now in effect under the DBA. Since 2002, the DBA caseload has increased by almost 2,600 percent, from 430 in 2002 to over 11,600 in 2011. The Department has experienced a number of administrative challenges in the wake of the increased workload. Over the past several years, we have been working closely with the Department of Defense, the Department of State, and the U.S Agency for International Development to reform and improve the operation of the program, and the proposal reflects the culmination of those collaborative efforts. The reform would replace the current DBA program with a new Government-wide self-insurance program that we're calling the Overseas Contractor Compensation program. The financing structure would be somewhat similar to FECA, with benefits paid directly from a Federal fund administered by the Department and agencies billed only for their share of benefits and administrative costs. This proposal would improve service to claimants and reduce the overall costs of the program.

#### ADDITIONAL PRIORITIES

The Bureau of Labor Statistics (BLS) produces some of the Nation's most sensitive and important economic data. The budget request of \$614 million includes \$1.6 million to add an annual supplement to the Current Population Survey that would collect information relevant to labor force trends, including data on contingent work and alternative work arrangements, workplace flexibility, and work-family balance. The BLS request also includes \$2.5 million to modify the Consumer Expenditure (CE) Surveys to support the Census Bureau in its development of a supplemental statistical poverty measure using CE data.

### FINDING BETTER AND MORE EFFICIENT APPROACHES

The budget balances some of these investments with responsible and reasonable cuts and a continued focus on increased efficiency and effectiveness. In some cases, that means making difficult choices on funding reductions and realignments that will put America on a more sustainable fiscal course. Consistent with Administration-wide efforts to improve efficiency and find savings, the Department's budget proposes to streamline operations by:

- **Modernizing the delivery of training and employment services.** The Administration continues to explore opportunities to modernize the delivery of training and employment services, including the possibility of reorganizing some of the existing training programs that serve overlapping populations. The FY 2014 budget requests funding to support co-location of workforce investment partner programs and to increase access for services, and also consolidate two more narrowly-targeted programs to create a Universal Displaced Worker program.
- **Eliminating certain overlapping programs.** We appreciate the support in the final Continuing Resolution to implement our FY 2013 request to eliminate the Veterans' Workforce Investment Program (VWIP) and reallocate those funds to veteran employment programs with stronger accountability measures and better outcomes, including Transition Assistance Program (TAP) employment workshops and the implementation of new veteran activities mandated in the VOW to Hire Heroes Act.
- **Reforming Job Corps.** In support of the Administration's continued commitment to improving and reforming the Job Corps program, the budget continues the plan to close a small number of Job Corps centers that are chronically low-performing; identifying and seeking to replicate the practices of high-performing centers; and adopting cost-saving reforms. In addition, the Budget puts forward steps to strengthen financial and contract oversight, so the program can continue to provide valuable services to disadvantaged youth while maintaining strong internal controls and ensuring that its contracts are procured at the lowest risk and the best value to the Federal Government.
- **Boosting funding for rigorous program evaluation.** During this Administration, the Department has made a significant commitment to the evaluation of our programs, which over time will allow us to drive more investments toward practices that achieve better outcomes at lower costs. The FY 2014 budget builds on this commitment by increasing to

up to one percent the amount of program dollars that can be set aside for evaluation, complementing funds provided to the Chief Evaluation Office.

- **Modernizing technology infrastructure.** The Department's IT Modernization program works across agencies to provide new capabilities to help employees work more effectively and efficiently. We are creating a modernized, standardized IT infrastructure that streamlines operations, improves customer service and collaboration opportunities, and maximizes technology return on investment to support agency business missions. In FY 2014, the program will reduce costs and increase efficiency through several initiatives and improvements including as cloud email, web conferencing, mobility, and IT integration.

## SEQUESTRATION

Before I conclude my testimony today, I want to briefly address the impact – the significant and very negative impact – of the 2013 sequester on funding job training and worker protection. Arbitrary, across-the-board cuts are not the best economic growth or deficit reduction strategy. We ought to be strengthening investments in those initiatives that create jobs and grow the middle class, while eliminating what we don't need. And this should be achieved in a common-sense, balanced way, so that low-income and middle-class families do not bear the entire burden and the most fortunate Americans pay their fair share.

Sequestration has serious implications for my Department and the people we serve. These reductions will impact our most vulnerable workers just as we are emerging from economic recession. They will jeopardize our Nation's ability to develop and support a skilled workforce that can compete in the global economy, while also jeopardizing the conditions under which they work. While we are making choices that protect our most mission-critical activities, it is impossible for the Department of Labor to manage cuts of this magnitude without severe impact on our ability to prepare and protect American workers. This is going to have an immediate and significant impact on our efforts to ensure safe and healthful workplaces, and to ensure that workers get the wages and benefits to which they are entitled.

It's also important to note that even before the sequester, discretionary spending had already been cut in nominal terms over the past few years. Under the Budget Control Act targets, non-security discretionary spending is on a path to reach its lowest level as a share of GDP since the Eisenhower Administration. So the impact of these significant cuts in Federal support for employment and training are magnified, coming on top of already lower levels of Federal workforce funding, as well as reduced State and local efforts as a result of the recent financial crisis and economic recession. At a time when we are just starting to see strong signs of renewed economic growth, this sequester of Federal discretionary spending undermines our progress.

We all agree on the need for significant deficit reduction, but we want to work with Congress on a balanced approach toward this goal, combining fiscal responsibility with investments in American workers that will create jobs and strengthen the economy.

## CONCLUSION

Promoting the welfare of American workers, job-seekers and retirees is the fundamental mission of the Labor Department, and is critical to the Nation's continued economic recovery and long-term competitiveness. The Labor Department budget calls for targeted investments and significant reforms to help workers gain new skills so they can advance in their current occupations or move into new and growing industries; the proposal would ensure the Department can maintain safe and healthy workplaces; it would strengthen worker voice in the workplace; and it will safeguard critical minimum wage and overtime protections for workers.

The 2014 Budget includes smart, evidence-based investments to support workers, and it continues critical funding for training and other resources for job seekers. Our efforts will help to get Americans into good jobs; foster safe workplaces that respect workers' rights; provide a level-playing field for all businesses; and help American workers provide for their families by keeping the pay and benefits they earn. I am committed to pursuing these goals, and I believe strongly that we can do so even as we take steps to reduce the Federal deficit. We at the Department of Labor are ready to work with you in the weeks and months ahead on a responsible path forward.

Mr. Chairman, thank you for inviting me today. I am happy to respond to any questions that you may have.

BIOGRAPHY OF SETH D. HARRIS  
ACTING SECRETARY OF LABOR AND DEPUTY SECRETARY OF LABOR

Seth Harris was nominated to be the Deputy Secretary of Labor on February 23, 2009. Prior to joining the Department, Mr. Harris served as a Professor of Law at New York Law School and Director of its Labor & Employment Law Programs. While teaching at the New York Law School, Mr. Harris was also a Senior Fellow at the Life Without Limits Project of the United Cerebral Palsy Association and a member of the National Advisory Commission on Workplace Flexibility.

Prior to his work at the New York Law School, Mr. Harris served for seven years at the Department of Labor during the Clinton Administration, spanning the tenures of Secretaries Robert Reich and Alexis Herman. During this time, Mr. Harris served as Counselor to the Secretary of Labor and as Acting Assistant Secretary of Labor for Policy, among other policy-advising positions.

Mr. Harris is a graduate of the New York University School of Law where he was Editor-in-Chief of the Review of Law and Social Change. Mr. Harris served as a law clerk to Judge William Canby of the U.S. Court of Appeals for the Ninth Circuit and to Judge Gene Carter of the U.S. District Court for the District of Maine. He received his Bachelor of Arts degree from the School of Industrial and Labor Relations at Cornell University.

On May 26, 2009, Seth Harris was sworn in as the eleventh Deputy Secretary of Labor since the position's creation in 1986.

## DUPLICATIONS IN TRAINING PROGRAMS

Mr. KINGSTON. Thank you, Mr. Secretary. And I appreciate your brevity because I think we would like to have lots of questions today. And the chair will stick to the 5-minute rule.

So my first question to you is on duplications. I have often read in outside publications that the Federal Government has 44 job training programs. Do you know the number?

Mr. HARRIS. Well, the GAO suggests that there are 47 job training programs. I am not sure we agree with that assessment, but that was what the GAO said.

Mr. KINGSTON. Well, how many could be combined?

Mr. HARRIS. Well, if I could step back a little bit from the question, Mr. Chairman? Consolidation is a means to an end of providing workers and employers with excellent quality services. We want workers to get the skills that they need to succeed; we want employers to get the skilled workers they need; and we want to be able to do that at the lowest cost possible.

So one example of an effective consolidation strategy is the proposal in the President's budget, which I understand is not before this subcommittee—there are two other committees that will take it up—which is to create a Universal Displaced Worker Program, which would consolidate the WIA Dislocated Worker Program and the TAA program, which provide vastly different arrays of services to very similar groups of workers who are assigned to the programs based on why they lost their jobs.

It doesn't make any sense. There is no economic basis for it. So by bringing those programs together, providing the best services out of both programs—early intervention, good quality case management, skills assessment, the training that workers need if their skills are obsolete and—

Mr. KINGSTON. But all that is a given. I mean, that is what they ought to be doing. So let me get back to the central question. As stewards of tax dollars in a nation where we have huge deficits which have been largely driven up the last 4 years, the question is—and it is not anything that President Obama created at all. There weren't changes under Republicans either.

It just appears to me that if there are 47 job training programs, certainly we could pare that down, and it would not even be controversial. It would be common sense. You are an educated guy. Don't you think some of those could be corralled together?

And I am not saying on the micro level. You may have somebody who trains in tractors and somebody else who trains in computers, and I understand the division within the department. But with 47 different agency heads or Under Secretaries or whatever, it seems to me that a lot of money is going into administration and not enough into training.

Mr. HARRIS. Well, I—

Mr. KINGSTON. And again, let me emphasize I am not blaming this on the Obama administration. But I am blaming it on all of us who sit in these chairs and don't do anything about it.

Mr. HARRIS. Well, that is a fair criticism, I think, Mr. Chairman. It is a discussion that I think that we should continue to have.

## CONSOLIDATING JOB TRAINING PROGRAMS

Most of the programs that were listed by the GAO are actually very small, specialized programs. For example, there is a program in the Department of Health and Human Services for refugees and asylees, a very, very small program.

The largest—we sponsor the largest programs, along with the Education Department. So what we are proposing to do is to take two of the very largest programs and consolidate those, and they will work better as a result of that consolidation.

What we don't want to do is, frankly, what is proposed in the SKILLS Act, which is to consolidate programs and leave large populations of disadvantaged people behind. Veterans, people with limited English proficiency, people with disabilities, farm workers, Native Americans are not contemplated in the SKILLS Act consolidation.

So my view, that is not the right way to do it. We are trying to offer a model for a better way to do it.

Mr. KINGSTON. Do we know statistically how much of the workforce came through Federal job training programs?

Mr. HARRIS. I don't know that number.

Mr. KINGSTON. Because the reason why I ask that is it would appear that the premise of the statement you just made was that everybody has to go through a Federal job training program in order to be a productive worker. And I don't know the number, but we need to keep in mind here in Washington, D.C., that the private sector trains people routinely and that you can survive and thrive without going through one of these programs.

## VETERANS TRAINING PROGRAM

One of my questions that immediately pops up is that you have a veterans training program and you are asking for more money, and I understand that. But the VA has job training programs, too. Do we know if there is—

Mr. HARRIS. They actually don't.

Mr. KINGSTON. Job placement programs.

Mr. HARRIS. Well, if I can? The Department of Veterans Affairs has the VRE program, which is for veterans who have service-related disabilities of a particular seriousness. They provide rehabilitation services and assessment services, but frankly, we provide the job placement services at the back end of the VRE program through our Jobs for Veterans State Grant Program.

Mr. KINGSTON. And I am out of time. Yes, I want to pick up on that—

Mr. HARRIS. Please.

Mr. KINGSTON [continuing]. On my next round because that does lead into the question.

So, thank you.

Mr. HARRIS. Very good.

Mr. KINGSTON. Rosa?

## GAO REPORT ON PROGRAM OVERLAPS

Ms. DELAURO. Let me move quickly to kind of separate some fact from fiction. GAO's report on this issue states that, "Even when

programs overlap, the services they provide and the populations they serve may differ in meaningful ways. Simply consolidating programs does not guarantee cost savings, nor does it mean that the workers or businesses will be any better served."

In fact, GAO warned, "One-size-fits-all approach may make services less accessible to many groups considered hard to serve. Workforce programs could be better aligned, streamlined to improve service delivery and participant outcomes."

The work does not belong in this committee, nor do I see anything in GAO's materials to conclude that such efforts would result in a significant cost savings. The report offers no evidence of specific instances where an individual received the same service from multiple programs or funding streams.

Further, GAO released a report that examines the performance of workforce programs around the Nation. The findings demonstrated that workforce boards are engaged in highly effective entrepreneurial practices for employers, job seekers, and their communities to get people working again.

#### SEQUESTRATION EFFECT

With that, Mr. Secretary, let me ask you this question. The budget proposal we are discussing today, like the administration's budget, assumes adoption of the President's proposal to turn off the sequestration now scheduled for 2014, replace it with something more balanced in terms of deficit reduction.

With funding restored to the caps set in the Budget Control Act, the request for the Labor Department maintains core programs and even include some modest increases. You have done that. You have tried to do that.

If sequestration remains in effect, the picture is different. We will look at reductions. Is that your understanding as well?

Mr. HARRIS. It is.

Ms. DELAURO. Okay. What would be the effect on the Labor Department programs, the people they serve, if sequestration remains in effect during fiscal year 2014?

Mr. HARRIS. It is going to hurt the middle class significantly. The sequestration costs the Labor Department \$3,100,000,000, and that is money that comes out of job training for workers who are trying to transition into middle-class jobs. It makes it more difficult to serve veterans, who are trying to transition into civilian jobs. It makes it more difficult to enforce wage and hour protections, overtime, minimum wage, child labor protections, and Family and Medical Leave Act protections.

It makes it more difficult both for us to enforce safety and health laws and for our State partners to do it. So it makes no sense, and it is an across-the-board arbitrary cut that everybody thought was a bad idea when it was originally discussed. It is actually proving to be a bad idea.

#### SKILLS ACT

Ms. DELAURO. Further, let me ask you about the SKILLS Act, which was put forward last month. What it does is freezes funding for workforce programs for an additional 7 years into the future. I am hoping that you can illustrate for us what such a funding

strategy would mean for millions of Americans who are out there every day looking for their way back into the workforce.

Mr. HARRIS. Well, we can take the example, as you said, that there has been a steady decline in funding for—

Ms. DELAURO. Erosion.

Mr. HARRIS [continuing]. Workforce investment activities, an erosion over the last 11 or 12 years. That is why the President—

Ms. DELAURO. I just want to say that it has been \$1,000,000,000, to be exact, in terms of actual dollars cut.

Mr. HARRIS. And that is one of the reasons why the President has made a number of investments in this budget to try to increase the amount of money that is available to train workers for middle-class jobs. But one illustration of the erosion that has occurred is that we have lost 800 American job centers, One-Stop centers around the country—20 percent of the total. So there are fewer places where workers can get services. Workers are getting fewer services. There are waiting lists and lines at a number of our American job centers.

It makes no sense when we have a high unemployment rate that we are trying to bring down, we have a transitioning economy, we have workers who have skills that may not be purchasable in their local labor market, and we want these folks to get the skills they need to get into and succeed in middle-class jobs, to continue to erode the available resources for them to get training.

So the President in this budget proposes an \$80,000,000 increase for the Workforce Investment Act, an \$8,000,000,000 Community College to Career program. A very important part of the workforce investment system is its partnership with community colleges. We propose a number of efforts to transition people from unemployment, particularly long-term unemployment, into jobs.

We need to make an investment in skills if we expect workers to succeed and local economies to grow.

Ms. DELAURO. I have about just about 20 seconds left. So, Mr. Chairman, we are coming back for a next round?

Mr. KINGSTON. No, this is it. [Laughter.]

Mr. Alexander.

Mr. ALEXANDER. Thank you, Mr. Chairman.

Good morning, Mr. Secretary.

Mr. HARRIS. Good morning.

#### H-2B PROGRAM

Mr. ALEXANDER. Let us talk about the H-2B program for just a moment, if you don't mind? As you are aware, there are hundreds of small businesses across the Nation that are heavily dependent on the H-2B program. Oftentimes, Americans are unavailable or unwilling to fill some of those jobs that are needed out there.

The department has issued some rules the last couple of years that have been opposed by Congress and the courts. In the last several weeks, there have been two court rulings that have dramatically jeopardized the administration's H-2B program.

One of those rulings has required the Department of Labor to begin using a new wage determination method. The ruling, of course, has thrown the H-2B program into chaos and has struck

widespread fear among the employers who are dependent on those jobs.

I am sympathetic to the position that you find yourself in today, but I also want to emphasize that there are a lot of small businesses in Louisiana that are depending on you to make a decision rather quickly that would affect. Would you mind sharing with the committee what steps have been taken to make sure that the H-2B program will have minimal interruptions in the future?

Mr. HARRIS. I would be happy to, and I thank you for the question because I think there is a good bit of confusion and fear.

The H-2B program exists to assure that employers get the workers that they need and that U.S. workers have a fair shot at job opportunities in domestic industry. So our challenge under the legislative mandate is to strike a balance between those two interests.

We are now caught between an act of Congress on the one hand, the judicial decision that you referenced on the other hand, and a judicial decision from the 11th Circuit on the third. Let me just quickly sketch out where we are, sort of the problem that we are facing.

A rider that was included in an appropriations bill last year said we can't use the 2011 wage rule that we had promulgated. The decision in the Eastern District of Pennsylvania in the Third Circuit said we can't use the 2008 wage rule that was promulgated by the Bush administration. We have to suspend any further processing of certifications, and then we had 30 days, which ends on April 22nd, to issue an interim final regulation. It was a new wage regulation.

And then the 11th Circuit jumped in with a decision that said that the Labor Department has no regulatory authority over the H-2B program at all. So we are trying to find the line between those two decisions and Congress' decision and keep the program operating that will allow us a path forward.

So we are committed to doing everything we can to meet that April 22nd deadline. We are working feverishly to do that, including with our partners at the Department of Homeland Security and the Office of Management and Budget. We are working very hard to do that.

My expectation is that we will, but I don't want to make a firm commitment because the H-2B program always has a surprise in it for us. And then we will be able to continue or restart the processing of certifications if that rule is promulgated on or around the 22nd.

The path forward from there, I don't, frankly, know because this 11th Circuit decision throws a very significant wrench into the works, and we don't know exactly what that is going to mean.

Mr. ALEXANDER. Will employers that have pending applications be required to resubmit?

Mr. HARRIS. I don't believe they will, but let me get you an answer on that. I want to check back with my staff to make sure I get that right.

But my expectation is that anything that is pending, I think they will have to get a new wage—they will have to get a new wage determination because there will be new wage rules in place, but otherwise, I think will be able to go forward.

Mr. ALEXANDER. Thank you.  
[The information follows:]

#### H-2B APPLICATIONS

No. All pending H-2B program prevailing wage requests will be processed on a first-in, first-out basis from the National Prevailing Wage Center after April 24, 2013, the effective date of the new Interim Final Rule (IFR), Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2. Additionally, pending Applications for Temporary Employment Certification for H-2B workers at the CNPC will be processed on a first-in, first-out basis and accompanied by a new prevailing wage consistent with the Wage Methodology IFR.

Mr. KINGSTON. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

And welcome.

Mr. HARRIS. Thank you.

#### EMPLOYER PROVIDED CONTINUOUS EDUCATION

Mr. HONDA. One of the questions I had, and it came up as I was listening to my colleagues ask questions. But it seems like we have a lot of programs addressing different groups and trying to make sure that they are employable, get reemployed.

One of the areas I haven't seen yet is companies who continue to innovate and create efficiencies in the kinds of things that we do, companies that merge and say that we are not laying anybody off is sometimes not actually true 5, 6 months later. And then a good many people get laid off, and it is difficult to get them employed because of their age or maybe they haven't kept up with the skills.

To avoid this arena, are there any thoughts by your department about requiring any companies that receive Federal funds to have programs in their companies to keep folks up to date on the innovations that are occurring so that they are not unemployed or unemployable if and when they get laid off?

I mean, like the medical profession, the law, dental, they all have continuous education to keep up in their profession and all the changes that occur. Is that something that you are looking at in industry where there is a lot of changes that is going on?

The changes create efficiency. Efficiency creates better profits, and it seems to me that some of that profit could be folded into continuous education for those who are creating the wealth for the companies. Any thoughts on that?

Mr. HARRIS. Well, I agree with you completely that the centerpiece of skills training is to facilitate innovation by employers' growth in local economies and the opportunity for new businesses to get started with a workforce that will support the growth.

There are already significant tax benefits to employers to engage in the kind of training that you are talking about. The approach that we are taking in this budget is to get an early intervention strategy when there are indications that an employer may be facing trouble and may be facing a layoff, whether it is from a merger or from a downturn in business.

So as part of the Universal Displaced Worker Program, there would be an early intervention, a rapid response capacity even more aggressive than what we have in the existing Dislocated Worker Program so that when there is an indication that an em-

ployer may be having trouble or may be, say, facing a layoff that we can get in there with the employer early on—and if there's a union in the workplace, working with the union—to assure that workers get the services they need.

So that either they can get into a new job very quickly or acquire the new skills that they need in the economy.

#### CONTINUOUS EDUCATION

Mr. HONDA. I understand what you are saying, but that is intervention. I am talking about continuous education, and I don't know if it is prevention, and it is not in the face of pending mergers or downturn in the economy, but a responsibility that folks have to those who helped create the wealth that the companies are experiencing.

Mr. HARRIS. Right.

Mr. HONDA. And I don't think that the workers, the engineers or whomever, are receiving their adequate share of the wealth that has been created through the efficiencies because people are saying that "I am working harder, longer, and more efficient, but I don't see it in my paycheck."

And I suspect that that is because of the efficiencies that we have created and our technology. Thoughts on that area? Are you looking at that, or will you look at that?

Mr. HARRIS. Well, again, I share that view. I think that the fact that most workers' wages have been flat or declining over the last two decades is an indication of the point that you are making. While corporate profits are soaring, workers are not reaping that benefit in their paychecks.

Mr. HONDA. So I am asking you, are you thinking about it? Will you think about it? Do you have some ideas that your department would be exploring that?

Mr. HARRIS. Well, we are certainly exploring ways that we can help workers to raise their wages and that we can help employers to provide more resources to their workers. There already are rich benefits for employers in the tax code to provide the kind of training that you are describing.

I think it is unlikely, frankly, that we would undertake a mandate of employers to do training that would benefit another employer rather than themselves. They are going to be willing to invest in their own workforce.

Mr. HONDA. It is within the company that they continuously keep them up to date, and that is not preparing them for another employer. It is to maintain them in the—

Mr. HARRIS. Right. I think they are likely to do that because it benefits their bottom line. I think they invest in their own training, and there is a lot of evidence that they do, that private sector employers are investing—

Mr. HONDA. Would you share that evidence with me?

Mr. HARRIS. Sure. I would be happy to.

[The information follows:]

## PRIVATE SECTOR INVESTMENT IN WORKFORCE TRAINING

There are several workforce training models that provide examples of how employers are investing in their current workforces through training. The H-1B Technical Skills Training grant program is an example of the Department of Labor (Department) working with employers and other entities to invest federal and private funds and resources to provide customized training that includes incumbent worker training. The Department's Registered Apprenticeship system is another example of significant employer investment in on-the-job training for incumbent workers.

H-1B Technical Skills Training Grant Program

The Department's current H-1B Technical Skills Training grant program (TST), created in Fiscal Year 2011, is designed to provide education, training and job placement assistance directly related to high-growth occupations for which employers are currently using the H-1B nonimmigrant visa program to hire foreign workers. These grants are intended to raise the technical skill level of American workers, allow them to obtain professional, industry-recognized credentials, and position them to take advantage of more stable and profitable career pathways that offer future opportunities for professional development and upward mobility.

Grantees that use the funds for incumbent worker training must provide resources equivalent to 50 percent of the grant award amount as matching funds. For incumbent worker training, the 50 percent matching funds may be provided in cash or in-kind; however, at least one-half of the total matching funds must be cash match. Employers that benefit from the incumbent worker training provide most of the matching funds. As a result, the TST grant program will generate more than \$250 million worth of private sector matching funds to support incumbent worker training, including approximately \$63 million in cash from participating employers.

Registered Apprenticeship

Registered Apprenticeship is paid, on-the-job training with related technical instruction and a mentor. This approach provides the apprentices with income while training, and gives the employer the ability to select and train workers to meet their industry's needs. There are over 21,000 active Registered Apprenticeship programs that use the Department of Labor's Registered Apprenticeship system, investing billions of dollars of private sector investment into their workforce annually. Private investments from the construction industry alone amounts to approximately \$1 billion per year. These investments include state of the art training facilities, instructor training, wages, and other investments.

Mr. KINGSTON. Mr. Fleischmann.

Mr. FLEISCHMANN. Thank you, Mr. Chairman.

#### WORKFORCE INNOVATION FUND

Mr. Secretary, thank you for being with us today.

Mr. Secretary, the President's budget calls for three times as much funding for the Workforce Innovation Fund as was previously appropriated. What has the department done with the funding that has already been provided, and have you seen any demonstrative results from the creation of the fund, sir?

Mr. HARRIS. Well, I thank you very much for that question. I am very proud of the Workforce Innovation Fund.

Let me just say that \$50,000,000 of the increase in the Workforce Innovation Fund will be dedicated to veterans. This is part of the President's \$100,000,000 investment in the Labor Department and increasing veterans employment. And that money will allow us to seek out new and innovative ways of dealing with some fairly intractable problems that transitioning service members, Guard and Reserve, and the family members of active duty service members are experiencing, issues like licensing and credentialing, for example, which is a tremendous issue in the employment world for that population. So a sizable portion will be dedicated for the first time to veterans.

The Workforce Innovation Fund has already given out 26 grants, and consistent with what we are doing across the Labor Department, they are each going to be rigorously evaluated. A centerpiece of our management strategy at the Labor Department is to assure aggressive program evaluation. We have actually proposed in this budget an increase in program evaluation across the Labor Department. It is something we feel very strongly about.

But we funded some projects that are testing interventions in expanding career pathway strategies for adults, integrating data management systems to increase efficiency, consolidation of the sort that the chairman is talking about that will save us money and will get us better results, better information, management information that we can act on, and to get employers more deeply engaged in the workforce investment system.

We don't have final evaluations, but we are hearing very good things out of those investments, and I am hoping to get those evaluations very soon. When we get them, I will be happy to share them with the committee.

Mr. FLEISCHMANN. Okay. Thank you.

#### GOVERNOR'S RESERVE

And Mr. Secretary, as a follow-up, as you know, the Governor's Workforce Investment Act set-aside was temporarily reduced from 15 percent to 5 percent to promote accountability and the timely use of funds. And we have seen great progress in both of those areas.

The President's budget proposes a 7.5 percent set-aside and triples the size of the Workforce Innovation Fund. Why was the decision made to siphon off these funds, restricting the flexibility of the States to improve locally provided services rather than restoring the statutory level of 15 percent for the set-aside, sir?

Mr. HARRIS. Well, our strategy all along, and I believe Congress agreed with this strategy in 2011 when they reduced the size of the Governor's Reserve, is to preserve services at the local level to the extent possible. The phenomenon that we had encountered was that Governors had a sizable carryover of funds that they were not spending.

The Governor's Reserve was among the slowest spend-outs in the workforce investment system. So by reducing the amount of the Governor's Reserve, we were able to get them to spend that carry-over money. But now they have spent it down. So the President has proposed an \$80,000,000 increase in the Workforce Innovation Fund Governor's Reserve, up to 7.5 percent.

Let me just say that the Workforce Innovation Fund increase is consistent with the strategy that we have taken all along, along with the veterans increase, and it would not, in any way, bring us back to the 15 percent Governor's Reserve. In order to get to a fully funded 15 percent Governor's Reserve as in the Workforce Investment Act, it would take a total of \$320,000,000.

Frankly, when we are making difficult choices in this budget environment, we just felt that we didn't have the resources to be able to go all the way back up to 15 percent. And the Workforce Innovation Fund we think is critical to reform the system from the inside, and we are beginning to see signs that that is happening.

Mr. FLEISCHMANN. I don't want to put words in your mouth, but so you are saying, though, that you all are still committed to more local control by the Governors to promote these interests?

Mr. HARRIS. Well, local control and the Governors. The Governors are not the local officials who are funded through the workforce innovation system. That money goes—with the exception of the 15 percent set aside for the Governors—the money goes down to the local areas run by workforce investment boards typically selected by county executives and mayors and local officials.

We are wholly committed to a locally driven system because every labor market is different. Every group of workers needs different services. So we are fully committed to that.

That is why we are pushing for a reauthorization of the Workforce Investment Act to make that an even stronger part of our system. So I agree with you completely on that.

Mr. FLEISCHMANN. Thank you, Mr. Secretary.

Mr. Chairman, I yield back.

Mr. HARRIS. Thank you.

Mr. KINGSTON. Ms. Roybal-Allard?

#### TAA COMMUNITY COLLEGE AND CAREER TRAINING GRANTS

Ms. ROYBAL-ALLARD. Secretary Harris, several community colleges in Los Angeles have received Trade Adjustment Assistance Community College and Career Training grants. Now these schools are using the funds to establish innovative programs to train students for employment in high-wage, high-skill occupations, and I am very pleased with the progress that I have seen with many grant recipients, especially in educating and training low-income students who disproportionately rely on our community colleges for their education to meet current employment needs.

Unfortunately, the TAA community college grants are only authorized through 2014. So the President's Community College to Career Fund caught my attention because there is going to be continuing and a growing need for education credentials and career training. So could you please elaborate on the President's Community College to Career Fund and whether it will continue to meet the current needs that were started by the TAA grant program?

Mr. HARRIS. Yes, Congresswoman. First of all, thank you for the kind words about the TAACCCT program. I agree with you that it is an excellent program. I have traveled around the country visiting community colleges. I haven't yet gotten to Los Angeles, but maybe we will arrange a trip together.

Ms. ROYBAL-ALLARD. Get there.

Mr. HARRIS. And I have gotten to see these really remarkable programs—mechatronics, advanced manufacturing, biosciences—that are training dozens and dozens and dozens of students for demand occupations in their communities in close cooperation with the employers themselves. The employers are involved in curriculum development. They provide instructors in some cases. They guide the process. They provide internships. They hire the students out of the program. It is a very successful program.

So the President's proposal, the \$8,000,000,000 proposal for a Community College to Career Fund, would further expand that program and would allow us to serve a broader swath of workers. The TAA program, of course, is tied to trade affected and other unemployed workers. This would allow a broader stretch so that we can serve students who are coming out of high school, for example. We are not able to serve them in this or we are not able to target the programs to those students under the existing program.

So it will allow us to do a lot more. It will also involve the Education Department more deeply. Four billion dollars would go to the Labor Department; \$4,000,000,000 to the Education Department. And we would collaborate in spending all \$8,000,000,000, but we would be able to target populations and programs a little bit differently.

So I agree with you. That is a critically important proposal. And we are going to announce a new round of TAACCCT grants very soon. And then we will have one more round this year, and then that is the end of that program unless this Community College to Career Fund is enacted.

Ms. ROYBAL-ALLARD. Okay. Thank you.

#### IN-HOME CAREGIVERS FAIR WAGES

As you know, the United States has over 2 million in-home caregivers who care for loved ones and help them to live independently with dignity and comfort. In fact, I personally saw and experienced the value of their work when they were caring for my 95-year-old mother. I am very proud of the fact that, once again, California has implemented rules to ensure that these workers receive the minimum wage and are subject to overtime rules.

For many years, I followed the department's efforts to ensure in-home care workers have fair wages and overtime protections. It is my understanding that the companion exemption rule was included in the Fair Labor Standards Act, that it was intended to apply to

casual work arrangements like babysitting and not to professional caregivers whose vocation is in-home care services. Is that correct?

Mr. HARRIS. Yes, that is right.

Ms. ROYBAL-ALLARD. Okay. So I understand that the draft final rule requiring minimum wage and overtime protections for in-home caregivers was submitted to OMB for review this past January, and I am interested in the anticipated effects the rule will have on the in-home care industry. Because as you know, unregulated wages have in many cases resulted in low quality of care and a high rate of turnover among home caregivers.

So how do you anticipate this rule will influence these negative trends?

Mr. HARRIS. I agree with everything you just said about in-home care workers. They are not babysitters, and they are not simply providing fellowship to elders.

My wife used to be a hospice social worker. These were her co-workers. These are people who are providing professional in-home care, often medical care, and the idea that they wouldn't get the minimum wage and they wouldn't get overtime when they frequently are asked to work very, very long, difficult hours is just simply not what Congress contemplated when the Fair Labor Standards Act or this amendment to the Fair Labor Standards Act was included.

I am sure we will come back to that rule, Mr. Chairman. Thanks.

Mr. KINGSTON. Dr. Harris.

#### BUDGET CONTROL ACT

Mr. HARRIS of Maryland. Thank you very much, and thank you for coming before the committee today.

Three very brief things. First of all, did—and I am sorry, I may not have been paying close enough attention. Did you say the sequester was a bad idea? Was that your testimony earlier?

Mr. HARRIS. Yes. Yes, I thought it was widely accepted that it was a bad idea.

Mr. HARRIS of Maryland. Okay. Okay. Now I have just got to ask, since it is also widely accepted that the administration came up with the idea. Did the right hand not know what the left hand was doing? Did they not go to the departments and say, gee, is this a good idea to recommend?

I mean, did those conversations take place before it was recommended to the group that was negotiating for the Budget Control Act?

Mr. HARRIS. Well, I wasn't involved in those discussions, Congressman. So I am not going to give you a tick-tock of how that worked.

Mr. HARRIS of Maryland. Okay. So you don't know. Okay. I just find that curious that all of a sudden what was an idea that came from the administration every single witness coming from the administration in front of this committee has said it is a bad idea. I was just curious.

#### 2011 WAGE RULES ON H-2B

Okay. I am going to share Mr. Alexander's concern about the H-2B program. It is a shambles right now. That is the bottom line.

And it is a shambles because the Labor Department went ahead with those 2011 wage rules that were just—that were going to drive businesses in the congressman's district and my district literally out of business.

And we would like to pretend that we don't drive businesses overseas by rules like this, but we do. And one of the things Department of Labor should be doing is not promulgating rules that drive businesses out of our districts.

And they will. The seafood industry will leave my district. It will go to Indonesia. The seafood industry will leave the congressman's district. They will go somewhere else.

So the bottom line is you made your bed, and now you have got to sleep in it. I mean, those court cases were a direct result of a very aggressive 2011 wage rule. So I have got to beg the question, and I didn't hear a solution. I heard, well, maybe we will have something done by April.

Well, I got to tell you. The weather is warm, if you haven't noticed. The crabs are going to start running. We are going to start catching crabs. We have got to process them. When is the Labor Department going to have that rule solved by?

Mr. HARRIS. Well—

Mr. HARRIS of Maryland. You are in charge. What date is that new rule going to deal with that court decision that the court required?

Mr. HARRIS. The court decision struck down the Bush rule on wages, not the rule that we promulgated in 2011. That is the source of the concern that you are expressing. And that rule was promulgated in violation of the Administrative Procedures Act. That is why we are scrambling to promulgate a new interim final regulation by April 22nd.

My hope is that we will get it done by then. I can't give you a date certain because it involves a lot of discussion with a lot of other agencies. It is not wholly within my control.

The decision from the 11th Circuit was not a decision on the wage rule at all. It was a decision on whether or not the U.S. Department of Labor has the regulatory authority to regulate at all under the H-2B program. That is not a manifestation of anything the Obama administration had done. That is their interpretation of what the statute Congress passed did.

So we have to figure out how to deal with that and whether we have the authority to promulgate any regulation under the law. So I am not sure I agree with the premise of your comment, but I am utterly sympathetic to your point that we have to get a rule out as quickly as we can.

We are working as hard as we can to get that done so that we can secure this program and assure that it is going to move forward and give U.S. workers a shot at those jobs and give the employers that need foreign workers the workers that they need to succeed.

#### H-2B COMPREHENSIVE RULE

Mr. HARRIS of Maryland. Now the 11th Circuit Court decision came after the 2011 wage rule. Is that right? I mean, that is the premise of my question. Look, I mean, I know the 2008 rule was

one thing, but the 2011 rule went even further. And that is what resulted in a large number of court cases.

Were any of them unsuccessful? I just got to ask the question. Was there any court case that challenged the rule, either asking for a temporary injunction or overturning it, were any of them unsuccessful?

Mr. HARRIS. The the 11th Circuit decision is not a decision on the wage rule. It is a decision on the so-called comprehensive rule, and it is about whether or not the Labor Department has regulatory authority at all. It doesn't comment at all on the wage rule. If it had, you and I would be having an entirely different—

Mr. HARRIS of Maryland. Let us say wage rule/comprehensive rule. Bottom line is they both came out—that is right. And there is a systematic effort appearing, a systematic effort in the Labor Department to drive those industries out of my district and overseas.

Now the last thing before my time is up. There is a \$5,000,000 expenditure—\$5,000,000 is not a lot of money, but it is money—for a State paid leave grant program. Now I have got to ask you. Why should—this is a State program. So it is up to the States to do it.

Why should a taxpayer in one State whose State decided they don't need it. Their citizens aren't asking for it. They don't need it. Why should they be subsidizing this in another State?

Mr. HARRIS. The goal is to have models established in various States that would establish means by which other States could get to State paid leave. One of the big barriers to States establishing State paid leave systems is the administrative costs of doing that. So if we can establish models in different States.

And let me say we have pilot programs in various parts of the Government where general taxpayer funds are used to establish programs in particular States. Many grant programs fund resources in other States rather than in the States where the taxpayers pay the taxes. So this is certainly not out of the ordinary.

But it is to try and address this very difficult problem of particularly low-wage workers who are not able to use—not able to use the Family and Medical Leave Act, not able to take leave when they themselves are sick or children or another family member is sick, so that they can afford to take the leave. That is what we are trying to accomplish.

Mr. HARRIS of Maryland. Sure. And thanks.

And Mr. Chairman, again, I was just pointing out it was a new program in a time of budgetary restraint.

#### SKILLS ACT

Mr. KINGSTON. What I want to do is ask a question, but I want to make sure for the record that on the SKILLS Act, what it does is consolidates and eliminates 35 ineffective and duplicative programs, including 26 that were identified in a 2011 GAO report. And as respects women or youth or ex-offenders or whatever, the States can still fund those as needed. But it changes the cookie cutter, one-size-fits-all Washington approach. And so, the whole idea is the flexibility of it and consolidation.

## DAVIS-BACON WAGE DETERMINATIONS

So my question that I want to talk about, adverse wages. As you know, we all in Washington like to read a lot of polls, but when we do polling, we like to get representative samples. The GAO found in a 2011 report that when Wage and Hour does their Davis-Bacon wage determination process, they use a statistically unreliable sample. They are based on self-selected surveys of six or fewer workers.

It is unscientific. It is irresponsible. It is ridiculous. It is laughable. Call it what you will, it is absolutely unacceptable.

So my question is what have you done, and I am going to quote the GAO report. "The Secretary of Labor—recommended that the Secretary of Labor direct the Wage and Hour Division to enlist the National Academies or independent statistical organizations to evaluate and provide objective advice on the survey, including its method and designs, the potential for conducting a sample survey instead of a census survey, the collection process, and tracking and analysis of data, and promotion of survey awareness."

And again, that is not the Republican Party. It is not the Chamber of Commerce. That is the GAO recommendation. So what has been done about that recommendation?

Mr. HARRIS. The Wage and Hour Division has been involved in a fairly aggressive effort to reform the way they do their wage determinations for Davis-Bacon, addressing some of the concerns that you have expressed. So they have raised the sufficiency level that is required before a survey is accepted. They have increased the number of workers that have to be included in the sample.

They have tried to narrow down the geographic area that they are dealing with rather than accumulating or accruing additional areas in order to be able to get to the requisite level. They are trying to be much more aggressive about getting contractors to participate, getting local unions to participate.

Mr. KINGSTON. Are they doing it in-house, or are they doing—are they getting the National Academies or any other outside, independent organizations?

Mr. HARRIS. Honestly, Mr. Chairman, I don't know the answer to that, whether they have talked with the National Academy. I am aware of what we are doing internally, but I don't know whether or not—so let me get you an answer to that. I don't know the answer to that.

Mr. KINGSTON. Yes, if you—I think what we are looking at is if it is moving in the direction of independence, and if not, would you agree that it should bring in the National Academies or another independent group?

Mr. HARRIS. You know, I want to have a consultation with my staff, who do this very complicated Davis-Bacon work, before I give you a final answer to that. But I know that they are in the process of trying to reform how they do wage determinations.

Mr. KINGSTON. We would be very eager to work with you on that.  
[The information follows:]

## DAVIS BACON SURVEY PROCESS

The Wage and Hour Division (WHD) has previously enlisted McGraw Hill Construction Analytics, a firm of leading industry economists with expertise in construction analysis, trends, and forecasts, to assess WHD's process and operations. The recommendations from McGraw Hill, which WHD provided to the GAO auditor, have been implemented and are beginning to bear fruit. Given that further changes to the process are currently being implemented or will be implemented in the near future, such as the calculation of survey response rates, contracting with a different organization to evaluate the efforts of WHD may be premature, especially in light of cost considerations. WHD will, nevertheless, explore options for seeking independent evaluation of the survey methodology and identify organizations or academics that may have expertise in this area.

During the last three years in particular, WHD has reevaluated and changed various administrative processes, addressed recommendations from various audits, improved outreach, and enhanced enforcement. For example, the time spent by WHD survey analysts on administrative/clerical type functions was greatly reduced when WHD modified the University of Tennessee contract, thereby freeing WHD staff to concentrate on analysis and clarification of data. Regional WHD analysts are now performing analysis and clarification of data within two weeks of the receipt of such data. Currently, contractor, third party, and on-site verification are being performed within an average of six to eight months from survey cut-off date compared to the 12-15 months it took prior to 2010. These and other initiatives have resulted in more accurate reporting of information, allowing, among other things, WHD national office personnel to monitor the time spent in specific survey activities. Moreover, new performance standards were also developed for the FY 2010 rating cycle for WHD regional and national office survey and wage determinations staff. These standards are closely aligned to the agency's program performance goals and measures.

WHD has also adopted a systematic approach to affect improvements in the wage determinations IT system. These IT improvements have enhanced the efficiency and effectiveness of myriad tasks performed both by the WHD's analysts and by the agency's contract staff at the University of Tennessee's Construction Industry Research and Policy Center (CIRPC). For example, the usual time needed to complete basic business processes, such as loading reports identifying construction projects within a particular geographic area, has been reduced from three weeks to one hour; the time needed to prepare documents for on-site verification has been reduced from one month to one day; and area practice resolution by WHD staff has been reduced from weeks to one day. Enhanced reports from the data systems allow for easy review of wage rates enabling analysts to find, review and correct potential errors. This is especially useful to identify anomalies in wage rates.

In addition, WHD has taken steps to address representation and responsiveness in WHD's survey results in response to concerns that were raised. WHD also implemented an aggressive outreach program to increase participation in the survey process from all

parties, including small contractors and their associations. Beginning in FY 2013, all international unions and contractor associations are notified of every survey that will start in the fiscal year and asked to provide the most recent addresses of their locals for notification. Electronic form submission has been enhanced and made more user-friendly. The submitter can now create templates, the form can be saved by the submitter, and each submittal is acknowledged with an email. Users also receive an immediate confirmation of receipt and have the ability to go back into the system and review the form as submitted. Beginning in FY 2013, acknowledgement letters are now sent to each submitter participating in a survey. The acknowledgment letter summarizes information received by WHD and are sent in response to both electronic and paper submissions. Finally, WHD continues to improve the Davis-Bacon Website to increase transparency and surveys' status information on that site is updated monthly.

## COMPLIANCE ASSISTANCE PROGRAM AUDITS

Mr. KINGSTON. I have another question. The Office of Labor Management Standards in 2008 conducted 791 Compliance Assistance Program audits, but by 2011, that number of 791 had fallen to 461, a 40 percent drop. However, the Inspector General reports that 16 percent of these audits conducted led to criminal charges being filed against one or more employees in the audited union.

And there is union corruption. Whether you are pro union or anti union, I think we could all agree there is union corruption. I am not saying that is a broad brush. But I am saying these audits did show that there was some, and yet it appears that the Department of Labor has placed a low priority on exposing union corruption by scaling back the CAP audits. And I was wondering what your response was to that?

Mr. HARRIS. I am going to keep going maybe past your 5 minutes, if that is okay, because this is a very important issue. The Office of Labor Management Standards has accomplished a remarkable management result. Their budget was cut and not insubstantially. So they prioritized criminal enforcement over the auditing process.

However, even though they brought down the total number of audits, they were able to keep up at a constant level the number of indictments and the number of convictions that they were able to achieve when they found union corruption. So even though they are using a smaller base of audits, they have been able to find the same number of criminals and get those criminals convicted. It is really a remarkable management success, even though they don't have the resources to do the criminal audits.

The law requires that the top priority be given to election cases, not to criminal cases. So they have had to set a priority of election cases and then criminal cases, and then audits, unfortunately, are a third priority.

Mr. KINGSTON. Okay. Thank you.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

## BUDGET CONTROL ACT

I am sorry that Dr. Harris left because I think it is important for the record to really to lay out that it was, as I remember it very well, it was the majority, the Republicans that threatened default of Federal Government and with a gun essentially at its head. As in terms of the negotiation, the issue of sequestration was the least of the very bad options.

So we had the threatening default on debt ceiling, leading us to the Budget Control Act, which then led us to sequestration. So, what remains to be seen is what will the debt ceiling effort in July bring us, which could create another draconian set of cuts to much-needed programs?

## PERFORMANCE AND EVALUATION PROCESS

With that, Mr. Secretary, let me just ask you, in your testimony, you indicate that there is a serious commitment at the Department of Labor to improve the quality of evaluation efforts across the pro-

grams. The budget request for this year, for 2014, includes a proposal to increase to 1 percent the amount of program dollars that major agencies may set aside for evaluation purposes.

The budget also supports a chief evaluation office to ensure rigorous evaluation practices. We would like to hear more about what is going on in this area at the department. Can you explain how you have used performance management and evaluation to identify and monitor progress and priority programs and activities?

Mr. HARRIS. Well, I thank you for that question because as I said in response to an earlier question, this is a top priority, a top management priority for the department. We have put in a comprehensive performance management and performance measurement system.

One of the complexities of running an agency like the Labor Department is it is often not possible to know from your performance data what the ultimate outcome of a particular action would be. So it is often hard to know, for example, if you enforce a law in a particular way, what results from that enforcement effort.

So this program evaluation fund and the Office of the Chief Evaluation Officer, which we created in 2010, and we have one of the absolutely best in the business, Demetra Nightingale, who is now our Chief Evaluation Officer. Their job is to draw that connection between the outputs that we produce—enforcement actions, compliance activities, others—and the ultimate outcome, which is assuring compliance with the law, making sure workers don't die, don't get injured, don't get sick.

So it is integrated into everything that we do. Every single agency in the Labor Department has a 5-year learning plan that uses this evaluation money to test whether or not what they are doing works. If it doesn't work, how do we shift resources into those things that do work to produce better outcomes for employers and employees and the economy as a whole?

So it is integral to everything that we are doing. We have turned around performance of the department. The department's performance, I am confident saying, is really quite excellent now because folks are paying close attention to whether or not every single thing they do produces better outcomes. The performance evaluation process is a very important part of that.

Ms. DELAURO. Can you just give us a couple of examples of where you looked at this and it has been demonstrated? Just so that there is a reference point here so that those who are disbelieving that there is this very robust performance and evaluation process going on can keep in their head something that is for them more tangible.

Mr. HARRIS. Right. We have a gold standard evaluation of the Workforce Investment Act underway right now, which is to assess not merely what performance we are able to produce—how many workers we place in jobs, how many workers retain those jobs, what their wages are at the end—but what the impact is. Is the outcome of the program different than if there had been no program at all?

That is what this evaluation money goes for. But we are doing that not just in job training. We are doing that throughout the department right now in our enforcement programs, in our benefits

programs. It is making a big difference in the mentality of the department, in the way people are doing their work, and in the outcomes that they are producing.

Ms. DELAURO. Okay. So that that 1 percent increase is critical in order for the department to move further.

Mr. HARRIS. I agree. Yes.

#### DISCONNECTED YOUTH

Ms. DELAURO. Let me—well, I am just going to throw this on the table because it is about disconnected youth, and we can come back in another round. BLS data, unemployment rate for workers 6 to 19, 24.2 percent. Workers age 20 to 24, better, but it is still 13.3 percent. I want to be able to ask you in the next go-around more about the proposal that would help address the needs of disconnected youth and the type of administrative authority this proposal would provide because I understand that you are trying to develop a multi-agency performance partnership pilot for disconnected youth.

So let me leave it there. My time is up.

Mr. HARRIS. Good. Thank you.

#### EMPLOYMENT OF PEOPLE WITH DISABILITIES

Mr. ALEXANDER [presiding]. Mr. Secretary, in December of 2011, the Office of Federal Contract Compliance proposed a rule that would require the Government contractors to employ at least 7 percent of their workforce with individuals with disabilities. Not only would the company as a whole have to be in compliance with the rule, but those working under the contractor would have to also apply.

Now the Washington Post, the Wall Street Journal both ran articles about this proposed rule. To start with, asking an employer or an employee or an applicant if he or she is disabled is a violation of the spirit, if not the intent, of the law. Additionally, many job applicants and employees may not want to self-identify as being a disabled worker. Therefore, it might seem impossible for a contractor to be able to meet these requirements.

A contractor could be at a point of not being able to hire anybody new. If they have only 3 of their 100 employees are disabled, then they are not in compliance by 4. If they are not able to hire more or if they are unhappy with the idea of firing someone that is able to replace them with a disabled worker puts them in a precarious situation.

So the question is assume an employer has 3 percent, could they be subjected to a fine under this rule if they weren't in a position to hire 4 more?

Mr. HARRIS. Let me just give a caveat that that rule is still under development. It hasn't been published finally. So I can't really talk about where it is or where it was. I can talk about what was in the proposed rule, which addresses your question.

The answer is no. There is no fine or penalty if the employer is not able to meet what is an aspirational goal in the proposed rule of 7 percent.

What we find in our conversations with the business community, and I personally have had extensive conversations with folks in the

contractor community and the larger business community, what gets measured gets done. And what this rule would do is to give Federal contractors a benchmark against which they can measure their own performance in hiring people with disabilities.

And what the business community tells us is with that benchmark, they will do it. They will focus on it, and they will do it. But we will not penalize them if they are not able to do it.

And let me offer the Labor Department as an illustration of how this could work. Before President Obama issued his Executive Order directing Federal agencies to increase their employment of people with disabilities, representation of people with disabilities in the Labor Department in July of 2010 was 5 percent. Now it is 11 percent.

As of October 2011, actually, that was more than a year ago. It is higher now. It was 11 percent. So we have succeeded in bringing up our representation of people with disabilities.

I think Federal contractors can do it. Large Federal contractors can do it. Now some may not be able to do it, and for that reason, there will be no penalty. There will be no consequence except that we will engage with them, try to help them identify resources and change processes so they can.

[The information follows:]

#### THE PERCENTAGE OF FEDERAL EMPLOYEES WITH DISABILITIES

The statistics on workers with disabilities that were quoted by Acting Secretary Harris apply to all Federal employees, not just the Department of Labor. The first percentage he cited—5 percent in July 2010—is quoted from Executive Order 13548—Increasing Federal Employment of Individuals With Disabilities. The second percentage he cited—11 percent in October 2011—is from a July 25, 2012 follow-up report from the Office of Personnel Management—Employment of People with Disabilities in the Federal Executive Branch Report for FY 2011.

Mr. ALEXANDER. Thank you.

Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. A final question.

Mr. ALEXANDER. Okay.

#### STATE PAID LEAVE

Ms. ROYBAL-ALLARD. Secretary Harris, as you know, women constitute nearly half of the workforce, and 60 percent of working women are either the primary or co-breadwinner for their family. In addition to their work responsibilities, women are much more likely to have significant care giving responsibilities, such as caring for sick children or family members.

With only 11 percent of workers having access to paid family leave through their employers, many women are forced to choose between providing needed care for their family or losing pay or even their jobs.

I was pleased to see that your budget includes \$5,000,000 for a program called the State Paid Leave Fund. Can you explain the fund, the goals and requirements in order to participate, and has there been any expression of interest from States who want to participate?

Mr. HARRIS. Let me take that last part first because I appreciate your question very much. This is a very, very important issue, and we have not seen as much take-up or interest from States as we

might have liked because there are a number of barriers to them adopting State paid leave. The administrative costs are a very important part of it.

States are rather seriously strapped right now because of the economic downturn. They are laying off teachers and firefighters and EMTs. So finding the resources available to test a State paid leave effort is very, very difficult.

There are a couple of States that in private conversations have expressed an interest, and that is why we have included this budget proposal. We think that with a small amount of funding to deal with the creation of a program, and there are a variety of programs that they could create, that they will be able to provide working families, working parents in their States the opportunity to take paid leave. It is a very important issue.

As I mentioned, we completed a survey, a Family and Medical Leave Act survey recently and announced the results just a few weeks ago, and 40 percent of workers, 40 percent who would like to take leave are not able to take that leave because they simply can't afford to do it. They can't afford to give up a week of pay or 2 weeks of pay.

The Family and Medical Leave Act only assures unpaid leave of up to 12 weeks for some workers, not for all workers. So this inability to take time off from work because they can't take the pay cut is keeping people from caring for themselves when they are sick. So they are going to work sick, which is a bad thing from a public health perspective.

And most importantly, it keeps them from caring for their children, their parents, other family members when they are in some form of distress or taking care of a newborn or a newly adopted or newly placed child.

So a very, very important effort to try to use the States as the laboratories to test means of doing this, create models in the States that, hopefully, other States will adopt.

Ms. ROYBAL-ALLARD. Okay, well, I would just like to point out that California is one of two States to offer paid leave insurance program. And Californians have used the plan millions of times, and research shows that both the employer and the worker have benefited from offering paid leave. So I think that is also an important point.

Mr. HARRIS. I agree. Thank you.

#### SMALL BUSINESS CONTRACTING PROGRAM

Mr. ALEXANDER. Mr. Secretary, since 2008, the Department of Labor has been trying to purchase a new acquisition management system to replace its existing procurement system. And after deciding to set aside this work for small business, the department reversed the decision and awarded a \$20,000,000 contract to a larger business for the implementation of the brand-new AMS.

Now the award was \$10,000,000 higher than the next fully qualified competitor's price, which was a small business. Can you explain why the decision was made to go with a contractor charging twice as much with very little differences in the proposed solution, and why was the decision made to set aside the work for the small business?

Mr. HARRIS. Well, let me say we are deeply committed to our small business contracting program. More than 30 percent of Labor Department contracting goes to small businesses, and the Small Business Administration very helpfully sets a higher goal for us every year. So we are trying very hard to provide as much business as we can to small businesses because it helps the economy to grow.

In this particular case, as I understand it and as it has been explained to me—and I participated in part of this—in 2010 we replaced our departmental financial management system. We adopted a system called the New Core Financial Management System, which is an Oracle-based product. That system must be integrated with our procurement system, or we can't assure financial accounting or the requisite financial controls over statutes like FISMA, but others as well.

The electronic procurement system, the EPS system, which was the system you are referring to that was employed in 2005, could not be successfully integrated with the New Core system. They just would not talk to one another, and we tried a number of different ways of doing it. We brought the contractor in, the small business contractor who had originally implemented the EPS system. And it just—they couldn't make it work.

Even at \$10,000,000, we were fearful that we were not going to have full-out integration. So, instead, we went to an Oracle-based product, the AMS, acquisition management system, and that product will be able to integrate with the Oracle-based New Core Financial Management System.

So it is more money. We did want to try and do it with a small business. We were not able to do it in this case. But we are committed to small business contracting wherever we can do it. In this case, it just was not going to work for the department.

Mr. ALEXANDER. Mr. Chairman.

Mr. KINGSTON [presiding]. Thank you, Mr. Alexander.

#### OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

I had some other questions. One of the questions that I have has to do with OSHA and their relationship to workers. You know, in my opinion, the Government really should be a partner with businesses and employees. It should be a neutral partner, but it should be if an employee is misbehaving or a business is misbehaving, the Government should be a helpful agent.

We do get a lot of OSHA complaints, and so I sent out a survey to employers asking what their relationships are. One employer actually had some very favorable things, but the other ones were somewhat disturbing. And here is an example of a business, one of the questions.

How would you describe your experience with OSHA? Professional—and this is the business's response. Professional, but intense. The audit process is exhausting. The intent seems to be focused on generating fines instead of helping organizations improve on the safety of work environment.

There is also an intimidation factor, especially when interviewing hourly associates. They ask leading questions, such as are you just

using lockout/tagout just because we are here? And the interviews last about 45 minutes and cover 12 to 15 associates.

Another question I asked. Do you believe OSHA representatives are fair and unbiased? And the answer was OSHA investigators bring an attitude of "gotcha." Their bias is to believe companies are not following regulations, and it their mission to find something, anything to improve that.

There are also many layers of regulations. So it is unlikely—or it is likely they can find something to get a fine out of it. It is not a value-added process.

And I just wanted you to respond to that. Are you aware of that? And these are—I did not send this to the big corporations. And frankly, the big corporations have such resources that it is easier for them to compete.

Mr. HARRIS. Right.

Mr. KINGSTON. But I sent this to employers who had anywhere from 25 to 500 employees.

Mr. HARRIS. I have heard complaints at times from small businesses about the Occupational Safety and Health Administration, and I don't want to minimize the comments. And let me invite you, if you feel you are comfortable in doing this and if there is a way to redact the names of the employers, just the general information would be something that would be useful to us as a management matter. So I would welcome that information if you are willing to provide it. I don't want to put you on the spot.

But OSHA's task is to assure compliance with the safety and health laws. And there are a number of strategies that we use in order to accomplish that.

One is to provide small business advice, consultation through a program that we fund in the States, which is the OSHA Small Business Consultation Program. And employers, small employers can get advice on how to come into compliance with the law with no referral of any kind to the enforcement side of OSHA, and they get whatever help they need perfectly free provided and funded by OSHA. The Mine Safety and Health Administration, by the way, has the same kind of program.

So we have an aggressive compliance assistance effort with small businesses. But we also do have to enforce the law and assure that folks come into compliance with the law. I am not going to promise that that is always going to be a pleasant experience for employers, particularly if there are violations.

Let me say there is no incentive for CSHOs, the people who enforce the law, or for OSHA itself to impose penalties or fines. We don't get that money. That money goes to the Treasury, and there is no scoring system for CSHOs where they make more money or get a bonus if they find more citations rather than fewer.

We are prohibited from doing it that way. We wouldn't do it anyway because it is bad management. So if there are individual cases of inappropriate conduct, we want to deal with it, and we want to deal with it as a management matter.

But as a general matter, the evidence suggests that OSHA is doing a very good job in bringing employers into compliance with the law.

Mr. KINGSTON. I will send this information to you, and I think that there is an attitude issue that maybe it is isolated, maybe not. But I think that we would kind of like to have if somebody is breaking the law, not complying, then they should have a fine. And we are all in agreement on that.

But I think there are also some maybe procedural mistakes or whatever, and yet the feeling of employers is that they come to their premise on a fishing trip, and they are not going to leave until they catch something.

I am out of time. And Rosa, if you are ready?

Ms. DELAURO. Thank you, Mr. Chairman.

#### PILOTS FOR DISCONNECTED YOUTH

I posed a question, Mr. Secretary, on disconnected youth and want to get your view on this performance partnership pilots for disconnected youth and how you view that as being helpful in terms of dealing with this serious issue.

Mr. HARRIS. I think it is very important. We have a number of programs in the President's proposal to try to help disconnected youth. Those are out of school, out of work youth who, frankly, are just heading in the wrong direction and where bad outcomes could result.

We have in the Workforce Innovation Fund \$10,000,000 that is going to try and build knowledge about what interventions are going to work. That will be done in partnership with our colleagues at the Department of Health and Human Services and the Department of Education. We have \$50,000,000 in the RExO account, the reentry program for ex-offenders, to test and replicate evidence-based strategies for young adults and youth.

But more broadly, we are going to try to deal with the problem because before those students get disconnected, the President's proposal—and this is a repeat of a proposal he made in the American Jobs Act—is going to invest \$2,500,000,000 in summer jobs and year-round jobs for disadvantaged youth. Before those students are lost to us and become disconnected, drop out of school, drop out of the workforce, let us get them connected to the workforce, give them a good work experience, and give them an opportunity to rise up in school, keep them in school, and then get a degree so that they can use that in the labor market.

Our partnership with HHS to help WIA youth participants access good jobs in the healthcare field, I think that is very important. The healthcare industry has seemingly been impervious to the recession.

Ms. DELAURO. You are right.

Mr. HARRIS. It has grown in every quarter, every month—it is remarkable—since we entered office. And we have a partnership with Interior and Agriculture to use funds for work experience on public lands. We are talking with the Housing and Urban Development to help youth that are living in public housing.

We have got a multifaceted strategy to try to deal with disconnected youth and bring them back into the fold and get them on the path to employment.

## JOB CORPS FUNDING ISSUES

Ms. DELAURO. As just an adjunct to that, let me mention the Job Corps, quite frankly, and the health professions. I saw these youngsters being trained as EMTs and so forth and eager to be able to get to work. We have had a number of conversations about this effort.

And I would just say to you that I know the program simply has not had all of the funding that it needs in order to support the centers and the students that it has. And you have also been very forthcoming, acknowledging the problems and the challenges of the program, which you know have been miscalculation or mismanagement, et cetera. But you have been forthcoming on that.

What I would like to know is that the department has already dealt with cutbacks or savings in this program to make it viable. And you now have to contend with another \$80,000,000 cut from sequestration. Just when we are trying to stabilize the program, you are going to look at how we are going to replicate harm done to kids.

What is your plan to deal with another massive loss? How do you envision the center operators are going to be able to find more savings without jeopardizing the mission of the program? What will the department be doing to ensure the program is maximizing the number of students that can be served by Job Corps?

Mr. HARRIS. May I start by thanking you publicly, as I have privately, for your vigorous and passionate advocacy on behalf of the Job Corps kids. I share your strong support for the Job Corps program. It is a critical program. It makes a difference in lives and communities, and so I want to thank you for your advocacy. As a target of your advocacy, I want to thank you for your advocacy.

Let me start by taking our fair share of the responsibility. We had some management failures in the department. We did not manage this program as carefully as we needed to. We did not have financial management tools in place that we should have had in place. We did not watch the spending as carefully as we should have. We allowed the program to grow beyond the size that the appropriation permitted.

We also, frankly, changed the program in good ways. We made good policy decisions about assuring that the students got industry-recognized credentials. That cost additional money. We made a number of other reforms to the program that cost additional money, but we didn't adjust to those refinements.

So we have put a new system in place where we are working with the contractors to limit the total enrollment in the program. We did have to take into account an \$82,000,000 cut that was a consequence of sequestration. So we set the so-called on-board strength, the enrollment level, to a level that is not merely sustainable in fiscal year 2012, but it will also be sustainable in fiscal year 2013 with the sequestration.

At the same time, we are going to be working with the contractors, and I have spoken with the executive director of the contractors association, and my staff has had conversations with all of the contractors about finding new ways for us to find savings in the

program and to put all of that money back into growing the enrollment so we can get as many students into the program as possible.

We think it is a terrific program and that it helps kids. If we can get more kids into the program to help them, we want to be able to do that. But we have to find savings and have a secure financial base before we move forward with that. That is the strategy moving forward.

#### LOW PERFORMING JOB CORPS CENTERS

Mr. KINGSTON. Time has expired, but I wanted to kind of build on that. There are better performing Job Corps centers, and then there are worse performing. What are you doing to eliminate or rehabilitate the ones that aren't performing?

Mr. HARRIS. Well, in the President's budget proposal for last year, we proposed to close a number of low-performing Job Corps centers.

Mr. KINGSTON. Well, let me ask you last year and this year as well, or just last year?

Mr. HARRIS. Yes. No, we are going to move forward with the strategy of closing low-performing Job Corps centers.

Mr. KINGSTON. Okay.

Mr. HARRIS. We published several weeks ago a proposed methodology for doing that. We received comments from the public. We have now closed that comment period. We are analyzing those comments. Our goal is to move forward before the beginning of program year 2013 with a strategy for closing chronically low-performing centers, according to the methodology that we will ultimately produce similar to the one that we proposed.

That is not a money-saving strategy. That is a performance strategy. There are some centers that, frankly, can't do it. Some centers bounce around. They do well in one year. They do not so well. We don't want to close them because they have demonstrated that they can do it. But some, for a variety of reasons that I am not expert in, they just simply can't do it. We want to close those centers down.

We will repurpose that money to help increase onboard strength in other centers if we can, but we don't want that to be our budget strategy. We want it to be a performance strategy.

#### FIDUCIARY RULE

Mr. KINGSTON. Okay. Switching gears, and I did want to kind of move in a different direction. But the Employee Benefits Security Administration issued a non-mandated universal fiduciary standard rule under its ERISA authority. It would eliminate commission-based business model, the commission-based business model utilized by companies that manage small IRAs. That would be IRAs that are less than 25,000. And when they do that, it would hurt a lot of middle-class Americans' access from using that important tool.

The DOL is not statutorily mandated to create a universal fiduciary standard, and only the congressional mandate regarding this matter is to the SEC and the CFTC, and Dodd-Frank specifically states that the new fiduciary standard be model neutral. And so, my question is because of these concerns and the stated opposition

of over 100 members of Congress, EBSA withdrew the rule and said that they would repropose it in the future with more substantial cost-benefit analysis.

And I am wondering what the status of it is right now? If the DOL does go forward with this reproposal, can you guarantee us that it will do so in coordination with the SEC and the CFTC and not reduce access and increase cost to the middle-income IRA?

Mr. HARRIS. Yes. We are working, very, very, very closely with the Securities and Exchange Commission and the CFTC, as well as the Consumer Financial Protection Bureau, to assure that not only is there no conflict between our fiduciary standard and the SEC's fiduciary standard, but that they are actually consistent and they work together.

Just to clarify a couple of things, Mr. Chairman, in your question. This would not be a universal fiduciary standard. It would be a fiduciary standard that applies only under ERISA. It would not purport to regulate securities that are not part of a retirement scheme, just as the SEC does not have the authority to issue a fiduciary standard that applies to many, many retirement instruments that are not themselves securities.

So we do need to look at opportunities to regulate in this space to assure that we protect workers' retirement. Here is the problem we are trying to solve. Workers work extremely hard to save their money so that they will have enough to retire on. And then they sit down with an investment adviser, expecting that they are going to get advice that is going to allow them to maximize their return on this retirement investment.

And what they don't know is that they are often getting advice that is to line the pockets of the investment adviser or the people they are working for rather than to help the retiree to have the most money that they can spend in their retirement.

And so, the goal is to protect that retirement income that the worker has worked so hard to save and to not have it go to profits on Wall Street, frankly. Or to go into the pockets of the person who is giving the conflicted advice.

So what we want is retirees who retire, who have worked hard for 30 or 40 years, we want them to retire with enough money so that they can support themselves into retirement, and we don't want that money being shifted either into unproductive investments, irresponsible, too risky investments, or to investments that simply yield the most fees for the person who is giving them the advice.

#### EXISTING FIDUCIARY STANDARD

Mr. KINGSTON. But there are already lots of laws in place that prevent that, whether it is churning or just fiduciary laws in general. So I am not sure—I mean, it is like——

Mr. HARRIS. There is no law that prevents what I just described. There is currently no law that prevents what I just described.

Now in the securities——

Mr. KINGSTON. Then, okay, I am out of time. We will leave this.

Mr. HARRIS. Okay. Come back to it.

Mr. KINGSTON. But I don't understand what you are describing. If it is a violation of their fiduciary responsibility, then there are laws in place about that.

Mr. HARRIS. It is not a violation of the existing ERISA fiduciary definition, and that is the problem that we are trying to solve.

Mr. KINGSTON. And what—state it one more time for me.

Mr. HARRIS. So if you are a retiree who has got a block of money, and the question is how do I invest that money or what kind of instrument do I put it in so that I will have that money through the rest of my retirement? Or if you are a worker who is thinking about retirement 5 years down the line.

You sit down with an investment adviser. The expectation is they are going to give you the best advice for you and for your retirement money to return the most yield, the highest return on investment, or at least preserve your fund so that you have it available to you.

Under existing ERISA fiduciary standards, that investment adviser can give you advice that results in them getting higher fees, putting you into riskier investments, less productive investments, rather than preserving your money or giving you a higher return. So let me give you an example of where there is no overlap with the SEC fiduciary standard.

Let us say they suggest that you put the money into an annuity. Well, an annuity is an insurance product. It is not a security under the securities law. So the SEC fiduciary standard would not apply to the annuity.

Mr. KINGSTON. But there would be an errors and omission law that would step in. They would not be exempted from that. If I go to a stockbroker or a financial adviser and they give me bad advice, and they—it is shown that they are doing it for their own commission, I do have a cause of action and route.

Mr. HARRIS. Under the SEC fiduciary standard. But if it is not a security, that doesn't apply.

Mr. KINGSTON. And but what—

Mr. HARRIS. The securities law doesn't apply to non-securities. And a lot of retirement products, including annuities, which are a very important part of lifetime income strategies, they are insurance products.

Mr. KINGSTON. But you would still have an errors and omission claim against an insurance agent?

Mr. HARRIS. Not under State law. ERISA preempts State laws. ERISA preempts.

Mr. KINGSTON. Yes.

Mr. HARRIS. What I would like to do is now I am right at the boundary of my knowledge. So what I want to do is get you some further information from my staff that will help respond to that question.

Mr. KINGSTON. You and I both are at the boundary. [Laughter.] So I wanted to make sure I understand the clarification.

Mr. HARRIS. I will get you some further information.

[The information follows:]

## FIDUCIARY STANDARDS

The recent PBS Frontline report – “The Retirement Gamble” Facing Us All – which aired on April 23, starkly and sadly showed that the culture of conflicted advice that pervades Wall Street must be addressed to safeguard the roughly \$10 trillion in retirement savings being managed today by the financial services industry. I firmly believe that the Department of Labor’s (DOL) intention to re-propose a conflict of interest rule is part of the solution. I disagree with those who contend that Security and Exchange Commission (SEC) rules and state laws already provide all the consumer protections that the Department’s conflict of interest rule would. There is a gap between what the SEC rules cover and what the Employee Retirement and Income Security Act of 1974 (ERISA) covers, and ERISA provides recourse in areas where State legal remedies do not exist either. Please be assured that the Department has and continues to work very closely with the SEC to ensure our efforts in this area are fully aligned.

Under ERISA, fiduciaries are subject to a strict duty of loyalty and are specifically banned by law from engaging in a wide variety of conflict-of-interest transactions unless there is a specific exemption in the statute or the Department, after public notice and comment, publishes an administrative exemption. The statutory and administrative exemptions all have conditions designed to mitigate conflicts and to protect plans from advisers with divided loyalties and other misconduct. Also, ERISA’s requirements do not turn on whether the person is a licensed or registered broker/dealer or investment adviser under the SEC rules, but rather on whether a person (any person) is providing investment advice for a fee to a retirement plan or account under ERISA’s statutory definition and DOL’s regulation. This structure is premised on Congress’ judgment, evidenced in the “Findings and Declaration of Policy” set forth in section 2 of ERISA, that these tax-preferred retirement assets are deserving of special protection. The Internal Revenue Code uses the same definition of fiduciary for Individual Retirement Arrangements (IRA) and has the same scheme of prohibited transaction with statutory and administrative exemptions. The Department of Labor has authority to grant exemptions for both ERISA plans and IRAs.

In contrast, the SEC’s governing statutes and rules relating to investment advisers and broker-dealers generally are not as prescriptive as ERISA requirements. There is a strong focus under the Federal securities laws on prohibiting fraudulent conduct and requiring disclosure of conflicts of interests. However, the SEC’s authority generally runs to securities, and not the full range of non-securities investment and insurance products that ERISA plans use. So it is important to bear in mind that the SEC regulates a subset – not all – of the consultants and advisors that deal with ERISA-covered plans.

Remedies available under State securities laws would not generally afford the same protection against conflicts of interest. As with federal securities laws, they

focus more on issues of fraud, suitability or careless execution of transactions. These laws do not afford retirement plan assets the level of protection from conflicts of interest in ERISA and the Internal Revenue Code. Moreover, ERISA preempts state contract and tort laws that might otherwise apply to employee benefit plans.

Mr. KINGSTON. Okay.

Ms. DELAURO. Great. Let me try to move to two other areas if I can.

Mr. HARRIS. Please.

#### EMPLOYEE MISCLASSIFICATION

Ms. DELAURO. One is employee misclassification, and your budget requests resources to deal with this issue. And as I understand it, you are referring to what happens when a business treats a worker as an independent contractor rather than an employee, even though the worker plainly isn't running an independent business.

So what misclassification means, a worker loses the protection of unemployment insurance, probably workers comp, wage and hours laws. Among other things, it means that the businesses gain an advantage in lower labor costs over competitors who follow the law, and it means a loss of payroll tax revenue for Social Security and Medicare trust funds.

Am I correct in my understanding?

Mr. HARRIS. Exactly correct.

Ms. DELAURO. How widespread do you think misclassification, the problem is? What steps are you taking to combat it, and how would the requested resources be put to use?

Mr. HARRIS. There are studies that suggest that misclassification in certain industries, including the construction industry, can be as high as 30 percent of workers in that industry. We think it is a very serious problem. So we have undertaken two strategies, both of which are supported by the budget proposal that the President included in his 2014 budget.

One is that we are working through the UI system, our Employment and Training Administration is working with the States through their UI system to find employers who are misclassifying their workers and, therefore, avoiding UI taxes. It is a tax evasion scheme.

So they are working with them to try to get them to audit more aggressively in the model way and to try and get this additional money back into the UI system. We have a tremendous deficit in the UI system right now, and misclassification contributes to that.

We also have an enforcement strategy from the Wage and Hour Division, where the Wage and Hour Division is working with State labor departments—including the Connecticut Labor Department, but others all around the country—and with State UI and State workers compensation programs to try to share information and in some cases engage in joint enforcement activities. There is some additional money for the Wage and Hour Division in the budget to support that effort as well.

It is a very important effort. I frankly think that there is a lot more that we could be doing. It is something that we should be doing because the group that is most disadvantaged is the workers, but the group that is second most disadvantaged are employers who are playing by the rules.

Responsible contractors, responsible employers who are paying UI taxes, who are paying workers compensation premiums, who are paying overtime and minimum wage are getting cheated. And

they are losing out on bids, and they are losing out on competition. It is not fair.

Those who illegally misclassify their workers are not playing by the rules, and they shouldn't be allowed to do that.

#### VOLUNTARY PROTECTION PROGRAM

Ms. DELAURO. Okay. Thank you.

Let me ask about the OSHA Voluntary Protection Program, if I might.

Mr. HARRIS. Sure.

Ms. DELAURO. The Voluntary Protection Program is held out sometimes as a model for what agencies should be doing, but it is also an example in some instances of what can go wrong. Businesses that convince OSHA that they have a strong safety program receive an exemption, as I understand it, from regular inspections.

The program grew rapidly during the George W. Bush administration. There have been more emphasis on signing of facilities than watching what was going on. GAO looked at the files of 30 VPP sites where fatal accidents occurred between 2003 and 2008, found no indication there had been any review to determine whether the facility should remain in the program, even when the deaths were related to violations of OSHA standards.

There were news articles by the Center for Public Integrity. 2011 found worse results. Since 2000, at least 80 workers have died at facilities enrolled in the VPP. OSHA inspections found serious safety violations in at least 47 of those cases, but 65 percent of the sites with fatalities remained in the program.

Are you aware of the concerns about the VPP program, Mr. Secretary?

Mr. HARRIS. I am.

Ms. DELAURO. I understand that in recent years, OSHA has taken steps to address these problems. Is that the case? And if that is the case, what has been done?

Mr. HARRIS. I will do it very quickly. We have a review of the VPP program underway right now. The VPP program adds a good bit of value to those employers who participate and continue to take safety and health seriously. They use safety and health management programs, which are a very important strategy for avoiding injuries, illnesses, and fatalities.

But we do need to address the issue in the program that there are employers who are in VPP who have fatalities or serious injuries in their work site, which suggests they are not doing enough.

Ms. DELAURO. Thank you, Mr. Chairman. My time is just about up. I will come back again.

Mr. KINGSTON. Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

Mr. Secretary, how are you, sir?

Mr. HARRIS. I am well, thank you.

#### SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Mr. JOYCE. Secretary Harris, I would ask you, and thank you for testifying here today. But under the administration's fiscal year 2014 budget, the Senior Community Service Employment Program would be transferred to the Department of Health and Human

Services Administration on Aging. Can you explain to the subcommittee the reasoning behind this decision?

Mr. HARRIS. Sure. We are very strong supporters of the SCSEP program in the Labor Department. But the question is trying to align the goals of that program with the purposes of the agency in which it is housed.

The Employment and Training Administration is entirely dedicated to the purpose of moving workers through training programs, through placement efforts, into lasting jobs in the economy. The SCSEP program does that in part, but really it is a way for seniors to be able to participate in their communities, to make contributions to their communities often through not-for-profit organizations, and also for them to remain engaged. It is as much for their benefit as for the community's benefit.

Our feeling was that that is a better fit with the Office of Aging in the Department of Health and Human Services. So we wanted to try to put SCSEP together with the Department of Aging so that those two organizations, which have complementary strategies, complementary goals, would be able to work together.

Nonetheless, if Congress decides not to make that move, we are fully committed to the program. We will continue to operate it in the highest quality way possible.

Mr. JOYCE. Is there some methods of efficiencies that would be achieved by allowing the two to merge under this thought process?

Mr. HARRIS. You know, I haven't seen an analysis of that question. I don't know that it would necessarily net a savings, but we think that when you have organizations that have complementary goals, you are much more likely to achieve that goal. It makes it easier to administer the program. The mindset of the agency works better. The relationship with the stakeholders works better. That is the goal we are hoping to achieve.

Mr. JOYCE. Great. Well, thank you.

Mr. HARRIS. Thank you.

Mr. JOYCE. I yield back, Mr. Chairman.

Mr. KINGSTON. Thank you.

#### COAL DUST STANDARD

Mr. Secretary, the GAO published a report last August about the coal dust standard, and it found that the MSHA relied upon data that was gathered over an 18-year period from 1970 to 1988. So it is 25-year-old data.

And of course, during that time, there has been a lot of technology advancements and that we can do better in terms of modernizing it. But there is no study that determines whether it is even possible to lower the PEL, if it can be accomplished, and that it would support the industry.

I guess my question is that what can we do if you lower the PEL, what can actually be accomplished by it? And that is permissible exposure limit, of course.

Mr. HARRIS. Right.

Mr. KINGSTON. Are we working with the industry on this to get a good balance? Are we moving forward with the new regulation? I know there is a final rule that is coming out, I think, this summer. So a kind of open-ended question on that.

Mr. HARRIS. Sure. Let me just give the same caveat I gave before about another rule, and that is the rule is still in development, and it has not been finally approved. So it is entirely possible that it will change or that the schedule will change.

Having said that, the respirable dust rule is part of a larger strategy to end black lung. Black lung is the number-one occupational killer of miners. We often focus on these horrible, terrible tragedies like Upper Big Branch that killed 29 miners because of grotesque negligence by a single operator. But black lung kills hundreds of people every single year.

And so, the goal is to reduce that number as low as possible. It is part of a larger, multifaceted strategy. We have an enforcement strategy that is focusing on dust exposures in the workplace, and we have succeeded in that effort and also through compliance assistance efforts working with mine operators to bring down the level of exposure even without a new rule. And we have succeeded in doing that working with the operators and also, frankly, enforcing the law much more aggressively.

But we do need to address the question, I think, although unclear exactly what the rule will ultimately do, of the permissible exposure level because the amount of dust that you are exposed to directly affects the likelihood that you will get black lung, and black lung kills. We find miners under the age of 40, relatively new miners who have toxic levels of coal dust in their systems and are exposed to black lung.

So we are moving forward and trying to work with OMB on the question of when, if at all, we will move forward with this regulation. But I think that we have made a number of steps on black lung. My hope is that we will be able to move forward with the rule as well.

Mr. KINGSTON. Do you know what your cost estimate was? I think it was \$40,000,000, and do you stand behind that? Was that an accurate estimate?

Mr. HARRIS. You know, I haven't seen any revisions to the cost estimate that was put out in the proposed rule. The cost estimate would depend largely on what the PEL level is and what the medical surveillance requirements are. So I haven't seen any revisions to that. I haven't reviewed it myself.

Let me just make one comment.

Mr. KINGSTON. If we could look at how you came up with that estimation, it would be helpful. But everybody is in agreement on the goal here. We just want to make sure we are using up-to-date data and—

Mr. HARRIS. Right. Well, so could I make a comment about the GAO study, which you cited? The bottom line of the GAO study was that the science that MSHA used was sound and responsible and fully supported the conclusion that they reached.

And so, our conclusion from that study, which was required by this committee and the Congress in the last appropriations bill, is that GAO fully endorsed our moving forward with that regulation. So there may be some hesitations here and there, but my understanding is that what GAO said was the science was good. The rule is good.

Mr. KINGSTON. Okay. I wanted to switch gears to another topic, but I don't know if I can cover it in the minute I have remaining. So let me just go ahead and yield to you.

#### OSHA RULEMAKING PROCESS

Ms. DELAURO. I appreciate that, Mr. Chairman, because I was moving into this area as well, and I think we need to get the data. I mean, we have decreased the incidence of black lung about 40 percent over the years. And now it appears to be surfacing amongst younger mine workers.

Mr. HARRIS. Yes.

Ms. DELAURO. And that is really what we are trying to get at here. In the context of that, we hear a lot of rhetoric about regulation and it suggests that OSHA is turning out new rules constantly. That is far from the case.

OSHA's process for setting health standards for exposure to hazardous chemicals, in my view, seems to have reached a state of near paralysis. A couple of examples.

Updating its standard for exposure to silica. Since 1997 has yet to issue a rule in a proposed form. I understand the proposal is stuck at OMB since early 2011.

OSHA has been working on updating its beryllium standard since 2000. No proposal to date.

An article on the front page of the New York Times a couple of weeks ago highlighted the near impossibility of issuing new standards to guide employers and workers regarding safe exposure limits for new or newly recognized chemical hazards. So not OSHA's fault by any means. There are now so many steps in the process and so many opportunities for delay that it is not surprising that so little gets done.

Mr. Secretary, is the OSHA rulemaking process near paralysis? Are there plans to improve the process? Can we expect to see progress on silica, beryllium standards, the coal dust standard, any of the other health and safety rules that have been under the development at OSHA and MSHA?

Mr. HARRIS. Much of the OSHA regulatory process is not within OSHA's control. It is a series of requirements that is imposed on it by Congress and by others that requires it to go through a number of steps that other agencies don't have to go through.

I actually just had a conversation yesterday with a colleague in the White House who expressed shock after having worked on a number of regulations under the Affordable Care Act—which we thought were pretty complicated and required three agencies to agree—at how much more complicated the OSHA regulatory process is than the ordinary regulatory process, even with respect to the Affordable Care Act.

So our hope is that we are going to be able to continue regulatory development. We think that standards in OSHA and MSHA make a tremendous difference even if they don't result in direct enforcement. There is a norm-setting value to these standards.

They change employers' behavior just because the regulation is in place. Most compliance that occurs is responsible employers bringing themselves into compliance with the law. So if we can articulate what the law is, it gives guidance to those employers, and

they bring themselves into compliance and that keeps people from being killed, hurt, and made sick in the workplace.

So we think it is very important. We are working with our colleagues to try and move some of these regulations forward. I am hopeful that we are going to be able to do that soon.

Ms. DELAURO. Is there any kind of progress? I mean, silica, beryllium? Can we expect anything?

Mr. HARRIS. I am hopeful. I don't want to make a commitment because there are others who are involved in that decision, and it is not entirely within our control. But we are working quite hard, I can assure you, on trying to make things happen.

Ms. DELAURO. I am sure you are. I appreciate your hope, but I want to see them, see the rules.

Mr. HARRIS. I will pass that along.

#### MINE SAFETY

Ms. DELAURO. Let me ask another issue. This has to do with mine safety. And you mentioned Upper Big Branch, 29 miners killed, injured, others. A wakeup call, I might add. There were investigations into the causes as well as broader discussions of what we could do to prevent this in the future.

What lessons have been learned as a result of Upper Big Branch explosion and other mine disasters? What is the department and MSHA taking—what steps are you taking to improve mine safety? And how does your budget advance those efforts?

Mr. HARRIS. Well, thank you very much for that question. I think that has been a sadly untold story is how MSHA did respond to the Upper Big Branch disaster, and I think they have done a tremendous job, an excellent job. And the evidence is in the results.

Last year had the lowest fatality rate for miners ever measured, and that is not entirely because of MSHA. I think that responsible mine operators are operating differently. Technology has advanced. But MSHA's strategies, I think, contributed significantly to that result.

There were a number of problems that caused Upper Big Branch. One was that MSHA was not focusing enough attention on the most egregious violators of which Upper Big Branch absolutely was one. So Assistant Secretary Main has put in place an impact inspection strategy which focuses—although they are still making their 2s and 4s, they focus their resources on those employers who are the most egregious violators of the law. They are there, and they go after them, and they give them as many citations as are required.

The evidence suggests that the impact inspections have brought down by a fifth the total number of significant violations that have been found in those mines, and it significantly reduced the number of lost production days, which is one measure of whether or not you have injuries and illnesses in the workplace.

We have also produced a rock dusting rule, which will help to avoid explosions. We have produced a preshift exam rule, which requires employers to go in, make sure the workplace is safe before they allow any miners into it. And we have a new pattern of violations rule, which also is focused on the most egregious violators.

What we are finding, intriguingly, is that the number of egregious violators has shrunk dramatically, and we have had many, many, many fewer violations, many fewer withdrawal orders. That is because MSHA is doing an outstanding job in response to UBB.

Ms. DELAURO. Thank you very much.

Thank you, Mr. Chairman.

Mr. KINGSTON. Mr. Joyce.

Mr. JOYCE. Next time.

#### DRUG TESTING OF PERSONS RECEIVING DISABILITY

Mr. KINGSTON. I wanted to ask you about drug testing. It is interesting that the National Survey on Drug Use and Health conducted a substance abuse and mental health—conducted a study of substance abuse and found that 17.5 percent of unemployed Americans 18 and older were abusing illegal drugs, whereas in the working population, the number is only 8.4 percent. So it is doubled.

And recently, you probably saw this that Britain implemented a health test for people who are on disability, and when they did that medical assessment, over 900,000, nearly a million people quit taking the disability just because the threat of—I don't know why the word "threat" would even be used, but the threat of getting a medical exam.

It would appear to me that if we are paying somebody's unemployment insurance that they do have a societal obligation, and society has an interest in them to say you need to be ready for a job at any given point. What is your feeling on drug testing for somebody who is unemployed?

Mr. HARRIS. Well, let me just say I haven't seen those two studies. I would be interested to see those studies that you cited.

In the reform of the UI program that was included in Congress' legislation I believe it was last year, there was a requirement that we promulgate a regulation that addresses this question of drug testing, and we are now working on that proposed regulation that would allow States in certain—the statute was very, very, very limited—but in those limited circumstances to undertake pilots of drug testing of their UI recipients.

So we are moving forward with that rule, and I expect to see something in the next several months, maybe a proposal in the next several months on that.

Mr. KINGSTON. So are you supportive of it? Do you consider it common sense, or what is your philosophy on it?

Mr. HARRIS. Well, I would like to know more about it before I come to a final conclusion on whether it is a good idea or not a good idea. I think that is part of the logic of what Congress enacted the last time was to test and give States an opportunity to test.

There are selected jobs where drug intoxication is a serious threat to public health and safety, and I think there, there is a good argument. I want to know more before I opine on the rest.

Mr. KINGSTON. Okay. Now, Rosa, I have some other questions that we can submit for the record, depending on what works for you.

Ms. DELAURO. I just have a couple more.

Mr. KINGSTON. Okay. Mr. Joyce, how do you feel?

Mr. JOYCE. That would be fine.

Mr. KINGSTON. Okay. Go ahead.

#### VETERANS EMPLOYMENT

Ms. DELAURO. I just would like to address veterans employment for a moment.

Mr. HARRIS. Sure.

Ms. DELAURO. BLS data in March showed that the unemployment rate for post 9/11 veterans declined by more than 2 percentage points. That is real progress, and it is great news. I continue to remain concerned about the recent veterans from Iraq and Afghanistan. Two subgroups let me just mention to you.

Female veterans, troubling statistics. Two-point-six million post 9/11 veterans in 2012, 17 percent were women. According to BLS, the progress we saw with unemployment between 2011 and 2012 was limited only to male veterans. Unemployment rate fell by 2.5 percent during that period. Rate for female vets was roughly static at 12.5 percent.

The second group is those who returned home, young men and women with an injury. Post 9/11, the numbers are staggering. Twenty-eight percent of veterans reported having a service-connected disability in 2012.

You are devoting in this budget serious attention to making sure that these folks can return home and pursue a career. I would like to hear about the budget proposal, the new funds, working with disabled vets. How will that work?

And the employment programs that you have structured in order to reach female veterans who are clearly not where they need to be. So those two groups.

Mr. HARRIS. Exactly right. Well, I agree with everything you just said. We had very good overall news that the veterans unemployment rate came down. The veterans unemployment rate for post 9/11 veterans also came down dramatically, but unacceptably high levels still for the youngest veterans and also for women veterans and veterans with disabilities. So we have a number of strategies to try to address that issue.

#### WOMEN VETERANS

With respect to women veterans and the youngest veterans, the unemployment rate among veterans between the ages of 18 and 24 is something in the vicinity of 20 percent. A sizable portion of that, I think, is because they are much less likely than their nonveteran colleagues to have bachelor's degrees. Unsurprising because they have been in the service, and they haven't had the opportunity to go to college.

So the President's investment in the GI bill, the Department of Veterans Affairs effort to try to get more veterans into college, our effort to try to push veterans into college degrees a very, very important part of that story. I think that is a piece of the story with respect to women veterans as well is that because women veterans are a fairly recent, comparatively recent phenomenon in the military. There are many more women veterans I think in that age cohort than you would find in older age cohorts.

But they also find barriers that are barriers that other veterans don't experience, sexual assault and others that they may have ex-

perienced. So at least with respect to the homeless veterans population, we have made an effort to carve out a pot of money that is exclusively dedicated to women homeless veterans and women veterans with families because they simply need to be served differently.

They will not go to a service center that serves male homeless veterans. They are not comfortable there. There is every reason why they should not be comfortable there.

Ms. DELAURO. They are scared.

Mr. HARRIS. Right. So we have dedicated our grantees to focusing on that population. They have been very, very successful. Our homeless veterans program on the whole has had a tremendous placement rate, above 60 percent among homeless veterans in jobs, which has been a tremendous success, I think. And it is getting better and better as we go along.

#### DISABLED VETERANS

With veterans with disabilities, we have a program that is supposed to serve that population, the so-called DVOP program, the disabled veterans program, service representatives who are in our One-Stops, our American Job Centers around the country. This additional \$38,000,000 that the President has invested in this budget is to expand the core of DVOPs because we don't have enough. We don't have one in every American Job Center. This would not get us to one in every center, but it would get us a lot closer.

Those folks are going to get the kind of intensive services that we know lead to training and that we believe lead to employment. Training we know is much more likely to lead to employment. They need intensive case management services, skills assessment services, job placement help. That is what that money will go for. So that is directed at exactly the population you are talking about and other veterans who have substantial barriers to employment.

Ms. DELAURO. Thank you.

Can I ask my final question?

Mr. KINGSTON. Yes, actually, I had two more that popped up anyhow. So—

#### OSHA'S WHISTLEBLOWER PROTECTION

Ms. DELAURO. Okay. Thank you very much, Mr. Chairman. Thank you.

Mr. Secretary, thank you for the answer, and thank you for your unbelievable knowledge and intimate knowledge of these programs. It is really very, very exciting.

Your budget requests \$6,000,000 increase for whistleblower protections at OSHA. This involves far more protection, as I understand it, for workers who report workplace problems.

Labor Department has Government-wide responsibility for enforcement of some 22 laws that protect employee whistleblowers, and that responsibility has been delegated to OSHA. The laws involved protect employees from retaliation for reporting problems in a wide range of areas from transportation safety to standards for the securities and financial services industries to safety of food and consumer products. Please describe OSHA's responsibilities in this area and why you believe the increase is necessary.

Mr. HARRIS. If I could just very briefly, Mr. Chairman? I see that the time is out, but just very briefly.

Well, it is very simple. Congress keeps giving us more work and no more money to do the work. We have seen, since 2009 alone—

Ms. DELAURO. You have to enforce 22 laws that protect employment whistleblowers. That is all at OSHA.

Mr. HARRIS. Right. Five new laws since 2009, including the Affordable Care Act and food safety laws. It is not just safety and health laws. It is every whistleblower law, most whistleblower laws that are in the Federal Government. So we have gotten no additional resources to do that. We have seen an increase I think I saw the number of 29 percent in complaints since 2009.

So this additional \$5,900,000 will allow us to enforce those whistleblower laws. These laws are really a very cost-effective and effective way of assuring that there is compliance with the law. It assures that people who have the most knowledge about what is going on inside their organization can raise their hand up and say, you know what? I know about an illegality. I know about an unsafe working condition. I know about a violation of the securities law under Sarbanes-Oxley or unsafe food. I know about it, and you can't retaliate against me. And if you do, OSHA is going to intervene and protect me.

So it is a way of getting everybody involved and assuring that the laws that Congress passes are actually complied with. It is a low-cost way of doing it. It is only 5,900,000 additional dollars, but it will make a tremendous difference.

Now we have undertaken an administrative reform of the whistleblower program. We have created a directorate inside of OSHA. We have got for the first time a career SES who has the lead in that program, a very experienced person who is going to make that successful program. We have changed the relationship between the national office and the field. We think we have got a system that is going to work better. All it lacks is resources right now.

Ms. DELAURO. Thank you, Mr. Chairman.

#### WHISTLEBLOWER EXAMPLE

Mr. KINGSTON. Rosa, I have a friend, a small employer of about 10 or 12 employees, and I have known this guy a long time. He had no reason to spin me. But he brought all his employees in and said, you know, employee safety and environmental compliance is in everybody's interest, and I just want you to know if you see something wrong, let me know. And here is how we can get fined, and here is how we can't. But we are a small firm. We are all in it together. It is like a printing business.

Mr. HARRIS. Right.

Mr. KINGSTON. Well, 2 months later, he had to fire somebody. So that employee on the way out the door called OSHA or EPA and said that the guy was discharging paint in his backyard. And he said it was an absurd claim. But I am not sure if it was OSHA or EPA who came, and of course, he said the door is wide open, come look.

Well, he said the problem was they decided to take it very seriously, even though it was absurd, and he said they stayed until they found \$6,000 worth of fines on him, which they settled for

\$2,000 or something like that. It was here is a guy that tried to do the right thing, but probably informed the wrong employee of how you can use these tools of whistle blowing against an employer for a violation.

I have some questions if you are finished, and if not we will just go back.

Ms. DELAURO. I am just going to—if you will allow me, I just have one last question.

Mr. KINGSTON. Absolutely.

#### STATE PAID LEAVE PROGRAM

Ms. DELAURO. And then I will—this has to do with State paid leave, something I am very committed to. California reached its 10th anniversary for enacting the Nation's first paid leave insurance program. The effort has been a huge success by all studies.

Results are positive for families, both for health and economics, but business outcomes have also been positive. The President's budget included funding for State paid leave for a fund to help support States that are considering establishing a paid leave program. Opponents argue that the requirement for paid leave will be too costly, will lead to employers hiring fewer people, or will drive companies out of business.

Quite frankly, they are the very same arguments that were made 20 years ago when we were fighting to pass family medical leave, none of which turned out to be true. What can the department's experience with the FMLA tell us about the benefit of paid leave and who benefits from these types of programs?

Mr. HARRIS. It is precisely what you described. We just, as you well know because we participated in an FMLA anniversary event together—

Ms. DELAURO. Right.

Mr. HARRIS [continuing]. At the Labor Department with President Clinton and with Senator Dodd. We released a Family and Medical Leave Act survey, and it was a survey of both employers and employees. And what employers told us is it doesn't cost very much. It is easy to administer. Workers don't turn over as easily.

What employees told us was that there is a large swath of workers who simply can't access the Family and Medical Leave Act benefit because they don't earn enough. And it is low-wage women. It is African Americans and Latinos who are disproportionately in that group of people who are cut out of access to family and medical leave simply because they cannot afford to take time off.

Forty percent of workers told us that they would take leave if they had paid leave, but they couldn't take it under the Family and Medical Leave Act, even though their job was protected and their benefits were protected.

So that is the effort here with this \$5,000,000 trying to spark a couple of States to establish models, new ways of doing business that will become models for other States as well, building on the California experience and other States. Massachusetts also has a program.

That would allow us to test paid leave around the country, find low-cost ways of doing it. California has had an excellent experi-

ence. Congresswoman Roybal-Allard talked about that. New Jersey has a temporary disability program that works very well.

Once it becomes a part of the ordinary way of doing business, employers find a cheaper, more effective way of doing it themselves, and it works.

Ms. DELAURO. And I would just say, Mr. Chairman, many, many years ago, when FMLA was done, I had the real honor of working with Senator Dodd. And what we did in the State of Connecticut at the Senator's direction, we organized small groups of business people all over the State and literally went door-to-door, if you will, to talk about a family and medical leave bill.

And we found that employers for the most part were open to this effort, and that bill was—Senator Dodd was the prime mover of that piece of legislation, which got signed, the very first bill that President Clinton signed.

But what we have found, as the Secretary said, there are so many, particularly women, who just don't make enough to be able to take that time away from a job without any pay. And we are, I think, one of three nations and maybe Papua New Guinea and Lesotho that don't have some sort of a paid leave program for their employees.

So it is something that I think we ought to look at in terms of that \$5,000,000 request that you have made to be able to encourage and move. States are doing this. States are working at it, but this could help to move in that direction.

Thanks. Thank you for your indulgence, Mr. Chairman.

Mr. KINGSTON. Thank you.

Mr. Joyce.

Mr. JOYCE. No, thank you.

#### DVOP AND LVER STAFF

Mr. KINGSTON. I wanted to ask about DVOPs and LVERs. The American Legion actually did a survey that they had asked—that they had tried to see how well it was going. And they found that the DVOP and LVER staff are often tasked by WIA-funded supervisors that have duties that are not germane to providing employment services to the vets.

And they also report that the DOL vets staff provide virtually no oversight of how the program is executed at individual One-Stop centers. Now, interesting, they actually called around a random sampling, and I will share this with you if you want?

Mr. HARRIS. Please do.

Mr. KINGSTON. They called 20 One-Stop centers. Only three had DVOP or LVER staff available to take the call.

Mr. HARRIS. Right.

Mr. KINGSTON. And messages were left, including the names and skill sets of veterans looking for work. Those calls were never returned. And then one call was even closed during normal business hours and left no option except for it to go to the Web site.

Mr. HARRIS. Right.

Mr. KINGSTON. It is my understanding that DVOPs and LVER staff are designated only to serve the veteran population, but clearly, these findings suggest that not only are they not available to

help, but they are also providing services funded by the WIA program. And so, where is your oversight on this?

Mr. HARRIS. Right. This is right at the core of what we are trying to accomplish with our reform of the Jobs for Veterans State Grant Program of which the DVOPs and LVERs are a piece. Although I haven't seen the study from the American Legion, we have had a number of meetings with the Legion about services provided by the DVOPs and LVERs.

Right now, under existing law, there are only 1,100 DVOPs. There are 2,800 American Job Centers. So the majority of American Job Centers don't have DVOPs. Our effort in this budget is to increase that number. I believe it will get us an additional 500 DVOPs. So that would take us to about 1,600.

And what we are going to do, hopefully, is work with the States to convert more LVERs into DVOPs so that there is more service and in more American Job Centers. The Vow to Hire Heroes Act required that 100 percent of the service provided by the DVOPs be provided to veterans, and we are setting up a compliance and monitoring system in the Veterans Employment and Training Service to assure that that is true.

We understand it is true in most places, but we want to make sure it is absolutely true. But more importantly, it is not just that they should be serving veterans, there is a certain slice of veterans who really need this help—veterans with disabilities, homeless veterans, older veterans who have less education, transitioning service members. They have substantial barriers to employment. They need the particularized help of the DVOPs.

So that is the strategy that we are going to be pursuing moving forward with these additional resources, if the committee approves the President's request.

#### IMPLEMENTATION OF THE HEALTH CARE ACT

Mr. KINGSTON. Okay. Another question is with the implementation of Obamacare, there are a lot of employers who are reducing hours to get their employees to be part-time employees and working to get less than 50 employees, and that is anecdotal. But are you tracking those? Because it does seem to be everybody is hearing this.

Mr. HARRIS. We are working on analyzing that question. I have not seen any evidence to support that that is true. I do hear anecdotes as well. But as I have dug in, I haven't really found in any particular case where it is true. So, but we are going to look at that question.

Mr. KINGSTON. And what would it mean to you? What would be the—if this is true, what would DOL react? What would be the implications?

Mr. HARRIS. You know, I think I want to get the evidence before I speculate on what we would do with it. I want to see if it is widespread. I suspect it is not, but I want to learn more before I come to a conclusion about what action we would take.

Mr. KINGSTON. I think the employers are just being very cautious. I did talk to one business that has 42 employees, and they said they do not want to grow right now. They may in the future, but right now, they are going to sit and wait even though they

could expand. But I have heard from others that they are putting people on part-time basis, and I don't know if you are hearing that or——

Ms. DELAURO. I think it is accurate that there is a lot of anecdotal information out there. There isn't anything that is substantial, and I think it makes sense to try to see what is going on and what is happening.

Mr. KINGSTON. Okay. Mr. Joyce, do you have anything?

Mr. JOYCE. No, sir.

Mr. KINGSTON. You have been a great committee member. This gives Rosa and me more time and so——

[Laughter.]

Ms. DELAURO. We could spend the afternoon here if left to our own devices. Staff would kill us, but that——

Mr. KINGSTON. We have done that before.

Ms. DELAURO. Right.

Mr. KINGSTON. If you don't have anything?

Ms. DELAURO. No, I am fine. Thank you very much.

Mr. KINGSTON. Mr. Harris, thank you very much.

Mr. HARRIS. Thank you.

Mr. KINGSTON. The committee stands adjourned.

[The following questions were submitted for the record.]

**Department of Labor, Health and Human Services and Education and Related Agencies**

**Department of Labor FY14 Budget Request Hearing  
April 16, 2013**

**QUESTIONS FOR ACTING SECRETARY HARRIS  
TO BE SUBMITTED FOR THE PUBLIC HEARING RECORD**

**[The following questions were submitted to be answered for the record:]**

**ETA SEQUESTRATION**

**Mr. Kingston:** I have heard concerns that the Administration is forcing the ETA accounts to take the sequestration cut out of the first quarter of program year (PY) 2013 formula funds – rather than out of the entire PY, which will make it extraordinarily difficult to help people in need during this first three months of the PY. It seems to be unnecessarily draconian and comes from OMB rather than the agencies. DOL has made this declaration for WIA funding.

Why are you implementing sequestration this in this fashion?

**Mr. Harris:** Under sequestration, the Department of Labor (DOL) was required to implement across-the-board reductions of funds appropriated for Fiscal Year 2013 (October 1, 2012-September 30, 2013) for formula grants under title I of the Workforce Investment Act (WIA) and other programs. The WIA Dislocated Worker and Adult formula grants are administered on a program year (PY) basis – PY 2013 is the period from July 1, 2013 through June 30, 2014, which overlaps two different fiscal years. One portion of the funds for PY 2013 is available for Federal obligation on July 1, 2013 (FY 2013), but the remainder of appropriated funds would only become available on October 1, 2013, which is FY 2014. Since this sequestration does not apply to FY 2014 funds, DOL did not have the option of applying reductions to the funding for the entire PY 2013. Similarly, since the first quarter of PY 2012 was funded from an FY 2012 appropriation, DOL did not have the option of applying the reductions to the funding for the entire PY 2012.

Instead, the sequestration had to be applied to the sum of the amounts that became available on October 1, 2012 (which was for the remainder of PY 2012) and the amounts that become available on July 1, 2013 (the first quarter of PY 2013) for each of those formula programs. DOL decided to implement the sequestration by applying all of the required reductions to the funds that have not yet been allotted to the States--that is the funds that become available on July 1, 2013. Otherwise, States would have been required to recapture and return funds that had already been allotted to them and allocated to local areas. DOL wanted to avoid that significant disruption, including the potential need for States or local areas to deobligate grants and contracts that have been entered into to provide employment and training services to participants in PY 2012. This decision was not dictated by OMB or others in the Administration, but was based on DOL's assessment of the implementation options.

The approach taken by DOL to implementing sequestration was intended to limit the disruption to the programs, provide some flexibility to States and local areas, and minimize the impact on participants. To further these objectives, DOL has also been providing technical assistance to the States, including early projections of the required reductions and assistance in identifying the limited areas of administrative flexibility that may be used by states to help mitigate the impact of sequestration.

### SKILLS MISMATCH

**Mr. Kingston:** According to the Bureau of Labor Statistics (BLS), there were 3,925,000 job openings in February. This is nearly 400,000 more than one year ago, and over 900,000 more than two years ago. More recently, there are now 314,000 more vacancies since January. Despite this increase in job vacancies, some 90 million Americans have now left the workforce according to March BLS numbers.

Local One-stops must be tied into and receive the latest labor market information for the communities they serve, and employers must have a seat at the table when these local boards make these training decisions.

What is the Department doing and what policies are being developed so that the local WIBs can be more engaged with employers in the community they serve?

**Mr. Harris:** Employers are one of the “dual customers” of the workforce system (the other customer being the worker). Strengthening the role of business in the workforce system, ensuring training responds to the needs of the labor market or industry, and enhancing outreach to businesses are DOL priorities.

States and local areas provide direct services to businesses through Business Service Representatives (BSRs), Rapid Response Staff, and other staff. The Employment and Training Administration (ETA) supports front-line staff development through on-line learning opportunities available on our technical assistance website, including a complete training curriculum for BSRs that is accessible to staff with varying skill levels and can be customized to meet local needs. The curriculum focuses on critical skill areas such as developing relationships with business, refining outreach strategies, and aligning business services with demand.

The Expanding Business Engagement Technical Assistance grant initiative supports the strategic planning and implementation of revitalized or enhanced business engagement activities. Currently 13 states are bringing together industry representatives; federal, state, and local practitioners; and business to refine their business engagement activities, respond to the needs of local economies, and improve program performance. The Department is currently developing a suite of online resources, including a toolkit of promising practices that will support grantees in their peer sharing and implementation efforts over the coming year.

In addition, ETA collaborates with employers and industry associations to document the skills required in emerging and economically vital industries through competency models. Competency models support workforce development strategies by providing a common language

for employers to communicate their workforce needs. They also help ensure that workers have the knowledge and skills needed for success in jobs with good pay and advancement opportunities. ETA currently has over 20 industry-validated competency models for a variety of demand sectors including energy, healthcare, manufacturing, and IT.

Local workforce investment boards have access to a range of labor market information (LMI) that can inform their interaction with employers, including recruitment and training for jobs in demand. ETA has provided guidance and technical assistance on how local areas can access national and state level LMI on job openings, occupational and skill projections, wage comparisons, data on where available skilled workers are located, and regional economic trends. Significant technical assistance on how to use labor market information to inform decision making, including guides to data sources, analysis of real-time LMI tools and webinars, is available at <https://winwin.workforce3one.org/>.

### **JOB CORPS – OUTREACH AND ADMISSIONS (O&A)**

**Mr. Kingston:** The outreach and admission process is vital to the recruitment and eligibility determination of Job Corps students. Data previously provided by the Department suggests there may be as many as 85 contracts that bundle the O&A activities with the operations contract. There is no empirical data that suggests there has been any abuse, just to be clear. But, the concern has been raised as to whether or not the profit motive may encourage an operations contractor to recruit only the best and brightest for their particular center, thereby inflating the center's performance measures.

Do you believe that there should be a firewall between the O&A process and the contracts that govern the operations of Job Corps centers?

**Mr. Harris:** The USDOL Employment and Training Administration's Job Corps (ETA/Job Corps) operates both stand alone and bundled contracts for its outreach and admissions services. ETA/Job Corps has no information or evidence of abuses in either form of contract. If abuses are discovered, ETA/Job Corps will concentrate on correcting the deficiencies rather than focusing on the form of the contract. Outreach and Admissions (OA) operators have specific student recruitment and retention goals for each center they serve. Failure to meet these goals results in financial penalties via performance-based service contracting and future contract award decisions. OA operators are not held accountable for a student's academic performance, nor do they evaluate academic performance or training success of the student.

### **DRUG TESTING**

**Mr. Kingston:** A 2011 survey by the Society for Human Resource Management (SHRM) found 57 percent of organizations conducted pre-employment drug testing on all job candidates and 47 percent of the surveyed businesses institute random drug testing of their employees. These results demonstrate the importance of ensuring that job seekers are not abusing drugs.

According to the 2010 National Survey on Drug Use and Health conducted by the Substance Abuse and Mental Health Services Administration, 17.5 percent of unemployed Americans ages 18 and older reported abusing illegal drugs compared to only 8.4 percent of employed adults.

Initiatives to drug screen and test as a condition for unemployment compensation are helpful in ensuring that unemployment benefits are spent in the most productive manner possible: to help ensure that beneficiaries are as competitive as possible in the job market so they might regain full employment as quickly as possible.

What are you doing to insure that those using UI are drug free and prepared to re- enter the workforce?

**Mr. Harris:** As you are aware, the Unemployment Insurance (UI) program is a federal/state partnership and eligibility requirements for UI are driven primarily by state law. The Middle Class Tax Relief and Job Creation Act of 2012 (the Act) included provisions to permit States to enact legislation that would allow State UI programs to conduct drug testing on applicants for whom suitable work (as defined under the State law) is only available in an occupation that regularly conducts drug testing or if the applicant was discharged for unlawful use of drugs. States may deny UI benefits to an applicant that tests positive for drug use under these circumstances. Section 2105 of the Act required the Department to determine and establish in regulations those occupations that regularly conduct drug testing. DOL is currently drafting the required regulation. In addition, at the same time we publish the NPRM, the Department anticipates providing additional guidance to states through an Unemployment Insurance Program Letter on the drug testing provisions in the Act.

#### DAVIS-BACON WAGE DETERMINATION PROCESS

**Mr. Kingston:** In 2011, the GAO issued a report critical of the Wage and Hour Division's Davis-Bacon wage determination process. The GAO found that the Wage and Hour uses small and statistically unrepresentative samples—over a quarter of wage determinations are based on self-selected surveys of six or fewer workers. Such an unscientific methodology produces highly inaccurate estimates, yet these estimates set the pay rates on tens of billions of dollars of federal construction spending.

The GAO recommended that “the Secretary of Labor direct the Wage and Hour Division to enlist the National Academies, or another independent statistical organization, to evaluate and provide objective advice on the survey, including its methods and design; the potential for conducting a sample survey instead of a census survey; the collection, processing, tracking, and analysis of data; and promotion of survey awareness.”

What has been done to follow up on this recommendation? In particular, what if anything, has been done to revise the Davis-Bacon surveys to account for survey non-response and the statistically invalid and self-selected methodology of the current survey?

**Mr. Harris:** WHD has previously enlisted McGraw Hill Construction Analytics, a firm of leading industry economists with expertise in construction analysis, trends, and forecasts, to

assess WHD's process and operations. The recommendations from McGraw Hill, which WHD provided to the GAO auditor, have been implemented and are beginning to bear fruit. Given that further changes to the process are currently being implemented or will be implemented in the near future, such as the calculation of survey response rates, contracting with a different organization to evaluate the efforts of WHD may be premature, especially in light of cost considerations. WHD will, nevertheless, explore options for seeking independent evaluation of the survey methodology and identify organizations or academics that may have expertise in this area.

In recent years, WHD has reevaluated and changed various administrative processes, addressed recommendations from various audits, improved outreach, and enhanced enforcement. For example, the time spent by WHD survey analysts on administrative/clerical type functions was greatly reduced when WHD modified the University of Tennessee contract, thereby freeing WHD staff to concentrate on analysis and clarification of data. Regional WHD analysts are now typically performing analysis and clarification of data within two weeks of the receipt of such data. Despite a large amount of data still being received on the survey cut-off date, processing time is quicker than before because other data is reviewed and processed by the cut-off date. Currently, contractor, third party, and on-site verification are being performed within an average of six to eight months from survey cut-off date compared to the 12-15 months it took prior to 2010. WHD has increased the number of both its Federal survey staff in the regional offices as well as contract staff at the University of Tennessee to provide support for the increased number of surveys and the reduced timeframes in which surveys are to be concluded. Additionally, WD-10s reviewed and submitted by analysts are also reviewed by the senior wage analyst in each region and feedback is given to the analysts. All of these initiatives have resulted in more accurate reporting of information, allowing, among other things, WHD national office personnel to monitor the time spent in specific survey activities. Moreover, new performance standards were also developed for the FY 2010 rating cycle for WHD regional and national office survey and wage determinations staff. These standards are closely aligned to the agency's program performance goals and measures.

WHD has also adopted a systematic approach to effect [or make] improvements in the wage determinations IT system. These IT improvements have enhanced the efficiency and effectiveness of myriad tasks performed both by the WHD's analysts and by the agency's contract staff at the University of Tennessee's Construction Industry Research and Policy Center (CIRPC). For example, the usual time needed to complete basic business processes, such as loading F.W. Dodge reports that identify construction projects within a particular geographic area, has been reduced from three weeks to one hour; the usual time needed to prepare documents for on-site verification has been reduced from one month to one day; and area practice resolution by WHD staff has been reduced from weeks to approximately one day. IT development and resulting changes to the survey process to further increase the accuracy and timeliness of DBA wage surveys and wage determinations are still ongoing. Enhanced reports from the data systems allow for easy review of wage rates enabling analysts to find, review and correct potential errors. This is especially useful to identify anomalies in wage rates.

WHD has taken steps to address representation and responsiveness in WHD's survey results in response to concerns that were raised. WHD also implemented an aggressive outreach program

to increase participation in the survey process from all parties, including small contractors and their associations. Beginning in FY13, all international unions and contractor associations are to be notified of every survey that will start in the FY and asked to provide the most recent addresses of their locals or chapters for notification. The electronic WD-10 submission form has been enhanced and has been made more user-friendly. The submitter can now create templates, the form can be saved by the submitter, and each submittal is acknowledged with an email. Users also receive an immediate confirmation of receipt and have the ability to go back into the system and review the form as submitted. Acknowledgement letters are now being sent to each submitter participating in a survey, which began FY2013. The acknowledgment letter summarizes information received by WHD and are sent for both electronic and paper submissions of WD-10s. WHD continues to improve the Davis-Bacon website to increase transparency, and surveys' status information on that site is updated monthly. Wage and Hour continues to work with states to determine the most efficient way to establish rates for highway construction and a new Davis Bacon Manual of Operations should be completed in the next few months for external stakeholders.

### OLMS – COMPLIANCE ASSISTANCE PROGRAM

**Mr. Kingston:** In FY 2008, the Office of Labor-Management Standards conducted 791 compliance assistance program (CAP) audits of local and intermediate unions. By FY 2011 that number had fallen to 461, over a 40 percent drop. However, the Inspector General reports that 16 percent of CAP audits conducted lead to criminal charges being filed against one or more employees of the audited union, indicating that union corruption remains a significant problem.

Why has the Department of Labor placed such a low priority on exposing union corruption and scaled back the number of CAP audits?

**Mr. Harris:** In light of constrained budgets, coupled with the statutorily required automatic across-the-board spending cuts that took effect March 1, DOL (and OLMS) has had to make difficult decisions on which programs and activities to prioritize. Cases in which Congress imposed a 60 day deadline come first. Embezzlement and other criminal activity are next highest priority. The compliance audits you mention then are prioritized above all remaining OLMS activities. While there are fewer of them today than there were a couple of years ago, new techniques have allowed them to succeed far more often in detecting criminal activity.

By statutory mandate, election investigations and supervised elections must be a top priority in terms of OLMS investigative resources. OLMS administers and enforces the Labor-Management Relations and Disclosure Act (LMRDA). The LMRDA establishes certain minimum standards that unions must observe in conducting elections of officers. A member may file an election complaint with the Secretary of Labor after pursuing internal union remedies. Under the LMRDA, OLMS must investigate each election complaint filed and, if a violation is found that has not been remedied, file a civil suit in federal district court within 60 days after the member filed the complaint. Due to this statutory limitation, election investigations must be conducted expeditiously.

When an OLMS investigation reveals that violations have occurred that may have affected the outcome of an election, OLMS seeks to conduct a new, OLMS-supervised election of officers either through a voluntary compliance agreement or through court action. A new election of officers supervised by OLMS is the only remedy provided by the LMRDA. Thus, OLMS must also place a high priority on the conduct of supervised elections.

Due to these statutory requirements, OLMS must prioritize election investigations and supervised elections. The number of election investigations and supervised elections has remained relatively constant as indicated in the chart below.

<b>OLMS Election Enforcement Statistics</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Election Investigations Conducted	131	128	145	174	123
Supervised Elections Completed	35	32	29	26	25

OLMS also places a high priority on criminal investigations. Labor union officials occupy positions of trust and therefore, must ensure that the union's funds and other assets are used solely for the benefit of the union and its members. It is a Federal crime for a labor union officer or employee to embezzle funds of the union. Most of our criminal investigations involve embezzlement, theft, or the conversion of union funds. Evidence of suspected embezzlement is obtained through leads, analysis of union financial reports, surety company reports, contacts with union officials, employees, or members, and our compliance audit program. OLMS conducts criminal investigations and takes its criminal reports of investigations to U.S. Attorney's Offices to obtain criminal indictments and convictions.

OLMS prioritizes criminal investigations above compliance audits because in criminal investigations, OLMS already has specific information or allegations of criminal activity versus compliance audits where OLMS may only suspect criminal activity. The OLMS criminal program is its primary program for fighting against union financial corruption. Despite reduced investigative resources, OLMS has held close to its historical average of criminal investigations completed and the number of criminal indictments and convictions obtained as indicated in the chart below.

<b>OLMS Criminal Enforcement Statistics</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Criminal Investigations Conducted	391	405	355	321	308
Indictments	131	123	129	144	124
Convictions	103	121	130	116	121

OLMS' consistency in obtaining an average of over 125 criminal indictments and over 115 criminal convictions in this five-year period demonstrates that OLMS has continued to place a high priority on exposing union financial corruption.

In order to continue its core mission election and criminal program work, OLMS has had to re-prioritize the Compliance Audit Program (CAP). However, OLMS has created efficiencies in the CAP program by improving its audit targeting methods to more effectively identify fraud and

embezzlement even as it is conducting fewer audits. The overarching purpose of CAP is to use audit procedures to determine whether the union being audited has been the victim of embezzlement. Not all unions can be audited; OLMS has to pick which unions should be selected for audit. OLMS has developed two risk-based strategies to target CAP audits to those unions with the highest likelihood of criminal violations. The risk-based models include: (1) a predicate model that tracks the predications for opening CAP cases and allows OLMS to associate CAP predicates to higher fallout rates; and (2) a database of financial information reported annually by unions that identifies “red flag” conditions for CAP targeting purposes. By implementing these strategies, OLMS successfully increased the percentage of audits that unearthed evidence of likely criminal activity. This ratio, representing the frequency in which a CAP audit is converted to a criminal investigation, is termed the “fallout rate.” The fallout rate rose from 10.8% in FY 2008 to 12.2% in FY 2009, 14.6% in FY 2010, 15.2% in FY 2011, 13.8% in FY 2012, and over 20% thus far in FY 2013. This vast improvement, as detailed in the chart below, is helping to offset the reduced numbers of audits conducted by adding a higher percentage of fall-out cases to the OLMS criminal case inventory.

<b>OLMS Compliance Audit Statistics</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Compliance Audits Conducted	791	746	541	461	333
CAP-to-Criminal Case Fallout Rate	10.8%	12.2%	14.6%	15.2%	13.8%

### **ACQUISITION MANAGEMENT SYSTEM**

**Mr. Kingston along with Mr. Alexander:** My understanding is that since 2008, DOL has been attempting to purchase a new Acquisition Management System (AMS) to replace its existing procurement system (the Electronic Procurement System (EPS)). After initially deciding to set-aside this work for small business, DOL inexplicably reversed that decision, and, subsequently awarded a \$20 million contract to a large business for the implementation of a brand new AMS. This award was \$10 million higher than the next fully qualified competitor’s price, which was a small business. Can you explain the decision to go with the contractor charging twice as much for negligible differences in the proposed solution?

**Mr. Harris:** The Electronic Procurement System (EPS) currently in use at DOL was implemented in 2005 and no longer meets the Department’s procurement needs. Over the past eight years, numerous improvements have been made to the various electronic procurement systems available in the commercial marketplace, offering vastly more efficient and more robust platforms from which to carry out the Government’s critical procurement functions. Therefore, this procurement was executed to acquire a new electronic procurement system that will allow the Department to leverage the increased efficiencies, additional functionality, and provides the latest technologies available in today’s electronic procurement systems to ensure the accurate and timely procurement, and mandatory reporting to meet DOL’s mission requirements for the foreseeable future.

DOL issued a competitive solicitation on General Services Administration’s (GSA) Information Technology schedule, Schedule 70, where the vendors offer innovative Information Technology products, services, and solutions, at prices already determined by GSA to be fair and reasonable. All schedule contract holders, regardless of size, were eligible to compete for this requirement.

The RFQ provided interested offerors information regarding the evaluation criteria that DOL used to evaluate quotes/proposals and assigned adjectival ratings. As stated in Section 8.0 of the RFQ (Basis for Award), the Technical Approach was significantly more important than Past Performance and when combined, these two factors were more important than Price. The “Live Product Demonstration” was equal in importance to Past Performance and therefore significantly less important than Technical Approach. As stated in the solicitation, the non-price factors, when combined, were considered significantly more important than Price. The Contracting Officer also evaluated the prices submitted by all of the offerors for reasonableness, realism, and completeness, and determined that the awardee’s price was reasonable, realistic, and complete. This determination is buttressed by the fact that the pricing for this solicitation was based on GSA FSS pricing which has already been established to be reasonable.

DOL conducted a thorough analysis of the proposals in accordance with the evaluation criteria. DOL determined that the winning offeror’s proposal presented the best overall value to the Government, considering both non-price factors and price together given the relative weights provided for these elements in the RFQ. The Contracting Officer considered any applicable price differences among the offerors, and determined that the significant technical advantages of the awardee’s proposal including efficiencies and cost savings outweighed the apparent savings that other vendors offered in their quotes. The Contracting Officer’s decision to award a firm-fixed price task order with a base and six option periods was determined to be in the best interest of the Department.

DOL issued the solicitation in July of 2010 and, after GAO protests by the incumbent were resolved, contract award was made in August 2011. As result of post-award protests by the incumbent, the contract award was reaffirmed in March 2102. Most recently, the incumbent contractor filed a bid protest at the Court of Federal Claims, challenging its evaluation and the Department’s tradeoff between the technical benefits of the awardee’s proposal and the increased cost. The Court of Federal Claims, and subsequently, upon appeal, the Federal Circuit, both affirmed the Department’s decisions.

**Mr. Kingston along with Mr. Alexander:** Why was the decision to set-aside the work for small business reversed, and who made that decision?

**Mr. Harris:** During the acquisition planning phase, we considered the various procurement strategies that were available to conduct the acquisition. There was never a decision by the Contracting Officer to set this requirement aside for small business; therefore, there was no reversal of a small business set aside. In accordance with FAR Part 8.405-5, Small Business, the mandatory preference programs of Part 19 (i.e., Small Business Set Asides) were not applicable at the time. However, in November 2011, FAR Part 8.405-5 was amended to allow set asides on a discretionary basis, as determined by the Contracting Officer. The initial award to Compusearch occurred prior to the effective date of this regulatory change.

The Department chose to use the Federal Supply Schedule for this acquisition in accordance with FAR Part 8.002, *Priorities for use of Government supply sources*, Paragraph (a) (2) Services, Optional use Federal Supply Schedules (8.4, Federal Supply Schedules). This regulation

provides that optional use schedules should be used prior to commercial sources, which includes small businesses. This requirement was solicited and awarded using the ordering procedures identified in FAR Part 8.405, Ordering Procedures for Federal Supply Schedules. This requirement was publicized and competition requirements were used to compete this acquisition among all qualified GSA FSS Schedule holders that could fulfill the solicitation requirements. It should be noted, the incumbent contractor is a FSS contract holder, and was eligible to participate. In fact, the incumbent participated in the competition for this requirement.

## H-2B PROGRAM

**Mr. Alexander:** Mr. Secretary, as I'm sure you know, the H-2B program is essential for hundreds of small businesses across the country seeking to fill seasonal labor shortages when able-bodied Americans are unwilling or unavailable to fill them. Over the past couple of years, the Department of Labor has attempted to implement a couple of regulations on this program, and both have been opposed by Congress and the courts.

In the last several weeks, there have been two court rulings that have dramatically jeopardized the administration of the H-2B program, and one of those rulings has required DOL to begin using a new wage determination method. This ruling has thrown the H-2B program into chaos and struck widespread fear in employers who are now wondering if they will be able to fill vacant spots this summer.

I want you to know, I am sympathetic to the difficult position the Department finds itself in with regard to this court order. But I also want to emphasize that there are a lot of small business owners, in Louisiana and across the country, trying to make ends meet, who are counting on you to continue processing H-2B applications in an expeditious manner.

Would you mind sharing with the subcommittee what steps the Department is taking to ensure there will be minimal interruption in H-2B application processing?

**Mr. Harris:** The interruption we experienced in processing prevailing wage requests and applications for certification in the H-2B program is over. The Department began processing and issuing updated prevailing wage determinations on the date we published a new prevailing wage rule for the H-2B program, which was April 24, 2013. To date, the Department has issued over 700 revised wages affecting thousands of workers, and has cleared most of the certifications that were pending when the process was suspended on March 21, 2012. Those pending Applications for Temporary Employment Certification for H-2B workers at the Chicago National Prevailing Wage Center are being processed on a first-in, first-out basis and accompanied by a new prevailing wage consistent with the Wage Methodology Interim Final Rule.

**Mr. Alexander:** When do you expect new guidance to be published on wage determinations?

**Mr. Harris:** New guidance on H-2B wage determinations has already been issued. On April 24, 2013, the Departments of Labor and Homeland Security published in the *Federal*

*Register* a joint Interim Final Rule, Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2. The joint Interim Final Rule revises the prevailing wage methodology used by the Department of Labor to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification. As you know, the new H-2B wage regulation was published in response to a court order issued by the U.S. District Court for the Eastern District of Pennsylvania on March 21, 2013, in *Comite de Apoyo a los Trabajadores Agrícolas et al v. Solis*, 09-cv-00240 (E.D. Pa). The court vacated a portion of the 2008 wage methodology rule dealing with the way the Department of Labor determines the prevailing wage when relying on the Bureau of Labor Statistics' Occupational Employment Statistics (OES) survey, and provided the Department of Labor with 30 days to come into compliance.

On April 24, 2013, the effective date of the Interim Final Rule, the Department of Labor resumed processing both pending H-2B prevailing wage requests and H-2B applications for temporary labor certification based on the OES wage survey data, in accordance with standards set in the Interim Final Rule.

In addition, the Department of Labor is making available Frequently Asked Questions (FAQs) to assist filers with complying with the requirements of the joint Interim Final Rule. The FAQs address the applicability of the new prevailing wage methodology, employer wage obligations, requests for review and the processing of pending H-2B prevailing wage requests and H-2B applications for temporary labor certification. To learn more, please read the [FAQs](http://www.foreignlaborcert.doleta.gov/pdf/faq_final_rule_april_2013.pdf), which have been updated as of April 25, 2013, at [http://www.foreignlaborcert.doleta.gov/pdf/faq\\_final\\_rule\\_april\\_2013.pdf](http://www.foreignlaborcert.doleta.gov/pdf/faq_final_rule_april_2013.pdf).

**Mr. Alexander:** Will those applications that have already been submitted be processed in an expeditious manner, or will those employers be required to resubmit their applications?

**Mr. Harris:** Pending requests for wage determinations and applications to certify the need for H-2B workers will be processed on a first-in first-out basis, and requests for a prevailing wage and applications for certification do not need to be resubmitted. The Department has posted program filer guidance in the form of Frequently Asked Questions (FAQs) on the Office of Foreign Labor Certification's web site – the link is <http://www.foreignlaborcert.doleta.gov/>.

**Mr. Alexander:** Also, would you give your outlook on how the H-2B program will be administered in the short-, medium-, and long-term. Are there any substantial changes to the program DOL would like to make at any point down the road?

**Mr. Harris:** As noted above, the Department recently published an Interim Final Rule with respect to wages in the H-2B program in response to the decision in *Comite de Apoyo a los Trabajadores Agrícolas et al v. Solis*, 09-cv-00240 (E.D. Pa. Mar. 21, 2013). DOL invited public comments on a final rule, and we appreciate stakeholder input and plan to carefully review all comments before promulgating a final rule. The Department's Office of Foreign Labor Certification, which administers the H-2B program, has initiated a number of program efficiency measures in the recent past, such as electronic filing on October 15, 2012, posting Frequently Asked Questions to clarify program requirements, and expanding its Ombudsman

Program to H-2B employers. As of May 15, 2013, more than 67 percent of H-2B employers are filing electronically, with more than 93 percent processed by the OFLC within 30 days. Subject to resource constraints, we will continue to look for additional ways to enhance and improve program operations.

#### OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)

**Mr. Alexander:** In December 2011, OFCCP proposed a rule that would require government contractors to employ at least seven percent of their workforce with people with disabilities. Not only would the company as a whole have to be in compliance with that rule, so would each one of the company's job groups. Even though OFCCP is not typically known for generating major headlines, both the *Washington Post* and the *Wall Street Journal* have run stories on the proposed rule, and it has caused serious concern in nearly the entire federal contracting community.

However sincere the intent of the rulemaking was, this rule was clearly not well thought out. To start with, asking an employee or applicant if he or she has a disability is a violation of the spirit, if not the intent, of the law. Additionally, many job applicants and employees may not want to "self-identify" as a disabled worker. Therefore, it may be impossible for a contractor to prove he is in compliance. Another issue is, if a non-compliant employer isn't looking to substantially expand his business, he may have to fire existing non-disabled employees and seek to replace them with disabled employees in order to reach the 7 percent target. This just doesn't make a whole lot of sense to me.

I think both employers and employees can agree, hires should be made based upon who the best applicant for the job is—not if he or she is disabled. Now I don't think there is a person up here who opposes promoting opportunities for disabled workers; but effectively mandating such hiring by imposing an unrealistic quota goes far beyond what Congress ever intended when it crafted the Americans with Disabilities Act or the Rehabilitation Act, and goes far beyond what employers could possibly hope to be able to comply with despite their most vigorous efforts.

Say for instance that an employer has, say, 100 employees, three of whom (3%) are disabled, making him four employees short of DOL's mandated goal of seven. Sequestration has been hard on him, so he has no room to expand, but he doesn't want to lay anyone off, either. Could he be punished under this rule? If so, what could that punishment be?

**Mr. Harris:** Our December 2011, Notice of Proposed Rulemaking (NPRM) (76 FR 77056) proposing revisions to the regulations implementing Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended, included proposals to require contractors to invite applicants and employees to voluntarily self-identify as individuals with disabilities. The collection of such data would allow contractors and the Office of Federal Contract Compliance Programs (OFCCP) to better identify and monitor contractors' recruitment, hiring and selection practices with respect to individuals with disabilities. Our proposed rule noted that the collection of this information is consistent with the Americans with Disabilities Act (ADA) restrictions on disability-related inquiries, as interpreted by the Equal Employment Opportunity Commission (EEOC). EEOC states in the Appendix to its ADA regulations that "collecting information and inviting

individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act is not restricted by [the ADA or EEOC's implementing regulations]." Appendix to 29 CFR 1630.14(a).

The NPRM also proposed to establish a single, national utilization goal of seven percent for individuals with disabilities. Rather than a rigid quota, the goal would be an aspirational objective, and a tool for measuring contractors' progress toward equal employment opportunity for individuals with disabilities and for assessing whether barriers to equal opportunity remain. Moreover, the proposed aspirational objective would not require that contractors terminate employees to make room for new employees with disabilities or hire individuals with disabilities who are not qualified for the job. To the contrary, the proposed rule specifically states that "[a] contractor's determination that it has not attained the utilization goal ... does not constitute either a finding or admission of discrimination" in violation of the law. Section 60-741.46(f) (76 FR 77056 at 77099). Thus, an employer with 100 employees, three of whom have disabilities, would not be found by OFCCP to be in violation of the proposed goal merely because it does not meet the seven percent goal. Nor would an employer be compelled to hire new employees or terminate existing employees in order to attain the goal.

**Mr. Alexander:** Does DOL intend to finalize this rule? If so, when?

**Mr. Harris:** A Final Rule revising our Section 503 regulations is currently under development, and we are working to address the comments we received on the proposed rule.

#### OFFICE OF JOB CORPS

**Mr. Alexander:** As you know, there has been an extraordinary amount of frustration surrounding the Job Corps over the past couple of years. In addition to making a habit of exceeding its budget, it has had to turn people away, effectively denying them the training that the program exists to offer. To make matters worse, the Department of Labor has been entirely unresponsive to experts with suggested improvements; and the Department has also been defiant in explaining to concerned members of Congress, who are responsible for appropriating funding to Job Corps, exactly why the program is having these budget issues.

I think each of us up here today have heard from a number of people involved in administering the Job Corps program to the people who need it. One of these individuals told me, and I quote, "The [budget] 'shortfalls' have not resulted from contract 'overruns' but result from the failure of ETA management to make permanent and timely adjustments to program operations or to request the correct amount of funds to cover existing operations." Do you agree with this assessment?

**Mr. Harris:** This is not an either-or situation. Although Job Corps has faced financial pressures in the past, it experienced particular problems in Program Year (PY) 2011. Several factors contributed to the problems in PY 2011, including growth in expenditures, such as student-related expenditures and those associated with the opening of three new Job Corps centers in PYs 2010 and 2011. While these and other costs increased during the course of PY 2011, the extent of Job Corps' financial difficulties went unrecognized because of serious

weaknesses in Job Corps' financial management processes that led to a failure to identify and adjust for rising costs in a timely manner. This is largely because Job Corps lacked appropriate program monitoring tools and control protocols, including those to sufficiently analyze contractual spending trends. In turn, this led to inadequate spending projections for the Operations account.

It is important to note, however, that Job Corps operates primarily through cost-reimbursement contracts. Cost-reimbursement contracts in particular require close, ongoing oversight by Job Corps in order to manage and predict costs for future periods. The weaknesses in Job Corps program monitoring tools and protocols combined with its heavy reliance on cost-reimbursement contracts contributed to the challenges we faced in addressing these difficulties.

**Mr. Alexander:** I have also been told that the current management structure at DOL has proved to be extremely challenging for Job Corps administrators. They have had difficulty getting a straight and consistent answer to almost any question that in previous years would have been answered right away. Regional offices seem to be in a state of confusion as they are unsure who is authorized to make decisions regarding contract management. What will the Department do to streamline this system and resolve communication and decision-making issues?

**Mr. Harris:** With the creation of the Office of Contracts Management (OCM) in 2010, a single senior-level administrator in the national office has direct oversight of all ETA contracts, including Job Corps. Prior to OCM, the Job Corps contracting program was focused on programmatic performance and outcomes with little to no contract administration and communications with the contractors came from various persons. Centralizing procurement within OCM has created a contracting environment where standard operating procedures and guidance is given to contracting staff, training is consistently provided to ensure Federal Acquisition Regulations procedures are followed, and lines of communications with the contractors are clearly defined. Under OCM's leadership, the contracting officer's representatives (COR) in the regional offices—acting under the direction of contracting officers (CO) in the national office - are responsible for performing oversight of cost-reimbursement contracts which require intensive monitoring.

To enhance the management of the cost-reimbursement contracts used for Job Corps center operations, the Department implemented a new control process for expenditures during PY 2012. At the start of a contract year, center contractors are required to submit to ETA spend plans aligned with the value of their contracts. Each contractor then submits monthly expense reports for the center on the Job Corps Contract Center Financial Report (Report 2110), which is comprised of 29 different expense categories. The submitted monthly center financial reports are analyzed by the Office of Financial Administration (OFA) in the national office against the center's overall budget to ensure that they are within the contractor submitted spend plans. When OFA identifies a budget discrepancy, OFA requests the CORs investigate the discrepancy and highlight any issues for the national office. In addition, CORs at the regional level—who are officially responsible for monitoring one or more contracts, including the financial aspects of those contracts—compare the spend plan against the actual expenditures and monitor the centers' expenses on a monthly basis to ensure expenses are valid under the contract. The COR then compares this information with payment vouchers submitted by the contractor and either certifies

the voucher for payment or returns it for correction. It is returned if it does not coincide with the information the COR sees on the financial report or if the voucher itself has unallowable or otherwise inappropriate costs. When a contractor unjustifiably exceeds its budget in any of its contracted budget lines, CORs are trained to alert their CO, so that the CO can address the matter with the contractor. This entire control process provides assurances that spend plans submitted by contractors are aligned with the center's budget, the actual valid expenses, and the payments made to contractors. It has also improved the procurement system by identifying contractor over/under payments, conflicts of interest, unauthorized commitments.

## GAO REPORT ON DUPLICATION IN TRAINING AND EMPLOYMENT PROGRAMS

**Ms. DeLauro:** Mr. Secretary, does the GAO report offer any evidence of specific instances where an individual actually received the same service through multiple programs or funding streams?

**Mr. Harris:** The Government Accountability Office (GAO) states in its report, referring to the Temporary Assistance for Needy Families (TANF), Wagner-Peyser Employment Service (ES), and Workforce Investment Act (WIA) Adult programs, that they provide some of the same employment and training services to low-income individuals, despite differences between the programs. GAO notes, however, that "[e]ven when programs overlap, the services they provide and the populations they serve may differ in meaningful ways."<sup>1</sup>

The GAO does not cite specific instances where an individual actually received the same service through multiple programs. As noted in GAO's report, ES and WIA Adult programs have specific funding streams and as a result, they are unlikely to fund the same services for the same individuals. For example, American Job Centers typically use ES funding to provide core services, such as job search and job referrals, while they typically use WIA Adult funding to provide intensive and training services. States are required by WIA to attest in plans they provide to Labor that their ES and WIA programs have agreements in place to coordinate service delivery across the two programs.

**Ms. DeLauro:** Does the report offer any evidence that eliminating individual workforce programs will save taxpayer dollars or improve the effectiveness of the system?

**Mr. Harris:** GAO does not provide any evidence or recommendations with respect to eliminating individual workforce programs. GAO does say that collocating services and consolidating administrative structures (as some states have done) may achieve administrative efficiencies, and recommends that the Departments of Labor and Health and Human Services develop and disseminate information on these approaches. The Department concurred with this recommendation.

In the FY 2014 budget, the Department requests \$30 million to strengthen American Job Centers, including funding to support co-location among partner programs and to increase access to

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<sup>1</sup> MULTIPLE EMPLOYMENT AND TRAINING PROGRAMS: Providing Information on Co-locating Services and Consolidating Administrative Structures Could Promote Efficiencies (GAO-11-92)-January 2011, p. 13.

services, such as through online tools. Both of these proposals could reduce administrative costs while improving and better coordinating service delivery.

**Ms. DeLauro:** Mr. Secretary, from your perspective, what does GAO's work on duplication in job training programs tell the Department about its workforce programming?

**Mr. Harris:** GAO's work is a timely reminder that more work can be done to improve alignment of Federal investments in job training. The Administration believes we should be doing everything we can to make it easier for people who need help to find a job or build their skills for a better one, and for employers who need to find well-qualified workers. The Administration is exploring opportunities to revisit how the Federal Government funds job training and employment services, including the possibility of reorganizing some of the existing training programs that serve overlapping populations. As a result, the Department will continue to work closely with Congress on the reauthorization of the Workforce Investment Act (WIA) to ensure an improved workforce system that seamlessly responds to the current and future needs of our workers and employers. While we agree that it is important to minimize duplication and maximize efficiency, any reform must ensure that the needs of low-income families and other vulnerable jobseekers and workers continue to be met.

President Obama has laid out five key principles to strengthen the public workforce system:

1. **Streamline and improve services** – Our state and local partners need more flexibility in how they provide easy access and clear information to jobseekers, workers and employers.
2. **Provide true "one-stop shopping"** – Every American worker should have access to the full range of services they need to succeed in their communities.
3. **Employ regional and industry-driven economic development strategies** – A one-size-fits-all approach will not work. Programs must serve their most important industries and those likeliest to grow and prepare workers for labor markets that may stretch beyond one town, state, or country.
4. **Toughen accountability** – Every entity spending taxpayer dollars should be held accountable. We need reliable, consistent metrics throughout the workforce system so that workers, employers, and my Labor Department staff will know which services and training providers work best.
5. **Promote innovation and replicate best practices** – We need a process of continuous improvement and innovation. There should be incentives for creative solutions in the public workforce system, with information about the most successful strategies widely available to communities that would benefit from them.

**Ms. DeLauro:** What steps has the Department of Labor taken to respond to recommendations contained in GAO's report?

**Mr. Harris:** Both the Departments of Labor and Health and Human Services are exploring a variety of efforts aimed at addressing the challenges, strategies, incentives, and results for states and localities to undertake initiatives to increase administrative efficiencies, including testing

innovative strategies, developing joint administrative guidance, technical assistance and outreach, and leveraging research resources and other collaborative efforts.

*Testing Innovative Strategies:* On June 14, 2012, the Department announced the award of 26 Workforce Innovation Fund grants, totaling nearly \$147 million, to a combination of state workforce agencies and local workforce investment boards, as well as one Workforce Investment Act Section 166 grantee serving Indian and Native American communities. One of the goals of the Fund is to incentivize greater efficiency by states and local areas in the delivery of quality services. Examples of efficiencies could include: 1) achieving equal or better outcomes for lower cost; 2) reduction in program overlap and administrative costs; and 3) stronger coordination and alignment across programs and funding streams.

On the same day, DOL also announced the availability of up to \$20 million to pilot Pay for Success projects. Under this model, the government pays for services only after clearly defined outcomes are achieved which allows effective and evidence-based solutions to be identified and implemented while maximizing taxpayer dollars by paying only for demonstrated results. In developing the solicitation for grant applications, we worked closely with the Departments of Education and Justice.

*Technical Assistance:* This administration supports highlighting promising practices and approaches that reflect strong partnerships, leveraged resources, and solid outcomes.

Building on the Career Pathways Technical Assistance Initiative grants, which ended in June 2011, the Departments of HHS, Labor, and Education have taken several steps to promote interagency collaboration and the leveraging of resources to create and expand career pathways, including 1) issuing a joint letter to encourage partnerships and program integration at the state and local levels between workforce, education, and health and human services stakeholders to develop strong career pathway programs; 2) both Labor and Education have incorporated the inclusion of career pathways strategies into their technical assistance work with community colleges that are the recipients of Carl Perkins funding (Education) and the \$2 billion Trade Adjustment Assistance Community College and Career Training (TAACCCT) grant program (Labor); and 3) the Department of Education is currently funding the *Designing Instruction for Career Pathways (DICP) initiative*, which seeks to assist state and local adult education practitioners develop and deliver adult career pathways programs. The initiative has launched a Web site, featuring technical assistance resources, policy briefs, and the latest research on career pathways.

*Administrative Guidance:* On June 8, 2012, the Department issued Training and Employment Guidance Letter 33-11, “*Annual Program Guidance for the Program Year 2012 Workforce Investment Act (WIA) Adult, Dislocated Worker, and Wagner-Peyser Programs (TEGL)*”. The TEGL’s purpose is to communicate ETA’s three major program and policy priorities for the formula-funded WIA Adult, Dislocated Worker and Wagner-Peyser programs in Program Year (PY) 2012. Those program and policy priorities are (1) improving the effectiveness of workforce programs; (2) enhancing jobseeker competitiveness; and (3) promoting a dual customer focus. The first priority area: Improving the Effectiveness of Workforce Programs, encourages states and local areas to increase interagency coordination and alignment, particularly

with HHS programs like Temporary Assistance to Needy Families (TANF). Specific recommendations under this priority also include streamlining administrative processes, like intake, application, case management, data sharing and integrated program reporting to maximize program efficiency.

***State Unified Planning:*** DOL and HHS, along with a number of other Federal agencies, have been meeting since mid-2011 to identify opportunities for promoting joint strategic planning across programs. We have concluded that legislative changes are needed to best support unified planning. However, the Departments will continue to examine incentives for states and localities to undertake opportunities for cross-program planning to increase administrative efficiencies and alignment of core public workforce (WIA Adult, Dislocated Worker, and Youth programs, Wagner-Peyser Employment Services, Adult Education, and Vocational Rehabilitation) as well as partner programs such as TANF.

***Joint Evaluation Activities:*** The TANF/WIA Coordination Study is one of the first projects funded to support both ETA and ACF's joint evaluation efforts. This project focuses on identifying and documenting potentially promising practices in coordinating TANF/WIA services at the state and local levels. As part of this study, we plan to examine governance structures, policy coordination, service delivery pathways, shared data systems, and funding mechanisms. We plan to also document the reasons for collaboration and the process for creating and sustaining partnerships. The TANF/WIA study is expected to be completed by September 30, 2013.

#### OFFICE OF JOB CORPS

**Ms. Roybal-Allard:** The Office of Job Corps has run a deficit of \$60 million during its current budget cycle. The President's budget requests a \$17.7 million operation increase relative to FY 2012. However that figure is still \$43.8 million, or 2.7 percent less than the funding that, according to the DOL, would have been necessary to maintain full operations in PY 2012.

Will Job Corps be able to operate without interruption, on the funds requested?

**Mr. Harris:** For PY 2013 we have negotiated reduced On-Board Strength (OBS) for each of the various center contracts that will ensure that we are operating within our appropriations. Moving forward, we will work to support putting the Job Corps program on a path to increase student enrollment levels within the budget constraints. The OBS will primarily be driven by the appropriation level the Department receives for Job Corps operations.

**Ms. Roybal-Allard:** Can you comment on how the Administration's proposal will work? How does the budget address the missteps taken last year?

**Mr. Harris:** The Department has established an improved system to align contract values and requirements to the appropriated dollars and to improve the administration of those contracts. We believe that we have put in place a system that will provide much greater protection against shortfalls in the future. In addition, for PY 2013 we have negotiated a reduced

On-Board Strength (OBS) for each center contract that will ensure that we are living within our appropriations.

At the requested funding level for FY 2014, we maintain our commitment to operating a program on sound financial footing. The request reverses the financial reduction of sequestration, accounts for all costs of the program – including credentialing and other items that are important to the academic and employment success of participants – and provides for increased OBS levels from the OBS levels that are affordable in PY 13 after sequestration. Because of the controls we have put in place and since we have accounted for all costs of the program, the OBS levels at the requested funding are sustainable.



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