

ELIMINATING BARRIERS TO EMPLOYMENT: OPENING DOORS TO OPPORTUNITY

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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ELIMINATING BARRIERS TO EMPLOYMENT: OPENING DOORS TO OPPORTUNITY

**Tuesday, May 21, 2019
House of Representatives,
Committee on Education and the Workforce,
Washington, D.C.**

The subcommittee met, pursuant to call, at 10:20 a.m., in Room 2175, Rayburn House Office Building. Hon. Robby C. “Bobby” Scott [chairman of the committee] presiding.

Present: Representatives Scott, Davis, Grijalva, Courtney, Sablan, Wilson, Bonamici, Takano, Adams, DeSaulnier, Norcross, Jayapal, Morelle, Wild, Harder, McBath, Schrier, Underwood, Hayes, Shalala, Levin, Omar, Trone, Stevens, Lee, Trahan, Castro, Foxx, Roe, Walberg, Grothman, Stefanik, Allen, Smucker, Banks, Walker, Cline, Fulcher, Taylor, Watkins, Wright, Meuser, Timmons, and Johnson.

Staff Present: Katie Berger, Professional Staff; Nekea Brown, Deputy Clerk; Ilana Brunner, General Counsel; Emma Eatman, Press Assistant; Carrie Hughes, Director of Health and Human Services; Eli Hovland, Staff Assistant; Bertram Lee, Policy Counsel; Katie McClelland, Professional Staff; Richard Miller, Director of Labor Policy; Max Moore, Office Aid; Udochi Onwubiko, Labor Policy Counsel; Veronique Pluviose, Staff Director; Carolyn Ronis, Civil Rights Counsel; Banyon Vassar, Deputy Director of Information Technology; Courtney Butcher, Minority Director of Coalitions and Member Services; Bridget Handy, Minority Legislative Assistant; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; John Martin, Minority Workforce Policy Counsel; Hannah Matesic, Minority Director of Operations; Kelley McNabb, Minority Communications Director; Jake Middlebrooks, Minority Professional Staff Member; Casey Nelson, Minority Staff Assistant; Brandon Renz, Minority Staff Director; Alex Ricci, Minority Professional Staff Member; Ben Ridder, Minority Legislative Assistant; and Meredith Schellin, Minority Deputy Press Secretary and Digital Advisor.

Chairman SCOTT. The Committee on Education and Labor will come to order. I want to welcome everyone to the committee and note that a quorum is present, and also note that 100 years ago today, May 21, 1919, U.S. Representative James R. Mann, a Republican from Illinois and Chair of the Suffrage Committee, pro-

posed the House resolution to approve the Susan B. Anthony Amendment granting women the right to vote. The measure passed the full House 100 years ago by a vote of 304 to 89, 42 votes above the required 2/3 majority.

Ms. FOXX. Mr. Chairman?

Chairman SCOTT. The gentlelady from North Carolina.

Ms. FOXX. A short point of person privilege.

We were told this morning by the leading Republican in the House that the first bill was introduced by a Republican from California back in the 1800s. So we are very proud of our leadership in this effort.

Chairman SCOTT. I thank the gentlelady.

The Committee is meeting today in a legislative hearing to hear testimony on eliminating barriers to employment, opening doors to opportunity.

Pursuant to Committee Rule 7c, opening statements are limited to the Chair and Ranking Member. This allows us to hear from our witnesses sooner and provides all members with adequate time to ask questions.

I will recognize myself for the purpose of making an opening statement.

Today's legislative hearing will examine barriers keeping Americans out of the workforce, and also to identify legislative solutions to expand opportunity.

Despite the overall strength of the economy, too many still face a range of obstacles to employment, including discrimination, that undermines opportunities to take part in the benefits of work. For example, older workers, workers with disabilities, disconnected youth, and returning citizens are often left behind in today's economy.

Our witnesses here today will help us understand the challenges facing each of these groups and how Congress can help solve those problems.

For older Americans age discrimination is a significant barrier to opportunities, and when older workers lose their jobs they are far more likely than other workers to join the ranks of the long-term unemployed.

In 1967, Congress enacted the Age Discrimination in Employment Act, or ADEA, to prohibit age discrimination in the workplace. The ADEA is an integral part of the civil rights legislation enacted during the 1960s to ensure equal opportunity in the workplace, along with the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964. When Congress passed the ADEA it recognized that age discrimination was caused primarily by the unfounded assumption that age impacted ability. Unfortunately, protections for older workers were undercut by the Supreme Court's decision in *Gross v. FBL Financial Services*, which imposed a higher burden of proof of age discrimination. This 5–4 decision overturned precedent by requiring individuals to prove that age discrimination was the sole motivating cause for the employer's adverse action rather than just a motivating factor of the employer's adverse action. The plaintiff in that case, Mr. Gross, is in the audience today. Mr. Gross, welcome.

The Protecting Older Workers Against Discrimination Act, or POWADA, is a legislative fix that would restore the pre-2009 evidentiary threshold applied to age discrimination claims. Reinstating the mixed motive test aligns the burden of proof for age discrimination with the same standards for proving discrimination based on sex, race, religion, and national origin.

I want to thank the lead co-sponsor of this important legislation, the gentleman from Wisconsin, Mr. Sensenbrenner, for his continued commitment for fighting against age discrimination.

Individuals with disabilities also have long suffered from barriers to competitive integrated employment. Today an 80 year old provision in the Fair Labor Standards Act, known as Section 14(c), empowers employers to obtain a certificate which allows them to pay workers with disabilities a sub-minimum wage. More than 130,000 employees with disabilities are employed under 14(c) certificates. While intended as transitional employment, at least 95 percent of individuals with disabilities who enter sub-minimum wage jobs never obtain competitive employment even though with appropriate support most could in fact earn at least the minimum wage.

We have the responsibility to eliminate 14(c), written in 1938, under the belief that individuals with disabilities were necessarily significantly less productive than individuals without disability, and presumably unable to earn even the minimum wage.

The H.R. 873, the Transformation to Competitive Employment Act, is a bipartisan proposal that reflects this responsibility and phases out the 14(c) sub-minimum wage nationwide over a 6 year period. The bill provides \$300 million for the Department of Labor to award grants to states and 14(c) certificate holders to help workers with disabilities transition into competitive integrated employment. It includes the grant to subsidize wages for the few who cannot, in fact, make at least the minimum wage but still desire to work to the best of their ability. It also incentivizes states and businesses to work with good faith towards implementing competitive integrated employment for all workers with disabilities.

One of today's witnesses, Shane Roos, will show how his organization proactively transitions their employees into competitive integrated employment settings. Their success demonstrated that it is both feasible and socially beneficial to remove most of these individuals from segregated settings.

Finally, today's hearing is an opportunity to explore the benefits of investing in millions of young Americans who are disconnected from school or the workforce. The research indicates that approximately 11 percent of young people aged 16–24, that is about 4.5 million people, are neither employed nor in school. Studies show that disconnected youth can cost nearly \$400,000 in earnings over their lifetime and cost our communities \$25 billion in healthcare, public assistance, and incarceration costs every year.

Once again, this is a missed opportunity for individuals and our economy, which is partly why we refer to these specific young people as "opportunity youth". The Workforce Innovation and Opportunity Act of 2014 increased opportunities for youth with significant barriers to employment by requiring 75 percent of funding for youth activities to be spent on out of school youth.

As this Committee considers reauthorizing this key workforce development law, we must prioritize strengthening evidence based programs, such as summer jobs programs, that help underserved youth remain connected or reconnected to the education and employment. According to at least one study, a summer jobs program in Chicago actually saved more money by reducing crime and other social pathology, saved more than it cost.

So similarly, we must ensure that returning citizens must have the support needed to reenter the workforce. Today, roughly one in three Americans has a criminal record. More than 600,000 Americans return to their communities from incarceration each year and they face a majority of employers who are unwilling to hire them. That barrier is particularly challenging for men of color who are disproportionately incarcerated.

In 2013 a National Institute of Health report found that as incarceration increases, African Americans face greater obstacles to employment compared to white Americans, creating—and I quote from that study—“a new form of institutional racism with wide reaching economic benefits”. The EEOC even responded to this discrimination a few years ago by issuing guidance that a blanket policy of denying employment for persons with any criminal record without an individualized consideration, such as seriousness of the crime, the relevance to the job, and the time since the conviction, that if you have a blanket policy against hiring people with a criminal record, that could result in a finding of illegal employment discrimination. But if we follow the evidence, we will find that supporting employment for many returning citizens yields widespread benefits, including increased earnings for individuals, cost savings through reduced recidivism, strengthened public safety, higher taxpayer revenues, and, of course, a source of good workers in today’s tight job market.

Today’s hearing is an opportunity for us to consider the barriers to employment that impact a wide range of communities, as well as our responsibility to use our legislative mandate to remove these barriers.

I look forward to the testimony of our witnesses who can help inform this Committee on eliminating barriers to employment. Doing so will mean that America’s workers will be better off, our economy will be stronger, and our communities healthier.

I want to thank our witnesses for being with us today, and yield to our Ranking Member Dr. Foxx for the purpose of making an opening statement.

[The statement by Chairman Scott follows:]

Prepared Statement of Hon. Robert C. “Bobby” Scott, Chairman, Committee on Education and Labor

Today’s legislative hearing will examine barriers keeping Americans out of the workforce and also identify legislative solutions to expand opportunity.

Despite the overall strength of the economy, too many still face a range of obstacles to employment, including discrimination, that undermines opportunities to take part in the benefits of work. For example, older workers, workers with disabilities, disconnected youth, and returning citizens are often left behind in today’s economy.

Our witnesses here today will help us understand the challenges facing each of these groups and how Congress can help solve those problems.

For older Americans, age discrimination is a significant barrier to opportunities. And when older workers lose their jobs, they are far more likely than other workers to join the ranks of the long-term unemployed.

In 1967, Congress enacted the Age Discrimination in Employment Act, or the ADEA, to prohibit age discrimination in the workplace. The ADEA was an integral part of civil rights legislation enacted during the 1960s to ensure equal opportunity in the workplace, along with the Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964. When Congress passed the ADEA, it recognized that age discrimination was caused primarily by the unfounded assumption that age impacted ability.

Unfortunately, protections for older workers were undercut by the Supreme Court's decision in *Gross v. FBL Financial Services, Inc.*, which imposed a higher burden of proof for age discrimination. This 5–4 decision overturned precedent by requiring individuals to prove that age discrimination was the sole motivating cause for the employer's adverse action, rather than just a motivating factor in the employer's adverse action. The plaintiff in that case, Mr. Gross, is in the audience today. Welcome, Mr. Gross. The Protecting Older Americans Against Discrimination Act (POWADA), is legislative fix that would restore the pre-2009 evidentiary threshold applied in age discrimination claims. Reinstating the mixed-motive test aligns the burden of proof for age discrimination with the same standards for proving discrimination based on sex, race, religion, and national origin. I want to thank the lead co-sponsor of this important legislation, the gentleman from Wisconsin, Mr. Sensenbrenner, for his continued commitment to fighting age discrimination.

Individuals with disabilities have also long-suffered from barriers to competitive integrated employment. Today, an 80-year-old provision in the Fair Labor Standards Act, known as Section 14(c), empowers employers to obtain a certificate, which allows them to pay workers with disabilities a subminimum wage. More than 130,000 employees with disabilities are employed under 14(c) certificates. While intended as transitional employment, at least 95 percent of individuals with disabilities who enter subminimum wage jobs never obtain competitive employment even though, with appropriate support, most could make the minimum wage.

We have a responsibility to eliminate Section 14(c), written in 1938 under the belief that individuals with disabilities were necessarily and significantly less productive than individuals without disabilities and presumably unable to earn the minimum wage.

H.R. 873, the Transformation to Competitive Employment Act, is a bipartisan proposal that reflects this responsibility and phases out the 14(c) subminimum wage nationwide over a six-year period. The bill provides \$300 million for the Department of Labor to award grants to states and 14(c) certificate holders to help workers with disabilities transition into competitive integrated employment. It includes a grant to subsidize wages for the few who cannot, in fact, make at least the minimum wage, but still desire to work to the best of their abilities. It also incentivizes states and businesses to work in good faith toward fully implementing competitive integrated employment for all workers with disabilities.

One of today's witnesses, Shayne Roos, will show how his organization proactively transitioned their employees into competitive integrated employment settings. Their success demonstrated that it is both feasible and socially beneficial to remove most of these individuals from segregated settings.

Finally, today's hearing is an opportunity to explore the benefits of investing in the millions of Americans of young Americans who are disconnected from school or the workforce.

Research indicates that approximately 11 percent of young people aged 16 to 24—about 4.5 million people—are neither employed nor in school. Studies show that disconnection can cost youth nearly \$400,000 in earnings over their lifetimes and cost our communities more than \$25 billion in health care programs, public assistance, and incarceration costs every year.

Once again, this is a missed opportunity for individuals and our economy, which is partly why we refer to these specific young people as “opportunity youth.” The Workforce Innovation and Opportunity Act of 2014 increased opportunities for youth with significant barriers to employment by requiring 75 percent of funding for “Youth Activities” be spent on out-of-school youth.

As this Committee considers reauthorizing this key workforce development law, we must prioritize strengthening evidence-based programs, such as summer jobs programs, that help underserved youth remain connected or reconnect to education and employment. According to at least one study, a summer jobs programs in Chicago actually saved more money by reducing crime and other social pathology, saved more than it cost.

Similarly, we must ensure that returning citizens have the support needed to re-enter the workforce. Today, roughly one in three Americans has a criminal record. More than 600,000 Americans return to communities from incarceration each year. They face a majority of employers who are unwilling to hire them. That barrier is particularly challenging for men of color, who are disproportionately incarcerated.

A 2013 National Institute of Health report found that, as incarceration rates increase, African Americans face greater obstacles to employment compared to White Americans, creating—and I quote from the study—a new form of institutional racism with wide-reaching economic effects.

The EEOC even responded to this discrimination a few years ago, issuing guidance that a blanket policy of denying employment for persons with any criminal record without an individualized consideration, such as seriousness of the crime, the relevance to the job, and the time since the conviction, could result in a finding of illegal employment discrimination.

If we follow the evidence, we will find that supporting employment for returning citizens yields widespread benefits, including increased earnings for individuals, higher taxpayer revenues, cost savings through reduced recidivism, and strengthened public safety.

Today's hearing is an opportunity for us to consider the barriers to employment that impact a wide range of communities as well as our responsibility to use our legislative mandate to remove these barriers.

I look forward to the testimony of our witnesses who can help to inform this Committee on eliminating barriers to employment. Doing so will mean that America's workers will be better off, our economy will be stronger, and our communities are healthier.

Thank you to the witnesses for joining us today. I now yield to the Ranking Member, Dr. Foxx, for the purpose of making an opening statement.

Ms. FOXX. Thank you, Mr. Chairman, for yielding time.

This hearing is supposedly about barriers to employment, not opportunities for Federal spending, Federal involvement, and Federal power. We could use a little truth in advertising today.

It seems our colleagues on the other side have done their level best to have a hearing about employment without addressing the role of education; or, put another way, skills development. That shows two things. First, a fundamental disregard for why this Committee exists to do what it does, education policy and workforce policy in tandem, side by side, cause and effect. Second, it shows a tone deafness about the current state of the American economy. We have historic job growth, historic wage growth, and a historic number of job openings. Employment opportunities abound, but the skills gap persists and grows.

Looking at individual policies outside of the role of education is not the way to approach this question of opening doors for Americans. It is the siloed, piecemealed approaches that have gotten us here. When will we learn?

The American dream was founded on the premise that individuals are free and capable of improving their lives, of living better, and climbing higher than their ancestors before them. As representatives of millions of people who still cling to these hopes, anything Congress can responsibly do to help increase opportunity for all Americans in the workforce, especially those with disadvantages, it ought to do. But history has shown us it is not the Federal government, but the innovation and initiative of individual Americans themselves that has successfully broken down barriers.

Though in the past we seemed to agree more on what the barriers to success are and how to remedy them, today Democrats see barriers as opportunities to increase Federal power. Republicans see barriers as opportunities to enable individual empowerment.

If we really want to lift the barriers that stifle Americans trying to enter and thrive in the workplace, we need to propose remedies that reduce the skills gap and prepare individuals to fill the plethora of available high-quality jobs in this country. It cannot be overemphasized that all education is career education. We will get nowhere in our efforts to close the skills gap and fill these millions of open jobs if we do not make postsecondary education reform the focus of our efforts. Apprenticeships, earn and learn opportunities, stackable credentials, a fair and full view of what postsecondary education is and should be. This is the key to opening doors to opportunity and prosperity, not a more reactionary Federal government.

The promise of higher education is broken, and Federal law perpetuates this failing system. By reforming the Higher Education Act to leverage employer expertise, allow for innovative ways to gain skills and stackable credentials, and encourage lifelong learning, Congress can help close the skills gap and unleash the economic potential of Americans nationwide.

Our previous efforts, like Strengthening the Career and Technical Education for the 21st Century Act, and WIOA, provided lucrative results for the American worker by supporting his or her progress and development. These policies have asserted that the answers are closer to home than an influx of government spending and programs. We have recognized that education and workforce development are one in the same in the past and we must do the same going forward.

As legislators working to remove the barriers to economic and employment success for all Americans, especially the disadvantaged, it is critical that we keep this approach in mind. Our success is an individual success and removing barriers should mean less government overreach and involvement, not more.

Thank you, Mr. Chairman. I yield back.

[The statement by Mrs. Foxx follows:]

Prepared Statement of Hon. Virginia Foxx, Ranking Member, Committee on Education and Labor

This hearing is supposedly about barriers to employment, not opportunities for Federal spending, Federal involvement, and Federal power. We could use a little truth in advertising today.

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Looking at individual policies outside of the role of education is not the way to approach this question of opening doors for Americans. It's these siloed, piecemealed approaches that have gotten us here. When will we learn? The American dream was founded on the premise that individuals are free, and capable of improving their lives, of living better and climbing higher than their ancestors before them. As representatives of millions of people who still cling to these hopes, anything Congress can responsibly do to help increase opportunity for all Americans in the workforce, especially those with disadvantages, it ought to do. Our history has shown us that it is not the Federal government, but the innovation and initiative of individual Americans themselves, that has successfully broken down barriers.

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The promise of higher education is broken, and federal law perpetuates this failing system. By reforming the Higher Education Act to leverage employer expertise, allow for innovative ways to gain skills and stackable credentials, and encourage lifelong learning, Congress can help close the skills gap and unleash the economic potential of Americans nationwide.

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As legislators working to remove the barriers to economic and employment success for all Americans, especially the disadvantaged, it is critical that we keep this approach in mind. Our success is an individual's success, and removing barriers should mean less government overreach and involvement, not more.

Chairman SCOTT. Thank you. Without objection, other Members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5:00 o'clock on Tuesday, June 4, 2019.

I will now introduce our witnesses.

Our first witness is Laurie McCann, who is a senior attorney with the AARP. Her principal responsibility includes litigation and an amicus curiae participation for AARP on a broad range of age discrimination and other employment issues.

Shane Roos is the Senior Vice President of ACHIEVA Support located in Pittsburgh, Pennsylvania, a nonprofit organization that serves thousands of people with disabilities and their families each year. He oversaw ACHIEVA's vocational transformation, including the shuttering of five sheltered workshops and the phase-out of their 14(c) certificates.

Daniel Pianko is Co-Founder and Managing Director at the University Ventures. He leads the firm's investments in education related ventures.

Kisha Bird is the Director of the youth policy at the Center for Law and Social Policy, or CLASP. She has expertise in youth development, workforce development policy, reentry and career pathways, with a focus on equity, opportunity, youth, and individuals impacted by the criminal justice system.

We appreciate all of our witnesses for being here and look forward to your testimony.

Let me remind you that we have read your written statements and they will appear in full in the record.

Pursuant to Rule 7d and Committee practice, each of you is asked to limit your oral presentation to a 5 minute summary of your written statement.

Before you begin your testimony, please remember to press the button in front of you on the microphone so it will turn on and

Members can hear you. As you begin to speak, the light in front of you will turn green. After 4 minutes the light will turn yellow and you will have 1 minute remaining. When the light turns red, your 5 minutes have expired and we ask you to please wrap up.

We will let the entire panel make presentations before we move to Member questions. When answering a question please remember, once again, to activate your microphone.

I will first recognize Ms. McCann.

**TESTIMONY OF LAURIE MCCANN, J.D., SENIOR ATTORNEY,
AARP FOUNDATION LITIGATION**

Ms. MCCANN. Thank you.

Chairman Scott, Ranking Member Foxx, and Members of the Committee, on behalf of our nearly 38 million members, and all older Americans, AARP thanks you for inviting us to testify on employment barriers facing older workers and H.R. 1230, the Protecting Older Workers Against Discrimination Act, or POWADA.

It is simply good business to recruit and to retain talent, regardless of age. The 50+ segment of the workforce is the most engaged cohort across all generations, yet older workers continue to face numerous obstacles to employment, barriers that cannot be fully addressed in one hearing.

Today I will focus on the most significant barrier older workers face, age discrimination. Age discrimination in the workplace remains disturbingly pervasive. Three in five older workers report that they have seen or experienced age discrimination on the job. Fifty-six percent of all older workers are pushed out of their long-time jobs before they choose to retire, and only one in ten of those workers will ever again earn as much as they did before. Discrimination in hiring is common, but less visible, and much harder to prove. Experimental studies document that employers are less likely to call back older applicants for an interview and women face even more age discrimination in hiring than men.

There are many best practices employers can and do adopt to help prevent discrimination, but such efforts are no substitute for strong legal protections. Unfortunately, courts have failed to interpret the Age Discrimination and Employment Act as a remedial civil rights statute, but, instead, narrowly interpret and erode its protections. Exhibit A is the Gross v. FBL Financial Services decision, which came out 10 years ago next month. Joining me here today is Mr. Jack Gross, the plaintiff in that case, which created the need to pass POWADA.

Mr. Gross is now a happy retiree, who spends his time with his wife of 51 years and his grandchildren, but he still wants to stop his name from being associated with the pain and injustice inflicted on older workers by age discrimination. Those are his words.

After working for more than 30 years and steadily rising within the ranks of the company, Jack's employer underwent a merger and reorganized. Many older workers were offered a buyout, and those who didn't take it, including Jack, were demoted and essentially replaced by younger workers. Jack, then 54, went to court and the jury agreed that age discrimination had been one of the motives behind his demotion. He was awarded about \$47,000 in lost compensation.

But when his case was appealed to the Supreme Court, the Court ruled that the ADEA requires a much stricter showing of causation than other kinds of discrimination. It was no longer enough to prove that age was one of the motivating factors behind an employer's conduct. The Court held that older workers must prove that age was a decisive, but for cause for the employer's actions.

The Gross decision has made it far more difficult for older workers to get their day in court and to prevail. Courts have used Gross to weaken other wage discrimination protections and the damage has not stopped with the ADEA. The Supreme Court and lower courts have extended the harmful reasoning of Gross to other civil rights laws. In 2013 the Supreme Court imposed the Gross standard on Title VII retaliation cases. While the Supreme Court has not yet ruled on the availability of the mixed motive framework under the American Disability Act or the Rehabilitation Act of 1973, several lower courts have extended the damage to disability discrimination.

POWADA alone won't fix all the problems. Much more needs to be done. For instance, Representative Grothman introduced a bill last year that would protect more older workers from age discrimination by extending the ADEA's coverage to more employers. But POWADA would fix the enormous problem created by the Gross decision and its progeny, a legal standard that is stacked against workers and backtracks on the promise of the ADEA and other civil rights laws.

POWADA does not expand civil rights, it is a limited straight forward restoration of the same standard that was in effect before 2009. The bill has long been bipartisan and was developed as a consensus between civil rights and business groups.

Discrimination is discrimination, and POWADA would make Congress' intent clear, that no amount of unlawful discrimination in the workplace is acceptable. Congress should pass POWADA as soon as possible.

Thank you again for inviting AARP to testify and I would be happy to answer any questions you may have.

[The statement of Ms. McCann follows:]



**TESTIMONY OF LAURIE McCANN
ON BEHALF OF AARP**

SUBMITTED TO THE

**EDUCATION AND LABOR COMMITTEE
U.S. HOUSE OF REPRESENTATIVES**

ON

ELIMINATING BARRIERS TO EMPLOYMENT: OPENING DOORS TO OPPORTUNITY

May 21, 2019

**AARP
601 E Street, NW
Washington, DC 20049**

For further information, contact:
Deborah Chalfie
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Introduction

Chairman Scott, Ranking Member Foxx, and Members of the Committee, on behalf of our nearly 38 million members and all older Americans nationwide, AARP thanks you for inviting us to testify at today's hearing to discuss barriers to employment faced by older workers. I am Laurie McCann, a Senior Attorney with AARP Foundation, the charitable affiliate of AARP, which, among other things, works to help low-income older adults earn a living. For more than 30 years, I have been working to ensure equal employment opportunities for older workers so that they can continue to put their experience to work.

It is simply good business to recruit and to retain talent regardless of age. The age 50+ segment of the workforce is the most engaged cohort across all generations, which translates into higher productivity, increased revenues, and improved business outcomes.¹ Research study after research study finds that a diverse workforce is a more productive, better performing, more innovative workforce, and this holds for age diversity too.² Yet, older workers continue to face numerous obstacles to employment, barriers that cannot be fully addressed in one hearing. Today, I will focus on the most significant barrier older workers face, which is age discrimination. However, my full written statement touches on some of the other challenges older workers face and possible solutions.

Age Discrimination Is the Most Significant Barrier to Employment for Older Workers

All Too Pervasive in the Workplace

For older jobseekers and workers, age discrimination is the biggest barrier to both getting employed and staying employed. Certainly, the enactment of the Age Discrimination in Employment Act (ADEA) – which has been in effect for 50 years as of last summer – significantly brightened the employment landscape for older workers. Congress has amended the law several times to gradually strengthen its coverage and protections. Upper age limits on coverage were eliminated – banning mandatory retirement for almost all workers – discrimination in employee benefits has diminished, and significant protections for older workers who are laid off were added.

Unfortunately, age discrimination in the workplace is still disturbingly pervasive. According to an AARP survey released last year, 3 in 5 older workers report they have seen or experienced age discrimination on the job.³ Nearly two-thirds of women and more than three-fourths of African American workers age 45 and older say they've seen or experienced age discrimination in the workplace.⁴ Age discrimination takes many forms:

¹ See generally, AARP, *A Business Case for Workers Age 50+: A Look at the Value of Experience* (2015), available at http://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2015/A-Business-Case-Report-for-Workers%20Age%2050Plus-res-gen.pdf.

² See generally, L. Trawinski, *Disrupting Aging in the Workplace: Profiles in Intergenerational Diversity Leadership* (AARP Pub. Pol'y Inst., Oct. 2016), available at http://www.aarp.org/content/dam/aarp/ppi/2016-11/213719%20Disrupt%20Aging%20in%20the%20Workforce%20Report_FINAL_links.pdf [hereinafter *Intergenerational Diversity*].

³ R. Perron, *The Value of Experience: Age Discrimination Against Older Workers Persists* 3 (AARP, 2018), at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2018/value-of-experience-age-discrimination-highlights.doi.10.26419-2Fres.00177.002.pdf [hereinafter *AARP Survey*].

⁴ *Id.*

- Termination - A new Urban Institute/*ProPublica* study found that 56% of all older workers age 50+ are “pushed out of longtime jobs before they choose to retire” and “only one in 10 of these workers ever again earns as much as they did before” their involuntary separation.⁵ Among the age discrimination charges filed with the EEOC, complaints about discriminatory discharge constitute, by far, the largest number of charges filed under the ADEA (coincidentally, also 56% in 2018).⁶
- Hiring - Discrimination in hiring is quite common but less visible and much harder to prove. Experimental studies have documented significant discrimination against older applicants in the hiring process, including one recent study that found employers were less likely to call back older applicants, and “women face worse age discrimination than men.”⁷ AARP’s survey found that three-fourths of age 45+ workers blame age discrimination for their lack of confidence in finding a *new* job.⁸ It doesn’t help that 44% of older jobseekers who had recently applied for a job were asked for age-related information such as their date of birth or date of graduation.⁹
- Everything In Between – After discharge, the next most frequent complaint by older workers involves the “terms and conditions” of employment,¹⁰ such as being moved to a night shift, or given an unfair performance evaluation. Age-based harassment on the job is also, unfortunately, quite common. It is the next most frequent complaint to the EEOC, and nearly one-fourth of age 45+ workers in the AARP survey said they had experienced negative comments about their age from supervisors and coworkers.¹¹

A key reason why age discrimination in the workplace remains stubbornly persistent is because ageism in our culture remains stubbornly entrenched. Quite possibly, ageism is one of the last acceptable forms of prejudice in our society. Certainly, not enough companies have taken it seriously. Despite the fact that the workforce is aging and workers age 65+ are the fastest growing age group in the labor force,¹² only about 8% of CEOs report that they include “age” as a dimension of their diversity and inclusion policies and strategies.¹³

There are many best practices employers can adopt, and are adopting, to eschew age discrimination and benefit from building a multigenerational workforce. Such efforts can help prevent discrimination from ever occurring. However, it is important to remember that these efforts are not a substitute for strong legal protections against age discrimination in the workplace, and vigorous enforcement of those protections.

⁵ P. Gosselin, “If You’re Over 50, Chances Are the Decision to Leave a Job Won’t be Yours,” *ProPublica* (Dec. 28, 2018), at

<https://www.propublica.org/article/older-workers-united-states-pushed-out-of-work-forced-retirement>.

⁶ AARP calculation based on EEOC, *Statutes by Issue (Charges filed with EEOC): FY 2010 - FY 2018*, at https://www.eeoc.gov/eeoc/statistics/enforcement/statutes_by_issue.cfm and *Age Discrimination in Employment Act (Charges filed with EEOC): FY 1997 - FY 2018 (Receipts)*, at <https://www.eeoc.gov/eeoc/statistics/enforcement/adea.cfm> (accessed May 12, 2019) [hereinafter *EEOC Charge Statistics*].

⁷ D. Neumark, I. Burn, et al., *Age Discrimination and Hiring of Older Workers*, Federal Reserve Bank of San Francisco (2017), at <https://www.frbsf.org/economic-research/publications/economic-letter/2017/february/age-discrimination-and-hiring-older-workers/>.

⁸ AARP Survey, *supra* n. 3, at 8.

⁹ *Id.* at 7.

¹⁰ *EEOC Charge Statistics*, *supra* n. 6.

¹¹ AARP Survey, *supra* n. 3, at 6.

¹² M. Toossi, & E. Torpey, *Older workers: Labor force trends and career options*, Chart 2 (BLS, May 2017), at <https://www.bls.gov/careeroutlook/2017/article/older-workers.htm>.

¹³ *Intergenerational Diversity*, *supra* n. 2, at 2.

The Gross Decision and Its Impact

Unfortunately, over the years, the courts have failed to interpret the ADEA as a remedial civil rights statute, instead, narrowly interpreting its protections and broadly construing its exceptions – compounding the barriers older workers face around age discrimination. Exhibit A in the increasingly cramped reading of the ADEA by the courts is the decision in *Gross v. FBL Financial Services, Inc.*,¹⁴ issued by the Supreme Court nearly 10 years ago.

Joining me today in the hearing room today is Mr. Jack Gross, the named plaintiff in the case that spawned the need to pass the Protecting Older Workers Against Discrimination Act (POWADA) being heard today. Mr. Gross is now a happy retiree who spends his time with his wife of 51 years and his grandchildren. But he still cares enough about wanting to stop having his “name associated with the pain and injustice now inflicted on older workers”¹⁵ by age discrimination that he wanted to be here today.

To appreciate the departure that the *Gross* case represents, it's important to have a bit of historical background. The ADEA is firmly grounded in this nation's civil rights era. Originally, age discrimination was proposed as protected category to be part of the Civil Rights Act of 1964.¹⁶ Though not ultimately included, that law directed the Secretary of Labor to conduct a study of age discrimination and report back to Congress.¹⁷ The enactment of the ADEA in 1967 – amidst the enactment of the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act in 1968 – was an important and integral part of Congressional actions to define and protect civil rights in the 1960s. President Johnson viewed the passage of the ADEA as a fundamental part of his civil rights legacy as well as his efforts to address the significant problems facing older Americans.

Besides sharing an ancestry with Title VII, the ADEA's language was borrowed directly from Title VII, prohibiting discrimination “because of” age. Thus, for decades, the ADEA was interpreted in concert and consistently with Title VII. The tradition and precedent of parallel construction was so strong that, when the Supreme Court recognized a “mixed motive” framework for proving discrimination under Title VII in the *Price Waterhouse v. Hopkins* case in 1989,¹⁸ and after Congress codified that framework in the Civil Rights Act of 1991,¹⁹ courts “uniformly” interpreted the ADEA to permit a mixed motive cause of action.²⁰ Under the mixed motive framework, once a worker proves that discrimination was a motivating factor, that it played any role in the employer's actions, liability for unlawful discrimination is established,

¹⁴ 557 U.S. 167 (2009).

¹⁵ *The Protecting Older Workers Against Discrimination Act, Hearing on H.R. 3721 before the U.S. House of Representatives Subcomm. on Health, Empl., Labor, & Pensions, Comm. on Educ. & Labor*, 111th Cong. 2d Sess. 8 (May 5, 2010) (testimony of Jack Gross, Plaintiff in *Gross v. FBL Financial Services*), at <https://www.govinfo.gov/content/pkg/CHRG-111hhrg56131/pdf/CHRG-111hhrg56131.pdf>.

¹⁶ D. O'Meara, *Protecting the Growing Number of Older Workers: The Age Discrimination in Employment Act* 11-12, n. 24 (Univ. of Penn., The Wharton School, Industrial Research Unit, 1989) (citing 110 Cong. Rec. 9911 (1964)).

¹⁷ Section 715 of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 265 (1964).

¹⁸ 490 U.S. 228 (1989).

¹⁹ 42 U.S.C. § 2000e-2(m).

²⁰ *Protecting Older Workers Against Discrimination Act, Hearing on H.R. 3721 before the U.S. House of Representatives Comm. on the Judiciary*, 111th Cong. 2d Sess. 4 (June 10, 2010) (testimony of Assoc. Prof. Helen Norton, Univ. of Colo. School of Law).

even if the employer puts forward additional, lawful motives. The burden of persuasion then shifts to the employer to prove that it would have made the same decision even absent the unlawful discriminatory factor. If the employer demonstrates this “same decision” defense, the worker still wins, but her/his remedies are limited to injunctive relief, declaratory relief, and attorney’s fees; no damages are recoverable.²¹

In the case of *Gross v. FBL Financial Services, Inc.*, Jack Gross, then 54, brought suit for age discrimination. After working for more than 30 years and steadily rising within the company, Jack’s employer reorganized and underwent a merger. As part of these changes, many older workers were offered a buy-out, and those who didn’t take the buy-out were demoted, with their prior duties and titles assigned to younger workers. Jack took his case to a jury, which agreed that age discrimination had been one of the motives behind his demotion. Jack was awarded \$46,945 in lost compensation. But, the employer won on appeal, arguing that mixed motive discrimination must be proven by direct evidence, not circumstantial evidence. The Supreme Court agreed to hear the case on that evidentiary question. However, the Court surprised both parties when it issued a decision on a question that was never presented to the Court or briefed by the parties: whether mixed motive discrimination cases could be brought *at all* under the ADEA.

In *Gross*, the Court ruled that older workers may not bring mixed motive claims under the ADEA. It was no longer legally sufficient to prove that age discrimination tainted the employer’s conduct. The Court held that older workers must prove that age discrimination was a decisive, determinative, “but-for” cause for the employer’s conduct. The Court discarded decades of precedent embracing parallel construction of the ADEA with Title VII, and flipped it on its head. Instead, the Court noted that when Congress amended Title VII to codify the mixed motive framework, it could have similarly and simultaneously amended the ADEA, but it chose not to do so. The Court drew a negative inference from Congress’ omission: if the ADEA was not amended to include motivating factor discrimination, then Congress must have intended to *exclude* motivating factor discrimination under the ADEA.

The *Gross* decision has resulted in significant harm to older workers challenging age discrimination. Requiring a worker not only to prove that age discrimination was one motivating factor in their treatment on the job – already a very difficult showing to make – but to prove that age was a critical, but-for motive in their adverse treatment, is a much higher and tougher standard of proof.²² Moreover, by changing the standard from “motivating factor” to “but-for cause,” the Court held there is never any shift in the burden of proof to the employer. Contrary to the balanced approach represented by Congress’ codification of the mixed motive framework, older workers now always bear the burden of persuasion in ADEA cases. The combination of heightening the standard of proof and ruling that the burden of persuasion never shifts to the employer has made it much more difficult to win a case of *proven* age discrimination under the ADEA, and erected a new and substantial legal barrier in the path of equal opportunity for older workers.

²¹ 42 U.S.C. §2000e-5(g)(2)(B).

²² Despite the *Gross* Court’s denial that its decision imposed any “heightened evidentiary standard” to prove age discrimination, *Gross*, at 178, n. 4, it did not take long for the courts in subsequent decisions to interpret *Gross*’ but-for standard as requiring a higher, more stringent causation standard. See e.g., *Fuller v. Seagate Technology, LLC*, 651 F. Supp. 2d 1233, 1248 (D. Colo. 2009) (“...this Court interprets *Gross* as elevating the quantum of causation required under the ADEA.”).

For several reasons, it is difficult to quantify the impact that the *Gross* decision has had on the number of older workers who bring cases, and the number of those who win them. First, it is difficult to separate out the impact of the *Gross* decision from larger economic forces. Around the same time of the *Gross* decision, when we might have expected a drop in charges due to *Gross*-inspired discouragement from employment attorneys, there was a sizeable jump in the number of ADEA charges filed with the EEOC, which coincided with massive, recession-spawned lay-offs that resulted in record unemployment levels among older workers.²³ Second, like the dog that didn't bark, it is difficult to measure cases that do not materialize. If it is too difficult to prevail, workers can't find attorneys willing to take the economic risk to bring their cases, and we never see those cases. Anecdotally, though, we know that attorneys are less willing to take on age discrimination cases in light of the *Gross* decision.

There are, however, many cases that illustrate the deleterious impact that the *Gross* decision has had on the ability of older workers to get their day in court and prevail. The most obvious example is Jack Gross' own case. As noted above, Jack won his case under the motivating factor framework, but after the Supreme Court changed the rules and required him to retry his case under the new higher standard, he lost, despite having proven the same facts, with the same parties, in the same courts as before. In another example,²⁴ a long-time employee who was let go challenged her termination as age discrimination under both the ADEA and the Iowa Civil Rights Act. Under the ADEA, *Gross*' but-for standard governs; under state law, workers need only show that discrimination play a part – that it was a motivating factor in adverse treatment. A single court applying pre- and post-*Gross* standards to the very same set of facts and body of evidence reached opposite conclusions: the worker lost her ADEA case due to *Gross*, but her state law/motivating factor claim survived the employer's motion for summary judgment.

In addition to hurting individual older workers who have been treated unfairly, the *Gross* decision sent a terrible message to employers and to the courts generally – that age discrimination isn't as wrong, or as unlawful, as other forms of discrimination. As long as the employer can point to other lawful motives that also may have played a role, employers will not be held liable or accountable, even for manifest, proven age discrimination. In this manner, the *Gross* decision undermined Congress' entire purpose, mandate, and expected enforcement of the ADEA – that discrimination play NO role in employment decisions.²⁵

Moreover, courts have begun using the approach of *Gross* – interpreting *any* difference in the ADEA's statutory structure or history (from Title VII) to weaken elements of the law, even if that interpretation is irreconcilable with the ADEA's language, purpose, and jurisprudence. For instance, in the recent case of *Kleber v. CareFusion Corp.*,²⁶ the Seventh Circuit Court of Appeals ruled that one must *already be an employee* to challenge certain types of position

²³ Over FY 2007 and 2008, the number of age discrimination charges filed with the EEOC jumped 50% over FY 2006. See *EEOC Charge Statistics*, *supra* n. 6. See also, e.g., S. Rix, *The Employment Situation, August 2011: Older Worker Unemployment Remains Stubbornly High* (average duration of unemployment for older workers was higher than one year, compared to 37 weeks for the younger unemployed) (AARP Pub. Pol'y Inst., Sept. 2011), available at <https://assets.aarp.org/rgcenter/ppi/econ-sec/fs237.pdf>.

²⁴ *Burger v. Kmart*, 2012 U.S. Dist. LEXIS 89826, 2012 WL 2521114 (N.D. Iowa, June 28, 2012).

²⁵ As bad as the *Gross* decision was, some courts managed to make it worse, especially early on. For instance, some courts interpreted the "but for" standard to mean that the plaintiff must prove that age was *sole* cause for their adverse action. This misinterpretation has largely been corrected. See e.g., *Lewis v. Humboldt Acquisition Corp. Inc.*, 681 F.3d 312 (6th Cir. 2012).

²⁶ 888 F.3d 868 (7th Cir. 2018), *rev'd en banc*, 914 F.3d 480 (7th Cir. 2019).

qualifications that have a disparate impact against older applicants. In Mr. Kleber's case, he challenged a requirement that job applicants have a *maximum* of 10 years of experience, a specification that would clearly and foreseeably have a disparate impact on older applicants. Yet, the Court ruled that because Congress had amended Title VII back in 1972 to clarify its intent that applicants could bring disparate impact claims, but never had similarly amended the ADEA, then job applicants could not challenge practices in the hiring process with an age-discriminatory impact. In other words, the ADEA prohibits hiring discrimination, but not for job applicants!

Furthermore, the damage inflicted by *Gross* has not stopped with the ADEA. The Supreme Court and lower courts have extended the "negative inference" reasoning of *Gross* to other civil rights laws. Four years after *Gross*, in *University of Texas Southwestern Medical Center v. Nassar*,²⁷ the Supreme Court imposed the same unreasonably difficult burden of proof in Title VII cases in which an employer *retaliates* against workers who challenge workplace discrimination based on race, sex, or other grounds. That is, even though Congress had codified mixed motive discrimination in the "Unlawful Employment Practices" section of Title VII, it did not repeat the amendment in the "Other Unlawful Employment Practices" section of Title VII, which includes the anti-retaliation provision. Following *Gross*, the Court held that Congress must not have intended for the mixed motive analysis to apply to charges of retaliation. Thus, a woman who has been discriminated against on the basis of sex need only prove that sex discrimination was one motivating factor in her adverse treatment, but then if she is fired in retaliation for filing a complaint, she must demonstrate that retaliation was the decisive, but-for reason that she was fired. As one commentator put it, if a worker can be more easily fired for challenging discrimination, this "strips away"²⁸ the underlying protections of Title VII. The *Nassar* holding created two different standard causation standards for the same course of conduct within the same statute, just like *Gross* created two different causation standards for workers who allege intersectional discrimination, such as an older woman who challenges age+sex discrimination under the ADEA and Title VII.²⁹

The Supreme Court has not yet ruled on the availability of the mixed motive framework under the Americans with Disabilities Act (ADA) or the Rehabilitation Act of 1973. Unfortunately, several lower courts have, and they have extended *Gross* and *Nassar* to these two statutes. Just last month, the Second Circuit³⁰ joined the Fourth, Sixth, and Seventh Circuits in ruling that disability discrimination must be established under a "but-for" standard.³¹

Why the Protecting Older Workers Against Discrimination Act (POWADA) Is Needed

²⁷ 570 U.S. 338 (2013).

²⁸ C. Donnelly, The Power to Retaliate: How *Nassar* Strips Away the Protections of Title VII, 22 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 411 (2016).

²⁹ Some courts have ruled that the but-for standard precludes cases of intersectional discrimination under both the ADEA and Title VII, "because the [very] existence of the Title VII claim suggests that age was not the "but for" cause of the decision." Brief of Employment Law Professors as *Amici Curiae* in Support of Respondent, at 14-5, n.3, *University of Texas Southwestern Medical Center v. Nassar* (quoting *Culver v. Birmingham Board of Education*, 646 F. Supp. 2d 1270, 1271-72 (N.D. Ala. 2009)). See also e.g., *Frappied v. Affinity Gaming Black Hawk, LLC*, No. 17-cv-01294-RM-NYW (D.C. Colo. June 22, 2018) (plaintiffs may not proceed with their gender plus age claim; "the scope of liability under the ADEA is narrower than that under Title VII. See *Gross*....") (summary judgment on ADEA claim granted Jan. 17, 2019).

³⁰ *Natofsky v. City of N.Y.*, No. 17-2757, ___ F.3d ___ (2d Cir. Apr. 18, 2019), available at <https://casetext.com/case/natofsky-v-city-of-ny>.

³¹ This is despite the fact that the ADA expressly incorporates by reference Title VII's enforcement provisions, including the provision containing the "same decision" defense. See 42 U.S.C. 12117(a).

The bill under consideration today – the Protecting Older Workers Against Discrimination Act (POWADA) – won't fix all the problems with how protections against age discrimination have been eroded over the years. Much more needs to be done. For instance, Rep. Grothman introduced a bill last year that would protect more older workers from age discrimination by setting the employer size threshold (now 20 employees) under the ADEA at the same level as for Title VII and the ADA (15 employees). And, given the ad targeting practices of platforms like Facebook that have recently come to light, we need to ensure that *job applicants* are protected from age discrimination, whether the job posting says no one over 45 need apply, or a job posting is only sent to those under 45, or a job posting specifies a maximum of 10 years of experience.

But, POWADA is bipartisan legislation that would fix the enormous problem created by the *Gross* decision and its progeny: an unreasonably high standard of proof that is stacked against workers and backtracks on the promise of the ADEA and other civil rights laws: equal opportunity in employment. POWADA does not expand civil rights. It is a limited, straightforward restoration of the same standard that was in effect before 2009. The bill was developed and co-written into an agreed-upon draft over about 12-18 months by civil rights groups,³² business groups,³³ and the heavy involvement of staff for Senators Harkin and Grassley. POWADA would amend our four core civil rights laws to make Congress' intent clear, that no amount of unlawful discrimination in the workplace acceptable.

- **“Mixed motive” claims are again recognized.** In accordance with the prior standards, a worker establishes an unlawful employment practice when a protected characteristic such as age or disability is proven to have been a motivating factor for an employer's action, even though nondiscriminatory motives may have also been involved. (There is certainly no requirement that a worker be required to prove that discrimination was the “sole cause” for their treatment on the job.) Then, the burden of proof shifts to the employer to show it would have made the same decision even absent discrimination. If the employer proves this, the employee's remedies are limited, as they have always been in such cases, to injunctive relief and attorneys' fees.
- **Workers may prove their cases using any type of admissible evidence.** The bill would clarify the question that originally led to the Supreme Court's acceptance of the *Gross* case. Workers can prove their cases, including “mixed motive” cases, using any type of admissible evidence, including circumstantial and direct evidence.

Discrimination is discrimination, and older workers who can prove they have been discriminated against should be treated no less favorably by the courts than other workers challenging workplace discrimination. It has been 10 years since the *Gross* decision weakened protections against age discrimination and other rights. It's time to re-level the playing field and restore fairness under the law. Across party and ideological lines, roughly 8 in 10 American voters age 50+ say it is important for Congress to take action and restore workplace

³² The civil rights groups most involved were AARP, the Leadership Conference on Civil and Human Rights, and the National Employment Lawyers Association.

³³ The business groups most involved were the US Chamber of Commerce, HR Policy Association, and the Society for Human Resource Management (SHRM).

protections against age discrimination.³⁴ Congress should pass POWADA as soon as possible.

Other Barriers Faced by Older Workers

Job Displacement, Retraining and a Thin Safety Net

Workers of all ages have been experiencing displacement from long-time jobs, but because of the forces that have prompted displacement – offshoring, automation, outsourcing to a contingent workforce – older workers are often disproportionately affected. When that happens, older workers have been relegated to an unresponsive workforce development system and a much diminished safety net. Compared with other advanced economies, the U.S. underperforms in its efforts to help displaced workers transition back into the labor force. Greater investment in retraining and other forms of transition assistance are needed to reintegrate workers back into the labor market.

Older workers age 55+ are appropriately identified under the Workforce Innovation and Opportunity Act (WIOA) as “individuals with barriers to employment” (IWBE) and older workers tend to be overrepresented in some of the other IWBE categories, including the long-term unemployed, displaced homemakers, and individuals with disabilities. However, under WIOA, there is no statutory mandate to provide or prioritize services (individualized or otherwise) and training for dislocated workers in the same way as for the Adult program. Nor is there even any express mandate to prioritize services within the Dislocated Worker program for IWBEs; they just have the *potential* to be served.

When Congress reauthorizes WIOA next year, AARP urges that the law establish a priority for IWBEs within the Dislocated Worker program. To do so would give substance to the IWBE designation and better align the Dislocated Worker program to WIOA’s objective to target services, especially staff-assisted and individualized services, to those most in need of assistance. The availability of in-person navigators are especially needed. Congress should require workforce development centers to provide in-person counseling and accurate guidance about job search strategies and job training programs, as well as facilitate connections with appropriate supportive services. This assistance should be tailored to the needs of older workers. Finally, with a future of work that is uncertain, more sufficient funding is needed for the workforce development system, including workforce development centers, Trade Adjustment Assistance, Senior Community Service Employment Program (SCSEP), and subsidized employment programs.

In addition, there is a dire need to restore the safety net and strengthen transition assistance for older workers who are displaced from long-time employment. Since the economy began recovering from the recession, state unemployment insurance programs have been severely downgraded in several states,³⁵ with several cutting eligibility and benefits, and failing to take steps to shore up their solvency in preparation for the next downturn. AARP believes states

³⁴ AARP, *Protecting Older Workers Against Discrimination Act: National Public Opinion Report* 9, Fig. 9 (June 2012), available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/work_and_retirement/powada-national.pdf.

³⁵ See G. Wentworth, *Closing Doors on the Unemployed: Why Most Jobless Workers Are Not Receiving Unemployment Insurance and What States Can Do About It* (NELP, 2017), at <https://www.nelp.org/publication/closing-doors-on-the-unemployed/>.

should be required to improve the financial situation of their UI trust funds by increasing funding rather than reducing the basic 26 weeks of UI benefits traditionally provided. Beyond UI, there is a need to explore more comprehensive responses to displacement; some have proposed using the Trade Adjustment Assistance as a model to develop more adequate transition assistance response to worker displacement. AARP is currently exploring transition options.

Conclusion

Today, Americans are healthier than earlier generations, often working into their 70s and beyond, and they continue to have big dreams and goals. Many are still working because they cannot afford to retire. Either way, it is now common to see four or five different generations working side by side in the workplace, and that trend will continue in the future, as long as we don't let outdated stereotypes about age get in the way.

As was the case with the Americans with Disabilities Act (ADA) – where Congress took bipartisan action to restore the statute's strength by enacting the Americans with Disabilities Act Amendments Act of 2008 – AARP believes that it is well past time to restore basic fairness for older workers and to enact POWADA immediately. AARP again thanks this Committee for inviting us to testify and we look forward to continuing to work with the Committee to enact this legislation.

Chairman SCOTT. Thank you.
Mr. Roos.

**TESTIMONY SHAYNE ROOS, SENIOR VICE PRESIDENT,
ACHIEVA SUPPORT, ACHIEVA**

Mr. ROOS. Good morning and thank you to Chairman Scott and Ranking Member Foxx for allowing me this opportunity to come before you today in support of the Transformation to Competitive Integrated Employment Act.

This morning my testimony will include the story of my organization's transformation away from the use of a 14(c) and the successes realized as a result of that transformation.

My name is Shane Roos. I am the Senior Vice President of ACHIEVA Support, promoting employment opportunities for people with disabilities is a personal passion, has been a primary focus of my career. I view employment as being the centerpiece of a community life.

ACHIEVA was founded in 1951 by a group of family members who all desired the same thing, to ensure their children with disabilities had the same chances in life that all children should be given. Their commitment helped to establish a nationwide movement that changed the long history of isolation and segregation of both children and adults with disabilities.

For several decades ACHIEVA has been providing employment supports for people with disabilities and we have always taken a diversified approach to achieve competitive integrated employment outcomes.

Until recently, however, we had relied heavily on sheltered workshops and the use of a 14(c) certificate. In 2014 we began to examine our scope of employment services relative to the mission, vision, and core values of our organization. We determined that they did not align. In a community where disability should be a distinction that makes no difference, people should not be earning less than minimum wage with little or no access to the greater community.

So in late 2015 our boards of directors unanimously adopted a resolution whereas we would divest ourselves of all facility based services that segregate people from the richness of local community life. While it took time, planning, investment, and a reallocation of resources, all five of ACHIEVA's workshops were shuttered within 3 years of the adoption of the resolution. Even more importantly, both of our 14(c) certificates were phased out within 2 years. And despite the rhetoric that implies when workshops close there are no other alternatives, the successes of those people once languishing in our workshops tell a different story.

Today just over 100 people formerly in one of our workshops and earning a sub-minimum wage are now enjoying the richness and benefit of competitive integrated employment. Those jobs span across 53 unique employers with an average starting rate of \$8.25 per hour. An additional 65 people are employed by one of ACHIEVA's 3 business. The average hourly rate earned in ACHIEVA's business operations is \$8.93 an hour. These same people were once earning an average wage of \$1.90 per hour under a 14(c) certificate. Current earnings represent a 370 percent increase in hourly wages.

Transitioning away from a 14(c) is not without its challenges. Many of the people currently in workshops transitioned into them directly from high school and they have remained there ever since. The workshops and the associated meager earnings are all they and their families have ever known because people were not truly being prepared for a transition to competitive integrated employment.

Passage of the Transformation to Competitive Employment Act in and of itself sets a new standard. It answers the question as to whether or not people with disabilities should be paid less than minimum wage. That answer is no. The Act sends a message that all people with disabilities who choose to be employed have the same rights and opportunities as people without disabilities. It also addresses those challenges by first and foremost offering technical assistance to current 14(c) holders. They will need to understand and buy into why it should be done and develop a competency as to how it can be done in order to successfully transition away from the use of a 14(c).

Transformation of this kind does not occur overnight. The Act allows ample time to create and implement an exit strategy. Technical assistance and financial supports provided by the act should be used at the onset to develop a vision of how things will look 6 years down the road, establish realistic deadlines for implementation, and design a comprehensive communication plan. Having those three components in place prior to execution minimizes the fear of the unknown for your internal and external stakeholders and holds organizations accountable in terms of meeting your strategic benchmarks.

I support the Transformation and Competitive Employment Act, and ACHIEVA is a proud member of ANCOR, the American Network of Community Options and Resources, who support the Act.

While there may have been a place for such a law when it was created in 1938, this discriminatory practice that undervalues the abilities and contributions of a person with a disability is no longer acceptable.

And while I will always stand tall behind ACHIEVA's decision to discontinue the use of our 14(c) because we felt that it was simply the right thing to do, my experience over the past few years has shown me that all too many current certificate holders will not take that approach under their own volition. They instead will lean on falsehoods, such as a person's lack of options or eliminating one's choice to defend a model of sheltered employment and sub-minimum wage. And it is for that very reason that the adoption of the Transformation to Competitive Employment Act is so inherent to promoting competitive integrated employment opportunities for all.

Thank you.

[The statement of Mr. Roos follows:]



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**Testimony of Shayne Roos
Senior Vice President, ACHIEVA Support
Before the House Committee on Education and Labor
May 21, 2019**

**On
'Eliminating Barriers to Employment: Opening Doors to Opportunity'**

INTRODUCTION

Thank you all for the opportunity to appear before you today to provide testimony and support of the *Transformation to Competitive Employment Act (H.R. 873)*. By way of background, my name is Shayne Roos. I am the Senior Vice President of ACHIEVA Support. Prior to joining ACHIEVA in 2001, I worked in the state of North Carolina, initially as a Qualified Intellectual/Developmental Disabilities Professional and then as a Vocational Rehabilitation Counselor.

ACHIEVA

Based out of Pittsburgh, Pennsylvania, ACHIEVA is a nonprofit parent organization that has comprehensive services and supports and serves thousands of people with disabilities and their families each year. ACHIEVA was founded in 1951 by a group of family members who all desired the same thing, to ensure their children with disabilities had the same chances in life that all children should be given. Their commitment helped to establish a nationwide movement that changed the long history of isolation and segregation for both children and adults with disabilities.

ACHIEVA is the only agency of its type in southwestern Pennsylvania that provides lifelong supports. From early intervention therapies and in-home support to older adult protective services for medically fragile senior citizens, ACHIEVA provides services through the entire lifespan. Total revenue for ACHIEVA in FY 17/18 was close to \$48 million with government revenue representing 73% of the total. Of that 73%, the majority of government funding received is through the Federal Medicaid Waiver programs. Other revenue streams include contributions, fundraising, etc.

ACHIEVA has always committed to and advocated for the provision of person-centered, inclusive supports in the least restrictive environments. In 1971 as a member of the Pennsylvania Association for Retarded Children (PARC) we brought the seminal lawsuit *PARC v. Commonwealth of Pennsylvania*, the first right-to-education suit in the country, to overturn Pennsylvania law, which allowed for public schools to deny services to children "who have not attained a mental age of five years" by the start of first grade, and secure a quality education for all children. The case quickly settled before the U.S. District Court for the Eastern District of Pa., resulting in a consent decree in which the state agreed to provide a free public education for children with mental retardation. In the late 1990's, ACHIEVA was one of three plaintiff organizations to file suit against Western Center, a Pennsylvania state-run institution housing close to 400 people with intellectual



disability. Those efforts, reinforced by the passage of the Olmstead decision, resulted in the closure of that facility in April 2000.

ACHIEVA'S VOCATIONAL TRANSFORMATION

ACHIEVA envisions a community where disability is a distinction that makes no difference. Our core service areas- early intervention, residential, home care, employment- focus on nurturing a community life. We recognize that in order to be successful in doing so that we must always be willing to evolve, subscribe to best practices and take an individualized approach because what living a community life looks like for one person may not look the same for the next. However, each person is entitled to have *full* access to the richness of community and it is our pledge to eliminate any barriers that place limits on a person with a disability.

Employment is the centerpiece of a community life and for nearly 50 years, promoting the employment of people with disabilities has been a part of ACHIEVA's landscape. We have always taken a diversified approach- supported employment, small group employment, internal business operations- to employment supports. Supported Employment consists of three primary components- career assessment, job finding or development, and job coaching and support. Small group employment is a mobile workforce model where teams of people, supervised by a training/job supervisor, conduct service activities. AbilityOne contracts make many small group employment opportunities possible.

Until recently, our business operations had relied heavily on sheltered workshops and the use of a 14(c) certificate. Less than four years ago ACHIEVA was operating five workshops where close to 500 people with disabilities were working under two separate 14(c) certificates¹. The type of work available varied amongst the five facilities with a large majority being jobs that entailed sorting, packaging, and labeling.

In 2014 ACHIEVA's approach to employment began to shift. In January of that year, the Centers for Medicare and Medicaid Services (CMS) issued the final rule as it relates to home and community-based services (HCBS). The final rule addresses several sections of Medicaid law under which states may use federal Medicaid funds to pay for HCBS. The rule supports enhanced quality in HCBS programs and adds protections for people receiving services. In addition, the rule reflects CMS' intent to ensure that people receiving services and supports through Medicaid's HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.² Later that year the Workforce Innovation and Opportunity Act (WIOA) was signed into law. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy.³

As an organization, we recognized that the final rule and passage of WIOA would affect our organization greatly. Our five workshops would be subject to the requirements of WIOA which would impact eligibility for pre-vocational services. And each facility fell under the HCBS umbrella. As such, we endeavored to determine how we would bring these facilities into compliance with the final rule over an initial five-year period.⁴

¹ ACHIEVA merged with The Arc of Westmoreland in 2009 and in doing so inherited a second 14(c) certificate.

² CMS, Centers for Medicare & Medicaid Services, Office of Communications, FACT SHEET, January 10, 2014.

³ United States Department of Labor

⁴ In May 2017, CMS issued a 3-year extension for providers of HCBS to come into compliance with the final rule.



Initially, the discussions revolved around how to tweak what already existed in order to maintain the status quo. However, an unfortunate incident at one of our workshops changed ACHIEVA's trajectory for good.

In our pallet-manufacturing business, a material handler was gravely injured while operating a table saw. An Occupational Safety and Health Administration (OSHA) investigation led to a review of internal processes and working conditions. Findings specific to the injury aside, the investigation resulted in a realization that there was substantial 'down time' where work was simply not available and that a number of people currently working in the facility had been there for many, many years. With one of the primary objectives of a pre-vocational facility being to *assist clients in the development of skills necessary for placement in a higher-level vocational program and ultimately into competitive employment*⁵, we grew concerned as to why people were not moving onto competitive integrated employment.

From that point forward, internal discussions with ACHIEVA's senior management team gravitated away from focusing on compliance. We began to examine our scope of employment services relative to the mission, vision and core values of our organization. It was determined that they did not align. In a community where disability is a distinction that makes no difference, people should not be earning less than minimum wage with little or no access to the greater community.

For several months, this shift in thought and approach was strategically shared with ACHIEVA's executive team and board of directors. In November 2015, all four corporate boards⁶ and the ACHIEVA parent board unanimously adopted a resolution whereas ACHIEVA would divest itself from providing workshops and training facilities that segregate people from the richness of local community life. And with that, what would come to be known as ACHIEVA's Vocational Transformation began.

While it took time, planning, investment and a reallocation of resources, all five of ACHIEVA's workshops were shuttered within three years of the adoption of the resolution. Even more importantly, both of our 14(c) certificates were phased out within two years. And despite the rhetoric that implies when workshops close there are no other alternatives, the successes of those people once languishing in our workshops tell a different story.

To date, just over 100 people formerly in one of our workshops and earning a subminimum wage are now enjoying the richness and benefit of competitive integrated employment. Those jobs span across 53 unique employers with an average starting salary of \$8.25 per hour. An additional 65 people are employed by one of ACHIEVA's three businesses- pallets and packaging; property maintenance; and cleaning and janitorial. The average hourly rate earned in ACHIEVA's business operations is \$8.93. These same people were once earning an average wage of \$1.90 per hour under a 14(c) certificate. Current earnings represent a 370% increase in hourly wages.

Close to 250 people were undecided as to whether or not they wanted to actively pursue employment. They opted to engage in what is referred to by Pennsylvania's Department of Human Services (DHS), Office of Developmental Programs (ODP) as Community Participations Supports (CPS). CPS is a waiver funded service

⁵ PA Code Title 55, Chapter 2390.

⁶ In 2015, The ACHIEVA Family of Organizations consisted of five separate corporations- ACHIEVA, ACHIEVA Support, The Arc of Greater Pittsburgh, ACHIEVA Family Trust and The Arc of Westmoreland. The Arc of Westmoreland has since been dissolved into ACHIEVA Support.



and provides opportunities and support for community inclusion and building interest in and developing skills and potential for competitive integrated employment. It is designed to result in active, valued participation in a broad range of integrated activities that build upon a person's interests, preferences, gifts, and strengths while reflecting their desired outcomes related to employment, community involvement and membership⁷.

A number of the remaining people once supported in an ACHIEVA workshop, some in their 70's and 80's, opted to retire. Again, this is a somewhat sad narrative. Were they never offered the opportunity to retire in the past? Did they spend the entirety of their lives in a sheltered environment earning a subminimum wage without ever achieving a competitive integrated employment outcome?

Finally, a group of people left our supports and entered into workshops operated by other local agencies. When ACHIEVA began its' transformative efforts, we were met with much resistance, particularly from families. And while we had the commitment and vision for the future, we did not yet have all of the answers to their questions as to available alternatives and what a person's life would look like without a workshop. Ultimately decisions were made to transition to known entities who's plans were to remain status quo for as long as possible. Which emphasizes the fact that the continued existence of the 14(c) certificate serves only as a barrier to the pursuit of competitive integrated employment.

LESSONS LEARNED

Effective communication from the onset is key. You must know your audience, be able to relate to their concerns and impress upon them competitive integrated employment outcomes are achievable. Following the announcement of ACHIEVA's intent to part from providing employment services in segregated settings, we shared that message with the people we support and their families via written communication. We soon realized additional measures were necessary to properly convey the reason behind our conviction to alter our supports. ACHIEVA hired a Communications Manager to lead those efforts. In-person informational meetings for vocational customers and their families were held. Such meetings were offered in both large and small group settings. Smaller, personalized consultations were also provided. A database was developed and maintained to facilitate routine communications with agency stakeholders. Website updates, a monthly newsletter, social media posts, videos, and educational marketing materials were among the efforts taken to keep families informed.

The key component of ACHIEVA's communication efforts was to reinforce the dedication to the people we support and to help them, one-by-one, to recognize their vision of a good life. The result was one success after another. Previous negative behaviors that were exhibited in the sheltered workshop subsided as the people supported by ACHIEVA were given the personalized attention that they deserved. Parents who were initially angered by or fearful of the change found themselves grateful for the chance to witness their son or daughter succeed and make fair wages in less isolated settings.

Also, when shifting focus from a workshop to competitive integrated employment do not do so within a vacuum by targeting specific positions or industries. That approach only focuses on the disability and not the person's unique desires and strengths. What is key to successful competitive integrated employment

⁷ Commonwealth of Pennsylvania, Department of Human Services, Individual Support Plan (ISP) Manual for Individuals Receiving Targeted Support, Base Funded Services, Consolidated or P/FDS Waiver Services or Who Reside in an ICF/ID



outcomes is taking a person-centered approach and utilizing the wealth of long-established supports that are in place. The aforementioned supported employment includes activities such as training and additional supports including worksite orientation, job aide development, coordination of accommodations and ensuring assistive technology that may be needed by the person to obtain and sustain competitive integrated employment. And newer, innovative approaches to employment supports such as advanced supported employment which is an enhanced version of supported employment that includes discovery, job development, systematic instruction to learn the key tasks and responsibilities of the position and intensive job coaching and supports that lead to job stabilization and retention⁸.

THE TRANSFORMATION TO COMPETITIVE EMPLOYMENT ACT

Transitioning away from the 14(c) was not without its challenges. The majority of people who were in our workshops transitioned into them directly from high school and they had remained there ever since. The workshops and the associated meager earnings were all they and their families had ever known. We worked hard to educate the people we support and their families so that they could make informed decisions about alternatives and the real possibility of becoming competitively employed. But the provider community at large continued to support the use of a 14(c) and it is difficult to work against preconceived or outdated notions of people's ability. However, the continued use of a 14(c) is an outdated carryover from the 1938 FLSA law and is counter to the Olmstead decision in the way that it promotes the unjustified segregation of persons with disabilities.

Furthermore, while the ODP was supportive of our efforts, their main focus was Pennsylvania's transition plan as it relates to the CMS final rule. Newly developed HCBS service definitions promoted competitive integrated employment and a community life but did not go as far as eliminating workshops. This left the door open for providers to remain status quo and continue with a subminimum wage, workshop model while infusing very little or no innovation.

Passage of the *Transformation to Competitive Employment Act* in and of itself sets a new standard. It answers the question as to whether or not people with disabilities should be paid less than minimum wage. That answer is no! It removes the 'what if' mentality that has been detrimental to our transformative efforts. What if I can't become competitively employed? What if I lose my job? This Act sends a message that all people with disabilities who choose to be employed have the same rights and opportunities as people without disabilities. It also addresses those challenges by first and foremost offering technical assistance to employers. Those employers will need to understand and buy into why it should be done and develop a competency as to how it can be done in order to more effectively communicate the benefits to their stakeholders.

With the proper tools and buy-in, all employers can successfully phase out the use of a 14(c). Technical assistance via the *Transformation to Competitive Employment Act* should include best practices in evaluating current business models to determine how employers can maintain their current customer base and maintain productivity levels utilizing a modified workforce. This should include mentoring with an employer who has

⁸ Commonwealth of Pennsylvania, Department of Human Services, Individual Support Plan (ISP) Manual for Individuals Receiving Targeted Support, Base Funded Services, Consolidated or P/FDS Waiver Services or Who Reside in an ICF/IID



already successfully transitioned away from the use of a 14(c) certificate. There is no need to reinvent the wheel.

Transformation of this kind does not occur overnight. The Act allows ample time to create and implement an exit strategy. Technical assistance and financial supports provided by the Act should be used at the onset to develop a vision of how things will look six years down the road and establish realistic deadlines for implementation. Having these two components in place prior to execution minimizes the fear of the unknown for your internal and external stakeholders and holds your organization accountable in terms of meeting your strategic benchmarks.

Technical assistance and financial supports should also be utilized to design a comprehensive communication plan. This is most important as it relates to the people with disabilities impacted and their families but reaches the likes of supports coordinators, case managers and employers. Technical assistance should also include how to access and navigate resources already established that could promote the employer's transformative efforts and provide any wraparound supports that may be deemed necessary.

If this legislation were available at the time, it would have facilitated the process more effectively for ACHIEVA. While we will always stand by our 'right thing to do' mantra it was not a well-received notion. A federal buy-in to such a movement would resonate with people much more so than one provider's shift in philosophy and approach. Furthermore, because we were in the minority among other providers and employers, technical assistance from trusted sources was difficult to come by through the process. Coordinated expertise from a national and state perspective would have helped facilitate and lend credibility to the process.

CONSIDERATIONS

In order to ensure that no person is left behind with this transformation, people with disabilities who have historically been working under a 14(c) must be involved in the process. They know first-hand where they are coming from and what they've experienced. They will be able to inform others as to what barriers they have faced, whether real or imagined, on their quest for competitive integrated employment. Employers, families and organizations specializing in employment for people with disabilities should round out the table. This diverse group of stakeholders can put the pieces together for a successful transformation if they are willing to approach it with open minds and strategic dialogue.

Supports and services need to align with an 'employment first' mentality. Whether through the Office of Vocational Rehabilitation, the various HCBS waivers, etc., assistance with career assessment, job development, job placement and follow-along need to be available. In addition, as people gravitate towards competitive integrated employment, they will need support in understanding and navigating the potential impact of increased earnings. Benefits Counseling and the availability of certified Community Work Incentive Coordinators will be paramount to the success of transitioning to a competitive wage. We also need to make sure that existing tools and policy that will supplement the Act align with its basic tenets. While there are organizations that exist to create job opportunities for people with disabilities, precautions must be taken to ensure the goals of this Act are accomplished in a way that does not generate segregated settings.

There are also typically concerns raised regarding the number of hours people will be working in competitive integrated employment as compared to the time that they spent in a 14(c) facility. A question frequently



asked is how the person will spend the rest of their time if they are no longer 'working' 30-40 hours per week. HCBS addresses that concern. CPS and other wraparound services such as habilitation and companion exist to complement a person's work schedule and are designed to support people to participate meaningfully in community life.

CONCLUSION

ACHIEVA's success in transformation is a result of establishing an ideal and standing behind it. Once the commitment to phasing out our workshops was made, we had to devise and implement a plan and continuously push the agenda forward. Self-imposed deadlines with lofty goals kept us on track. We operated as if we had no choice. But in actuality our drive came from internal champions who recognized that the 14(c) was yet another contributing factor to a societal misconception that a person with a disability is less valuable than a person without. External champions like Senators Bob Casey (D-PA) and Chris Van Hollen (D-MD) who introduced this bill in the Senate and Chairman Bobby Scott (D-VA) and Representative Cathy McMorris Rodgers (R-WA) who introduced this bill in the House clearly recognized that this is a national priority.

I support the Transformation to Competitive Employment Act. And ACHIEVA is a proud member of American Network of Community Options and Resources (ANCOR) who has endorsed the Act. While there may have been a place for such a law when it was created in 1938, this discriminatory practice that undervalues the abilities and contributions of a person with a disability is no longer acceptable. And while I will always stand tall behind ACHIEVA's decision to discontinue the use of our 14(c) because we felt that it was simply the right thing to do, my experience over the past few years has shown me that all too many current certificate holders will not take that approach under their own volition. They instead will lean on falsehoods such as a person's lack of options or eliminating one's choice to defend a model of sheltered employment and subminimum wage. And it is for this very reason that the adoption of *The Transformation to Competitive Employment Act* is so inherent to promoting competitive integrated employment opportunities for all.

Chairman SCOTT. Thank you.
Mr. Pianko.

**TESTIMONY DANIEL PIANKO, MANAGING DIRECTOR,
UNIVERSITY VENTURES**

Mr. PIANKO. Thank you, Chairman Scott, Ranking Member Foxx, for the opportunity to testify.

My name is Daniel Pianko and I am Co-Founder and Managing Director of University Ventures. Our portfolio company has reduced barriers to employment and made higher education more affordable by pioneering new approaches to learning and helping employers think differently about how and where they discover talent.

America is facing an unprecedented mismatch in the supply of and demand for talent. Even in this robust economy, college degrees are not delivering the skills required to get a good first job. We are spending hundreds of billions of dollars to empower Americans through education, to get one of the 7 million open jobs that are out there. But higher education just isn't working for too many. It used to be that the American companies would hire recent high school and college graduates and then prepare them for specific jobs. These programs have virtually disappeared.

Today, employers expect new hires to already have specific skills. Gallup and Inside Higher Ed found—and this is probably the most important statistic—that while 96 percent of provosts believe that they are academically preparing students for the world of work, only 14 percent of hiring managers believe that colleges are successfully preparing their graduates for the workforce. The result is over 40 percent of college graduates end up in jobs that do not require a bachelor's degree, and 2/3 of those underemployed graduates will still be underemployed five years later.

The employability gap is best understood in micro terms. Salesforce, for example, is a customer relationship management software platform. Over 300,000 jobs are created each year for individuals with Salesforce skills, yet virtually no colleges or workforce programs teach students the fundamentals of Salesforce.

In addition to hard skills, we have a soft skills gap. Employers use soft skills as a prerequisite for employment. Today's students though have less exposure to paid work as adolescents, which means that a generation of new hires with less ability to communicate effectively, adapt to the workplace, or even know that they should show up on time. It is imperative that we do away with the false dichotomy that teaching job specific skills would mean a shift away from soft skills. Technical skills and soft skills can and must be taught together.

Today I will lay out four solutions that should receive bipartisan support.

First, solutions for higher education are being developed in the marketplace. Congress should encourage employer pay models of education by allowing companies that prepare and subsequently hire workers to be eligible for Federal funding from programs like Pell and Workforce Innovation Act funds.

For example, Talent Path works with colleges to create a direct pathway for students to employment with free software education provided. Employers are effectively ending in-house spending on

entry level hiring and instead paying for full stack last mile training programs that recruit, teach, and place students in good first jobs. We call these employer pay models and believe they will grow dramatically to fill the gap between education and employment.

Second, existing funding mechanisms, like Federal work study, should be reformed to better support the connection between education and employment. The Federal Government is spending almost \$1 billion annually in work study to preference on campus jobs that do not have a direct connection to work. Federal work study should incent off campus work that has a potential to lead to full-time high wage employment, or provide funds for discipline aligned apprenticeship programs.

TekTonic, which operates the first Department of Labor-approved apprenticeship program in software development, creates an outsourced apprenticeship model that is partially funded by WIOA dollars.

Third, Congress should use the Higher Education Act as a tool to encourage more institutions to adopt work experience into academic programs through the work college designations. Work colleges, such as Paul Quinn and Berea, have proven that work, when integrated into the curriculum, radically reduces the cost of education while improving job outcomes.

Finally, Congress should look to dramatically reform the Federal financial aid system, particularly when it comes to graduate education. The Grad PLUS loan program has shifted from access to undergraduate education to supporting graduates who seek to transition into professional fields.

The pursuit of graduate education remains vital to talent development in many high need areas, but Congress should have some assurances that the Federal investment in Grad PLUS is tied to employment in career aligned fields.

Congress has spent decades providing access to postsecondary education, yet the chasm between employers and educators creates huge barriers to entry to employment. Today, it is more important than ever to ensure that completion of a credential connects a graduate to employment and future success.

Thank you for your time, and I look forward to answering questions.

[The statement of Mr. Pianko follows:]

Testimony: “Eliminating Barriers to Employment: Opening Doors to Opportunity”

Daniel Planko

Thank you to Chairman Scott and Ranking Member Foxx for the opportunity to testify. My name is Daniel Planko and I am co-founder and Managing Director of University Ventures. University Ventures' portfolio companies reduce barriers to employment and make higher education more affordable by pioneering new approaches to learning and helping employers think differently about how and where they discover talent.

America is facing an unprecedented mismatch in the supply of and demand for talent. In a robust economy, over 40% of college graduates are still underemployed in their first job. And we know that if they're underemployed in their first job, 2/3 of the time they'll be underemployed five years later, and half the time they'll be underemployed ten years later. Even worse, tens of millions of older workers are out-of-position relative to the skills required by employers. And on the demand side of the equation, there are over 7 million unfilled jobs, most of which are high skill or middle skill positions. The labor market isn't working very well.

The skills gap is exacting a heavy toll on American families and institutions. It is impeding economic growth, promoting generational inequity, jeopardizing the American Dream, and creating real anxiety about the future of work.

Why is it worse than ever? Because the nature of work has changed, and hiring has changed, while our postsecondary education and workforce development infrastructure aren't equipped to keep up. I will address these in order.

First, the nature of work has changed. Over the past decade, businesses and organizations have transformed their internal systems, as well as their processes for interacting with stakeholders – customers, suppliers, employees, shareholders – from informal and manual to formal software-based processes. Across all sectors, most middle- and high-skill jobs now involve managing some business function through software or software-as-a-service (SaaS) platforms. According to Brookings, only 41 million American jobs still don't require significant digital skills; nearly 100 million do. Two-thirds of the jobs created in the last decade require either high or moderate digital skills.

Of course, it's inexact to generalize about a digital skills gap. The digital skills gap actually consists of thousands of micro-level or tactical digital skills gaps. For example, we don't have a shortage of C++ or Fortran coders, although there's huge unmet demand for J2EE, Microservices, and .NET developers. Depending on whom you ask, the total number of positions that require coding skills ranges from 500,000 to 1 million. But the gap extends well beyond coding to positions outside the formal technology sector. These are jobs that manage functions like supply chains, sales, marketing, customer service, finance, IT, and HR. Employers are seeking skills like Pardot (marketing), Marketo (digital marketing), Google Adwords (digital marketing), ZenDesk Plus (customer service), NetSuite (finance), Financial Force (finance), Workday (HR), and the customer relationship management (CRM) platform Salesforce – the most popular SaaS platform in American businesses. According to Burning Glass, jobs demanding Salesforce experience have quadrupled in the past five years; in 2017, more than 300,000 open positions called for Salesforce skills. In addition to these cross-sector SaaS platforms, every industry has its own SaaS platforms for specific functions. For example, insurance companies and third-party claims administrators have a range of SaaS options for claims processing.

We also have a soft skills gap. Behind digital skills, as evidenced by job descriptions, employers care a great deal about a second set of skills: soft skills like teamwork, communication, organization, creativity, adaptability, and punctuality. Employers want workers who will show up on time and focus on serving customers rather than staring at their phones. They need employees who can get along with colleagues and take direction from supervisors. The combination of digital skills and soft skills appears to be the killer app, particularly for entry-level jobs. We have coined the phrase “Last-Mile Training” to represent the combination of these missing digital and soft skills.

Meanwhile, Millennials (and now Generation Z) have less exposure to paid work than prior generations – the best environment to develop these skills. When older Americans were in high school, even if they weren’t working during the school years, they probably took summer jobs. Some worked in restaurants or painted houses, others mowed lawns or scooped ice cream. But in the summer of 2017, only 43% of 16-19 year-olds were working or seeking work – down from nearly 70% a generation ago. The Bureau of Labor Statistics forecasts teen workforce participation will drop below 27% by 2024.

Ironically, colleges encouraging unpaid internships and travel programs – at the expense of paid part-time work – may be handicapping students by denying them the soft skill development that they’ll need to land a good first full-time job. As a society, we have unfairly and improperly devalued dishwasher and busboy jobs as useful steps on the road to successful careers.

Second, the nature of hiring has changed, which has over-indexed digital skills in job postings. First, nearly every good job is posted online and generates hundreds of résumés, employers utilize keyword-based filters called Applicant Tracking Systems to determine which résumés are actually seen by a human. If you don’t have sufficient keyword density, you’re not visible. Faced with the deluge of résumés over the past decade, HR and hiring managers have sought to tighten the screen and have done so by adding skills to job descriptions. Which skills have they added? Unfortunately, there are only so many ways to say “critical thinking,” or “problem solving.” So the skills that have been added to job descriptions are digital and software skills. Across virtually every industry, technical skills now outnumber all other skills in job descriptions, particularly for entry-level jobs. Without the digital skills employers are increasingly listing in entry-level job descriptions, too many college graduates are invisible for exactly the positions they want (and need in order to make student loan payments).

More fundamentally with regard to hiring, American employers have moved the goalposts, increasingly requiring candidates who’ve already done the job rather than making a bet on unproven talent. Two reasons explain why. First is the increasing cost of bad hires; experts estimate that the cost of a bad hire now exceeds six months of that employee’s salary, which means companies are increasingly reluctant to take the leap with employees about whom they’re not confident can do the job. The second reason companies are demanding better-qualified candidates upfront is the higher rate of churn for entry-level employees. Whereas a generation ago, employers viewed entry-level hire skill development as an investment in their own future, today it’s seen through the lens of the free-rider problem: investing in entry-level education is more likely a gift to a company’s competitors, and hence, for suckers. It is this thinking that has produced the new status quo of “do the job before getting the job,” which has led to rampant degree inflation and experience inflation in job descriptions. The result is that candidates who would have been snatched up a generation ago are now left sitting on the sidelines.

Colleges and universities launching new degree programs and certificate programs have struggled to keep up. Too few of them are expert at understanding exactly what digital skills employers need, further complicated by the fact that employers aren't particularly adept at engaging with dozens or hundreds of postsecondary institutions' faculties simultaneously. And the cycle time on multi-year degree programs may not be the right speed for a digital age. But perhaps most fundamentally, colleges and universities aren't evaluated based on placement or employment outcomes, and faculty have little incentive to align curricula to perceived employer needs.

Higher education's interface of choice to employers is career services. But not only is career services well outside the academic chain-of-command, the concept of "career services" as a separate office, distinct from every other part of the institution, conveys to students that they aren't expected to think about employment until senior year. Not surprisingly, only half of all students ever visit career services. When they do, they're not meeting with professionals in their fields of interest (with relevant experience and networks), but rather with career services lifers, who may be best positioned to help students get jobs working in career services.

We believe the skills gap is a function of two distinct frictions in the labor market. On the candidate side, there is what we call "Education Friction." Education Friction means that because of the time, the cost and – most important – the uncertainty of a positive employment outcome, many individuals fail to upskill themselves. If we could eliminate Education Friction, millions of candidates would immediately equip themselves with the digital skills, industry and business process knowledge, and soft skills that employers are seeking.

On the employer side, there's what we call "Hiring Friction." Hiring Friction encapsulates the growing reluctance of employers to hire candidates who haven't already proven they can do the job. Hiring Friction helps to explain all the unfilled good jobs, and why employers are increasingly requiring years of relevant experience for positions that should be (and once were) entry level.

We believe solutions to eliminating barriers to employment must address both Education Friction and Hiring Friction and must scale to help tens of millions of Americans who are victims of the skills gap.

Take free college, for example. Free college would go some way to reducing Education Friction, but it wouldn't eliminate it. Students would still be required to pay for (or borrow for) their living expenses. Furthermore, free college doesn't guarantee employment. So there's still significant Education Friction. And free college also completely fails to address Hiring Friction.

We believe many of the barriers to employment we're seeing are inherent in our current "Education-Up" paradigm. What do I mean by "Education-Up"? It's the model for every school and skill development program in America. Educators develop curriculum, recruit students, deliver the program, graduate students, and then hope and pray they find work. But because the hardest part of the skills gap to bridge is the connection to the employer, "Education-Up" models are hard to scale.

We believe a big part of the solution are what we call "Employer-Pay" models in which established intermediaries of scale, with strong connections to dozens or hundreds of employers, add "Last-Mile Training" and become frictionless pathways to good jobs and careers for millions of Americans.

Think about staffing companies. They're in the business of having their fingers on the pulse of their clients' talent needs. They have relationships with hundreds or thousands of clients – most importantly with hiring managers – often at very large employers. Equally important, they're accustomed to taking risk: hiring the talent themselves and staffing the talent out to clients. Our experience – and the rapid growth we've seen from adding "Last-Mile Training" to staffing – has provided convincing evidence that the best way to eliminate Hiring Friction is for intermediaries like staffing companies to provide employers with the opportunity to "try before they buy." We believe what was previously a tough hiring decision for employers becomes an easier decision. Moreover, because the initial employer decision is not a hiring decision, these new pathways typically circumvent the formal HR function (which increasingly has become a compliance/risk management gatekeeper, rather than a talent management role) by working directly with hiring managers and business units. HR only gets involved later on, at the time of the hiring decision, after the talent has proven they can do the job – a much easier decision.

As a bonus, because these models are paid by the employer, they also eliminate Education Friction by not only refraining from charging tuition, but hiring candidates from day one, thereby guaranteeing an employment outcome. We have been involved in Employer-Down models like this that are educating and through-putting thousands of new workers into high-skill jobs every year.

There are a remarkable number of relatively simple solutions to start bridging the gap between education and employment. I will lay out three solutions that should receive bipartisan support and could be included in the next reauthorization of the Higher Education Act.

First, some solutions for higher education have been developed in the marketplace. The average company spends [\\$30,000 to recruit a software engineer](#), but bootcamps, which charge approximately \$15,000, can effectively prepare a recent college graduate to fill such a role and then move that graduate into a job where they can immediately earn a high wage. For example, Talent Path works with colleges to identify high potential recruits and then creates a direct pathway to employment with free software education provided. Non-profit groups like Merit America are providing technical and soft skills to students without a bachelor's degree who are underemployed but in the workforce. Employers are effectively exchanging in-house spending on recruiting for paying full stack last mile programs that recruit, teach, and place students in good first jobs. We call these employer pay models and believe they will grow dramatically to fill the gap between education and employment.

Congress should encourage such behavior by allowing companies that prepare and subsequently hire workers to be eligible for federal funding from programs like Pell Grants and Workforce Innovation and Opportunity Act (WIOA) funds to offset the education investment dollars spent.

Second, existing funding mechanisms should be tweaked in ways that encourage work. While well-intentioned, the current Federal Work Study program fails to incentivize colleges and universities to reach out to real employers. In fact, the work study program's structure makes it much easier for schools to employ students to clean toilets on campus than to connect them with private sector jobs that could result in full-time work upon graduation and is, in effect, crowding out private sector employment for college students.

There are three reasons for this. First, the standards for private sector jobs' connection to students' program of study are much higher; there are no standards for on-campus work. Second, while on-campus jobs receive a subsidy of 75%, "for off-campus FWS jobs with private

for-profit organizations, the federal share of wages paid to students is limited to 50%.” Third, “a school may use no more than 25% of its total current year initial allocations to pay wages to students employed with private for-profit organizations.”

The result of these skewed rules is entirely predictable. According to the [Department of Education](#), of the \$1.085 billion spent on FWS during the 2016-17 school year, \$996 million – or 92% – went to subsidizing on-campus jobs. Nearly all the rest went to off-campus jobs at not-for-profit or community service organizations. Of the \$1.085 billion spend, only \$726,208 – or less than 0.1% – helped students gain work experience at “private for-profit organizations” AKA the United States economy.

There are easy fixes here. We should protect students to make sure they’re not being taken advantage of by private employers, but at the same time equalize the subsidy, remove the 25% cap, and require participating institutions to place a much higher percentage – I humbly suggest a majority – of students in real, off-campus jobs. If colleges can’t make that work, they shouldn’t receive FWS funds, and remaining dollars could be added to the Pell program to directly help the nation’s neediest students.

Third, Congress should use the Higher Education Act as a tool to encourage the introduction of work experience into academic programs through the work college designation. For example, work colleges such as Paul Quinn and Berea have proven that work, when integrated into the curriculum, radically reduces the cost of education while improving job outcomes. Congress should encourage more institutions to seek a work college designation.

Finally, Congress should look to dramatically reform the federal financial aid system, particularly when it comes to graduate education. For decades, the Higher Education Act has provided access to postsecondary education for millions of Americans. However, in recent years, the GRAD Plus Loan program has shifted resources from access to undergraduate education to supporting graduates who seek to transition into professional fields. Each year the federal government funds [\\$67 billion](#) of GRAD Plus without any direct connection between that investment and employment. Understanding that the pursuit of post-graduate programs remains vital to the growth of talent in many high-need fields such as healthcare, Congress should have some assurance that the federal investment in GRAD Plus is tied to employment outcomes for graduates in career-aligned fields.

Congress has spent decades incentivizing and providing access to postsecondary education. Yet the chasm between employers and educators creates a huge barrier to employment. Over the last ten years, stakeholders across the ecosystem have focused on ensuring students have the tools and resources to actually complete their program and earn a high-quality credential. Today, it is more important than ever to ensure that completion of a credential connects a graduate to employment and future success.

Thank you for your time and I look forward to answering your questions.

<https://thehill.com/opinion/finance/436350-the-dangers-of-skills-gap-skepticism>



The dangers of skills-gap skepticism

BY WILL MARSHALL AND RYAN CRAIG, OPINION CONTRIBUTOR — 03/29/19 02:30 PM EDT

Was America's skills gap based on a lie? Some prominent progressives have referred to the idea of a national skills shortage as an "incredible cop out."

Others have claimed that the skills gap "was the consequence of high unemployment rather than its cause ... With workers plentiful, employers got choosier. Rather than investing in training workers, they demanded lots of experience and educational credentials."

Skills-gap skepticism is increasingly persistent among U.S. pundits and policy wonks. Skeptics claim the country's record number of unfilled jobs (6.9 million as of early January, according to BLS data) are the fault of employers because there are candidates with potential but not experience who are being passed by.

They argue that these unfilled positions are not skilled jobs but rather low-skill jobs, making the case that while the engine of America's dynamic economy is humming along, the millions of unfilled jobs are in agriculture, hospitality and custodial services.

Those who haven't ever worked in the private sector might be forgiven for being skeptical about the existence of a skills shortage. But employers know that America has a significant skills gap — one that is growing with each passing month. And you won't find many skill-gap skeptics among underemployed workers, particularly millennials.

There are two primary reasons why so many middle- and high-skill positions are left unfilled. The first is a lack of workers with digital skills. The World Economic Forum found that only 27 percent of small companies and 29 percent of large companies believe they have the digital talent they require.

Three quarters of Business Roundtable CEOs say they can't find workers to fill jobs in science, technology, engineering and mathematics (STEM)-related fields.

For the first time in recent memory, in May, August and September 2018, the TechServe Alliance, the national trade association of technology staffing and services companies, reported no tech job growth in the U.S.

According to TechServe Alliance CEO Mark Roberts, "[T]his is totally a supply side phenomenon. There are simply not enough qualified workers to meet demand."

It's a sentiment shared by the newest generation to enter the workforce: Most Gen Z workers (the successors to millennials) believe that the hard skills needed for the workplace are changing faster than ever.

The second reason for the skills gap is that employers care a great deal about a second set of skills: soft, or so-called "human" skills like teamwork, communication, organization, creativity, adaptability and punctuality.

Employers want workers who will show up on time and focus on serving customers rather than staring at their phones. They need employees who are able to get along with colleagues and take direction from supervisors: a particular challenge for some headstrong millennials.

In a LinkedIn study of hiring managers, 59 percent said soft skills were difficult to find, and this skill gap was limiting their productivity. A 2015 Wall Street Journal survey of 900 executives found that 89 percent have a very or somewhat difficult time finding candidates with the requisite soft skills.

Why do these gaps exist, and why do they persist? As America's economy has digitized over the past decade, our legacy infrastructure — postsecondary education institutions and workforce development boards — has not come close to keeping up.

College is increasingly unaffordable; the average student who borrows to attend college graduates with nearly \$40,000 in student loan debt.

Because life tends to "get in the way" of any multi-year task — particularly for students most in need of the social mobility that postsecondary education is supposed to provide — nearly half of all students who undertake degree programs fail to complete (and many drop out with debt — the worst of both worlds).

But higher education leaders typically aren't incentivized to align curricula to employer needs. Few are interested in what employers are seeking, particularly for entry-level positions.

Moreover, the digitization of the economy has also changed hiring practices, with real implications for our workforce. Faced with the deluge of résumés over the past decade, hiring managers have sought to tighten the screen and have done so by adding skills to job descriptions. But the skills that have been added to job descriptions are overwhelmingly digital and software skills.

Across virtually every industry, technical skills now outnumber all other skills in job descriptions, particularly for entry-level jobs. Without the digital skills employers are increasingly listing in entry-level job descriptions, too many college graduates are invisible for exactly the positions they want (and need in order to make student loan payments).

Perhaps taking inspiration from the growing "deficits don't matter" crowd, skeptics continue to shrug their shoulders at the skills gap. But that's a dangerous approach.

In a recent survey of U.S. hiring managers, 90 percent reported it difficult to find and hire the right tech talent, and 83 percent said the shortage of tech talent is slowing company revenue growth.

Another survey found that three-quarters of hiring decision-makers fail to see much connection between a worker's education and their job performance.

Perhaps the biggest casualties of the skills shortage are the 10 million workers who have stopped seeking work and dropped out of the workforce in the last decade — many because they didn't have the skills employers were seeking.

There are few challenges more consequential to America's future than the skills gap. It is impeding economic growth, promoting generational inequity and destroying the American Dream.

Skeptics be warned: The skills gap is real, it matters, and it won't close unless America's employers and higher education institutions do something about it.

Will Marshall is co-founder and president of the Progressive Policy Institute. Ryan Craig is managing director of University Ventures and a frequent commentator on higher education and workforce issues; his most recent book is "[A New U: Faster + Cheaper Alternatives to College](#)." This piece is based upon a [report](#) released by the Progressive Policy Institute.

<https://www.insidehighered.com/news/2018/05/23/college-graduates-whose-first-job-doesnt-require-bachelors-degree-often-stay>



The Bad First Job's Lingering Impact

New report finds that bachelor's degree recipients whose first job does not require degree are more likely to remain "underemployed" five years later -- and women fare worse than men.
By

[Doug Lederman](#)

May 23, 2018

The image of the recent college graduate working as a Starbucks barista or a rental car clerk has become a cliché in the national debate over student loan debt. Studies of the underlying validity of the stereotype over time have offered mixed results, with various methodologies counting anywhere from [single digit percentages](#) to [45 percent](#) of recent graduates as "underemployed." But most have found that some people will always be what economists call "underemployed," and that the proportion of Americans in that position stays relatively constant over time.

For students and parents, having a graduate take a job that might appear beneath his or her qualifications might beat the alternative in an especially tight job market.

But [a study released today](#) by the labor market analytics firm Burning Glass Technologies suggests that graduates who take such jobs pay a lasting price.

Bachelor's degree graduates whose first job does not require a bachelor's degree (which is how the study defines the underemployed) are significantly likelier than those whose first job did require such a degree to still be underemployed five years later. (Many of those workers remain underemployed by this definition 10 years after leaving college.)

As is true of so many overarching statistics like this, enormous variation occurs among the graduates. Degree holders in many science and technology are less likely to be underemployed -- and notably, women are quite a bit *more likely* than men to face that fate: 47 percent of them are underemployed, versus 37 percent of male graduates, found the report, "[The Permanent Detour: Underemployment's Long-Term Effects on the Careers of College Grads.](#)"

The data in the Burning Glass report, which was done in conjunction with the Strada Institute for the Future of Work, are likely to be seized on by the growing number of people questioning the value of a bachelor's degree, and by extension the wisdom of college-going generally. (Some analysts said they believe the data and the report's conclusions from them overstate the extent of the problem and the reasons for it -- more on that below.)

Matt Sigelman, Burning Glass's chief executive officer, says the data suggest that "there are too many schools producing bachelor's degrees that are not taking into account the last-mile skills graduates need to get a good job, and too many graduates getting bachelor's degrees that aren't aligned with the job market."

But the report's findings do not suggest a "throw the baby out with the bathwater" problem, Sigelman said, because the difference in the capabilities and skills of "the employed and the underemployed is not necessarily a big gap."

By being "a bit more mindful about" how to prepare their graduates for a first job, many colleges and universities should be able to "layer more preparation on top of the traditional education they offer," he said, preparing their graduates better for today's workforce.

Defining Underemployment

Everyone knows what unemployment means, and why it's a problem for the individuals involved. But *underemployment* is a murky term.

The federal government doesn't formally calculate underemployment in its regular surveys of Americans' working lives, largely "[b]ecause of the difficulty of developing an objective set of criteria which could be readily used in a monthly household survey," the Labor Department [explains](#). (In other words, underemployment is too hard to measure accurately.) But scholars have typically mined federal and other data to try to define underemployment as being in the labor force but employed either at less-than-full-time jobs or at positions that don't match workers' skills and training or meet their economic needs.

Estimates of underemployment for recent graduates are often pegged at between a third and 45 percent, although [a 2015 study](#) by the Georgetown University Center on Education and Workforce -- defining underemployment as "those who want a job but don't have one as well as those who want a full-time job but only have a part-time job" -- found rates much lower, even in the single digits.

Burning Glass mined its distinctive database of online job advertisements and résumés to define underemployment according to how employers hire workers. The company analyzed job postings and defined as a "college-level job" any position for which more than half of job postings requested a bachelor's degree. Using that measure, it added dozens of job types (such as insurance adjustor, radiation therapist and paralegal) to the standard job lists used by the Labor Department, and excluded some others. (Burning Glass acknowledges that these shifts in employer expectations, known as "upcredentialing," could inflate the amount of underemployment revealed by the report.)

Using that definition, Burning Glass found that 43 percent of recent graduates had jobs that did not request a bachelor's degree, while 57 percent held positions for which employers sought workers with a bachelor's. The 43 percent who the company deemed as underemployed earned an average salary of \$37,330, compared to the \$47,470 earned by the majority who were appropriately employed.

The initial hole was tough to climb out of. Two-thirds of the 43 percent were still underemployed, by Burning Glass's definition, five years after graduating. And almost three-quarters of those were unemployed 10 years after they began their first job, as seen in the graphic below.

By comparison, the vast majority of the 57 percent whose first jobs were deemed "college-level" positions were in such jobs 5 and 10 years later.

Significant differences surfaced by major and choice of professional field. No surprise, but engineers (29 percent) and computer scientists (30 percent) were least likely to be underemployed in their first job, followed at a significant distance by communication majors (39 percent) and mathematics majors (39 percent). More than half of graduates in nine categories of graduates (including those majoring in psychology, general studies, biology and education) were underemployed right out of college. There was a similarly wide range of outcomes by job fields.

And strikingly, Burning Glass's analysis finds a large gender gap in underemployment. Nearly half of women (47 percent) are underemployed in their first job by its definition, compared to 37 percent of men.

These findings, the report says, "undercut a long-held assumption, that female underemployment is the result of work-life tradeoffs often expected of women.... While women are more likely than men to later slip into underemployment, what is most concerning is that women fall behind at the very outset of their careers, in their first jobs -- at the very point when, presumably, they have the fewest familial obligations."

"The initial job a younger worker takes can profoundly influence the direction of a long-term career," the report concludes. "Graduates who accept or are forced into subbachelor's-level jobs early in their careers suffer significant long-term consequences; they may be consigned to underemployment for years to come. The first job is a high-stakes decision, and both educators and graduates should treat it accordingly."

Questions and Critiques

Joseph Fuller, a professor of management practice and co-leader of the Managing the Future of Work project at Harvard Business School, said via email that the Burning Glass report "explodes the myth [that] a college degree is a golden ticket. The aptitudes and specific skills that students develop in a college program influence the arc of one's degree, not merely degree attainment."

He also noted that while the so-called STEM fields rise to "the top of the heap" in Burning Glass's findings, "other skills, like communications, that employers often find in short supply are also rewarded."

Not everyone is convinced that the situation is as dire for recent graduates as Burning Glass portrays it to be.

Nicole Smith, a Research Professor and chief economist at the Georgetown University Center on Education and the Workforce, questions Burning Glass's decision to judge which jobs are "college-level" based purely on the fact that many employers are asking for (not even requiring) a bachelor's degree. "Employers can ask for everything under the sun, especially in an employer's market," she said. "They assume that employers are actually going to hire based on that.... I care about what the person has who actually gets the job, who actually seals the deal."

Letting employers' desires dictate which positions get characterized as "college level" -- and treating as "underemployed" everyone who doesn't get one of those elevated jobs -- "would by definition result in higher levels of underemployment," Smith said.

In addition, she says, the analysis fails to account for the "voluntary" nature of some of what Burning Glass paints as forced underemployment. Some of the workers the analysis assumes to lack skills or preparation for the workforce may just lack the motivation; others may choose to work in a lower-stress position, in a "caring" profession, or to sacrifice a better job to stay near family or a loved one.

And even right out of the gate, she said, "women still bear the burden of child rearing," so for the age 22-27 group in the Burning Glass analysis, some may be choosing one job over another for that reason.

[A 2016 study](#) by economists at the Federal Reserve Bank of New York found roughly similar levels of recent graduates to be underemployed, even though it defined jobs as "bachelor's level" based not on whether at least half of employers asked for candidates to have that degree, but because at least half of people in the positions said the degree was necessary to do the job.

But as Smith suggests, the New York Fed researchers concluded that many of the 40-some percent of recent bachelor's degree graduates who took jobs typically done by people without such degrees actually fared quite well.

"[C]ontrary to popular perception, our work reveals that most of these newly underemployed workers were not forced into low-skilled service jobs. In fact, many of the jobs such graduates took, while clearly not equivalent to jobs that require a college degree, appeared to be more oriented toward knowledge and skill when compared to the distribution of jobs held by young workers without a college degree," wrote [Jaison R. Abel](#) and [Richard Deitz](#).

Abel's and Deitz's analysis also found that while some number of recent graduates did stay "stuck" in true underemployment, many others moved into jobs they were satisfied with, especially over time. Their assessment might challenge the use of the word "permanent" in the Burning Glass report's title to describe the impact of graduates' early stumbles.

<https://techcrunch.com/2017/06/25/the-last-mile-in-education-and-training/>



The 'last mile' in education and training

[Ryan Craig@ryancraiguv](mailto:ryan@ryancraiguv) / 2 years ago

After graduating from college in 1994, I spent a few years at McKinsey & Co. — a young kid in an ill-fitting suit naively but energetically attempting to convince experienced and jaded managers to do their jobs differently.

One question that kept coming up for a number of clients was “who was likely to win the war to bring broadband access to homes: telephone companies or cable companies?” While we know the answer now (cable), I recall spending a lot of time studying the technical specifications of cable and telephony “last mile” connectivity.

The concept of the last mile — the final leg of the connection to each home — originated in telecom, but is now a primary focus for supply chain management and e-commerce, in particular.

The general principle applicable to all contexts is that the last mile is the most difficult and expensive to build, but equally the most valuable: Dominating the last mile can provide a nearly unassailable competitive position. In telecom and other utilities, the cost of building the last mile is what results in natural monopolies, thereby requiring regulation.

We are now seeing the emergence of the last-mile phenomenon in an unlikely setting: education. There are three reasons for this.

I. The hiring process has changed drastically

Today, more than 85 percent of all job openings (and nearly all positions in growing sectors of the economy) are posted online. As a result, the typical job posting receives approximately 200 applications — too many resumes and CVs for any hiring manager to seriously look at. So all large employers and most mid-size firms have resorted to utilizing Applicant Tracking Systems to manage their hiring processes. These systems, like Oracle's Taleo, the market leader, filter applicants based on a keyword match.

What are Applicant Tracking Systems matching to? Increasingly, it's technical skills. Over the past decade, technical skills have come to outnumber cognitive and non-cognitive skills combined in job descriptions across nearly all industries. While this is undoubtedly a product of the fact that, for any given job, it's easier to come up with 10 different technical skill requirements than 10 different ways of saying “problem solving” or “critical thinking,” that is of no matter to the inexorable keyword matching logic of Applicant Tracking Systems, which filter out candidates without a

sufficient level of keyword match. This means that most candidates with few technical skills are invisible to human hiring managers.

The prevalence of technical skills in job descriptions is particularly acute for entry-level positions, many of which now involve utilizing SaaS platforms to manage functions like supply chain, sales, marketing, customer service, finance, IT and HR. So candidates who don't have keywords like Salesforce (sales), Pardot (marketing), Marketo (digital marketing), Google AdWords (digital marketing), ZenDesk Plus (customer service), NetSuite (finance), Financial Force (finance) and Workday (HR) on their resumes are unlikely to be considered.

II. Students really, really care about getting a good first job

The single biggest change in higher education over the past decade is the percentage of students who say they're enrolling for job, career or income reasons. Today, more than 90 percent of students provide this as the sole or primary reason for going to college.

Some of this undoubtedly stems from the poor employment outcomes experienced by college graduates during the Great Recession. Most students have older siblings or friends who were underemployed — often significantly — for many years. Another cause is that today's students have much less experience with paid work, which creates additional anxiety about getting a good first job. And finally, concerns about getting a good first job are real: There are simply fewer jobs that require college degrees without specifying experience requirements, perhaps because employers have given up hoping that new college graduates have the requisite technical skills, and so have begun imposing experience requirements. As a result, whereas a decade ago entry-level sales positions had few if any technical skill requirements, the same positions today are likely to specify two years' experience with Salesforce.

III. Colleges and universities have not adjusted

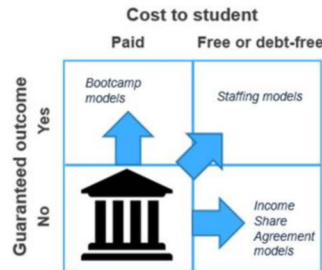
Even though today's students no longer buy it, the vast majority of colleges and universities continue to abide by the old adage: "we prepare you for your fifth job, not necessarily your first." So despite increasing recognition that students are increasingly unlikely to get a good fifth job if they don't get a good first job, there's been little in the way of adjusting curriculum to reflect employer needs and job-market realities. Lower-level course curriculum hasn't changed; most departments offer the same lower-level courses they offered 20 or 30 years ago. Meanwhile, upper-level courses continue to be dictated by faculty research priorities, which operate independently of labor-market demands.

Last-mile training providers

This growing gap — often referred to as the skills gap — has given rise to the emergence of last-mile training providers. These providers are focused on exactly the technical skills employers need (as demonstrated in job descriptions), but which colleges and universities don't teach. Coding is the most obvious example; while all schools teach Java, few computer science programs actually expose students to how coding projects work in practice (e.g. using struts: existing code that developers call upon for common functions). But last-mile training providers are emerging in almost every sector. In addition to coding, my firm has already made investments in last-mile training providers in sales, medical devices and insurance.

Last-mile training provider models fall into three categories, each of which represents an advance over the traditional higher education value proposition. Viewing higher education through a 2x2 matrix, where the X axis shows cost to the student (paid or free) and the Y axis shows outcomes

(no guarantee or some guaranteed outcome), traditional colleges and universities have always been and continue to sit in the bottom-left quadrant: pay your money upfront for no guaranteed outcome.



But given employer demand for the technical skills they are imparting to students, last-mile training providers are able to improve upon this value proposition. We are seeing bootcamp models where students pay tuition upfront and receive an explicit or implicit guarantee of employment; most student-pay bootcamps show placement rates of close to 90 percent into relevant, well-paid jobs.

We are also seeing income-share agreement models where students don't pay anything upfront, but where the last-mile training provider is so confident of a positive employment outcome that it is happy to take payment as a percentage of graduates' income for several years — typically only once students have begun making \$50,000 or more. Finally, we are seeing staffing and placement models, where the last-mile training provider can truly guarantee an employment outcome because it hires graduates and staffs them out to clients. This revenue model allows providers to offer the last-mile training for free — further enhancing the value proposition for students.

As all three types of last-mile training providers further their engagement with employers, it will become increasingly difficult for traditional colleges and universities to keep up; their last-mile connectivity through antiquated career services offices will not be competitive with last-mile training providers whose business depends on having their fingers on the pulse of the technical skills employers need right now.

As last-mile training providers proliferate across every industry and enrollment flows and tuition dollars begin to shift, don't be surprised if colleges and universities resort to the same tool that losers of last-mile competitions have always used to attempt to rein in the resulting natural monopolies: regulation.

<https://thehill.com/opinion/white-house/418934-how-to-train-2-million-americans-for-high-skilled-jobs-for-free>



How to train 2 million Americans for high-skilled jobs for free
BY DANIEL PIANKO, OPINION CONTRIBUTOR — 11/29/18 02:30 PM EST

According to recently released Labor Department data, job openings in the United States topped 7 million for the first time in history. Nursing and tech jobs remain, according to the report, among the most difficult for US employers to fill. Companies are, in turn, spending extravagantly to attract the relatively few Americans with in-demand skills.

Tech firms spend \$30,000 to find a new developer. Finding a new nurse costs \$82,000 on average. Employers, in aggregate, spend billions on advertising and recruiting firms that charge up to 30 percent of an employee's salary to find people with the right technical skills.

Economists would classify the \$200 billion job search-industrial complex as an economic dead-weight loss to the economy — one that, if fixed, has the potential to dramatically improve the nation's productivity.

But a growing number of firms are investing in a new and more benevolent corporate paradigm that will result in training millions of Americans for good first jobs, for free. Because as the costs of recruiting and churn continue to rise, it is actually becoming cheaper for employers to train a generation of Americans to fill these jobs. And the relationship between education and work is evolving to meet the needs of this changing training landscape.

So-called "coding bootcamps" have now trained more than 50,000 software developers at an average cost of just over \$11,000. Next-generation staffing firms are not only placing, but training college grads within in-demand tech jobs at companies like Walmart and Capital One.

The advent of online and competency-based learning now allows institutions like Western Governors University to train a nurse for much less than \$40,000: just a fraction of what it costs a hospital to retrain their replacement.

Employers often believe they can only hire workers that already have the skill set that they require — such as the ability to use a software package like Tableau, a common data visualization tool. But as the pace of technological change continues to increase, such workers will be harder to find. There are only so many Tableau developers. And the problem is going to get worse before it gets better, with the Trump administration working overtime to eliminate some 500,000 H-1B visa holders.

The idea of employer-provided training is, of course, not an entirely new concept. Up until the late 1990s, most large employers recruited entry-level talent and trained them throughout the course of their careers.

Over time, though, those programs became too expensive and the percentage of workers receiving on-the-job training fell 42 percent between 1996 and 2008. But as the labor market tightens, employers are under increasing pressure to retain skilled workers — and as a result, investment in training has been on a steady rise, with both per-employee expenditures and number of learning hours reaching new highs in 2017.

As they work to integrate ongoing education and skills training more deeply into the employee experience, employers are, in turn, looking to a new generation of intermediaries who source qualified labor and then provide job-specific, last-mile training. These intermediaries recruit from within high schools, colleges and workforce boards, providing career-focused training in the most in-demand skills. They look to find those of the 40+ million underemployed Americans that have strong cognitive skills, but may lack the technical skills required for employment — in order to both solve employers' costly retention problem and create new pathways to economic opportunity for job-seekers.

The future of work is here. If just a few major employers began to repurpose their \$200 billion recruiting budget on purpose-training a new generation of American workers, we'd solve the future of work challenge.

Daniel Pianko is the managing director of University Ventures. His commentary has also appeared in The Wall Street Journal and TechCrunch.

<https://www.forbes.com/sites/ryancraig/2018/09/06/employers-seeking-to-try-before-they-buy-will-change-career-paths-for-college-grads/#6b18891b2834>



Employers Seeking To 'Try Before They Buy' Will Change Career Paths For College Grads

Ryan Craig

Contributor

Sep 6, 2018, 09:00am

Those of us who attended college in the Paleolithic, pre-Internet, pre-smartphone era will recall that there was a way to contact other students: call the landline phone in the dorm room. At my school, every other student was five digits away; we'd dial 6, followed by the dorm room number. While this was convenient, it meant that some rooms were riskier than others.

Junior year, I wrote an article about a medical school student who received dozens of calls each day from other students attempting to order pizza from Domino's. Why? Because instead of first dialing 9, then the Domino's number (624-3317), hungry pizza seekers would often forget to punch 9, dial 62433, and reach Mina Chung in room 2433. "They leave messages on my answering machine with their pizza orders," complained Mina. "Sometimes they call in the middle of the night. I suffer from sleep deprivation." She said she was so frustrated by calls from strangers craving pepperoni, sausage, mushroom, and double cheese that she was considering pretending to take the orders herself.

Mina's story, which ran under the headline, "No, This Isn't Domino's, Jerk," demonstrates the value of trying before you buy; Mina should have spent some time in that dorm room before selecting it. Trying before you buy is common across a range of consumer products – from cars to ice cream. Even colleges and universities invite admitted students to campus every spring, allowing them to try before they buy a four-year degree. But a new "try before you buy" trend is about to impact colleges and universities as never before: employers seeking and expecting to try new and recent college graduates before they hire them into entry-level positions.

The crisis of employability facing America's college graduates is a component of the broader skills gap: 7 million unfilled jobs – many of which are the high-skill and middle-skill jobs sought by millions of underemployed new and recent grads, as well as tens of millions of Americans working in declining or stagnant sectors of the economy.

There are two reasons why the skills gap persists in a full-employment economy. On the student or candidate side, there is "Education Friction." Education Friction is why individuals fail to upskill themselves with the skills demanded by employers. This is a result of the time required to upskill, the cost, and – most important – the uncertainty of a positive employment outcome. The second and often overlooked contributor to the skills gap is "Hiring Friction" on the part of

employers; employers are increasingly reluctant to hire candidates without exact relevant experience. The cost of a bad hire is higher than ever, as is employee churn, as is the cost of replacing terminated employees – all of which have contributed to an increase in experience requirements for positions that should be (and once were) entry level. A recent analysis of over 95,000 job postings by job-matching software firm TalentWorks revealed how difficult it can be for newly minted grads to find an entry-level job. The research found that 61 percent of all full-time jobs seeking entry-level employees required at least three years or more of experience. Many employers have become so risk averse in hiring for entry-level positions that candidates who haven't done the job before don't have a shot; for many employers, the concept of a good entry-level job has collapsed under its own tautological weight.

From time immemorial, all serious education, training, and workforce efforts to close the skills gap have started by identifying missing skills, developing curriculum, and delivering programs. These "Education Up" models are logical, but also easy. The hardest part of the skills gap is not identifying skills or skill building, but rather building the bridge to employers. Few employers alter their hiring practices to account for Education Up programs that graduate a few dozen graduates each year, let alone guarantee employment. Few are organized to even have a conversation about it. The rare conversations that do occur are typically with a philanthropic or external-facing arm of the employer – not with anyone directly involved in hiring at scale. Most important, Education Up models ignore Hiring Friction.

Reducing Hiring Friction means proving to employers that candidates for entry-level positions can do the job. One obvious way to do this is to utilize cognitive, behavioral, and situational judgment tests at the top of the hiring funnel. Unfortunately, employing such assessments risks running afoul of 1970s-era labor law if they have an adverse impact on a legally protected group. To avoid adverse impact actions from the Equal Employment Opportunity Commission (EEOC) or – increasingly under the Obama Administration – the Office of Federal Contract Compliance Programs (OFCCP), employers must demonstrate content validity, construct validity, and criterion validity for each assessment-job pairing. This means conclusively showing that each assessment is predictive of performance for each position where it is used. Doing so is so time- and resource-intensive that only a handful of U.S. employers are willing to make the effort.

The urgent need to reduce Hiring Friction, coupled with the regulatory barrier to utilizing assessments at the top of the hiring funnel, is giving rise to new models that are the antithesis of "Education Up." These new "Employer Down" models start with employers and the entry-level positions they need to fill, and eliminate Hiring Friction by allowing employers to try before they buy. Staffing and business services companies are hiring candidates themselves, providing Last-Mile Training, and placing newly-trained talent at the service of employers so they can try before they buy. Some Employer Down models add a new "emerging talent" product to an existing talent business (i.e., staffing or placement). Others establish outsourced apprenticeship programs to add a talent dimension to an existing business service (i.e., providing not only digital marketing services, but a pipeline of purpose-trained, proven digital marketing talent), which can boost pricing power, increase market share, and accelerate growth. What they have in common is that candidates are hired and trained by the provider and then, while remaining employed by the provider, perform work for clients; clients convert candidates to full-time employees only when they're good and ready. Here's what else they have in common: scalable business models built around the provision of proven entry-level talent.

By allowing clients to try before they buy, Employer Down models absorb and eliminate Hiring Friction. But they also absorb and eliminate Education Friction by not charging candidates for training, and by hiring candidates from day one of training, thereby guaranteeing an employment outcome. The result is the first frictionless pathways to employment for both candidates and employers.

Another advantage of an Employer Down approach to closing the skills gap is by not demanding an immediate hiring decision, Employer Down providers often circumvent the formal human resources (HR) function, which increasingly has become a compliance/risk management gatekeeper rather than a talent management role. Employer Down means working directly with hiring managers and business units. HR only gets involved later on, at the time of the hiring decision, after the talent has proven they can do the job – a much easier decision. As a result, Employer Down models are scaling faster than it takes to order a Domino's pizza.

The power of frictionless pathways to good first jobs will soon be felt by America's colleges and universities. A value proposition that guarantees a good entry-level job at no cost or financial risk is the polar opposite of traditional higher education's "you pays your money, you takes your chances." Braving Hiring Friction by hiring directly from college campuses will continue to make sense for many employers, particularly recruiting from selective universities where the caliber of talent is consistently high. But as employers are given the option to try before they buy, many will opt for Employer Down over having to make immediate, uninformed hiring decisions. American employers lead the world in outsourcing non-core functions, or functions they don't perform as well as specialists. Entry-level hiring is widely perceived to be broken and, as Employer Down models emerge, will be the next major business function to be outsourced.

"Education Up" colleges and universities are ill-prepared for the coming of Employer Down. While many staffing and business services companies that add entry-level talent provision to their value propositions will recruit from the pool of new and recent college graduates – where the most talented and motivated candidates are unquestionably found today – some will supplant traditional college by providing a complete, faster + cheaper pathway to employment. Colleges facing declining enrollment may seek to build their own Employer Down models. But Employer Down can't be built out of thin air. Employer Down builds on the staffing company or business service provider's *a priori* relationships with employers and hiring managers – the relationships that traditional Education Up models have such difficulty establishing. These relationships – built over years around the provision of a service to the employer, whether experienced talent (staffing) or another service – are much deeper than the superficial relationships established by higher education's poor interface to the labor market (i.e., career services).

But whether by partnering with these new providers, or somehow absorbing Hiring Friction themselves, colleges and universities – and all Education Up programs – will need to get a handle on Employer Down. Unless they can figure out how to allow employers to try before they buy, more and more of their graduates will end up delivering pizza for Domino's.

Chairman SCOTT. Thank you.
Ms. Bird.

**TESTIMONY KISHA BIRD, M.S.S./M.S.L.P., DIRECTOR, YOUTH
POLICY CENTER FOR LAW AND SOCIAL POLICY (CLASP)**

Ms. BIRD. Chairman Scott, Ranking Member Foxx, and Members of the Committee, thank you so much for the opportunity to testify on barriers to employment.

I am Kisha Bird, the Director of Youth Policy at the Center for Law and Social Policy, or CLASP, an anti-poverty organization. We work nationally and with states and communities around the country.

Today you have asked me to address barriers and solutions that affect young people, including opportunity youth, young people who are ages 16–24, are not in school and work, and people impacted by the criminal justice system. In my written testimony I also include other workers who face barriers.

Today I want to make four key points.

First, the economy is leaving out too many people. Despite extremely low unemployment rates, millions of would be workers are locked out of the labor market and millions more are stuck in low wage jobs that cannot support a family. For example, approximately 4.5 million young people are opportunity youth. And people impacted by the criminal justice system are unemployed at a rate of 27 percent. For black men and women who have returned from incarceration, that figure jumps to 35.2 percent and 43.6 percent, respectively.

Second, the barriers to employment that face youth and adults locked out of opportunity are structural. They arise from systems and policies and not individual choices. So we know the key structural systemic factors include mass incarceration, racism and discrimination, segregation and isolation from inner cities to rural communities, we know policy and investment failures in the K–12, adult, and postsecondary education systems and major gaps in access to work supports, like childcare.

Third, the Federal Government is critical to addressing barriers to employment in partnership with states, communities, and business. The Federal Government, and in particular this Committee, has a central role in dismantling barriers based on race, gender, geography, income, and ability.

So Federal Education and Workforce Development funds are investments in equity. They are the funds that build the equity framework and infrastructure by focusing on effective interventions, like career pathways, and disparately impacted populations. But this crucial role has been weakened by the erosion of budget investments. For example, while 36 million adults need foundational skills, adult education at current levels only serve 1.4 million annually, so we have a tremendous gap in service.

And, fourth, and finally, we know what works and we know where investments need to be made. So simply put, it is really time to act.

So among the immediate steps that I would urge the Congress to consider, are lift budget caps to make critical investments in workforce development, adult education, postsecondary education,

and critical work supports, like childcare. Invest in strategies for job creation and youth free connection, summer youth employment, for examples through the Opening Doors for Youth Act. Make improvements in the Workforce Innovations and Opportunity Act in tandem with the Higher Education Act, and directly address the consequences of incarceration. This could include ensuring background checks are accurate, such as the Chairman's Fairness and Accuracy in Criminal Background Checks Act, restoring Pell grants to individuals who are incarcerated, and investments in correctional education.

In conclusion, I urge Congress to build on what we already know from research, state and local experience, and young people impact the communities themselves, directly address the structural barriers that I have mentioned here today, invest in equity and spreading innovation, for example, through infrastructure.

I urge Congress to create a plan for universal access to education and employment for all young people and individuals impacted by the criminal justice system.

Thank you for the opportunity to testify, and I look forward to your questions.

[The statement of Ms. Bird follows:]

CLASP

Policy solutions that work for low-income people

Statement of Kisha Bird
 Testimony Before the Committee on Education and Labor United States House of Representatives
 “Eliminating Barriers to Employment: Opening Doors to Opportunity”

May 21, 2019
 Washington, D.C.

Chairman Scott, Ranking Member Foxx, and Members of the Committee, thank you so much for the opportunity to testify about *Eliminating Barriers to Employment: Opening Doors to Opportunity*.

I am Kisha Bird, the director of youth policy of the Center for Law and Social Policy (CLASP), an anti-poverty organization that promotes effective federal, state, and local policies for low-income families and individuals. In my role at CLASP, I lead a team of experts focused on economic justice, criminal justice reform, and mental health policy as they relate to youth and young adults, with a particular focus on low-income young people, Opportunity Youth, and youth of color. I work both nationally and with states and communities all over the country, bringing my experience leading a statewide youth system change effort in Pennsylvania and working in community programs in Philadelphia and Atlanta.

Today, you’ve asked me to address barriers and solutions that affect young people, people affected by the criminal justice system, and other low-income workers, parents, and students. In my testimony, I draw both on my own expertise, the knowledge of my colleagues at CLASP, including nationally recognized experts on child care, postsecondary education, the low-wage labor market, and our state and local partners, including young people themselves.

In my testimony, I’d like to make four intersecting points:

1. The economy is leaving too many people out -- including youth and young adults, individuals impacted by the criminal justice system, low-income adult learners, families with children, and low-wage workers.
2. Barriers to employment are structural and arise from systems and policies—like discrimination, segregation, unstable and low-quality jobs, and the lack of investment in education, child care, and other crucial supports—not individual choices.
3. The federal government is crucial to addressing barriers to employment—in partnership with states, communities, and business.
4. We know what works and where to make investments.

1. The economy is leaving too many people out.

Today’s economy is leaving too many people out—including youth and young adults, individuals impacted by the criminal justice system, and low-income adult learners, families with children, and low-wage workers. This is true even though, according to the U.S. Bureau of Labor Statistics, we have reached the lowest unemployment rate in five decades. Unemployment rates for particular groups are far above the national average and changes in the labor market mean that many low-income people are working, not unemployed, yet still cannot make ends meet.

The most recent unemployment rate for adults ages 25 and older was 2.7 percent.¹ However, the adage that “a rising tide lifts all boats” is certainly not playing out for the millions of would-be workers who are still locked out

of the labor market and looking for work and workers in low-wage jobs. For example:

- The unemployment rate for young people (ages 16 to 24) of 7.4 percent is more than double the national rate;
- Adults without a high school credential have an unemployment rate of 5.2 percent.²
- People impacted by the criminal justice system fare even worse. Formerly incarcerated individuals face an array of collateral consequences³ and systemic barriers to employment. According to the Prison Policy Institute, they are unemployed at a rate of over 27 percent. For Black men and women who have returned from incarceration, the unemployment rate is 35.2 percent and 43.6 percent, respectively.⁴
- More than two-thirds of poor children—70 percent—live with at least one working parent but their families struggle with low wages, intermittent work, and inadequate hours.
- CLASP analysis show that 9.6 percent of poor parents are working part-time involuntarily meaning they would prefer full-time employment but are unable to find it or get enough hours from their employer.⁵

Millions of workers are stuck in jobs with low pay.

Low-income workers are piecing together multiple jobs just to earn enough income to make ends meet. Despite employment gains since the Great Recession, wages have remained low⁶ and have not kept pace with productivity.⁷ For example, “while a full-time minimum-wage worker in 1968 would have earned \$20,600 a year (in 2017 dollars), a worker paid the federal minimum wage in 2017 could only earn \$15,080 working full time.”⁸ Jobs that pay low wages offer few, if any benefits, and limited opportunities for advancement or career growth.

Now I’d like to focus on particular groups of people who are left out: youth and young adults—America’s future—including Opportunity Youth; individuals impacted by the criminal justice system; and low-income parents and adult learners. Across all these groups, people of color are acutely left out and face barriers to employment.

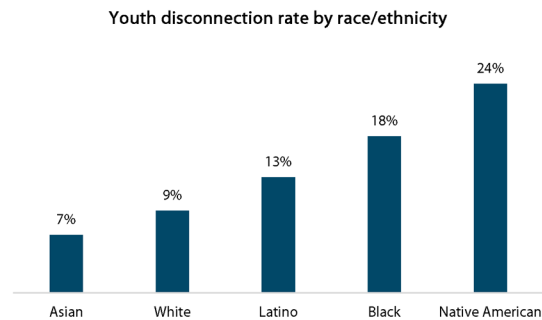
Focus on Youth and Young Adults, including Opportunity Youth

The millennial and post-millennial generation comprise over 40 percent of the current labor force.⁹ That’s why the overall economic viability of the nation depends on what happens to youth and young adults and their access to strong educational pathways, early work experience, and jobs that allow them to earn, learn, and progress. So, the high levels of unemployment described above for youth and young adults—driven both by involuntary disconnection from work and low wages and inadequate hours when they are working—is harmful to the nation.

Young people need early work experience—whether through summer jobs, college work-study, entry-level jobs out of high school, working at family-owned businesses, or volunteering—to gain readiness for future jobs and explore careers.

The youth disconnection rate now stands at 11.5 percent, a marked improvement since 2010 when the post-recession level was 14.7 percent.¹⁰ Nevertheless, approximately 4.5 million young people ages 16 to 24 are not participating in school or work. This cohort of young people are known as “Opportunity Youth” because they are seeking opportunity and they offer the nation a chance to invest in them, so they can be at the forefront of rebuilding their communities and lives.¹¹ Opportunity Youth report a range of factors for leaving high school prematurely or not going on to postsecondary education after earning a high school diploma or equivalent. For example, factors include being pushed out of school by harsh and sometimes discriminatory suspension and expulsion policies; loss of a parent or caregiver; unstable housing; and financial strain.

Opportunity Youth are eager to work and continue their education but struggle to find jobs and programs that help them build better lives for themselves and their families. Youth disconnection impacts all regions of the country—urban, suburban, and rural. West Virginia has the highest rate (17.0 percent), followed by New Mexico (16.5 percent), and Mississippi (16.4 percent). And while Native American and Black American teens and young adults have the highest rates of youth disconnection, Latino/Hispanic, and white and Asian youth also find themselves out of school and work and seeking pathways to opportunity.¹²



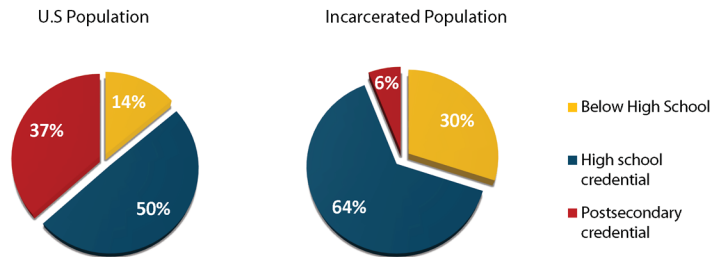
Source: Kristen Lewis, *Making the Connection: Transportation and Youth Disconnection, Measure of America, Social Science Research Council, April 2019*

Focus on Individuals Impacted by the Criminal Justice System

Incarceration's negative lifelong impacts on employment, earnings, and health affect a large number of Americans. According to the Prison Policy Institute, the unemployment rate for formerly incarcerated people is nearly five times greater than the general population.¹³ Approximately 12 million people live under the supervision of the criminal justice system directly, over 600,000 return home from incarceration annually, and countless family members of these individuals face their own consequences. These people who are directly and indirectly affected are parents, siblings, friends, and neighbors who are vital to our communities.

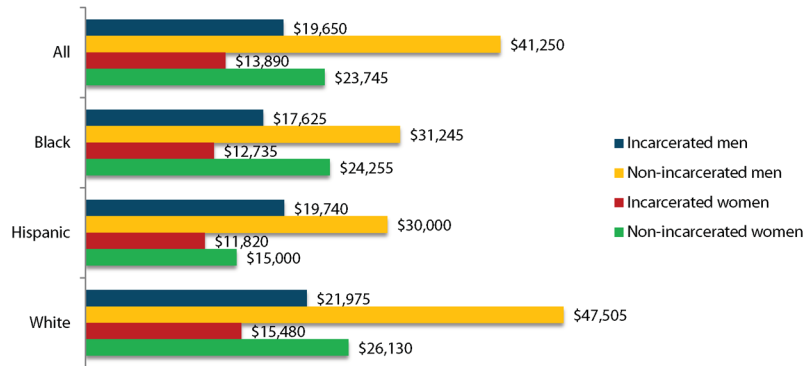
Furthermore, it is well documented that the criminal justice system disproportionately targets low-income communities and communities of color. Black people are incarcerated at five times the rate of white people, while Hispanic people are incarcerated nearly twice as frequently as whites.¹⁴ Across all races, incarcerated people are more likely to come from low-income communities.¹⁵ And they're less likely to have a postsecondary education.¹⁶

Educational attainment of incarcerated individuals compared to the overall U.S. Population



Source: Highlights from the U.S. PIAAC Survey of Incarcerated Adults, 2014

Pre-incarceration income levels of incarcerated Americans in comparison to non-incarcerated Americans by race and gender

Source: *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, Prison Policy Initiative

One study found that the “American prison system is bursting at the seams with people who have been shut out of the economy and who had neither a quality education nor access to good jobs.”¹⁷ People who are incarcerated must be recognized as a talent pipeline to restore vibrancy to our nation’s most marginalized communities.

Roughly two-thirds of the 650,000 individuals who are released from the criminal justice system every year are rearrested within three years. Providing quality education and training pathways to those who are incarcerated—and continuing those pathways when individuals reenter society—is a proven way to break this

cycle. While correctional education and training is not a panacea, it's shown to increase employment post-release and is linked to lower recidivism.¹⁸

Focus on Low-Income Parents and Adult Learners

In addition to the specific groups that I've described in detail above—youth and young adults, particularly Opportunity Youth, and people affected by mass incarceration—striking numbers of parents, students, and workers are struggling with low incomes and barriers to steady employment. Many of these low-income parents, students, and workers have jobs—but jobs that don't pay enough, don't offer steady or regular hours, and/or with schedules too rigid to combine with caregiving and school responsibilities.

A significant number of young adult parents live in poverty.

Among parents 18-24, more than a quarter (27.8 percent) live at or below the poverty level,¹⁹ and among all adult parents under 30, more than one in five (20.5 percent) are living in poverty. Young parents raising children in poverty struggle with economic stability to meet their children's basic needs while juggling caregiving needs.²⁰ They are facing the intersection of low wages, transient and rigid jobs that do not offer them the flexibility they need for caregiving, the absence of policy supports like child care and paid family and medical leave, and—often—the difficulty of combining work, caregiving, and further schooling that could improve their employment options over time. These parents matter because they are raising the next generation and will increasingly comprise a majority of the workforce.

What's more, Americans need more skills.

According to the Survey of Adult Skills, a product of the OECD Programme for the International Assessment of Adult Competencies (PIAAC), 30 percent of U.S. adults face significant literacy and/or numeracy challenges, scoring low in the PIAAC assessment. This is higher than the OECD average of 26.3 percent in other developed nations.²¹ PIAAC also revealed that U.S. millennials are struggling with skill deficits, including using technology for problem solving. U.S. millennials ranked dead last out of 19 countries tested on these skills.²²

2. Barriers to employment are structural and arise from systems and policies—like discrimination, segregation, unstable and low-quality jobs, and the lack of investment in education, child care, and other crucial supports—not individual choices.

Many structural and systemic factors contribute to individuals' barriers to work. These include mass incarceration and the implicit biases in the criminal justice system; racism and discrimination; segregation and isolation; policy and investment failures in the K-12 and postsecondary systems; and major gaps in access and in investment in crucial supports for work, including child care, health, and behavioral health.

These factors have their roots in systems of power. Systems of power are the beliefs, practices, and cultural norms on which individual lives and institutions are built. They are rooted in social constructions of race and gender and are embedded in history (colonization, slavery, migration, immigration, and genocide) as well as present-day policies and practice.²³ While it is impractical to summarize the whole research literature on these barriers in just a few pages, I've highlighted key points that are particularly relevant to the groups just described.

Mass incarceration.

Research has shown that Black and Hispanic people are more likely to be arrested, sentenced, and punished more severely for the same crimes as whites.²⁴ In concert with “law-and-order” policies, systems of power have led the United States to incarcerate people, the majority of whom are people of color, at a higher rate than any other developed nation.²⁵ This mass incarceration is having devastating and perpetual consequences on employment, education, and health for those incarcerated and the communities they come from.²⁶ Individuals with justice system involvement often face insurmountable discriminatory barriers to employment. For example, research indicates that between 60 and 75 percent of people who are formerly incarcerated face persistent unemployment up to a year after their release.²⁷ This is due, in part, to the discrimination they face when reentering the workforce. From gaps in their work history to licensing bans, having a record leaves too many on the wrong side of opportunity.

Racism, employer discrimination, and perceptions.

In addition, discriminatory hiring practices against people of color and young people can make finding work an uphill battle.

- Your race and ethnicity greatly influence your chances of gaining employment. A persistent history of employment discrimination, along with segregation, has kept people of color, and in particular African Americans, either out of the labor market entirely, trapped in low-wage jobs, or reliant on informal economies. Recent studies confirm that hiring discrimination against Blacks and Latinos has remained virtually unchanged in the last 25 years. People of color are less likely to get callbacks and interviews and therefore are less likely to have face time with potential employers despite education and qualifications.²⁸
- Employers often view younger workers as less dependable and hardworking than older workers. A study of employer perceptions by the Commonwealth Corporation and the Drexel University Center for Labor Markets and Policy found that employers perceive teens’ work behaviors, such as attendance, punctuality, and quit rates, as inferior. They report that this is a major factor and barrier to hiring teens.³⁰

A 2019 study from the Federal Reserve System concluded “despite 40 years of data showing a wide black-white unemployment gap, researchers have struggled to explain fully the cause of the gap, and policymakers have struggled to implement policies to close it. Recent research suggests that the gap is partially driven by higher rates of job loss among black workers than white workers. Black workers also experience longer periods of unemployment and lower labor force participation.”²⁹

Residential and geographical segregation and isolation.

From inner city neighborhoods to isolated rural regions of the country, geography and spatial proximity to work make a difference. People living in socio-economically distressed communities with high rates of poverty and unemployment are regularly confined to spaces that impede their closeness to social capital and networks that afford them access to jobs in traditional business and industry sectors. For example, researchers in one study found that young men of color tend to live in low-income, racially segregated neighborhoods as a result of income inequality and housing discrimination. This social isolation exacerbates their job prospects partly by limiting their “social capital” for labor markets.³¹ Those living in Appalachia face similar challenges. Due to limited job opportunities in the area’s rural communities and increased participation in the informal, barter economy, many residents there are also not included in traditional economies.³²

Challenges facing American Indian and Native Youth

A large share of American Indian reservation communities are “located in harsh, remote and sparsely populated areas” where transportation, access to health care and employment are among the many challenges.³³ Along with high rates of youth disconnection, about two-thirds of the 27 counties with a majority American Indian and Alaskan Native populations had unemployment rates above the national average.³⁴

Inadequate investments in K–12 schooling impacts student preparedness for postsecondary education, and affordability impedes postsecondary access.

According to predictions by the Georgetown University Center on Education and the Workforce, “jobs will return, but not everyone will be ready for them.” Despite the debate around the value of postsecondary education, “employers are still willing to pay more for college education... workers with a postsecondary education earn 74 percent more than workers with a high school diploma or less.”³⁵ Two thirds of all jobs created since the Great Recession have gone to workers with some

postsecondary training. Without postsecondary credentials, people seeking work opportunities and career advancement will continue to face barriers in accessing the labor market.

And as a nation we are facing a crisis of being unable to meet this demand. Adult learners, students from low-income backgrounds, and students of color are all in need of increased support to achieve postsecondary access and attainment. And when youth and adults do enter postsecondary institutions they are not prepared, and affordability poses a challenge. Sixty-eight percent of community college students require at least some developmental education.³⁶ As Bunker Hills Community College President Pam Eddinger testified to Congress recently, this developmental education churn is exceedingly harmful. The longer students stay in developmental education, the less likely they are to achieve any academic award.³⁷

Low-wage jobs that hold people back rather than help them move up.

As noted earlier, changes in the labor market also have created barriers to stable employment and to improved earnings over a career. The fissuring of the labor market means that low-wage workers today too often face unstable hours, transient jobs, no paid leave for illness or caregiving, and the possibility of being fired if child care, school, or a second job conflicts with a schedule provided with just days of notice. Jobs like these can actually make it far harder to obtain steady and family-supporting employment, because they destabilize workers’ and families’ lives and prevent them from seizing the opportunity to gain education and additional work experience.

3. The federal government is critical to addressing barriers to employment—in partnership with states, communities, and business.

The federal government is central to dismantling systemic barriers and enabling everyone to work, achieve economic stability for themselves and their families, and contribute to the nation’s future. While states, communities, and private business have crucial roles, they cannot do it alone.

Here’s why:

The federal government can ensure that everyone in the United States, wherever they live, can have access to the basics of life, like the food, health care, and stable housing they need to live, work, and thrive.

Federal investments are critical to work because they help those who live in poverty gain the stability they need to support their families, get and keep a good job, and advance in a career. Basic needs programs like the Supplemental Nutrition Assistance Program (SNAP), Medicaid, rental assistance, and cash assistance help people meet immediate needs and have positive long-term impacts. Research shows that safe, quality housing; nutritious food; access to health care; and having cash helps workers become economically secure and children reach their potential. For example, SNAP participation can improve elementary school children's reading and math skills and increase high school students' likelihood of graduating.³⁸ These aren't just short-term patches but rather fundamental building blocks that help people succeed throughout life.³⁹

"We as the workforce system are here to remove barriers to employment. We are here to include youth and adults, rather than exclude... There always needs to be a voice at the table to make sure Opportunity Youth are a priority and a focus of citywide efforts. And I try to be that voice."

—Ernest Dorsey, Assistant Director, Mayor's Office of Employment Development, City of Baltimore, Communities Collaborating to Reconnect Youth Network Member and National Youth Employment Coalition Board Member

The federal government has a central role in dismantling barriers based on race, gender, and geography in public policies and incentivizing state and local systems change and behavior.

Equity is not a process; it is an outcome. It's not a special initiative or special box that you check off but a set of values that should be embedded in public policies and the institutional culture of public agencies, education entities, nonprofits and the private sector.⁴⁰ By explicitly focusing on equity, Congress can send an important message to states and localities about its priorities and bake in policy provisions that incentivize services to left-out populations and enhance accountability for state and local systems leaders.

The federal government can ensure that workers don't have to "win the boss lottery" or move to a different state in order to have basic work protections like paid sick days, paid family and medical leave, and fair and flexible schedules.

When there is no federal guarantee of these core work protections, young workers, workers of color, and parents are particularly likely to have jobs that do not offer them—which in turn leads to being pushed out of the labor force when a worker needs to care for a family member or take a sick day.

The federal government has the unique opportunity to scale up effective investments and spread innovation across states and communities—building on learning and innovation from around the country.

To illustrate why the federal role is so important, let's take some examples from federal policies on workforce development and higher education.

Federal education and workforce development funds are investments in equity.

While federal funds are not the lion's share of overall spending, for youth, adult working learners, and returning citizens, they ARE the funds that build the equity framework by focusing on effective interventions and focusing on individuals with barriers to employment. For example, the first purpose of the bipartisan Workforce Innovation and Opportunity Act (WIOA) is:

(1) To increase, for individuals in the United States, particularly those individuals with barriers to employment, access to and opportunities for the employment, education, training, and support services they need to succeed in the labor market. [Sec 2(1)]

WIOA's extensive definition of 'individuals with barriers to employment'⁴¹ has helped state and local partners

think strategically about the implications of the barriers and solutions to mitigate them. For example, the California Workforce Development Board has used WIOA to focus policy and resources on English language learners after identifying that only 3.7 percent of those exiting WIOA title I training services were foreign born in program year 2014, despite over one-third of California's workforce being foreign born.⁴² The Washington State Training and Education Board used the WIOA list of barriers to dive deep into the nature of the barriers themselves, the implications of the barriers, and solutions our public systems can offer to mitigate them.⁴³

Yet, based on the most recent available administrative data, we still have work to do (see Appendix I for additional information).

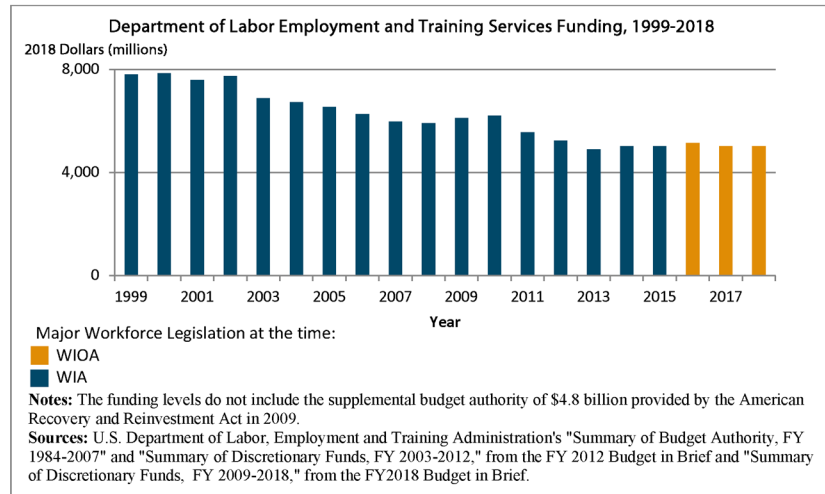
Scale investments in effective practices and foster innovation.

Congress and federal agencies are in a unique position to learn from states and local communities across the nation, tease out what is working, and pollinate strategies from one community to the next and one state to another. In this manner, having a national framework sets a standard with an eye toward consistency, continuous quality improvement, cross-sector alignment and collaboration, and improved outcomes. The codified Career Pathways definition in WIOA, Perkins Career and Technical Education Act (Perkins V), and the Higher Education Act (HEA)—see Appendix II—is a prime example of the federal role in learning from the field—practitioners, researchers, state/local policymakers, students, and workers—to seed best practice, foster innovation, and spur partnerships and alignment across federal funding streams and systems.

Fund workforce and education systems to meet the demands of youth and adults and employers.

After reaching an all-time high of \$24 billion annually in the late 1970s (in constant 2018 dollars), Congress has significantly reduced our nation's investment in workforce training and employment services at the U.S. Department of Labor to about \$5 billion a year today.⁴⁴ Since the early 2000s, employment and training programs have been cut significantly, from the steady \$7-8 billion level to around \$5 billion, where it has remained for a few years.⁴⁵

Current funding levels are insufficient to provide the employment and training services that individuals with barriers to employment need to move out of poverty and into good jobs. Current federal youth employment and training programs serve approximately 339,000 Opportunity Youth, reaching just about 25 percent of the young people in need of employment, education, and service pathways.⁴⁶ Total federal funding for adult education programs in 2019 was less than 1 percent of the total education budget.⁴⁷ At current levels of funding, adult education serves about 1.4 million adults annually. With 36 million adults lacking foundational skills, we have a tremendous gap in service.



A focus on equity also inherently means intentionally addressing barriers faced by people with low incomes, people of color, immigrants, and those who have experienced trauma. WIOA includes provisions to fund "Supportive Services" to mitigate barriers, including transportation, child care, housing, and financial assistance to enable individuals to participate in training activities.

Transportation is a major barrier to employment, accessing postsecondary options, and managing daily life.

In urban and suburban areas with public transportation, the cost is often too high, and bus and train routes are infrequent in low-income areas. For rural residents and individuals living in more spatial counties, public transportation is limited and having access to a reliable car is paramount to accessing jobs, education and training and other services such as child care.

Individuals who have experienced trauma may have stressors and triggers that can pose barriers to workforce development and education program participation and gaining employment.⁴⁸

"Every once in a while, everyone needs to talk to that perfect stranger who can help you deal with everything going on in your life."

—Young Adult Focus Group Participant⁴⁹

It is important to recognize the intersections between health, mental health and one's ability to access and participate in education and training successfully.

Mental illnesses and Substance Use Disorders (SUDs) affect one-third of working-age individuals

eligible for Medicaid, and a large proportion of these individuals have co-occurring disorders and/or poor physical health.⁵⁰ Proper access to care through Medicaid, including prevention, screening, and treatment for mental health and substance use, can help people to obtain and maintain employment.

Documentation is a major barrier to employment for immigrant youth.

The nearly 2.1 million⁵¹ undocumented youth under the age of 24 are often left out of opportunities and programs, and therefore face uncertainty about their job prospects and futures. Undocumented youth experience higher rates of workplace exploitation, including wage theft⁵² and sexual harassment⁵³. These youth vastly underreport abuse for fear of reprisal from their employers, police, or immigration authorities. While the 2012 Deferred Action for Childhood Arrivals program provided temporary deportation relief and work authorization to approximately 800,000 young people, many were left out of the program and current beneficiaries now face an uncertain future due to the Administration's efforts to terminate the program. Congress can pass clean legislation, like the Dream and Promise Act, that enables young people who grew up in the United States full access to the labor market. Policymakers can also remove requirements related to citizenship status from federal funds that support workforce development and postsecondary education.

4. We Know What Works and Where Investments Should Be Made

It's time to act, address, and dismantle these barriers. Research and program experience nationally and in states and communities around the country has demonstrated what works and where investments are needed. Investments must place equity front and center. Below, I've highlighted key areas for policy action and budget investments:

1. Invest in scaling up effective strategies for workforce development and postsecondary programs and partnerships that include other research-tested approaches for low-income adults and youth.
2. Invest in scaling up jobs—through documented strategies like subsidized jobs, including transitional and summer jobs.
3. Directly address collateral consequences for people impacted by the criminal justice system.
4. Invest in core work supports such as child care and health care.
5. Promote improved economic security through better jobs and a stronger EITC.

Equity at the Center

As noted above, investments must create equitable opportunities for workers of color. Policymakers must place equity at the center and use data to understand, diagnose, and address access and disparities based on race, gender, geography, and income.

In the case of workforce and education investments, the public workforce system and their education, employer, and non-profit community-based partners can mitigate discrimination and help youth, adult learner workers, workers of color, and people impacted by the criminal justice system. Policy provisions can target investments to under-resourced communities and regions of the country; require data transparency in reporting requirements, including outcome data disaggregation by racial, ethnic, gender and other groups with barriers; require and/or encourage particular programmatic strategies such as career pathways, sector strategies, transitional jobs, and pre-apprenticeship and apprenticeship to support youth and adult learners needing additional skills and work experience; and foster cross-sector and employer partnerships to remove and address collateral consequences facing those impacted by the criminal justice system. With support, these individuals with barriers to employment can build social networks, broker access and proximity to employment and work experiences, and gain credible employment references that are critical to establishing solid work history.

Congress should make strategic investments in research-based strategies at scale and foster state and local

workforce and postsecondary and partnerships with the private sector. While efforts to “ban-the-box” on employment applications and remove unnecessary licensing bans for individuals with a criminal record are needed, other provisions to ensure background checks are accurate, such as the Fairness and Accuracy in Criminal Background Checks Act, are an important step in mitigating barriers to employment.

Effective strategies depend on comprehensive and well-connected collaborations across systems (K-12 education, postsecondary, justice, child welfare, health and human services, business and industry, etc.); strong case management function with “advisors” and “navigators” to support workers in navigating the policy/program silos; and employer partnerships.

Career Pathways

Career pathways are a service-delivery model that can help close gaps in education, and employment while also advancing racial equity. Specifically, this model offers an opportunity to retool our workforce and education systems to better serve individuals with varied education and skill levels and non-academic needs. Through the Alliance for Quality Career Pathways, a CLASP-supported technical assistance network with states, we’ve identified three core features of a career pathway:⁵⁴

1. Well-connected, quality education and training programs that result in credentials with labor market value and include support services, work experiences, and employment services;
2. Multiple entry points for targeted populations, starting from initial levels of education and connecting to higher levels;
3. Multiple exit points leading to progressively higher levels of employment within a career path.

When done correctly, career pathways provide quality education and training opportunities targeted to individuals without a postsecondary credential who are in low-wage jobs.⁵⁵ Operationalizing career pathways and the systems needed to support them requires intentionality and infrastructure to use data and shared performance measures, leveraging co-enrollment policies with WIOA and state-funded programs, and long-term investment in retention, follow-up, and outreach support. While we have yet to see the full promise of career pathways, states are making promising advancements. Career pathway strategies such as Integrated Education and Training allow for youth and adults to accelerate their learning and advance skills in partnership with industry, employers, and educational institutions. These established partnerships help to mitigate employment barriers.

Integrated Education and Training

Integrated Education and Training (IET) is a research-proven educational practice based in adult learning theory. Through IET programs, youth and adults seek goal-oriented, relevant, and practical knowledge. Successful IET programs lead to educational and economic mobility, offsetting opportunity costs for people with family and work responsibilities. IET programs align foundational skill building, workforce preparation, and workforce training.⁵⁶ Over the past 50 years, the threshold of skill needed for adult self-sufficiency has moved from an 8th grade functioning level, to a high school diploma, to a postsecondary credential. Adult educators responded to this need, creating inventive programming built on the core principles of adult learning theory.⁵⁷ WIOA title II is the Adult Education and Family Literacy Act. And while it is far and away the WIOA title that serves the most participants, it has never yet been funded at its authorized levels or been provided the resources to scale IET models (see Appendix III for examples of IET models).

Subsidized employment

This includes a range of employment positions in either the public or private sector. Employers pay their

employees using a subsidy for short or long-term placement and are reimbursed for the wages associated with creating and maintaining the position. Particular models of subsidized employment include *transitional jobs* (see Appendix III) that combine work-based income and support services for disadvantaged workers—youth, returning citizens, individuals experiencing homelessness, and those with mental health challenges—to improve their employability, as well as summer employment programs that help youth gain work experience while increasing educational attainment and life skills.⁵⁸

Subsidized employment programs can be tailored to address the barriers to employment of these specific groups by enhancing the job search, job training, and employment experiences. For example, in a 2012 CLASP study about the employment experiences of young men of color, we found that young men cited lack of work experience and references as chief barriers to getting a job.⁵⁹ These programs often include additional support services such as child care assistance, life skills courses, or mental health services to support participation and promote long-term employability.

Summer Youth Employment Programs

The benefits of summer jobs span past adolescence. Teen employment predicts future employment. Child Trends and FHI 360 identified that the skills most frequently sought by employers include communication skills, social skills, higher-order thinking, self-control, and positive self-concept.⁶⁰ Teens can learn all these skills through their first jobs. Summer jobs are also linked to staying in school and increased engagement (see Appendix III) and in some cases keeping youth safe.⁶¹ Summer youth employment programs (SYEP) can be a critical equity investment. SYEP participants tend to come from high-poverty communities where job opportunities are few and far between. Summer jobs provide much-needed income for youth and their families. Youth report using earnings to purchase school supplies, help their families buy food, or contribute to college costs.

WIOA includes provisions that allow local areas to support transitional jobs and requires local areas to spend a minimum on work experiences for youth, including summer jobs. These provisions are a welcome initial step. However, simply including these provisions is insufficient to meet the enormous demand for these programs and to meet employer needs. Individuals with barriers to employment need large-scale investments in subsidized jobs such as transitional jobs and summer youth employment. Congress should work to reinstate the federal summer jobs program to match the efforts of mayors and local leaders from around the country.

Reconnecting Opportunity Youth

In 2014, Congress overwhelmingly approved WIOA to modernize our workforce-development system and make it more responsive to industry. During fiscal year 2018, 81 percent of those served by WIOA Youth providers were out-of-school youth, and 69 percent were employed two quarters after exit from their program.⁶² Congress should fund programs that serve Opportunity Youth at levels sufficient to reconnect one million youth each year, which requires increased appropriations of approximately \$4.1 billion annually. For more details on this proposal, including the benefits that it would yield, see the *Bridge to Reconnection* report.⁶³ The *Opening Doors for Youth Act* is an important vehicle to help reconnect youth by providing subsidized summer and year-round employment and supporting local community partnerships in improving high school graduation and youth employment rates,

Congress should explicitly work to address collateral consequences facing individuals impacted by the criminal justice system and allocate resources to states, local communities, and employers that prioritize prevention for youth and focus on pathways from incarceration to reentry.

Expand and invest in Ban the Box policies and enforcement.

Reentry is not the goal. It is a specific point in time. The goal is lifelong reintegration, sustained civic engagement, and a life that one can enjoy and be proud of and pass along to their children and their communities."

—Vivian Nixon, College and Community Fellowship

Policy vehicles that remove barriers to work based on criminal history and involvement with the criminal justice system, such as "Ban the Box" legislation, can improve the employment and education prospects of returning citizens and boys and men of color—the people who have been most impacted by the criminal justice systems and mass incarceration. The federal government should adopt these fair hiring policies and work with the private sector to change

their hiring practices. More work is needed to monitor enforcement of these policies and to connect them to system-wide workforce and economic development planning and training and education.⁶⁴

In addition, Congress can take steps to remove the ban on access to public benefits, including SNAP and TANF, for individuals with previous convictions for drug-related felonies. Denying people access to food and cash assistance does not improve employability for returning citizens—rather, denying access to these critical supports makes it harder for people to reconnect with their families and find work, which can contribute to recidivism.⁶⁵

Invest in correctional education and reentry.

National research shows that correctional education leads to a 43 percent reduction in recidivism and a 13 percent higher likelihood of post-release employment.⁶⁶

With a federal ban on Pell grants for incarcerated individuals, states have had to make their own investments in correctional education and training. A report from the Indiana Department of Correction in 2012 found that education and employment were key factors for reducing recidivism in the state. They found that inmates who attended correctional education programs had a recidivism rate of 29.7 percent, compared to a 67.8 percent recidivism rate for those who did not. In addition, they found that over 50 percent of formerly incarcerated individuals who were unemployed returned to prison within 5 years.⁶⁷ These implications underscored the need for more education and better alignment with articulation and employability after release. The state responded by investing in career pathway education and training programs for incarcerated individuals through partnerships with the state's department of workforce development.

Congress should invest in work supports, such as child care and health care to reduce barriers to employment.

To address the employment challenges facing low-income parents, Congress must invest in child care.

Families struggle to meet the high costs of child care, and many children lack access to quality child care settings. Child care consumes a particularly large part of the budgets of poor families. For families in households with incomes less than the federal poverty level who pay for child care, child care expenses consume an average 30 percent of their income, compared to 18 percent for families with incomes between 100 and 200 percent of poverty and 7 percent for families making over 200 percent of poverty.⁶⁸ Parents without access to affordable child care may have to use less safe, lower-quality care, make untenable choices in their household budget, or choose between work and their children's care.⁶⁹ While Congress made an important investment in the Child Care and Development Block Grant in FY 18 and FY19 appropriations, the program still serves a very small share—approximately one in six—of eligible children.

Congress should promote increased economic security for individuals with barriers to employment and low-income workers by considering such policies as expanding the Earned Income Tax Credit (EITC); creating good jobs with progressive wages; increasing the minimum wage; instituting benefits such as paid family and medical leave and paid sick days; and promoting fair and predictable schedules.

Numerous policies would improve job quality for workers earning low wages. These include increasing the federal minimum wage and creating a \$15.00 an hour floor for workers and overtime salary threshold to at least approximately \$50,000 a year; improving workers' bargaining power; enhancing enforcement for existing labor standards; and increasing access to quality, affordable child care; health care; and retirement benefits.¹ These policies would improve low-wage workers' economic stability. Critical work supports like paid sick days and paid family and medical leave can mean the difference between a family staying afloat or falling into poverty when welcoming a new child or coping with a medical condition. For many workers, taking time off without pay often just isn't an option. Staying attached to a job ensures low-wage workers have needed income along with the opportunity for wage growth and career training and advancement opportunities. A national scheduling standard would also provide low-wage workers with much-needed stability in their schedules and therefore their incomes.

The EITC, which supplements the earnings of low-wage workers, is one of nation's most important anti-poverty programs. In 2017, the EITC, along with the Child Tax Credit, benefited over 29.1 million people, lifting 8.9 million (including 4.8 million children) out of poverty.⁷⁰ Unfortunately, the EITC provides a very limited benefit to workers without dependent children and is only available to 25- to 65-year-old workers. Recent bipartisan proposals would lower the eligibility age to 21 and raise the maximum credit, providing needed supplemental income for low-wage workers. These improvements to the EITC would benefit up to 16 million workers, including 2.6 million African Americans and 3.9 million Latinos.⁷¹ The EITC can better strengthen economic security for workers with a robust minimum wage floor. These two policies should be paired together for maximum impact.

Conclusion

Today's economy leaves out far too many people—youth and young adults, people affected by the criminal justice system, low-income adult learners, families with children, and low-wage workers. But that's not inevitable—we know what barriers they face and, even more important, we know what works. Among the immediate steps I would urge the Congress to consider are:

- Lifting the budget caps to make possible adequate investment in workforce and postsecondary programs and crucial work supports like child care by:
 - Scaling up effective and research-based strategies, such as career pathways, integrated education and training, and pre-apprenticeships;
 - Greatly expanding investments in federal programs that reconnect Opportunity Youth to education, employment and service pathways;
 - Ensuring federal adult education policies and investments are central to addressing employment barriers;
- Investing in job creation while also improving the quality of private sector jobs by:
 - Building on state and local experience and research to implement robust and targeted subsidized jobs policy investments;

- Ensuring low-income individuals with barriers to employment have access to good jobs, with progressive wages, and benefits such as paid family and medical leave and paid sick days and fair and predictable schedules;
- Making improvements to the Workforce Innovation and Opportunity Act and Higher Education Act to aid in cross-system alignment and to address the major barriers discussed in this testimony;
- Directly addressing the consequences of incarceration by:
 - Removing barriers to postsecondary education and restoring Pell grants to individuals who are incarcerated;
 - Investing in correctional education and pathways to reintegration and reentry;
 - Targeting research, investment, and policies in adult education, workforce development, and postsecondary education to serve and better connect individuals impacted by the criminal justice system to education, training, and work; and
- Placing equity front and center, with a focus on low-income people, young people, and people of color, in any proposals to improve economic opportunity, for example, through infrastructure investments.

More broadly, drawing on the federal government's crucial role in investing in equity and spreading innovation, I urge Congress to create a plan for universal access to education and employment for all young people. There are many models for what such a plan could entail, and I would be delighted to provide additional information.

Thank you for the opportunity to testify and I look forward to your questions.

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Appendix I: WIOA Participant Data¹

YOUTH SERVED BY SELECTED WIOA EMPLOYMENT BARRIER		
WIOA Title I Youth Activities	Total Participants Served	Percentage served
Total Nationwide	150,394	
English Language Learners, Low Levels of Literacy, Cultural Barriers	88,452	59%
Exhausting TANF within 2 years	83	0%
“Ex-offenders”	14,647	10%
Homeless Individuals / runaway youth	8,187	5%
Long-term Unemployed (27 or more consecutive weeks)	4,977	3%
Low-Income Individuals	127,768	85%
Single Parents (Incl. single pregnant women)	17,820	12%
Youth in foster care or aged out of system	4,793	3%

ADULTS SERVED BY SELECTED WIOA EMPLOYMENT BARRIER		
WIOA Title I Adult Activities	Total Participants Served	Percentage served
Total Nationwide	1,108,201	
English Language Learners, Low Levels of Literacy, Cultural Barriers	54,112	5%
Exhausting TANF within 2 years	351	0%
“Ex-offenders”	55,912	5%
Homeless Individuals / runaway youth	32,990	3%
Long-term Unemployed (27 or more consecutive weeks)	19,841	2%
Low-Income Individuals	505,292	46%
Single Parents (Incl. single pregnant women)	107,642	10%
Youth in foster care or aged out of system	213	0%

YOUTH AND ADULTS SERVED BY SELECTED WIOA EMPLOYMENT BARRIER ²		
WIOA Title II Activities	Total Participants Served	Percentage served
Total Nationwide	1,427,339	
English Language Learners, Low Levels of Literacy, Cultural Barriers	943,061	66%
Exhausting TANF within 2 years	6098	0%
“Ex-offenders”	92,877	7%
Homeless Individuals / runaway youth	18,189	1%
Long-term Unemployed (27 or more consecutive weeks)	65,117	5%
Low-Income Individuals	321,426	23%
Single Parents (Incl. single pregnant women)	113,588	8%
Youth in foster care or aged out of system	6,450	0%

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<https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/spr/py2017/nationalsummary.pdf>

Appendix II: “Career Pathway” Defined in Perkins V, HEA, and WIOA

Career pathways are a “combination of rigorous and high-quality education, training, and other services” that:

- Align with the skills needs of industries in a state or regional economy;
- Prepare an individual to be successful in a full range of secondary or postsecondary education, including Registered Apprenticeships;
- Include counselling to help individuals achieve their education and career goals;
- Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
- Organize education, training, and other services to meet the particular needs of an individual in a manner that helps accelerate their educational and career advancement;
- Enable an individual to attain a secondary school diploma or equivalent, and at least one recognized postsecondary credential; and
- Help an individual enter into or advance within a specific occupation or occupational cluster.

Appendix III: Workforce Development Program and Strategy Examples and Research

Integrated Education and Training Programs

Pre-Apprenticeship Programs are “earn-and-learn” programs that build technical and foundational skills. California Roofers & Waterproofers Apprenticeship is a partnership between East Los Angeles Community College and a Cal Apprenticeship program. In this program, apprentices build English language and math skills and employers benefit through improved recruitment and retention. Participants report increased job satisfaction.

Community College Programs provide just-in-time skill building with career & technical education courses. The Kentucky Work Ready KY scholarship initiative has more than 80 programs in high-demand industries. Participants can earn up to 32 credits hours tuition free, including a 16-credit program with 2 in-person and 3 online courses.

Out-of-School Youth Programs provide targeted re-engagement strategy for 18- to 24-year-olds. Saint Paul Emergency Medical Services Academy is an intensive, tuition-free emergency medical technician (EMT) certification and firefighter awareness program designed for low-income, minority, and women residents of Saint Paul between the ages of 18 and 30 (in the summer, the age range is 18-24). Participants earn an hourly wage during the training. Recruitment is targeted to youth of diverse ethnicity, linguistic ability, and cultural experience, with the goal of building an EMS workforce reflective of Saint Paul’s communities.

Summer Youth Employment

The Youth Policy Lab at the University of Michigan conducted a study of Grow Detroit’s Young Talent (GDYT) Summer Jobs Program, a collaboration managed in part by Connect Detroit. The study shows improvement in educational outcomes two years after participation. Participants are less likely to be chronically absent and more likely to stay in school, graduate, and take the SAT. In the two years following summer employment: 95 percent of participants remained enrolled in high school. 73 percent of rising 10th- and 11th-graders took the SAT. Participants were over 5 percentage points more likely to graduate high school.

For me, YouthBuild was the only option for me in my community. After dropping out of high school, there were not many options to get reconnected. At my lowest point in life, and being turned down by numerous jobs and programs, YouthBuild Brockton (MA) was there to welcome me with open arms. While in the program, I gained my credentials and a new family. The staff there supported me in ways that I didn’t expect and saw potential in me that I did not see myself. They pushed me to go to college, which is something that I never imagined as a first-generation college student. Because of their amazing support, I went from being a high school dropout, to receiving my master’s degree and landing a job that I love. While I am happy about my own personal transformation, I have always thought about all the young people that were turned down due to lack of resources. What if they were given the same opportunity as me? The truth is they can, if we expand and increase access to programs like YouthBuild.

—Lashon Amado, Opportunity Youth United

Transitional Jobs

Transitional Jobs (TJ) combine wage-paid work, job skills training, and supportive services to help individuals facing barriers to employment succeed in the workforce. Transitional Jobs are aimed at benefiting individuals, families, and communities. A central goal is to help TJ participants address their barriers to employment and prepare for successful work in the unsubsidized labor market by experientially learning, modeling, and practicing workplace behaviors and building a work history with job references. Transitional Jobs also aim to stabilize individuals and their families with immediate earned income and access to incentives such as the Earned Income Tax Credit (EITC). Additional goals of Transitional Jobs are to reduce recidivism and its associated public costs, stimulate local economies through wages paid to TJ participants, and improve the economic health of TJ participants' employers.

Evaluations of TJ programs show that the strategy has many demonstrable effects:

- The benefits of these programs can far outweigh the costs. A recent evaluation of a reentry-focused TJ program found that every \$1 invested in the program yielded up to almost \$4 in returned benefits to the community and taxpayer.
- Transitional Jobs programs get people working who would not otherwise be employed by targeting such individuals. Transitional Jobs programs keep individuals employed and earning a paycheck to meet their basic needs, even in very weak labor markets.
- Transitional Jobs programs can increase federal and state revenues. A program that placed over 27,000 individuals in TJ over a 6-month period generated nearly \$13.6 million in federal income, Medicare, and Social Security taxes and over \$2.7 million in state income tax.
- Transitional Jobs programs can reduce recidivism. Transitional Jobs programs contribute to lowering recidivism and re-arrest and decrease reliance on public benefits. In a recent study, Transitional Jobs programs contributed to decreasing recidivism up to 50 percent on several measures, such as re-arrest and reincarceration for a new crime.
- Transitional Jobs programs can contribute to the success of children. These programs positively impact the lives of children as evidenced by better long-term educational outcomes. These programs support parental engagement by noncustodial parents, with the earned income generated through these programs positively benefitting children and families.
- Transitional Jobs programs can positively contribute to the economic health of communities. The wages paid to workers are immediately spent in local communities by individuals who must provide for their basic needs. This increases local demand for goods and services. In a Chicago Transitional Jobs program that placed over 1,500 people in transitional jobs over 4 months, demand for goods and services increased by over \$5 million because of the Transitional Jobs program.

Re-entry

With re-entry dollars from the Department of Labor, the City of Los Angeles's Compass Rose Collaborative (CRC) enrolls returning citizens in an intensive construction pre-apprenticeship program that is tailored to their situation. The staff work closely with LA Trade Technical College and construction employers and unions to provide targeted wraparound services to ensure that participants are prepared to enter and advance in the construction field. Participants earn basic safety certifications, such as OSHA, CPR/First Aid, as along with hard

skills training specific to employer and market needs. For example, CRC coordinated a short-term certification course for participants in the aftermath of the Malibu fires. Members of the cohort earned the OSHA and HAZWOPER certifications needed for fire clean-up and construction work. Since then, participant Raul Sanchez completed training for safety pre-apprenticeship MC3, OSHA-10, CPR, Forklift, and HAZWOPER. CRC staff worked with the Woolsey Fire Crew to plan an orientation, and Raul was selected for the fire crew with a start date in May. CRC's supports continues post-placement and addresses such issues as financial barriers by providing work boots and tools.

When Anthony Galindo started the CRC program, he was on parole, living in transitional housing, and concerned that he might become homeless. However, he was hired on the spot at a job fair a few weeks after completing his MC3, Forklift Training, CPR, and OSHA 10. He went from making \$10.50/hr at a warehouse to \$18.50/hr at his new construction job. By the time he was released from parole, Anthony had saved enough money to rent an apartment and purchase a vehicle. He has since received a raise and is earning \$20.50/hr. He has high expectations of becoming a foreman at his job site in the near future.

Chairman SCOTT. Thank you. I want to thank all of our witnesses for their testimony.

We will begin now with questions from the Members and I will go last. So I first recognize the gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman, and thank you to the witnesses.

Ms. McCann, in your experience as a litigator, explain how the change to the standard of proof in the Gross decision has adversely impacted age discrimination in employment claims. Is there evidence that AEDA claims are being rejected by the courts more often, since that Gross decision occurred, and the impact of that?

Ms. MCCANN. Sure. Thank you.

As I explained in my testimony, the Gross decision basically heightened the level of proof for an age discrimination victim as compared to other victims of discrimination. So it is no longer enough for an age discrimination victim to prove that age was a motivating factor in their employer's decision, but they also have to prove the hypothetical negative that had the employer not taken age into account, they would have done the same action or taken the same decision. So they are almost being required to prove a hypothetical negative.

That is very difficult to prove and by proving that age was already a motivating factor, the age discrimination victim has already established a claim.

It is hard to quantify the impact Gross has had on age discrimination claims. How do you quantify or take into account the cases that were never brought because an age discrimination victim, knowing how difficult it was already to prove discrimination, now knows that the burden has been raised. We have heard anecdotally from other plaintiff's attorneys that they are not going to take an age discrimination case knowing that they are going to be required to produce either more evidence or more compelling evidence to prove age discrimination than other forms of discrimination. It is one of the reasons AARP has its litigation program, because we have the resources to take on these cases.

So a lot of victims just choose not to bring them.

Mr. GRIJALVA. Thank you very much.

Ms. Bird, just a general question. I think we have heard and will probably continually hear some more about the issues that we are dealing with, whether it is youth, issues of age discrimination, disabilities, discrimination in terms of whether it be pay or accessibility, that all this can be overcome by individual grit, you know. That the individual's initiative, the individual's success, that it is up to that individual regardless to make it out. And that for this reason there should be no government involvement, let nature take its course. Kind of an upside down Darwin theory in my mind, but, anyway.

So your response to that, since you mentioned systemic reasons, and why there is a role for government. If you could expand on that one point that you made.

Ms. BIRD. Yes, thank you for that question.

As I mentioned, the barriers to employment faced by a range of folks are structural. The research is pretty clear that there are dis-

criminatory hiring practices based on age, whether you are a younger worker or an older worker, based on race. We haven't improved discrimination—

Mr. GRIJALVA. If that barrier exists—if I may, Ms. Bird—how can the individual, through individual grit, get over that barrier?

Ms. BIRD. Yeah, so I believe that there is a Federal role to play and part of that Federal role is ensuring that there are fair hiring practices; Federal Government working in partnership with employers to dismantle some of those barriers. For example, for individuals who are incarcerated, ensuring that there are Ban the Box efforts that don't unfairly discriminate from those who have had backgrounds and impacted by the criminal justice system.

So that is just one example of how the Federal Government can play a role, because these issues are structural and we can't overcome them with individual case by case efforts.

Mr. GRIJALVA. Thank you.

Mr. ROOS, in the transition process that you talked about and that ACHIEVA went through, and others, you state your decision was not well received. Who objected and why?

Mr. ROOS. Primarily it was families of the people who had been in the workshops for all of those years that were really our biggest opponents. They didn't see an alternative for their sons and daughters, brothers and sisters, and I attribute that to what they were used to. I talked about it in my testimony, they had gone right from high school right into a workshop. It was that standard Monday through Friday, 8:00–4:00 o'clock. They knew their son or daughter, their loved one, was well taken care of during that time. Employment really wasn't the focus, it was time spent somewhere that they knew that they were adequately supported, as opposed to looking to achieve employment outcomes.

Mr. GRIJALVA. I yield back, Mr. Chairman. Thank you.

Chairman SCOTT. The gentleman from Tennessee, Dr. Roe.

Mr. ROE. Thank you, Mr. Chairman, and thank all of you. I agree with many things that all of you said. And, Mr. Gross, I knew when I was getting older when I kept getting these unsolicited emails for the walk-in tub. That is how I knew I was aging.

In our State of Tennessee—and I want to go over some things that we are doing there and just get your comments on it, and also on the issue of incarceration. I had a local roundtable with my law enforcement people, and 80 percent of the jails are people there with drug crimes. And we can't arrest our way out of this problem. And these are people then that are tainted. We need them in the workforce.

And I think the President did the First Step Act. It was a bipartisan bill that I totally agreed with. And as a physician that has watched this occur over the years, this drug epidemic, we have to do something about it because it is affecting the life expectancy in this country, it is also affecting our workforce. So that is one thing said.

In Tennessee we recognized—we had a skills gap and we recognized that in our State. And we started a Drive to 55, where 55 percent of our people in our state had a definable skill or certificate after high school. And the way we did this was we made community college free. Anybody in our state who graduates from high

school now can go to community college or technical school. And these are some numbers I want you all to remember. I went to my local TCAT and talked to the president the other day, and 77 percent of students graduate on time in a career path—77 percent, much higher than college—98 percent are placed in a job immediately after school, 100 percent graduate with 0 debt, where the average debt of a college student, who may not be able to get a job, is around \$30,000 in our State. If it is a private school obviously it is much higher. So we have recognized this skills gap.

And I went out hiking this weekend with a friend of mine who can hire five mechanics today. I could go on and on about the unfilled and the soft skills. That is why, Ms. Bird, it is so important to have youth working to learn those soft skills. Show up at 8:00 o'clock, work hard and be there until 5:00 o'clock. And I think our State is doing a decent job. We have 14,000 people in the Tennessee Reconnect. If you are a senior and you lose your job, you also can go back to a school and be educated at no cost. Because we believe that investment in education in the State of Tennessee is going to pay huge dividends for our State.

I guess, Mr. Pianko, a couple of questions that you have. What are some of the biggest challenges that states face in helping students earn degree, and what are some of the biggest opportunities we ought to be focusing on?

Mr. PIANKO. Well, first of all, I want to commend the government of the State of Tennessee. What you did in Tennessee—and I didn't actually know all the statistics you just mentioned, but when Governor Haslam started with the free college program I think he made a big splash. And, honestly, I think he really galvanized a lot of people around the concept of making college tuition free up to some level.

At the state level—again, I think Tennessee is a really wonderful example of sort of creating the ecosystem around connecting education to employment. You mentioned sort of the employment councils that you guys created and then made sure that the community colleges and the regular colleges and universities all integrated with that. And the results speak for themselves. So I think Tennessee is an excellent example.

Mr. ROE. Let me give you another example we are doing. We have a bus company from Belgium that is moving in, and they are starting to shovel dirt I think this spring. They are paying 120 students \$16 an hour to go to school to learn to be welders, to have a guaranteed job at north of \$22 an hour to start out with, plus their benefits. So we are already seeing huge benefits from that.

What are the—and anyone can answer this question—what are some of the best innovations that you all have encountered when it comes to using industry expertise to guide the development of career preparatory programs? I will throw that open to anybody.

Ms. BIRD. Yeah, that is a really good question. And I will jump in.

I think one of the things that we are seeing is really the notion of career pathways, which is baked into the Workforce Innovation and Opportunity Act. It requires a number of different systems working together, so with business and industry, with the workforce development board, which has those employer partnerships,

which has the labor market information, and with higher education institutions, like community college, like technical schools. So there is not one entity that can do it alone, but at the state and local level support it, again by the Federal role and that framework. It allows for business and industry to be an effective partner in creating career pathways and creating the opportunities post education and training for employment.

Mr. ROE. Thank you.

And Mr. Roos, I want to thank you for advocating for your employees and for the group that you represent. I respect and admire you for that.

And I yield back.

Chairman SCOTT. Thank you.

The gentleman from the Northern Mariana Islands, Mr. Sablan.

Mr. SABLAN. Yeah, thank you very much, Mr. Chairman, for holding this hearing, and welcome to all the witnesses. Thank you for being here with us.

Ms. Bird, I know you are here appearing in your position as Director of the Youth Policy, but I am also taken back in your oral presentation with the passion you have in supporting your testimony. So I want to—I have a few questions for you.

I want to know about funding levels. When we talk about money here, sometimes it gets into higher level of discussions. But your testimony notes that current funding levels are insufficient to provide the employment and training services that individuals with barriers to employment need to move out of poverty and into good jobs. Current Federal youth employment and training programs serve approximately 339,000 opportunity youth, reaching just about 25 percent of the young people in need of employment, education, and service pathways.

So let me ask, if Congress were to say double the funding for youth employment and training programs, what do you see the potential in the participation rate?

Ms. BIRD. Thank you for that question. It is really critical.

So first thing is that we have seen funding levels dramatically decline for employment and training programs for young people over the last 40 years, and in particular since 2000. And so we are not at the funding levels where we used to be. So we know that at some point in our history this country did think these were critical investments, early work experience and those skills.

So as it relates to opportunity youth in particular, we do need to increase the funding. We have 4.5 million young people who are out of school and out of work, and yet we are only serving a fraction of those young people through programs like Job Corps, Youthbuild, the Workforce Innovation and Opportunity Act programs. And so we know that we should scale up those programs and serve them. Now, we would increase participation, but it is not just a formula that if you double the funding you double the amount of young people engaged, because we know we need to think about the supportive services, work supports, as well as the different types of programs that young people are engaged in.

Mr. SABLAN. But you could in a sense double it and maybe—even more than double right, if it is done right?

Ms. BIRD. Yeah. Well, what we have been calling for through the Reconnecting Youth campaign is that we need annually to engage at least 1 million more young people in these opportunities. And so that includes a range of things like summer youth employment, like work based learning, and all those other opportunities.

Mr. SABLON. Which leads me to my next question. Really, I would like to know your opinion about which Federal programs are most effective in assisting opportunity youth, for example. In your testimony you described this group as the—like you just said, 4.5 million young people ages 16–24 who are not participating in school or work. So can you give me your assessment on which Federal programs—some we may have in my district, the Northern Marianas, and some way may not—have been most effective in addressing this cohort? And in particular, can you speak to the effectiveness of Job Corps centers, which we do not have in my district, regrettably.

Ms. BIRD. Yes. So I will try to get to as much of that as possible.

Mr. SABLON. Thank you.

Ms. BIRD. So the issues that young people, especially opportunity youth face, are not one size fits all issues. And so there is no one answer, like this is the most effective program.

What we know from research and state and local experience and implementation, is that there are effective strategies, like work base learning, that allows young people to earn and learn, like integrated education training which allows young people to gain foundational skills, build adult education, and create pathways to postsecondary opportunities and to employment.

So there are the strategies that are baked in. And what WIOA does is actually include those provisions to incentive state and local workforce boards to have community based partners, to engage young people in those opportunities.

Mr. SABLON. Yeah, thank you. My time is up.

Mr. Chairman, I yield back.

Chairman SCOTT. Thank you.

The gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel for being here. It is an important topic, an exciting topic that we are engaging in today.

When I meet employers in my district, they often talk about the disconnect between the skills being taught in colleges and universities and the skills that employers are seeking to meet their workforce needs. Sometimes they don't even come close to what actually is needed in the workplace, as you have indicated in your testimony.

I have a number of excellent colleges in and around my district that are attempting to develop courses and programs to satisfy this workforce demand. Mr. Chairman, you might be interested, that in one college, Adrian College, in my district has developed a relationship with Google. And I remember when we visited Google last term together and heard of the massive need that they had in people trained in the computer skills, IT, coding, all of the rest, but also needed those soft skills, critical thinking skills, et cetera. They weren't finding them. They were finding people that had courses, but those courses weren't meeting the needs of the real world. And

so it has been interesting to watch Adrian College develop this consortium now, starting with Google, and now ratcheting up and out with other colleges as well that have niche fields that they can share in unique and creative educational arrangements so that individual students can have opportunity to have those needs met, the soft skills as well as the technical skills that the businesses, whether it is in marketing or sales or logistics or insurance, et cetera—when they get into the field themselves they are prepared and ready. And they don't have to have the remedial training that Google would have to give most of what they are receiving from universities today. And so partnerships like this seem to be something we ought to be working toward.

Mr. Pianko, in your experience, have you seen other colleges start to amend their curricula to better align with the workforce demands? And, if so, is there a common thread or model that you think could be broadly emulated?

Mr. PIANKO. Yes. So this is—I get asked this question a lot, which is like how do we do it better for a college or university, how do we get better connected to employment. And I think we have to realize what people do well and what people may or may not need help with. And colleges and universities were really not set up to do workforce development and job training.

The jobs that you are talking about at Google, the technologies that they are describing probably change over once every 3–6–9–12 months.

Mr. WALBERG. Right.

Mr. PIANKO. And colleges tend to take—I sat on the curriculum committee of my undergraduate institution and it took us two years to update a curriculum, and usually that was adding a new book or something. When programming languages, especially in the technology field, are changing as rapidly as they are, it becomes very difficult for colleges to do what you are describing.

And so I think—

Mr. WALBERG. Under the old model?

Mr. PIANKO. Under the old model.

Mr. WALBERG. And I guess what we are saying is, that model needs to change?

Mr. PIANKO. Right. So the question is what do you do if you are a college, right.

Mr. WALBERG. You change.

Mr. PIANKO. You change.

Mr. WALBERG. Or you go away.

Mr. PIANKO. Or you focus on what you are really good at. And then I think there are going to be a new brand of companies, nonprofits, community-based organizations that spring up that actually provide the connective tissue between educational institutions and employers.

And it is really hard for the one college in your district that probably graduates a few hundred students every year to have that relationship with Google. That is unique. But if they could tie into some sort of broader national framework of either a company or a nonprofit that actually provides a lot of that training that Google needs, that last mile training that Google needs—and Google will pay for it.

Mr. WALBERG. And Google is paying for it.

Mr. PIANKO. Google is paying for it.

Mr. WALBERG. And 21 other businesses are now starting to work in this consortium to do the same thing.

Mr. PIANKO. Exactly. And what you are describing is exactly what the future is. These intermediaries are going to spring up. And Congress should really help develop these intermediaries that can connect, you know, this chasm between education and employment.

So what you are describing is exactly the innovation we would be excited to see grow.

Mr. WALBERG. And with push like you are talking about, in the sense forcing through—saying it is not going to work the old way.

Mr. PIANKO. Right.

Mr. WALBERG. Colleges, if they are going to survive. And small colleges like Adrian are going out of business every day.

Mr. PIANKO. Those are the ones that are struggling the hardest. I mean if you are a small college, how do you keep up to date? And so, you know, I think as you think about well how do you encourage innovation, you should actually think about putting workforce dollars on the table that could facilitate that interaction with—Google is a big example, they got a ton of money. But there plenty of other companies in your district, Congressman Scott's district, that would probably love some money to help them build an apprenticeship program for the middle skill areas that you described.

Mr. WALBERG. Thank you. Exciting opportunity.

I yield back.

Chairman SCOTT. Thank you.

The gentlelady from Florida, Ms. Wilson.

Ms. WILSON. Thank you, Chairman Scott, for holding this hearing on this critical issue of eliminating barriers to employment. I also thank the witnesses for sharing their testimony with us this morning.

The importance of today's hearing cannot be overstated. Even though the economy has statistically reached full employment, there are still tens of thousands of people who have been left out of the job market. There are numerous ways to increase employment and break down the barriers that too many Americans face when trying to enter or re-enter the workforce.

Two prime examples of Federal programs that contribute to breaking down these barriers are the Workforce Innovation and Opportunity Act and career and technical education programs. Increasing funding for both of these important programs would be a positive step forward.

We also need to remove the barriers to employment for those with arrest records and other criminal backgrounds. One in three Americans has a criminal record, and they not only face educational, social, and other barriers to employment, but oftentimes outright discrimination. Low rates of high school retention among black male students directly relate to high rates of joblessness and incarceration. More than 2/3 of black male dropouts end up serving time in State or Federal prison, making their path into the workforce much more difficult.

One of my life's missions has been to put up a permanent roadblock on the destructive and demoralizing path that has entrapped too many boys and young men of color and other at risk youth. In my experience as a teacher and a principal has taught me that very real benefits of reaching children as early as possible and how, with the necessary encouragement and support and resources, their lives can be transformed so that they will make positive choices for themselves and their futures.

I have a few questions for Ms. Bird.

Ms. Bird, how important is it to bring together community institutions, such as schools, workforce development providers, the juvenile justice and child welfare agencies, to reach opportunity youth?

Ms. BIRD. It is really important. What we know is that because opportunity youth have faced a number of different barriers, whether it be as a result of living in high poverty communities where there is lack of investment, systemic failures in their k-12 system that have pushed them out of school. You've mentioned boys and men of color. We know they are more likely to be referred to law enforcement and have higher suspension and expulsion rates. So, again, these issues are structural and systemic.

So in order to really capture opportunity youth and to meet them where they are, we need recruitment efforts, and that involves cross systems collaboration. We know that young people in the child welfare system, for example, are more likely to have employment and postsecondary challenges.

So the workforce investment system really is a convening entity that can braid and blend and support cross systems partnership to create the best interventions and the best opportunities for opportunity youth where they are.

Ms. WILSON. Your testimony addressed the untapped potential of opportunity youth. At a time when job openings exceed the number of applicants we are seeing more and more employers recognizing the potential of these young people and making concerted efforts to engage these workers. We also know the barriers to employment do not go away once a young person is hired.

How does our current workforce development system help ready young workers for employment opportunities and help employers connect with these young workers? And what services are in place for support?

Ms. BIRD. So I will answer in a number of different ways because, again, what we find is that what workforce development boards in partnership with their community partners are really thinking critically about the needs of employers, as well as the needs of young people in their communities.

So, one, they are thinking about coaching and advocates that help young people to navigate not only the types of career pathways that they need, but also the social supports and the supportive services, again, that are baked into WIOA, to help them, for example, if they are a young parent. What do they need in terms of support there, in terms of childcare.

The other thing that we think is really important, and we've seen this in some of the research with summer youth employment, with employers is really how do you also train the workplace to be prepared and to be able to supervise and to coach young people them-

selves. So all the training and support doesn't just happen for young people, but the employer and private sector community.

I would be happy to follow up with you, because we have a number of examples from around the country and we do think that the Federal investment can support that in places where it is not happening.

Ms. WILSON. Thank you very much.

Chairman SCOTT. The gentleman from Georgia, Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman, and thank you all for being here today.

We have quite a dilemma in the country, and it was basically created by this tremendous economic opportunity we have experienced under the Trump Administration and Republican-led Congress. Our economy is doing better than ever, best in the world; 7 million jobs open right now.

I meet college graduates with college debt every day that cannot find a job. I talk to people in my district, and everybody needs workers to grow their business. They can grow their business if they had a skilled workforce. We know that the number one thing that a business looks at when they want to locate in a community, is skilled workforce. This government is spending a lot of money to try to look at various ways to deal with this.

I will tell you the biggest problem in my district as far as workers is passing a drug test. I mean it is alarming. In fact, law enforcement tells me the biggest problem they have—80 percent of their problem surrounds either the sale, distribution, or use of drugs. And so we know that there are reasons—I have employers that want to encourage their folks to work overtime, but they won't work overtime because if they make a certain amount of money they lose their government benefits. In fact, they do not want to move up in the workforce because they will lose their government benefits. There are people who won't go to work because they will lose their government benefits—maybe 20 million work capable people out there.

I think the problem is with the Federal government.

As far as your research, and you have talked a lot about innovation and education programs, what are you doing to solve some of these issues, these real issues that folks are having out there?

Mr. PIANKO. Yeah, look, I think the biggest problem is what you alluded to, which is you graduated from college and you don't actually know—you do not have the right skills to get a job. And what then ends up happening is you are under employed and you become the barista at Starbucks, or whatever the image that connotes. And you are lost. And if you are a millennial right now, you are on average 40 percent less wealthy than the generation before you was at the same time in their career. And it has led to a huge amount of disaffection and, frankly, a significant decrease in the labor participation rate. And you mentioned that we have this amazing economy going right now, and we actually have employers who are willing to pay to bring people back into the economy.

And so what I strongly recommend is we figure out a way to leverage existing dollars because there are—we spend a lot of dollars right now between WIOA, Pell, all the Title IV spending that we make—that we can create more incentives for colleges to—for busi-

nesses, to bring back people who are underemployed, who have gone down the path that you described, because the world isn't working for them. They went to college, they took out all this debt, and they are not getting the jobs that they want. Or they went to college and they weren't successful at college. We didn't mention this, but 50 percent of people—more than 50 percent of people who try college, it doesn't work for them. And so our only response to them is go back to college to get a job. And we need other alternatives, we need other alternative pathways to employment. And that is what I would strongly recommend this body—

Mr. ALLEN. We have a financial aid system in the country, and you touched on this a little bit, but what are some steps you suggest that we take to address the real problem?

Mr. PIANKO. So right now the entire incentive structure in the financial aid system is—and I regret to use this term here in this forum, but it is butts in seats. And our entire economic model is, if someone shows up to class on a certain day, then there is enough Pell or Title IV money for that person to get paid to sit there or for the school to get paid to sit there. We need to create better models that encourage schools to actually have output measure, whether that is actually linking the Title IV monies that they are receiving to eventual outcomes or creating other, you know, financial measures that incent schools to create better outcomes for their students.

Mr. ALLEN. Great. Thank you, sir.

And I yield back, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentlelady from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you, Mr. Chairman, and Ranking Member. Thank you to our witnesses and also to Mr. Gross for being here today.

You know, despite our Nation's low unemployment rate, the economy is not working for everyone. There are systemic forces in our labor market that are creating barriers. Those include wage discrimination, lack of paid family leave, unpredictable schedules, inaccessible childcare, and, of course discrimination.

My home State of Oregon has taken some tangible steps to address some of these barriers. The state legislature raised the minimum wage, we have long prohibited employers from paying tipped workers a sub-minimum wage, and in 2015 the legislature passed a Ban the Box bill to prohibit employers from inquiring about criminal convictions before the interview stage of hiring.

Also I want to talk about workforce development programs that are helping more people, but I want to note that—you know, I mention my State. An equitable workforce requires Congressional action. So workforce development programs—Ms. Bird, I really appreciated your testimony. I want to talk a little bit more about the Workforce Innovation and Opportunity Act, or WIOA, which we passed with bipartisan support in 2014. We know that it is really outlining the vision for a workforce system that is responding to the needs of employers, but also getting people into jobs.

So how do the programs provide the support services to help individuals facing barriers, but also what role have local workforce development boards played in supporting the state and local strate-

gies? How should this Committee address these successes and challenges as we look at reauthorizing WIOA?

Ms. BIRD. Yeah, so I will start with the role of local workforce boards. As we know through WIOA, the Federal role is really to kind of set the stage of what does research show about interventions that work to lift up the innovation that has been happening in local communities. And now what we have found is that local workforce boards again are the convening entity and really connecting. Because of the unified plan that was baked into the law as an option, we have seen then that more and more local workforce boards are partnering with their health and human services agencies, thinking about behavioral health. That is a really huge challenge for individuals who have been formerly incarcerated or young people, and others.

Ms. BONAMICI. Absolutely.

Ms. BIRD. We have also seen that local workforce boards are using their research strategies to go deeper with individuals to barriers to employment. And that is at the local level and the state level.

And so I have couple of examples in my written testimony about how California has advanced that, because of the definition of individuals with barriers to employment, as well as Washington State. And I am not sure they would have done it otherwise.

Ms. BONAMICI. And I don't want to cut you off, but—

Ms. BIRD. Oh, I am sorry.

Ms. BONAMICI.—I want to get another question.

Ms. BIRD. I am sorry.

Ms. BONAMICI. Thank you very much.

Ms. McCann, Oregon's population is one of the most rapidly aging in the country. I have heard from workers who tell me they have been dismissed or denied employment because of their age. And for at least the last decade there is a sort of common understanding that it is really hard to prove an age discrimination case. Age discrimination is wrong and employers should not be allowed to violate the rights of older workers who are striving to provide for themselves.

So I joined Chairman Scott in introducing the Protecting Older Workers Against Discrimination Act. I am glad we are focusing on that today.

So you talked in your testimony about the importance of providing the same sort of Title VII protection to older workers that other populations have under the Civil Rights Act. So I wanted to follow up on Mr. Grijalva's question, how has the Gross decision and the subsequent cases applying it, affected the EEOC's ability to respond to age discrimination? And also—I am going to try to get these all in at once so you can use the time to respond—how have these decisions affected the anti-retaliation claims under Title VII, and how would the Protecting Older Workers Against Discrimination Act help workers bringing these claims?

Ms. MCCANN. Thank you for all your questions.

To start with your comment about the EEOC. I think that the Gross decision affects the EEOC in much the same way in which it affects private plaintiffs, that the EEOC also faces that—when

bringing an age discrimination case, faces that same heightened burden of proof.

Ms. BONAMICI. It was already hard, now it is—

Ms. MCCANN. It is already very, very hard. And so the EEOC is hampered as well.

As far as your question about the anti-retaliation provisions of Title VII, unfortunately Gross has been applied to Title VII's retaliation provision. And the problem is historically when statutes have the same purpose and identical language, courts have interpreted those statutes consistently. But Gross changed all that and said that unless Congress, you know, thought far into the future and thought of every possible other statute that might be affected and amended them as well, that the amendment they are making to the particular statute—

Ms. BONAMICI. I am running out of time. How could the legislation help workers?

Ms. MCCANN. Because it sends a clear message that discrimination is discrimination, that age discrimination is not a second class civil right and you do not face a higher burden of proof than other discrimination victims.

Ms. BONAMICI. Thank you. And now I am out of time. I yield back.

Thank you, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Yeah. I would like to thank you for this hearing. I wish I had five minutes for each one of the four of them, but I have got to pick. And I, as the Chairman knows, have a special interest in Dr. Roos' area of expertise. I am a little concerned about some of the things he said, but you say it one time that over 500 people with special needs working for you and things have shifted. You still have 65 working for you and 100 in other places and other people are still looking.

I have a lot of people who are very happy working in the sheltered workshops in my area and they are very concerned. So I would like to know if we follow through on what the bill you support says, what becomes of these folks? I am very concerned that in your testimony you say that all too many current certificate holders will not take that approach under their own volition. So, in other words, you believe that people with special needs have to be forced somewhere where they wouldn't actually want to go, which I find kind of discriminatory and offensive.

But I would like to know of the 500 people you used to have working for you, when you decided to kind of shut down your work floor, where are they all? I guess you have got 65 working for you and 100 in other places. The 100 in other places, how many have a work coach?

Mr. ROOS. Out of the 100 that became employed competitively, probably the majority if not all receive some level of job coaching. Support and employment through the Office of Vocational Rehabilitation or through the home and community-based waivers is a great service for people looking to get into community—between community-based assessments, job development, job coaching,

placement, follow along, that has really been the key to the success for those over 100 people and almost all have accessed that service.

Mr. GROTHMAN. Okay. Okay. Now we have got 165, which means there are still 335 to go who at one time worked on your floor and now are not. What became of the 335? Could you break that down for us?

Well, first of all, I have got another question for you. You mentioned you have 100 working outside of your facility. Of those 100 how many are working say at least 30 hours a week?

Mr. ROOS. Very few. We probably average about 18–20 hours a week across those 100 people.

Mr. GROTHMAN. Okay. So they really—as far as the value of work or the self-satisfaction of work, you have got—of the 65 who are still working at ACHIEVA, how many are working what I would call full-time or what you would call full-time?

Mr. ROOS. For that 65, we are probably in the same range, although a little bit higher, about 20–25 hours a week for that 65.

Mr. GROTHMAN. Okay. So you really have very few people who are now working let us say at least 30 hours a week?

Mr. ROOS. That is correct.

Mr. GROTHMAN. Okay. So if I have somebody who is right now happy in a work center and is working 30 or 35 hours and is proud to be like so many other people in society, so many people like siblings in their society, when we pass this bill a very tiny percent are still going to have the satisfaction of working say 30–35 hours a week and kind of like being like everybody else.

Is that true? Apparently?

Mr. ROOS. When you say working in a facility like that, that number of hours a week, I would argue that in essence they are not working. They might be attending, they might be physically present 30–35–40 hours a week, but they are not working.

I discussed in my testimony there is a lot of down time that occurs in those workshops. Work is not always available. I still see people prior to our closure doing work sampling, where one person will put together a widget and the guy across the table from him would take it apart.

Mr. GROTHMAN. Okay.

Mr. ROOS. So attendance versus working are two different—

Mr. GROTHMAN. Okay. Now I will give you another question. I have 10 work centers in my district. I have a very high opinion of all of them. Right now there are people who work part-time in a work center and part-time out in the community. Some of these people are very proud to work out in the community and wish they could work more hours out in the community. Other people prefer to work in the work center, for a variety of reasons, and they are very adamant in that, that they prefer to work in the work center.

Why would we vote on a bill or for a bill in which people who are happy working in the work center no longer have that right or, as you say here—in essence pushing them out of their work center because “all too many current certificate holders will not take that approach under their own volition”. In other words, they don’t want to, but the government has to force them out of a job they currently like.

Mr. ROOS. Elimination of a 14(c) doesn't force people out of a workshop necessarily. I would challenge those workshops that if they support their business model and they have a happy workforce, to find a way to pay minimum wage, just as we have done in our business operations, successfully.

Mr. GROTHMAN. I don't know what your average employee is like, but at least the work centers that I deal with, there are a lot of people who fairly obviously cannot produce at a minimum wage, right. The minimum wage I think is \$7.50. There is a bill we have heard here that it is going up to 15 bucks. I would think it is somewhat obvious that it is hard to put together a work plan in which you can take somebody like that and make money while paying them, you know, \$4–500 a week. And you could wind up with some very unhappy people.

Do you agree?

Mr. ROOS. I agree that you need to look at your workforce in terms of their ability to contribute and produce, but I would argue that if you have people in a work center that clearly aren't showing those abilities or showing any advancement towards competitive employment, then I would question as to why they are in a work center when there are other home and community-based services available to them that would provide to them a fulfilling community life.

Mr. GROTHMAN. Do you mind if I respond, Mr. Chairman?

I mean I will give you an example and you can tell me what I should tell them. I ran into a guy in my district recently, I think he is 34 or 35 years old. He is severely physically handicapped. He gets paid well under minimum wage, as he is incredibly physically handicapped. Very sharp though, very bright. He was laid off, for whatever reason, because the government said this is not okay. His dad tells me he is crushed. That they put him in day services, which his dad and him describe as babysitting.

So he has gone from maybe making \$.80–\$1.00 an hour, but so proud of that paycheck he earns, to going in day services, babysitting. And this 33 or 34-year-old sharp guy, he is crushed. What should I tell his dad?

Mr. ROOS. Yeah, I don't promote segregated day services either, and I don't think that is the right solution for that gentleman that you have just described.

The Center for Medicaid Services is looking at something called community participation supports as a way of getting out in the community, short of having to rely on a facility, any type of facility.

Mr. GROTHMAN. He is crushed because he doesn't have a job, he is not earning a paycheck, not because he wants better day services.

Chairman SCOTT. The gentleman from California, Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman.

I am very pleased today that the Committee is considering the passage of POWADA, which stands for Protecting Older Workers Against Discrimination Act. I don't want to use the word POWADA because I want the people to understand what we are talking about.

Ms. McCann, just briefly tell me what this law would do, this Act would do.

Ms. MCCANN. Sure. The Protecting Older Workers Against Discrimination Act would restore the ADEA and other civil rights statutes that have been negatively impacted by the Gross decision back to the standard of proof that applied to it prior to 2009. So it does not expand the law, it restores the standard of proof that was disturbed by Gross.

Mr. TAKANO. Because of a Supreme Court decision. I have become familiar with some of the facts around Mr. Gross' case. And as I understand it, he was working with a great record, rising rapidly in the company, the company was merged with another company, and then he was demoted and dismissed. Do I have the facts correct?

Ms. MCCANN. You have them exactly right. He, you know, worked for his company for 30 years, steadily rising among the ranks, always getting good reviews. But then after the merger and a reorganization, some employees were offered a buyout, Mr. Gross was not. Instead he was demoted and his new position, he tells me, he basically was given no responsibilities, and as a result, he got a poor review.

Mr. TAKANO. So we have seen the same old—this is a big statistic we always cite, this trajectory of increased productivity in our country, but yet workers not sharing in that productivity and technology is blamed. But I contend, as many others are starting to contend, that it is the rules of our economy and the ways in which the protections for our workers, for basic fairness in the workplace, have atrophied and then weakened. And the way I look at this, the Supreme Court decision made it far more difficult for people like Mr. Gross to prove that he was discriminated against based on his age. He was a great worker, producing—part of the productivity of the company, but these new managers that came in had this obvious economic motive to reduce the salary obligations they had to workers like Mr. Gross. Right, Ms. McCann?

Ms. MCCANN. Correct. And I also want to add that he actually—Mr. Gross actually was able to prove that age did play a factor in his demotion. He proved that in the District Court and the employer was not able to prove that it would have made the same decision if it hadn't considered his age, and he won. And it was only until the Supreme Court said that actually he also had the burden to prove that negative hypothetical that despite the fact that he had proved his age was a factor, that the employer would not have taken the same decision, would not have demoted him—

Mr. TAKANO. He had to prove that the employer did not have any other reason to do what they did?

Ms. MCCANN. Exactly, exactly.

Mr. TAKANO. Right? Even after he had proved that discrimination was—

Ms. MCCANN. Even after he had already proved—

Mr. TAKANO.—that discrimination was definitely—age discrimination was definitely a part of it.

Well, I can definitely see a lot of Americans who are reaching, I mean, this age. And I mean I think this last recession—I mean we are at full employment now, but I think there are a lot of Americans, older Americans, who are going back to work because they have to, who cannot reach the same salary levels that they had be-

fore this last recession. This protection is so important to Americans.

Look, here is a question I want to ask you. Even if we fix this, that will be an important thing if we fix this with the protecting older Americans, but don't we also face the burden of a growing number of employers who are forcing their employees to sign employment contracts which force them into arbitration, which I mean even if they have this private right of action and can prove discrimination, that is also a barrier?

Ms. MCCANN. That is also a barrier to employment. As I said in my testimony, all the barriers that older workers face cannot be addressed in one hearing. And POWADA certainly does not address that situation, but it is also a significant issue.

Mr. TAKANO. I am pleased that this legislation is bipartisan. I am please we see a number of Republicans, conservative Republicans actually joining us and—I mean they understand it. The older Americans is a huge voting population.

But it is important also—and I don't want to—I want to move toward the light instead of crossing the entire darkness, but I also just want to make the point that it is incomplete today, that we need to pass POWADA, but we also need to deal with forced arbitration. That if we enhance your protections but we don't really give you a full remedy to make sure that you have a right to enforce these rights, then that is only—that is a halfway measure.

I yield back, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentleman from Idaho, Mr. Fulcher.

Mr. FULCHER. Thank you, Mr. Chairman.

I have got a question for Mr. Pianko. I wanted to make maybe just a point first and shift gears a little bit to an area that we really haven't talked about yet.

But you made a statement in your testimony that some 40 percent of college graduates are under employed with their first job and 10 years later probably half of them still are. Honestly, that makes sense to me because that is kind of what we see in my home State of Idaho. And we have an incredibly good statistic when it comes to unemployment. It is like less than 3 percent. And this is overall, all employees. But yet more than 20 percent are on some kind of public assistance. And so we see that.

In our State—and this is kind of the point I wanted to make and then I am going to follow up with a question—but in our State part of the reason is a little bit different. We used to be more dependent on resource-based jobs, manufacturing based jobs. And due to a number of reasons, a lot of regulatory and legal and that type of thing, those jobs have transitioned to service-based jobs. Nothing wrong with service jobs, they just don't have the same economic impact.

So that is the point I wanted to make.

And you also said the nature of work has changed, and that is in our State, and I think other states in the west in particular, that is part of it.

It has put more focus on the need to be the entrepreneur. Entrepreneurs are different skills type of people. How would you recommend to incentivize that entrepreneur? You are shifting the par-

adigm. How do you encourage that new generation of entrepreneurs?

Mr. PIANKO. That is a hard one. Look, I actually went to Stanford for business school, which is sort of the heart of Silicon Valley and entrepreneurship. It is an ecosystem that takes a lot of time to develop. And actually, you know, we in this sometimes beat up on colleges and universities for not providing people a pathway to employment.

One thing universities do extremely well is serve as hubs for entrepreneurial ecosystems. And universities attract a lot of research funding from the Federal government and from private industry. And so one of the things that you can do is to encourage the development of—you know, you have got some really wonderful universities in Idaho—encouraging the development of those universities into research hubs and sort of entrepreneurial hubs.

The second thing, and this is—I think it is hard to underestimate the debilitating impact of student loans on entrepreneurship. If you have a \$100,000 or \$30,000, or any number of student loans, and if you don't make your student loan payment you are in default and your life kind of falls away. It is incredibly different to take that risk to start a company.

And so the other piece beyond sort of how you on the positive side create that ecosystem is it is incredibly imperative—and I think the gentleman from Tennessee left—but some of the states are really working hard to minimize the student loan impact, especially for students who go to state university systems. And I think this body, you know, has a real obligation at this point to help fix that problem. There are a number of very good solutions to it.

The downside of federalizing the financial aid system about 10 years ago is—I think the other side of it, you know, we really tried to encourage access, but then suddenly now that we have so much access that there is \$1.5 trillion of debt. That would be fine if we were all paying it off, but we are not.

And so I think those two pieces as a policy maker is what I would encourage you to look at.

Mr. FULCHER. Okay. Those are definitely worth looking at.

I have got just another minute, so I am going to do a quick follow up. An example, possibly, of one of the areas that started to bear some fruit. I just wanted to know if you heard anything like it before. In our—again, in our State and in the west there is a lot of open land. Drone usage, for example. It can be used for a whole host of things, infrastructure, aeriels for forest management. The list goes on and on, power lines, utility lines, all that.

We have an inventive community college that started a drone operator software. Have you heard of anything like that? And for things like that, any idea for incentives or ways to try to incent that type of education?

Mr. PIANKO. The most important thing you said is you have picked an area of expertise. Too many colleges and—too many states say oh, we are just going to create entrepreneurship, right. That aspect of having to create a center of excellence around drone research, I have actually read a little bit about this. I mean take advantage of your natural resources. I haven't heard—there are a lot of programs developing around drone usage, there is a lot of

funding head toward drone usage. I think it is going to be big. But that is not my area of expertise.

What is my area of expertise is you have to take the most important first step. You have identified an area where you have some form of advantage because of open land, low population density, and you have created a locus for what can become a thriving economic ecosystem that drives lots of high paying good jobs. And that is what I would encourage you to think about.

Mr. FULCHER. Thank you to the panel.

Mr. Chairman, thank you.

Chairman SCOTT. Thank you.

The gentlelady from North Carolina, Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chairman, and thank you to the Ranking Member as well. And to the witnesses, thank you for being here today.

I want to start off by mentioning that I am a proud co-sponsor of H.R. 1230, the Protecting Older Workers Against Discrimination Act. I support it because there is no reason why elderly Americans should be held to higher evidentiary standards than workers who are discriminated against because of sex or race or religion or national origin.

And we have heard a lot from this Administration about our record low unemployment rate, but we know that number doesn't entirely reflect the status of our economy. We also know that older workers are consistently given the short end of the stick. Age discrimination claims represent 20 percent of all EEOC claims. And in times of economic slowdown, older workers are more likely to be laid off, which can have terrible impacts on a future life expectancy.

So, Ms. McCann, with all of that being said, in this current economy with low unemployment rates, is age discrimination still an issue?

Ms. MCCANN. Unfortunately, very much so. The number of age discrimination charges certainly does surge during times of economic downturn, but they never go away. The share of older people who still want a job but have not been able to find one has not recovered from pre-recession levels. And the reasons are, one, hiring discrimination. Hiring discrimination is rampant, but it is very hard to prove. And so employers have no incentive to self examine their hiring policies to reduce them.

And the other reason that age discrimination is still a problem is that a lot of the jobs in this economic recovery are low skill and low quality and low income. So you have a lot of older workers who are under employed who are still looking to find better jobs.

Ms. ADAMS. So do the unemployment numbers accurately reflect a number of long-term unemployed older workers?

Ms. MCCANN. They certainly reflect the number, but I don't think they are totally accurate. It doesn't capture all of the discouraged workers, and again, those who are still looking for a job but have not been able to find one.

Ms. ADAMS. Okay. Thank you very much.

Let me move to Ms. Bird. I want to touch on the issue of barriers to employment for people who get caught up in the criminal justice system. A lot is being said about ex-offenders and the importance

of a full reintegration into society by providing quality employment, and rightfully so. But I also want to address those who are arrested for low level crimes, such as minor drug possession. And there have been a lot of studies conducted that show racial disparities and how prosecutors make charging decisions for low level crimes. We know that arrests that remain on an applicant's record can impact employment opportunities regardless of whether the case is dropped in the future.

So, Ms. Bird, in your opinion, could addressing the decision making of prosecutors have a meaningful impact on tearing down a barrier to employment?

Ms. BIRD. I think that is a part of lowering barriers for individuals who have been—had an attachment to the criminal justice system. So it is a part of it. But what we really need to think about is beyond arrest, for those who have been incarcerated, how do we start not at reentry as a way, but as while folks are incarcerated, including adult education and training while folks are inside, and that is correctional education. And we have a number of different models from around the country. That is important.

The decisions that prosecutors make, it is very important. And we have examples also of partnerships with workforce development boards around the country that create diversion for in particular young adults that have access to more work opportunities, more work experience, youth development programs, and mentors.

So it is not a one size fits all solution. But as I mentioned earlier and in my testimony, we really do need cross system solutions and the investments in things that we know that work.

Ms. ADAMS. Okay, great. Thank you very much.

Mr. Chair, I yield back.

Chairman SCOTT. Thank you.

The gentleman from North Carolina, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman. And I would like to thank the panel for being here today.

I have got a couple of questions I would like to get into for Mr. Pianko, but I would like to actually start with Ms. Bird.

And, first of all, just to comment, I was looking at it, it looks like you work with economic justice, criminal justice reform, and mental health policy, specifically for youth and young adults. I think that is very important. And I remember taking student mission trips as a pastor for 16 years in the places, the inner cities of Cleveland, New York, and Baltimore, and saw it first hand as far as what can be done. So I commend your heart and passion. It is very obvious today that you believe in what you are saying here. And I would venture to guess there is probably a little bit of a faith perspective coming from—but no response there, it is just my hunch.

Republicans have tried to lead the way in many of these areas. Opportunity zones, as far as when we talk about investments into some of the different areas, also First Step and Second Chance Act, some of the investments that continue to grow in the HBCU areas and other places.

So I think there is a conscientious level that the Federal government does have a role in some of this. But also I do believe that there—one of the gentleman earlier on one of the colleagues on the

Democrat side said this is not about grit. I agree with that, but I do believe that part of this is a level of personal responsibility coupled with these other areas to show that the self-worth can be reached to a place to accomplish some of these things. And I think that is where sometimes the Federal government can overshoot the runway, almost creating an enabling mindset as opposed to one that continues to persevere. Because adversity is in every one of our lives, and adversity is what builds that integrity or character to be able to overcome some of this.

And I just want to make sure—not that you are not saying this—there is a balance approach as far as what the Federal Government's role is, but also what needs to be done in some of the workforce training. So a little bit of a commentary, and if I have time I will come back to you for a response on it.

But I just wanted to say I appreciate specifically—because if you can capture the youth, if you can show a better pathway for the youth, I think you have a chance of really making a positive impact.

Mr. Pianko, given the consistent lack of skilled workers in today's workforce, what kind of long-term effects does this kind of skills gap impose on our economy and our ability to compete, not just here, domestically, but on a global scale?

Mr. PIANKO. So this is—we are in a global market right now, where we are in competition for jobs and jobs are driven by skills. There is a London Center of Economics study that the skills gap costs about \$160 billion to the U.S. economy. And, frankly, we have a massive deadweight loss to the economy by all the money we spend on recruiting and training and then not having that person actually end up—the educational system not getting them the jobs that they need to be competitive. So we have invested all this money and then we don't get the outcome we want. And so, it is critically important and I think you are on to an important topic.

Mr. WALKER. Well, you mentioned in your testimony that under the current Federal work-study structure it is easier for a student to get a job, to use your word, mopping floors on campus than getting hands-on workforce education at a private business off-campus. Can you break that down or give the weights of that for just a minute on how additional flexibility to spend Federal work study funding off-campus jobs would enable students to gain the hands-on experience needed to enter the workforce?

Mr. PIANKO. So right now less than I think .1 percent of all Federal work study dollars are spent with private businesses.

Mr. WALKER. You said .1 percent?

Mr. PIANKO. I believe it is .1 percent. I can—counsel is nodding his head, so I think I am right on that.

Mr. WALKER. Wow.

Mr. PIANKO. Which is a shockingly small number. We all talk about, and this is where I will get on a soapbox for a second, apprenticeships, okay? We have a billion dollars sitting here that could be effectively funding the start of a major apprenticeship movement in our country and instead, you know, something like 75 or 80 percent of those dollars are spent doing on-campus jobs that don't have a direct connection to employment. And so I believe that Secretary DeVos recently—this morning announced that they were

going to expand a pilot program to start experimenting here, but I would strongly recommend that the Congress as part of HEA—

Mr. WALKER. In my final 20-some seconds, sorry to interrupt you there, and you were going there a little bit, can you speak to the role apprenticeship programs play in reducing the skills gap for students who do not have the resources to attend a four-year college or university?

Mr. PIANKO. If there is one thing that matters it is reducing the friction between educators and employment. And, you know, I hate to quote a European model, but I think it actually works in the apprenticeship system, which is you actually combine work and education into one and you bring the skills training into the education. And if you look at the funding models that exist in places like Switzerland and Germany that have created this apprenticeship model that works, it is based on that premise.

Mr. WALKER. Thank you. Mr. Chairman, I yield back.

Chairman SCOTT. The gentleman yields back. The gentlelady from Pennsylvania, Ms. Wild.

Ms. WILD. Thank you, Mr. Chairman. Mr. Roos, I would like to start with the question about the issue of disabled workers earning competitive rates of pay. The times have changed so very much and I do truly believe that the disabled deserve to live independently and that subminimum wages certainly won't encourage or enable that to happen. And I very much want to sign onto H.R. 873, the Transformation to Competitive Wages Act. But I will tell you, and I am asking this question really in an endeavor to be able to respond to advocacy groups who have contacted my office and have claimed that H.R. 873 would have a chilling effect on the hiring of workers with disabilities and particularly those with the most severe disabilities. Can you address that? Help me out with this issue.

Mr. ROOS. Sure, I would be glad to. I have heard all those concerns, as well, and we heard those from families back in 2015 when we made the announcements that we were going to transform our vocational supports. And honestly, I just haven't seen it in reality. For those who truly want to work, I stand by the fact that the supports are in place to empower that to happen, to supported employment technology. Partnerships with local employers has really been key to our success in finding competitive opportunities for people with disabilities, even the most severe disabilities.

There is also that group of people, as I was alluding to earlier, that I truly don't think work is what is important to them necessarily, yet they are in a workshop. And it is really finding what is meaningful to them if that workshop were no longer a possibility. And, you know, I think they are commonly referred to as wraparound services. There are many services available, and through those home- and community-based waivers, that can help someone live a fulfilling life and meet those health and safety concerns that arise quite often when we think about workshops not being there.

But again, I always go back to the point that if someone wants to be employed, I truly feel that they can be at a competitive level earning a rate at or above minimum wage, commensurate with other people doing the same job in the same industries. It is just

piecing together those services and supports that they are going to need to be successful.

Ms. WILD. So you don't believe that there would be additional costs to the employer other than the higher wages?

Mr. ROOS. I don't. Reasonable accommodations are usually quite cheap, quite frankly. Employers get scared about that a little bit in terms of having to make those reasonable accommodations, but most of the time it is really not much of an investment on their part.

For current 14(c) holders, if they want to maintain their current work they are doing and maintain the contracts they are doing, they are going to have to do it through a reduced workforce. You know, our business operations used to operate with—it was discussed earlier—

Ms. WILD. Excuse me, I am going to stop you there.

Mr. ROOS. Sure.

Ms. WILD. Just because I have questions, other questions I want to ask.

Mr. ROOS. Sure.

Ms. WILD. And, of course, we always have limited time, but thank you very much for your input.

Ms. Bird, I want to address the issue of criminal background checks in the application process. I represent a district in Pennsylvania. And in Pennsylvania, an employer can consider an applicant's felony or misdemeanor conviction in the hiring process only if they relate to the applicant's suitability for the job. If the employer decides not to hire someone based on his or her criminal record, the employer must inform the applicant in writing.

And while I think that law is imperfect, because an employer is granted great deference in determining the applicant's suitability for the job, I do like the requirement that the employer inform the applicant in writing that the criminal background was a factor in the hiring process.

Do you see any utility or application of that kind of provision at the Federal level as a deterrence to discriminatory hiring practices?

Ms. BIRD. Yes, and I think there are a number of other approaches, as well. We know we have incorrect records, and so there is a remedy for that. We know that we have seen expungement be really important and really critical because we have young people and older adults who may have had an infraction when they were in their late teens, and it still follows them 10, 20 years later. And so the research does bear that out.

So I think to have approaches that address a number of things, incorrect records, and you might have been arrested, but there is no actual detention or incarceration.

Ms. WILD. And if you weren't notified by the employer of why you weren't hired—

Ms. BIRD. Exactly, exactly.

Ms. WILD.—you wouldn't know to address that.

Ms. BIRD. Much like we do in our credit background checks. There are incorrect things and it allows us to have increased credit scores. So it is really important to apply a number of approaches.

Ms. WILD. Thank you very much. I yield back.

Chairman SCOTT. Thank you. The gentleman from Pennsylvania, Mr. Meuser.

Mr. MEUSER. Thank you, Chairman Scott. And thank you, Dr. Foxx. And thank you to our witnesses.

As we know, unemployment has hit its lowest point in 50 years. The economy has added 4.6 million jobs over the past two years. Mr. Pianko mentioned in his testimony America is facing an unprecedented mismatch in the supply and demand of talent, and I quote. I do not believe we need new laws, more regulations, and heavy-handed government to close the skills gap. I was in business for 25 years. Historically, it is not the Federal government, but the innovation initiatives of businesses that have successfully closed skills gaps over the course of time. Perhaps we are in a new area with new challenges, but that certainly has been the history.

I also believe that any education and support for education provided to career and technical schools deserves equal the support provided any higher education school.

I also believe with Mr. Roos related to people with disabilities, those with disabilities, and the work that they can do, those who happen to have disabilities, and their importance to a productive business team.

So all that being said, Mr. Pianko, I want to start with you, please. The funding for higher education, Federal and State, over the past 20 years, do you know how much that has gone up over the past 20 years in general, rough terms?

Mr. PIANKO. I think that is a very difficult question to answer.

Mr. MEUSER. Right.

Mr. PIANKO. I am sorry. It would take a thesis to get you a good answer on that.

Mr. MEUSER. Roughly it is about double. So, as you probably guessed, since 1999 to 2019 we have doubled the Federal and state expenditures for higher education, not to mention the, well, the level of student loans that you could also add on top of that. So the funding has been there.

Perhaps we should be smarter in planning ahead from this day forward, as you have been mentioning.

So a couple of my questions are, have businesses statistically, according to your statistics—I do my “me” search throughout my district, but your research, have businesses embraced career and technical colleges for recruitment?

Mr. PIANKO. So I think it is very spotty. I think in general the talk is more than the reality and everyone in their district probably has one example where a company and a technical college kind of coordinated on something. And I think there are some exceptions, like Tennessee. I think the Commonwealth of Pennsylvania has really struggled in this area, as an example, so I think it is very spotty.

Mr. MEUSER. Do you have any examples, any models, anything you can point to that—

Mr. PIANKO. Well, I think Tennessee has done an excellent job. I think Colorado—I forgot to mention earlier, I don’t know if there are any representatives from Colorado. Colorado has really made a real effort on this, some other states, as well. I think there is some—I think if you want real Federal action across the board, the

only way to truly incent businesses, and I think it impacts achievement, is to actually put some real dollars behind the coordination of the education infrastructure and the employment infrastructure. And I think that is really where we would have to go.

Mr. MEUSER. So on-the-job skill development is where it is happening.

Mr. PIANKO. And I agree with your point. We are spending enough money on education. So the issue isn't how much money are we spending. The issue is how are we spending it.

And, you know, take the Federal work study example, I mean, that is a perfect example, or GRAD Plus. I mean, we have these massive, massive programs that are well-intentioned, but they are not actually achieving the goals that we want them to achieve. So I would encourage you to think about redirecting dollars and sort of encouraging this education employment ecosystem connecting rather than new dollars and new regulation.

Mr. MEUSER. I mean, some companies take great pride in their workforce development, but what they offer to those with disabilities and to all people, but not all companies, of course, do that. So there is certainly a place for career and technical development.

Mr. PIANKO. I think there is—companies aren't going to change. You have got two organizations that just don't talk to each other. Companies, they want someone who programs in Python, who can, you know, on June 30th in Harrisburg, Pennsylvania.

Sorry, go ahead, congressman.

Mr. MEUSER. Clearly, your number, 74 percent of academia thinks that they are doing great in this regard and 15 percent of the workforce.

So my time is up. I yield back.

Chairman SCOTT. Thank you. The gentlelady from Connecticut, Ms. Hayes.

Ms. HAYES. Thank you, Mr. Chair. And thank you to all the witnesses for being here today.

Last Friday, we marked the 65th anniversary of the Brown v. Board of Education decision, a landmark ruling declaring that school segregation was unconstitutional. Unfortunately, we know that systemic racial segregation continues to leave youth of color behind. The overwhelming number of disconnected youth in this country come from disconnected communities marked by high adult unemployment, poverty, racial segregation, and low levels of adult education attainment.

High poverty, racially segregated communities often lack the opportunities for upward mobility, contributing to higher youth disconnection rates for communities of color. From 2016 to 2017, Black youth were the only racial group who saw an increase in rates of being disconnected. I mean, groups 16 to 24 coming from high poverty areas who were not in school.

In Connecticut, there are over 44,000 disconnected youth ages 16 to 24. In my district alone there are 8,100 disconnected youth.

So my questions today are for Ms. Bird. How does racial and income segregation make it difficult for youth of color to access the social capital and networks that afford them access to traditional business and industry sectors?

Ms. BIRD. So as I mentioned in my oral testimony as well as my written testimony that these issues are structural and they are about segregation and proximity to networks that allows you to gain access to work experience. In our research with young men of color we found that references and work experience, those two issues, are critical in creating access. So the question is how can we create more opportunities in particular for African American and Native American youth who have these high disconnection rates due through workforce investment system.

Ms. HAYES. Thank you, and I couldn't agree more. I have seen that same thing right here on the Hill when I am trying to recruit interns or hire staff. There are people who have just never had access to the types of opportunities that are provided here, so they have never had the experience to now qualify for the jobs.

So what does the evidence tell us about the effectiveness of summer job programs in improving academic outcomes for school youth?

Ms. BIRD. I am glad you asked that question because I was just thinking about my first summer job experience. I am born and raised in Philadelphia, and many of the skills that I learned on that first summer job which I didn't know was a workplace learning opportunity at the time, but it was a partnership with the school district and the University of Pennsylvania, was gaining positive self-concept, communication skills, social skills. And so the research bears it out, but what we don't have is that same level of Federal investment that we had when I was able to have that opportunity.

Employers say they need and want it. When they have young people, they want to keep them over time. And we have research that shows that it keeps kids safe in the summer as well as increase our attendance and student engagement.

Ms. HAYES. I am so glad you said that. Let us talk about it.

Ms. BIRD. Okay.

Ms. HAYES. Because my first job was at New Opportunities as a summer youth counselor, and that was actually my next question. How does it impact attendance rates and test scores?

Ms. BIRD. Yeah. So there is a couple of new research that is in Detroit, for example, and studies, so we think that there needs to be more research invested in what are the impacts of summer jobs, but we already know there is a great body of research already there. So it improves test scores. It increases attendance, but also these transferable skills that folks call soft skills, which really we call essential skills in our field, are transferable over a lifetime.

Ms. HAYES. And how does that impact transitioning into the workforce?

Ms. BIRD. So the research bears it out. The more you work one year, the more you work another year, and so work experience is literally critical. And in the Workforce Innovation Opportunity Act there is a carve-out—I wouldn't call it a carve-out, but 20 percent to support work experience, which includes a number of different things we were talking about, but it really isn't enough.

Ms. HAYES. I love just hearing you speak because you are literally adding credibility to everything that I know already to be true. And so my last question, does current Federal funding, in-

cluding WIOA Title I youth funding formulas, ensure that groups of young people are prioritized?

Ms. BIRD. Yes. Well, it provided the—what I will say, the infrastructure and framework as I mentioned, but it could do more. And what I mean by more is when we are talking about individuals of various employment or opportunity youth, we know it is not a traditional kind of route to pathways. And so the more means supportive services, the more means additional partnerships, the more means more investments and work experience and references, as I mentioned.

Ms. HAYES. Thank you so much.

Chairman SCOTT. Thank you. The gentleman from Pennsylvania, Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman. Mr. Roos, I would like to just clarify your position. This is following up to some of the questions from Mr. Grothman. Are you opposed to the 14(c) wages or do you think that all organizations should close their work centers?

Mr. ROOS. First and foremost is the payment of subminimum wage.

Mr. SMUCKER. Sure. What about the work centers?

Mr. ROOS. I think that, for example, to answer your question, one of our work centers was transitioned into an affirmative industry model. In that model we were able to do the same. It is pallet manufacturing and packaging. We were still able to do the same type of work we did before, it is just an integrated workforce.

Mr. SMUCKER. And I am going to stop you, I am sorry—

Mr. ROOS. Sure.

Mr. SMUCKER.—because I can't take my entire five minutes on this. But I concur with some of the comments that Mr. Grothman had made. I have a number of very effective work centers in my areas who are serving individuals with disabilities and in some cases very severe disabilities. They are groups of parents in some cases who have come together to try to provide the best opportunity they possibly can for their sons and their daughters. And I have spoken to those parents and talked with them about how they feel and how their sons and daughters feel about working in a facility like this. These are individuals who require supervision that generally cannot be provided.

So, first of all, I want to say the goal is always to get someone into an integrated workplace if they can. And, in fact, today I think they are making more of an effort to do that than maybe in the past, and that is a good thing. But, you know, I think your numbers of how many people have transitioned to a workforce tell the story of what can potentially happen if you are going to close all the workforce centers.

These groups have contracts with businesses. They are providing a valuable service in a setting that can provide the self-worth of a job. So I would ask you to rethink requiring, you know, the goal of every work center to be closed.

Mr. Pianko, I do want to get—I thank you for your testimony and some of your policy suggestions you used. The last-mile training, I think staffing agencies can be a potential solution there; I have

seen that. And as your testimony highlighted, the nature of work has changed, so we need additional training.

I happen to believe that our community colleges and technical schools can play a very, very important role in addressing employment and what you call the hiring friction. I very much agree with your suggestion that Congress should make more of these programs eligible for receipt of dollars from the Pell program.

I do want to go to your testimony and perhaps take issue with the way you have characterized businesses. You literally say investing, too often businesses look at things through the lens of a free rider problem. Investing in education is more likely a gift to a company's competitors and hence for suckers. Do you really think businesses view their workforce in that way?

Mr. PIANKO. I think it was specifically tied towards dollars spent. And there is a big different between spending on something that will benefit you as a company, so teaching them the specific software—

Mr. SMUCKER. There is a quote from Henry Ford, "The only thing worse than training your employees and having them leave is not training your employees and having them stay."

Mr. PIANKO. So—

Mr. SMUCKER. In my experience, I think businesses, employers need to be the first ones to make the effort to address the skills gap.

Mr. PIANKO. I think—

Mr. SMUCKER. And the businesses in my area that I talk to understand that investing in their employers—I was a business owner myself, several hundred employees, investing in my employees was the most important investment that I can make. If you are losing employees to a competitor, then you are not doing what is needed to provide the kind of workforce that your employees want to choose to work in. So I would encourage you to think differently about how businesses should be thinking about training.

Mr. PIANKO. Now I understand your question. I totally agree with you. I think it is incredibly shortsighted. I think businesses are actively—are actually acting in a shortsighted manner by not creating educational options. And so I think that we actually have a rare case where businesses are willing to invest in talent. And, frankly, one of the biggest things—right now what happens is businesses—

Mr. SMUCKER. I think—

Mr. PIANKO. Yeah, I agree with you, yeah.

Mr. SMUCKER.—that is what businesses need to do and then the investments and the partnerships with community college, the apprenticeship programs, can really improve the workforce. But it would be a disaster for businesses not to understand that they have to take the lead in investing in their workforce.

Mr. PIANKO. And, unfortunately, too few businesses are and that was the point of that comment.

Mr. SMUCKER. Thank you.

Mr. PIANKO. Especially around entry level hiring. Entry level hiring is where this is a big issue.

Chairman SCOTT. Thank you. The gentlelady from California, Ms. Davis.

Ms. DAVIS. Thank you, Mr. Chairman, and thank you all for being here. I am going to support my colleague and my Ranking Member on the higher ed subcommittee because I think that there actually is a lot of excitement here about how we best develop programs, apprenticeship programs, that really are going to scale in this country, different from what we have today. And so I wanted to move that conversation a little bit during my time.

We have talked about a number of systemic barriers and that is very important. I think, you know, we always have to ask ourselves who benefits when we break those barriers down and if there are people who lose. I am not we—I think we all benefit. Maybe we can check your feelings about that in a second.

But for Mr. Pianko, as I understand it, and please correct me if I am wrong, that within your realm you do have a number of registered apprenticeship programs.

Mr. PIANKO. Sorry, one, TekTonic has the first Department of Labor approved registered apprenticeship program in software development, yes.

Ms. DAVIS. Uh-huh. Could you share with us then how you think that is a proven model or can be a proven model? And what evidence-based—I think evidence do we have basically that creates a more portable system for anybody who is engaged in that process?

Mr. PIANKO. Yeah. So TekTonic is a wonderful program—company. What they do is they actually recruit from workforce investment boards really top-quality candidates who are overlooked in the traditional world. They use the WIOA dollars to train. As soon as they are accepted into the program they are paid, I believe, \$15 an hour.

And then what TekTonic does is it is actually a web development company. So we have dozens of clients who pay us to develop websites. We immediately put those people right after there through a short training program off of WIOA into actual work where they are getting paid far above minimum wage. These are highly functioning people.

And then it solves two problems because at the end of the program they are actually then—we encourage after someone has done 1,000 hours to be hired by the ultimate company. So that is how it functions as an apprenticeship program.

Ms. DAVIS. And so when we talk about a registered program, and I think the Ranking, Chair, and I certainly have a great deal of interest in this, but sometimes there are some differences in terms of how Federal dollars are invested, where they are invested, and whether or not we need to ensure that the programs are portable.

Mr. PIANKO. Yeah, and I want to point out one issue around diversity which I think is very important, that eliminating friction from students matters. So TekTonic has an extremely diverse population, 82 percent of the population is diverse. If you look at a picture it will look like America. Thirty-three percent are female. This is in a coding environment. Thirty-seven percent are people of color and 30 percent, perhaps most importantly, are veterans.

And so I think what you are seeing is if you allow employer pay models to take over, you enable a much more diverse workforce in

our technology community and the high wage jobs that go along with it. And I think that is critically important. We are seeing that.

Make schools another example. I won't go on, but.

Ms. DAVIS. Yeah. Would you say, also, though, that the standards that they have set as being a registered program also has benefit and may be what drives in many cases the opportunity for them to receive that investment from the Federal Government?

Mr. PIANKO. Yeah, I think the registration program overall is useful. I am not sure it is a sine quo non. I am not sure it is like the only thing that matters. I think actually employer acceptance is a lot more important. And I think the registration process tries to get at that. I think the registration process was designed for a different age.

Ms. DAVIS. Yeah.

Mr. PIANKO. So as we look into software and other areas, I would encourage us to think about how we can modernize that.

Ms. DAVIS. Yeah. I think the other thing that is critical there is we have a number of states that actually don't have any oversight for apprenticeship programs. So that is one of the things in terms of the infrastructure that we need to build.

But I also wanted to just mention that, you know, we are talking about investment now and you mentioned a billion dollars and, in fact, that Secretary DeVos talked about this today. I think if we were to look at the European models, which we have touted and we see the infrastructure that has been developed there, not just with the businesses, but also with the school system, that is really critical in terms of counselors and advice that students get, data, et cetera, they are spending a whole lot more. I mean, ratios to what they are doing, they obviously have been at it a whole lot longer than we have and they have that history.

So I think we just want to acknowledge that I am glad that we are moving in that direction, but we are really not investing in the way that we should if, in fact, we believe that this is one of the ways in which we really can address some of these systemic problems, but also generally just the workforce development that we need in this country.

Mr. PIANKO. I think you are on exactly our point. We don't invest in the apprenticeship piece, but we invest a lot in the education piece. And so I think reallocating some of those dollars to better reflect what we are trying to accomplish with education and workforce is really critical. So I welcome that suggestion.

Ms. DAVIS. Thank you very much.

Chairman SCOTT. Thank you. The gentleman from Maryland, Mr. Trone.

Mr. TRONE. Thank you, Mr. Chairman. Roughly 600,000 individuals are released from incarceration every year. On July 19th, the BOP will update their records this year based on additional sentence reduction, based on the first—good behavior and the First Step Act. So more than ever are going to be released shortly coming up.

Can we just run through the four folks, just two quick bullets, what you think are the top first and second points that we should be digging into to have a strategy backed by research, research,

what works and what doesn't to have successful reintegration? Start over with Ms. Bird.

Ms. BIRD. Yeah, two quick points. One is that reintegration actually does not start at the point of reentry. Reintegration actually starts before. And so a couple of things. To WIOA, we could think about the floor that is set to support correctional education and increase that for adult education. Just 6 percent of folks who are incarcerated have a postsecondary education and 30 percent lack a high school diploma. So that is one quick thing with some research backed up.

Mr. PIANKO. This is not my area of expertise, so if I could yield my time to Ms. Bird or another panelist.

Ms. BIRD. Well, I will go on one more—

Mr. TRONE. Do another one.

Ms. BIRD.—one more thing that we can definitely do. As we talk about reentry, we talk about a couple of different things. Reentry is really important not only for the individuals themselves, but their families and all the collateral consequences. So another thing we can do, as we already discussed, is think about employers and hiring practices, so that whether that is the Ban the Box effort coupled with workforce development board partnerships that can create pathways to work will be important.

Mr. TRONE. Mr. Roos?

Mr. ROOS. Again, not my level of expertise either, but what I will say is we have referenced them a couple of times today is the Office of Vocational Rehabilitation. A lot of support is in place for people who have been incarcerated getting off to a good start, getting those supports in place, and the services needed from the get-go to be successful in transitioning back into the workforce.

Ms. MCCANN. Again, totally outside of my wheelhouse, so I would just advocate that any efforts not ignore the needs of older workers who are reentering the workforce.

Mr. TRONE. Let us go back to the Ban the Box. Thirty-four states and more than 150 cities have adopted a Ban the Box policy providing applicants a fair chance at employment, removing the conviction history from job apps, delaying background checks. At this point, three-quarters of the U.S. population lives in a jurisdiction that has some kind of Ban the Box.

My company has personal experience in this area. I have over 7,000 employees. We banned the box a number of years ago. We have hired hundreds-plus of folks in Ban the Box. And what we are getting is better retention rates, a win, a second chance for folks that works out better for everyone.

So is it time for Congress, Ms. Bird, to expand Ban the Box, fair chance hiring to the private sector across the country?

Ms. BIRD. Well, yes, simply put. The evidence does bear out that there does need to be, again, some Federal role to help support and incentivize the private sector to do this. And also that folks who are returning from incarceration need to be judged on their own merits, not anything in their past, based on what they can do and their employability skills.

Mr. TRONE. What do you think is the key to convince employers? Because it needs to be a partnership between employers and the government and the BOP. How do we convince employers that

these folks who have a lower level of skillset and we got to—it is key is starting before release, I completely agree. What do we do to convince these companies that they need to be aggressively looking and getting the word out that they are looking for great workers who want a second chance?

Ms. BIRD. Yeah. Well, a number of employers are already doing it in partnership. So we have a number of hospitals, for example, in Baltimore, Johns Hopkins, who are really considering the—

Mr. TRONE. But 55 percent of the folks, 1 year out, never get a job.

Ms. BIRD. Yeah.

Mr. TRONE. So the number is not working for us.

Ms. BIRD. Yes.

Mr. TRONE. Fifty-five percent no job.

Ms. BIRD. Yes. And so one of the things I think that we definitely need to do is to look at where it is happening around the country and to assess how are they changing their human resources policies. Because once the workers are in, whether they are a young worker or an old worker who has been impacted by the criminal justice system, they do have higher retention rates. So that is do a little bit of learning of what is happening around the country and lift it up at the Federal level.

Mr. TRONE. Okay, thank you.

Chairman SCOTT. Thank you. The gentlelady from Michigan, Ms. Stevens.

Ms. STEVENS. Thank you, Mr. Chairman, for this important and timely hearing. I represent a suburban community in Michigan and this topic is critically important to my district, a district that has a robust automotive supply chain, a manufacturing economy that is frequently changing, and questions come up around age discrimination, questions come up around when people lose their job at age 50 and they have got to reapply for a new job and where they are going to go. So my questions today are going to center on that.

And they are also going to focus on the fact that when somebody loses their job in their fifties and is unemployed for a long period of time, they cannot access Medicare until age 65, so we have this gap. And we know that only 3 percent of employees experiencing age discrimination in the workplace when they are actually in the workplace have filed complaints with their employers or the government according to the EEOC report. And yet research shows that up to 60 percent of individuals have experienced or witnessed age discrimination in the workplace.

So if you don't all mind, and maybe, Ms. McCann, you could take this one, but is age discrimination being normalized?

Ms. MCCANN. Unfortunately, I think yes. I think we actually are learning to discriminate against ourselves. It is just an acceptable ism in this society. And I think the 3 percent figure is an illustration of that. And I think so many people view it as futile to bring an age discrimination claim.

And you mentioned the cost of health insurance. A lot of workers, when they know that they are going to fight face this heightened burden of proof in an age discrimination case, say I would rather take the resources, both my time, my emotional energy, and my

monetary resources, and use that to pay for health insurance or pay for my kid's college education or pay my mortgage rather than try to win an age discrimination case.

Ms. STEVENS. Well, I am a proud cosponsor of the Protecting Older Workers Against Discrimination Act. There is obviously needed legislation and there is also this cultural conversation that we need to have around our workforce. And this is what the Ed and Labor Committee, by the way, is prioritizing as part of our cultural values, the value of work, that you matter.

So let us talk about the legislation for a minute. If this important piece of bipartisan legislation was enacted how does this affect the EEOC's effectiveness in countering unlawful age discrimination cases?

Ms. MCCANN. I think it would help the EEOC immensely because, again, we would restore the burden of proof to age discrimination claims. They would not—as private plaintiffs as well, they would not have to produce more quantitative, you know, more evidence and more compelling evidence to prove age discrimination. It is really critical and important.

Civil rights statutes don't just compensate victims. It deters future discrimination. So if the EEOC was able to bring and be more successful in age discrimination cases, it would deter future discrimination, as well.

Ms. STEVENS. Well, we are grateful to our AARP for your work in this because it is not just retirees. It is older working Americans that you represent, as well.

And I want to cite this study, Ms. McCann, if you have anything else you would want to chime in on this. In a recent AARP study researchers sent over 40,000 resumes to apply for more than 13,000 job openings posted online in 12 cities to test for age discrimination. They responded to each posting with three resumes representing different age groups: young, middle-aged, and older. Even though all had similar skills, older candidates received far fewer callbacks than young or middle-aged workers. What does this data tell us, Ms. McCann?

Ms. MCCANN. I think it confirms what every long-term unemployed older worker knows in their gut: that age discrimination is going on. When they send out those resumes, when they press the Apply button online, and never hear back, they have this gut feeling that I think it is my age. And research such as that confirms that, yes, when you do have similar resumes, similar candidates, and the older worker is not getting the interviews, the callbacks, that age is at play in the hiring.

Ms. STEVENS. Thank you. And I yield back the remainder of my time.

Chairman SCOTT. Thank you. The gentleman from New York, Mr. Morelle.

Mr. MORELLE. Thank you, Mr. Chair. I want to thank you for holding yet another important hearing in this Committee, which has really been great over the last several weeks and all the different topics we are taking. And today to discuss the barriers to employment and effective methods to help disconnected individual reengage in our communities and pursue meaningful opportunities,

particularly in light of the challenges we face in terms of a labor shortage expected to last in the United States for many years.

We know that our communities are best served when people are actively participating in the workforce. When individuals are disconnected they become isolated and miss out on critical growth opportunities.

I did want to take a moment to focus on young people, often referred to as opportunity youth, who fall behind in school and miss out on basic foundational skills. As a result, prospects for a stable and productive life become increasingly unattainable. In my home State of New York, there are over 250,000 opportunity youth. These young people have been left behind and we are missing out on their potential strength in communities to fill the gaps in our workforce and create a better life for their families and themselves. Identifying at-risk youth and taking preventive measures to keep them engaged in school and our workforce is critical to decreasing the number of disconnected youth in our Nation.

In my district of Rochester, New York, our community has recognized this need for preventive measures and taken innovative steps to provide the tools, training, and support to keep students from falling through the cracks and missing out on the chance to lead a full and productive life. And I wanted to just highlight two quickly, if I might.

One such effort, the Multicraft Apprentice Preparation Program, or MAPP, is a unique partnership between the building trades and historically disadvantaged youth. MAPP is dedicated to helping those facing a risk or facing the devastating impacts of poverty by training and engaging youth in building and construction trade apprenticeships, and they have been a very, very effective organization in the construction trades.

Enacting preventive measures within schools is another key piece of the puzzle. In my district a partnership between East High School and the University of Rochester has completely transformed the outlook of the once failing high school. East High integrates a myriad of systems that provide comprehensive and high-quality services to support a diverse student body.

The school uses a restorative justice approach with systematic support of counselors, social workers, and comprehensive health services for those students. They are also committed to promoting the social and emotional health of teachers, students, and their families.

And I am proud to say that in just the first 3 years the graduation rate has gone from 33 percent to 61 percent of students. Suspensions are down and test scores have increased.

These programs demonstrate that through meaningful partnerships, holistic approaches to education, and commitment from the local, state, and Federal level we can keep students engaged and build our workforce and strengthen our communities and economy.

And I would like to ask, Ms. Bird, in your testimony you touched on the barriers to employment that come from the lack of investment in education, child care, and other critical supports. Could you just share your thoughts on the importance of a holistic approach to education and the importance of integrating support systems? Something I am very interested in as it relates to social, edu-

cational, and healthcare services to help reduce the number of opportunity youth in the country.

Ms. BIRD. Sure. All of what you said is critical and I really commend the work that is happening locally in your district.

So as you already articulated, there was no one-size-fits-all. We have to work on school discipline and school climate issues, so that young people don't get pushed out of school and leave prematurely. And so restorative justice strategies are an important ingredient to that comprehensiveness that we need to focus on.

But at the same time, for young people who aren't in a traditional school system, we have to figure out ways to reengage them, and that may be through a program that is supported through the WIOA or through a community-based organization. And so that includes partnerships like with the building trades.

And apprenticeship is really important, but for opportunities they need on ramp sometimes. And so we need to really think about what is the role of pre-apprenticeship in terms of workforce preparation, work readiness, and all the other supportive services?

So absolutely, a supportive services model is one that we should really be thinking about.

Mr. MORELLE. I appreciate that, particularly the comments about the pre-apprentice, which I am a big supporter of.

I would just like to also follow up. One of the things that I think is so important is that we remember individuals come from families. And if you could give me maybe just a few seconds your thoughts on how we might support families so that they continue to support those young people who are struggling, if you have any thoughts on that as it relates to barriers.

Ms. BIRD. Yeah. So at CLASP we have done some research on low-income families and we have found that many young people are living in families where they are working more than one job and that does not allow them the fair wages that they need or the support of schedules, as well as the benefits that they need, like paid family medical leave. So we have to support what happens in families as well as the young people, again, as a result of segregation, isolation. We need to do all of those things in order to put young people on a pathway.

Mr. MORELLE. Thank you to do all the witnesses. And I yield back my time, Mr. Chair.

Chairman SCOTT. Thank you. The gentlelady from Nevada—excuse me, the gentleman from Michigan, Mr. Levin. I am sorry.

Mr. LEVIN. Thank you, Mr. Chairman. And the gentlewoman from Nevada's time is coming soon, I am sure.

I just want to start by thanking the Chairman for his really tremendous leadership in this area. These barriers to employment are so important to overcome and we have got bills we are moving and I am very grateful for that.

And also to thank Mr. Gross. There is nothing requiring him to be here. He is out here as a champion for justice for older workers, and I want to thank you so much, sir, for your ongoing efforts in this regard.

Ms. McCann, I want to ask you a broader question really beyond POWADA what we should be doing. It is so important that we pass it. Obviously I am an original cosponsor. But, you know, I used to

run the workforce system in the State of Michigan and when we created our No Worker Left Behind program and put 162,000 workers back to school to study for in-demand jobs in community colleges and universities and so forth, so many of them were older Americans who had been unjustly, you know, terminated or separated from employment.

I think of the gentleman who had been in college and then his dad had a heart attack. And mom said, you know, we all have to pitch in here. And then here he was running a retail establishment, I will just say, in Bay City, Michigan, and they looked at him and they basically said, wait, we can get some much younger person at a less price and they made some excuse. And under our current legal regime, you know, he couldn't obtain justice.

So this is affecting so many workers. What in addition to POWADA should we be looking at legislatively or otherwise?

Ms. MCCANN. Thank you for that question. As you say, POWADA is not going to fix everything. And some day AARP hopes for the same sort of restoration act for the AEDA that the American With Disabilities Act got in 2008. So there are a couple things I will mention.

I mean, just last year, Representative Grothman introduced a bill that would expand the coverage of the AEDA. It would require employers with 15 or more employees instead of 20 or more employees to not discriminate based on age. A modest change, but would have an important impact.

I think most critically we need to make sure job applicants are protected given the rampant hiring discrimination and the most recent, you know, media attention to the targeting based on age on Facebook and other platforms. But yet the courts are saying that job applicants cannot even have their day in court to attempt to prove that these policies and practices discriminate against them based on age.

Mr. LEVIN. Thank you. Well, let me pick up on that comment and ask a question of Ms. Bird. I so appreciated your testimony.

Another area that was super important to me personally and I thought we made some progress, but not nearly enough, in Michigan was prisoner reentry programs. And so we haven't talked enough about that this morning. It is so hard to get a job for a returning citizen because of all the kinds of discrimination they face. Can you just speak to, you know, what you think we need to do to help people get jobs? And there is nothing more important to reducing recidivism rates than getting people who have been incarcerated a good job and a way to be productive on the outside.

Ms. BIRD. Yeah. So I hate to be repetitive, but I am going to say it again, is that we really have to think about how reentry starts before folks go home. And so what that means is investing in the types of correctional education while people are incarcerated and also lifting the ban on Pell for people while they are incarcerated are two things. Because you don't just have some kind of magic wand when you are released and says, hey, you have all the skills that you need. And so we need to focus on that.

We also, again, need to do all the kinds of things in partnership with the private sector to ensure that we reduce the hiring barriers that they face.

Mr. LEVIN. All right, thank you very much. Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. Now the gentlelady from Nevada, Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman. And I want to thank all of you for being here today. I want to thank the Chairman for having this incredibly important hearing.

This is an issue that has such important resonance for me. My father was laid off at the age of 56 and, sadly, never found gainful employment after that, and really watched him suffer with depression the rest of his life and so taking on this issue and also looking at how we are evolving in this economy. It is not just the skills that are changing, that are, you know, that are going to help people retain employment. But it is also looking at the effect of age and our aging supply on our economy just not only from an employment point of view, but also family.

And in my State of Nevada we have some specific challenges overall. Nevada is one of five states whose 65-plus population has increased by 50 percent or more between 2005 and 2015. And we also have a sizeable population of older Americans in our rural areas. And last week, in this Committee I was also proud to participate in the Older American Act and work on legislation that is critical to ensure that we are in tune with this important segment of our population.

Ms. McCann, I just want to discuss with you the viability of older workers staying around longer in the labor market. And it seems that Congress has made it necessary for them to do that by raising the retirement age in order to collect Social Security. In fact, some people in this Congress are considering raising the age even further.

And given that we know that Social Security plays such a critical role in lifting millions of people out of poverty, specifically about 15 million Americans over the age of 65, what would be the impact on the economy of raising the retirement age without addressing age discrimination in the labor market?

Ms. MCCANN. Thank you for that question. I do think that raising the Social Security age without considering the impact of age discrimination is very shortsighted. It exacerbates an already very significant problem. So the vast majority of older workers are working because they need the money. And yet, I talked about hiring discrimination, so if they are trying to find a job and they can't get one and then they have to take their Social Security and it is reduced because of the higher level for receiving full benefits, they are facing lower Social Security benefits for life and it is going to result in greater levels of senior poverty.

Ms. LEE. Yeah, we are definitely seeing that. I can't tell you how many times in my community when I am out whether it is—you know, I am seeing older and older Americans out trying to make ends meet. So incredibly important.

I also I wanted to follow up. You know, as you know, today's workforce is more mobile than it has ever been. Workers are able to stay at a job and move around onto the next, hopefully most often for higher pay. Would you say that is true for older Americans, as well?

Ms. MCCANN. Actually it is one of the greatest assumptions and stereotypes that older workers are not going to stay in a position very long because they are just waiting till they are able to retire. And the research shows the opposite, that they have significantly longer tenure than younger individuals. And it is no, you know, black mark against the younger workers. They are just following the money. They don't have the defined benefit pension plans and other benefits that caused earlier generations to stay for an employer for their entire career.

But, unfortunately, the assumption is still there, that it is the older worker that is going to leave soon and not the younger worker. And I see those type of cases all the time where someone is denied a promotion or denied training opportunities because of the assumption that they won't be there very long.

Ms. LEE. Yeah. I want to follow up, also, along the lines of automation in terms of not only how it affects discrimination, but also what is the effect on older workers in the workforce transitions that will be needed to transition workers into occupational categories. Can you talk about how that pertains, your perspectives on that, with older Americans?

Ms. MCCANN. Sure. I mean, I think our country underperforms in our efforts to help displaced workers back into the labor force when they have lost their jobs due to automation or outsourcing to a contingent workforce. And so we definitely need more funding for our workforce development systems. We need to focus on some workforce development centers, the Senior Community Service Employment Program, trade adjustment assistance and others. It is very important for older workers.

Ms. LEE. Great. Thank you very much for your time. I yield back. Thank you.

Chairman SCOTT. Thank you. The gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chairman. I thank the witnesses for appearing today.

We have the lowest unemployment rate in 49 years, but yet only 13 percent of the population believes that college graduates are well-prepared for success in the workplace. Part of this issue comes from more than 51 percent of students wishing they could change their major, but other parts stem from that college or degree simply not being a good fit. Students are individuals and as such we should be encouraging the best fit for each. There are many opportunities that work for students beside just baccalaureate educations, and as lawmakers it is our duty that opportunity and flexibility is extended to a variety of professional paths, including career and technical.

So I would ask Mr. Pianko, how can the private sector do a better job of partnering with postsecondary institutions to ensure the proper skills are being developed so that the workforce gap closes even further?

Mr. PIANKO. Yeah, thank you. I think what we have talked about today is that there needs to be a new class of intermediaries that are private sector in nature primarily between education and employment. And what we have seen happen is that too many times when you go through college, you don't get the result that

you want and—whether you drop out or you graduate and you don't get a job.

My colleagues Ryan Craig and Cassidy Leventhal just did a whole—listed 250 alternative pathways to employment. And I think you are going to see alternative pathways to employment grow and around the edges of higher education. And I think you are going to see higher education change because you are going to see higher education need to adapt some of those models. Otherwise, you are already seeing enrollments going down for the reasons you cited. And I don't think that is going to end.

Mr. CLINE. Exactly. And with just 58 percent of students completing their education within six years, financial issues are often being cited as a common issue with completion. Do you have some steps that you would suggest that we take to address this specifically?

Mr. PIANKO. Yeah. The fundamental problem here, the reason ROI has gone down, right, return on investment, and why it suddenly doesn't make sense anymore for a lot of people to think about college is because—not because the wage premium hasn't gone down, right? You can still make more if you go to college. It is because the cost of college has gone up.

And so, you know, there are a lot of reasons, people have written doctoral theses on why the cost of college has gone up, but the cost of college has exceeded the rate of inflation for about 30 years by about 3 percent a year. So at this point it takes someone working about 2,000 hours a year to pay for college if they can, even in a state school, whereas if you went to school in the 1960s it would have taken you about 200 hours.

And so you have this massive explosion of cost with continued wage premium, but not enough to justify it. And so I would encourage you to consider ways to limit the rising cost of college. And I think a lot of it has to do with how our Federal financial aid system is structured.

And so you smiled at that.

Mr. CLINE. Can you elaborate on that?

Mr. PIANKO. We can go back and forth on that one, but.

Mr. CLINE. No, I agree with you. Can you elaborate on that?

Mr. PIANKO. Yeah. If you provide a good and you provide that level of subsidy for a good, costs will go up and that is how it works.

Mr. CLINE. Do you feel that there ought to be some increased accountability not only on the part of the institution with respect to their costs, but also on the part of the Federal Government, or reinjecting some private sector role there and that will bring with it some interest in limiting how much can be borrowed by a student?

Mr. PIANKO. Look, the Federal government right now sets the limit for how much you can borrow at each stage of your education. And especially at the graduate level, that is where most people get into trouble. It is really hard with the way the limits are set up for undergrads to get into too much trouble with Federal student loans. The real explosion is on the private side for people who choose very expensive schools or graduate programs.

And so, you know, we should be looking at creating mechanisms for skin in the game where the economic result of college is defined by the return on investment that students are getting for many people.

Mr. CLINE. As someone who is still paying off his law loans, I agree with you.

Mr. PIANKO. I am, as well, incidentally.

Mr. CLINE. With that, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman. And I just want to say thank you so much for your leadership on these critical issues and continuing to just be unflagging in breaking down unfair barriers to unemployment. Thank you all for being here.

My home State, Washington State, just ended the subminimum wage. And during the testimony in the legislature, Josh Major, a worker with a disability, told the legislature, "Just because I dance to the rhythm of the rain doesn't mean I should be underpaid. I am a great worker and bring many positive attributes to my job and deserve an equal and livable wage."

Mr. Major raised his voice alongside many other workers to demand this change, and I just thought that was such a beautiful statement.

Mr. Roos, you are in senior leadership at ACHIEVA, a Pennsylvania organization that supports people with disabilities to access employment. And your organization is integrated. You employ people with and without disabilities and your employment programs pay at or above the minimum wage. Thank you for that.

Why is it so important to listen to the concerns of self advocates, like Joshua Major, who demanded an equal and livable wage?

Mr. ROOS. Great question. Thank you for asking. And my response to that is that for years people languishing in workshops, their voices just haven't been heard. We haven't listened. For those over 100 people that are now competitively employed, at least over 50 percent of their team members who represent them always told us that they couldn't be employed. They didn't have the skills to be employed. There weren't alternatives for them from the workshop. And those 100-some placements prove otherwise.

So to reiterate, their voices haven't been heard or others have spoken for them over the years. That has been very detrimental to their progression to competitive, integrated employment.

Ms. JAYAPAL. Thank you. I just think it is an incredibly important community, workers with disabilities, and I think we should be doing everything we can in Congress to end the subminimum wage and answer Mr. Major's concerns.

Ms. Bird, let me turn to you. Many Americans continue to face an unnecessary barrier to employment as a result of faulty or incomplete criminal records released by the FBI for use in employment and licensing decisions. I know this is something that the Chairman cares very much about, has a bill around this. I care very much about it. We are going to be talking about it tomorrow during our markup of the Dream and TPS bills in the House Judiciary Committee.

Local law enforcement agencies routinely report arrest records to the FBI. However, these same groups often fail to report important information on the final outcome of an arrest or disposition of a criminal case. Many of the gang databases have no real legitimacy to why somebody is in there and it is very difficult to get off.

There are an estimated 1.8 million workers subject to FBI background checks that include faulty or incomplete information. There are Federal mandates that require criminal background reports to be complete and accurate. But a study conducted by the Urban Institute examining 75 major counties across the country found that roughly one-third of all arrests for felony charges did not result in an actual criminal conviction.

Furthermore, criminal background checks can include convictions that occurred 7 years or more prior to an employee's application date. This can potentially violate Federal statutes that limit record checks to 7 years. Arrest and convictions that have been expunged, but have not been removed from the criminal background records, can also unintentionally exclude qualified candidates.

Can you tell me from your experience how significant is this problem? And what do you recommend be done to eliminate this barrier to employment?

Ms. BIRD. Yeah. So I think you have already talked about how significant it is, and so one of the important steps is to really consider the Chairman's bill and to think about how does it work in tandem with the Workforce Innovation and Opportunity Act? And how does it work in tandem again with employers to reduce barriers to hiring?

Ms. JAYAPAL. And how do you see them working together now or not working together now?

Ms. BIRD. Well, we need to pass the bill and we have an opportunity as we think about reauthorization how do we bake in provisions that include reducing all the barriers, which one important piece is really making sure these records are accurate and we know they disproportionately impact people of color.

Ms. JAYAPAL. Thank you. Another question for you. A new Federal Reserve Board study shows that while unemployed black and white workers are almost equally likely to have left their last job voluntarily, black workers were nearly twice as likely as whites to have been laid off or fired from their last job.

And once black workers are out of a job, they experience longer spells of unemployment than white workers. Ms. Bird, how does race intersect with the barriers that we have talked about today? I feel like you have sort of touched on this in almost every answer, but I want to give you that opportunity.

Ms. BIRD. Yeah, yeah. And thank you for that opportunity. I think we know what the research says and so what that means is how does the public system help support a subsidized employment system? Because the private sector is continuously discriminating at these workers, especially if you have been impacted by the criminal justice system. And so what the public sector essentially does is allow for access and proximity to work experience, to jobs. Transitional jobs, for example, is a very good strategy that I hope that the Congress considers.

Ms. JAYAPAL. Thank you so much. I see my time has expired. Mr. Chairman, I ask unanimous consent to introduce for the record this report examining the role of job separations in black-white labor market disparities?

Chairman SCOTT. Without objection.

Ms. JAYAPAL. Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. The gentlelady from North Carolina.

Ms. FOXX. Thank you, Mr. Chairman. And I want to thank all of our witnesses for being here today.

Mr. Pianko, the Georgetown Center on Education Workforce estimated that over 95 percent of jobs created since the recession have been filled by those with at least some college education. Yet, you identified in your testimony that over 40 percent of college graduates are underemployed because they took a job after graduating that does not require a degree.

It appears employers are over-reliant on using a college diplomate as a candidate filter for their open jobs. To what extent is this contributing to the skills gap? Are there alternative metrics or indicators employers could use besides a baccalaureate degree to seek a qualified worker?

Mr. PIANKO. Well, first of all, I would ask that you also consider the Federal Government's role in this, as well, because the Federal Government has similar requirements under a bachelor's degree. And so whatever I say about the private sector I would also ask that the public sector consider, as well, which is that too often companies or the government will put on a job application that you must have a college degree to get that job. And if you think about that, one of the more interesting stats that I have heard is that 50 percent of the people replacing somebody, they are replacing somebody who did not have a college degree. So you are effectively creating a situation where you are constantly having to skill-up, spend more money on education and training when other credentials would work.

The entire mechanisms we use to hire, I know we have been focusing on older Americans, disabled workers, et cetera, it all comes back to what we call applicant tracking systems. One of the fundamental shifts we have had is that people are hiring through—you know, get 10,000 resumes, everybody hits submit on an application, and then who is reading that application is actually a computer right now. And so in the absence of the ability to meet somebody in person, you are screening out lots of people.

So to answer your question very directly, I think that we should be move towards a more competency-based hiring system. We need to create the marketplace for competencies so that people from other backgrounds can take advantage of job opportunities.

Ms. FOXX. Thank you for bringing forth the comment about the Federal government. I am concerned about that and it is a very appropriate thing to bring to our attention.

You also said in your written testimony that younger people today are seeking summer entry level work at a much lower rate than previous generations. And you point out that this lower workforce participation likely has negative effects on soft skill development.

How do college admission processes perpetuate this downward trend? And what can be done to make sure we reduce barriers to a young person's first job?

Mr. PIANKO. The most important thing you can do for your kids is encourage them to go get a real job as early as possible, I believe, no matter what your background is. And I am a firm believer in that. College admissions counselors, though, have been preferencing unpaid internships and travel effectively, volunteer travel, over sort of the difficulties of work. And if you are able to work at the level that is required to pay 2,000 hours and still uphold a college—or, you know, get through high school, you deserve a much bigger badge for distance traveled than you do for being born to the right parents.

Ms. FOXX. Thanks. I met with some people last week in the masonry industry and they told me about a student in a pre-apprenticeship program who made \$6,000 last summer working. So that is pretty impressive.

Colleges are enrolling students, but not making sure they leave campus with the skills necessary to earn a good-paying job, Mr. Pianko. This leaves the job of teaching productive skills to business and industry, as you pointed out.

What is the benefit of employers—what is the benefit to employers of investing directly in both formal and informal workforce development program for their employees? And what are some of the ways employers can reduce this hiring friction you identify in your testimony?

Mr. PIANKO. First, I think someone who was a masonry pre-apprentice and made \$6,000 in the summer. And I think too often, you mentioned B.A. degrees, too often we devalue trade work and other skills that actually create real opportunity, economic opportunity for large populations and, you know, may impact Ms. Bird's testimony, as well.

In terms of sort of the—I am sorry, I forgot your—I apologize. I was too busy answering your masonry. Just give me the quick prompt and I will come back to you.

Ms. FOXX. Shouldn't have done that example.

Mr. PIANKO. Yeah. So I loved your example so much that I went back to it.

Ms. FOXX. Well, you have talked a lot in your comments about the employers directly investing in—

Mr. PIANKO. Right. Yeah, and I think, you know, we are at a unique—and this is important for Congress to understand. We are at a unique point in time where employers are willing to pay to get people trained. If there is a time right now, I have listened to this testimony. I am not an expert on the legal issues that have been discussed here. What I can tell you is you are at a unique point in time where you can bring back these disenfranchised communities into the world of work.

Our portfolio companies are overwhelmingly serving and getting people jobs without—usually with no government funding, no payment on behalf of the future employer, into high-paying, good jobs. Because an employer right now will pay \$30,000 for someone who can code for them. I can train someone for 10 to 15.

A hospital group will train someone, will pay \$80,000 to recruit a nurse. I can train—Western Governors University, which operates in many of your states, can train someone for 40. And if you are interested in getting a diverse workforce and repositioning underrepresented minorities into high-demand jobs, this employer pay model is one of the most critical things to accomplishing that mission.

Ms. FOXX. Thank you, Mr. Chairman. But before I yield my time, I would like to say to Mr. Pianko we have to have a conversation after this hearing. You have violated a terrible—

Mr. PIANKO. I wrote down a big note and crossed that off.

Ms. FOXX. Okay. We will talk after. Thank you.

Chairman SCOTT. Thank you. I recognize myself for 5 minutes.

Let me follow through, Mr. Pianko, on that. As you know, you get a tax credit if you invest in equipment or technology that can make your operation more efficient, but you don't get a similar tax credit for educating your workforce. Should there be a similar tax credit?

Mr. PIANKO. I would go much further than that, Mr. Chairman. I think you have a unique opportunity with HEA to actually integrate a massive funding stream into getting people jobs and I would strongly encourage you to consider that. I mean, yes, there should be a tax credit, but you can't really value—you can't eat tax credits. We need cash on the table.

Chairman SCOTT. Thank you. Ms. McCann, did I understand you to say that you can actually prove age discrimination, but that is not enough?

Ms. MCCANN. That is exactly what I said and that is what Mr. Gross did. He proved that age was a factor in his employer's decision to demote him, but since he was unable to also prove that it was the but-for decision, in other words that the employer would not have made the same decision without considering his age, he was unable to prevail.

Chairman SCOTT. Who has the burden of proof to show that there was no other motivating force?

Ms. MCCANN. Right now, under the Gross decision, the employee, who is not in the position that the employer is to make that showing.

Chairman SCOTT. Ms. Bird, you said we know what works on incarcerated and you mentioned Ban the Box. Do you have evidence to show that actually works?

Ms. BIRD. Yes, there has been evidence to show that it actually works. But we also know it doesn't go far enough because there still is discrimination against workers of color as well as young people. So we have to think about Ban the Box as well as other strategies.

Chairman SCOTT. Has the EEOC suggested that if you don't have an individualized assessment of the criminal record that it could constitute illegal discrimination? Is that being used as a defense against improper use of criminal records?

Ms. BIRD. I am not able to answer that. I am not an expert in what the EEOC does.

Chairman SCOTT. You mentioned the inaccurate criminal background checks. Can you say a word about how bad a problem that is?

Ms. BIRD. Yes, I believe the congresswoman already articulated how bad it is and how inaccurate it is in terms of arrests to conviction and so forth. And so it is really critical that is cleaned up and your act will help to do that, and, also, to increase employment for folks who are returning.

Chairman SCOTT. Thank you. I believe the gentleman from Wisconsin had one question.

Mr. GROTHMAN. For Mr. Roos. Again, in your testimony you said too many current certificate holders will not take that approach under their own volition. In other words, we have to force them out.

There is a young gal with disabilities in my district who had a job, about 8 hours a week outside the work shelter and the other 30 hours a week in the work shelter. One employee asked her which job she preferred and she said I like my other job, too, but all my friends are here. In other words, she preferred the work center.

Now, your testimony says that we have to take away these people's own volition. How do you justify to yourself just because people were born with a different ability than you or I that they no longer have the right to choose where they want to work?

Mr. ROOS. I don't believe that we have the right to pay any person, disability or not, less than the minimum wage. This is not taking away the rights of anyone. This is creating opportunities for people with disabilities that they have not been able to experience.

Mr. GROTHMAN. No, she has both jobs, understand. You are not answering the question. She has jobs in both places. She knows what it is like to work in both places and she prefers to work in the workshop. Why do we take that opportunity away from her?

Mr. ROOS. Let us remember what workshops are designed to do. Workshops are designed to develop the skills in order to become competitively employed. So in your example, she has shown that she has the skills to become competitively employed, so why have to rely back on a workshop that is supposed to develop those skills to achieve an outcome?

Chairman SCOTT. Reclaiming my time. Let me follow through, Mr. Roos, on that. There is in the transition bill funding to support transitional skills to get people out of the workshop into competitive employment. There is also the possibility for those that, frankly, cannot make the minimum wage—earn the minimum wage—wage subsidies. Does that cover the problems that the gentleman from Wisconsin articulated?

Mr. ROOS. I think that it may and I think all of the tenets of the Act support current 14(c) holders in order to be able to achieve these outcomes and takes into consideration those very specific circumstances which you are describing and, again, can create that whole community life for people currently in workshops.

Chairman SCOTT. Thank you. That ends the Member questions. The gentlelady from North Carolina, do you have a closing statement?

Ms. FOXX. Yes, sir.

Chairman SCOTT. The gentlelady is recognized.

Ms. FOXX. Thank you, Mr. Chairman. And once again, I want to thank our witnesses for being here today.

As I said in my opening remarks, this hearing on eliminating barriers to employment has focused on more, more, more Federal Government intervention and not what most people in this country understand, and that is that education and skills are the key to employment. High schools don't encourage students to work, but in many cases to volunteer, and that is a problem. Blaming amorphous entities or concepts such as the economy as structural barriers is a cop-out.

The economy has created 7.1 million jobs that are unfilled. There is not one of us who doesn't hear from employers many times every week, I have got all these jobs, I can't find people with the skills. You cannot walk into any business or industry in this country and not see signs up, Help Wanted.

It is easy to blame someone or something else for one's failures. We all do it. Perpetuating that mindset does not help anyone, but actually hurts a person by helping them avoid the truth.

We have learned some lessons, I think, particularly from Mr. Pianko's testimony today. Number one, the current system of higher education is falling short and the cost to students, employers, and the economy is enormous, \$1.5 trillion in debt for students. Forty percent of students are underemployed in their first job. And as I said earlier, there are 7 million-plus unfilled jobs.

The solution partly resides in the private sector with intermediaries bridging the divide between schools and employers. But the Federal approach to workforce development is to blame for perpetuating a failing system. As this Congress continues, this Committee must consider comprehensive and true reform to the Higher Education Act. Federal work study and the private sector partnerships, apprentice-style opportunities, renewed focus on outcomes for all students, requiring skin in the game for colleges and universities, all of those elements that were in the PROSPER Act, which passed this Committee last year.

Federal requirements are stifling the interaction between businesses and college campuses and are setting up a generation of Americans for failures. Colleges and universities need to provide their students the opportunity to develop the skills necessary to succeed in the workplace.

I remain committed to reforming the postsecondary system so it works for students. There is no issue more critical to securing a prosperous future for our Nation.

I yield back, Mr. Chairman.

Chairman SCOTT. Thank you. And again, I thank the witnesses for joining us for this important discussion on barriers to employment that keep too many Americans out of work. Obviously, skills education can certainly help.

Today the Committee heard how older workers, workers with disabilities, disconnected youth, and returning citizens face discrimination and barriers to employment that undermine opportunities to take part in the benefits of work. These barriers have serious consequences for a wide range of communities. Older workers, for example, face obstacles to challenging workplace age discrimination.

Workers with disabilities face outdated laws allowing them to be paid a subminimum wage. And millions of Americans disconnected from school or the workforce face structural obstacles to reentering.

Yet what remains consistent across these obstacles is that when we work together to reduce these barriers, we strengthen America's workers, the economy, and our communities. Accordingly, Congress has a responsibility to ensure that all Americans can have access to employment and earn the financial stability and independence that come with work. By considering the Opening Doors for Youth Act, the Protecting Older Workers Against Discrimination Act, and the Transformation to Competitive Employment Act, we took an important step towards fulfilling that responsibility and empowering Americans shut out of the workforce to access rewarding careers.

I look forward to working with my colleagues on both sides of the aisle to pass these bills and ensure that all Americans can take an active role in our country's workforce and contribute to our communities.

Finally, I would like to ask unanimous consent to introduce into the record a letter of support for the Transformation to Competitive Employment Act from 19 national and 134 state and local disability organizations, the final report from the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, convened as required by WIOA, which recommended to Congress to pass a bill to phase out Section 14(c) while providing resources to expand the capacity of competitive integrated employment.

In a recent report from the National Council on Disability, the independent Federal agency charged with advising the President, Congress, and other Federal agencies regarding disability policies and programs recommending that Congress pass a bill to phase out 14(c) while providing resources to expand the capacity of competitive employment; and a letter from Paralyzed Veterans of America in support of H.R. 1230, the Protecting Older Workers Against Discrimination Act.

Is there further business to come before the Committee?

If not, the Committee is now adjourned.

[Additions submissions by Mrs. Foxx follow:]



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June 4, 2019

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Ranking Member Virginia Foxx
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Re: Hearing on "Eliminating Barriers to Employment:
Opening Doors to Opportunity", May 21, 2019

Dear Chairman Scott and Ranking Member Foxx:

Please find attached my statement addressing the referenced Committee hearing.

Very truly yours,

SEYFARTH SHAW LLP

/s/ *Lawrence Z. Lorber*

Lawrence Z. Lorber

LZL:kmm
Attachment

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June 4, 2019

**Statement of Lawrence Z. Lorber, Counsel, Seyfarth Shaw LLP
Committee on Education and Labor
Hearing on "Eliminating Barriers to Employment: Opening Doors to Opportunity"
May 21, 2019**

BACKGROUND

H.R. 1230 - Protecting Older Workers Against Discrimination Act, ("POWADA") purports to "cure" a lapse in the coverage of the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 by importing into those statutes the theory of mixed-motive discrimination included within Title VII in the Civil Rights Act of 1991. POWADA would amend those statutes by including language parallel to that included in Title VII holding that "the complaining party demonstrates that age or an activity protected by subsection (d) was a motivating factor for any practice, even though other factors also motivated the practice." POWADA further provides that the complaining party can rely on any type of admissible evidence sufficient for a trier of fact to find that an unlawful practice occurred under the respective acts.

POWADA reverses the Supreme Court's holding in *Gross v FBL Financial Services, Inc.*, 557 U.S. 167 (2009) ("*Gross*") which held that the specific language in the 1991 Civil Rights Act which recognized the mixed-motive theory in Title VII did not recognize that theory in the statutes

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amended by POWADA. The proponents of POWADA argue that a theory of equity urges that the definitions of discrimination under our various and varied non-discrimination laws be uniform. It is curious, however, that the sponsors of POWADA wrote the legislation to maintain the significant limitations on remedies included in the 1991 Civil Rights Act whereby a finding that the improper employment decision based upon “a motivating factor” is limited to an award of attorney’s fees and costs, a possible injunction, and declaratory relief. This would be the case even if the employer demonstrates that the employment action would have occurred in the absence of the impermissible factor. A mixed-motive violation under POWADA, therefore, would not result in any individual relief to the claimant including damages or an order of rehire, hire, reinstatement or any other individual relief. But it would result in needless litigation.

Finally, and as will be discussed separately, POWADA also undertakes to reverse another Supreme Court decision, *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013) (“*Nassar*”). There the Supreme Court relied in part on the *Gross* decision and held that since the 1991 Civil Rights Act did not address or amend section 704 of Title VII (pertaining to retaliation claims), then the mixed-motive theory of discrimination would similarly not apply to retaliation charges. Notably, the Findings and Purposes section of POWADA is absolutely silent as to the application of the mixed-motive theory to retaliation and POWADA does not even refer to the *Nassar* decision.

DISCUSSION

While Congress can further the reach of any statute as long as its action is constitutionally permissible, the underlying theory of POWADA—that the various non-discrimination statutes

should be interpreted precisely the same when they define violations—is belied by the history, passage, amendment and structure of the non-discrimination statutes here at issue. Indeed, the question of incorporating age discrimination into the prohibitions of discriminating based on race, sex, gender, religion and national origin of Title VII was debated when Title VII itself was passed in 1964. During the debate held on February 8, 1964, the House voted down an amendment by the vote of 123 to 94, which would have included age. In the debate, Chairman Cellar (D-NY), a main sponsor of the Civil Rights Act of 1964, stated that the reach of age discrimination, although inherently pernicious was not widely understood and differed from the focus of the Civil Rights Act. Similarly in the Senate debate on June 11, 1964, Democrat Senators Humphrey and Morse, and Minority Leader Dirksen, all prime sponsors of the Civil Rights Act, argued that the problem of age discrimination was distinct from that of race discrimination and should be addressed separately. The amendment to include age in the Civil Rights Act was defeated 63 to 28.

Of course, in 1967, Congress did address age discrimination but included it as an amendment to the Fair Labor Standards Act, as the Age Discrimination in Employment Act (ADEA) and not Title VII. But when Congress passed the ADEA in 1967 it included within that law a provision not found in Title VII. Congress determined in 29 U.S.C. § 623 (f) (1) that it would not be unlawful for an employer to rely on “reasonable factors other than age” (RFOA). The Supreme Court recognized that:

“Congress took account of the distinctive nature of age discrimination, and the need to preserve a fair degree of leeway for employment decisions with effects that correlate with age, when it put the RFOA clause into the ADEA ‘significantly

narrowing its coverage,” citing to *Smith v. City of Jackson*. 544 U.S. 228 at 233 (2005).

Meachem et. al. v. Knolls Atomic Power Laboratory, 554 U.S. 84, 102. (2008).

This Congressional action certainly did not denigrate the problems of age discrimination and the ADEA, but rather recognizes, as it should, that in dealing with the complexities of discrimination, not every form of discrimination is the same nor does it require that every form of discrimination be defined precisely the same, or that the procedures and remedies designed to address the discrimination be the same. So not only did Congress not include the various statutes at issue in POWADA in the 1991 Civil Rights Act recognizing mixed-motive discrimination in Title VII, it also did not include ADEA in the new remedial scheme established for Title VII including punitive and compensatory damages. And, in reviewing the RFOA affirmative defense, it is difficult to square that defense with the mixed-motive theory holding that liability can be found when there are two factors deemed to be motivating, a “good” factor and a “bad” factor. Indeed, it is difficult to discern how the mixed-motive theory can co-exist with the RFOA defense.

Another significant concern about POWADA which should be addressed is that including a mixed-motive theory into the ADEA, and the other statutes at issue, will simply encourage needless litigation in which, by statute, the only successful participant will be the plaintiff’s attorney. If the employer demonstrates it would have taken the same action in the absence of the impermissible motivating factors of age or retaliation, by statute, the “successful” plaintiff gains nothing from the proceeding and indeed may very well be left with a tax liability when his or her attorney’s fee is paid. Too, because the theory of mixed-motive is so elusive, and under the RFOA theory in the

ADEA will be inextricably raised, it will undoubtedly make it nearly impossible for an employer to prevail on summary judgment even if it has a persuasive explanation for its action. Such a result does not prevent discrimination. Rather it furthers unnecessary litigation. Indeed, under the mixed-motive theory a persuasive explanation for an employer's action is not persuasive at all. That is why the Supreme Court distinguished the ADEA from Title VII of the Civil Rights Act in the *City of Jackson* and *Meachem* decisions.¹

Americans with Disabilities Act. Equally clear is that the inclusion of the ADA and the cited sections of the Rehabilitation Act in POWADA reflects an attempt to achieve "statutory equality" without any understanding of the critical elements of the ADA and the Rehabilitation Act. The problem of disability discrimination, and the well-established procedures to deal with it does not lend itself to a mixed-motive analysis. The ADA has its own procedures and required employer actions including the key element of the interactive process. In the interactive process, the parties must engage in discussion of all factors considered for reasonable accommodation. There may be instances where the employer does not accept the requested accommodation and instances where the employee or applicant does not accept the proffered accommodation. Under a mixed motive theory, the interactive process could by itself be an example of a mixed-motive and lead to a finding of employer liability. Concern about expensive and needless litigation addressing a mixed-motive would hinder the achievement of the key purpose of the ADA and Rehabilitation Act,

¹ In considering age discrimination and the reach of the ADEA, it should be noted that unlike other protected characteristics, age is not an immutable characteristic and the ADEA treats age differently even as compared to individuals within the protected age level but with different ages. See e.g. *O'Connor v Consolidated Coin Caterers*, 517 U.S. 308 (1996). So in attempting to rationalize RFOA with mixed motive treatment, it becomes even more difficult to reach a fair conclusion and the burden on employers is even greater.

reasonable accommodation. There is no evidence that the ADA needs the mixed motive analysis in order to be an effective statute.

Retaliation. In addition to the attempt to include mixed-motive into three different statutes, the sponsors of POWADA inserted new and alarming language into the bill, a heretofore undiscussed requirement to include mixed-motive into the retaliation theories already included in the statutes at issue and Title VII. The Findings and Purpose section of POWADA provides no reason or purpose for these proposed amendments. Indeed, only in the testimony of the advocates for POWADA do we find the reference to reversing the Supreme Court decision in *Nassar*. In *Nassar*, with some reliance on *Gross*, the Court reached the obvious conclusion that since Congress chose not to amend the retaliation section in Title VII in 1991, it certainly did not intend to amend, through judicial fiat, that statutory section in 2013. Nor should it have.

Retaliation is inherently a case of differing explanations. The plaintiff claims that the employer is taking an adverse action because the plaintiff complained of a certain improper employer's action (or participated in an action opposing an improper employer action). If a case proceeds beyond dispositive motions, the employer has the burden to show that its action was otherwise justified because of an employment policy or some other legitimate non-retaliatory reason. The plaintiff will attempt to show that the employer's explanation is without credence. If the plaintiff is successful, then all of the remedial provisions of the operative statute are available. The plaintiff will receive actual relief.

However, in a mixed-motive case, which will involve almost the same set of facts, the plaintiff receives nothing. This gives the plaintiff's attorney two bites of the apple but in a mixed-

motive retaliation case, the plaintiff does not even get the core. Furthermore, if the mixed motive involves the application of an employment policy, the plaintiff's attorney may well attempt to request an injunction precluding the employer from enforcing its own policy. Thus, aggressive plaintiffs' attorneys could use mixed-motive retaliation claims to seize control of an employer's personnel system.

In 1991 Congress decided that it should broaden the theory of mixed-motive discrimination in Title VII because of a belief that the Supreme Court decision in *Hopkins v Price Waterhouse*, 490 U.S. 228 (1989), where the plaintiff in fact was successful, created an unnecessary inhibition on the ability of Title VII plaintiffs or their lawyers to pursue cases. However, recognizing that the mixed-motive theory was perhaps antithetical to the core purpose of Title VII because it could lead to finding liability for possible bad thoughts or so called impermissible motivating factors even though the impermissible motivating factor really did not result in a discriminatory action, Congress provided that while a plaintiff could get her or his day in court, they would not benefit.

CONCLUSION

Thus with the ADEA and the problem of age discrimination the mixed-motive theory is a bad fit. Congress provided for the RFOA as an explanation for an employer's actions has insured that age will always be part of the inquiry. Adding mixed-motive as a threshold for liability under POWADA will insure there will always be an issue of fact to be resolved eliminating the prospect of a successful motion for summary judgment thereby extending litigation and increasing costs for all parties involved.

And with respect to the ADA and Rehabilitation Act, the mixed-motive theory is not only a bad fit but will encumber the achievement of the direct purposes of the Acts. Rather than the constructive interchange which would lead to a focused accommodation, the concern about mixed motive claims will constrict the examination of workplace accommodations. And most concerning, “success” in a mixed-motive litigation will lead to no relief for the individual.

Finally, maintaining the status quo where mixed-motive is not the threshold for liability in any of these statutes does not denigrate any of these vital protections. Requiring that they all lose their individual identity and be interpreted the same merely eliminates the unique factors associated with these different protected classes. POWADA represents a misunderstanding of the complexity of employment discrimination law and should not be enacted.



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June 4, 2019

The Honorable Bobby Scott
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The Honorable Virginia Foxx
U.S. Representative and Ranking Member
House Education and Labor Committee - Republicans
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**In Re: Submission to the Congressional Record, May 21 Full Committee Hearing,
Eliminating Barriers to Employment: Opening Doors to Opportunity**

Dear Chairman Scott and Ranking Member Foxx:

Thank you for the opportunity to submit this letter to the Record in relation to the House Education and Labor Committee's May 21 hearing on Eliminating Barriers to Employment: Opening Doors to Opportunity.

ACCSES is a national disability policy organization that represents community-based disability service providers across the country and the individuals with disabilities they serve. Guided by federal policy, including the Americans with Disabilities Act, the Olmstead Decision, the Workforce Innovation and Opportunity Act, the Individuals with Disabilities Education Act, the Rehabilitation Act of 1973, and other federal and state laws, ACCSES stands with over three million people with disabilities and over 1,200 community rehabilitation providers across the country in supporting maintaining a full array of options and opportunities for ALL people with disabilities. As part of that mission, ACCSES represents and stands with the individuals who would be affected if the right to be paid special minimum wage under 14(c) certificates were eliminated.

We are disappointed that the Education and Labor Committee conducted its May 21 hearing without a witness to tell the Committee about the positive impact that having a full array of options has on the lives of people with the most significant disabilities. We appreciate the

comments of Congressman Glenn Grothman of Wisconsin. Congressman Grothman understands the important role that community rehabilitation providers (CRPs) play in their communities. The politically manufactured idea that CRPs providing people with significant opportunities at work centers and elsewhere are not "in the community" is an absurdity that is placing good jobs – and the people who are working at them – at risk.

The value of a job in or through CRP-run work centers that provide employment opportunities and training cannot be overstated. In short, if CRPs and the jobs they provide were eliminated, they would have to be reinvented. CRPs have played the primary role in disability employment for decades. The network of CRPs across this country, staffed by people with substantial knowledge and extensive experience, are a vital component of providing and maintaining work opportunities for people with the most significant disabilities. CRPs will play a major role in future disability policy, too, because there can be no growth without them. CRPs not only provide training, work opportunities, transportation, and job supports, they also work with the people they serve to provide supported employment and job coaches in competitive jobs.

In some places in this country, jobs in which people were thriving were eliminated in favor of day programs or as some advocates call it, a "meaningful day." What is more patronizing or discriminatory to a person with a disability than telling them their job is going to be replaced with day activities so they can have a "meaningful day"? What is meaningful for most American adults is having a job and having the dignity of work. Every person working in or through a work center under a 14(c) certificate has chosen the dignity of work. Each person could participate in a full-time day program right now. In fact, many people choose an option that allows the flexibility of working part of the day under a certificate and spending part of the day in day activities. Other people work part of the day in a competitive job, often with job coaches or other job supports, and spend part of the day at a work center. In other words, a meaningful day at or through a CRP offers many options, including options that make competitive employment possible. Competitive jobs frequently provide a person with a significant disability only a few hours of work per week – a subject that Congressman Grothman touched on during the Committee hearing. This can leave people with too many empty days. Going from a 30 hour per week job to two four-hour shifts does not benefit an individual who does not do it by choice.

ACCSES is not suggesting that there should not be additional options. To the contrary, we champion expanding choices. We appreciate and promote apprenticeships, job sharing, job coaching, entrepreneurship, and increasing competitive opportunities. Where we draw a line, is taking a valuable and important tool out of the employment toolbox and with it, the jobs that provide great satisfaction to so many people. A lot of people who would not be affected support eliminating 14(c) certificates. They are **not** the ones to whom this Committee should be listening. This Committee needs to hear from individuals who want to keep their jobs. This Committee also needs to hear from CRPs on the important role they play in their communities.

If there are a lot of misconceptions about CRPs, there are even more about 14(c) certificates. Let us look at some truths:

1. Section 14(c) requires an application and regular renewals through the U.S. Department of Labor. The Department of Labor has strict enforcement measures.

2. The certificates are heavily regulated. Even though they are issued by the Department of Labor, they cannot be used without state authority.
3. Federal law requires regular job counseling for every person who earns less than minimum wage under a certificate.
4. No one is required to work under a Section 14(c) certificate. People working under Section 14(c) certificates already could participate in a day program or other employment. Many people, in fact, choose to divide their day between work and day activities. Moreover, many people working under a 14(c) certificate make *more than* minimum wage.
5. Working under a Section 14(c) certificate gives people the opportunity to develop job skills that they can expand on in other environments. These critical job-sustaining skills have allowed many people who started out working under a Section 14(c) certificate to take on new challenges that were previously out of reach.
6. Section 14(c) certificates allow people with the most significant disabilities the dignity of work and of earning a paycheck. We cannot underscore enough the importance of this fact.

One of the biggest concerns ACCSES has with the Transformation to Competitive Employment and Raise the Wage bills is that Congress is trying to eliminate Section 14(c) certificates without any real data. Neither the Federal government nor any State government has conducted a substantive, unbiased study of what happens when 14(c) is eliminated. The opportunities Section 14(c) certificates provide are too important for policy to be decided in a vacuum or based on less than hard evidence. Even at the May 21 hearing, it was clear that the witness organization testifying to the effects of eliminating its certificate was not able to find work for everyone – or even a majority – of the people who had been working. For those people who are working in a competitive job, the testimony shows that they are working fewer hours. Eliminating options has real life consequences for individuals and their families. Those consequences must be part of the discussion.

We therefore would like to propose a different solution rather than turning to legislation that would eliminate the 14(c) certificate. According to the Bureau of Labor Statistics, in 2018, **30.4 percent of people with disabilities between the ages of 16 and 64 were in the workforce versus 74 percent of people without disabilities** in the same age range. Let's work together to close that gap. Instead of taking options away, let's focus on (a) expanding employment opportunities and educating businesses on how to hire people with the most significant disabilities, (b) work on transportation issues that are a more than metaphorical roadblock to full employment, and (c) really invest in the kind of employment supports that people will need. Let's also recognize one important fact: If 14(c) were eliminated tomorrow, **no one would benefit**. No one would benefit, but a lot of people would be hurt. That is not a good outcome.

We ask that the Members of this Committee visit work centers in their states and districts before taking any action that would lead to the elimination of 14(c). If there is no work center near a

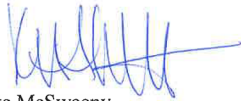
specific Member, we can arrange a visit to one of our ACCSES member organizations. It will be worth your time. We also ask that this Committee invite ACCSES's testimony at a future hearing, and work more closely with ACCSES and the individuals and organizations we represent on disability policy. Together, we can accomplish so much.

Thank you for the opportunity to submit this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Terry R. Farmer".

Terry R. Farmer
President & CEO
ACCSES

A handwritten signature in blue ink, appearing to read "Kate McSweeney".

Kate McSweeney
Vice President of Government Affairs
& General Counsel

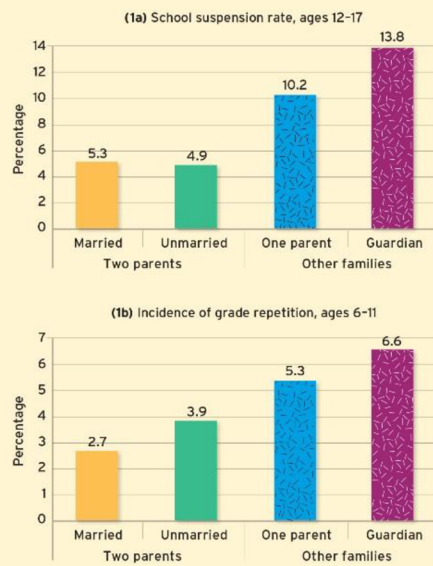
Rep. Virginia Foxx (R-NC)
Republican Leader
Committee on Education and Labor
Hearing on “Eliminating Barriers to Employment: Opening Doors to Opportunity”
May 21, 2019

Impact of Family Structure on Student Suspension Rates

Citing data from the U.S. Census Bureau, a 2016 *EducationNext* article found that students ages 12-17 from one-parent households are nearly twice as likely to be suspended as students from two-parent households.¹ Here is the chart from that article illustrating this data.

Suspension Rates and Grade Repetition (Figure 1)

Children ages 12 to 17 who live with just one parent or a guardian are at a higher risk of school suspension than their peers who live with two parents. Similarly, 6- to 11-year-olds who live with one parent or a guardian are more likely to repeat a grade than children of the same age in two-parent families.



SOURCE: U.S. Census Bureau, Survey of Income and Program Participation, 2008 panel

¹ Anne J. Egalite, *How Family Background Influences Student Achievement*, *EDUCATIONNEXT*, Spring 2016, Vol. 16, No. 2, <https://www.educationnext.org/how-family-background-influences-student-achievement/>.

EEOC Age Discrimination Charges

The U.S. Supreme Court decided *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), on June 18, 2009. Listed below is data from the U.S. Equal Employment Opportunity Commission (EEOC) relating to age discrimination charges filed from FY 2001 through FY 2009 and from FY 2010 through FY 2018.²

Age Discrimination Charges (Average Per Year)

FY 2001 – FY 2009: 19,320

FY 2010 – FY 2018: 20,873

Age Discrimination Charges as a Percentage of All Charges Filed

FY 2001 – FY 2009: 23.2%

FY 2010 – FY 2018: 22.8%

Bureau of Labor Statistics: Facts About Older Workers

The Bureau of Labor Statistics (BLS) published an article on May 20, 2019, titled “How Are Older Workers Doing?”³ which included the following facts:

- “For workers age 65 and older, employment tripled from 1988 to 2018, while employment among younger workers grew by about a third.”
- “Among people age 75 and older, the number of employed people nearly quadrupled, increasing from 461,000 in 1988 to 1.8 million in 2018.”
- “The labor force participation rate for older workers has been rising steadily since the late 1990s. Participation rates for younger age groups either declined or flattened over this period.”
- “Over the past 20 years, the number of older workers on full-time work schedules grew two and a half times faster than the number working part time.”
- “Full-timers now account for a majority among older workers—61 percent in 2018, up from 46 percent in 1998.”
- “In 1998, median weekly earnings of older full-time employees were 77 percent of the median for workers age 16 and up. In 2018, older workers earned 7 percent more than the median for all workers.”

² EEOC, CHARGE STATISTICS (CHARGES FILED WITH EEOC) FY 1997 THROUGH FY 2018, <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.

³ BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., HOW ARE OUR OLDER WORKERS DOING? (May 20, 2019), <https://blogs.bls.gov/blog/2019/05/20/how-are-our-older-workers-doing/>.



June 4, 2019

VIA ELECTRONIC MAIL

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
2175 Rayburn HOB
Washington, DC 20515

Re: **H.R. 1230, the "Protecting Older Workers Against Discrimination Act"**

Dear Chairman Scott:

Littler Mendelson, P.C.'s Workplace Policy Institute™ (WPI) respectfully submits these comments regarding the above-referenced legislation, and requests that they be included in the record of the Committee's May 21, 2019 hearing, "Eliminating Barriers to Employment: Opening Doors to Opportunity."

By way of introduction, WPI partners with the employer community to engage in legislative and regulatory advocacy efforts on issues that impact the workplace on federal, state, and local levels. WPI gives employers a voice in the legislative and regulatory process, with the goal of forging consensus and support for practical solutions that balance the rights of workers and employees while increasing economic opportunity for all. We limit our comments today to the issues raised at hearing regarding the "Protecting Older Workers Against Discrimination Act" (POWADA).

At the outset, we state in no uncertain terms that WPI and its members oppose workplace discrimination on all protected bases, and state categorically our position that all workplace decisions – from the initial hiring decision throughout an employee's workplace tenure – are rightly based on merit, ability, and equality of opportunity. We underscore further that discrimination on the basis of age is no less pernicious than discrimination on the basis of race, sex, ethnicity, disability, or any other characteristic protected under law. That said, we suggest that rather than simply amend the Age Discrimination in Employment Act (ADEA) in a manner unlikely to address root causes of age discrimination, the Committee devote its resources and energy to exploring practical solutions that will actually help older workers. Our concerns and recommendations are set out below.

First, we question the necessity of the proposed legislation. While proponents of the legislation, which purports to simply overturn the decision of the U.S. Supreme Court in *Gross v.*

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FBL Financial Services, Inc., 557 U.S. 167 (2009), maintain that the legislation is necessary to ensure robust protections under the ADEA, there is little empirical evidence to support such a claim. Indeed, as the sole witness testifying in support of the legislation at the Committee's May 21 hearing herself observed:

For several reasons, *it is difficult to quantify the impact that the Gross decision has had on the number of older workers who bring cases, and the number of those who win them.* First, it is difficult to separate out the impact of the Gross decision from larger economic forces. Around the same time of the Gross decision, when we might have expected a drop in charges due to Gross-inspired discouragement from employment attorneys, *there was a sizeable jump in the number of ADEA charges filed with the EEOC*, which coincided with massive, recession-spawned lay-offs that resulted in record unemployment levels among older workers.

Testimony of Laurie McCann, AARP, U.S. House Committee on Education and Labor Hearing, "Eliminating Barriers to Employment: Opening Doors to Opportunity" (May 21, 2019) (emphases added). This testimony suggests two conclusions: (1) support for the bill is based at best on anecdotal, and at worst highly speculative, information; and (2) these speculations notwithstanding, the Gross decision has in no way deterred potential victims of age discrimination from bringing their cases forward.

Indeed, in contrast to the claims of the bills' supporters, the Supreme Court made expressly clear that its Gross decision did not increase the burden on plaintiffs to prevail under the ADEA: "There is no heightened evidentiary requirement for ADEA plaintiffs to satisfy their burden of persuasion that age was the 'but for' cause of their employer's adverse action, see 29 U.S.C. § 623(a), and we will imply none." 557 U.S. at 178. In light of this fact, it is perhaps not surprising that since the Gross decision, numerous federal appeals courts have ruled in favor of plaintiffs even where a "mixed motive" was potentially in play. *See, e.g., Mora v. Jackson Memorial Foundation, Inc.*, 597 F.3d 1201 (11th Cir. 2010); *Baker v. Silver Oak Senior Living Mgt. Co.*, 581 F.3d 684 (8th Cir. 2009) (citing Gross to conclude that that plaintiff had produced sufficient evidence to warrant trial on claim of age discrimination).

Second, as a matter of substantive law, we are concerned that the bill as drafted would in too many instances result in an employee who has *proven* that he or she was the victim of age discrimination recovering nothing under federal law, and certainly less than they would under the current-law Gross standard.

Post-Gross, under the ADEA, if an employee or applicant proves that he or she was the victim of intentional age discrimination – more specifically, that they were subject to an adverse employment action because of their age – *they prevail under law, and are entitled to a wide range of remedies in law and equity that are intended to make that individual whole.* For example, under those facts, the aggrieved employee could potentially be entitled to back pay, reinstatement, promotion, or hire, or front pay where such remedies would not be feasible. This in addition to the plaintiff's costs (including attorneys' fees) of vindicating his or her rights.

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Those protections are undermined by POWADA. Under H.R. 1230, that same individual may prove that the employer's decision was based on his or her age – at which point the employer would be given the opportunity to limit its liability by proving it would have come to the same conclusion even absent age discrimination. Were the employer to successfully prove such a defense, the victim's monetary recovery would be dramatically limited. He or she would be entitled to no significant equitable relief (*e.g.*, reinstatement) and dramatically limited financial relief (essentially, attorneys' fees and costs alone). To so limit the recovery of an individual who has *proven* that his or her employer factored age into its employment decision hardly seems to "protect" such workers. Indeed, the only party who "wins" under such a scenario is the plaintiffs' bar.

Third, we are concerned the scope of H.R. 1230 – which extends beyond the ADEA to amend a series of additional provisions of law outside the scope of the *Gross* decision – has not been shown to be necessary or given any serious legislative examination, and may potentially result in unintended consequences. Specifically, H.R. 1230 – the title of which suggests a narrow focus on addressing discrimination on the basis of age – in fact amends other laws, including the Americans with Disabilities Act (ADA) and other federal laws governing unlawful retaliation in the workplace. The standard and structure of proof of discrimination under these laws are distinct and impose liability under very different circumstances than the ADEA.

For example, the ADA imposes on covered employers an affirmative duty to provide a reasonable accommodation to an individual with a disability, unless doing so would pose an undue burden on the employer. Courts have split on the question of whether an employer's failure to engage in the "interactive process" contemplated under the ADA's reasonable accommodation provisions is a *per se* violation of the law, or whether such failure results in employer liability only where the employer's failure to engage in results in actual harm to the employee. As amended by H.R. 1230, the ADA could presumably result in liability for an employer who fails to engage in the interactive process, even where it may be evidently obvious that no reasonable accommodation would allow the employee to perform the essential functions of his or her position. Is the employer's failure to engage in such a process a "motivating factor" under POWADA? Assuming *arguendo* that it may be, an employer under POWADA may be able to establish a "same action" defense as outlined above – proving that its failure to engage would not have changed the ultimate result – but that employer, otherwise acting lawfully under the ADA, would conceivably face liability for injunctive relief, and as a dollars-and-cents manner, attorneys' fees.

Finally, we are concerned that certain provisions of H.R. 1230 are unclear in their scope and purpose, and appear to be novel additions to the existing scheme of federal law protecting the civil rights of employees. Specifically, section 3(a)(2) of POWADA provides that a complaining party "may rely on any type or form of admissible evidence sufficient" for a reasonable trier of fact to find a violation of the law, and that such individual "shall not be required to demonstrate that [age or retaliation] was the sole cause" of an unlawful employment practice. At the same time, the bill's purposes provide in section 2(b)(3)(C) that an individual may demonstrate an unlawful employment practice through "any available method of proof or analytical framework."

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Foremost, we note that this language is almost limitlessly broad, and that the inclusion of it as a “purpose” of POWADA does nothing to clarify the application of the proposed statutory language, instead leading only to confusion as to the law’s true intent and impact. For example, there is currently a debate among courts as to whether applicants (as distinguished from employees) may bring a claim of “disparate impact” discrimination under the ADEA. *Compare, e.g., Kleber v. CareFusion Corp.*, 913 F.3d 480 (7th Cir. 2019) (*en banc*) (applicant may not state disparate impact claim under ADEA) with *Rabin v. PricewaterhouseCoopers LLP*, 236 F.Supp.3d 1126 (2017) (reaching opposite conclusion). Indeed, the very question is presently before the U.S. Supreme Court for review. Does H.R. 1230’s stated purpose of imposing liability on an employer under “any available method of proof or analytical framework” purport to decide that question? If so, that is an issue that merits serious examination and legislative scrutiny; if not, the bill should be clarified to explicitly state so.

We commend the efforts of the Committee to explore barriers to employment across a range of bases. Particularly insofar as age discrimination and the ADEA are concerned, we suggest that a focus on increased litigation is misplaced. Rather, we urge the Committee to explore solutions that will result in actual protections and improved economic opportunity for older workers.

In that light, the recommendations of the Equal Employment Opportunity Commission (EEOC) with respect to eliminating age discrimination in the workforce seem especially trenchant. In June 2018, to mark the 50th anniversary of the effective date of the ADEA, the EEOC released a report addressing age discrimination in today’s workforce, “The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA).” Recognizing the impact of age discrimination on workers and applicants, particularly in light of the Great Recession, the EEOC’s report made a number of recommendations that would, as a practical matter, root out and eliminate unlawful age discrimination in the workplace. EEOC’s recommendations include:

- Increasing Age Diversity of the Workforce. EEOC recommends that employers explore and adapt as appropriate strategies that can prevent biases from entering recruitment, hiring, and human resource processes. For instance, employers may wish to consider including age in diversity and inclusion programs and efforts, and focusing on efforts to structure mixed-age work teams which often result in higher productivity for both older and younger workers.
- Recruitment and Hiring Strategies. The EEOC concluded that given historically-low levels of unemployment and growing shortages of skilled, qualified workers, hiring older workers can help employers fill what has become known as the “skills gap” (the mismatch between workers’ training and experience and the skillsets needed for current jobs). EEOC recommends including age-diverse photos, graphics, and content in the online application and social media presence to encourage a multi-generational workforce; ensuring that applications, whether online or paper, do not ask for date of birth or similar information that may act as a proxy for age (*e.g.*, dates of college attendance); and training recruiters and interviewers to avoid ageist assumptions and even common perceptions about

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older workers is critical. Finally, EEOC suggests that employers assess their recruitment strategies to avoid age bias and potential unconscious bias.

- Retention Strategies. The EEOC noted that effective retention strategies can decrease employee turnover, employer turnover costs, and the loss of institutional knowledge, while at the same time increasing worker engagement and productivity. Moreover, research cited by the EEOC recognizes that age is positively correlated with employee engagement, and older workers age have the highest levels of engagement in the workplace, which in turn increases employee productivity. Finally, EEOC recommends that employers consider provide career counseling, training and development opportunities to workers at all ages

WPI respectfully suggests that the Committee's efforts to protect workers from age discrimination would better focus on the real-world solutions recommended by experts and supported by empirical data, rather than simply increase employer liability under the ADEA and other statutes, the need or desirability of which has simply not been proven.

We trust these comments are helpful to the Committee in its consideration of this legislation, and thank you for the opportunity to provide our views and insights on this important matter.

Sincerely yours,

/s/
James A. Paretti, Jr.
Shareholder
Workplace Policy Institute™
Littler Mendelson, P.C.

cc: The Honorable Virginia Foxx
Ranking Republican
Committee on Education and Labor

June 4, 2019

Chairman Bobby Scott
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office
Washington, DC 20515

Ranking Member Virginia Foxx
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office
Washington, DC 20515

Dear Chairman Scott and Ranking Member Foxx:

The undersigned organizations submit this statement to the record for the Education and Labor Committee's May 21, 2019 hearing, "Eliminating Barriers to Employment: Opening Doors to Opportunity" specifically to clarify our involvement in negotiations intended to produce legislation similar, but not identical, to the Protecting Older Workers Against Discrimination Act (POWADA), H.R. 1230.

The written testimony presented at the hearing from AARP states that "[POWADA] was developed and co-written into an agreed-upon draft over 12-18 months by civil rights, business groups, and the heavy involvement of staff for Senators Harkin and Grassley." (AARP statement, page 8). Footnote 33 states that "The business groups most involved were the US Chamber of Commerce [sic], HR Policy Association, and the Society for Human Resource Management (SHRM)."

AARP's statement gives the impression that H.R. 1230 is based on a draft to which the business representatives agreed during the 2009-2010 negotiations. Since no agreement was reached, no draft was agreed upon. The business groups explicitly rejected applying the mixed motive framework to cases involving retaliation claims, such as those included in POWADA. These cases will invariably revolve around mixed motives and thus including them in this framework would greatly expand the amount of litigation employers could face, and thereby inhibit employers from taking perfectly justified actions towards employees in terms of discipline, penalties, or termination. Ultimately, and largely because of the disagreement over whether retaliation cases would be included, no agreement was reached between the business group representatives and the other participants in the negotiation.

This statement is intended to address the specific issue of perceptions surrounding the negotiations of several years ago. It is not meant to convey either support of, or opposition to, the current bill, H.R. 1230, being considered by the Education and Labor Committee.

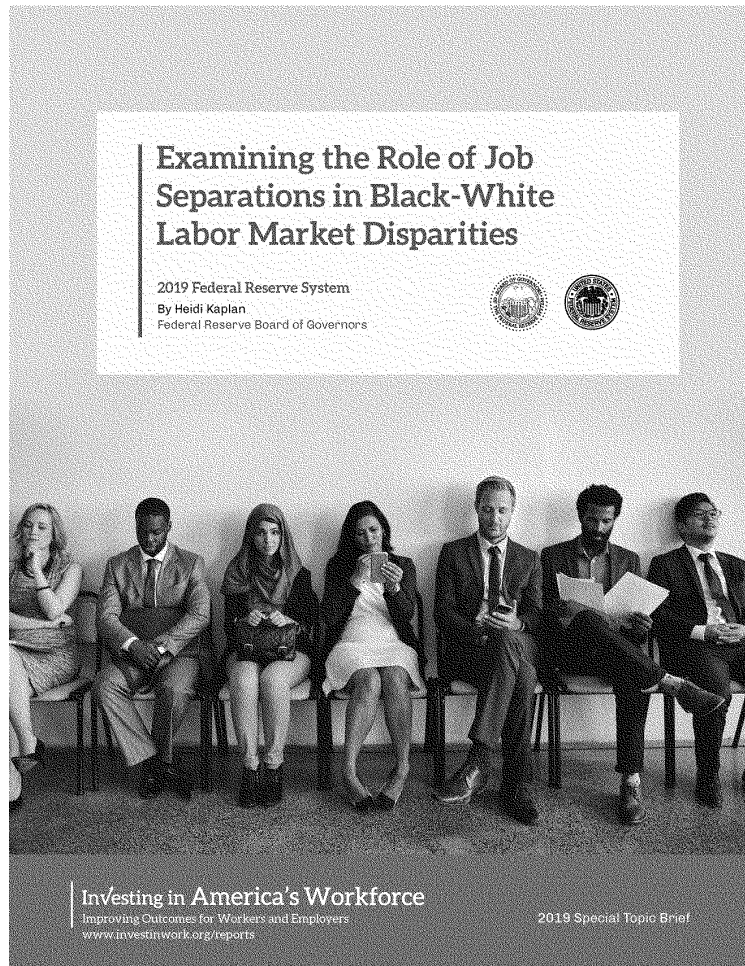
Sincerely,

U.S. Chamber of Commerce

HR Policy Association

Society for Human Resource Management

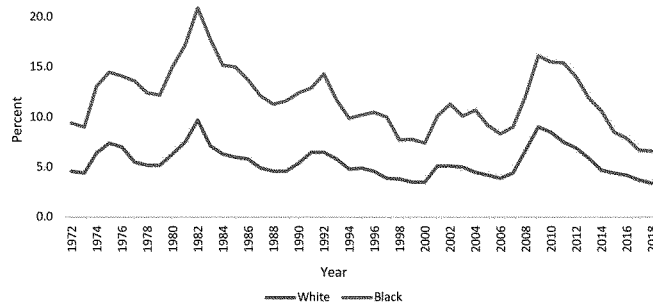
[Additional submission by Ms. Jayapal follow:]



Topic Overview

Economic research provides strong evidence of wide racial disparities in the labor market. Numerous studies document the gap between black and white unemployment that has persisted for upwards of 40 years. In fact, black and white workers experience such distinct labor market outcomes that the highest level of white unemployment has rarely exceeded the lowest level of black unemployment over the past four decades (see Figure 1).

Figure 1. Unemployment Rate by Race, 1972 to 2018



Source: Bureau of Labor Statistics based on the Current Population Survey¹

The Federal Reserve System adheres to a dual mandate to promote maximum employment and stable prices. The process to determine the extent to which the labor market is at full employment drives the Federal Reserve to understand disparities in employment, labor force participation, and wealth. Using findings from recent studies and data from the Federal Reserve's 2017 Survey of Household Economics and Decisionmaking (SHED), this special topic brief elaborates on the causes of the persistent black-white unemployment gap. Recent studies have shown that black workers have higher rates of job loss, longer periods of unemployment, and lower labor force participation than white workers. These disparities continue to exist when researchers control for factors such as education, age, and income, leading some to conclude racial segregation and discrimination contribute to gaps. The pervasiveness of these disparities should guide future research, and underscore the importance of investments in community infrastructure like transportation, education, and childcare, as well as workforce supports like mentors to help workers maintain or regain employment.

The Role of Job Separations in Black-White Labor Market Disparities

While academics widely acknowledge the existence of the black-white unemployment gap, they continue to study and debate the causes of the disparity. A recent study by Tomaz Cajner and colleagues² used census data to examine racial gaps in labor market outcomes across time. The authors found that differences in educational attainment, age, marital status, and state of residence explain very little of the disparity between black and white unemployment rates.

The Cajner et al. study found that while black and white workers secured new jobs at similar rates, job-loss rates for black workers far exceeded job-loss rates for white workers. This disparity exists even when controlling for educational attainment and age. As a result, the authors demonstrate that variation in job separation (another term for involuntary job loss or voluntary resignation) contributes to the persistent black-white unemployment gap. Furthermore, Cajner et al. suggested that the relatively high job losses among black workers lead to lower labor force participation rates (the share of workers working or looking for work) among black workers, particularly among black men.

Like the Cajner et al. study, a study by Mary Daly and colleagues³ found that black workers are more likely to experience job separation than white workers, and that those higher rates of job separation drive much of the unemployment gap between black and white workers. Daly et al. also found that black workers, particularly black men, have longer average non-employment periods than white workers. Notably, the authors showed that the relatively lengthy periods of unemployment among black men slow down career and wage growth. The more frequent and lengthy disruptions in employment among black workers can also accumulate into sizable earnings gaps.

Job Separations and Related Challenges: Findings from the 2017 Survey of Household Economics and Decisionmaking (SHED)

Higher Rates of Involuntary Job Separations among Black Workers

Data on employment activities collected in the 2017 SHED expand upon Cajner et al.'s and Daly et al.'s findings of disparities in job loss by race. The SHED measures the economic well-being of U.S. households, and identifies potential risks to their finances. The 2017 SHED results are based on a national sample of 12,246 respondents weighted to be representative of adults ages 18 and older living in the United States.⁴

According to a review of the SHED data, while black workers were equally as likely as white workers to have "voluntarily left a job" (9 percent), black workers were significantly more likely than white workers to have been "laid off or fired from a job" (9 percent and 3 percent, respectively). See Table 1.⁵ In this data set, race remains the strongest predictor for a respondent getting "laid off or fired from a job" even when controlling for age, gender, and education.⁶

Table 1. Reason for job loss in the past 12 months (among all workers)

	White	Black
Voluntarily left a job	9%	9%
Got laid off or fired from a job	3%	9%
n	3,803	666

Source: Survey of Household Economics and Decisionmaking, 2017, Federal Reserve Board

Similarly, among just the unemployed workers, black and white respondents “voluntarily left a job” in the past 12 months at nearly the same rate (21 percent and 20 percent, respectively).⁷ And, like the total worker pool, a significantly larger share of unemployed black workers had been “laid off or fired from a job” compared to their white counterparts (50 percent and 27 percent, respectively). See Table 2.⁸

Table 2. Reason for job loss in the past 12 months (among unemployed workers)^a

	White	Black
Voluntarily left a job	20%	21%
Got laid off or fired from a job	27%	50%
n	233	100

Source: Survey of Household Economics and Decisionmaking, 2017, Federal Reserve Board

Longer Periods of Unemployment among Black Workers

As noted above, Daly et al. found that black workers experience longer spells of unemployment than white workers. While the SHED provides descriptive data on unemployed workers’ efforts to find a job, the survey does not delve into how long workers have been unemployed or barriers workers faced when seeking jobs. The 2017 SHED shows that a slightly larger share of unemployed black workers applied for a new job (86 percent) than their white counterparts (81 percent). And, a slightly smaller share of unemployed black workers started a new job in the past year (29 percent) than their white counterparts (33 percent). See Table 3. However, these differences were not statistically significant.

Table 3. Job search activities in the past 12 months (among unemployed workers)

	White	Black
Applied for a new job	81%	86%
Started a new job	33%	29%
n	233	100

Source: Survey of Household Economics and Decisionmaking, 2017, Federal Reserve Board

Lower Rates of Labor Force Participation among Black Men

The SHED data provide greater insight into the factors underlying the discrepancy in labor force participation rates between black and white men, as noted by Cajner et al. For example, the 2017 SHED data show that significantly larger shares of black men did not work due to “business conditions or lack of work” (20 percent), a “disability” (15 percent), or “childcare or family obligations” (11 percent) than their white counterparts (9 percent, 8 percent, and 4 percent, respectively). See Table 4.¹⁰

Additionally, white men were more likely to have left the labor force due to retirement. Notably, in the 2017 SHED, a significantly larger share of white men are retired (71 percent) than black men (53 percent).¹¹

Table 4. Reasons for not working (among men who are not participating in the labor force)

	White	Black
Retired	71%	53%
Have a disability but not retired	8%	15%
Business conditions or lack of work	9%	20%
Childcare or family obligations	4%	11%
n	1,360	234

Source: Survey of Household Economics and Decisionmaking, 2017, Federal Reserve Board

Lower Rates of Compensation Increases among Black Men

In the 2017 SHED, while employed black men were more likely than employed white men to have “asked for a raise at work” in the previous 12 months (21 percent and 16 percent, respectively), black men were significantly less likely than white men to have received a raise (44 percent and 56 percent, respectively). See Table 5.¹²

Table 5. Raises in the past 12 months (among employed men)

	White	Black
Asked for a raise at work	16%	21%
Received a raise at work	56%	44%
n	1,651	229

Source: Survey of Household Economics and Decisionmaking, 2017, Federal Reserve Board

Opportunities for Investment

Evidence that the black-white unemployment gap reflects a higher risk of job loss among black workers is an important finding that can guide future investments in workers and their workplace environments. As noted above, the negative effects of employment disruptions that accumulate over a worker's career add to the urgency of addressing these disparities.

Investment in Community Infrastructure

Where a person lives can affect their ability to access and maintain stable employment. For example, workers residing in low-income communities may struggle with insufficient transportation, schools, and childcare. Black adults disproportionately reside in low-income neighborhoods that lack these types of community infrastructure. According to a study by John Logan,¹³ black neighborhoods are often separate and unequal from white neighborhoods. Logan's research also shows that neighborhood disparities persist due to racial segregation and discrimination that hinder blacks who achieve higher incomes from moving to areas with more economic opportunity.

Investment in community resources for majority black neighborhoods may provide necessary supports for black workers to maintain steady employment. Raj Chetty and his colleagues have developed a body of work describing the relationship between neighborhoods and economic mobility. Their research documents substantial variation in economic mobility by neighborhood.¹⁴ More specifically, Chetty et al. found that within a given commuting zone, counties with higher rates of upward mobility tend to have less segregation by income and race, lower levels of income inequality, better schools, lower rates of violent crime, and a larger share of two-parent households. The authors find that areas with a larger black population tend to have lower rates of upward mobility.¹⁵

Based on Chetty et al.'s findings, investing in community infrastructure at the neighborhood level, including public transportation, quality K-12 education, and childcare options, could increase economic mobility for the residents. Investments in majority black neighborhoods, which typically lag white neighborhoods in terms of supportive community infrastructure, could also improve job stability among black workers who live in such neighborhoods.

Investment in Support Services for Workers

Investment in on-the-job supportive services for workers may also reduce disparities in job loss. In 2017, the Federal Reserve System hosted 52 listening sessions across 32 states and Puerto Rico to gain insights into the regional aspects of improving workforce outcomes and investments. During these sessions, workforce leaders from their respective regions discussed numerous nonskill barriers to employment.¹⁶ Participants in nearly every listening session mentioned that investments in comprehensive supportive services are essential to ensure client success in any workforce program.



Training, health resources, and mentoring programs may help workers maintain their employment. For example, research by Lilian Eby and colleagues¹⁷ showed that workplace mentoring is associated with more motivated workers and favorable career outcomes such as promotions.

Furthermore, Jain Newman's research¹⁸ found that support services such as counseling, case management, and public benefits that offer community supports (transportation, childcare, and medical and housing assistance) help workers maintain stable employment and increase access to training. Notably, while some training programs offer support services, post-employment support services are equally important, allowing clients not only to obtain but also maintain employment.

A study by Belle Ragins and her colleagues shows the importance of mentors in reducing workplace discrimination. Ragins et al. found that workers who witness or are exposed to racial discrimination at work had lower organizational commitment than those who did not witness or experience discrimination. However, even when exposed to racial discrimination, a high-quality mentoring relationship "buffered" workers from a range of negative outcomes, including lower organizational commitment, physical symptoms of stress and insomnia, as well as stress-related absenteeism. This study suggests that mentoring could offer a safe harbor for employees who face indirect discrimination at work.¹⁹ In this way, mentoring could result in higher job stability among black workers, especially in cases where job losses stem from racial discrimination.

Conclusion

Despite 40 years of data showing a wide black-white unemployment gap (see Figure 1), researchers have struggled to explain fully the cause of the gap, and policymakers have struggled to implement policies to close it. Recent research suggests that the gap is partially driven by higher rates of job loss among black workers than white workers. Black workers also experience longer periods of unemployment and lower labor force participation. It is essential that policymakers and employers consider structural changes that support employed black workers and reduce barriers to employment. These supports may include community investment in transportation, schools, childcare, and work supports, such as mentors, that protect an inclusive work environment.

Acknowledgments

This special topic brief is part of a series and the result of a collaborative effort across the community development departments in the Federal Reserve System. The Federal Reserve community development function thanks the participants of the 2018 regional listening sessions, who generously shared their time, knowledge, and insights to inform this research. We would also like to acknowledge individuals across the Fed System responsible for hosting the 2018 regional listening sessions and/or writing special topic briefs.

Elizabeth Sobel Blum, Federal Reserve Bank of Dallas
 Jeanne Milliken Bonds, Federal Reserve Bank of Richmond
 Ashley Bozarth, Federal Reserve Bank of Atlanta
 Joselyn Cousins, Federal Reserve Bank of San Francisco
 Tony Davis, Federal Reserve Bank of New York
 Kyle D. Fee, Federal Reserve Bank of Cleveland
 Jen Giovannitti, formerly with Federal Reserve Bank of Richmond
 Todd Greene, formerly with Federal Reserve Bank of Atlanta
 Rob Grunewald, Federal Reserve Bank of Minneapolis
 Heidi Kaplan, Federal Reserve Board of Governors
 Jason Keller, Federal Reserve Bank of Chicago
 Craig Nolte, Federal Reserve Bank of San Francisco
 Drew Pack, Federal Reserve Bank of Cleveland
 Ashley Putnam, Federal Reserve Bank of Philadelphia
 David Radcliffe, Federal Reserve Bank of Boston
 Edison Reyes, Federal Reserve Bank of New York
 Alexander Ruder, Federal Reserve Bank of Atlanta
 Anjali Sakaria, formerly with Federal Reserve Bank of Boston
 Alvaro Sanchez, Federal Reserve Bank of Philadelphia
 Javier Silva, Federal Reserve Bank of New York
 Noelle St.Clair, formerly with Federal Reserve Bank of Philadelphia
 Whitney M. Striffler, Federal Reserve Bank of Atlanta

A special thank you to Noelle St.Clair and her team at the Federal Reserve Bank of Philadelphia for their work to create the 2017 [Investing in America's Workforce: Report on Workforce Development Needs and Opportunities](#). That work highlighted the need for more research and discussion on specific topics, culminating in this series of briefs.

Finally, thanks also to the team at the Federal Reserve Bank of Richmond, including Cecilia Bingenheimer, Jack Cooper, Latonya Duncan, Shannon McKay, Doug Sampson, and Rodney West, for designing the special topic briefs, as well as to Ashley Bozarth, Mels de Zeeuw, and Jeanne Zimmermann at the Federal Reserve Bank of Atlanta and Edison Reyes from the Federal Reserve Bank of New York for reviewing this brief.

The views expressed in this special topic brief are those of the author, and do not necessarily reflect the views of the Federal Reserve System.



Methodology

In 2017, the community development departments at each of the 12 Federal Reserve Banks organized regional meetings at locations around the country with nearly 1,000 workforce development leaders to confer on the status of the nation's workforce development system and the challenges it faces. The community development team at the Federal Reserve Bank of Philadelphia gathered and analyzed the information from those meetings, and it subsequently published [Investing in America's Workforce: Report on Workforce Development Needs and Opportunities](#).

In 2018, the Federal Reserve's community development departments conducted a second series of regional meetings with stakeholders across public, private, and nonprofit sectors. The meetings focused on several workforce-related topics that impact communities, which originated from themes captured in the 2017 report. A series of special topic briefs were created based on regional meetings and community development research interests. Briefs include research and insights from workforce development organizations, experts, and community development staff.

About the Initiative

Investing in America's Workforce is a [Federal Reserve System](#) initiative in collaboration with the [John J. Heldrich Center for Workforce Development](#) at Rutgers University, the [Ray Marshall Center for the Study of Human Resources](#) at the University of Texas at Austin, and the [W.E. Upjohn Institute for Employment Research](#). Led by the community development function of the Federal Reserve System, the initiative aims to reframe and reimagine workforce development efforts as investments that can lead to scalable solutions and measurable outcomes. Components of the initiative to further this goal include:

- A series of listening sessions and [subsequent report and special topic briefs](#) aimed at gathering and analyzing information and ideas from people who work at the intersection of workforce training, recruiting, and finance.
- A [national conference](#) in Austin, Texas, in October 2017, where over 300 attendees discussed promising approaches to workforce development.
- A [three-volume book](#) that offers research, best practices, and resources on workforce development from a wide range of experts in various fields.
- A training curriculum for Community Reinvestment Act bank examiners on qualifying workforce investments under new Interagency Q&A clarifications for the regulation.

For more information about the initiative, and to read chapters from the three-volume book and other special topic briefs, please visit www.investinwork.org.

References

- 1 Bureau of Labor Statistics (BLS) Table E-16 "Unemployment Rates by Age, Sex, Race, and Hispanic or Latino Ethnicity" <https://www.bls.gov>.
- 2 Cajner, Tomaz, Tyler Radler, David Ratner, and Ivan Vidango. 2017. "Racial Gaps in Labor Market Outcomes in the Last Four Decades over the Business Cycle." FEDS Working Paper, No. 2017-071. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2996284.
- 3 Daly, Mary C., Bart Hobijn, and Joseph H. Pothke. 2017. "Labor Market Dynamics and Earnings Gaps." Unpublished Paper presented at Disparities in the Labor Market: What Are We Missing? Conference at the Federal Reserve Board, Washington, DC. <https://www.federalreserve.gov/conferences/disparities-in-the-labor-market-about-2017.htm>.
- 4 Since 2013, the Federal Reserve Board has conducted the Survey of Household Economics and Decisionmaking (SHED). See <https://www.federalreserve.gov/consumerscommunities/shed.htm>. The selection methodology for the general population sample from KnowledgePanel ensures that the resulting samples behave as an equal probability of selection method (EPSEM) samples. For more information on the SHED survey sample and weighting, see <https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-description-of-the-survey.htm>.
- 5 The difference in outcomes by race is statistically significant at a 10 percent significance level.
- 6 A simple probit model is used for analysis. More extensive research is necessary to examine whether this holds true when other variables—such as industry, occupation, income, and proxies that measure financial stress and housing stability—are taken into account.
- 7 In SHED, "unemployed" respondents indicated they were neither "working" nor "retired" in the past 12 months, and stated they "looked for work" in the past month.
- 8 Statistically significant at a 10 percent significance level.
- 9 See endnote 7.
- 10 Statistically significant at a 10 percent significance level.
- 11 Ibid.
- 12 The difference in "asked for a raise at work" is not statistically significant at a 10 percent significance level, but the difference in "received a raise at work" is statistically significant at a 10 percent significance level.
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- 15 Chetty, Raj and Nathaniel Hendren. 2015. "The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County Level Estimates." Harvard University and the National Bureau of Economic Research. https://scholar.harvard.edu/files/hendren/files/ibhds_paper.pdf.
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- 17 Eby, Lillian T., Tammy D. Allen, Sarah C. Evans, Thomas Ng, and David L. Dubois. 2008. "Does Mentoring Matter? A Multidisciplinary Meta-Analysis Comparing Mentored and Non-Mentored Individuals." *Journal of Vocational Behavior* 72(2): 254-287.
- 18 Jain, Ranita, Amanda Newman, and Marcela Montes. 2017. "Investing in Workforce Program Innovation: A Formative Evaluation of Five Workforce Organizations' Experiences During the Human Capital Innovation Fund Initiative." The Aspen Institute. <https://www.aspeninstitute.org/publications/investing-in-workforce-program-innovation/>.
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Examining the Role of Job Separations in Black-White Labor Market Disparities

2019 Federal Reserve System
By Heidi Kaplan
Federal Reserve Board of Governors



Investing in America's Workforce

Improving Outcomes for Workers and Employers
www.investinwork.org/reports

2019 Special Topic Brief

[Additional submissions by Chairman Scott follows:]



House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Robert C. "Bobby" Scott:

Today, Americans are working longer; in fact, workers 65 and older are the fastest growing age group in the labor force. However, according to AARP, more than 6 in 10 older workers report that they have seen or experienced age discrimination in the workplace. When older workers lose their jobs, they often face age bias in hiring and experience longer spells of unemployment than younger workers. Age and experience should be considered assets, not liabilities. However, I hear from many older constituents who, despite being willing and able to be participating members of the workforce, face great obstacles in the job market. This not only hurts families but also our economy.

The Supreme Court's 2009 decision in *Gross v. FBL Financial Services, Inc.* weakened federal protections against age discrimination by making it far more difficult to prove age discrimination in employment than to prove discrimination based on race, religion, or gender. Breaking with decades of precedent, it is no longer enough to prove that age discrimination tainted an employment action; plaintiffs seeking to prove age discrimination in employment must now demonstrate that age played a decisive role in the employer's decision-making. This communicates to employers that some smaller amount of age discrimination is permissible.

The Protecting Older Workers Against Discrimination Act (POWADA) addresses this issue by amending the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act, the Rehabilitation Act, and the Americans with Disabilities Act to clarify that proven age discrimination may not play any role in employment decisions.

This bipartisan, commonsense legislation will restore fairness to our nation's older workers by ensuring that they need not jump through extra legal hoops when they have been subjected to employment discrimination. The Protecting Older Workers Against Discrimination Act would level the playing field for older workers by restoring the pre-2009 legal standards for age discrimination claims.

Sincerely,


F. JAMES SENSENBRENNER, JR.
Member of Congress



May 29, 2019

Dear Chairman Scott,

The Collaboration to Promote Self Determination (CPSD) and the National Disability Rights Network (NDRN) write to thank you for holding the hearing, "Eliminating Barriers to Employment: Opening Doors to Opportunity." In particular, we wish to thank you for highlighting the Transformation to Integrated Employment Act. This bill represents a thoughtful approach to ending the outdated and unfair payment of workers with disabilities who receive subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA) of 1938. CPSD and NDRN appreciate the hard work of your office on this important piece of legislation.

Additionally, CPSD and NDRN wishes to submit the following for the Record. We feel that the below documents provide further evidence of the many successes of competitive integrated employment (CIE) for individuals with disabilities, including people with significant disabilities and people who have transitioned to CIE from sheltered workshops.

Testimony from Successes of Youth with Disabilities Transitioning From School to Competitive Integrated Employment (CPSD Briefing):

- [Testimony of Jeffrey and Van Berg](#)
September 26, 2018
- [Testimony of Greta Harrison](#)
September 26, 2018
- [Testimony of Yasmine "Yassy" Harrison](#)
September 26, 2018
- [Testimony of Wisconsin Promise](#)
September 26, 2018
- ["Successes of Youth with Disabilities Transitioning From School to Competitive Integrated Employment"](#)
Delaware Health and Social Services
September 26, 2018

Testimony from National Disability Employment Awareness Month Congressional Briefing on Increasing Competitive Integrated Employment for People with Disabilities (CPSD Briefing)

- [Testimony of Dr. David Mank](#)
October 2, 2018
- [Testimony of Laura Kuster](#)
October 2, 2018
- [Testimony of Charles Hill](#)
October 2, 2018
- [Testimony of Patti Killingsworth](#)
October 2, 2018

Additionally, CPSD and NDRN wish to submit the following blogs focusing on the importance of and successes of CIE.

- [Why High Expectations are Important: A Parent's View on Disability Employment](#)
CPSD Blog by Greta Harrison
May 13, 2019
- [The Journey of Community Employment](#)
SEEC
- [It's Time to Help States Build Capacity to Provide Competitive Integrated Employment to All People with Disabilities](#)
CPSD Blog by David Mank, Ph.D.
April 8, 2019

Finally, CPSD and NDRN wish to submit two reports which highlight the very real exploitation and isolation of individuals with disabilities who work in segregated, subminimum wage employment.

- [Segregated and Exploited: A Call to Action](#)
NDRN
January 2011
- [Beyond Segregated and Exploited: An Update on the Employment of People with Disabilities](#)
NDRN
April 2012

Thank you again for holding this important hearing and spotlighting the critical importance of the Transformation to Integrated Employment Act.

Should you have any questions or need any additional follow up, please do not hesitate to reach out to Alison Barkoff, CPSD Policy Advisor (abarkoff@cpr-us.org) or Amanda Lowe, NDRN Senior Public Policy Analyst (amanda.lowe@ndrn.org).



May 1, 2019

Dear Representative,

The undersigned organizations are writing to urge you to co-sponsor the Transformation to Competitive Employment Act. This bill represents a thoughtful approach to transitioning away from payment of workers with disabilities who receive subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA) of 1938. The bill not only phases out Section 14(c), but importantly includes funding to help states and providers transform business models to support individuals with disabilities to transition to competitive integrated employment and tracks outcomes over the six year phase out period.

The Workforce Innovation and Opportunity Act (WIOA) of 2014 established as a priority competitive integrated employment (CIE), where people with disabilities work in mainstream jobs alongside, and are paid comparable wages to, co-workers without disabilities. WIOA furthers the goal of the Americans with Disabilities Act (ADA) to advance the economic self-sufficiency of people with disabilities.

Yet despite the clear national priority for CIE, nearly 230,000 people with disabilities are legally paid subminimum wages under Section 14(c) of FLSA. Subminimum wage for individuals with disabilities does not help advance individuals with disabilities emerge from poverty or to pursue career opportunities that would further integrate them in society.

The undersigned organizations support transitioning away from the Section 14(c) program and providing resources to make sure no one is left behind. In doing so it is necessary to ensure that people with disabilities have opportunities to work at fair wages, alongside co-workers without disabilities. If passed, the capacity-building component included in the Transformation to Competitive Employment Act will be a game-changer in expanding opportunities for CIE.

The Congressionally-created federal Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities ("the Committee"), established under WIOA submitted a report to Congress and the Labor Secretary regarding 14(c) in September 2016. Importantly, the Committee recommended that "Congress should amend Section 14(c) of FLSA to allow for a well-designed, multi-year phase-out of the Section 14(c) Program *that results in people with disabilities entering CIE.*" The Committee's recommendations focused on pairing the elimination of Section 14(c) with expanding the capacity of CIE, including through funding and technical assistance to help providers transform their business model. The Committee also recommended improved data collection and focus on employment outcomes.¹ The Transformation to Competitive Employment Act would make these recommendations a reality.

¹ Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities Final Report (Sept. 2016) at 28-31 (emphasis added), available at <https://www.dol.gov/odep/pdf/20150808.pdf>.

Similarly, the National Council on Disability, an independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies that impact people with disabilities, has repeatedly called for the elimination of subminimum wages under Section 14(c), including in its recent report, "National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future."²

The undersigned believe that the Transformation to Competitive Employment Act addresses these recommendations by providing states and employers with 14(c) certificates the funding, supports and training necessary to change the infrastructure of outdated business models, while ensuring that individuals with disabilities have opportunities for CIE and are supported throughout the process. Additionally, we have listed below this letter state and local organizations who stand in support of the Transformation to Competitive Employment Act. In short, this bill signifies a critical and responsible paradigm shift for the employment of individuals with disabilities.

Please contact Alison Barkoff, Policy Advisor to the Collaboration to Promote Self Determination (abarkoff@cpr-us.org or 202-854-1270) or Amanda Lowe, Senior Policy Analyst at the National Disability Rights Network (amanda.lowe@ndrn.org or 202-408-9514 ext. 101) if you have any questions or to follow up on this letter.

Sincerely,

American Association of People with Disabilities
 American Civil Liberties Union
 American Network of Community Options and Resources (ANCOR)
 Association of People Supporting Employment First
 Association of University Centers on Disabilities
 Autism National Committee
 Autism Society of America
 Autistic Self Advocacy Network
 Center for Public Representation
 Collaboration to Promote Self Determination
 Disability Rights Education & Defense Fund
 National Association of Councils on Developmental Disabilities
 National Association of State Directors of Developmental Disabilities Services
 National Council on Independent Living
 National Disability Institute
 National Disability Rights Network
 National Down Syndrome Congress
 National Rehabilitation Association
 TASH, Inc.

² National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future (Oct. 2018) at 119-121, available at <https://ncd.gov/publications/2018/new-deal-real-deal>

State and Local Organizations Support for the Transformation to Competitive Employment Act

Alabama

Alabama Disability Advocacy Program
Down Syndrome Network of Montgomery County

Alaska

Disability Law Center of Alaska

Arizona

Arizona Center for Disability Law
DIRECT Center for Independence

Arkansas

Disability Rights Arkansas, Inc.

California

California Down Syndrome Advocacy Coalition
Child and Adolescent Services Research Center at Rady Children's Hospital San Diego
Disability Rights California
Exceptional Family Resource Center
JLA Special Needs Trust
Kern Down Syndrome Network
FIESTA EDUCATIVA INC

Colorado

Colorado Cross-Disability Coalition
Disability Law Colorado

Connecticut

Disability Rights Connecticut

Delaware

Delaware Disabilities Law Program
Down Syndrome Association of Delaware

District of Columbia

Cal-TASH
LINC

Florida

Disability Rights Florida
Down Syndrome Association of Jacksonville
Florida Democratic Disability Caucus

Georgia

D.E.A.F. Demanding Equal Access for All
 GA ADAPT
 Georgia Advocacy Office
 Georgia APSE
 Georgia Council on Developmental Disabilities
 Georgia Mental Health Consumer Network
 Institute on Human Development and Disability
 Mental Health America of Georgia
 SILC GA
 Statewide Independent Living Council, GA
 Work Works, IHDD – The University of Georgia

Idaho

Disability Rights Idaho
 Idaho State Independent Living Council
 United Action for Idaho
 United Vision for Idaho

Illinois

RAMP Center for Independent Living
 SCRS-IL

Indiana

Down Syndrome Indiana, Inc.

Iowa

Access2Independence CIL
 Disability Rights Iowa
 Northwest Iowa Down Syndrome Society

Kansas

Disability Rights Center of Kansas
 Prairie Independent Living Resource Center, Inc.

Kentucky

Kentucky Protection and Advocacy

Louisiana

Advocacy Center

Maine

Autism Society of Maine
Consumer Council System of Maine
Disability Rights Maine
KFI
ME-APSE Chapter
Syntiro

Maryland

Disability Rights Maryland
Down Syndrome Connection of Anne Arundel County
Maryland Down Syndrome Advocacy Coalition

Massachusetts

Disability Policy Consortium of Massachusetts

Mississippi

Disability Rights Mississippi
MS-APSE Chapter

Missouri

Paraquad

Nebraska

Disability Rights Nebraska
Down Syndrome Alliance of the Midlands

Nevada

Nevada Disability Advocacy & Law Center

New Hampshire

Disability Rights New Hampshire
TASH-New England

New Jersey

Disability Rights New Jersey

New Mexico

Disability Rights New Mexico

New York

Disability Rights New York
Independent Living Center of the Hudson Valley
National Organization on Disability
Northern Regional Center for Independent Living

North Carolina

Disability Rights North Carolina
TASH-NC

North Dakota

North Dakota Protection and Advocacy Project

Ohio

Down syndrome Association of Central Ohio
Linking Employment Abilities and Potential (LEAP)
Ohio Association for Centers for Independent Living
Ohio APSE
Tri-County ILC

Pennsylvania

Bucks County Down Syndrome Interest group
Disability Rights Pennsylvania
Pennsylvania APSE
Pennsylvania Down Syndrome Advocacy Coalition
Pittsburgh Center for Autistic Advocacy

Rhode Island

Rhode Island Disability Law Center

South Carolina

Protection and Advocacy for People with Disabilities- South Carolina

Tennessee

Disability Rights Tennessee
Down Syndrome Association of Middle TN (DSAMT)
Empower Tennessee

Texas

Coalition of Texans with Disabilities
Disability Rights Texas
Down Syndrome Partnership of North Texas
Houston Center for Independent living
Personal Attendant Coalition of Texas
The Arc of Texas

Utah

Disability Law Center
Utah Developmental Disabilities Council
Utah State University Center for Persons with Disabilities

Vermont

Disability Rights Vermont

Virginia

Appalachian Independence Center
Disability Law Center Virginia

Virgin Islands

Disability Rights Center of the VI

Washington

Cascade Connections
Disability Rights Washington
Morningside Services
NAVOS
Pierce Jones & Associates, LLC
WA Initiative for Supported Employment
Washington ADAPT

West Virginia

Disability Rights West Virginia
West Virginia Center on Budget and Policy

Wisconsin

Disability Rights Wisconsin
Inclusa Inc.

National Disability Employment Policy: <https://ncd.gov/sites/default/files/Documents/NCD—Deal—Report—508.pdf>

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID): <https://www.dol.gov/sites/dolgov/files/odep/topics/pdf/acicieid—final—report—9-8-16.pdf>

The State of Age Discrimination And Older Workers In The U.S. 50 Years After the Age Discrimination In Employment Act (ADEA): <https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment>

[Questions submitted for the record and their responses follow:]

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COMMITTEE ON EDUCATION
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 U. S. HOUSE OF REPRESENTATIVES
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 WASHINGTON, DC 20515-6100

June 18, 2019

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 VAN TAYLOR, TEXAS
 STEVEN WATKINS, KANSAS
 RON WRIGHT, TEXAS
 DANIEL MEUSER, PENNSYLVANIA
 WILLIAM R. TIMMONS, W. SOUTH CAROLINA
 DUSTY JOHNSON, SOUTH DAKOTA

Ms. Kisha Bird, M.S.S./M.S.L.P.
 Director, Youth Policy
 Center for Law and Social Policy (CLASP)
 1200 18th Street NW, Suite 200
 Washington, D.C. 20002

Dear Ms. Bird:

I would like to thank you for testifying at the May 21, 2019, Committee on Education and Labor hearing on *"Eliminating Barriers to Employment: Opening Doors to Opportunity."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Tuesday, June 25, 2019, for inclusion in the official hearing record. Your responses should be sent to Katie McClelland of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
 Chairman

Enclosure

Committee on Education and Labor
“Eliminating Barriers to Employment: Opening Doors to Opportunity.”
Tuesday, May 21, 2019
10:15 a.m.

Rep. Ilhan Omar (MN)

1. Thank you all for being with us to testify on this important topic.

We heard from each of you about the many barriers that seniors, young people and disabled Americans face when seeking stable employment.

I’d like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity.

Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment?

2. Ms. Bird, in your testimony you discussed the need to address cultural changes and willingness to confront the implicit and explicit biases in the workforce.

I strongly agree with that assessment.

Unfortunately, this is a timely subject in my district. We’ve seen workplace bias playing out at Amazon facilities in my district over the last year.

The company has been accused of religious discrimination and unjust retaliation against Muslim workers who have spoken out after being denied appropriate time and space to pray.

Not only is this a violation of workers’ rights, but on a larger level – it creates a hostile work environment for many of the existing employees and further, it discourages others from seeking employment with the tech giant.

Ms. Bird, could outline what policy changes Congress can explore to improve the recruitment and retention of religious minorities, women and people of color in the workplace?



**COMMITTEE ON EDUCATION
AND LABOR**

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

June 18, 2019

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DUSTY JOHNSON, SOUTH DAKOTA

Ms. Laurie McCann, J.D.
Senior Attorney
AARP Foundation Litigation
601 E Street NW, Room B4-203
Washington, D.C. 20049

Dear Ms. McCann:

I would like to thank you for testifying at the May 21, 2019, Committee on Education and Labor hearing on *"Eliminating Barriers to Employment: Opening Doors to Opportunity."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Tuesday, June 25, 2019, for inclusion in the official hearing record. Your responses should be sent to Katie McClelland of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Committee on Education and Labor
"Eliminating Barriers to Employment: Opening Doors to Opportunity."
Tuesday, May 21, 2019
10:15 a.m.

Rep. Ilhan Omar (MN)

1. Thank you all for being with us to testify on this important topic.

We heard from each of you about the many barriers that seniors, young people and disabled Americans face when seeking stable employment.

I'd like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity.

Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment?

2. The employment barriers we heard detailed at this hearing feel somewhat insurmountable when we look at them as a whole.

I believe it will take creative, big-picture thinking to overcome many of the problems that are so inherent in today's workplaces.

That's why I plan to introduce with Federal Jobs Guarantee Development Act with my colleague from New Jersey, Rep. Bonnie Watson Coleman.

Our bill would create a pilot program in a select number of communities in which every adult resident would be guaranteed a job that pays a living wage and provides basic benefits like health insurance and paid leave.

Ms. McCann, you testified about the displacement and discrimination plaguing older workers. Given that the way these workers are often squeezed out of the market by a shortage of available jobs – do you believe seniors would benefit from a federal jobs guarantee program like the one I described?



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Mr. Daniel Pianko
Managing Director
University Ventures
303 Spring Street
New York, NY 10013

Dear Mr. Pianko:

I would like to thank you for testifying at the May 21, 2019, Committee on Education and Labor hearing on *"Eliminating Barriers to Employment: Opening Doors to Opportunity."*

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We heard from each of you about the many barriers that seniors, young people and disabled Americans face when seeking stable employment.

I'd like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity.

Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment?



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Mr. Shayne Roos
Senior Vice President, ACHIEVA Support
ACHIEVA
711 Bingham Street
Pittsburgh, PA 15203

Dear Mr. Roos:

I would like to thank you for testifying at the May 21, 2019, Committee on Education and Labor hearing on *"Eliminating Barriers to Employment: Opening Doors to Opportunity."*

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Enclosure

Committee on Education and Labor
"Eliminating Barriers to Employment: Opening Doors to Opportunity."
 Tuesday, May 21, 2019
 10:15 a.m.

Chairman Robert C. "Bobby" Scott (VA)

1. Describe the steps you took and the way you transformed your business from a 14(c) certificate holder to a competitive integrated employer.
 - a. Did you re-negotiate contracts? Have the contracts changed in nature or scope? Do you still have contracts with the same entities, or did you need to find new contracts for this new business model?
 - b. How did accommodations for employees change?
 - c. Was there a shift in the hours of work performed for employees?
 - d. What is your business plan and how has it shifted as the transition took place?
2. Your testimony had recommendations for managing the transformation, including benefits counseling and the availability of certified Community Work Incentive Coordinators. Why are these important to the success of individuals transitioning to competitive wages?
3. According to your testimony, prior to transforming to a competitive, integrated employer, you employed approximately 500 individuals with disabilities working under two 14(c) certificates. Please provide additional details on the following:
 - a. How many of the individuals transitioned into competitive integrated employment?
 - b. What accommodations are provided to them in their new positions? How does this increase their productivity?
 - c. What competitive, integrated employment options did these individuals move into, and how does the employment match the individuals' needs and skillsets?
 - d. For individuals that chose not to work or individuals that are working on a limited basis, what are they doing when they are not working? What services are provided?
 - e. Your testimony indicates that close to 250 people were undecided as to whether they wanted to actively pursue employment. What supports did they receive in their decision-making process, what choices were these individuals given, and why is their current arrangement more advantageous to them and their families than the sheltered workshop?
4. Families are an important stakeholder and rely on services provided by current employers. What outreach did you conduct with families in the process of the transformation?
5. Some providers and families have argued that some of the individuals with disabilities will be left behind when 14(c) is phased out, and there is no other employment available. Were people left behind during the transition at Achieva, and if not, what steps were taken to ensure that did not happen?

Rep. Ilhan Omar (MN)

1. Thank you all for being with us to testify on this important topic.

We heard from each of you about the many barriers that seniors, young people and disabled Americans face when seeking stable employment.

I'd like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity.

Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment?

Committee on Education and Labor
"Eliminating Barriers to Employment: Opening Doors to Opportunity."
 Tuesday, May 21, 2019 10:15 a.m.

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I'd like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity.

Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment?

The inability to find affordable housing can be a significant barrier to employment. Unstable housing is one of many factors that affect a young adult's ability to obtain a postsecondary education after earning a high school diploma or equivalent, which in turn limits job prospects with post-secondary educational requirements. Geographical isolation can reduce an individual's ability to access the social networks and capital that lead to employment. In both inner-city neighborhoods and isolated rural regions of the country, residents have limited access to job opportunities in the traditional business and industry sectors. The affordable housing crisis also exacerbates residential segregation. One study found that young men of color are more likely to live in low-income, racially segregated neighborhoods partly due to income inequality. These low-income neighborhoods frequently do not have the same resources, such as public transportation, as higher-income neighborhoods. Bus and train routes are infrequent in low-income areas, and limited public transportation creates yet another barrier to accessing jobs and training.

2. Ms. Bird, in your testimony you discussed the need to address cultural changes and willingness to confront the implicit and explicit biases in the workforce.

I strongly agree with that assessment.

Unfortunately, this is a timely subject in my district. We've seen workplace bias playing out at Amazon facilities in my district over the last year.

The company has been accused of religious discrimination and unjust retaliation against Muslim workers who have spoken out after being denied appropriate time and space to pray.

Not only is this a violation of workers' rights, but on a larger level – it creates a hostile work environment for many of the existing employees and further, it discourages others from seeking employment with the tech giant.

Ms. Bird, could outline what policy changes Congress can explore to improve the recruitment and retention of religious minorities, women and people of color in the workplace?

While we have not done any work in improving the recruitment and retention of religious minorities, for women and people of color in the workplace, policymakers can require the use of data to understand, diagnose, and address access and disparities based on race, and gender. For example, workforce policies can require data in reporting requirements, including data disaggregated by race, ethnicity, and gender. This can include information on retention and earnings to understand disparities by race, ethnicity and gender.

AARP Response to Questions for the Record from Rep. Ilhan Omar (MN)
 Committee on Education and Labor
"Eliminating Barriers to Employment: Opening Doors to Opportunity."
 Tuesday, May 21, 2019

1. **Thank you all for being with us to testify on this important topic. We heard from each of you about the many barriers that seniors, young people and disabled Americans face when seeking stable employment. I'd like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity. Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment?**

As you note, housing insecurity, especially for renters, is an acute problem for Americans of all ages. The increasing burden posed by housing costs is primarily due to the divergence between high and rising housing costs relative to stagnant or even falling household incomes.¹ According to a new study from Harvard University, 47% of all renters were "housing cost-burdened" in 2016.²

Difficulties with the affordability of housing is also a problem for older adults. Approximately 29% of all householders ages 45-64 are moderately (pay 30-50% of household income) or severely (pay more than 50% of household income) cost-burdened by housing costs.³ While workers age 65+ are the fastest growing age group in the labor force, nearly one-third of the 65+ age group are moderately or severely burdened by housing costs.⁴ The proportions who are cost-burdened jump significantly for renters: 44% of householders ages 45-54, 48% of householders ages 55-64, and 54% of householders age 65+ are moderately or severely burdened by housing costs.⁵

Although AARP does not have any direct information on the impact of housing insecurity on job-seeking for older adults, there are some key ways in which housing unaffordability could impact finding work. For example, in order to afford housing, a family may need to move further away from metropolitan areas where jobs are concentrated, leading to appreciably longer commutes to and from work. Commuting time, in turn, could influence which jobs a person could accept. For instance, if the householder has to contend with family caregiving responsibilities, they may be limited to those jobs with a commuting time that enables them to meet those responsibilities. Finally, high housing costs can drive some workers to need more than one job to make ends meet, or to stay in the workforce longer, which can impose a significant hardship if they have a job that requires physically demanding work, or have health issues that make continued work difficult.

2. **The employment barriers we heard detailed at this hearing feel somewhat insurmountable when we look at them as a whole. I believe it will take creative, big-picture thinking to overcome many of the problems that are so inherent in today's**

¹ Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2018*, at 5, Fig. 6, available at <https://www.jchs.harvard.edu/state-nations-housing-2018>.

² *Id.* at 5.

³ See *id.*, at Table W-4: U.S. National—Housing Cost-Burdened Households by Demographic Characteristics 2016, available at https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_SON_2018_AppendixTables.xlsx.

⁴ *Id.*

⁵ *Id.*

workplaces. That's why I plan to introduce the Federal Jobs Guarantee Development Act with my colleague from New Jersey, Rep. Bonnie Watson Coleman. Our bill would create a pilot program in a select number of communities in which every adult resident would be guaranteed a job that pays a living wage and provides basic benefits like health insurance and paid leave. Ms. McCann, you testified about the displacement and discrimination plaguing older workers. Given the way these workers are often squeezed out of the market by a shortage of available jobs – do you believe seniors would benefit from a federal jobs guarantee program like the one I described?

While age discrimination is certainly the most significant barrier facing older workers in finding and keeping jobs, older workers are not immune from the larger forces at work in our economy that are threatening job security for workers of all ages. During the recession, older workers experienced record-high levels of unemployment, and were disproportionately represented among the long-term unemployed.⁶ Many older workers have also been disproportionately impacted by off-shoring⁷ of manufacturing jobs. Many older workers also face a significant risk of displacement due to automation, such as truck drivers who could be replaced by autonomous vehicles, or workers who could be replaced by self-service kiosks in retail establishments. Thus, we share your concerns regarding displacement of workers from many jobs and industries, without the creation of new jobs and industries into which those displaced workers can land.

The scale of the problem will require many policy responses. In addition to ensuring that older workers have a fair shot at getting jobs for which they are qualified, without facing age discrimination, it is critical that we invest in our workforce development system. Compared with other advanced economies, the U.S. underperforms in its efforts to help displaced workers transition back into the labor force. Greater investment in retraining and other forms of transition assistance, including greater responsiveness to the needs of older workers, are needed to reintegrate workers back into the labor market.

The upcoming reauthorization of the Workforce Innovation & Opportunity Act (WIOA) will provide the Congress with the occasion to make those investments and improvements. AARP also believes that the federal government should provide funds to support subsidized employment programs that engage the private sector. While we are aware of discussions that include the idea of a federal jobs guarantee, AARP does not have a specific policy position on this idea at this time. However, AARP is happy to review any proposals that would enable older workers to work as long as they need or want to work.

⁶ See S. Rix, Long-Term Unemployment: Greater Risks and Consequences for Older Workers 2 (AARP PPI, 2015) available at https://www.aarp.org/content/dam/aarp/ppi/2015-2/AARP953_LongTermUnemployment_FSFeb2v1.pdf.

⁷ See S. Dolfin & J. Berk (Mathematica Policy Research, Inc.) for U.S. Dept. of Labor, *National Evaluation of the Trade Adjustment Assistance Program: Characteristics of Workers Eligible under the 2002 TAA Program and Their Early Program Experiences* at vi, x (Apr. 2010), available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_publicListingDetails&pub_id=2442&mp=y&start=21&sort=7; P. Schochet (Mathematica Policy Research, Inc.), R. D'Amico (Social Policy Research Assoc.) et al., for U.S. Dept. of Labor, *Estimated Impacts for Participants in the Trade Adjustment Assistance (TAA) Program under the 2002 Amendments*, at III-7, III-10 (Aug. 2012), available at http://www.mathematica-mpr.com/~media/publications/PDFs/labor/TAA_Estimated_impacts.pdf.

Friday, October 11, 2019 10:11 AM

"Housing policy is outside my area of expertise and would defer to others on the topic."
Best,
Daniel

Daniel Pianko
University Ventures
Co-Founder, Managing Director
New York, NY

Committee on Education and Labor
 "Eliminating Barriers to Employment: Opening Doors to Opportunity."
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 Chairman Robert C. "Bobby" Scott (VA)

1. Describe the steps you took and the way you transformed your business from a 14(c) certificate holder to a competitive integrated employer.

a. Did you re-negotiate contracts? Yes. Most of the contracts under the 14(c) were paid and billed based on piece rates. When developing our new business model we approached the process like any other business. We analyzed the scope of work and developed a costing and pricing structure based on that analysis. We followed this process for both existing customers and new customers. On average, existing customers saw a modest price increase but stuck with us because they value the work that we do and the quality of service we provide. Have the contracts changed in nature or scope? No. The tasks and jobs remain the same, as do the expectations of ACHIEVA and our business partners. Do you still have contracts with the same entities, or did you need to find new contracts for this new business model? We still have contracts with the same entities that we did under the 14(c) as well as new contracts. Prior to the change, we had invested a lot of time and effort over the years developing strong relationships with our business partners and so we found value in engaging them to acquaint them with our new business model. Like any business, we had established ourselves as a reputable business that provided quality and prompt service at a competitive price, and that served us well during the transformation process.

b. How did accommodations for employees change? Overall, there were few changes when it came to accommodations. Some employees needed more training and individualized instruction than others and we were able to offer it with smaller ratios and more staff support. Under the 14(c) we were operating at a staff to employee ratio between 1:7 to 1:15. In our new business model, the ratio is approximately 1:4, leading to more individualized job training.

c. Was there a shift in the hours of work performed for employees? Yes. Because employees would now be earning minimum wage or higher, several of them were unable to work full time without adversely impacting their SSI and SSDI benefits.

d. What is your business plan and how has it shifted as the transition took place? **The business plan specific to our business operations has not changed, just the rate we pay our employees. Our goal is to engage with the community and offer services and manufacturing assistance to local businesses while providing employment opportunities to people with disabilities. What has changed is our mindset. Like all people enrolled in**

our employment supports program, the employees in our business operations are there for job training, not a career. Our common goal is competitive-integrated employment. So while these employees are working in our business operations, they are simultaneously developing hard and soft skills that will eventually lead to competitive-integrated employment.

2. Your testimony had recommendations for managing the transformation, including benefits counseling and the availability of certified Community Work Incentive Coordinators. Why are these important to the success of individuals transitioning to competitive wages? **The perceived or potential real adverse impact that increased earnings can have on one's benefits was an obstacle we identified early and it's one of the concerns we heard repeatedly, particularly from families. While our team has a strong working knowledge as to how to mitigate the risk of adversely impacting benefits eligibility, access to certified Community Work Incentives Coordinators (CWIC) allow job seekers and their families to map out an employment plan that enables them to achieve competitive-integrated employment outcomes while preserving their eligibility for needed benefits.**

3. According to your testimony, prior to transforming to a competitive, integrated employer, you employed approximately 500 individuals with disabilities working under two 14(c) certificates. Please provide additional details on the following:

a. How many of the individuals transitioned into competitive integrated employment? **As of 5/21/19, 101 people had transitioned into competitive-integrated employment.**

b. What accommodations are provided to them in their new positions? How does this increase their productivity? **Systematic instruction has helped us to determine accommodations, job modifications and what supports will look like for each person while fulfilling the employers' needs. Allowing employment specialists to support job seekers with interviews, onboarding procedures, and during their shifts, especially for the first few weeks of employment, are the most common accommodations. None of these supports are uncommon for people with disabilities who are seeking or trying to retain competitive-integrated jobs, especially those receiving supported employment services through the vocational rehabilitation system or Medicaid-funded home and community-based waiver programs. We also saw the introduction of assistive technology and employers who were willing to negotiate the job responsibilities for entry-level positions.**

c. What competitive, integrated employment options did these individuals move into, and how does the employment match the individuals' needs and skillsets? **The majority of the people who transitioned into competitive-integrated employment completed Community-Based Work Assessments (CBWAs) prior to obtaining employment. They then worked with their support teams including a state Office of Vocational Rehabilitation counselor to determine an achievable vocational goal that aligned with their strengths and interests. Ultimately, the vast majority of job seekers found positions in the service industry, such as grocery store clerks, dining room attendants, housekeeping, and retail stocking.**

d. For individuals that chose not to work or individuals that are working on a limited basis, what are they doing when they are not working? What services are provided? **Most, if not all, receive some sort of wrap-around service, such as companion, habilitation, or community participation support, that supports them to be as successful and independent as possible in their homes and communities.**

e. Your testimony indicates that close to 250 people were undecided as to whether they wanted to actively pursue employment. What supports did they receive in their decision-making process, what choices were these individuals given, and why is their current arrangement more advantageous to them and their families than the sheltered workshop? **Person-centered planning was incorporated into much of the decision-making process to map out a plan for those who were undecided as to whether or not they wanted to pursue competitive-integrated employment. This group of people opted to receive community participation supports either exclusively in the community or via one of two existing day programs offered through ACHIEVA that focus on community engagement. While relying on the day program is not ideal, it is more advantageous to them and their families than the sheltered workshop because opportunities exist for the person to be engaged in the community.**

4. Families are an important stakeholder and rely on services provided by current employers. What outreach did you conduct with families in the process of the transformation? **As we were developing our transformative plans, we sought the advice and guidance from several family members whose sons and daughters and brothers and sisters were currently working in a 14(c) facility. While they had questions and concerns, through ongoing dialogue and informed discussions we garnered support as we moved forward. Once the board of directors approved our plan to phase out the use of 14(c) certificates, we reached out to all family members impacted. Due to the volume of families, we opted to do so via a letter. We then held 'town hall' meetings. Such meetings had mixed results because one or two very vocal parents would tend to monopolize the conversation. Ultimately, small-group meetings with no more than one or two families present were found to be the most effective at informing families and keeping the focus on a person-centered approach to supporting the person with the disability. That was then supplemented by dialogue that occurred organically with site staff who knew the person and their family the best.**

5. Some providers and families have argued that some of the individuals with disabilities will be left behind when 14(c) is phased out, and there is no other employment available. Were people left behind during the transition at ACHIEVA, and if not, what steps were taken to ensure that did not happen? **I can state with conviction that nobody was left behind. Staff worked diligently to identify options for people if employment was not of interest or not available. The people who left our program to go to other 14(c) provider did so as a matter of choice, not because they could not work. They will need to go through that same process should that provider end its use of the 14(c) certificate or if the 14(c) certificate is phased**

out in federal law. When or if that happens, people with disabilities will find there are a number of community-based options available to them.

Rep. Ilhan Omar (MN)

1. Thank you all for being with us to testify on this important topic.

We heard from each of you about the many barriers that seniors, young people and disabled Americans face when seeking stable employment.

I'd like to ask about one barrier in particular that I believe impacts workers across all of those demographics – housing insecurity.

Could you please detail how the growing affordable housing crisis in this country exacerbates the struggle to find employment? **Obviously, one's ability to perform effectively in one's job is helped or hampered by that person's ability to have other staples in life available to them, such as housing, sustenance, transportation, a network of support including family and friends, etc. All people supported by ACHIEVA have housing, either via licensed community homes operated by ACHIEVA, owning or renting their own homes, or living with family.**

[Whereupon, at 1:23 p.m., the committee was adjourned.]

