

**Union Calendar No. 478**104TH CONGRESS }  
*2d Session*

HOUSE OF REPRESENTATIVES

{ REPORT  
104-875

REPORT ON THE ACTIVITIES  
OF THE  
COMMITTEE ON ECONOMIC AND  
EDUCATIONAL OPPORTUNITIES  
DURING THE  
104TH CONGRESS



JANUARY 2, 1997.—Committed to the Committee of the Whole House on  
the State of the Union and ordered to be printed

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WASHINGTON : 1997

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

One Hundred Fourth Congress

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DAVID M. McINTOSH, Indiana	
CHARLES NORWOOD, Georgia	

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<sup>1</sup> Resigned October 1, 1995.

<sup>2</sup> Appointed October 11, 1995.

<sup>3</sup> Resigned April 22, 1996.

<sup>4</sup> Appointed June 5, 1996.

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<sup>1</sup> Resigned October 1, 1995.<sup>2</sup> Appointed October 11, 1995.<sup>3</sup> Resigned April 22, 1996.<sup>4</sup> Appointed June 12, 1996.<sup>5</sup> Resigned June 12, 1996.

## Letter of Transmittal

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ECONOMIC  
AND EDUCATIONAL OPPORTUNITIES,  
*Washington, DC, January 2, 1997.*

Hon. ROBIN H. CARLE,  
*Clerk of the House of Representatives,*  
*Washington, DC.*

DEAR MS. CARLE: Pursuant to rule XI, clause 1, paragraph (d) of the Rules of the U.S. House of Representatives, I am hereby transmitting the Activities Report of the Committee on Economic and Educational Opportunities for the 104th Congress.

This report summarizes the activities of the Committee and its subcommittees with respect to its legislative and oversight responsibilities.

This report has not been officially adopted by the Committee on Economic and Educational Opportunities or any subcommittee thereof and may not therefore necessarily reflect the views of its members.

Sincerely,

BILL GOODLING, *Chairman.*



## INTRODUCTION

The Rules of the Committee on Economic and Educational Opportunities for the 104th Congress provide for referral of all matters under the Committee's jurisdiction to a subcommittee. Five standing subcommittees with specified jurisdiction are established by the Rules.

The jurisdiction of the Committee on Economic and Educational Opportunities as set forth in rule X of the Rules of the House of Representatives is as follows:

EXTRACT FROM RULE X, RULES OF THE HOUSE OF REPRESENTATIVES

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### RULE X

#### ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

##### THE COMMITTEES AND THEIR JURISDICTION

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

\* \* \* \* \*

- (f) Committee on Economic and Educational Opportunities.
  - (1) Child labor.
  - (2) Columbia Institution for the Deaf, Dumb, and Blind; Howard University; Freedmen's Hospital.
  - (3) Convict labor and the entry of goods made by convicts into interstate commerce.
  - (4) Food programs for children in schools.
  - (5) Labor standards and statistics.
  - (6) Measures relating to education or labor generally.
  - (7) Mediation and arbitration of labor disputes.
  - (8) Regulation or prevention of importation of foreign laborers under contract.
  - (9) United States Employees' Compensation Commission.
  - (10) Vocational rehabilitation.
  - (11) Wages and hours of labor.
  - (12) Welfare of miners.
  - (13) Work incentive programs.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight func-

VIII

tion provided for in clause 3(c) with respect to domestic educational programs and institutions, and programs of student assistance, which are within the jurisdiction of other committees.



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### REPORT OF THE ACTIVITIES OF THE COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES DURING THE 104TH CONGRESS

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JANUARY 2, 1997.—Committed to the Committee of the Whole on the State of the  
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Mr. GOODLING, from the Committee on Economic and Educational  
Opportunities, submitted the following

## REPORT

### SUMMARY

A total of 437 bills and resolutions were referred to the Committee in the 104th Congress. A total of 28 public laws resulted on issues within the Committee's jurisdiction. Two bills referred to the Committee were vetoed. The Full Committee and its five subcommittees conducted 116 days of hearings on legislation under consideration and on oversight and administration of laws within the jurisdiction of the Committee. The Full Committee held 14 of these hearings. Finally, the Full Committee and its subcommittee held a total of 33 days of markup sessions in the consideration of legislation with 21 of these being Full Committee markup sessions.

### FULL COMMITTEE ACTIVITIES

With Republicans given the opportunity to lead the House of Representatives and, as such the Committee on Economic and Educational Opportunities, for the first time in 40 years, the Members of the Committee began the process of reforming the maze of hundreds of programs and laws that are well intentioned, but often ineffective in truly helping improve education for children and youth, human services for disadvantaged citizens, and the workplace for employees and employers. During the 104th Congress, the Committee on Economic and Educational Opportunities focused on the following:

## I. SUMMARY OF ACTIVITIES

### A. WELFARE REFORM

The Committee on Economic and Educational Opportunities had a major role in the creation and eventual enactment of the historic welfare reform legislation achieved by the 104th Congress. Working together with the Committees on Ways and Means and Agriculture, the Committee helped to shape welfare reforms that (1) allow States flexibility to operate effective welfare systems; (2) emphasize work and personal responsibility as antidotes to long-term welfare dependence; (3) increase funding for child care to enable poor families to escape welfare and consolidate a former jumble of federal child care programs; (4) streamline child nutrition programs and target funding to the most needy families; (5) establish strong new measures to enforce child support obligations and to combat welfare fraud and abuse; (6) save taxpayer money; and (7) eliminate benefits to illegal aliens and give priority for benefits to citizens.

The path to reforming welfare was not an easy one. H.R. 4, introduced as part of the Republican Contract with America, was the subject of four hearings by the Committee. Subsequently, on February 22 and 23, 1995, the Committee amended and approved H.R. 999, which included those parts of H.R. 4, and changes thereto, which were within the Committee's jurisdiction, specifically, portions of the bill dealing with work requirements for welfare recipients, child care programs, programs on child protection, child nutrition programs, and restrictions on benefits for non-citizens under programs within the Committee's jurisdiction.

A principle aim of the reforms in H.R. 999 was the simplification and consolidation of numerous federal programs that have grown up in the area of social services, and thereby reduce the burden of paperwork, red tape, and complication for both beneficiaries and service providers. The goal was to allow more of the funds to be used for actual services rather than being soaked up by the costs of delivering those services. In the area of child nutrition, the bill not only consolidated programs and reduced paperwork, it also gave States the freedom and opportunity to find new approaches to increase the percentage of low income children that benefit from these programs. For example, less than 50 percent of those eligible for free or low priced school lunches actually participate in this, the largest of the child nutrition programs. The bill also included increased funding for the child nutrition programs of 4.5 percent per year over the next 5 years.

H.R. 999 was incorporated into H.R. 4 which passed the House of Representatives on March 24, 1995 and, after further changes, was approved by the Senate on September 19, 1995. Final legislation was approved on December 21, 1995 by the House of Representatives, and approved by the Senate on December 22, 1995. President Clinton vetoed H.R. 4, as well as the budget bill which included most of the text of H.R. 4.

Pursuant to the Budget Resolution for fiscal year 1997, on June 12, 1996 the Committee amended and approved an unnumbered committee print containing those parts of welfare reform within the Committee's jurisdiction. The Committee's submission was incorporated into H.R. 3734, the Welfare and Medicaid Reform Act of

1996, prior to consideration by the House of Representatives. H.R. 3734 was approved by the House of Representatives on July 18, 1996 and by the Senate on July 23, 1996. The Committee participated actively in the deliberations of the bill by the House of Representatives as well as during the House and Senate Conference on H.R. 3734. The conference agreement was approved by the House on July 31, 1996 and by the Senate on August 1, 1996. President Clinton signed the bill into law as Public Law 104-193 on August 22, 1996.

Further descriptions of the Committee's activities related to welfare, including Job Opportunities and Basic Skills Program (JOBS), child welfare and child care, can be found in the "Postsecondary, Education, Training and Life-Long Learning" and the "Early Childhood, Youth and Families" sections of this report.

#### B. THE CONGRESSIONAL ACCOUNTABILITY ACT

In large part because of the efforts of the Members of the Committee, the Congressional Accountability Act (CAA) was the very first measure passed by the Republican-led 104th Congress. This measure was signed into law as P.L. 104-1 by President Clinton on January 23, 1995. Passage of the legislation marked the culmination of a long effort by Republican Members of the Committee to extend workplace laws to the Congress with enforcement in the courts, including trials by juries.

The CAA effectively extends 11 workplace laws to the House and the Senate. All but two of the laws (the Federal Labor-Management Relations Act and the Occupational Safety and Health Act) were applied to Congress on January 23, 1996:

1. Fair Labor Standards Act of 1938
2. Title VII of the Civil Rights Act of 1964
3. Americans with Disabilities Act of 1990
4. Age Discrimination in Employment Act of 1967
5. Titles I and V of the Family and Medical Leave Act of 1993
6. Occupational Safety and Health Act of 1970 (will apply in January 1997)
7. Chapter 71 (relating to Federal service labor-management relations) of title 5, United States Code (applied in October 1996)
8. Employee Polygraph Protection Act of 1988
9. Worker Adjustment and Retraining Notification Act
10. Rehabilitation Act of 1973
11. Chapter 43 (relating to veterans' employment and reemployment) of title 38, United States Code.

The Congress had been brought under some of these laws in the past, but employees have never had the right to trial in court.

#### C. IMMIGRATION REFORM

The Committee also had significant involvement in the development of the comprehensive immigration reform legislation that was enacted into law as part of the omnibus appropriations bill. The Committee held a hearing on the issue of immigration reform in San Diego, California on February 22, 1996, and heard about the impact of both legal and illegal immigration from a preeminent

slate of witnesses led by the Governor of California, Pete Wilson. Testimony was also received concerning the impact of comprehensive immigration reform legislation—H.R. 2202, Immigration in the National Interest Act of 1995—upon public benefits' programs, and education and employment-related laws under the jurisdiction of the Committee.

With respect to employment issues, the legislation recognized that one of the primary inducements to illegal immigration is the availability of U.S. jobs and that this nation will never be able to fully control its borders with law enforcement strategies alone. The immigration reform legislation also recognized, however, the practical constraints on employers in policing the attempts of immigrants to illegally secure employment. The immigration reform bill resolves this tension by including needed reforms in the worksite verification process and authorizing a workable pilot telephone verification system to allow employers to readily document which applicants for employment are legally authorized to work.

The legislation also recognizes the importance of education-related benefits to legal immigrants. Under the bill, legal immigrants will continue to be eligible to apply for and receive benefits under the National School Lunch Act, the Child Nutrition Act, the Head Start Act, the Job Training Partnership Act, and the Higher Education Act of 1965, and participate in programs funded under the Elementary and Secondary Education Act of 1965.

The immigration reform legislation—ultimately enacted as part of H.R. 3610, the Omnibus Consolidated Appropriations legislation for fiscal year 1997 (Public Law 104-208)—tackles the problems caused by illegal immigration and fosters the sense of responsibility that we hope will be felt by all newcomers to our great nation. The immigration reform accomplished by the Republican Congress brings this nation back to the point where we can welcome the hope and creativity that new voices can offer us while feeling secure that the wonderful opportunities that life here presents will continue to be available for generations to come.

#### D. STRIKER REPLACEMENT

On March 8, 1995, President Clinton issued Executive Order No. 12954, which prohibited employers with federal contracts in excess of \$100,000 from hiring permanent replacements for striking workers. That same day, legislation (H.R. 1176) was introduced by Chairman Goodling and other Republican Members of the Committee to render the Executive Order null and void.

The Committee held a hearing on H.R. 1176 and Executive Order 12954 on April 5, 1995. The hearing focused on both the policy implications of a ban on striker replacement workers and on the legality, from a constitutional perspective, of the Executive Order.

The Committee considered and reported H.R. 1176 on June 27, 1995. Although the full House did not consider H.R. 1176 separately, a provision precluding funding for the Executive Order was included in the Labor, HHS appropriations bill (H.R. 2127) which was passed by the House on August 4, 1995. Further legislative action became unnecessary when, on February 2, 1996, the U.S. Court of Appeals for the District of Columbia invalidated the Exec-

utive Order, and a subsequent Administration petition for a rehearing was denied.

#### E. NUTRITION ACTIVITIES

##### 1. *Welfare reform*

During the 104th Congress, the Committee on Economic and Educational Opportunities helped initiate major changes to federal child nutrition programs and the Special Supplemental Nutrition Program for Women, Infants and Children.

On February 1, 1995, the Committee held a hearing titled "Nutrition, the Local Perspective." Local providers were invited to testify on existing federal nutrition programs and how their ability to provide nutrition services to beneficiaries was impeded by burdensome, restrictive federal regulations. It was clear from this hearing and past hearings on child nutrition programs that the current programs were in need of reform. Paperwork requirements and restrictive regulations prevented providers from preparing and serving nutritious meals which children would eat.

As a result, H.R. 999, the Welfare Reform Consolidation Act of 1995 (as considered by the Committee) included two flexible State block grants designed to replace existing nutrition programs, to ease the burden on State and local providers and, at the same time, to ensure the nutritional needs of low income individuals were met.

The first block grant focused on school-based nutrition programs, such as school lunch and school breakfast. It provided funds to operate these programs as well as summer feeding programs and programs to schools which provided nutrition services to children in before and after-school child care. In this way, schools would no longer be required to fill out separate applications and meet a variety of conflicting regulations in order to serve the same children under a variety of programs designed to meet their nutritional needs.

The second block grant, the Family Nutrition Block Grant, was designed to meet the nutritional needs of low income children and pregnant mothers, provide meals and supplements to children in child care and to provide for the operation of a summer food program to meet the needs of children when they were not in school. This program was focused on meeting the needs of families with incomes below 185 percent of poverty. Eighty percent of available program dollars were to be used for a program to provide food assistance to pregnant, postpartum and breastfeeding women, and infants and children (WIC) found to be at nutritional risk.

H.R. 999, the Welfare Reform Consolidation Act of 1995, which included both block grants, was reported by the Committee on Economic and Educational Opportunities on February 23, 1995. H.R. 999 was eventually merged with H.R. 4, the Personal Responsibility Act, and sent to the President on December 29, 1995, and subsequently vetoed.

During the House-Senate Conference on the nutrition provisions contained in the welfare bill, a decision was made to allow up to seven States to receive block grant funds for school lunch and school breakfast programs. States applying for such funds would be

required to serve the same or greater proportion of poor and low income students. In addition, conferees agreed to make major streamlining and paperwork changes to the current child nutrition programs and to provide greater flexibility to States and local providers. The bulk of the savings attributable to changes in child nutrition programs was derived from the implementation of a means test for children in family day care homes receiving benefits under the Child and Adult Care Food Program.

The Budget Reconciliation bill for fiscal year 1997, H.R. 3734, the Welfare and Medicaid Reform Act of 1996, as reported from the Committee on June 12, 1996, contained a modified version of this legislation. The block grant provisions were eliminated, and several changes were made to strengthen streamlining, paperwork reduction and flexibility provisions. This legislation was signed into law by the President on August 22, 1996, and is now P.L. 104-193.

### *2. H.R. 2066, The Healthy Meals for Children Act*

On May 1, 1996, the Committee on Economic and Educational Opportunities reported H.R. 2066, The Healthy Meals for Children Act. The purpose of this legislation was to amend the National School Lunch Act to provide more flexibility to local schools in demonstrating they have met the Dietary Guideline requirements of the National School Lunch Act.

Final regulations were issued by the Department of Agriculture to establish the new Dietary Guidelines-based nutrition criteria and the menu-planning requirements for implementing them were issued June 13, 1995. Unfortunately, these regulations did not provide schools with the menu-planning flexibility that Congress sought in the 1994 amendments. Schools which desired to comply with the Guidelines by using another nutritionally sound approach, such as their existing food-based menu system or their own meal pattern revisions were required to get a waiver from the State. While retaining the requirement that school meals comply with the Dietary Guidelines, H.R. 2066 permits schools to use any reasonable approach to achieve this goal. This change will allow schools to prepare meals which are not only healthy and nutritious, but which students will eat.

H.R. 2066 passed the House of Representatives on May 14, 1996, by voice vote, and the Senate on May 16, 1996, by voice vote. The bill was signed into law by the President on May 29, 1996. It is Public Law 104-119.

### *3. H.R. 2428, The Bill Emerson Good Samaritan Food Donation Act*

H.R. 2428, The Bill Emerson Good Samaritan Food Donation Act, was introduced by Representative Pat Danner and the late Representative Bill Emerson to encourage the donation of food and grocery products to non-profit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

A hearing on H.R. 2428 was held by the Subcommittee on Post-secondary Education, Training and Life-Long Learning on May 31, 1996. Representative Pat Danner and several organizations, which accepted and distributed donated foods, testified at this hearing.

Representative Bill Emerson was unable to testify because of illness and submitted his testimony.

On June 26, 1996, the Economic and Educational Opportunities Committee considered H.R. 2428 and ordered it reported, as amended, by voice vote. H.R. 2428 was considered by the House of Representatives and passed by voice vote on July 12, 1996. The Senate amended and considered this legislation on August 2, 1996, and returned it to the House of Representatives for further consideration. The bill, as amended by the Senate, was considered and passed by the House of Representatives by unanimous consent on September 5, 1996. It was signed into law by the President on October 1, 1996, and is known as Public Law 104-210.

This legislation was originally enacted as a Sense of the Congress Resolution in the National and Community Service Act of 1990. The Good Samaritan Food Donation Act, at that time, was to serve as a model law which States were encouraged to adopt. The purpose of the Good Samaritan Food Donation Act was to protect those who donate food in good faith from civil or criminal liability should those consuming such donated food later become sick or die. It did not, and does not, provide such protections in cases of gross negligence or intentional harm. This bill also paid tribute to Bill Emerson's lifelong efforts to alleviate hunger in America.

#### F. SCHOOL REFORM

##### *What works in public education?*

During the 104th Congress the House Committee on Economic and Educational Opportunities held several hearings on education reform. Full Committee hearings were held on January 12, 1995, and January 31, 1996. Their purpose was to confirm the need for education reform, to learn what type of reforms were needed, and to identify reform practices that have been proven effective.

Witnesses at the January 12, 1995, hearing provided Members with national, State, and local perspectives on what is the appropriate federal role in educational policy. The panel of witnesses included Richard Riley, Secretary of Education, Governor Tommy Thompson of Wisconsin, and Mayor Bret Schundler of Jersey City, New Jersey. The overriding sentiment from the hearing was that the federal government should encourage innovation and excellence in education. According to the panel, this can be accomplished by driving decisions to localities and giving States and localities greater flexibility to design and implement creative approaches to improving the quality of education.

The purpose of the January 31, 1996, hearing was to learn what works in public education. Members heard about a variety of local school reform initiatives being implemented throughout the country. While the structure and substance of reforms differed, the net result was the same: student achievement and parental satisfaction increased.

Further discussion on school reform can be found in the "Subcommittee on Early Childhood, Youth and Families" and "Subcommittee on Oversight and Investigations" sections of this report.

*Focusing on local control: Repeal of National Education Standards and Improvement Council*

On February 24, 1995, Chairman Bill Goodling introduced H.R. 1045 which repealed the National Education Standards and Improvement Council (NESIC) created by the Goals 2000: Educate America Act of 1994. NESIC was a Presidentially appointed council with the mission of reviewing and certifying national education standards and State education standards that are voluntarily submitted to it. Because decisions about educating children are primarily decided at the local level by parents, teachers and students, NESIC, commonly referred to as a “national school board” by its critics, generated great controversy about continued local control of education.

On May 10, 1995, H.R. 1045 was ordered reported by the Committee on Economic and Educational Opportunities by a voice vote and no Committee report was filed. On May 15, 1995, H.R. 1045 passed the House of Representatives by voice vote under Suspension of the Rules. The Senate never took action on H.R. 1045, however NESIC was subsequently repealed by amendments made in Public Law 104–134, the Balanced Budget Downpayment Act II enacted on April 26, 1996.

*Education technology*

The Economic and Educational Opportunities Committee, recognizing the importance of gathering information on technology uses in the classroom, held a joint hearing on October 12, 1995 with the House Science Committee. The hearing, entitled “Education Technology in the 21st Century,” focused on the impact of technology in elementary and secondary school classrooms today and what to expect in the classrooms of the 21st Century.

G. NATIONAL ENDOWMENT FOR THE ARTS—NATIONAL ENDOWMENT FOR THE HUMANITIES

While authorization for the National Endowment for the Arts (NEA) expired at the end of fiscal year 1993, funding has continued to be appropriated on a yearly basis since that time. However, no authorizing legislation has been enacted primarily because of controversy surrounding a number of works funded by the NEA.

On May 3, 1995, Chairman Bill Goodling introduced H.R. 1557, a bill to authorize the NEA and the National Endowment for Humanities (NEH) for three additional years with a phase-out effective as of September 30, 1998. The bill provided for the continuation of the Institute of Museum Services, but with no phase-out. H.R. 1557, as amended by a Committee substitute, was approved by the Economic and Educational Opportunities Committee on May 10, 1995. Though no further action took place in the House of Representatives or the Senate, the fiscal year 1996 Interior Appropriations bill, H.R. 1977, reduced funding levels for the NEA and NEH approximately 40 percent to levels near the authorizing bill’s proposed funding levels.

The three year phase-out would have returned control of arts and humanities programs to the State and local level, provided for the



orderly transition of arts and humanities funding back to the private sector, and would have helped reduce deficit spending.

## II. MEETINGS HELD BY THE FULL COMMITTEE

### *104th Congress, First Session*

January 5, 1995—Committee organizational meeting.

January 11, 1995—Oversight hearing on the proper federal role in education policy.

January 12, 1995—Oversight hearing on the proper federal role in education policy.

January 18, 1995—Hearing on H.R. 4, Personal Responsibility Act of 1995.

February 1, 1995—Oversight hearing on the Contract with America: Nutrition, the local perspective.

February 7, 1995—Committee budget request and oversight plan for the 104th Congress.

February 22, 1995—Mark-up of H.R. 999, “Welfare Reform Consolidation Act of 1995”.

February 23, 1995—Mark-up of H.R. 999, “Welfare Reform Consolidation Act of 1995”.

March 15, 1995—Mark-up of H.R. 849, “Age Discrimination in Employment Amendments of 1995”.

April 5, 1995—Hearing on H.R. 1176, to nullify Executive Order 12954, prohibiting federal contracts with companies that hire permanent replacements for striking workers.

May 10, 1995—Mark-up of H.R. 1045, to amend goals 2000, NESIC.

Mark-up of H.R. 1557, “Arts, Humanities, and Human Services Act”.

May 11, 1995—Hearing on H.R. 743, Teamwork for Managers Act of 1995.

May 24, 1995—Mark-up of H.R. 1617, “Workforce and Career Development Act of 1996”.

June 7, 1995—Hearing on Departmental Reorganization.

June 8, 1995—Mark-up of H.R. 1720, “Privatization Act of 1995”.

June 14, 1995—Mark-up of H.R. 1176, to nullify Executive Order 12954, prohibiting federal contracts with companies that hire permanent replacements for striking workers.

June 22, 1995—Mark-up of H.R. 1715, respecting the relationship between workers’ compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

Mark-up of H.R. 743, “Teamwork for Employees and Managers Act”.

June 29, 1995—Hearing on Departmental Reorganization.

July 20, 1995—Mark-up of H.R. 1594, regarding Pension Protection Act (ETI).

Mark-up of H.R. 1225, “Court Reporter Fair Labor Amendments of 1995”.

Mark-up of H.R. 1114, to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and

compactors that meet appropriate American National Standards Institute design safety standards.

July 25, 1995—Hearing on Departmental Reorganization.

September 28, 1995—Mark-up of instructions contained in the Concurrent Resolution on the Budget Resolution for FY 1996.

October 12, 1995—Joint hearing on technology in the 21st century, held with the Committee on Science.

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January 31, 1996—Oversight hearing on what works in public education.

February 7, 1996—Hearing on H.R. 2497, to amend the National Labor Relations Act.

February 22, 1996—Field hearing on H.R. 2202, Immigration in the National Interest Act of 1995, held in San Diego, California.

March 6, 1996—Mark-up of H.R. 995, “ERISA Targeted Health Insurance Reform Act of 1995”.

Consideration of Resolutions regarding the Congressional Accountability Act; Committee instructed Chairman to seek adoption of the Resolutions by the House.

March 14, 1996—Mark-up of H.R. 2570, “Older Americans Amendments of 1996”.

Mark-up of H.R. 3049, to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

Mark-up of H.R. 3055, to amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

March 21, 1996—Mark-up of H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

Mark-up of H.R. 2531, to amend the Fair Labor Standards Act of 1938 to clarify the exemption for houseparents from the minimum wage and maximum hours requirements of that Act, and for other purposes.

April 12, 1996—Joint field hearing on salting, held in Overland Park, Kansas, with the Committee on Small Business.

May 1, 1996—Mark-up of H.R. 2066, “Healthy Meals for Children Act”.

Mark-up of H.R. 3269, “Impact Aid Technical Amendments Act of 1996”.

May 30, 1996—Mark-up of H.R. 3268, “IDEA Improvement Act of 1996”.

June 12, 1996—Consideration of Welfare Reform Committee Print

June 26, 1996—Mark-up of H.R. 2391, “Working Families Flexibility Act of 1996”.

Mark-up of H.R. 2428, “Bill Emerson Good Samaritan Food Donation Act”.

July 24, 1996—Mark-up of H.R. 123, “English Language Empowerment Act of 1996”.

August 1, 1996—Mark-up of H.R. 3863, “Student Debt Reduction Act of 1996”.

Mark-up of H.R. 3876, “Juvenile Crime Control and Delinquency Prevention Act of 1996”.

Mark-up of H.Res. 470, Expressing the Sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 related to campus crime.

August 2, 1996—Continue Mark-up of H.R. 3876, “Juvenile Crime Control and Delinquency Prevention Act of 1996”.

### III. LEGISLATIVE ACTIVITIES

#### A. LEGISLATION ENACTED INTO LAW

P.L. 104–26 (H.R. 1225), “Court Reporter Fair Labor Amendments of 1995”.

P.L. 104–49 (H.R. 1715), respecting the relationship between workers’ compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

P.L. 104–141 (H.R. 3055), to amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

P.L. 104–149 (H.R. 2066), “Healthy Meals for Children Act”.

P.L. 104–174 (H.R. 1114), to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

P.L. 104–191 (H.R. 3103), “Health Insurance Portability and Accountability Act of 1996”.

P.L. 104–195 (H.R. 3269), “Impact Aid Technical Amendments Act of 1996”.

P.L. 104–210 (H.R. 2428), “Bill Emerson Good Samaritan Food Donation Bill”.

P.L. 104–272 (H.R. 4167), “Professional Boxing Safety Act of 1996”.

P.L. 104–331 (H.R. 3452), “Presidential and Executive Office Accountability Act”.

#### B. LEGISLATION ENACTED AS PART OF ANOTHER MEASURE

H.R. 1, “Congressional Accountability Act of 1995”. Provisions of the bill were included in S. 2 and enacted as P.L. 104–1.

H.R. 4, “Personal Responsibility Act of 1995”. Provisions of the bill were included in H.R. 3734 and enacted as P.L. 104–193.

H.R. 849, “Age Discrimination in Employment Amendments”, was included in H.R. 3610 and enacted as P.L. 104–208.

H.R. 995, “ERISA Targeted Health Insurance Reform Act of 1995”. Provisions of the bill were included in H.R. 3103 and enacted as P.L. 104–191.

H.R. 999, “Welfare Reform Consolidation Act of 1995”. Incorporated into H.R. 4 and provisions of the bill were included in H.R. 3734 and enacted as P.L. 104–193.

H.R. 1227, "Employee Commuting Flexibility Act", was included in H.R. 3448 and enacted as P.L. 104-188.

H.R. 1617, "Workforce and Career Development Act of 1996". Provisions of the bill were included in H.R. 3610 and enacted as P.L. 104-208.

H.R. 1720, "Privatization Act of 1995". Provisions of the bill were included in H.R. 3610 and enacted as P.L. 104-208.

H.R. 2202, "Immigration in the National Interest Act of 1995", was included in H.R. 3610 and enacted as P.L. 104-208.

H.R. 2396, "Congressional Award Act Amendments of 1995", was included in H.R. 3610 and enacted as P.L. 104-208.

H.R. 3160, "Health Coverage Availability and Affordability Act of 1996". Provisions of the bill were included in H.R. 3103 and enacted as P.L. 104-191.

H.R. 3286, "Adoption Promotion and Stability Act of 1996". Provisions of the bill were included in H.R. 3448 and enacted as P.L. 104-188.

H.R. 3803, "George Bush School of Government and Public Service Act", was included in H.R. 4036 and enacted as P.L. 104-319.

H.R. 3829, "Welfare Reform Reconciliation Act of 1996", considered as original text of H.R. 3734 and enacted as P.L. 104-193.

H.R. 4282, to amend the National Defense Authorization Act for FY 93 to make a technical correction relating the provision of DOD assistance to local educational agencies, was included in H.R. 3610 and enacted as P.L. 104-208.

S. 1267, "Congressional Award Act Amendments of 1995", was included in H.R. 3610 and enacted as P.L. 104-208.

S. 1972, "Older Americans Indian Technical Amendments Act", was included in H.R. 3610 and enacted as P.L. 104-208.

C. BILLS NOT REFERRED TO COMMITTEE AND ENACTED INTO PUBLIC LAW CONTAINING PROVISIONS OR BILLS UNDER THE JURISDICTION OF THE COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

H.R. 3230, "National Defense Authorization Act for FY 97", includes Impact Aid provisions and enacted as P.L. 104-201.

H.R. 3448, "Small Business Job Protection Act of 1996", includes H.R. 1227, ERISA amendments, and adoption provisions of H.R. 3286 under Section 1808 and enacted as P.L. 104-188.

H.R. 3610, making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes (Omnibus FY 97 Appropriations Bill). This bill includes impact aid, labor and needs based federal education programs provisions along with provisions from the following bills and was enacted as P.L. 104-208: H.R. 849, H.R. 1617 (museum and library services), H.R. 1720 (Sallie Mae and Connie Lee), H.R. 2202, S. 1972, H.R. 4282, H.R. 2396, and S. 1267.

H.R. 3734, "Personal Responsibility and Work Opportunity Act of 1996". This bill includes welfare provisions from the following bills and was enacted as P.L. 104-193: H.R. 999, H.R. 4 and H.R. 3829.

H.R. 4036, to strengthen the protection of internationally recognized human rights, includes H.R. 3803 and enacted as P.L. 104-319.

S. 2, to make certain laws applicable to the legislative branch of the Federal Government, includes provisions of H.R. 1 and enacted as P.L. 104-1.

S. 377, to amend a provision of part A of title IX of the Elementary and Secondary Education Act of 1965, relating to Indian education, to provide a technical amendment, includes secondary education provisions and enacted as P.L. 104-5.

S. 919, to modify and reauthorize the Child Abuse Prevention and Treatment Act, and for other purposes. This bill is under the jurisdiction of the Committee and was held at the desk before being enacted as P.L. 104-235.

S. 1124/H.R. 1530, "National Defense Authorization Act for FY 96", includes Impact Aid provisions and enacted as P.L. 104-106.

S. 2183, to make technical corrections to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This bill makes technical corrections to welfare provisions under the jurisdiction of the Committee and was enacted as P.L. 104-327.

#### D. LEGISLATION PASSED THE HOUSE

H.R. 1, "Congressional Accountability Act of 1995".

H.R. 4, "Personal Responsibility Act of 1995".

H.R. 123, "Bill Emerson English Language Empowerment Act of 1996".

H.R. 743, "Teamwork for Employers and Managers Act of 1995".

H.R. 849, "Age Discrimination in Employment Amendments of 1995".

H.R. 1045, "To amend Goals 2000: Educate America Act to eliminate the National Education Standards and Improvement Council.

H.R. 1114, to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

H.R. 1225, "Court Reporter Fair Labor Amendments of 1995".

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

H.R. 1617, "Workforce and Career Development Act of 1996".

H.R. 1715, respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

H.R. 1720, "Privatization Act of 1995".

H.R. 2066, "Healthy Meals for Children Act".

H.R. 2092, "Private Security Officer Quality Assurance Act of 1995".

H.R. 2202, "Immigration in the National Interest Act of 1995".

H.R. 2391, "Working Families Flexibility Act of 1996".

H.R. 2428, to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals

by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

H.R. 3049, to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

H.R. 3055, to amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

H.R. 3103, "Health Insurance Portability and Accountability Act of 1996".

H.R. 3268, "IDEA Improvement Act of 1996".

H.R. 3269, "Impact Aid Technical Amendments Act of 1996".

H.R. 3286, "Adoption Promotion and Stability Act of 1996".

H.R. 3452, "Presidential and Executive Office Accountability Act".

H.R. 3803, "George Bush School of Government and Public Service Act".

H.R. 3863, "Student Debt Reduction Act of 1996".

H.R. 4134, to amend the Immigration and Nationality Act to authorize States to deny public education benefits to aliens not lawfully present in the United States who are not enrolled in public schools during the period beginning September, 1, 1996, and ending July 1, 1997.

H.R. 4167, "Professional Boxing Safety Act of 1996".

H.R. 4282, to amend the National Defense Authorization Act for FY 93 to make a technical correction relating to the provision of the Department of Defense Assistance to local educational agencies.

H.Con.Res. 123, to provide for the provisional approval of regulations applicable to certain covered employing offices and covered employees and to be issued by the Office of Compliance before January 23, 1996.

H.Con.Res. 207, approving certain regulations to implement provisions of the Congressional Accountability Act of 1995 relating to labor-management relations with respect to covered employees, other than employees of the House of Representatives and employees of the Senate, and for other purposes.

H.Res. 311, to provide for the provisional approval of regulations applicable to the House of Representatives and employees of the House of Representatives and to be issued by the Office of Compliance before January 23, 1996.

H.Res. 470, expressing the sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 relating to crime.

H.Res. 504, approving certain regulations to implement provisions of the Congressional Accountability Act of 1995 relating to labor-management relations with respect to employing offices and covered employees of the House of Representatives, and for other purposes.

S. 1972, "Older Americans Indian Technical Amendments Act".

## E. LEGISLATION PASSED THE HOUSE IN ANOTHER MEASURE

H.R. 1, "Congressional Accountability Act of 1995". Provisions of the bill passed the House in S. 2.

H.R. 4, "Personal Responsibility and Work Opportunity Act of 1995". Provisions of the bill passed the House in H.R. 2491.

H.R. 4, "Personal Responsibility and Work Opportunity Act of 1995". Provisions of the bill passed the House in H.R. 3734.

H.R. 5, "ERISA Targeted Health Insurance Reform Act of 1995". Provisions of the bill passed the House in H.R. 3103.

H.R. 999, "Welfare Reform Consolidation Act of 1995", passed the House in H.R. 4.

H.R. 1157, "Welfare Transformation Act of 1995", passed the House in H.R. 4.

H.R. 1214, "Personal Responsibility Act of 1995", passed the House as original text of H.R. 4.

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles, passed the House in H.R. 3448.

H.R. 1617, "Workforce and Career Development Act of 1996", passed the House in S. 1972.

H.R. 1720, "Privatization Act of 1995", passed the House in H.R. 1617.

H.R. 1720, "Privatization Act of 1995", passed the House in S. 1972.

H.R. 2332, "Consolidated and Reformed Education, Employment, and Rehabilitation Systems Act" or "CAREERS Act". Provisions of the bill passed the House in H.R. 1617.

H.R. 2517, "Seven-Year Balanced Budget Reconciliation Act of 1995", passed the House as text of H.R. 2491.

H.R. 3160, "Health Coverage Availability and Affordability Act of 1996". Provisions of the bill passed the House in H.R. 3103.

H.R. 3803, "George Bush School of Government and Public Service Act", passed the House in H.R. 4036.

H.R. 3829, "Welfare Reform Reconciliation Act of 1996", passed the House as original text of H.R. 3734.

H.R. 3863, "Student Debt Reduction Act of 1996", passed the House in S. 1972.

H.R. 3898, "English Language Empowerment Act of 1996". Provisions of the bill passed the House in H.R. 123.

## F. LEGISLATION WITH FILED REPORTS

H.R. 123 (H.Rept. 104-723), "Bill Emerson English Language Empowerment Act of 1996".

H.R. 743 (H.Rept. 104-248), "Teamwork for Employers and Managers Act of 1995".

H.R. 995 (H.Rept. 104-498, Pt. 1), "ERISA Targeted Health Insurance Reform Act of 1995".

H.R. 999 (H.Rept. 104-75, Pt. 1), "Welfare Reform Consolidation Act of 1995".

H.R. 1114 (H.Rept. 104-278), to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers

and compactors that meet appropriate American National Standards Institute design safety standards.

H.R. 1176 (H.Rept. 104-163), to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees.

H.R. 1225 (H.Rept. 104-219), "Court Reporter Fair Labor Amendments of 1995".

H.R. 1227 (H.Rept. 104-585), to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 1557 (H.Rept. 104-170), "Arts, Humanities, and Museum Services Amendments of 1995".

H.R. 1594 (H.Rept. 104-238), to place restrictions on the promotion by the Departments of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

H.R. 1617 (H.Rept. 104-152), "Workforce and Career Development Act of 1996".

H.R. 1720 (H.Rept. 104-153), "Privatization Act of 1995".

H.R. 2066 (H.Rept. 104-561), "Healthy Meals for Children Act".

H.R. 2391 (H.Rept. 104-670), "Working Families Flexibility Act of 1996".

H.R. 2428 (H.Rept. 104-661), to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

H.R. 2531 (H.Rept. 104-592), to amend the Fair Labor Standards Act of 1938 to clarify the exemption for houseparents from the minimum wage and maximum hours requirements of that Act, and for other purposes.

H.R. 2570 (H.Rept. 104-539), "Older Americans Amendments of 1995".

H.R. 3049 (H.Rept. 104-505), to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

H.R. 3055 (H.Rept. 104-504), to amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

H.R. 3268 (H.Rept. 104-614), "IDEA Improvement Act of 1996".

H.R. 3269 (H.Rept. 104-560), "Impact Aid Technical Amendments Act of 1996".

H.R. 3863 (H.Rept. 104-775), "Student Debt Reduction Act of 1996".

H.R. 3876 (H.Rept. 104-783), "Juvenile Crime Control and Delinquency Prevention Act of 1996".

H.Con.Res. 470 (H.Rept. 104-776), expressing the sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 related to campus crime.



G. BILLS NOT REFERRED TO COMMITTEE THAT PASSED THE HOUSE CONTAINING PROVISIONS OR BILLS UNDER THE JURISDICTION OF THE COMMITTEE ON ECONOMIC AND EDUCATION OPPORTUNITIES

H.R. 1530, to authorize appropriations for FY 96 for military activities of the Department of Defense, to prescribe military personnel strengths for FY 96, includes Impact Aid provisions (sec. 394).

H.R. 2491, "Balance Budget Act of 1995", includes welfare reform, student aid and ERISA provisions along with provisions from the following bills: H.R. 4, and H.R. 2517.

H.R. 3230, to authorize appropriations for fiscal year 1997 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1997, and for other purposes, includes Impact Aid provisions.

H.R. 3448, "Small Business Job Protection Act of 1996", includes H.R. 1227, ERISA amendments, and adoption provisions of H.R. 3286 under Section 1808.

H.R. 3610, making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes (Omnibus FY 97 Appropriations Bill), includes impact aid provisions.

H.R. 3734, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", includes welfare reform provisions from H.R. 999, H.R. 4 and H.R. 3829.

H.R. 4036, to strengthen the protection of internationally recognized human rights, includes H.R. 3803.

H.Con.Res. 108, to correct technical errors in the enrollment of the bill H.R. 1594, includes technical correction to ETI provisions.

S. 2, to make certain laws applicable to the legislative branch of the Federal Government, includes provisions of H.R. 1.

S. 377, to amend a provision of part A, of title IX of the Elementary and Secondary Education Act of 1965, relating to Indian education, to provide a technical amendment, and for other purposes, includes secondary education provisions.

S. 919, to modify and reauthorize the Child Abuse and Prevention Treatment Act, and for other purposes. This bill under the jurisdiction of the Committee was held at the Desk before passing the House.

S. 1124, "National Defense Authorization Act for Fiscal Year 1996", includes Impact Aid provisions.

S. 2183, to make technical corrections to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, includes technical correction to welfare provisions.

H.Res. 400, approving regulations to implement provisions of the Congressional Accountability Act of 1995 (P.L. 104-1) with respect to employing offices and covered employees of the House of Representatives.

H.Res. 401, directing the Office of Compliance to provide educational assistance to employing offices of the House of Representatives regarding compliance with the Congressional Accountability Act of 1995 (P.L. 104-1) and requiring employing offices of the House of Representatives to obtain prior approval of the chairman and ranking minority party member of the Committee on House

Oversight of the House of Representatives of the amount of any settlement payments made under such Act.

S.Con.Res. 51, to provide for the approval of final regulations that are applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, and that were issued by the Office of Compliance on January 22, 1996, and for other purposes.

#### H. LEGISLATION ORDERED REPORTED FROM FULL COMMITTEE

H.R. 123, "Bill Emerson English Language Empowerment Act of 1996".

H.R. 743, "Teamwork for Employers and Managers Act of 1995".

H.R. 849, "Age Discrimination in Employment Amendments of 1995".

H.R. 995, "ERISA Targeted Health Insurance Reform Act of 1995".

H.R. 999, "Welfare Reform Consolidation Act of 1995".

H.R. 1114, to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

H.R. 1176, to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees.

H.R. 1225, "Court Reporter Fair Labor Amendments of 1995".

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 1557, "Arts, Humanities, and Museum Services Amendments of 1995".

H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

H.R. 1617, "Workforce and Career Development Act of 1996".

H.R. 1715, respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

H.R. 1720, "Privatization Act of 1995".

H.R. 2066, "Healthy Meals for Children Act".

H.R. 2391, "Working Families Flexibility Act of 1996".

H.R. 2428, to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

H.R. 2570, "Older Americans Amendments of 1995".

H.R. 3049, to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity if the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

H.R. 3055, to amend section 326 of the higher Education Act of 1965 to permit continued participation by Historically Black Grad-

uate Professional Schools it he grant program authorized by that section.

H.R. 3268, "IDEA Improvement Act of 1996".

H.R. 3269, "Impact Aid Technical Amendments Act of 1996".

H.R. 3863, "Student Debt Reduction Act of 1996".

H.R. 3876, "Juvenile Crime control and Delinquency Prevention Act of 1996".

H.Con.Res. 470, expressing the sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 related to campus crime.

#### I. LEGISLATION VETOED

H.R. 4, "Personal Responsibility and Work Opportunity Act of 1995".

H.R. 743, "Teamwork for Employees and Managers Act of 1995".

#### LEGISLATION CONSIDERED AT FULL COMMITTEE AND NOT REPORTED FROM SUBCOMMITTEE

##### A. LEGISLATION ENACTED INTO LAW

P.L. 104-49 (H.R. 1715), respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

P.L. 104-141 (H.R. 3055), to amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

P.L. 104-272 (H.R. 4167), "Professional Boxing Safety Act of 1996".

P.L. 104-331 (H.R. 3452), "Presidential and Executive Office Accountability Act".

##### B. LEGISLATION ENACTED AS PART OF ANOTHER MEASURE

H.R. 1, "Congressional Accountability Act of 1995". Provisions of the bill were included in S. 2 and enacted as P.L. 104-1.

H.R. 4, "Personal Responsibility Act of 1995". Provisions of the bill were included in H.R. 3734 and enacted as P.L. 104-193.

H.R. 999, "Welfare Reform Consolidation Act of 1995". Incorporated into H.R. 4 and provisions of the bill were included in H.R. 3734 and enacted as P.L. 104-193.

H.R. 1720, "Privatization Act of 1995". Provisions of the bill were included in H.R. 3610 and enacted as P.L. 104-208.

H.R. 2202, "Immigration in the National Interest Act of 1995", was included in H.R. 3610 and enacted as P.L. 104-208.

H.R. 3829, "Welfare Reform Reconciliation Act of 1996", considered as original text of H.R. 3734 and enacted as P.L. 104-193.

H.R. 4282, to amend the National Defense Authorization Act for FY 93 to make a technical correction relating the provision of DOD assistance to local educational agencies, was included in H.R. 3610 and enacted as P.L. 104-208.

## C. LEGISLATION PASSED THE HOUSE

H.R. 1, "Congressional Accountability Act of 1995".

H.R. 4, "Personal Responsibility Act of 1995".

H.R. 1045, "To amend Goals 2000: Educate America Act to eliminate the National Education Standards and Improvement Council.

H.R. 1715, respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

H.R. 1720, "Privatization Act of 1995".

H.R. 2202, "Immigration in the National Interest Act of 1995".

H.R. 3049, to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

H.R. 3055, to amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

H.R. 3452, "Presidential and Executive Office Accountability Act".

H.R. 3863, "Student Debt Reduction Act of 1996".

H.R. 4134, to amend the Immigration and Nationality Act to authorize States to deny public education benefits to aliens not lawfully present in the United States who are not enrolled in public schools during the period beginning September, 1, 1996, and ending July 1, 1997.

H.R. 4167, "Professional Boxing Safety Act of 1996".

H.R. 4282, to amend the National Defense Authorization Act for FY 93 to make a technical correction relating to the provision of the Department of Defense Assistance to local educational agencies.

H.Con.Res. 123, to provide for the provisional approval of regulations applicable to certain covered employing offices and covered employees and to be issued by the Office of Compliance before January 23, 1996.

H.Con.Res. 207, approving certain regulations to implement provisions of the Congressional Accountability Act of 1995 relating to labor-management relations with respect to covered employees, other than employees of the House of Representatives and employees of the Senate, and for other purposes.

H.Res. 311, to provide for the provisional approval of regulations applicable to the House of Representatives and employees of the House of Representatives and to be issued by the Office of Compliance before January 23, 1996.

H.Res. 470, expressing the sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 relating to crime.

H.Res. 504, approving certain regulations to implement provisions of the Congressional Accountability Act of 1995 relating to labor-management relations with respect to employing offices and covered employees of the House of Representatives, and for other purposes.

## D. LEGISLATION PASSED THE HOUSE IN ANOTHER MEASURE

H.R. 1, "Congressional Accountability Act of 1995". Provisions of the bill passed the House in S. 2.

H.R. 4, "Personal Responsibility and Work Opportunity Act of 1995". Provisions of the bill passed the House in H.R. 2491.

H.R. 4, "Personal Responsibility and Work Opportunity Act of 1995". Provisions of the bill passed the House in H.R. 3734.

H.R. 999, "Welfare Reform Consolidation Act of 1995", passed the House in H.R. 4.

H.R. 1157, "Welfare Transformation Act of 1995", passed the House in H.R. 4.

H.R. 1214, "Personal Responsibility Act of 1995", passed the House as original text of H.R. 4.

H.R. 1720, "Privatization Act of 1995", passed the House in S. 1972.

H.R. 1720, "Privatization Act of 1995", passed the House in H.R. 1617.

H.R. 2517, "Seven-Year Balanced Budget Reconciliation Act of 1995", passed the House as text of H.R. 2491.

H.R. 3829, "Welfare Reform Reconciliation Act of 1996", passed the House as original text of H.R. 3734.

H.R. 3863, "Student Debt Reduction Act of 1996", passed the House in S. 1972.

## E. LEGISLATION WITH FILED REPORTS

H.R. 999 (H.Rept. 104-75, Pt. 1), "Welfare Reform Consolidation Act of 1995".

H.R. 1176 (H.Rept. 104-163), to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees.

H.R. 1557 (H.Rept. 104-170), "Arts, Humanities, and Museum Services Amendments of 1995".

H.R. 1720 (H.Rept. 104-153), "Privatization Act of 1995".

H.R. 3049 (H.Rept. 104-505), to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

H.R. 3055 (H.Rept. 104-504), to amend section 326 of the higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

H.R. 3863 (H.Rept. 104-775), "Student Debt Reduction Act of 1996".

H.Con.Res. 470 (H.Rept. 104-776), expressing the sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 related to campus crime.

## F. LEGISLATION ORDERED REPORTED FROM FULL COMMITTEE

H.R. 999, "Welfare Reform Consolidation Act of 1995".

H.R. 1176, to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees.

H.R. 1557, "Arts, Humanities, and Museum Services Amendments of 1995".

H.R. 1715, respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

H.R. 1720, "Privatization Act of 1995".

H.R. 3049, to amend section 1505 of the Higher Education Act of 1965 to provide for the continuity of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

H.R. 3055, to amend section 326 of the higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.

H.R. 3863, "Student Debt Reduction Act of 1996".

H. Con. Res. 470, expressing the sense of the Congress that the Department of Education should play a more active role in monitoring and enforcing compliance with the provisions of the Higher Education Act of 1965 related to campus crime.

#### G. LEGISLATION VETOED

H.R. 4, "Personal Responsibility and Work Opportunity Act of 1995".

#### H. STATISTICS ON BILLS CONSIDERED AT FULL COMMITTEE AND NOT REPORTED FROM SUBCOMMITTEE

Total Number of Bills Considered at Full Committee and Not Reported from Subcommittee .....	48
Total Number of Bills Ordered Reported from Full Committee .....	9
Total Number of Filed Reports on Bills .....	8
Total Number of Bills Passed the House .....	18
Total Number of Bills Passed the House in Another Measure .....	11
Total Number of Bills Enacted into Law .....	4
Total Number of Bills Enacted as Part of Another Measure .....	7
Total Number of Bills Vetoed .....	1

#### V. COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES STATISTICS

Total Number of Bills and Resolutions Referred .....	437
Total Number of Hearings .....	14
Field .....	2
Joint with Other Committees .....	2
Total Number of Full Committee Mark-Up Sessions .....	21
Total Number of Bills Ordered Reported from Full Committee .....	26
Total Number of Filed Reports on Bills .....	25
Total Number of Bills Passed the House .....	37
Total Number of Bills Passed the House in Another Measure .....	20
Total Number of Bills Enacted into Law .....	10
Total Number of Bills Enacted as Part of Another Measure .....	18
Total Number of Bills Vetoed .....	2

## SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

## I. SUMMARY OF ACTIVITIES

## A. ERISA TARGETED HEALTH INSURANCE REFORM

In the 104th Congress, the Committee initiated the legislative debate leading to the enactment of incremental health insurance reform.

On February 14, 1995, the Subcommittee on Employer-Employee Relations set the stage for ERISA-based insurance reform by holding hearings on "The ERISA Title I Framework: A 20-year Success Story." On February 21, 1995, the ERISA Targeted Health Insurance Reform Act of 1995 (H.R.995) was introduced by Representatives Fawell, Goodling, Arney, and other Members. This bipartisan legislation was cosponsored by 51 Members of the House of Representatives. Legislation addressing reforms in the individual health insurance market, the Targeted Individual Health Insurance Reform Act of 1995, was introduced on the same date. During Subcommittee hearings on the two bills, held on March 10 and March 28, 1995, witnesses testified that the preservation and expansion of ERISA and its preemption framework would be a critical step on the road to significant health insurance reform.

On March 6, 1996, the Committee adopted an amendment in the nature of a substitute to H.R. 995 offered by Chairman Fawell and ordered the bill reported. The ERISA Targeted Health Insurance Reform Act of 1996 was reported to the House on March 25, 1996 (H. Rept. 104-498). The Committee bill served as the genesis for the ERISA-based reforms contained in the Health Coverage Availability and Affordability Act, H.R. 3103, as passed by the House on March 28, 1996.

The provisions in the conference report (H. Rept. 104-736) relating to portability and health insurance accessibility are structured in a manner similar to those in the House passed bill and the ERISA Targeted Health Insurance Reform legislation originally reported by the Committee. Under the newly enacted portability protections, employees can no longer be told that their plan will not cover them because of a preexisting medical condition when they are continuously insured. The employees of small employers can no longer be told that their health coverage has been canceled by an insurer because of a costly illness. Small employers can no longer be told by insurers that health insurance is not available to their employees because of the risks of their jobs or their previous claims experience. In sum, employees will no longer have to fear, when they leave their job or take a new job, that they or their family members will lose access to health insurance coverage because of a preexisting medical condition.

Of particular note is the ERISA-based structure of the final legislation (the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191). The key components of the group-to-group portability provisions—restrictions on preexisting-condition exclusions, special enrollment rules and nondiscrimination on the basis of an individual's health status—are made applicable to "group health plans" and to "health insurance issuers offering group health insurance coverage in connection with a group health plan"

under a new Part 7 of ERISA Title I. Identical provisions under sections 2701 and 2702 of the Public Health Service Act are made applicable only to group health plans which are non-federal governmental plans and to health insurance issuers in connection with group health plans (but not to group health plans covered under ERISA, even if such a group health plan is a multiple employer welfare arrangement). Identical provisions under sections 9801–9803 of the Internal Revenue Code are made applicable only to group health plans (including church plans) and not to health insurance issuers. Section 104 of the Act ensures coordination by means of an interagency memorandum of understanding (MOU) which requires that regulations, rulings and interpretations issued by the different agencies on the same subject matter must be administered so as to have the same effect at all times. Likewise a coordinated enforcement strategy must be maintained under the MOU to prevent duplicative enforcement and to assign priorities in enforcement. For example, the Committee expects that any information relating to a potential violation of the Act by a health insurance issuer which comes to the attention of the Department of Labor or the Internal Revenue Service will be transmitted to the Department of Health and Human Services (HHS) for a determination under section 2722(a)(2) as to whether a state has failed to substantially enforce the particular provision of the Act (amending the Public Health Service Act) as it relates to the health insurance issuer. Only if the state involved has failed to substantially enforce the federal law with respect to the provision violated will the Secretary of HHS invoke the federal enforcement provisions under section 2722(b).

The Health Insurance Portability and Accountability Act, under section 704 of ERISA and section 2723 of the Public Health Service Act, also reinforces the broad preemption framework with respect to employee benefit plans (i.e. group health plans) which characterizes ERISA section 514. In particular, the new provisions of section 701 of ERISA and section 2701 of the Public Health Service Act as they relate to health insurance coverage offered by a health insurance issuer in connection with a group health plan supersede any provision of state law relating to the preexisting condition rules under such sections, except to the extent that such state law specifically provides for one of the exceptions listed under paragraph (b)(2). Therefore, in general, the above referenced portability/preexisting condition rules and certification/notice requirements will apply on a uniform basis to all group health plans and related health insurance coverage, if any. The only exception to this general rule occurs with respect to health insurance coverage offered by a health insurance issuer in a state which specifically provides for one or more of the exceptions listed in paragraph (b)(2).

The Committee also takes note that by omitting from the conference report the ERISA small business pooling provisions included under Subtitle C of the House bill, this Congress has missed an important opportunity to extend more affordable coverage to the millions of employees and their dependents who today do not have health insurance coverage. These provisions would have built upon the ERISA cornerstone of this nation's employee benefits law to allow employers, particularly small employers, to achieve econo-



mies of scale by joining together to form either self-insured or fully-insured health plans. The number of uninsured workers will be a continual reminder that this mechanism for expanded health coverage is needed and should be included at the earliest possible time. Nonetheless, the enacted legislation does preserve the ERISA preemption cornerstone which has fueled the marketplace dynamics that have recently reduced health insurance cost inflation, at least in the large group market. A principle also reflected in new ERISA section 704 is the need for national uniformity regarding the procedures and reporting required to make the portability mechanism work for all employees who participate in employee health benefit plans covered under the legislation.

#### B. PENSION PROTECTION

The Subcommittee held several hearings focusing on protecting workers pensions. On June 15, 1995, the Subcommittee held a hearing on H.R. 1594, the "Pension Protection Act of 1995." The purpose of H.R. 1594 was to prevent the Department of Labor, guardian of fiduciary standards for the nation's pension plans, or any other federal agency from promoting so-called economically targeted investments (ETIs) to employee benefit plans. ETIs are investments in an array of so-called "socially beneficial" projects such as public housing construction or infrastructure building, rather than in those selected exclusively to provide a financially sound return for pensioners as required by federal pension law. The Department of Labor is promoting such politically targeted investments through a \$1.2 million taxpayer-funded clearinghouse and through issuance of an Interpretive Bulletin—even though it acknowledges that these investments "require a longer time to generate significant investment returns," are "less liquid," and require more expertise to evaluate. H.R. 1594 would abolish the clearinghouse and repeal the Interpretive Bulletin. On July 13, 1995, the Subcommittee approved H.R. 1594; the full committee favorably reported the bill on July 20, 1995; and on September 12, 1995, the House passed it by a vote of 239–179.

In June 1996, the Subcommittee held two oversight hearings on promoting the expansion of pensions for American workers. The hearings focused on how after more than two decades since the passage of the landmark Employee Retirement Income Security Act (ERISA), Congress must reduce any barriers hindering its goal of securing adequate retirement income for American workers and their families. The hearings addressed the ways in which the Committee, in future legislation, can increase access to pension plans by further simplifying regulations which today make it difficult for many employers to offer pensions. The Subcommittee is committed to beginning the groundwork for pension expansion and simplification now, before baby boomers overwhelm our retirement system.

#### C. TEAM ACT

One of the issues upon which the Subcommittee on Employer-Employee Relations placed its highest priority was H.R. 743, the Teamwork for Employees and Managers (TEAM) Act, which would clarify the legality of a wide range of employee involvement programs. The Subcommittee was motivated by the recognition that

the workplace of today is simply not the same as the workplace that was prevalent in the America of the 1930's when the National Labor Relations Act (NLRA) was enacted. Employers and employees in nonunion workplaces who want to work together to confront and address the numerous issues that arise in any employment relationship (e.g. safety and health concerns, efficiency/productivity issues, scheduling, benefits, etc.) were finding their cooperation thwarted by broad interpretations of labor laws a half century old. The Subcommittee believes that federal labor law should facilitate the desire of employees and employers to create mechanisms in the workplace—be they formal or informal, permanent or temporary—to foster an exchange of concerns, problems, suggestions and solutions to make the employment experience more satisfying and productive for all parties.

The Subcommittee heard from many employers and business owners that they have either suspended or decided against initiating any employer-employee involvement or cooperative management programs because of a concern about how the National Labor Relations Board and the courts would judge the legality of such programs. Employees who have enjoyed having a voice in how their workplaces are operated and structured have also indicated that they are concerned that legal questions surrounding the legality of employer-employee cooperation will force them back into a situation where, in their words, they will have to “check their brains at the door.”

This nation's labor law must be relevant to the employer-employee relationships of the twenty-first century. The Subcommittee felt strongly that the amendments to the NLRA contemplated by the TEAM Act were crucial and that the bill would pose no threat to the well-protected right of employees to select representatives of their own choosing to act as their exclusive bargaining agent. Even with the changes to the NLRA proposed in H.R. 743, an employee involvement structure may not engage in collective bargaining nor may it act as the exclusive representative of employees. The prohibitions in the NLRA outlawing interference with employees' attempts to form a union and preventing employers from avoiding bargaining obligations by directly dealing with employees remain unaffected by the TEAM Act.

Although H.R. 743 was unfortunately vetoed by President Clinton after passage by both the House and the Senate, the Subcommittee remains committed to the legislation as it makes clear that employers can work together with their employees to confront and solve the myriad problems and issues that arise in a workplace. To allow otherwise would stand in the way of cutting edge human resource management that offers business the opportunity to make an investment in the human potential of the American workforce that will yield untold dividends for this nation.

#### D. ADEA PUBLIC SAFETY EXEMPTION

Another issue to which the Subcommittee on Employer-Employee Relations devoted early attention was the restoration of the public safety exemption to the Age Discrimination in Employment Act of 1967 (ADEA). Chairman Fawell introduced legislation (H.R. 849) to restore this exemption, which expired on December 31, 1993. The

legislation would allow police and fire departments and correctional institutions to utilize maximum hiring ages and early retirement ages as an element of their overall personnel policies. The restoration of the public safety exemption was sought by management and labor alike in the public safety arena.

Although the Subcommittee believes strongly that the use of an age requirement as a qualification for employment is rarely justified, the public safety arena presents one of the very limited exceptions where the need to perform at peak physical and mental conditioning is critical and the natural effects of the aging process cannot be discounted. Police and firefighters have the safety and well-being of not only their fellow officers, but the general public as well, in their hands, and the Subcommittee simply was not prepared to tolerate the risk presented by the possibility of sudden incapacitation or slowed reflexes.

The Subcommittee held a hearing on the need for the public safety exemption under the ADEA, and the testimony of firefighting and law enforcement organizations and local government was compelling. A representative of the International Association of Firefighters testified that "the most important reason that public safety occupations are an exception to the general rule against age-based employment criteria is simply that human lives are at stake." Both the firefighters and police officers presented persuasive testimony that state and local governments must ensure a physically fit and fully qualified workforce and that there are no adequate physical tests available to enable them to do so without the use of age criteria.

H.R. 849, which enjoyed overwhelming bipartisan support, was one of the first pieces of legislation considered by the Committee on Economic and Educational Opportunities and, by voice vote, passed the House of Representatives on March 28, 1995. The Subcommittee was gratified that the Congress took the critical steps necessary to ensure that H.R. 849 was finally enacted by including the legislation in the omnibus appropriations bill, P.L. 104-208, signed by President Clinton. The public safety exemption under the ADEA drew the proper balance between protecting the employment rights of older Americans and protecting the safety needs of all Americans, and gave police and fire departments the necessary flexibility to establish personnel policies that are suited to the demands of public safety occupations.

#### E. THE WORKER RIGHT TO KNOW ACT

The Worker Right to Know Act, H.R. 3580, was introduced by Chairman Harris Fawell on June 5, 1996. The Act implements and strengthens workers' rights, created by the U.S. Supreme Court's 1988 decision in *Beck v. Communications Workers of America*, to object to the payment of union dues or fees for any activities not related to collective bargaining, contract administration or grievance adjustment necessary to performing the duties of exclusive representation.

The Act would require unions to disclose to its memberships exactly where funds were going, and amends the Labor-Management Reporting and Disclosure Act to give all employees paying dues to a union greater access to the union's financial records.

In light of the serious undermining of workers' right to know, and have a say in, where their hard-earned dollars are sent, the Subcommittee on Employer-Employee Relations held two hearings in Washington, DC, in April and June 1996, to examine in detail the effects of this unfairness and to fashion an effective response which would uphold the rights of workers.

The Subcommittee's two hearings on H.R. 3580—held April 18 and June 19, 1996 (both hearings contained in Serial No. 104-66)—demonstrated a strong need for legislation protecting workers' rights. Eighteen witnesses' testimony, including eight current or former union members, created a compelling case for the appropriateness of simply asking workers for their permission before spending their money.

Witnesses' direct experience confirmed that rank-and-file union members are having their dues taken by union leadership and spent on political activities with which many members disagree. Testimony showed that most workers are unaware that they have a right to a refund on that portion of dues used for purposes unrelated to legitimate union functions, and that those who are aware of this right—and seek to exercise it—often face union delay and intimidation, and may become outcasts within the union when attempting to secure rebates.

#### F. REFORM OF THE NATIONAL LABOR RELATIONS ACT

The Subcommittee initiated a broad review of the National Labor Relations Act (NLRA) and of the National Labor Relations Board, the federal agency charged with administering and enforcing the NLRA. Upon completion of its review, the Subcommittee held hearings and considered several bills intended to address problems or areas of concern the Subcommittee had identified with respect to the both the NLRA and the NLRB.

The Subcommittee reviewed the union organizing tactic known as "salting", in which union organizers seek or gain employment with a non-union employer for the sole purpose of coercing that employer into signing a collective bargaining agreement. Hearings were held on union "salting" in conjunction with the Subcommittee on Oversight and Investigations on July 12, 1995 and October 31, 1995. On March 29, 1996, Chairman Fawell introduced legislation to address abusive "salting" practices, H.R. 3211, "The Truth in Employment Act of 1996." The Committee on Economic and Educational Opportunities held a joint field hearing on the bill with the Committee on Small Business on April 12, 1996 in Overland Park, Kansas.

The Subcommittee also reviewed the NLRB's increased use of 10(j) injunctions—referring to that provision of the NLRA that allows the NLRB, upon issuance of an Unfair Labor Practice complaint, to seek injunctive relief in the U.S. District Courts. A hearing on the Board's use of 10(j) injunctions was held on September 27, 1995; and, on March 14, 1996, Chairman Fawell introduced H.R. 3091, the Injunctive Relief Amendments Act of 1996.

Finally, the Subcommittee reviewed the current state of the law regarding access to an employers' property within the context of the National Labor Relations Act. On October 18, 1995, Chairman Hoekstra introduced legislation, H.R. 2497, to address questions re-

guarding a union's access to an employer's property, vis-à-vis the access granted to a charitable, civic or religious organization. The Committee on Economic and Educational Opportunities held a hearing on the bill on February 7, 1996.

#### G. GROUP PREFERENCES/AFFIRMATIVE ACTION/EQUAL OPPORTUNITY

The Subcommittee conducted an important review of the role of affirmative action in the employment context. In particular, hearings focused on examining the Office of Federal Contract Compliance Programs (OFCCP), which administers mandatory written affirmative action programs for federal contractors, and the Executive Order it enforces. The Subcommittee held the following hearings: oversight hearings on affirmative action in employment on March 24 and May 2, 1995; oversight hearing on Equal Employment Opportunity Commission (EEOC) administrative reforms on May 23, 1995; oversight hearing on Executive Order 11246 and its implementing regulations, as administered by the Office of Federal Contract Compliance Programs (OFCCP) on June 21, 1995; and legislative hearing on H.R. 2128, "The Equal Opportunity Act of 1995," and the role of the OFCCP on February 29, 1996.

### II. MEETINGS HELD BY THE SUBCOMMITTEE

#### *104th Congress, First Session*

January 24, 1995—Oversight hearing on the Age Discrimination in Employment Act, public safety exemption.

February 8, 1995—Oversight hearing on removing impediments to employee participation/electromation.

February 14, 1995—Oversight hearing on health care reform.

February 16, 1995—Mark-up of H.R. 849, "Age Discrimination in Employment Amendments of 1995".

March 7, 1995—Mark-up of H.R. 743, "Teamwork for Employees and Employers Managers Act".

March 10, 1995—Hearing on H.R. 995, ERISA Targeted Health Insurance Reform Act of 1995.

March 24, 1995—Oversight hearing on affirmative action in employment.

March 28, 1995—Hearing on H.R. 995, ERISA Targeted Health Insurance Reform Act of 1995.

Hearing on H.R. 996, Targeted Individual Health Insurance Reform Act of 1995.

May 2, 1995—Oversight hearing on affirmative action in employment.

May 23, 1995—Oversight hearing on the Equal Employment Opportunity Commission (EEOC) administrative reforms/case processing.

June 15, 1995—Hearing on H.R. 1594, Economically Targeted Investments (ETI's).

June 21, 1995—Oversight hearing on Executive Order 11246 and its implementing regulations, as administered by the Office of Federal Contract Compliance Programs (OFCCP).

July 13, 1995—Mark-up of H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies

and instrumentalities of economically targeted investments in connection with employee benefit plans.

September 27, 1995—Oversight hearing on National Labor Relations Board (NLRB) reform.

*104th Congress, Second Session*

February 29, 1996—Hearing on H.R. 2128, the Equal Opportunity Act of 1995; and the Office of Federal Contract Compliance Programs (OFCCP).

April 18, 1996—Oversight hearing on mandatory assessment of union dues.

June 6, 1996—Oversight hearings on promoting expansion of pensions for American workers.

June 19, 1996—Hearing on H.R. 3580, Worker Right to Know Act.

June 26, 1996—Oversight hearings on promoting expansion of pensions for American workers.

### III. LEGISLATIVE ACTIVITIES

#### A. LEGISLATION ENACTED INTO LAW

P.L. 104–191 (H.R. 3103), “Health Insurance Portability and Accountability Act of 1996”.

#### B. LEGISLATION ENACTED AS PART OF ANOTHER MEASURE

H.R. 849, “Age Discrimination in Employment Amendments”, was included in H.R. 3610 and enacted as P.L. 104–208.

H.R. 995, “ERISA Targeted Health Insurance Reform Act of 1995”. Provisions of the bill were included in H.R. 3103 and enacted as P.L. 104–191.

H.R. 3160, “Health Coverage Availability and Affordability Act of 1996”. Provisions of the bill were included in H.R. 3103 and enacted as P.L. 104–191.

#### C. LEGISLATION PASSED THE HOUSE

H.R. 849, “Age Discrimination in Employment Amendments of 1995”.

H.R. 743, “Teamwork for Employers and Managers Act of 1995”.

H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

H.R. 2092, “Private Security Officer Quality Assurance Act of 1995”.

H.R. 3103, “Health Insurance Portability and Accountability Act of 1996”.

#### D. LEGISLATION PASSED THE HOUSE IN ANOTHER MEASURE

H.R. 995, “ERISA Targeted Health Insurance Reform Act of 1995”. Provisions of the bill passed the House in H.R. 3103.

H.R. 3160, “Health Coverage Availability and Affordability Act of 1996”. Provisions of the bill passed the House in H.R. 3103.

## E. LEGISLATION WITH FILED REPORTS

H.R. 743 (H.Rept. 104–248), “Teamwork for Employers and Managers Act of 1995”.

H.R. 995 (H.Rept. 104–498, Pt. 1), “ERISA Targeted Health Insurance Reform Act of 1995”.

H.R. 1594 (H.Rept. 104–238), to place restrictions on the promotion by the Departments of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

## F. LEGISLATION ORDERED REPORTED FROM FULL COMMITTEE

H.R. 849, “Age Discrimination in Employment Amendments of 1995”.

H.R. 743, “Teamwork for Employers and Managers Act of 1995”.

H.R. 995, “ERISA Targeted Health Insurance Reform Act of 1995”.

H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

## G. LEGISLATION REPORTED FROM SUBCOMMITTEE

H.R. 743, “Teamwork for Employers and Managers Act of 1995”.

H.R. 849, “Age Discrimination in Employment Amendments of 1995”.

H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

## H. LEGISLATION DISCHARGED FROM SUBCOMMITTEE

H.R. 995, ERISA Targeted Health Insurance Reform Act of 1995”.

## I. LEGISLATION VETOED

H.R. 743, “Teamwork for Employees and Managers Act of 1995”.

## IV. SUBCOMMITTEE STATISTICS

Total Number of Bills and Resolutions Referred to Subcommittee .....	130
Total Number of Bills Discharged from Subcommittee .....	1
Total Number of Hearings .....	17
Field .....	0
Joint with Other Committees .....	0
Total Number of Subcommittee Mark-Up Sessions .....	3
Total Number of Bills Reported from Subcommittee .....	3
Total Number of Bills Ordered Reported from Full Committee .....	4
Total Number of Filed Reports on Bills .....	3
Total Number of Bills Passed the House .....	5
Total Number of Bills Passed the House in Another Measure .....	2
Total Number of Bills Enacted into Law .....	1
Total Number of Bills Enacted as Part of Another Measure .....	3
Total Number of Bills Vetoed .....	1

## SUBCOMMITTEE ON WORKFORCE PROTECTIONS

## I. SUMMARY OF ACTIVITIES

## A. THE FAIR LABOR STANDARDS ACT OF 1938

During the 104th Congress, the Subcommittee on Workforce Protections undertook a series of oversight hearings on the Fair Labor Standards Act of 1938. The overall theme of the six hearings was whether the Act, along with its many underlying regulations, needs to be updated to reflect the realities of the modern workforce and to clarify areas where the law reflects uncertainty.

*The Working Families Flexibility Act*

The Subcommittee on Workforce Protections held an oversight hearing on June 8, 1995 on amending the Fair Labor Standards Act (FLSA) to provide private sector employers with the option of allowing employees to choose to take compensatory time off in lieu of overtime pay, an option which federal, state, and local governments have had for many years. Witnesses testified at the hearing about the need for an amendment to the FLSA to provide covered or “non-exempt” employees with more flexibility regarding compensation and scheduling issues.

The Fair Labor Standards Act requires generally that hours of work by “non-exempt” employees beyond 40 hours in a seven-day period must be compensated at a rate of one-and-a-half times the employee’s regular rate of pay. Narrow exceptions to the so-called “40-hour work week” are permitted, under section 7 of the FLSA, for employees in a variety of specific types and places of employment whose circumstances have led Congress, over the years, to enact specific provisions regarding maximum hours of work for those types of employment. In addition, the overtime pay requirement does not apply to “exempt” employees—“executive, administrative, or professional” employees.

Payment to private sector employees for overtime hours worked must be in the form of cash wages. This is contrary to the overtime pay requirement under the FLSA for public sector employees. Public agencies may provide compensatory time in lieu of overtime compensation, so long as the employee or his or her collective bargaining representative has agreed to this arrangement and the compensatory time off is given at a rate of not less than one and one-half hours for each overtime hour worked by the employee.

On September 21, 1995, Representative Cass Ballenger introduced H.R. 2391, the Working Families Flexibility Act. The purpose of the legislation is to amend the FLSA to provide compensatory time for all employees. A hearing was held by the Subcommittee on H.R. 2391 on November 1, 1995. Witnesses testified about the changes in the work force and the workplace since the 1930s, when the private sector provisions regarding overtime pay were written. There is ample support for concluding that working men and women today want the option of being able to earn compensatory time off rather than cash wages for overtime hours worked. A survey conducted in September, 1995 by Penn Schoen Associates, Inc. found that 75 percent of those surveyed favored a



proposal to give workers the option of time off in lieu of overtime wages.

The Subcommittee on Workforce Protections favorably reported the Working Families Flexibility Act, as amended, on December 13, 1995. The Committee on Economic and Educational Opportunities favorably reported the bill, as amended, on June 26, 1996. The amendments to the bill include a number of provisions for employees in the private sector which are not provided in current law for public sector employees. The additional provisions for private sector employees have been added in response to concerns which have been raised about the possible misuses of allowing employers and employees in the private sector to decide on compensatory time in lieu of cash compensation.

Under H.R. 2391, an employer and employee must reach an expressed mutual agreement or understanding that overtime compensation will be in the form of compensatory time. If either party does not so agree, then the overtime pay must be in the form of cash compensation. The agreement to use compensatory time must be affirmed in a written or otherwise verifiable statement prior to the performance of the work for which the compensatory time off would be given. Any agreement must be entered into “knowingly and voluntarily” by the employee.

Private sector employers are prohibited under the bill from directly or indirectly intimidating, threatening, coercing or attempting to coerce any employee into taking or not taking compensatory time in lieu of cash wages. There are appropriate penalties in the bill for employers who violate the anti-coercion provision. An employee who has accrued compensatory time may generally use the time whenever he or she so desires. The employer may deny the employee’s request only if the employee’s use of the compensatory time would “unduly disrupt” the operations of the employer. This same standard—which is used under the Family and Medical Leave Act and under the public sector use of compensatory time—is to balance the employee’s right to make use of compensatory time that has been earned and the employer’s reasonable needs in operating the business. Finally, the bill provides that an employee may accrue no more than 240 hours of compensatory time. Any accrued compensatory time must be cashed out a minimum of once per year or within 30 days of an employee’s written request for a cash out.

The Working Families Flexibility Act passed the House, as amended, on July 30, 1996, but was not acted on by the Senate prior to the adjournment of the 104th Congress.

#### *Court reporters*

On July 11, 1995, the Subcommittee on Workforce Protections heard testimony on H.R. 1225, the Court Reporter Fair Labor Amendments of 1995. The bill was introduced on March 14, 1995 by Representative Harris W. Fawell to amend the Fair Labor Standards Act to exempt employees who perform certain court reporting duties from the overtime time requirements applicable to certain public agencies.

H.R. 1225 was introduced in response to a ruling by the Department of Labor which held that court reporters are acting as em-

ployees of the court when they are preparing transcripts for attorneys, litigants and other parties, even though the Internal Revenue Service has determined that they are independent contractors in this instance. While preparing such transcripts, court reporters typically have an agreement with their employer to charge a per page rate for preparing transcripts for outside parties. In this capacity, they are acting as independent contractors, not as employees of the court.

In order to comply with the Department of Labor's ruling, many courts were considering changes and some had already made changes to their payment structures for official court reporters. H.R. 1225, which was supported by court reporters as well as state and local government employers, restores the payment system of court reporters to what both court reporters and state and local courts believed the system was prior to the ruling by the Department of Labor.

H.R. 1225 clarifies that time spent by official court reporters preparing transcripts for a per page fee during "off hours" shall not be considered to be "hours worked" for the purposes of section 7(a) of the Fair Labor Standards Act. In particular, the legislation provides that where court reporters are being compensated on a per page basis for transcription work performed on the court reporter's own time, the time spent on that work need not be counted as hours worked for purposes of determining the employer's overtime obligation to that reporter.

The Committee on Economic and Educational Opportunities reported H.R. 1225, as amended, on July 20, 1995. The bill was then passed, as amended, by the House on the Corrections Calendar on August 1, 1995, and by the Senate on August 5, 1995. The measure was enacted on September 6, 1995, and became Public Law 104-26.

#### *Travel time in company vehicles*

On March 14, 1995, Representative Harris W. Fawell introduced H.R. 1227, to amend the Portal-to-Portal Act of 1947 to address the issue of the compensability of time spent by employees commuting in company vehicles. The bill was introduced in response to an opinion letter issued by the Department of Labor on August 5, 1994, which ruled that the time spent by an employee traveling from home to the first work assignment, or returning home from the last assignment, was similar to that of traveling between jobs during the day and therefore represented a principal activity, which must be compensated. No compensation would be required in cases where employees used their own personal vehicles.

The Department of Labor's opinion letter interfered with customary practice in many industries, where employees commute directly from home to the job site and use of the employer's vehicle for such commuting is a matter of convenience for both the employee and the employer. In response to Congressional inquiries, the Department of Labor issued a follow-up letter on October 19, 1994, suspending enforcement of the opinion letter. A revised opinion letter modifying the Department of Labor's position was issued on April 3, 1995. The letter held that such travel time need not be compensated if: (1) use of the vehicle is strictly voluntary and not

a condition of employment; (2) the vehicle which is used for commuting is the type of vehicle which would normally be used for commuting; (3) the employee incurs no costs for driving or parking the employer's vehicle; and (4) the work sites are within the normal commuting area of the employer's establishment.

On November 1, 1995, the Subcommittee held a hearing on H.R. 1227. Witnesses testified about the need for a legislative clarification of the intention of the Portal-to-Portal Act with regard to employee use of employer-provided vehicles for commuting. H.R. 1227 was favorably reported by the Subcommittee on Workforce Protections on December 13, 1995. The Committee on Economic and Educational Opportunities favorably reported H.R. 1227 on March 21, 1996.

The bill, as amended, provides clarification regarding the use of an employer-provided vehicle for travel from an employee's home to the first work location at the start of the workday and from the last work location to the employee's home at the end of the workday. Such travel is not considered to be part of the employee's principal activities and therefore, the time spent in such commuting is not required to be compensated under the Fair Labor Standards Act. The limitation applies only if the use of the vehicle is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement between the employer and the employee or employee's representative. This clarification regarding an employee's "principal activity or activities" applies as well to activities performed by an employee which are incidental to the use of the employer-provided vehicle for travel by the employee at the beginning and end of the workday. The bill does not apply to time spent traveling between job sites during the course of the workday.

H.R. 1227 was passed by the House on May 22, 1996 and was subsequently included as part of H.R. 3448, the Small Business Job Protection Act. The Senate passed H.R. 3448 on July 9, 1996, and it was enacted into law (P.L. 104-188) on August 20, 1996.

*Use of paper balers by teenage workers*

On July 11, 1996, the Subcommittee heard testimony on H.R. 1114, introduced by Representative Thomas W. Ewing which would authorize minors who are under the child labor provisions of the Fair Labor Standards Act to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards. The Department of Labor's regulations under the Fair Labor Standards Act prohibit minors under the age of 18 from loading or operating certain power-driven paper products machines, including paper balers. Witnesses testified that while there have been significant changes in technology which have resulted in improved safety mechanisms on balers, the 30-year old regulation had not been updated by the Department of Labor to reflect these changes.

The Committee on Economic and Educational Opportunities reported H.R. 1114, as amended, on July 20, 1995. The bill was considered and passed by the House, as amended, on October 24, 1995 on the Corrections Calendar. The House-passed bill would permit 16 and 17 year olds to load (but not operate or unload) paper balers

and compactors that (1) can not operate while being loaded, and (2) meet the most current safety standards of the American National Standards Institute (ANSI), a private standards-setting organization. In addition, it required that the machinery have an on-off switch, that the key be maintained in the custody of an adult employee, and that a notice be posted on the machine indicating that 16 and 17 year old employees are allowed to load but not operate or unload the machine.

The Senate passed H.R. 1114, as amended, on July 16, 1996. The final bill, which was enacted on August 6, 1996, and became P.L. 104-174, provides, in addition to incorporating the protections of the House bill, that the machinery must meet either the current ANSI standard, or a future ANSI standard so long as the Secretary of Labor certifies that the standard is at least as protective of the safety of minors as the current ANSI standards. In addition, for two years following enactment, employers will be required to report any injuries and fatalities which result from contact by an employee under age 18 during the loading, operating, or unloading of the machine.

#### *Houseparents legislation*

On November 1, 1995, the Subcommittee on Workforce Protections held a hearing on H.R. 2531, which was introduced on October 25, 1995, by Representative Tim Hutchinson. The purpose of the bill is to exempt certain qualified houseparents from the minimum wage and overtime requirements of the Fair Labor Standards Act.

Many private, nonprofit, charitable institutions which serve neglected or abused children employ individuals as houseparents or substitute parents, on a twenty-four hour basis. The institutions maintain a family-based environment by providing continuous, consistent care to children from homes broken by divorce, desertion, death, and separation. Staff who function as houseparents live, eat, sleep and enjoy recreation in the home with the children under their care. However, as the result of the application of the Fair Labor Standards Act to houseparents, a number of these institutions have been forced to change the method in which they provide care to the children who reside in the homes.

Section 13(b)(24) of the Fair Labor Standards Act excludes from overtime certain employees of institutions which operate residential schools serving children and youth. In reality, there are few individuals, if any, who are able to qualify for the current exemption. It fails to recognize the types of individuals who are employed as houseparents. There are many single individuals who serve ably and are unable to qualify for the exemption because they are not married. An individual who serves as the substitute parent for children who are from broken homes where both parents are living, but no longer together, would not qualify for the exemption because only orphans or children with at least one parent deceased will meet the current law requirement. Finally, many houseparents do not qualify because they are employed by institutions which only provide residential care, not educational programs, for abused or neglected children.

Witnesses who testified before the Subcommittee hearing emphasized that the success of these programs for abused or neglected children directly depends upon the institution's ability to provide a family-based home environment with continuous, consistent care by substitute parents. It is apparent that many of these institutions face tremendous uncertainty as to whether or not staff functioning as houseparents are covered by the Fair Labor Standards Act. Furthermore, the absence of clearly-defined guidelines from the Department of Labor concerning the treatment of houseparents under the Fair Labor Standards Act has resulted in confusion and costly litigation for some private, nonprofit institutions providing care for children. The present treatment of houseparents under the FLSA is an impediment to charitable, nonprofit organizations which attempt to provide necessary services using a family-based model.

On December 13, 1995, the Subcommittee on Workforce Protections favorably reported H.R. 2531, as amended. The bill, which was reported as amended by the Committee on Economic and Educational Opportunities on March 21, 1996, would exempt individuals employed by private, nonprofit institutions as houseparents from the minimum wage and overtime provisions of the Fair Labor Standards Act provided that the individual (1) receives room and board, without cost, (2) is compensated on an annual basis of not less than \$8,000 and (3) resides in the home with the children for a minimum of 72 hours. The bill was not considered by the House of Representatives.

#### B. BOXING SAFETY

On June 11, 1996, the Subcommittee on Workforce Protections held a joint hearing on H.R. 1186, the Professional Boxing Safety Act of 1996, with the Commerce Committee's Subcommittee on Commerce, Trade, and Hazardous Materials. The hearing focused on issues of fraud, health and safety in the sport of boxing.

Most State athletic commissions have differing policies with regard to boxing. In one State, boxers, promoters, and managers may be required to meet certain standards, while another State may have no requirements or safety and health standards at all. H.R. 1186, which was introduced by Representative Michael G. Oxley establishes minimum health and safety requirements for professional boxers and will improve the ability of State authorized boxing commissions to properly oversee professional boxing matches. H.R. 1186 was jointly referred to the Committee on Economic and Educational Opportunities and the Committee on Commerce. The bill was favorably reported by the Committee on Commerce on September 18, 1996. The Committee on Economic and Educational Opportunities did not further consider the bill, which was supported by Members on both sides of the aisle, in order to expedite the legislative process. H.R. 4167, identical to H.R. 1186 as reported by the Committee on Commerce was introduced by Representative Pat Williams of Montana and was considered and passed by the House in lieu of H.R. 1186. The Senate passed H.R. 4167 on September 27, 1996, and the measure was enacted on October 9, 1996, as P.L. 104-272.

## C. OSHA

The Occupational Safety and Health Act has been amended only once in the 25 years since it was enacted; that one amendment was part of a budget bill to raise revenues for the federal government through increased penalties. Despite the lack of amendment, however, OSHA has been one of the most criticized federal agencies. The criticisms have come not only from employers and employees, but from policy analysts who have studied OSHA's impact and found it to have imposed considerable cost with comparatively little benefit to worker safety and health.

Reasons for OSHA's lack of cost effectiveness and examples of excessively burdensome regulations were explored during a hearing conducted by the Subcommittee on Oversight and Investigations shortly after the 104th Congress convened, on February 16, 1995. They were further explored in a general oversight hearing held by the Subcommittee on Workforce Protections, on March 8, 1995, at which both present and past OSHA administrators gave their views of why OSHA has not been more cost effective in promoting workplace safety and health.

Legislation to reform Occupational Safety and Health Act (H.R. 1834) through reforms of the regulatory process, greater balance between consultative and enforcement efforts by OSHA personnel, changes to the enforcement process to provide more effective targeting at serious health and safety problems, and consolidation of federal agencies involved in workplace safety and health efforts was considered during several hearings conducted by the Subcommittee on Workforce Protections.

Despite claims by the Clinton Administration that it too recognized that OSHA needed to be "reinvented" because "the rules are too rigid and the inspections are often adversarial" (Vice President Gore, speaking to the White House Conference on Small Business), the President nonetheless declared his intention to veto H.R. 1834. Seeking the point of consensus on reforms to OSHA, Chairman Ballenger introduced a second bill, H.R. 3234, which incorporated several initiatives moving in the same direction of reform which had been previously announced or endorsed by the Clinton Administration. H.R. 3234 was approved by the Subcommittee on Workforce Protections on April 17, 1996. Unfortunately, the Clinton Administration continued to oppose all legislative efforts to reform OSHA, and so the Committee chose not to further confront the Administration with OSHA reform legislation in this Congress. The Committee expects to continue its efforts to make OSHA more cost effective in the 105th Congress.

## D. ADAMS FRUIT

In 1990 the United States Supreme Court, in the case *Adams Fruit Company v. Barrett*, 494 U.S. 638, held that monetary claims for injuries under the federal Migrant and Seasonal Agricultural Workers Protection Act (MSPA) could be granted even if the injuries were also covered and had been compensated under a state workers' compensation law. The Supreme Court thus exempted workers covered by MSPA from the general rule that state workers

compensation is the exclusive remedy for injuries suffered in the course of employment to which workers compensation applies.

Efforts had been made, on a bipartisan basis, since 1990, to reverse the effect of the Supreme Court's decision. Legislation attached to a fiscal year 1993 appropriations bill temporarily reversed the decision and stated that where workers compensation applied, it was the exclusive remedy for injuries suffered in the course of employment. That legislation expired, however, in July, 1993, leaving agricultural employers exposed to liability under MSPA even after workers compensation was paid, and leaving agricultural employees exposed to the likelihood that their employers in many states would simply drop workers compensation coverage altogether.

The Subcommittee on Workforce Protections held a hearing on the issues raised by the *Adams Fruit* decision on May 25, 1995. On June 22, 1995, H.R. 1715, introduced by Chairman Goodling, was approved by the Full Committee on Economic and Educational Opportunities.

As introduced and approved by the Committee, H.R. 1715 only addressed the exclusive remedy of workers compensation for agricultural workers covered by MSPA. Subsequent to Committee approval, interested parties and Committee staff engaged in extensive negotiations to address several issues related to the reversal of the *Adams Fruit* decision, and to reach consensus on legislation. Those negotiations were ultimately successful and on October 17, 1995, the House of Representatives unanimously approved a substitute version of H.R. 1715. The identical legislation was approved by the Senate, and became Public Law 104-49.

#### E. THE DAVIS-BACON ACT

The Davis-Bacon Act, passed in 1931, applies to contractors who work on federal construction projects. It requires contractors to pay certain "prevailing wages" to the various classes of laborers and mechanics working under federal contracts valued at \$2,000 or more. Davis-Bacon requirements have been also been extended to 60 other programs involving varying degrees of federal funding. These programs range from low-income housing to Head Start to veterans nursing home care. The Davis-Bacon Act has remained essentially unchanged since its passage 65 years ago.

The Subcommittee on Workforce Protection conducted a general oversight hearing on the Davis-Bacon Act on February 15, 1995. Witnesses testified that the Act limits free market competition, causes the taxpayers to pay more for federal construction projects, denies job opportunities, particularly to minority and entry-level workers, causes paperwork and recordkeeping burdens and is unnecessary in light of the numerous laws that already protect the wages and working conditions of all workers. On March 2, 1995 the Subcommittee on Workforce Protections approved H.R. 500, legislation to repeal the Davis-Bacon Act.

In January 1995, a number of Oklahoma citizens and public officials contacted the Oklahoma Department of Labor regarding newly published Davis-Bacon wage rates. A comparison of the old and new wage rates showed increases as much as 162 percent. These increases are passed along to taxpayers in the form of higher

costs on public construction projects like schools and highways. Because of the increase, the Oklahoma Department of Labor began an inquiry in the Davis-Bacon prevailing wage survey process. An investigative report, prepared by the Oklahoma Department of Labor entitled "Investigative Report: The Davis-Bacon Act, and Fraudulent Wage Data" was submitted to the U.S. Department of Labor (DOL) and to Congress in July 1995. The initial report by the Oklahoma Department of Labor identified three cases of apparent fraudulent activities.

In keeping with its oversight responsibilities for the U.S. Department of Labor, the Committee on Economic and Educational Opportunities has been investigating these charges of wrongdoing in the Davis-Bacon program. On January 18, 1996 the Subcommittees on Oversight and Investigation and Workforce Protections conducted a joint hearing in Oklahoma City, Oklahoma to review the allegations of fraud and abuse in the Davis-Bacon Act. The Subcommittees heard from several witnesses including Oklahoma Department of Labor officials and contractors. The Oklahoma Department of Labor testified that their investigation had uncovered over 100 cases of apparent fraudulent activity.

In addition, the Committee requested the General Accounting Office (GAO) to review the prevailing wage process to determine if it was susceptible to fraudulent activities. The Committee also asked the Department of Labor's Inspector General (the internal, independent watchdog over DOL) to investigate the allegations of fraud in Oklahoma and to audit several other states to determine if fraudulent activities are a systemic, nationwide problem.

The Subcommittee on Oversight and Investigation and the Subcommittee on Workforce Protections convened another joint hearing on June 20, 1996, to hear the results of the GAO review of the U.S. Department of Labor procedures under the Davis-Bacon Act. The GAO report released on May 31, 1996, raised questions about the U.S. Department of Labor's administration of the Davis-Bacon Act and stated that "Labor's wage determination procedures contain weaknesses that could permit the use of fraudulent or inaccurate data for setting prevailing wage rates." The Subcommittees also heard testimony from Oklahoma Department of Labor officials regarding a recently released report entitled "A Report to the U.S. Congress: Regarding Specific Concerns About the U.S. Department of Labor Discovered During the Oklahoma Inquiry into Possible Davis-Bacon Fraud." The report based on an extensive review of public documents reveals "that officials within the DOL may have played an active role in the wrongful inflation of federal prevailing wage rates at the expense of taxpayers and for the benefit of favored officials within organized labor."

The FBI in Oklahoma City is investigating allegations of fraud in the Davis-Bacon Act as well as the role of U.S. DOL officials. A grand jury has also been impaneled. Indictments are likely "imminent."

#### F. THE SERVICE CONTRACT ACT

The Service Contract Act, officially called the O'Hara McNamara Services Act covers all contracts with the federal government in excess of \$2,500 whose primary purpose is to provide services to the



government. At the time of enactment, employees typically covered by the Service Contract Act were semi-skilled or unskilled workers performing manual work or craft work. Types of service contracts covered by the Act were varied and included laundry and dry-cleaning, custodial and janitorial, guard service, packing and crafting, food service, and miscellaneous housekeeping services.

The Subcommittee on Workforce Protections conducted a general oversight hearing on the Service Contract Act on February 15, 1995. Witnesses testified that throughout its history the Act has been plagued with problems. In particular, the Service Contract Act denies small businesses the opportunity to compete for federal contracts, costs taxpayers billions in inflated wages, and has significant administrative problems. On March 2, 1995 the Subcommittee on Workforce Protections approved H.R. 246, legislation to repeal the Service Contract Act. On September 28, 1995, the Committee on Economic and Educational Opportunities reported to the Committee on the Budget a provision to repeal the Service Contract Act, which was included in H.R. 2491, the Balanced Budget Act of 1995, which passed the House on October 26, 1995. The provision was ultimately dropped from the final budget package.

## II. MEETINGS HELD BY THE SUBCOMMITTEE

February 15, 1995—Oversight hearing on the Davis-Bacon Act and the Service Contract Act.

March 2, 1995—Mark-up of H.R. 245, to repeal the Service Contract Act of 1965.

Mark-up of H.R. 500, to repeal the Davis-Bacon Act.

March 8, 1995—Oversight hearing on the Occupational Safety and Health Act (OSHA).

March 30, 1995—Oversight hearing on the Fair Labor Standards Act (FLSA).

May 25, 1995—Oversight hearing on *Adams Fruit Co., Inc. v. Barrett*.

June 8, 1995—Oversight hearing on the Fair Labor Standards Act (FLSA).

June 20, 1995—Hearing on H.R. 1834, Safety and Health Improvement and Regulatory Reform Act of 1995.

June 28, 1995—Hearing on H.R. 1834, Safety and Health Improvement and Regulatory Act of 1995.

July 11, 1995—Hearing on H.R. 1114, to authorize minors under the Fair Labor Standards Act to load paper bailers and compactors.

Hearing on H.R. 1225, to amend the Fair Labor Standards Act pertaining to Court Reporters.

Hearing on H.R. 1783, to require a regulation change under the occupational Safety and Health Act of 1970 pertaining to firefighters.

July 27, 1995—Hearing on H.R. 1834, Safety and Health Improvement and Regulatory Reform Act of 1995.

August 24, 1995—Oversight field hearing on the Occupational Safety and Health Act (OSHA), held in Pickens, South Carolina.

October 25, 1995—Oversight hearing on the Fair Labor Standards Act (FLSA).

November 1, 1995—Oversight hearing on the Fair Labor Standards Act (FLSA).

December 13, 1995—Mark-up of H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating the payment of wages to employees who use employer owned vehicles.

Mark-up of H.R. 2391, “Working Families Flexibility Act of 1996”.

Mark-up of H.R. 2531, to amend the Fair Labor Standards Act of 1938 to clarify the exemption for houseparents from the minimum wage and maximum hours requirements of that Act, and for other purposes.

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January 18, 1996—Joint oversight field hearing on the Davis-Bacon Act/Oklahoma Fraud Allegations, held with the Committee’s Subcommittee on Oversight and Investigations, in Oklahoma City, Oklahoma.

April 17, 1996—Mark-up of H.R. 3234, “Small Business OSHA Relief Act of 1996”.

June 11, 1996—Joint hearing on H.R. 1186, the Professional Boxing Act, held with the Subcommittee on Commerce, Trade, and Hazardous Materials of the Committee on Commerce.

June 20, 1996—Joint oversight hearing on Davis Bacon / GAO Report, held with the Committee’s Subcommittee on Oversight and Investigations.

September 12, 1996—Oversight hearing on the Fair Labor Standards Act (FLSA).

### III. LEGISLATIVE ACTIVITIES

#### A. LEGISLATION ENACTED INTO LAW

P.L. 104–26 (H.R. 1225), “Court Reporter Fair Labor Amendments of 1995”.

P.L. 104–174 (H.R. 1114), to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

#### B. LEGISLATION ENACTED AS PART OF ANOTHER MEASURE

H.R. 1227, “Employee Commuting Flexibility Act”, was included in H.R. 3448 and enacted as P.L. 104–188.

#### C. LEGISLATION PASSED THE HOUSE

H.R. 1114, to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

H.R. 1225, “Court Reporter Fair Labor Amendments of 1995”.

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 2391, “Working Families Flexibility Act of 1996”.

## D. LEGISLATION PASSED THE HOUSE IN ANOTHER MEASURE

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles, passed the House in H.R. 3448.

## E. LEGISLATION WITH FILED REPORTS

H.R. 1114 (H.Rept. 104-278), to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

H.R. 1225 (H.Rept. 104-219), "Court Reporter Fair Labor Amendments of 1995".

H.R. 1227 (H.Rept. 104-585), to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 2391 (H.Rept. 104-670), "Working Families Flexibility Act of 1996".

H.R. 2531 (H.Rept. 104-592), to amend the Fair Labor Standards Act of 1938 to clarify the exemption for houseparents from the minimum wage and maximum hours requirements of that Act, and for other purposes.

## F. LEGISLATION ORDERED REPORTED FROM FULL COMMITTEE

H.R. 1114, to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.

H.R. 1225, "Court Reporter Fair Labor Amendments of 1995".

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 2391, "Working Families Flexibility Act of 1996".

## G. LEGISLATION REPORTED FROM SUBCOMMITTEE

H.R. 246, to repeal the Service Contract Act of 1965.

H.R. 500, to repeal the Davis-Bacon Act.

H.R. 1227, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

H.R. 2391, "Working Families Flexibility Act of 1996".

H.R. 2531, to amend the Fair Labor Standards Act of 1938 to clarify the exemption for houseparents from the minimum wage and maximum hours requirements of that Act, and for other purposes.

H.R. 3234, "Small Business OSHA Relief Act of 1996".

## H. LEGISLATION DISCHARGED FROM SUBCOMMITTEE

H.R. 1114, to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors

that meet appropriate American National Standards Institute design safety standards.

H.R. 1225, "Court Reporter Fair Labor Amendments of 1995".

#### I. LEGISLATION VETOED

None of the legislation referred to Subcommittee was vetoed.

#### IV. SUBCOMMITTEE STATISTICS

Total Number of Bills and Resolutions Referred to Subcommittee .....	82
Total Number of Bills Discharged from Subcommittee .....	2
Total Number of Subcommittee Hearings .....	18
Field .....	2
Joint with Other Committees .....	1
Total Number of Subcommittee Mark-Up Sessions .....	3
Total Number of Bills Reported from Subcommittee .....	6
Total Number of Bills Ordered Reported from Full Committee .....	4
Total Number of Filed Reports on Bills .....	5
Total Number of Bills Passed the House .....	4
Total Number of Bills Passed the House in Another Measure .....	1
Total Number of Bills Enacted into Law .....	2
Total Number of Bills Enacted as Part of Another Measure .....	1
Total Number of Bills Vetoed .....	0

#### SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES

##### I. SUMMARY OF ACTIVITIES

##### A. EDUCATING AMERICA'S YOUTH

###### *School reform*

On June 21, 1995 and July 13, 1995, the Subcommittee on Early Childhood, Youth and Families held hearings on education reform as it pertains to public elementary and secondary schools. The hearings provided a beginning framework for gathering information on the quality of public education and answering the following two questions: (1) What needs to be done to reform and transform public education so it meets the needs of families, students, and employees of the 21st century?; and (2) What should be the Federal government's role, if any, in education reform?

At the hearing on June 21, 1995, Committee Members, Dave Weldon and Frank Riggs, primary sponsors of H.R. 1640, the "Low Income School Choice Demonstration Act of 1995," presented strong arguments for the establishment of a nationwide public and private school choice demonstration program to test the effectiveness of school choice as a means of improving K-12 education. Testimony was also received on how public charter schools have provided an increasingly popular and effective model for education reform in various States.

The hearing on July 13, 1995 examined various education reforms at the State and local levels including raising academic standards (i.e. importance of academic standards to private businesses), private management of public schools, district-wide public school choice, and various other local reforms.

On July 30, 1996, the Subcommittee held a joint hearing with the Subcommittee on Human Resources of the Ways and Means Committee on H.R. 3467, "Saving Our Children: The American

Community Renewal Act of 1996.” H.R. 3467, provided a comprehensive approach for the renewal of poor urban and rural communities. This bill was introduced on May 16, 1996 by Representative Jim Talent, a Member of the Economic and Educational Opportunities Committee, and Representative J.C. Watts. Through the use of free enterprise, tax incentives, and public and private school choice, the legislation provides a solid framework for community renewal. Title IV of the legislation would have established a low income scholarship program giving low income parents the opportunity to choose the best schools, public, private, or parochial, for their children. No further action was taken on this measure during the 104th Congress.

Further discussion on school reform can be found in the “Full Committee” and “Subcommittee on Oversight and Investigations” sections of this report.

*H.R. 3268, The IDEA Improvement Act of 1996*

The Individuals with Disabilities Education Improvement (IDEA) Act, H.R. 3268, was introduced by Subcommittee Chairman Randy “Duke” Cunningham on April 18, 1996. The bill amended the Individuals with Disabilities Education Act based on information gathered in four hearings. The first hearing, held jointly with the Senate Subcommittee on Disability Policy on May 9, 1995 was followed by two Subcommittee on Early Childhood, Youth and Families hearings on June 20 and 27, 1995. A fourth hearing on a draft version of the bill was held on March 7, 1996.

The amendments to the Act made significant changes to the permanently authorized Part B program for school-aged children, the Part H infant and toddler program, and the 14 funded-discretionary programs. The bill included a change in the funding formula, which phased in a formula based on each State’s child population and child poverty statistics over a ten-year period. The bill reduced inappropriate attorney’s fees and limited reimbursement by public schools for the cost of private school tuition where a child was unilaterally placed in such schools by the child’s parents.

The bill reduced unnecessary paperwork by streamlining Individualized Education Programs, State and local application procedures, and evaluation requirements. Its provisions permitted the removal of dangerous children from classrooms, regardless of their disability status, and permitted the equal disciplinary treatment of disabled children where the child’s actions are unrelated to their disability.

H.R. 3268 reorganized the 14 funded discretionary programs under the Act into four broad programs: a national research and improvement program; a national professional development program focused on low-incidence disabilities, model training programs, and training of special education higher-educators; a State program primarily focused on professional development; and a parent training center program. The Act also repealed the never funded and expired Part I program.

On April 24, 1996, the bill was considered and approved by the Subcommittee by voice vote. On May 30, 1996, the bill was considered and approved by the Economic and Educational Opportunities Committee by a vote of 32–5, and was passed by the House of Rep-

representatives under Suspension of the Rules on June 10, 1996, by voice vote. While the Senate Labor and Human Resources Committee did unanimously consider and approve a bill amending IDEA, S. 1578, on March 21, 1996, neither that legislation nor H.R. 3268 was considered by the Senate during the 104th Congress.

*English as the official language of the federal government*

On October 18, 1995 and November 1, 1995 Subcommittee Chairman Randy “Duke” Cunningham held hearings on the general topic of English as the Common Language, receiving testimony from Members of Congress and other interested parties.

H.R. 123, the “Bill Emerson English Language Empowerment Act of 1996” was introduced by the late Representative Bill Emerson and approved by the Committee on Economic and Educational Opportunities on July 23, 1996, by a vote of 19 to 17 and passed the House of Representatives on August 1, 1996, by a vote of 259–169. The Senate failed to take any action on this legislation.

The legislation declares English the official language of the federal government, and requires the government to conduct most of its official business in English. It builds upon our nation’s historic tradition and is designed to unify Americans from all walks of life behind one shared language. It replaces a balkanized national language policy, devoid of any uniform principles, with a common sense, common language policy. The bill has no effect upon the use of foreign languages in homes, neighborhoods, churches, or private businesses. Affirming English as the official language of the government ensures that all Americans can count on one language for government actions, policies and documents. It reinforces other national policies, such as the requirement that one be able to read, write and speak English before becoming a United States citizen.

*Impact aid*

H.R. 3269, the Impact Aid Technical Amendments Act of 1996, was introduced by Chairman Randy “Duke” Cunningham on April 18, 1996. H.R. 3269, as introduced, amended the Impact Aid program to provide for the following: inclusion of a hold harmless provision with respect to amounts for payments relating to the federal acquisition of real property; inclusion of provisions to address funding concerns arising from renovation of military housing; establishment of categories of eligibility of consolidated school districts for payments relating to the federal acquisition of real property; and clarification that each of Hawaii’s seven administrative school districts are to be considered as separate local educational agencies.

In each of these instances, the Committee felt it necessary to take action to ensure that school districts would not be adversely affected by actions beyond their control—either on the part of Congress or of other government agencies.

The Subcommittee on Early Childhood, Youth and Families reported H.R. 3269, by voice vote, on April 24, 1996. On May 1, 1996, the Committee on Economic and Educational Opportunities reported the bill favorably by voice vote.

H.R. 3269 passed the House of Representatives on May 7, 1996, by voice vote and was forwarded to the Senate for consideration.

H.R. 3269, as amended, passed the Senate on August 2, 1996, by voice vote.

The House of Representatives agreed to the Senate amendments by voice vote on September 4, 1996, and the bill was signed into law on September 16, 1996. It is now Public Law 104-195.

The Subcommittee also held several days of hearings on the Impact Aid Program. On July 19, 1995, the Subcommittee held a hearing on military-connected children and Impact Aid in Washington, D.C. On July 8, 1996, the Subcommittee held an additional hearing to explore the impact of decisions concerning housing for military personnel and their families on the Impact Aid program.

*Library and museum services*

On May 2, 1995, the Subcommittee held a hearing on Adult Education, Literacy, and Library Services. Library Services and Technology provisions were incorporated into H.R. 1617, the Consolidated and Reformed Education, Employment, and Rehabilitation Systems Act (CAREERS), which was introduced by Representative Howard P. "Buck" McKeon on May 11, 1995. On May 16, 1995, the Subcommittee on Early Childhood, Youth and Families approved H.R. 1617 as amended by voice vote. On May 17, 1995, the Subcommittee on Postsecondary Education, Training and Life-Long Learning approved H.R. 1617 as amended by voice vote and ordered it reported to the Committee on Economic and Educational Opportunities. On May 24, 1995, H.R. 1617 as amended was ordered reported by the Committee on Economic and Educational Opportunities by a vote of 29-5. On September 19, 1995, the House of Representatives passed H.R. 1617 by a vote of 345-79, and a Conference Report on the Workforce and Career Development Act was filed on July 25, 1996. However, the Conference Agreement was not considered by either the House of Representatives or the Senate during the final days of the 104th Congress.

On May 3, 1995, Representative Bill Goodling along with Representative Randy "Duke" Cunningham as a cosponsor, introduced H.R. 1557, the Arts, Humanities, and Museum Services Amendments of 1995 which among other things would have authorized continued funding of the Institute of Museum Services (IMS) for three years. On May 10, 1995, the Committee on Economic and Educational Opportunities considered and approved H.R. 1557 as amended by a vote of 19 yeas, 2 nays, and 18 voting present.

The Museum and Library Services and Technology Act was included in H.R. 3610, the Omnibus fiscal year 1997 Appropriations bill and signed into law by the President on September 30, 1996. It is now Public Law 104-208.

The Museum and Library Services Act of 1996 moves the federal responsibility for library programs into a new Institute of Museum and Library Services and streamlines and consolidates several federal library programs into one program focused on helping all libraries acquire cutting-edge technologies and better serving those with special needs.

Library Services Technology Consolidation grants will provide for improved library services to our citizens through the use of new information technologies. They will help bring America's libraries; public, elementary and secondary, and academic into the 21st cen-

tury. These reforms will help libraries form electronic linkages with one another to better share resources, and will give all Americans access to new and better sources of information, such as the Internet.

America is undergoing a technological revolution including a tremendous proliferation in new sources of information. This trend will not only continue, but is certain to accelerate. It is clear that America's libraries will need to take advantage of these new technologies if they are to continue to ensure that all Americans have equal access to information.

#### B. STRENGTHENING AMERICA'S FAMILIES

##### *Adult education*

The Subcommittee on Early Childhood, Youth and Families held two days of hearings on adult education and family literacy issues. The first hearing was held on April 25, 1995, in San Marcos, California. The second hearing was held May 2, 1995, in Washington, D.C.

Testimony received by the Subcommittee was supportive of adult education and family literacy programs and the variety of services provided to adults in need of literacy services. Individual witnesses expressed support for program consolidation and more flexibility at the State and local level to design and operate programs.

As a result, legislation creating an adult education and family literacy block grant was incorporated into H.R. 1617, the Consolidated and Reformed Education, Employment, and Rehabilitation Systems (CAREERS) Act. This block grant gave States broad flexibility in funding literacy programs for adults in need of services. All caps and set asides were removed and States were given broad flexibility to meet the literacy needs of their citizens. The legislation also limited the amount of funds which could be held at the State level, driving the bulk of the funds to local providers to provide actual program services. In addition, the block grant specifically stated, for the first time, that funds could be used for family literacy programs to work with adults and their children at the same time. The family literacy concept had been shown not only to raise the literacy level of adults, but to help ensure the educational success of their children as well. Finally, the block grant retained the requirement that States continue to provide a matching amount of funds for adult education in order to receive federal funds.

The adult education and family literacy portions of H.R. 1617 were reported by the Subcommittee on Early Childhood, Youth and Families on May 16, 1995, by voice vote.

Further discussion on H.R. 1617 can be found in the "Subcommittee on Postsecondary, Education, Training and Life-Long Learning" section of this report.

##### *Juvenile justice*

H.R. 3876, the Juvenile Crime Control and Delinquency Prevention Act, was introduced by Chairman Randy "Duke" Cunningham on July 23, 1996.



Prior to the introduction of this legislation, the Subcommittee on Early Childhood, Youth and Families held four hearings for the purpose of considering and reviewing the authorization of the Juvenile Justice and Delinquency Prevention Act.

The first of the four hearings was held on March 28, 1996 in Washington, D.C. This was a general hearing and witnesses discussed changes to the Juvenile Justice and Delinquency Prevention Program as well as the Runaway and Homeless Youth Program. The second hearing, which focused on youth violence and gangs, was held in Washington, D.C. on April 30, 1996. The third hearing, which focused on prevention programs, was held in Washington, D.C. on May 8, 1996. The fourth hearing was held in San Diego, California on May 13, 1996, and focused on local efforts to address problems of juvenile delinquency.

Based on these hearings and concern over the growing number of violent juvenile crimes, the Committee determined that there was a great need to modify the existing law to focus on holding juveniles accountable for their actions, as well as helping to prevent juvenile crime. Testimony also indicated there was a need to consolidate existing programs and to generally streamline program requirements and burdensome State mandates to provide greater flexibility to States to address juvenile crime. H.R. 3876, as introduced, reflected these changes.

On July 25, 1996, the Subcommittee on Early Childhood Youth and Families reported H.R. 3876, "The Juvenile Crime Control and Delinquency Prevention Act of 1996", as amended by voice vote. On August 1, and August 2, 1996 the Committee on Economic and Educational Opportunities assembled to consider H.R. 3876. H.R. 3876 was favorably reported by the Committee on August 2, 1996, by a recorded vote of 23-2.

*H.R. 2570, The Older Americans Act Amendments of 1996*

During the 104th Congress, the Subcommittee on Early Childhood, Youth and Families proposed significant reforms to the delivery of services under the Older Americans Act.

The Older Americans Act of 1965 created a federal program specifically designed to meet the service needs of older persons. Although older persons may receive services under other federal programs, the Act is the major vehicle for the organization and delivery of supportive and nutrition services to this group.

Through a series of five hearings held on June 13, 1995, June 26, 1995, June 28, 1995, July 10, 1995, and November 2, 1995, it became quite evident that after 30 years of federal requirements being added to this legislation, the Older Americans Act of 1965 was in need of comprehensive reform. While there was no question regarding the benefits of these programs, the federal requirements had simply become too burdensome and were impeding delivery of vital services to the elderly. In recent years, State and area aging agencies have noted the increasing array of legislative requirements imposed on them without corresponding increases in funding.

On November 1, 1995, Subcommittee Chairman Randy "Duke" Cunningham introduced H.R. 2570, The Older Americans Act Amendments of 1995. The bill improves services to seniors by pro-

viding better quality services; by driving more funds directly to local communities and, in turn, directly to seniors; by giving local providers the flexibility to design programs most needed by the elderly population in their own communities; and, by helping seniors live fuller more active lives.

H.R. 2570 was approved by the Subcommittee on Early Childhood, Youth and Families on November 16, 1995, by voice vote and by the Committee on Economic and Educational Opportunities on March 14, 1996 by a vote of 19–16. The Senate reported a bill amending the Older Americans Act, S. 1643, on May 8, 1996 by a vote of 9 to 7. No further action occurred on this legislation during the 104th Congress.

*Reform of the Child Abuse Prevention and Treatment Act (CAPTA)*

On January 31, 1995, the Subcommittee on Early Childhood, Youth and Families held a hearing on the status of the child protection system in this country. It was clear from this hearing and other research by this Committee that the current system had failed in two significant ways—it had unnecessarily intruded in the family life of millions of Americans wrongfully accused of child abuse or neglect and too often failed in protecting those children truly at risk.

At the heart of this failure was a maze of federal programs which focused too much on federal micro-management of the States and provided too little flexibility at the State and local level. It was clear that, rather than squandering federal resources in dozens of directions at once, with one hand not knowing what the other was doing, the federal effort in child protection should be concentrated, focused, and unified.

Based on these findings, this Committee worked with the Ways and Means Committee (which also has jurisdiction over certain child protection programs including the foster care and adoption assistance entitlement programs) to bring multiple sources of funding together in one block grant, giving States and localities flexibility in administering the funds, and placing a premium on uniform data collection and evaluation in order to greatly enhance and improve the federal role in child protection.

Provisions for such a block grant were originally part of H.R. 999, the Welfare Reform Consolidation Act of 1995, reported out of the Committee on Economic and Educational Opportunities on February 23, 1995. H.R. 999 was eventually merged with H.R. 4, the Personal Responsibility Act, sent to the President on December 29, 1995, and subsequently vetoed. A modified version of the child protection block grant was also included as part of Budget Reconciliation for fiscal year 1997, H.R. 3734, the Welfare and Medicaid Act of 1996, as reported from the Committee on June 16, 1996. This Title was later dropped during the conference committee negotiations with the Senate, due to the Senate's "Byrd rule" limitations.

In anticipation of these provisions being dropped from the welfare reform legislation, the Senate passed (by unanimous consent) S. 919 on July 18, 1996, to authorize and amend the existing CAPTA program. This legislation also included a host of amendments to the Child Abuse Prevention and Treatment Act (CAPTA) as well as program consolidation provisions which to a certain de-

gree reflected many of the initiatives begun as part of the welfare reform legislation.

Because a significant portion of S. 919 had been considered by the Committee in both hearings held by the Committee and during the separate markups of the welfare legislation, the House substitute was taken up directly at the desk and passed by unanimous consent on September 27, 1996 and signed into law (Public Law 104–235) on October 3, 1996.

Further description of the Committee’s activities related to welfare reform are described under the “Full Committee Activities” section of this report.

#### *Child care*

The Subcommittee on Early Childhood, Youth and Families held a hearing on January 31, 1995 and a joint hearing with the Ways and Means Subcommittee on Human Resources on February 3, 1995 to consider consolidation of child care programs within the context of welfare reform.

It was clear from these hearings and from other research by the Committee that too many federal child care programs currently exist with inconsistent and uncoordinated eligibility rules and other requirements. This fragmented system caused children and families to experience disruption in their day care arrangements as they attempted to move from welfare to work.

Knowing the importance of child care in helping families move from welfare to work, the Committee was dedicated to assisting States in developing the most efficient and effective way to use federal funds to assist low income families. Based on findings, the Committee worked with the Ways and Means Committee (which had jurisdiction over AFDC related child care programs) to bring multiple sources of funding together under the existing Child Care and Development Block Grant.

Provisions for the child care block grant were originally part of H.R. 999, the Welfare Reform Consolidation Act of 1995 and were marked up in the Committee on Economic and Educational Opportunities on February 22 and 23, 1995. H.R. 999 was eventually merged with H.R. 4, the Personal Responsibility Act. The funding structure for the child care provisions was substantially modified to include a combination of mandatory and discretionary funding in the House and Senate conference before it was sent to the President on December 29, 1995, and subsequently vetoed.

The Child Care and Development Block Grant provisions were included in the submission to the Budget Committee for the Budget Resolution for fiscal year 1997 and were subsequently incorporated into H.R. 3734, the Welfare and Medicaid Reform Act of 1996. H.R. 3734 was signed into law (Public Law 104–193) on August 22, 1996.

Further description of the Committee’s activities related to welfare reform are described under the “Full Committee Activities” section.

#### *Drug use*

On September 26, 1996, the Subcommittee on Early Childhood, Youth and Families and the Subcommittee on National Security,

International Affairs and Criminal Justice of the Committee on Government Reform and Oversight held a joint hearing on the Epidemic of Teenage Drug Use.

During this hearing, the Subcommittees learned a great deal about private initiatives utilized by various Members of Congress who either established or supported existing community anti-drug coalitions. The first witness of the hearing, Congressman Rob Portman cited the success of Miami's comprehensive community anti-drug coalition that cut usage in Miami to half that of the national average. What the successful programs do, he continued, is mobilize "parents, businesses, religious leaders, students, law enforcement, the media and others to fashion a comprehensive long-term strategy to prevent and treat substance abuse one person at a time."

There was also a discussion at the hearing regarding what message we should be sending as a society. "In my view," Congressman Portman said, "Nancy Reagan's 'Just Say No' campaign was not just about a slogan; it was about a national movement that energized the war on drugs, mobilized and organized people all across America, and gave the drug issue media attention."

The second witness was Judge Robert Bonner, the former Administrator of the Drug Enforcement Agency. Judge Bonner noted that it was not a mere coincidence that during the last four years there has been an extreme rise in teenage drug use. Indeed Judge Bonner explained that there has been a dramatic rise in teenage drug use because "there has been a nearly total absence of Presidential leadership on this issue." Judge Bonner expressed great concern because our country "cannot have an effective drug control policy when the President himself does not make this a serious issue, when he jokes about it and, even worse, when the President himself is the butt of jokes because of remarks he has made about his own involvement with drugs."

The Subcommittees heard testimony that the problem has to be addressed by parents and schools at the local level, but that those groups need the support of the federal government.

## II. MEETINGS HELD BY THE SUBCOMMITTEE

### *104th Congress, First Session*

January 31, 1995—Oversight hearing on the Contract with America: child welfare and child care.

February 3, 1995—Joint oversight hearing on child welfare and child care, held with the Subcommittee on Human Resources of the Committee on Ways and Means.

April 25, 1995—Oversight field hearing on adult education, held in San Marcos, California.

May 2, 1995—Oversight hearing on adult education.

May 9, 1995—Joint oversight hearing on the 20th Anniversary of Individuals with Disabilities Education Act (IDEA), held with the Senate Subcommittee on Disability Policy of the Committee on Labor and Human Resources.

May 16, 1995—Mark-up of H.R. 1617, "Workforce and Career Development Act of 1996".

June 13, 1995—Oversight hearing on the Older Americans Act.

June 20, 1995—Oversight hearing on the Individuals with Disabilities Education Act (IDEA).

June 21, 1995—Oversight hearing on education reform.

June 26, 1995—Oversight field hearing on the Older Americans Act, held in York, Pennsylvania.

June 27, 1995—Oversight hearing on the Individuals with Disabilities Education Act (IDEA).

June 28, 1995—Oversight hearing on the Older Americans Act.

July 10, 1995—Oversight field hearing on the Older Americans Act, held in Pontiac, Michigan.

July 13, 1995—Oversight hearing on education reform.

July 19, 1995—Oversight hearing on Military connected children and Impact Aid.

October 18, 1995—Oversight hearing on English as the common language.

November 1, 1995—Oversight hearing on English as the common language.

November 2, 1995—Hearing on H.R. 2570, “Older Americans Amendments of 1995”.

November 9, 1995—Mark-up of H.R. 2570, “Older Americans Amendments of 1995”.

November 16, 1995—Mark-up of H.R. 2570, “Older Americans Amendments of 1995”.

*104th Congress, Second Session*

March 7, 1996—Oversight hearing on the staff draft of the Individuals with Disabilities Act (IDEA).

March 28, 1996—Oversight hearing on the Juvenile Justice and Delinquency Prevention Act.

April 24, 1996—Mark-up of H.R. 3268, “IDEA Improvement Act of 1996”.

Mark-up of H.R. 3269, “Impact Aid Technical Amendments Act of 1996”.

April 30, 1996—Oversight hearing on the Juvenile Justice and Delinquency Prevention Act.

May 8, 1996—Oversight hearing on the Juvenile Justice and Delinquency Prevention Act.

May 13, 1996—Oversight field hearing on the Juvenile Justice and Delinquency Prevention Act, held in San Marco, California.

July 8, 1996—Oversight field hearing on Impact Aid, held in Fairfield, California.

July 25, 1996—Mark-up of H.R. 3876, “Juvenile Crime Control and Delinquency Prevention Act of 1996”.

July 30, 1996—Joint hearing on H.R. 3467, Saving our Children: The American Community Renewal Act of 1996, held with the Subcommittee on Human Resources of the Committee on Ways and Means.

September 19, 1996—Hearing on federally funded youth programs and local initiatives.

September 26, 1996—Joint hearing on the epidemic of teenage drug use, held with the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight.

### III. LEGISLATIVE ACTIVITIES

#### A. LEGISLATION ENACTED INTO LAW

P.L. 104–149 (H.R. 2066), “Healthy Meals for Children Act”.  
 P.L. 104–195 (H.R. 3269), “Impact Aid Technical Amendments Act of 1996”.

#### B. LEGISLATION ENACTED AS PART OF ANOTHER MEASURE

H.R. 3286, “Adoption Promotion and Stability Act of 1996”. Provisions of the bill were included in H.R. 3448 and enacted as P.L. 104–188.

H.R. 1617, “Workforce and Career Development Act of 1996”. Provisions of the bill were included in H.R. 3610 and enacted as P.L. 104–208.

S. 1972, “Older Americans Indian Technical Amendments Act”, was included in H.R. 3610 and enacted as P.L. 104–208.

#### C. LEGISLATION PASSED THE HOUSE

H.R. 123, “Bill Emerson English Language Empowerment Act of 1996”.

H.R. 1617, “Workforce and Career Development Act of 1996”.

H.R. 2066, “Healthy Meals for Children Act”.

H.R. 3268, “IDEA Improvement Act of 1996”.

H.R. 3269, “Impact Aid Technical Amendments Act of 1996”.

H.R. 3286, “Adoption Promotion and Stability Act of 1996”.

S. 1972, “Older Americans Indian Technical Amendments Act”.

#### D. LEGISLATION PASSED THE HOUSE IN ANOTHER MEASURE

H.R. 1617, “Workforce and Career Development Act of 1996”, passed the House in S. 1972.

H.R. 2332, “Consolidated and Reformed Education, Employment, and Rehabilitation Systems Act” or “CAREERS Act”. Provisions of the bill passed the House in H.R. 1617.

H.R. 3898, “English Language Empowerment Act of 1996”. Provisions of the bill passed the House in H.R. 123.

#### E. LEGISLATION WITH FILED REPORTS

H.R. 123 (H. Rept. 104–723), “Bill Emerson English Language Empowerment Act of 1996”.

H.R. 1617 (H. Rept. 104–152), “Workforce and Career Development Act of 1996”.

H.R. 2066 (H. Rept. 104–561), “Healthy Meals for Children Act”

H.R. 2570 (H. Rept. 104–539), “Older Americans Amendments of 1995”.

H.R. 3268 (H. Rept. 104–614), “IDEA Improvement Act of 1996”.

H.R. 3269 (H. Rept. 104–560), “Impact Aid Technical Amendments Act of 1996”.

H.R. 3876 (H. Rept. 104–783), “Juvenile Crime Control and Delinquency Prevention Act of 1996”.

#### F. LEGISLATION ORDERED REPORTED FROM FULL COMMITTEE

H.R. 123, “Bill Emerson English Language Empowerment Act of 1996”.

H.R. 1617, "Workforce and Career Development Act of 1996".  
 H.R. 2066, "Healthy Meals for Children Act".  
 H.R. 2570, "Older Americans Amendments of 1995".  
 H.R. 3268, "IDEA Improvement Act of 1996".  
 H.R. 3269, "Impact Aid Technical Amendments Act of 1996".  
 H.R. 3876, "Juvenile Crime Control and Delinquency Prevention Act of 1996".

#### G. LEGISLATION REPORTED FROM SUBCOMMITTEE

H.R. 1617, "Workforce and Career Development Act of 1996".  
 H.R. 2570, "Older Americans Amendments of 1995".  
 H.R. 3268, "IDEA Improvement Act of 1996".  
 H.R. 3269, "Impact Aid Technical Amendments Act of 1996".  
 H.R. 3876, "Juvenile Crime Control and Delinquency Prevention Act of 1996".

#### H. LEGISLATION DISCHARGED FROM SUBCOMMITTEE

H.R. 123, "Bill Emerson English Language Empowerment Act of 1996".  
 H.R. 2066, "Healthy Meals for Children Act."

#### I. LEGISLATION VETOED

None of the legislation referred to Subcommittee was vetoed.

### IV. SUBCOMMITTEE STATISTICS

Total Number of Bills and Resolutions Referred to Subcommittee .....	119
Total Number of Bills Discharged from Subcommittee .....	2
Total Number of Subcommittee Hearings .....	26
Field Hearings .....	5
Joint Hearings with Other Committees .....	3
Total Number of Subcommittee Mark-Up Sessions .....	5
Total Number of Bills Reported from Subcommittee .....	5
Total Number of Bills Ordered Reported from Full Committee .....	7
Total Number of Filed Reports on Bills .....	7
Total Number of Bills Passed the House .....	7
Total Number of Bills Passed the House in Another Measure .....	3
Total Number of Bills Enacted into Law .....	2
Total Number of Bills Enacted as Part of Another Measure .....	3
Total Number of Bills Vetoed .....	0

### SUBCOMMITTEE ON POSTSECONDARY EDUCATION, TRAINING AND LIFE-LONG LEARNING

#### I. SUMMARY OF ACTIVITIES

##### A. EMPLOYMENT AND JOB TRAINING REFORM

##### *Workforce development reform legislation*

During the 104th Congress, much of the Subcommittee on Postsecondary Education, Training and Life-Long Learning's work focused on reform of this nation's vast array of federal workforce development and literacy programs. Reports from the U.S. General Accounting Office (GAO) highlighting the excessive number of federally funded job training programs, as well as conflicting reports on the quality of the U.S. workforce development system, have sparked both public and Congressional interest in systemic reform

for the past several years. To date, the GAO has identified over 150 different programs which offer some form of career-related education, job training, or employment assistance to youth and adults. In its studies, the GAO found that the additional costs of administering overlapping workforce development programs at the federal, State, and local levels, diverts scarce resources that could be better spent to assist individuals in preparing for and entering into work.

Beginning in February, 1995, the Subcommittee held nine hearings on reform of federal workforce development programs, in addition to two hearings that were conducted by the Subcommittee on Early Childhood, Youth and Families on adult education, literacy, and library-related programs. In hearings conducted on February 6 and 7, 1995, the Subcommittee examined U.S. business leaders' perspectives on the education and training needs of the U.S. workforce. The Subcommittee also heard testimony from the U.S. Departments of Education and Labor and the U.S. General Accounting Office during these hearings. On March 1 and 3, 1995, the Subcommittee conducted hearings which focused on the Carl D. Perkins Vocational and Applied Technology Education Act and other innovative career-related education programs. On March 7 and 16, 1995, hearings were conducted to examine the education, training, and employment needs of at-risk and disadvantaged youth, with a panel of witnesses at the March 16 hearing providing testimony on the federal Job Corps Program. On March 21, 1995, a hearing was held that dealt with governance issues related to training programs, with testimony from State and local officials, service providers, and the private sector. A hearing held on March 23, 1995, examined issues related to system infrastructure, forecasting, and special populations. And finally, a hearing conducted on March 29, 1995 focused on vocational rehabilitation.

Of all of the witnesses who came before the Subcommittee to testify on reform of the U.S. workforce development system, everyone including representatives from the Administration, State officials, local officials, business leaders, educators, program providers, researchers, and organized labor, agreed that significant program consolidation and reform of U.S. workforce development programs is in order.

On May 11, 1995, Republican Members of the Committee on Economic and Educational Opportunities, led by Subcommittee Chairman Howard P. "Buck" McKeon and Chairman Bill Goodling introduced H.R. 1617, the Consolidated and Reformed Employment, Education and Rehabilitation Systems (CAREERS) Act. H.R. 1617 was designed to transform the confusing array of federal workforce development and literacy programs from a collection of fragmented and duplicative categorical programs into a streamlined, comprehensive, high-quality, market-based, and accountable workforce development and literacy system. This legislation was designed to transfer responsibility for the design and implementation of these programs out of Washington, to States and local communities; and to better meet the education, employment, training, and literacy needs of Americans, and the competitiveness needs of U.S. employers.



On May 16, 1995, the Subcommittee on Early Childhood, Youth and Families considered and approved H.R. 1617, as amended, by a voice vote. On May 17, 1995, the Subcommittee on Postsecondary Education, Training and Life-Long Learning considered and approved H.R. 1617, as amended, by voice vote, and ordered the bill reported to the Full Committee on Economic and Educational Opportunities.

On May 24, 1995, the Full Committee on Economic and Educational Opportunities met to consider H.R. 1617, where the bill was amended and favorably reported by a recorded vote of 29-5.

On September 19, 1995, the House of Representatives, in a bipartisan vote of 345-79, overwhelmingly passed H.R. 1617. The Senate passed the bill on October 11, 1995 by a vote of 95 to 2 and requested a conference with the House. During the 2nd session of the 104th Congress, House and Senate conferees met to resolve differences between H.R. 1617, and S. 143, the Senate's "Workforce Development Act of 1995." A final conference agreement on the newly named "Workforce and Career Development Act" was reached, and a Conference Report was filed on July 25, 1997. However, the conference agreement was not considered by either the Senate or the House of Representatives during the final days of the 104th Congress.

#### *The Job Opportunities and Basic Skills Program*

During the 104th Congress, the Subcommittee on Postsecondary Education, Training and Life-Long Learning helped initiate major changes related to the work requirements as included under welfare reform. On February 19, 1995, the Subcommittee held a hearing on the Job Opportunities and Basic Skills (JOBS) program. Experts from around the country testified how under this program, the emphasis has not been work, but instead education and training activities which too often have been designed with little relevance to the realities of the working world. Witnesses also described how the many statutory restrictions under the JOBS program have greatly hampered the ability of States to design more sensible welfare-to-work systems which both meet their needs and allow for easier coordination and integration with other programs.

As a result of this hearing and other discussions with interested parties from around the country, H.R. 999, the Welfare Reform Consolidation Act of 1995 (as reported by the Committee on Economic and Educational Opportunities) included the consolidation of the JOBS program into the larger Temporary Assistance for Needy Families (TANF) block grant. In its place welfare-to-work requirements were added which provide flexibility to States to implement new and innovative approaches at moving welfare recipients toward self-sufficiency utilizing funds from the overall TANF block grant.

Further description of the Committee's activities related to welfare reform, including the work requirements, are described under the "Full Committee Activities" section of this report.

## B. COMMON SENSE SOLUTIONS IN HIGHER EDUCATION

*Hearings on the rising cost of higher education*

On April 23, 1996, the Subcommittee held an initial overview hearing with respect to higher education. The witnesses provided information describing the current make-up of student bodies across the country. The testimony included information on the age, family income level, and educational attainment of the current student population across all sectors of higher education. The Committee also heard testimony as to the kinds of financial aid available to students at the State, federal and institutional levels.

During the course of the hearings, the witnesses provided some startling information with respect to the rising price of a college education. Since 1980, the price of a college education has increased at double and triple, in some years, the rate of inflation. Statistics provided by the witnesses showed that the price of a college education at a private institution rose more than 90 percent over the past fifteen years in inflation adjusted terms. The price at public institutions rose about 100 percent for the same period. Unfortunately, median family income only rose 5 percent in the last fifteen years in inflation adjusted terms.

A follow-up hearing held on July 18, 1996 by the Subcommittee took an in-depth look at the rising costs of college. This hearing provided insight to Members as to why there has been an ongoing rise in the price of a college education and the effect such prices are having on students and families struggling to pay the bill. Controlling college tuition increases is a top priority issue to students and parents across the country, and the Subcommittee felt it was important to have an in-depth understanding of this topic in preparation for the upcoming authorization of the Higher Education Act in the 105th Congress.

*H.R. 3863, The Student Debt Reduction Act of 1996*

On July 22, 1996, Chairmen Bill Goodling and Howard P. "Buck" McKeon introduced H.R. 3863, "The Student Debt Reduction Act of 1996." H.R. 3863 amended the Higher Education Act to allow lenders to waive or reduce the origination fees imposed on Unsubsidized Stafford Loans by paying the fee on behalf of the student borrower. This student benefit is currently available only in the Subsidized Stafford Loan program. On August 1, 1996, the Committee on Economic and Educational Opportunities considered H.R. 3863, and favorably reported the bill by a recorded vote of 34-0. On September 10, 1996, H.R. 3863 was considered by the House of Representatives, and was agreed to by a recorded vote of 414 to 1 on September 11, 1996. Unfortunately, this important measure was not considered by the Senate before the 104th Congress adjourned.

H.R. 3863 would have given students the opportunity to reap the benefits of competition at no cost to the federal government. Students would have found themselves with more cash in hand which could be used for books, living expenses and other education related costs. As the cost of a higher education continues to rise, every extra dollar becomes more and more important to students and their families.

This bill would have promoted increased competition among student loan lenders, that would have resulted in lower interest rates and lower origination fees for students. More importantly, the students that would have been assisted by this bill would have gained considerably, using their student loan funds as intended to offset the costs of obtaining a college education rather than the cost of obtaining financial aid.

*H.R. 1720, The privatization of Sallie Mae and Connie Lee*

On May 3, 1995, the Subcommittee on Postsecondary Education, Training and Life-Long Learning held a hearing jointly with the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the Committee on Government Reform and Oversight on privatizing government sponsored entities (GSEs). On May 25, 1995, Representative Howard P. "Buck" McKeon introduced H.R. 1720, the "Privatization Act of 1995" to provide for the cessation of federal sponsorship of two government sponsored enterprises, and on June 8, 1995, the Committee on Economic and Educational Opportunities considered and approved H.R. 1720 by a voice vote.

On September 24, 1996, the House of Representatives passed H.R. 1720, privatizing Student Loan Marketing Association (Sallie Mae) and College Construction Loan Insurance Association (Connie Lee). This privatization proposal received overwhelming bipartisan support and was included in H.R. 3610, the Omnibus fiscal year 1997 Appropriations bill signed into law by the President on September 30, 1996. It is Public Law 104-208.

The Committee on Economic and Educational Opportunities recognized that the time had come to sever the federal government's ties to the Student Loan Marketing Association (Sallie Mae) and the College Construction Loan Insurance Association (Connie Lee). At the same time, both companies had expressed a desire to become private sector businesses, without federal support and without federal restrictions. The Committee recognized that it was time to applaud the success of these Federally chartered companies and time to sever their federal ties.

Sallie Mae was established in 1972 under a federal charter authorized by Part B of Title IV of the Higher Education Act. At that time there was a tremendous need for a secondary market that would purchase student loans from lenders, so that lenders would have sufficient capital for making new loans. Under its federal charter, Sallie Mae gained certain advantages, including the ability to raise large amounts of capital in a cost effective way.

Today, there is an extremely competitive secondary market for student loans, and there is ample private capital. Every eligible student has access to student loans. Now, the federal charter which initially helped Sallie Mae assist students is hampering Sallie Mae's ability to put its expertise to work in the private market to provide services outside of the student loan arena. Clearly the time has come when it is advantageous to both the taxpayer and Sallie Mae to allow Sallie Mae to become a fully private company with no federal ties and no government sponsored advantages.

Connie Lee is another example of a successful public-private partnership which has served its purpose. Connie Lee was created

by Congress under Title VII of the Higher Education Amendments of 1986. At that time, many institutions of higher education faced the pressing problem of deteriorating physical infrastructures such as buildings and physical plants. Only wealthier schools with the best credit ratings were able to finance facilities improvements at a reasonable cost. Connie Lee was created to underwrite the financing of these needed improvements for institutions with lower credit ratings, leveraging large amounts of capital with little risk to the taxpayer.

However, Connie Lee has never enjoyed the advantages of most GSEs. In fact, the only government "help" Connie Lee received was start-up capital, in return for which the government received shares of stock. The law which created Connie Lee narrowly limited the company's business activities and clearly indicated that Connie Lee was meant to be a private company.

Proceeds from privatization of Sallie Mae and Connie Lee will amount to several million dollars. These funds will be placed under the direction of the District of Columbia's Financial Control Board to be used for much-needed school construction and repairs to carry out the District of Columbia School Reform Act of 1995.

The Committee believes the privatization of Sallie Mae and Connie Lee is good common-sense government reform. It frees the American taxpayer from subsidizing activities which will continue and flourish without federal support. It also demonstrates a willingness on the part of the federal government to take a successful public-private partnership and turn it into a completely private venture when government support is no longer necessary. The Committee's actions on privatization during the 104th Congress are paving the way to the future of a smaller, less intrusive government for all Americans.

#### *H. Res. 470, Campus Crime Resolution*

On June 6, 1996, the Subcommittee on Postsecondary Education, Training and Life-Long Learning held a hearing on the issue of campus crime. Witnesses testifying at this hearing agreed that crime is a major concern of students, parents and college administrators. During this hearing, several witnesses called into question the Department of Education's commitment to enforcing compliance with the Campus Security Act. In part, their concerns were based on a quote by the Assistant Secretary for the Office of Postsecondary Education which appeared in the New York Times on January 7, 1996. When asked about enforcement of the Campus Security Act, the Assistant Secretary said: "We aren't going to essentially establish a major monitoring effort in this area."

As a result of this hearing, House Resolution 470 was introduced by Chairmen Bill Goodling and Howard P. "Buck" McKeon on June 27, 1996, expressing a sense of the Congress that the Department of Education should make the monitoring of compliance and enforcement of the Campus Security Act a priority. The Campus Security Act requires institutions of higher education participating in the Title IV student aid programs to provide yearly statistics to students, faculty, and prospective students with respect to the number of crimes reported on campus in the following categories: murder, forcible and non-forcible sex offenses, robbery, aggravated

assault, burglary and motor vehicle theft. In addition to the reporting of statistics, institutions must make timely reports to the campus community of those crimes considered to be a threat to other students and employees in order to aid in the prevention of further crimes on campus.

This Committee believes it is imperative that the Department of Education actively enforce compliance with the law. In order for students to have information vital for their own safety on our college campuses, the Department of Education must make certain that institutions are complying with the Campus Security Act. Safety of students must be the number one priority.

House Resolution 470 was favorably reported by the Committee on Economic and Educational Opportunities by voice vote on July 31, 1996. The House of Representatives passed House Resolution 470 on September 11, 1996 by a vote of 413 yeas and 0 nays.

*Streamlining grant eligibility for America's historically black colleges and universities*

Section 326 of Title III of the Higher Education Act was established to provide grants to Historically Black Graduate and Professional Schools that make a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for African Americans.

Eligibility for grant funds under Section 326 was originally limited to five institutions. In 1992, the list of eligible institutions was expanded and eleven additional Historically Black Graduate and Professional Schools became eligible for grant funds under this section. The first \$12 million appropriated for this section is reserved for the five original institutions who have received funding under Section 326 since its inception. These schools, like all of the other eligible institutions, were restricted to two five-year grants. All five schools completed their second grant in fiscal year 1996. Without this amendment to the statute, they would no longer be eligible for future grant funds.

It is the Committee's finding that the survival of these schools contributes to the improved status of disadvantaged persons, as well as, all Americans. Because of the significant contributions of these five institutions and their graduates, it is important that they continue to be eligible for the grant support necessary to continue providing top quality education to their students.

H.R. 3055 was introduced by Representatives Charlie Norwood, Bill Goodling, and William Clay on March 7, 1996. On March 14, 1996, the Committee on Economic and Educational Opportunities favorably reported H.R. 3055 by voice vote. On April 23, 1996, H.R. 3055 passed the House of Representatives by voice vote under the Corrections Day Calendar. H.R. 3055 passed the Senate by voice vote on April 24, 1996, and was signed into law by the President on May 6, 1996. It is now Public Law 104-141.

*Increasing the autonomy of the Institute for American Indian Arts*

The Institute for American Indian Arts (Institute) is a federally created institution of higher education, authorized under Title XV of the Higher Education Amendments of 1986. Its primary purposes are to provide scholarly study of and instruction in Indian

arts and culture and to establish programs which culminate in the awarding of degrees in the various fields of Indian art and culture. Policy for the Institute is set by a board of trustees (Board) made up of 13 voting members, appointed by the President with the advice and consent of the Senate, and 6 non-voting members, including Members of Congress.

Unfortunately, the Board appointment process has proven to be overly cumbersome and the appointment of voting members to the Board has not historically been made in a timely manner. This has led to a situation where Board members feel compelled to serve additional terms in order to maintain a quorum for the purposes of doing business, and has threatened the continuity of the Board.

On March 7, 1996, Chairman Bill Goodling along with Representative Dale Kildee introduced H.R. 3049. This legislation would have made a simple correction to allow the Board to recommend successors for Board members whose terms are expiring and who do not wish to serve additional terms. The President would have the prerogative to act on these recommendations, or to appoint another qualified individual of his choosing subject to confirmation by the Senate. However, should the President fail to act within two months of the expiration of the sitting member's term, and should that member not wish to serve an additional term, then the individual recommended for appointment by the Board would be automatically seated.

H.R. 3049 was favorably reported by the Committee on Economic and Educational Opportunities without amendment by voice vote on March 14, 1996. On April 23, 1996, H.R. 3049 passed the House of Representatives by voice vote on the Corrections Day Calendar. Unfortunately, the Senate failed to act on this legislation prior to the end of the 104th Congress.

## II. MEETINGS HELD BY THE SUBCOMMITTEE

### *104th Congress, First Session*

January 19, 1995—Oversight hearing on Job Opportunities and Basic Skills Act (JOBS).

February 6, 1995—Oversight hearing on training issues.

February 7, 1995—Oversight hearing on training issues.

March 1, 1995—Oversight hearing on training issues.

March 3, 1995—Oversight hearing on training issues.

March 7, 1995—Oversight hearing on training issues.

March 16, 1995—Oversight hearing on training issues.

March 21, 1995—Oversight hearing on training issues.

March 23, 1995—Oversight hearing on training issues.

March 29, 1995—Oversight hearing on training issues.

May 3, 1995—Joint oversight hearing on privatizing government sponsored entities (GSE's), held with the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the Committee on Government Reform and Oversight.

May 9, 1995—Oversight hearing on Title IX of the Education Act Amendments of 1972.

May 17, 1995—Mark-up of H.R. 1617, "Workforce and Career Development Act of 1996".

*104th Congress, Second Session*

April 23, 1996—Oversight hearing on higher education; who plays, who pays, who goes.

May 31, 1996—Hearing on H.R. 2428, The Good Samaritan Food Donation Act.

June 6, 1996—Hearing on H.R. 2416, Open Campus Police Logs Act of 1995.

July 18, 1996—Oversight hearing on the rising cost of college.

## III. LEGISLATIVE ACTIVITIES

## A. LEGISLATION ENACTED INTO LAW

P.L. 104–210 (H.R. 2428), “Bill Emerson Good Samaritan Food Donation Bill”.

## B. LEGISLATION ENACTED AS PART OF ANOTHER MEASURE

H.R. 1617, “Workforce and Career Development Act”. Provisions of the bill were included in H.R. 3610 and enacted as P.L. 104–208.

H.R. 2396, “Congressional Award Act Amendments of 1995”, was included in H.R. 3610 and enacted as P.L. 104–208.

H.R. 3803, “George Bush School of Government and Public Service Act”, was included in H.R. 4036 and enacted as P.L. 104–319.

S. 1267, “Congressional Award Act Amendments of 1995”, was included in H.R. 3610 and enacted as P.L. 104–208.

## C. LEGISLATION PASSED THE HOUSE

H.R. 1617, “Workforce and Career Development Act of 1996”.

H.R. 2428, to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

H.R. 3803, “George Bush School of Government and Public Service Act”.

## D. LEGISLATION PASSED THE HOUSE IN ANOTHER MEASURE

H.R. 1617, “Workforce and Career Development Act of 1996”, passed the House in S. 1972.

H.R. 2332, “Consolidated and Reformed Education, Employment, and Rehabilitation Systems Act” or “CAREERS Act”. Provisions of the bill passed the House in H.R. 1617.

H.R. 3803, “George Bush School of Government and Public Service Act”, passed the House in H.R. 4036.

## E. LEGISLATION WITH FILED REPORTS

H.R. 1617, (H.Rept. 104–152), “Workforce and Career Development Act of 1996”.

H.R. 2428, (H.Rept. 104–661), to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

## F. LEGISLATION ORDERED REPORTED FROM FULL COMMITTEE

H.R. 1617, “Workforce and Career Development Act of 1996”.

H.R. 2428, to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

#### G. LEGISLATION REPORTED FROM SUBCOMMITTEE

H.R. 1617, "Workforce and Career Development Act of 1996".

#### H. LEGISLATION DISCHARGED FROM SUBCOMMITTEE

H.R. 2428, to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

#### I. LEGISLATION VETOED

None of the legislation referred to Subcommittee was vetoed.

### IV. SUBCOMMITTEE STATISTICS

Total Number of Bills and Resolutions Referred to Subcommittee .....	77
Total Number of Bills Discharged from Subcommittee .....	1
Total Number of Subcommittee Hearings .....	16
Field .....	0
Joint with Other Committees .....	1
Total Number of Subcommittee Mark-Up Sessions .....	1
Total Number of Bills Reported from Subcommittee .....	1
Total Number of Bills Ordered Reported from Full Committee .....	2
Total Number of Filed Reports on Bills .....	2
Total Number of Bills Passed the House .....	3
Total Number of Bills Passed the House in Another Measure .....	3
Total Number of Bills Enacted into Law .....	1
Total Number of Bills Enacted as Part of Another Measure .....	4
Total Number of Bills Vetoed .....	0

#### OVERSIGHT AND INVESTIGATIONS

During the 104th Congress, the Committee on Economic and Educational Opportunities (Committee) and more specifically its Subcommittee on Oversight and Investigations (Subcommittee) began to examine the role of the federal government and its effectiveness in meeting Congressionally mandated goals. Consistent with the Members' desire to balance the budget and to ensure the appropriate use of taxpayer money, the Committee and Subcommittee initiated intensive oversight of those programs, agencies, and departments within the Committee's jurisdiction.

More particularly, the Committee initiated several major inquiries into the activities of the Departments of Labor and Education, the Corporation for National Service, the National Labor Relations Board, and other agencies under the Committee's jurisdiction. These inquiries were consistent with the Committee's Oversight Plan which was adopted by the Committee on February 7, 1995 and submitted to the Committee on Government Reform and Oversight and the Committee on House Oversight on February 15, 1995.

The central focus of the Committee's Oversight Plan was to ensure that programs, agencies, departments, laws, and regulations under the Committee's jurisdiction:



- A. Focus on an appropriate federal mission;
- B. Work effectively and efficiently;
- C. Consistently follow Congressional intent;
- D. Establish a framework for policy initiatives that will create an environment for life long learning and effective workplace policy; and,
- E. Provide for a role for the federal government, only where absolutely necessary.

The following sections of this Activities Report of the Committee are filed pursuant to and comply with Rule XI, clause 1(d)(1) of the Rules of the House of Representatives and detail the oversight activities of the Committee in accordance with the five specific goals listed above. While several of the oversight activities of the Committee and Subcommittee could easily fall under more than one category, this report places each activity according to its primary objective.

## I. SUMMARY OF ACTIVITIES

### A. APPROPRIATE FEDERAL MISSION

During the 104th Congress, the Subcommittee conducted a series of evaluations, hearings, and investigations into AmeriCorps, the Federal Direct Student Loan Program (FDSLPL), and the National Endowment for the Arts (NEA). These programs and agencies were examined in an effort to fulfill one of the major functions of the Subcommittee, namely, whether or not these programs and agencies serve an appropriate federal mission. In other words, should the federal government be paying for volunteers, involved in banking and loan activities related to student educational loans, and funding questionable activities under the guise of “the arts.” Accordingly, set forth below is a brief analysis of the Subcommittee’s activities and related findings where appropriate.

#### *Findings on the Corporation for National Service*

*Failed Audit.*—When the establishment of the Corporation for National Service (Corporation) was originally debated, the President promised that the “national service corporation will be run like a big venture capital outfit, not like a bureaucracy.” In the same vein, Harris Wofford, Chief Executive Officer of the Corporation, continually described his organization in business terms—“market driven” and “based in the independent sector.” The mission statement of the Corporation even states that it would be a “model enterprise, not just for government, but for many sectors of society.”

Unfortunately, in the middle of the Corporation’s first statutorily required financial audit by Arthur Anderson, LLP and Williams, Adley & Co., LLP, they determined that, due to weaknesses in the Corporation’s financial systems, accounting records, and management controls, it would not be possible to perform an audit of the Corporation’s fiscal year 1994 financial records. In other words, the Corporation’s books were determined to be unauditible—hardly a well-oiled “venture capital outfit.”

In testimony before the Subcommittee, the lead auditor classified the Corporation’s accounting and management control weaknesses

into six broad categories. According to the auditors, the Corporation 1) lacks strong management controls, 2) lacks data integrity, 3) lacks data security, 4) failed to segregate accounting duties, 5) lacks budgetary controls, and 6) could not prepare reliable financial statements. In all, the auditors reported that the Corporation had 99 accounting weaknesses, 34 of which the auditors determined to be material.

One of the witnesses from a private sector financial institute that reviewed the Corporation's financial statements noted that "a third of the items [\$168 million out of \$343 million] on the statements are described in such a fashion that if I went back to Wall Street and told this story, people would laugh, but I could not laugh because I think it is too serious." During this same hearing, Harris Wofford, the Chief Executive Officer of the Corporation concurred with the seriousness of the problem and assured the Subcommittee that he would take every step possible to solve these problems.

In a follow-up hearing on this matter, the Corporation again testified to the importance of fixing the problems detailed by the auditors. Unfortunately, the Corporation now estimates that at least one more year of its financial records will be unauditible. A review by the Subcommittee staff (in consultation with outside experts), of the Corporation's progress to date and of its timelines for implementing corrective changes pursuant to the auditor's recommendations, makes this assurance seem overly optimistic. As noted in the Subcommittee's hearing of March 19, 1996, lack of financial controls makes it impossible for the auditors to determine if the Corporation or any of its staff is misusing taxpayer money.

*Funding.*—As a result of the Subcommittee's systematic review, the Subcommittee determined that the Corporation received an additional \$40.8 million in direct federal money through various interagency agreements with other Executive Branch agencies and departments. This is an amount equal to 20 percent of the Corporation's fiscal year 1994 appropriation, excluding its educational trust.

This fact raised serious concerns. For example, the work of the Members of this Committee, which have legislative and oversight responsibility over the Corporation, could be subverted by the increased reliance on other federal entities. More broadly, the web of federal funding sources for the Corporation has the effect of quelling Congressional oversight generally by spreading the appropriated amounts across several authorizing Committees. Because the spending by any individual department or agency on the Corporation, when viewed separately, is relatively small, the Committees authorizing those funds may have little incentive (or knowledge) to closely monitor the activities carried out with those funds.

While the Subcommittee requested from the Corporation and reviewed copies of what it believed were all the interagency agreements between the Corporation and other federal agencies, it was not until the Subcommittee received a complaint from the San Francisco Public Housing Authority, that the Subcommittee learned of the existence of the interagency agreements that require private or local spending on AmeriCorps or AmeriCorps type activities. These agreements call for the Corporation to receive \$690,811 from the Department of Housing and Urban Development (HUD),

and in return the Corporation provides HUD with staff time and educational awards valued at over \$1.5 million.

The size of the commitment on the part of the Corporation raised serious concerns. Most importantly, how did the Corporation intend to fund this obligation? The Subcommittee learned that the Corporation, through similar agreements, had been given exclusive veto power over the \$1.3 billion appropriated under HOPE VI—the Urban Revitalization Demonstration Program (Program). Under the Program, the San Francisco Public Housing Authority must use 7 to 10 percent of its funding for “community service.” While the Program does not identify AmeriCorps specifically, the San Francisco Public Housing Authority testified that they felt pressured to utilize AmeriCorps so as to ease the approval process because the Corporation is the gatekeeper to HOPE VI funds.

The investigation into this area led the Corporation, under an agreement with Senator Grassley, to end its practice of operating AmeriCorps programs directly with other federal agencies and departments. However, because the Corporation was still managing to utilize these federal resources indirectly, the Omnibus Consolidated Appropriations Act of 1996, P.L. 104-208, Section 314, included specific language requiring any federal agency seeking to provide funding to the Corporation to seek approval of a reprogramming request.

*Per Member Costs.*—On June 30, 1995, the Subcommittee announced its initial findings that the cost to the American taxpayer per AmeriCorps member was \$27,749 per year. In particular, the Subcommittee found that federal programs had budgeted costs that ranged from a low of \$17,362 to \$51,509 per member—well above the amounts projected when the Corporation was created. In fact, former Chief Executive Officer of the Corporation, Eli Segal, testified that per member costs were just under \$20,000.

Two months later, the General Accounting Office (GAO) released its report on the cost of AmeriCorps. That report demonstrated that total spending per member ranged from \$25,797 to \$31,017. This report went a step further and noted that costs in the AmeriCorps program equaled \$16 per hour of AmeriCorps service. Finally, this report noted that AmeriCorps was funded almost entirely with public funds. While fully 78 percent came from the federal government, an additional 15 percent was provided out of State and local tax receipts. In short, despite being created as a public/private partnership, 93 percent of AmeriCorps funding was provided by government funding.

*Wasteful Spending.*—As a result of the extraordinary costs attributed to AmeriCorps members, the Subcommittee conducted a review of the line by line budget items of federal AmeriCorps grantees. In particular, the Subcommittee found uniform costs varying from \$151 per member at the Department of the Interior, to almost \$1,500 per member at the Department of the Navy. Spending on travel and transportation ranged from \$148 per member at the Department of Transportation to almost \$3,000 at the Environmental Protection Agency. Additionally, the Subcommittee found over \$3.5 million budgeted in unspecified accounts or “other.” The Navy budgeted over \$13,000 per member in such an account, while the

National Endowment for the Arts budgeted \$5,600 per member. In all, over \$1,500 per member was budgeted in “other” accounts.

The Subcommittee also uncovered the fact that the Corporation spent large amounts of money on “training and technical assistance” grants. In particular, the Subcommittee uncovered one such contract with the AFL–CIO which amounted to \$400,000. Other contractors included the Multicultural Institute and the National Association of Community Mediation. In total, the Subcommittee found that the Corporation had spent almost \$13 million on such contracts—the equivalent of over 700 AmeriCorps members.

At the same time, the Subcommittee found that the Corporation was operating a Leadership Training Center at the Presidio, an area overlooking the San Francisco Bay and the Golden Gate Bridge. Complete with two golf courses, the Presidio Leadership Center is designed to “equip community leaders with proven management skills.” The Subcommittee also investigated possible illegal activities at the Presidio Leadership Center which involved customized corporate training—an activity outside the scope of the Corporation’s authorization. The cost for this new center is expected to exceed \$1 million in 1996.

The Subcommittee’s investigation into these areas is ongoing and has already resulted in the Corporation reviewing its spending and agreeing to reduce its per member costs. In addition, the Corporation’s questionable expenditures have resulted in the Office of the Inspector General (OIG) initiating financial reviews into several expenditures of the Corporation.

*National Identity Expenditures.*—The Subcommittee also initiated a review into some of the activities of AmeriCorps grantees. The Subcommittee uncovered large amounts of taxpayer funds being expended to promote the “national identity” of the Corporation. Such expenditures include the hiring of public relations firms and the purchase of “palm cards, site signs and uniforms” (which included T-shirts, jackets, sweat suits, work clothes, and many other items procured through the Corporation, each emblazoned with the Corporation’s official seal).

In addition, Americorps members are encouraged to “work” with the media and the Corporation published a “Guide to Working With the Media.” Additionally, members are encouraged to write op-eds, appear on local TV and radio stations, and work to include their local Members of Congress. Such an emphasis appears to be more targeted at “getting seen,” rather than at “getting things done,” which is not only AmeriCorps’ motto, but is the appropriate way to carry out service to one’s community.

The Subcommittee’s investigation into this matter led the Corporation to agree to end its requirement to have members wear uniforms. They have also stated that they will review their “national identity” activities generally. Despite this fact, the Subcommittee continues to see wasteful spending in these areas.

*Political Activities.*—Finally, the OIG and the Subcommittee independently found evidence of political activity by grantees of the Corporation. Most notable in this regard is the OIG’s findings on the apparent cross-over funding between ACORN, a political advocacy group and ACORN Housing Corp. (AHC), a non profit, AmeriCorps grantee. The OIG recommended, and the Corporation

agreed, to suspend AHC's funding after it was learned that AHC and ACORN shared office space and equipment and failed to assure that activities and funds were wholly separate. The Subcommittee held a hearing on this matter where it was revealed that AmeriCorps members of AHC raised funds for ACORN, performed voter registration activities, and gave partisan speeches. In one instance, an AmeriCorps member was directed by ACORN staff to assist the White House in preparing a press conference in support of legislation. AmeriCorps members were also directed to encourage their clients to lobby on behalf of legislation.

On the heels of the ACORN investigation, the OIG also uncovered illegal political activities by the Coal Coalition, an AmeriCorps program in Colorado that was improperly distributing political flyers. In the same vein, another AmeriCorps program, the Border Volunteer Corps (BVC) in Tucson, Arizona was found to have also distributed politically partisan newsletters. These programs were also stripped of Corporation funding. Since the BVC, the Coal Coalition, and AHC were all relatively large AmeriCorps grantees—the Subcommittee is concerned about the oversight and direction of AmeriCorps' funding and activities.

The Subcommittee also identified activities which included voter registration drives, get out the vote campaigns, "national election" activities, and participation in a Maxine Waters Day of Caring by AmeriCorps volunteers. Most troubling, however, is the continued presence of AmeriCorps members at political rallies and speeches after the assurance of the former Chief Executive Officer of the Corporation, Eli Segal, that such participation would cease. AmeriCorps' presence at such events gives the impression of political support and would give the appearance of impropriety.

*Misuse of Funds.*—Concerns over AmeriCorps' costs are further compounded by several audits conducted by the Corporation's OIG. These reports have detailed the findings of audits and investigations of several of the larger grantees of the Corporation. Some salient examples include \$95,000 in questioned costs at AHC and \$190,000 at BVC. In the latter case, BVC was found to have purchased a \$12,000 car (gas and maintenance), paid commuting charges for employees, paid for four trips to Mexico for the Director who was paid \$85,000 per year—over \$45,000 more than his predecessor and 50 percent higher than comparable Directors in AmeriCorps funded programs.

#### *National Endowment for the Arts*

Authorization for the National Endowment for the Arts (NEA) expired at the end of fiscal year 1993. However, funding for the NEA has continued to be appropriated on a yearly basis, but no authorizing legislation has been enacted primarily due to controversy surrounding a number of artists and projects funded by the NEA.

The Subcommittee reviewed art projects currently being funded through the NEA, including a review of the NEA's grant notices, its annual reports, certain grant documents, copies of videos prepared with NEA funds, and site visits to museums where NEA funded art is being displayed. While this review is ongoing, several of the Subcommittee's findings raise serious questions about the current activities of the NEA. For example, on June 14, 1996, the

Subcommittee requested a copy of the film "Watermelon Woman" and all related grant information from the NEA. This film portrays graphic homosexual sex, is strewn with graphic and degrading sexual language, and portrays illegal use of drugs as casual.

The Subcommittee is committed to continuing its review of art funded through the NEA. This information will assist Congress and the public in determining if funding the NEA is an appropriate expenditure of taxpayer money.

#### *The Federal Direct Student Loan Program*

The Subcommittee followed certain principles in reviewing federal education programs. One of the chief tenants of the Subcommittee is ensuring that federal education programs focus on an appropriate federal mission. Accordingly, the Subcommittee analyzed whether or not it is appropriate for the Department of Education to be, in effect, one of the largest banks in the United States.

Under the Federal Direct Student Loan Program (FDSLSP) the federal government has taken on the responsibility to act as a bank for millions of students throughout this nation. In light of this new role the Subcommittee held hearings on the two major federal student loan programs, Federal Family Education Loans (FFELP) and FDSLSP.

The FDSLSP began in 1993. Since its inception, there has been fierce debate in Congress regarding the FDSLSP. This debate involves: 1) the tremendous number of federal employees necessary to administer FDSLSP, 2) the huge federal expense involved in FDSLSP's operation, 3) whether FDSLSP is a more effective and efficient way to provide educational loans to students, and 4) whether the FDSLSP performs a necessary and appropriate federal function. The Subcommittee also raised concerns about the direct involvement of the federal government in the program, particularly in light of the devolution of power and responsibility to State and local officials.

On May 23, 1995, the Subcommittee held a hearing on the FDSLSP. One of the most significant issues that came to light during the May 23rd hearing was that a number of schools expressed their position that the FDSLSP is unnecessary and that they were pleased with the FFELP. In this regard, a letter from the Director of Financial Aid at the University of Nebraska at Kearney stated the general opinion of many, when he said, "we have chosen not to apply for the Direct Lending Program due to the fact that we have an exceptionally efficient process currently in place with the Federal Stafford Loan Program." In light of this and other similar letters, the Subcommittee continues to be concerned with why the 103rd Congress created the FDSLSP which required the hiring of hundreds of federal employees and billions of dollars in new expenditures by the Department of Education.

Moreover, since the hearing, the Subcommittee uncovered a number of alarming and potentially devastating problems with the FDSLSP. For example, the Subcommittee found information demonstrating that the Department of Education pushed back reporting requirements for schools. Consequently, the Department of Education will not receive timely and critical information about students and their loans. There are a number of schools that have

failed to produce Student Status Confirmation Reports for their students who are in the FDSLSP. Therefore, those students will not be placed in loan repayment in a timely manner.

These problems raise a number of significant concerns regarding the implementation of the FDSLSP. First, the Department of Education, which contracts with various independent for-profit companies for billions of dollars in services, is not collecting necessary data in a timely fashion. For example, questions have arisen regarding the data maintained on matters, such as whether a student continues to be enrolled at an institution. Second, the General Accounting Office, the Department of Education's Office of the Inspector General, and the Advisory Committee on Student Financial Assistance concluded that the Department of Education lacks the technical expertise and experience to administer complicated contracts for services which are vital to the operation of the FDSLSP. As a result, the Subcommittee is gravely concerned that some students are and will continue to be hurt by the inadequacies of the FDSLSP and, ultimately, the taxpayer is left to pay the bill when these students default on the repayment of their student loans.

The information vacuum that the Subcommittee has observed in the FDSLSP does not exist in the FFELP because the reporting requirements differ. In addition, the FFELP has become considerably stronger over the last few years and has responded well to competition. The guaranty agencies, lenders, and secondary markets have become more responsive to the needs of students and schools as evidenced by electronic loan processing and 24 hour turnaround for applications.

The Department of Education has become an advocate against this public/private student loan partnership. It has stymied improvements that would benefit students and schools alike in order to garner a larger share of the student loan market for the FDSLSP. It has also attempted to establish an environment where schools feel compelled to join the FDSLSP. But, despite the Department of Education's efforts nearly 100 postsecondary schools, approved by the Department of Education to participate in the third year of its FDSLSP, have dropped out since May, 1996. Finally, the Subcommittee has been in frequent contact with the Department of Education's Office of the Inspector General, which is near completion of an audit of FDSLSP, using 16 schools selected at random and 7 schools selected as potential problem schools. The audits will be comprehensive and focus on the various aspects of the program and potential areas of weakness.

#### B. WORKS EFFECTIVELY AND EFFICIENTLY

The federal government can no longer take a laissez faire attitude with regard to the manner in which it spends taxpayer dollars. Indeed, taxpayers are demanding that the federal government utilize its scarce federal dollars in an efficient and effective manner. In this regard, the Subcommittee examined several matters that equate to an apparent disregard for the basic principles of efficiency and effectiveness. In this report, the National Labor Relations Board is examined in terms of, among other things, its adjudicatory practices, and travel policies. In addition, the circumstances leading to the decision of Clinton Administration offi-

cials at the Department of Labor to expend unnecessarily almost \$32,000 is also examined in detail.

*The National Labor Relations Board's increased use of 10(j) injunctions*

The National Labor Relations Board (NLRB/Board) has dramatically increased its use of 10(j) injunction authority against employers. As the filing of 10(j) petitions became more commonplace under Chairman William Gould's and General Counsel Fred Feinstein's NLRB, serious due process concerns and questions about the use of NLRB procedures to assist unions have been raised including concerns about the Board's impartiality and neutrality.

The NLRB's 83 10(j) authorizations in fiscal year 1994 represent an increase of nearly 100 percent over the 42 authorizations issued in fiscal year 1993, and an increase of more than 300 percent over the 26 authorizations issued in fiscal year 1992. The NLRB has become even more zealous in its use of the 10(j) injunction. Between January 1, 1994, and June 13, 1995, the NLRB authorized the pursuit of injunctive relief in 162 cases. The impact of increases in 10(j) cases is significant in terms of time, energy, and money. This is illustrated by the fact that the NLRB:

Devotes approximately 34 staff days to process each 10(j) injunction and

Spends more than \$10,000 to process each injunction.

Accordingly, the NLRB spent an estimated \$452,408 to process 44 authorizations during a 13-month period and an estimated \$1,337,945 to process 127 authorizations from a second 12-month period.

Evidence strongly suggests the NLRB is deliberately using its 10(j) authority to force employers to settle unfair labor practice charges. Former NLRB General Counsel Collyer stated at a hearing that the NLRB's agenda has compromised its procedures and has led to a "rush to judgment." Such a "rush to judgment" undermines the NLRB's legitimate responsibilities and disregards a party's presumption of innocence.

*Travel practices at the National Labor Relations Board*

It is well accepted that the individuals who are responsible for the operation of a federal entity find it necessary to travel from time to time and accept invitations from around the country to discuss issues critical to the business of that entity. But one would not expect high-level government officials to abuse this authority in the face of scarce federal dollars.

Forty-five thousand dollars (\$45,000) in federal funds was expended by the Board for the period of March 1994 through March 1995. A major portion of those funds were expended by Chairman Gould.

During this same period, Board members traveled together, as well as independently, to such locations as Vancouver, British Columbia; London, England; Johannesburg, South Africa; Nassau, Bahamas; Rome, Italy; San Juan, Puerto Rico; and Taipei, Taiwan.

Of the number of trips taken by Board members, none warranted as much attention as that enjoyed by NLRB members Cohen, Truesdale, and Stephens. During the winter months of February 18



through March 2, 1995, these three Board members traveled to Kahului, Maui, for the American Bar Association (ABA) conference on practice and procedure and then continued on to Key West, Florida, to attend another ABA-sponsored conference on developing a labor law committee. The combined cost of this travel to the American taxpayer was almost \$10,000.

*The South Africa trip*

In May 1994, the people of South Africa selected a new leader—Nelson Mandela. After the election, an inauguration was scheduled that was attended by Chairman Gould.

Several days before the scheduled inauguration date Chairman Gould had not received an invitation to the ceremonies. As a result, he contacted Mr. Trevor Wentzel of the Ravensmead Workers Advice Bureau in South Africa regarding the fact that he had not received an invitation to the inauguration. In response to this communiqué, Mr. Wentzel, at 4:19 p.m. on May 6, 1994, provided Chairman Gould an invitation. Shortly after receiving the invitation, Chairman Gould purchased a ticket for Johannesburg, South Africa, at a cost of about \$4,000 to the taxpayers.

Therefore, not only did NLRB Chairman Gould solicit an invitation to the inauguration of Nelson Mandela, but he spent approximately \$4,000 in taxpayer funds to attend that function.

*Chairman Gould's reimbursement from non-federal sources*

There are a series of ethical rules, standards, and regulations concerning the payment of a federal employee's travel expenses by an outside, private party. The Subcommittee discovered that Chairman Gould had accepted travel expenses from, among others, the AFL-CIO—a consortium of labor unions that made more than 20,000 filings with the NLRB in 1993 alone.

In an effort to determine the propriety of the receipt of such travel expenses by Chairman Gould and the NLRB, the Subcommittee requested a legal opinion from the Congressional Research Service (CRS) regarding the propriety of the receipt of travel funds from an organization that regularly has matters adjudicated by the NLRB. Among the important points made by the CRS was the following:

Under regulations promulgated by the General Services Administration [GSA], the agency may accept travel expenses for a meeting or similar function "which the employee has been authorized to attend in an official capacity on behalf of the employing agency." 41 C.F.R. §304-1.3(a) (1996). A "meeting or similar function" includes a "conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station, and is sponsored or co-sponsored by a non-federal source." 41 C.F.R. §304-1.2(c)(3) (1996). There is within the GSA regulations a "conflict of interest" provision which directs agencies not to approve private reimbursement for travel if acceptance "would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs and operations." 41 C.F.R. 304 §304-1.5 (1996). In addition to considering the identity of the source, the purpose

of the meeting and the value and character of the travel expenses provided, the agency should consider in making such conflict of interest determinations the “nature and sensitivity of any matter pending at the agency affecting the interests” of non-federal source of payments and the significance of the employee’s role in such a matter. 41 C.F.R. §304-1.5(a)(1)–(6) (1996). Such conflict of interest and ethics determinations, since they involve subjective judgments and issues of appearances relating to an agency’s own mission and functions, as well as the specific duties and functions of one of its employees or officials, are the types of matters that have generally been found to be administrative determinations within the specific discretion and expertise of the agency itself.

Based on this language, it appears that Chairman Gould’s decision to accept travel funds and expenditures from the AFL–CIO, at a minimum, presents itself as a conflict of interest. The AFL–CIO is a consortium of some of the largest and most powerful members of organized labor in the United States. To accept their funds and later adjudicate their issues is inappropriate on its face and calls into question the integrity of certain NLRB actions.

In addition, according to travel logs provided by the NLRB, Chairman Gould has traveled outside the Washington, D.C. area on official business 51 times during his 2½-year tenure at the NLRB. Equally disturbing is the fact that while on this “official” NLRB travel, Chairman Gould attended 42 separate sporting events, including 5 professional basketball games, 5 college baseball games, 31 professional baseball games, and the 1996 Major League All Star game.

The freedom with which the NLRB, including its Chairman, spends taxpayer dollars—whether it be on an ABA meeting in Hawaii during the winter months or the Chairman soliciting an invitation to the inauguration of Nelson Mandela in South Africa and later attending that function, calls into question the ability of this NLRB to act as good stewards of federal funds.

#### *Corporate campaigns*

John Sweeney, President of the AFL–CIO, declared a new direction for the international labor unions that the Federation represents. Mr. Sweeney declared that labor would become far more militant in the pursuit of organizing and collective bargaining objectives. The term used to organize formally non-union corporations became known as “corporate campaigns.”

A “corporate campaign” has several distinct elements. Two of the most prominent elements are: having the target company perceived negatively by the company’s investors, customers, employees and the public, and initiating enforcement and oversight actions by federal, State, and local governmental agencies. In other words, organized labor in a “corporate campaign” does not necessarily target the employees of the corporation as it had done historically, but rather focuses on corporate management. Perhaps Stephen Lerner, Organizing Director of the Service Employees International Union said it best—

Instead of asking, ‘How do we win a majority of (employee) votes?’, we should be asking, ‘How do we develop

power to force employers to recognize the union and sign a contract.'

During the course of the 104th Congress many concerns were raised by targeted corporations regarding the tactics used by organized labor and their attendant relationship with the NLRB. Employers argued that the NLRB was favoring organized labor and was indeed a willing pawn in the "corporate campaign" strategy. As a result of these repeated and serious allegations, the Subcommittee conducted two hearings and one round-table discussion.

The first hearing held by the Subcommittee invited NLRB Chairman Gould, General Counsel Feinstein, and a variety of small and large employers to recount their personal experiences. The second hearing held by the Subcommittee focused on the "corporate campaign" technique of salting—the placing of professional union organizers or members in a nonunion facility to harass or disrupt contractor operations, to increase costs, or to organize.

These two hearings raised a number of concerns for the Subcommittee including the following:

Organizing nonunion employees into a unified union membership is not necessarily the objective of union organizers;

Resources are not an obstacle for the unions when it comes to public relations;

The cost of frivolous complaints and other federal agency charges fall on the businesses and the federal taxpayer while the unions have no direct accountability or cost; and

Jeopardizing jobs and employer viability is ultimately more important than ensuring that workers have good wages, safe worksites and fulfilling jobs.

In conclusion, the pursuit of injunctive relief, the NLRB's handling of "salting" cases and the public comments of the NLRB Chairman have served as ample evidence that the NLRB may be biased against the regulated employer community.

*Partisanship, partiality and the declining stature of the National Labor Relations Board*

During the past four years, the National Labor Relations Board (NLRB/Board) has received harsh criticism from U.S. Courts of Appeals for the legal reasoning underlying its rulings in several key cases. As the percentage of NLRB orders affirmed by federal appellate courts has sunk to all-time lows the current NLRB has ignored past NLRB and court precedent and has sidestepped key factual issues to reach outcomes that have been soundly rejected by appeals courts. Warren, Gorham & Lamont, *Inside Labor Relations*, (May 31, 1996). Similarly, in numerous NLRB requests for injunctive relief, federal district courts have also been unpersuaded by the NLRB's legal and factual conclusions in seeking preliminary remedies. While admittedly past NLRBs have also been admonished by the federal courts, the Committee was struck by the force of the strident criticism leveled at the Gould-Feinstein NLRB by federal judges.

*The Perdue decision*

In a case involving an attempt by the United Food & Commercial Workers Union (UFCW) to organize employees at a facility owned

by Perdue Farms, an employer had to resort to the highly unusual move of seeking injunctive relief in a U.S. district court to prevent the NLRB from persisting in moving toward ordering a third election at its facilities. The employer took this move after its employees rejected union representation by significant margins in two elections and after the NLRB largely ignored evidence of massive fraud in the collection of authorization cards and continued processing objections by the UFCW which would possibly lead to a third election. In scathing terms, the district court granted the employer's request and enjoined the NLRB from proceeding further in the matter until it had proven to the court that it had conducted an appropriate investigation into the allegations of fraud. The language of the court's opinion is notable for its harshness regarding the NLRB's conduct:

At present, the only possible explanation for the NLRB's behavior is the one proposed by the employer: "that the Board is manipulating its election rules capriciously in order to foster the interests of the United Food & Commercial Workers Union." *Perdue Farms, Inc. v. Nat'l Labor Relations Bd.*, 935 F. Supp. 713, 721 (E.D. N.C. 1996).

Thus, as the cases demonstrate, the Board has not only abandoned its Casehandling Manual, but no less than three times where this particular Union local is involved, its legal policy as well. *Such dramatic reversals tend to create an appearance of partisanship the Board can ill afford if it hopes to retain a supervisory role over labor relations.* 935 F. Supp. At 722 (emphasis added).

*Yet the legal policy reversals do not reveal the full extent of the Board's efforts on behalf of the Union. . . .* 935 F. Supp. At 722 (emphasis added).

*. . . The Board refuses to obey this statutory duty by defying numerous guidelines and regulations, engaging a significant policy departure which remains unexplained. This occurs against the backdrop of [sic] several legal policy reversals by the Board in favor of the Union, a representation to the plaintiff by a Board field examiner that the current hearing is a sham, and ignorance of the plaintiff's FOIA requests sufficient to invoke district court jurisdiction over that dispute.* 935 F. Supp. At 725 (emphasis added).

The strength of the district court's condemnation of the NLRB's handling of the Perdue election is troubling to the Subcommittee because of the message it sends to both employers and employees as to the fairness and effectiveness of the NLRB's processes for administering the NLRA. While in isolation the Perdue decision might be an unfortunate footnote to the Gould-Feinstein tenure at the NLRB, there have been similar decisions in which the federal courts have expressed profound objections to the NLRB's handling of both representation and unfair labor practice cases.

#### *Other court decisions*

In a series of decisions, the Fourth Circuit Court of Appeals twice had to admonish the NLRB to cease its attempts to revive a rep-

resentation proceeding and election at a facility owned by the Lundy Packing Company. The case involved a bargaining unit determination in which the employer was contending that the NLRB had improperly excluded industrial engineers from a unit of production and maintenance employees. The Fourth Circuit agreed with the employer and determined that the “NLRB’s bargaining unit determination both contravened its own announced standards and accorded controlling weight to the extent of union organization at Lundy, thereby violating section 9(c)(5) of the National Labor Relations Act,” which specifically prohibits such a factor from being dispositive. In cautioning the NLRB, the court remarked:

The deference owed the Board as the primary guardian of the bargaining process is well established. It will not extend, however, to the point where the boundaries of the Act are plainly breached.

The court then denied enforcement of the NLRB’s order that the employer begin to bargain with the union. *Nat’l Labor Relations Bd. v. Lundy Packing Co.*, 68 F.3d 1577, 1583 (4th Cir. 1995).

As if the Fourth Circuit’s admonition were not enough, the NLRB treated the decision as a mere distraction and proceeded to count the challenged ballots to determine if certification of the union would be appropriate. This action forced the employer to return to the Fourth Circuit, and the court told the NLRB in no uncertain terms that “the attempt by the Board to revive the representation petition and the election that followed exceeds the Board’s jurisdiction.” (*Nat’l Labor Relations Bd. v. Lundy Packing Co.*, 81 F. 3d 25, 26) (4th Cir. 1996). Nonetheless, the NLRB refused to take no for an answer and asked the Fourth Circuit to reconsider, whereupon the seemingly exasperated court stated:

The NLRB acted in clear contravention of its jurisdictional limits and sought to bypass this court. . . . As we explained in our order of February 15, 1996, the NLRB has no such authority. The court reiterates its respect for the NLRB’s role in the area of national labor relations law. The court expects in turn respect for its processes and mandates. *Nat’l Labor Relations Bd. v. Lundy Packing Co.*, No. 95–1364(L) (4th Cir. March 21, 1996) (unpublished opinion) (quoted in part in *Perdue*, 935 F. Supp. 713).

Like both the *Perdue* and the *Lundy Packing* cases, *Shepard Convention Servs., Inc. v. Nat’l Labor Relations Bd.* (85 F. 3d 671) (D.C. Cir. 1996) represents another instance where the NLRB disregarded long-standing NLRB policy and had to be reined in by a federal court. That case involved an organizing effort by the International Alliance of Theatrical Stage Employees where the union, citing the large number of eligible voters that will be on-call workers, requested that the election be conducted by mail. The NLRB Regional Director denied the request, and the union filed a “special request” for review by the NLRB. The NLRB, finding that the Regional Director had abused his discretion by denying the union’s request, directed a mail ballot election for the on-call employees. After the Regional Director ordered all eligible employees to vote by mail, the employer requested review, as the NLRB’s order had

referred only to on-call employees. The employer's request for review was summarily denied.

A mail ballot election was then conducted over a period of two weeks. Only 77 of the 438 eligible employees, or approximately 17.5 percent of the workforce, voted. Of the 68 ballots that were not challenged, 40 were cast for the union that was then certified as the bargaining despite the objections to the election that were filed by Shepard. After Shepard refused to bargain with the union, the NLRB issued an order finding the employer's refusal an unfair labor practice.

The District of Columbia Court of Appeals found that the Regional Director had "properly denied the union's request for an election by mail" and that the NLRB "undertook to second-guess the Regional Director in violation of its own regulations." 85 F. 3d at 674. The court went on to conclude:

In sum, the NLRB's reversal of the Regional Director's discretionary decision to conduct a manual election cannot be upheld. Had the NLRB left the decision intact, as its regulations required, voter turnout might well have been higher. . . . It could hardly have been lower. 85 F. 3d at 675.

The Seventh Circuit Court of Appeals has also had strong words for the NLRB. In a case involving an NLRB decision to certify a union over the objections of the employer that supervisory employees were improperly included in the bargaining unit, the Seventh Circuit had this admonition for the NLRB:

While we adhere to the generally accepted standard of review discussed above, the fact of the matter is that "[a]n administrative agency, like any other first-line tribunal, earns—or forfeits—deferential judicial review by its performance." In the context of classifying supervisors, the NLRB's manipulation of the definition provided in section 152(11) has earned it little deference. We remain mindful of the statutory prescription of judicial restraint but note that such restraint "does not entail complete abdication of the judicial role. *Nat'l Labor Relations Bd. v. Winnebago Television Corp.*, 75 F.3d 1208, 1214 (7th Cir. 1996).

A November 8, 1996, decision by the Court of Appeals for the District of Columbia was similarly critical of the Board in the case of *Skyline Distribs. v. Nat'l Labor Relations Bd.*, No. 95-1571, slip opinion, (Nov. 8, 1996). In that case, the Board ordered the employer to bargain with the union, even though the union had been rejected by the employees involved, based on an alleged unfair labor practice concerning a pay raise. While recognizing that such a bargaining order may be appropriate in extreme situations, Judge Harry T. Edwards rejected the remedy, noting that the Board had "no basis" to issue such an order and that "Indeed, the Board's decision to issue a bargaining order in this case is so lacking in evidentiary support and reasoned decisionmaking that it seems whimsical." The court also noted that the Board's remedy could not be enforced "because the Board has given no credence whatsoever to employee "free choice." These are strong criticisms indeed—here

made more alarming by the fact that the Board's remedy would have forced employees to be represented by a union they had rejected.

*Conclusion*

The opinions of both the federal courts and of labor law practitioners regarding the conduct of the NLRB are of concern to the Subcommittee. This is the case because the very nature of the NLRB's responsibilities requires that it maintain the respect and interest of both labor and management as it uses the applicable law to drive the parties toward peaceful and orderly resolution of labor disputes. The statutory make-up of the NLRB, where various arms of the agency are both judge and prosecutor of alleged violations of the law, demands a strong commitment to impartiality. But, unfortunately, it does not appear that such a commitment has been made by the current NLRB. Both the review of court decisions assessing the NLRB's actions and the oversight activities of the Subcommittee indicate that Chairman Gould and General Counsel Feinstein have apparently neglected the traditions of the NLRB to the detriment of the agency's stature in the eyes of the federal courts, the Congress and the public.

*Mismanagement within the Department of Education, Office of Postsecondary Education: Creation of A Student Loan Hierarchy*

Since the inception of the Federal Direct Student Loan Programs (FDSLPL) and its unique chain of command, new problems have arisen within the Department of Education. These problems include infighting among high ranking employees that have negatively impacted the efficient and effective operation of the higher education lending programs. According to a June 1996 report to the Subcommittee from the Department of Education's Office of the Inspector General (OIG) these personality differences "exacerbated the poor communication, contributed to poor coordination between their respective staffs, a further deterioration of morale, and heightened human resource management concerns in the bifurcated structure."

One of the major functions of the Department of Education involves administering student financial aid programs for higher education. The Subcommittee is seriously concerned about reports that the divided management structure intended to implement the student financial aid programs has been one of the most significant failings of the Department of Education. Indeed, in August 1995 the Advisory Committee on Student Financial Assistance (Advisory Committee) wrote a scathing report about the divided management of the FDSLPL and the Federal Family Education Loan Program (FFELP). In particular the Advisory Committee stated:

[The] Department of Education has chosen a structure that cannot adequately address its major management challenges: the redesign of the Title IV delivery system, implementation of the [FDSLPL], and reform of the FFELP. Furthermore, responsibility for both implementing the [FDSLPL] and overseeing FFELP reform is concentrated in a special advisor to the Secretary (Leo Kornfeld). However,

this advisor has stated publicly that FFELP reform is not a priority.

The Subcommittee will continue examining the FDSLPL to ensure that scarce federal dollars are used effectively and efficiently despite the inadequate management structure at the Department of Education.

*The entitlement maze*

During the first session of the 104th Congress, the Subcommittee began examining entitlement programs, including the voluminous amount of paperwork an individual must complete prior to obtaining food stamps, job training, and/or child care. Specifically, on March 27, 1995, the Subcommittee held a hands-on hearing regarding federal and State assistance programs. The purpose of this hearing was to provide Members with an opportunity to “step into the shoes” of a family seeking assistance from federal and State programs.

During this simulation, the Members participated in a role playing exercise where they became honorary members of the Hernandez family—a family living in the City Heights section of San Diego, California.

Members had the opportunity to participate actively in the simulation and were asked to complete application forms required by federal and State assistance programs. In order for them to get a real appreciation for the human side of this process, the simulation mediator, Ms. Margret Dunkle of the Institute for Educational Leadership, brought along 13 employees from the San Diego area, including many front-line individuals who were responsible for making eligibility determinations for many of the programs the Members dealt with during the simulation.

At the conclusion of the hearing, the Members found the process to be confusing, burdensome, and generally unacceptable. Indeed, Members were not only concerned with the sheer volume and duplicative nature of the information requested by applicants from entitlement agencies, but were surprised that relevant information cannot be exchanged between agencies assessing eligibility of applicants requesting more than one entitlement.

*The minimum wage hotline*

On November 8, 1995, it was brought to the attention of the Subcommittee that the Department of Labor created and activated a toll-free minimum wage hotline that was intended to identify minimum wage workers who were interested in an increase in the minimum wage. The Subcommittee’s main concern was whether or not this hotline was a waste of valuable taxpayer funds and whether or not its existence was in accordance with all applicable law. Therefore, on November 14, 1995, the Subcommittee sent a letter to the Department of Labor regarding the implementation of this hotline.

On December 5, 1995, the Department of Labor responded to the Subcommittee’s inquiry. According to the Department of Labor, the intent of the hotline was to gather information for use before Congress. The Department of Labor indicated that:



[The] Department of Labor believes this use of technology is one example of a cost effective and minimally burdensome means of making factual information about the actual consequences of proposed policy changes available to policymakers.

When asked what steps were taken to publicize the hotline, the Department of Labor noted that the availability of the hotline was communicated through a press release, a number of speeches given by Secretary of Labor Robert Reich, and several radio interviews. Based on documentation obtained by the Subcommittee, the Department of Labor failed to mention that they personally contacted approximately 15 labor unions, including the AFL-CIO, advising them that the hotline was operational and requested that they share this information with their affiliates and other interested parties. Even more disturbing were the actions of one high-level Department of Labor official who prepared and distributed materials regarding the hotline that contravened applicable lobbying laws. Due to these and other inappropriate actions by this high-level official, Mr. Richard F. Sawyer—a Secretary’s Representative—was terminated.

*The \$32,000 copying bill*

In June of 1995, the Subcommittee learned that the Department of Labor was regularly incurring costs associated with the use of private reproduction and copying services throughout the Washington D.C. area. In response to Subcommittee inquiries, the Department of Labor identified about 20 instances where it had used the services of private copying enterprises. The costs incurred by the Department of Labor for these services ranged from a low of \$21.00 to a high of \$31,830.00. Most notably, on the eve of the President’s State of the Union Address, the Department of Labor ordered additional copies of the President’s “Middle Class Bill of Rights.”

*The 1995 State of the Union Address*

During the early evening hours of January 24, 1995, high-level Department of Labor staff determined that the 200 copies of the document that had been produced internally were insufficient and that many more copies were needed. Instead of contacting the Government Printing Office (GPO), as required, and complying with the Department of Labor’s internal policies and procedures, the Office of the Secretary contracted with Kinko’s, a private copying enterprise. Kinko’s was tasked with producing 1,500 color, collated copies of the “Middle Class Bill of Rights” by 9:30 a.m. the very next day—the day of the President’s State of the Union Address.

The bill for the overnight reproduction of the “Middle Class Bill of Rights” was \$31,830.00. On April 15, 1995, the Acting Director of Administration and Procurement Programs wrote to the Joint Committee on Printing seeking an after-the-fact waiver of law. Specifically, the Department of Labor requested approval for payment of the \$31,830.00 Kinko’s bill for printing services acquired from a source other than the GPO.

The Joint Committee on Printing denied the Department of Labor’s request for a waiver because the Department of Labor:

- (1) Ignored a number of notices addressed to the heads of all departments and agencies, including the Department of Labor, concerning the limitations on appropriated funds for the direct procurement of printing and duplicating;
- (2) Failed to coordinate with its own Administration and Management officials for the reproduction;
- (3) Engaged in spontaneous decision-making in going to Kinko's as a sole source provider; and
- (4) Was a repeat offender, in that this was not the first incident of "illegal" printing by the Department of Labor.

*Repeat offenders: Political appointees*

In addition to denying the Department of Labor's request for a waiver, the Joint Committee on Printing requested that the Department of Labor's Office of the Inspector General conduct a review of the "Department's acquisitions of printing. . . ." The Office of the Inspector General determined that the Department maintained sufficient internal controls to prevent the improper expenditure of appropriated funds for printing. Indeed, the Department of Labor had implemented appropriate policies and procedures to safeguard taxpayer funds and to ensure the efficient and effective use of scarce federal resources. But the Department of Labor's Office of the Inspector General identified a different problem that cannot be corrected by mere policies and procedures—after all, policies and procedures must be followed to have any meaning. Specifically, the Office of the Inspector General stated the following:

. . . we do recommend that the Department of Labor place greater emphasis on this issue in the instructions provided to political appointees, who were responsible for most of the direct procurements cited by the Joint Committee on Printing. In particular, we recommend that the restrictions on direct procurement of printing and the potential consequences of violations be incorporated in the orientation briefings for all new political appointees. This recommendation has been discussed with officials of OASAM's Directorate of Administrative and Procurement Programs who concurred and are preparing information to include in the briefing materials. We further recommend that political appointees receive periodic reminders of the printing related requirements through briefings at the executive staff meetings and/or political appointees meetings.

*Conclusion*

The facts surrounding the Department of Labor's \$32,000 Kinko's bill are troubling. In this matter, it is apparent that high-level Department of Labor appointees violated the letter and spirit of the law which they are obligated to honor. In sum, the staff members at the Department of Labor were all too willing to disregard internal policies and procedures intended to protect scarce taxpayer dollars for political expediency related to the President's State of the Union Address.

C. CONSISTENTLY FOLLOW CONGRESSIONAL INTENT AND APPLICABLE  
LAW

Another major function of the Subcommittee is ensuring that the letter and spirit of the law is adhered to by the federal entities within its jurisdiction. At times, circumstances arise that are clearly inconsistent with the statutory intent established by Congress. Fraudulent filings of information, abuse of process by a high level federal employees and illegal partisan activities are just some of the matters examined by the Subcommittee and discussed below.

*Fraud in the Davis-Bacon Act*

For years, critics have argued that the Davis-Bacon Act (DBA), which governs wages and benefits on federal construction projects, mandates higher wages and benefits than those paid in private sector construction. A recent investigation by the Oklahoma Department of Labor uncovered fraud, waste, and abuse in the DBA. But, not only has the Oklahoma investigation uncovered fraudulent activities, it has also uncovered potential criminal activities as well. The Federal Bureau of Investigation (FBI) and the Oklahoma State Bureau of Investigations are currently investigating allegations of wrongdoing in Oklahoma involving Department of Labor employees and members of organized labor.

In keeping with its oversight responsibilities, the Subcommittee has been investigating charges of wrongdoing in the implementation of the DBA. The Subcommittee held hearings in Oklahoma City, Oklahoma, on January 18, 1996, and in Washington, D.C., on June 20, 1996. In addition, the Subcommittee requested that the General Accounting Office (GAO) review the prevailing wage process to determine if it was susceptible to fraudulent activities. The Subcommittee also asked the Department of Labor's Office of the Inspector General to investigate the allegations of fraud in Oklahoma and to audit several other states to determine if fraudulent activities are a systemic, nationwide problem.

*Current law*

Passed in 1931, the DBA applies to contractors who work on federal construction projects. It requires contractors to pay certain "prevailing wages" to the various classes of laborers and mechanics working under federal contracts. The DBA covers direct federal construction, alteration, and repair, including painting and decorating of public buildings or public works, where the contract is valued at \$2,000 or more.

The DBA has remained essentially unchanged since its passage 65 years ago, with only minor amendments in 1935, 1940, 1941, and 1964. However, a greater impact has come from the extension of Davis-Bacon requirements to a broad range of programs involving varying degrees of federal funding (ranging from low-income housing to Head Start programs). For example, the Department of Labor estimates that in fiscal year 1995, the DBA-covered construction accounted for approximately \$40 billion of the \$295.4 billion total dollar volume of the U.S. construction industry or about 14 percent.

*Government reports highlighted problems for years*

The GAO has raised concerns about the accuracy of the Department of Labor's wage determinations for a number of years. The GAO issued a series of seven reports to Congress between June 1962 and August 1970. Those reports "pointed out that the prevailing rates prescribed by the Department of Labor were significantly higher than wage rates prescribed in the areas and had substantially increased the costs of construction to the Federal Government." Moreover, in 1979, the GAO issued another report and recommended the repeal of the DBA.

In 1994, the GAO issued a follow-up report which found that while some regulatory improvements had occurred, key concerns noted in the 1979 GAO report remain. The 1994 GAO report noted the potential for wage determinations to be based on low quality data, as well as the fact that the Department of Labor does not verify the data received, even on a sample basis. These GAO reports underscore the inherent difficulties in accurately administering a complex, government wage-setting process. (The Davis-Bacon Act, GAO/HEHS-94-95R, February 7, 1994).

OVERVIEW OF THE OKLAHOMA INVESTIGATION

In January 1995, a number of Oklahoma citizens and public officials contacted the Oklahoma Department of Labor regarding newly published Davis-Bacon wage rates. A comparison of the old and new wage rates showed increases of as much as 162 percent. These increases are passed along to taxpayers in the form of higher costs on public construction projects like schools and highways. Because of the overwhelming increase and concern that Oklahoma's workers and taxpayers had been the victim of fraud and abuse, the Oklahoma Department of Labor began an inquiry into the Davis-Bacon prevailing wage survey process. The Oklahoma Department of Labor produced an investigative report entitled "The Davis-Bacon Act, and Fraudulent Wage Data" which was submitted to the Department of Labor and to Congress in July 1995. The initial report by the Oklahoma Department of Labor identified three cases of apparent fraudulent activities.

The Oklahoma Investigative Report concluded by noting that the "response of the U.S. Department of Labor to date has been disappointing. Repeated requests for information solely in the possession of the Department have been delayed or denied."

*1. Response of the committee*

After learning of the Oklahoma Department of Labor investigation, Members of the Committee met with Oklahoma officials to learn more about their investigation. As a result of this meeting, Chairman Goodling, and Subcommittee Chairmen Ballenger and Hoekstra sent a letter to Department of Labor Secretary Reich. The letter said in pertinent part:

Specifically, it has been reported to us that certain wage rates, applicable to federally funded heavy construction projects in some Oklahoma counties and applicable state-funded projects pursuant to Oklahoma's Little Davis-Bacon Act, are invalid. It is further alleged that inaccurate infor-

mation was “intentionally” submitted to the Department of Labor resulting in improper and excessive tax burdens for public construction in Oklahoma.

As part of its preliminary investigation, the Subcommittee continued an exchange of letters with the Department of Labor in an effort to obtain more details about the allegations of fraud and abuse in the DBA. Subcommittee Members also met with Wage and Hour Administrator Maria Echaveste to gain further insight into the Davis-Bacon prevailing wage process and the Department of Labor procedures. Because of the serious nature of the allegations of fraud, Chairs Bill Goodling, Nancy Kassebaum, Orrin Hatch, Henry Hyde and other interested House and Senate Members wrote to Attorney General Janet Reno, requesting that the Department of Justice “place a high priority on its on-going investigation into the Davis-Bacon Act and related allegations of fraud in the State of Oklahoma.”

Because of concern for taxpayer funds, Subcommittee Chairmen Pete Hoekstra and Cass Ballenger wrote to all 50 Governors and State Commissioners of Labor to inform them of the “. . . concerns that have come to our attention regarding prevailing wage determinations under the Davis-Bacon Act.”

## *2. Subcommittee hearing on allegations of fraud in the Davis-Bacon Act*

On January 18, 1996, the Subcommittees on Oversight and Investigations and Workforce Protections conducted a joint hearing in Oklahoma City, Oklahoma, to review the allegations of fraud and abuse in the DBA. Several witnesses testified at the hearing, including Oklahoma Department of Labor officials and contractors. At the hearings, Oklahoma Labor Commissioner Brenda Reneau testified regarding the State investigation of fraud in the DBA. Her testimony revealed that:

(1) Grossly inaccurate information had been reported to the federal government by what the Department of Labor calls “interested third parties”;

(2) Wage survey forms included inflated numbers of employees on projects, inflated wage rates reported for these same non-existent workers, and projects that were never built;

(3) The initial investigation identified only three cases of what appears to be fraudulent activities, and new evidence indicates nearly 100 additional cases of a similar nature;

(4) The Oklahoma Department of Labor repeatedly informed officials at the Department of Labor that they had been given false information during the survey process. Initially, Labor officials indicated that although they knew that inaccurate information was submitted during surveys, they made no effort to verify the information received; and

(5) A follow-up investigation conducted by the Department of Labor confirms that not only was a great deal of inaccurate information reported, but also the Department of Labor’s own documents show certain unions in Oklahoma City as the parties who submitted the information.

One witness who works for an Oklahoma contracting company testified that the company did not submit any WD-10 forms to De-

partment of Labor for a variety of reasons. However, this company's name appeared on 24 WD-10 forms in the 1993 Building Construction Survey. Out of the 24 forms, the company did work on only one of the listed projects. The witness testified that the company had been contacted by the Oklahoma Operating Engineers Union. The witness also testified that the union offered to "fill out" the WD-10's for the construction company, if someone from the company would just sign the forms.

THE MOST RECENT REPORTS FROM THE GENERAL ACCOUNTING OFFICE  
AND THE OKLAHOMA DEPARTMENT OF LABOR

*1. The 1996 GAO report*

On May 31, 1996, the GAO released a report that raised several questions about the Act and noted that inherent process weaknesses could contribute to a lack of confidence in the prevailing wage rates used by the Department of Labor. The report notes:

Labor's wage determination procedures contain weaknesses that could permit the use of fraudulent or inaccurate data for setting prevailing wage rates. These weaknesses include limitations in the degree to which Labor verifies the accuracy of the survey wage and fringe benefit data it receives, limited computer capabilities and safeguards to review wage data before calculating prevailing wage rates, and an appeals process that may not be well publicized. Labor's failure to prevent the use of fraudulent or inaccurate data may result in wages and fringe benefits being paid to construction workers that are lower than those prevailing. Erroneous prevailing wage rates could also lead to excessive government construction costs and undermine confidence in the system among survey respondents, reducing their future participation.

This report buttressed the conclusions of the Oklahoma Department of Labor that the Act's prevailing wage process is a candidate for fraudulent activity. The events and circumstances in Oklahoma reinforce the warnings issued by a series of GAO reports for over 30 years. The GAO reports highlight the inherent difficulties in administering a complex, government-mandated wage-setting system.

*2. The 1996 Oklahoma report*

On May 24, 1996, the Oklahoma Department of Labor released a new report regarding specific concerns about the Department of Labor's role in the allegations of fraud in the DBA. The Oklahoma Department of Labor report alleges that the Department of Labor:

- (1) Failed to be forthcoming with information related to the fraud investigation;
- (2) Knew the breadth and depth of Davis-Bacon problems, while denying these problems existed;
- (3) Stonewalled the Oklahoma investigation; and
- (4) Provided information to the Speaker of the House and to other Members of Congress that was inconsistent with other public documents.

The report, based on an extensive review of public documents, reveals "that officials within the Department of Labor may have

played an active role in wrongfully inflating federal prevailing wage rates at the expense of taxpayers and for the benefit of favored officials within organized labor.”

#### *Additional reviews*

As a result of these two new reports, the Subcommittees on Oversight and Investigations and Workforce Protections conducted a second hearing on June 20, 1996, so that Members could learn first hand of the problems with the prevailing wage process, as well as allegations of potential wrongdoing by the lead government agency in charge of setting wages and benefits for federal construction projects. Testifying at the hearing were Ms. Carlotta C. Joyner, Director of Education and Employment Issues for the GAO, Oklahoma Commissioner of Labor Brenda Reneau and Deputy Commissioner of Labor Jeff Lester.

The Department of Labor agreed that there were “data weaknesses” in the prevailing wage surveys used in Oklahoma and issued a redetermination of the prevailing wage rates in April 1996.

Currently, the Department of Labor’s Office of the Inspector General is conducting a review of several states to determine if prevailing wage programs have been subject to potentially fraudulent and possibly criminal activity.

#### *Conclusion*

Based on the two separate investigative reports submitted to the Committee by the Oklahoma Department of Labor and the May 1996 GAO report, it is obvious that the Davis-Bacon prevailing wage process in Oklahoma is fatally flawed. Years of research have demonstrated that there is substantial cost associated with the Davis-Bacon Act. It essentially requires contractors to pay higher than market wages and benefits on federal construction projects at the expense of the American taxpayers. Editorial writers throughout the country have repeatedly characterized the law as special interest legislation designed to protect one group of beneficiaries at the expense of other construction workers, contractors, and taxpayers.

Coupled with these findings are the two reviews conducted by the Oklahoma Department of Labor. The first review focused on the specific cases of fraud and exposed the fact that in one instance a wage survey was based on an underground storage tank that was never constructed. The second review conducted by the Oklahoma Department of Labor was even more revealing than the first—charging the Department of Labor with failure to be forthcoming with information, deceit, stonewalling, and providing information to the Congress that was inconsistent with other public documents.

#### *Politicization of the Government shutdown*

After receiving some very serious complaints concerning the shutdown of programs under the Committee’s jurisdiction during the lapse in appropriations that occurred in late 1995 and early 1996, the Subcommittee began a thorough examination of the shutdown at the Departments of Education and Labor. The findings raised serious concerns that the recent government shutdown vio-

lated applicable law and, in many ways, had the appearance of political calculation by the Clinton Administration.

This shutdown, coupled with the public statements of the Secretary of Labor, Robert Reich, had the effect of raising fear in American workers concerning their safety in the workplace. Additionally, financial strains were placed on State and local educational agencies unnecessarily and possibly illegally through the actions of the Secretary of Education, Richard Riley.

A brief summary of the applicable law concerning government shutdowns due to the lack of an appropriation will serve as a backdrop to the inappropriate actions of these two Secretaries.

*Brief background on the applicable law*

The Antideficiency Act prohibits government officials from incurring obligations or authorizing expenditures and contracts in excess or advance of appropriations unless authorized by law. Certain activities are “excepted” from suspension and are therefore authorized to continue during gaps in appropriated funding. These include:

1. Providing for national security;
2. Providing benefit payments and performing obligations under appropriations or funding not subject to the delayed appropriation; and
3. Conducting activities that protect human life and property.

The scope and applicability of this law is well briefed in memoranda and past opinions of the Attorney General’s office—commonly known as the Civiletti and Dellinger Memoranda.

*Shutdown of the Department of Labor*

Secretary of Labor Reich furloughed nearly all of the Occupational Safety and Health Administration’s (OSHA) job safety inspectors during the recent government shutdown. By this decision, Secretary Reich in essence determined that there was “no reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree. . . .” 31 U.S.C. § 1342 as amended, interpreted in Memorandum for Alice Rivlin from Walter Dellinger, August 16, 1995. However, rather than reassure the public that these employees are not necessary “in some significant degree” to the “safety of human life,” Secretary Reich was quoted as saying,

[in] a peculiar twist befitting the interests of this Congress, we will be prohibited from carrying on our normal duties to prevent tragedies in the workplace . . . [w]e will only be able to respond after these tragedies have occurred.

This quote directly contradicts Secretary Reich’s decision not to have these employees excepted under the Antideficiency Act and only served to create fear and confusion among American workers. At the same time, it wrongly implied that furlough decisions are in the hands of Congress.

Simply put, Secretary Reich furloughed these employees knowing that there was an imminent risk to human life, in which case he



was jeopardizing the safety of American workers, or he determined that these furloughed OSHA inspectors were not essential to the protection of human life, in which case he was being less than candid with the media by raising concerns about impending "tragedies in the workplace."

On November 29, 1996, a letter was sent to Secretary of Labor Reich, by Chairmen Goodling, Hoekstra and Ballenger, asking the Secretary to explain and provide documentation on the contradiction between Secretary Reich's furlough decisions and his public statements. Subsequently, the Committee received a response from the Department of Labor that failed to provide any of the requested documentation and which made no attempt to reconcile Secretary Reich's public statements with his furlough decisions. Instead, the Department of Labor "reinterpreted" the word "imminent" by relying on the imminent danger clause of the Occupational Safety and Health Act.

In short, Secretary Reich's response did little to alleviate the Committee's concern that the furlough decisions at the Department of Labor were political and were targeted at groups that had vocal and active constituencies. Secretary Reich's public statements and furlough decisions can only be explained in political terms. In the future, Secretary Reich or whomever is serving as Secretary must either deem OSHA employees as excepted or he/she should publicly reassure workers that there is no imminent risk to human life by having these employees furloughed.

#### *Shutdown of the Department of Education*

Nearly every program at the Department of Education was suspended during the government shutdown and most employees were furloughed. However, because most of the Department of Education's programs are forward or alternatively funded (meaning that current payments to grantees (schools, students, etc.) are made from funds appropriated in the prior fiscal year and that personnel related to those programs could not be employed pursuant to the Civiletti and Dellinger Memoranda), it appears that the Department of Education irresponsibly and possibly illegally chose to withhold funds that had already been appropriated by Congress signed into law by the President, and obligated to the States and localities (mostly in fiscal year 1995). These funding delays were unnecessary, since the government shutdown should only have applied to operations lacking current funding, which, in this case, are those programs awaiting a fiscal year 1996 appropriation. In more technical terms, these delays had the appearance of the impoundment of government funds by the Executive Branch.

In essence, the Department of Education held hostage 1995 education money to force compromise on the 1996 appropriation, to increase the impact of the shutdown on as many individuals and institutions as possible, and to further the Clinton Administration's overall agenda. Furthermore, because of the Cash Management Improvement Act, which requires penalties for late payments on prior obligations, the Department of Education may have recklessly wasted education money on fines and penalties instead of the education of children.

The Committee raised these concerns with Secretary of Education Riley in a letter signed by Chairman Bill Goodling and Subcommittee Chairman Pete Hoekstra dated November 28, 1995. This letter also requested background documentation concerning the Secretary's furlough decisions. The Secretary of Education responded promptly and included several documents that had been requested. Unfortunately, the Secretary's response completely misstated the interpretation of the Antideficiency Act's handling of alternately funded programs, specifically, the provision that such programs can continue operating despite the lack of a current appropriation to fund the administration of such programs.

Of even greater concern is that the Department of Education included in its initial response a letter from its own General Counsel, Judith Winston, to the Attorney General asking him to confirm the General Counsel's opinion that forward funded programs at the Department of Education should not be suspended by the lack of a current appropriation. Since no response from the Attorney General was included and since no other documentation concerning this opinion was provided, the Committee must conclude that the Department of Education not only went against every recent interpretation of the Antideficiency Act, but also went against or ignored the opinion of its own legal counsel—an unprecedented action, one which raised further concerns about the Clinton Administration's handling of the government shutdown.

The Committee sent a follow-up letter to the Department of Education on December 18, 1995, which again restated the law, and pointed out the opinion of the Department of Education's own General Counsel, which was in total agreement with the position of the Committee. The letter concluded by demanding that the Department of Education begin obligating funds as required by law.

Three days later, on December 21, 1995, the Department of Education sent a letter to the Committee stating in relevant part that:

The Department is taking steps to authorize the necessary staff to return to work to perform this activity [operate alternatively funded programs] . . . this authorization applies to payments for programs with budget authority currently available from prior year appropriations.

While this letter confirmed the validity of the Committee's position, and allowed many Department of Education employees who were wrongfully furloughed to return to work, it only heightened the Committee's concern that the Administration was not handling the government shutdown in accordance with applicable law.

In conclusion, the Committee remains concerned that the intent of the Antideficiency Act was not followed by either the Department of Labor or the Department of Education. Furthermore, these actions put the education of American students and the safety of American workers in jeopardy. In short, politics was apparently placed above sound public policy by the Clinton Administration.

#### *Abuse of power at the Department of Labor*

Over the course of the last two years, allegations have been made that political appointees within the Clinton Administration have used their positions to influence matters involving interested third

parties. While some of these allegations simply involve parties unhappy with the Administration's legitimate disposition of a relevant matter, the case leading up to the dismissal of Mr. Richard F. Sawyer is a remarkable study in the damage that can be done when inappropriate selections are made for high-level positions at an executive agency.

Mr. Sawyer, a Secretary's Representative at the United States Department of Labor, abused the power of his office by attempting to exert undue influence in an ongoing labor dispute between Somers Building Maintenance, Inc. (Somers), a janitorial services company located in northern California, and the Service Employees International Union (SEIU). These facts are demonstrated in a detailed investigative report prepared by the Department of Labor's Office of the Inspector General.

#### BACKGROUND

##### *1. Somers Building Maintenance, Inc. and the SEIU*

Somers is a janitorial services contractor headquartered in Sacramento, California, with offices throughout northern California and Oregon. Somers is the largest non-union janitorial contractor in Sacramento and currently employs over 600 people.

The SEIU is the fourth largest and fastest growing union in America with more than one million members working in health care, government, and private industry. The SEIU was engaged in efforts to organize janitorial workers at Somers. This campaign, which was initiated against Somers by SEIU Local 1877 in mid-1994, is still a part of the SEIU's national organizing campaign known as "Justice for Janitors."

##### *2. Department of Labor's wage and hour investigation of Somers*

Coincident with the SEIU campaign to organize the janitorial workers of Somers in late 1994, as part of a national initiative designed to target past violators of the Fair Labor Standards Act (FLSA), the Department of Labor's Wage and Hour Division began a proactive investigation of possible FLSA violations at Somers. In the midst of this investigation, Mr. Richard Sawyer became involved.

##### *3. Mr. Richard F. Sawyer*

On January 9, 1994, Mr. Richard F. Sawyer was appointed to the position of Secretary's Representative with the Department of Labor's Office of Congressional and Intergovernmental Affairs. Prior to his appointment, Mr. Sawyer was employed as a Business Manager, Central Labor Council of Santa Clara and San Benito Counties, AFL-CIO, from March 1986 until January 1994. From March 1973 to March 1986, Mr. Sawyer was an SEIU representative in Everett, Washington.

The position of Secretary's Representative is located in the Office of Congressional and Intergovernmental Affairs, Office of Intergovernmental Affairs, Regional Intergovernmental Affairs Office, with the duty station in one of the 10 Department of Labor regions. As defined by the Department of Labor, the duties and responsibilities of the Secretary's Representative include:

undertakes a variety of special non-recurring confidential and politically sensitive assignments based upon an understanding of the Administration goals and the Secretary's policies, as well as utilization of own personal and extended experience in labor-related affairs.

#### ALLEGATIONS OF MISCONDUCT

Allegations concerning Mr. Sawyer were made on June 27, 1995, by Mr. Randall Schaber, a member of the Board of Directors for Somers. At that time, Mr. Schaber provided evidence of a formal complaint that he, on behalf of Somers, had filed with the Department of Labor's Office of the Inspector General alleging misconduct and ethical violations of Executive Order No. 12674, on the part of Mr. Sawyer.

In his complaint, Mr. Schaber alleged that Mr. Sawyer had "conducted himself in a manner that was intended to induce and coerce Somers to enter into a recognition agreement and/or a collective bargaining agreement with SEIU Local 1877 under the penalty of having the Department of Labor continue its investigation of alleged wage and hour violations and impose a fine of an extraordinary amount for said violations and seize goods produced by clients of Somers under the hot goods provisions of the Fair Labor Standards Act." In support of his formal complaint, Mr. Schaber provided a detailed chronology of events including information regarding a telephone conversation between Mr. Sawyer, and Somers' largest client, Hewlett-Packard.

On June 27, 1995, Mr. Schaber filed another formal complaint, which he directed to the Department of Labor's Office of the Inspector General through Mr. Michael A. Hackard, an attorney representing Somers. In his complaint, Mr. Hackard requested that the Office of the Inspector General conduct an investigation of the Sawyer matter, citing "serious breaches of governmental ethics and probable violations of federal criminal law including, but not limited to, violations of the Racketeering Influenced and Corrupt Organizations (RICO) Act [and] violations of the Hobbs Act, Mail Fraud, Conspiracy and Bribery."

Subsequently, on July 10, 1995, 18 Members of Congress signed a letter requesting an investigation into allegations of "an apparent conspiracy to coerce non-union building maintenance contractors into signing union contracts against the will of their employees."

#### ACTIONS BY THE OVERSIGHT SUBCOMMITTEE

In December 1995, the Subcommittee initiated a preliminary investigation into the allegations concerning Mr. Sawyer and Somers. After conducting several interviews and concluding that such allegations merited further examination, the Subcommittee sent a formal letter of inquiry to Secretary of Labor Robert B. Reich on December 14, 1995. In this letter, the Subcommittee reiterated the allegations contained in Mr. Schaber's complaint and conveyed the gravity with which the Subcommittee held the allegations:

This Subcommittee and others are extraordinarily troubled by the seriousness of these allegations. They suggest strongly that a high-level Department of Labor official was

attempting to use his political influence to coerce Somers into signing a union contract by putting pressure upon Hewlett-Packard. These allegations also raise concerns regarding serious breaches of ethics, abuse of power, collusion, and the misuse of federal funds by a Department of Labor employee.

The letter requested that the Department of Labor conduct a “prompt and thorough review of the allegations” and provide Members with the findings of such review and any planned actions by January 12, 1996.

On December 21, 1995, Solicitor of Labor Thomas S. Williamson responded to the letter on behalf of Secretary of Labor Reich. In that letter, Solicitor Williamson indicated that his office had consulted with the Office of the Inspector General and confirmed that there was, in fact, an active and ongoing investigation. In addition, Mr. Williamson indicated that while his office believed it had identified the Department of Labor official involved, it did not “wish to risk any possibility of inadvertent interference with the [Office of the Inspector General’s] investigation—” and, therefore, would . . . withhold any final action pending the conclusion of the Office of the Inspector General’s investigation. In the interim, however, Mr. Williamson indicated that the Department of Labor had decided to place the official involved under administrative leave (with pay), pending completion of the Office of the Inspector General’s investigation. During this time, the official would be relieved of all official duties and have no authority to act on behalf of the Department of Labor.

FINAL REPORT OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF  
LABOR

On February 28, 1996, the Department of Labor’s Office of the Inspector General completed its 500-hour investigation into the matter involving Somers and Mr. Sawyer. After reviewing the Office of the Inspector General’s final report, the Subcommittee sent a letter on March 1, 1996, to Secretary of Labor Reich. In this letter, the Subcommittee conveyed its concerns over the findings of the Office of the Inspector General stating:

We are greatly concerned by the [Office of the Inspector General’s] Report. Based upon that Report it appears that Mr. Sawyer:

- (1) Misused his position and aided the Service Employees International Union (SEIU) in its attempt to organize janitorial services of Somers;
- (2) Contacted Hewlett-Packard, which is one of Somers largest clients, and disclosed investigative information which was damaging to Somers; and
- (3) Influenced the Department of Labor’s Wage and Hour Division in an attempt to intimidate Somers into recognizing the SEIU.

The Subcommittee also conveyed its concerns over information included in the Office of the Inspector General’s report suggesting that several other Department of Labor officials, including high-ranking officials within the Department of Labor’s Wage and Hour

Division, had not only been aware of Mr. Sawyer's actions, but also may have supported or encouraged these actions.

In March 1996, the Subcommittee was advised that Mr. Sawyer was no longer employed by the Department of Labor. On that same day, the Subcommittee responded by sending a letter to Secretary Reich requesting information relating to the Department of Labor's response to the Office of the Inspector General's investigation and documentation pertaining to Mr. Sawyer's termination. The Department of Labor's response was provided to the Subcommittee in a letter dated April 1, 1996, from the Acting Solicitor of Labor, J. Davitt McAteer.

On April 25, 1996, the Subcommittee held a hearing on Somers and the alleged misconduct by Mr. Sawyer. Testifying at the hearing were Mr. Schaber and Mr. Charles C. Masten, Inspector General at the Department of Labor.

#### CONCLUSION

Based on the Office of the Inspector General's investigation and the testimony of other witnesses at the hearing, it is obvious that Mr. Richard F. Sawyer abused his position as the Secretary's Representative by intervening on behalf of the SEIU in its campaign to organize the janitorial workers of Somers. This information establishes several irrefutable facts:

(1) Mr. Sawyer contacted officials of Hewlett-Packard, Somers' largest client, and specifically discussed the Department of Labor's active and on-going investigation of Somers.

(2) Mr. Sawyer contacted the Department of Labor's Wage and Hour investigators to request information on the status of the Somers' investigation and to complain about the progress of said investigation.

(3) Mr. Sawyer improperly provided the SEIU with specific information regarding the Department of Labor's active and on-going investigation of Somers—information that was used by the SEIU both privately and publicly to pressure Somers to capitulate to the union's organizational demands.

(4) Mr. Sawyer contacted high-ranking officials within the Wage and Hour Division's national office to complain about the progress of the Somers' investigation.

(5) In response to Mr. Sawyer's repeated contacts, high-ranking officials within the Wage and Hour Division's national office assigned five additional investigators to the Somers' investigation and directed investigators to give Somers special attention.

(6) The Somers' investigation was kept open well beyond the point the lead Wage and Hour investigator deemed warranted by the facts.

(7) Despite the involvement of no less than six investigators and 500 hours of investigative work, the Wage and Hour Division discovered only \$317.44 in FLSA violations.

These facts clearly illustrate that Mr. Sawyer was engaged in a conscious effort to use his position as the regional representative of Labor Secretary Robert Reich to assist his former employer, the SEIU, in its efforts to organize the janitorial workers of Somers. As such, the Subcommittee believes it wholly appropriate that Mr.

Sawyer's employment with the Department of Labor was terminated.

The Subcommittee also remains concerned about the extent to which other Department of Labor employees had knowledge of, supported or assisted Mr. Sawyer in his efforts to coerce Somers into signing a union contract with the SEIU. As noted previously, Mr. Sawyer's position as a Secretary's Representative falls under the purview of the Office of Congressional and Intergovernmental Affairs and his official Department of Labor job description clearly states that the "Incumbent reports directly to the Director of the Office of Intergovernmental Affairs \* \* \* [and] consults with the Director on decisions or matters which appropriately require personal attention." Based on this description of Mr. Sawyer's supervisory controls, it is reasonable to expect that high-level Departmental officers, like the Director of the Office of Intergovernmental Affairs would have been aware of Mr. Sawyer's actions concerning Somers. It is also reasonable to assume that Ms. Geri Palast, Assistant Secretary of Congressional and Intergovernmental Affairs, would also have knowledge of Mr. Sawyer's actions. If not, the Subcommittee cannot help but question the efficacy of the Department of Labor's supervisory controls with respect to the Secretary's Representatives.

The Subcommittee has similar concerns regarding the extent to which officials within the Department of Labor's Wage and Hour Division had knowledge of, supported or assisted Mr. Sawyer in his efforts to coerce Somers into signing a collective bargaining agreement with SEIU. In particular are concerns regarding the extent to which Ms. Maria Echaveste, Administrator of the Wage and Hour Division, was aware of, encouraged, or facilitated Mr. Sawyer's actions.

As previously noted, senior Wage and Hour Division officials responded to Mr. Sawyer's meddling by assigning an additional five investigators to the Somers case. In total, Wage and Hour personnel devoted no less than 500 hours to the investigation. In doing so, the Department of Labor far exceeded the number of investigative hours devoted to any of the other top ten Wage and Hour investigations that were closed during fiscal year 1995—the largest involved only 386 investigative hours. Certainly, any case that would merit this level of Wage and Hour activity must have had the attention and scrutiny of the Division's most senior official, Ms. Echaveste.

At best, these facts call into question whether or not Ms. Echaveste is administering the Department of Labor's Wage and Hour Division in the most effective and efficient manner possible under the watchful eye of the Secretary of Labor. At worst, these facts belie Ms. Echaveste's contentions that she neither encouraged nor supported Mr. Sawyer's coercion of Somers. The fact that Ms. Echaveste approved, directly or otherwise, both the expansion and extension of the Somers case beyond the point at which the lead investigator deemed the facts warranted suggests that she did, in fact, collude with Mr. Sawyer and representatives of the SEIU.

*Partisan political activities and the Central Oversight Group*

The Subcommittee became aware that the Department of Labor created a Central Oversight Group (COG) to coordinate responses to anticipated congressional oversight and to review programs under the Department of Labor's jurisdiction. The COG was created, according to the Department of Labor, only to "gather routine information in a short time frame to prepare the Secretary for congressional hearings and to respond to congressional inquiries." However, the activities of the COG, went well beyond what was reported repeatedly by the Department of Labor to Congress. Instead, the COG was the genesis for the preparation and distribution of highly political documents in apparent violation of applicable law.

*Who participated in the COG*

The COG was comprised of more than 60 career and political appointees representing each of the major programs and offices at the Department of Labor. Many of the Assistant Secretaries were assigned to the COG and Agency Defensive Coordinators would meet weekly to monitor the COG's progress, identify and solve problems, provide direction where necessary and discuss cross-cutting issues.

*Political charts and documents*

On March 28, 1995, the Subcommittee requested copies of all the materials that were prepared under the umbrella of the COG. A careful analysis of the documents provided demonstrated that a number of the documents prepared by the COG did not fall under the guise of "normal and proper governmental activity." Indeed, the Subcommittee became concerned that certain documents prepared by the COG were in violation of numerous laws.

In an effort to ensure that a thorough and objective legal review was conducted of some of the materials in question that were prepared by the COG, the Subcommittee requested the CRS to conduct a legal review of the following four COG documents:

- (1) Battleground 94-Democratic Strategic Analysis;
- (2) Females Voting for Democrats, by Education;
- (3) Males Voting for Democrats, by Education; and
- (4) Who Gains from the Republican Contract?

In response to this request, CRS, in its October 27, 1995 memorandum entitled "Use of Federal Agency Appropriations for Preparation of 'Political' Documents", noted:

The preparation of material by federal officers or employees on official time, or otherwise paid for, procured or printed with federal funds, when such material is partisan political in nature and intended to assist a particular political party or candidate, may implicate a potential violation of several federal statutes, regulations and ethical guidelines.

CRS went on to say with regard to the particular documents prepared by the COG:

If the material in question were prepared by department officials or employees on official duty time, on government premises, with government resources and equipment, or



otherwise paid for, printed or reproduced with government funds, . . . The material in question, on its face, appears to be classical partisan political, campaign research and analysis. The material analyzes voting patterns for Democratic candidates and discusses issues which the “Democrats will have to address . . . [to] reassure voters.”

Based on the CRS opinion, the Department of Labor, by preparing, reproducing, and distributing the COG documents in question, engaged in partisan political activities—a direct violation of federal law.

*The clandestine role of the Secretary of Labor*

It is important to note that the violations of law attributed to the production, reproduction, and distribution of the COG documents in question extends not only to those involved with the COG regularly, but to the Secretary of Labor himself.

In evaluating the activities of the COG, Congress requested all relevant documents, including an explanation of how the four documents in question were used. Never did the Department of Labor reveal that the Secretary himself used some of the documents that CRS found to be in violation of applicable law. Through independent sources, the Subcommittee obtained a copy of a hand-written note by Secretary Reich to Mr. Jack Donahue, the former Assistant Secretary for Policy and Counselor to the Secretary at the Department, which demonstrates that the Secretary was, at a minimum, well aware of the documents being prepared by the COG and, in fact, instructed Mr. Donahue to make copies of these illegally prepared documents for his public use.

*Teenage drug use on the rise: Four years of failure*

On September 26, 1996, the Subcommittee on early Childhood, Youth and Families and the Subcommittee on National Security, International Affairs and Criminal Justice of the Committee on Government Reform and Oversight (Subcommittees) held a joint hearing on the Epidemic of Teenage Drug Use. The Subcommittees learned that during the last four years there has been a horrifying increase in teen-drug use.

During this hearing, the Subcommittees learned about private initiatives utilized by various Members of Congress who either established or supported existing community anti-drug coalitions. The first witness of the hearing, Representative Portman, cited the success of Miami’s comprehensive community anti-drug coalition that cut usage in Miami to half that of the national average. What the successful programs do, he continued, is mobilize “parents, businesses, religious leaders, students, law enforcement, the media and others to fashion a comprehensive long-term strategy to prevent and treat substance abuse one person at a time.”

Furthermore, the Subcommittees learned that, despite tremendous improvements in slowing the rate of teen-drug use during the 1980’s, new reports by the Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration have shed new light on the dramatic failures of the last four years in continuing the progress made during the Reagan and Bush Administrations in ridding our schools of illegal drugs. The Sub-

committees began investigating the impact of the mixed-messages sent to teens about drug use over the last four years, and whether this lax attitude has been communicated to students through federal drug education programs. The Subcommittees are concerned that more money spent on the wrong message has led to higher drug use.

#### D. ESTABLISH A FRAMEWORK FOR POLICY INITIATIVES

Although the Subcommittee lacks legislative authority, it does play a role in identifying areas ripe for legislation. One major project initiated by the Subcommittee involves the present and future state of education throughout the United States. This effort was intended, among other things, to determine the number of education programs available throughout the federal government and the value added to education programs by the operation of the Department of Education. The Subcommittee also gave consideration to merging several departments in an effort to reduce duplication, enhance their usefulness and to the concepts of school choice.

#### *760 Project—Excellence in Education: What Works? and What's Wasted?*

In 1996, the Subcommittee devised the most comprehensive list of federal education programs that has ever been compiled. The Subcommittee found that there are over 760 federal education programs which span 39 agencies, commissions, and boards that cost the taxpayer \$120 billion (based upon fiscal year 1995 figures). Each of these programs have been designated as educational by either the President's Office of Management and Budget (OMB) or Congressional Research Service (CRS).

#### *The General Accounting Office report on schools and workplaces*

In early 1995, the Subcommittee requested that the General Accounting Office (GAO) conduct a review of what works in schools and workplaces throughout the country. GAO began its research by reviewing existing research on best practices in schools and the workplace. After extensive review, the GAO compiled a detailed bibliography of this research. Each bibliography entry features the author, practice, setting, source of information, findings and conclusions, and final comments. The scope of this study was based upon specific criteria. For schools, the criteria was 1) student achievement at or above the expected level, 2) high teacher and student engagement in learning activities, and 3) effectiveness in overcoming academic disadvantages among students. For the workplace, the criteria was 1) increased profitability, 2) improved productivity, and 3) high performance in the workplace.

The GAO found that successful schools encourage parental involvement and collaboration with and among staff, foster leadership for instructional improvement, and authorize school-level problem solving. They also noted that these schools provide safe and orderly sites which in turn promotes fewer distractions. In terms of curriculum and instruction, successful schools establish academically rigorous and well-focused curricula, provide effective

and engaging instruction, and ensure that students who need extra assistance are given opportunities for success.

Successful workplaces typically develop a set of core organizational values which are then transmitted to all employees, foster a sense of community throughout the organization, and encourage meaningful employee participation in the workplace. In addition, successful companies tend to adopt human resource policies that feature minimal job disruption and provide education and training programs for their employees. They also tend to engage in profit-sharing and gain-sharing plans.

The Subcommittee found the GAO report to be an excellent vehicle to forward the message that good things are happening all over the United States in both schools and workplaces. In schools all over the country, students are beating the odds and graduating with profitable skills and companies are improving the workplace in hopes of building worker confidence, self-esteem, and loyalty which will result in higher productivity.

*Leading edge practices in education: What works in Chicago*

On May 19, 1995 in Chicago Illinois, the Subcommittee held a hearing on "Leading Edge Practices in Learning" and visited local schools, including Our Lady of the Gardens Elementary School. The Subcommittee observed very successful educational programs and practices which required little in financial resources.

In 1988, the city passed sweeping educational reform legislation in order to improve Chicago's school system. The 1988 Chicago School Reform Act was designed to decentralize the Chicago Public Schools and place control with the individual communities. Since implementation of these reforms, principals are more accountable to the Local School Councils and they receive greater control over school budgets, the physical plant, and recruitment and hiring of personnel.

*Departmental reorganization*

In the age of an intrusive and bureaucratic federal government, many have questioned the role of the Department of Education and the Department of Labor. Consequently, the Committee held two hearings regarding the federal role in education, the possible merger of federal departments, and use of block grants.

On June 5, 1995, the Committee held a hearing to provide a historical overview of the Department of Education, the Department of Labor, and the Equal Employment Opportunity Commission. This hearing also gave the Committee Members the opportunity to review the *Back to Basics Education Reform Act*. The second hearing, on July 21, 1995, focused primarily on the Department of Labor and the Equal Employment Opportunity Commission merger.

As a result of these hearings, it became apparent that little was known about the operations, activities, and costs of the off-site offices maintained by the Department of Education and the Department of Labor. Additionally, it was determined that the Department of Labor itself was unaware of the number of off-site offices it maintained. Consequently, the GAO independently prepared a report illustrating, among other things, the sheer magnitude of fed-

eral funds expended on off-site offices by the Department of Education and the Department of Labor. For example, the GAO reported:

In fiscal year 1995, the Departments of Education and Labor had a field structure composed of 1,146 field offices and 22,000 authorized staff positions assigned to the offices.

These hearings served as potent reminders that the Department of Education and the Department of Labor have a fiduciary responsibility to every taxpayer. The Committee is committed to fulfilling its responsibility to ensure that the taxpayers hard earned dollars are spent more responsibly.

#### *Oversight of the DC public schools*

Speaker of the House Newt Gingrich, as a part of his government-wide reform efforts, promised to make oversight of the District of Columbia one of his first priorities in the 104th Congress. This led to the establishment of a Speaker's Task Force on the District of Columbia, which included several Members from several committees, each charged with oversight of particular aspects of the City's operations (housing, welfare, taxes, education, etc.) The Subcommittee held hearings regarding the needs of D.C. schools.

The D.C. Public Schools have an annual budget of over \$700 million—\$70 million of which is provided in federal grants (e.g., Title I, Spec. Ed., etc.). While the District is unable to ascertain the number of students enrolled, enrollment is estimated to be anywhere between 70,000 and 85,000 students. Spending could be as high as \$11,000 per pupil, which makes the District near the top of the country in spending per pupil. Despite this fact, student achievement and facilities maintenance continue to deteriorate.

It is estimated that only 56 percent of students that start the 10th grade in the D.C. Public School system receive their diplomas. There is an 8.2 percent annual dropout rate. In 1994, the average score on the verbal portion of the SAT was 333 for D.C. students compared to a national average of 423. Likewise, the average score on the math portion was only 373, over one-hundred points lower than the national average of 479. On the National Assessment of Educational Progress (NAEP tests) the District lagged all other states in 4th grade reading and 8th grade math proficiencies.

At the same time, the District has experienced repeated delays in opening its schools due to fire code violations and various problems with its facilities. The General Accounting Office (GAO) has estimated the cost of repairing D.C.'s existing facilities at over \$460 million—approximately \$90 million of which constitutes fire code violations. The District currently spends approximately \$100 million annually on maintenance of its facilities. The average age of a D.C. Public School is 50 years.

In short, there is a real educational crisis in urban education generally, and in D.C. in particular.

#### *Hearings*

The Subcommittee convened three hearings on the D.C. Public Schools in May and June 1995. These hearings included members

of the D.C. City Council, a spokesperson for the Mayor, the Superintendent, the President of the Board of Education, business groups, parents, and community leaders. In addition, the Subcommittee sought information from outside sources including principals from successful schools and school districts in other urban areas and from private businesses and scholars for reform ideas.

The goal of the hearings was to get detailed, first hand information on the problems in the D.C. Public Schools and their effect on the education of children. Secondly, the hearings sought to begin a dialogue on possible reform efforts that could alleviate the current state of crisis. Finally, the Subcommittee hoped that the continual involvement of each of the key parties involved in the system would lead to a consensus for prudent reform.

#### *School choice*

Milwaukee, Wisconsin and Cleveland, Ohio are the only cities in America currently operating school choice programs that allow low-income families to send their children to private schools under a State-sponsored voucher program. Additionally, the entire state of Vermont for several decades has maintained a tuition reimbursement program for high school students residing in rural areas to attend the school of their choice.

On October 23, 1995, the Subcommittee held a hearing in Milwaukee, Wisconsin on its private school choice program. This hearing included witnesses from the State and local government, parents, community activists, scholars, and school leaders. The hearing highlighted the importance of urban education and the need to force change in urban schools. There was a broad consensus that giving parents the power to choose their children's school would not only benefit their children in the short term, but would also lead to improved public schools in the long term.

The Subcommittee remains committed to tracking Milwaukee's experience with educational choice, as with other reform efforts around the country.

#### E. PROVIDES FOR A FEDERAL ROLE ONLY WHERE ABSOLUTELY NECESSARY

Over the years, the federal government continued to grow and to play a more prominent role in the lives of Americans and their businesses. During the last several Congresses, Americans saw an explosion of new laws being implemented by agencies and departments of the federal government which affected the way in which they conducted their businesses. With this explosion came the related costs of implementing and monitoring compliance by the business community with these new laws. As a result, the Subcommittee began a review of the costs of regulations.

#### *Review of government regulation*

On February 2, 1995, the Subcommittee held a hearing to examine the costs and benefits of federal regulations. The Subcommittee received oral testimony from Dr. Gallaway, Professor of Economics, Ohio University, Dr. Hahn, Scholar, the American Enterprise Institute, Dr. Hopkins, Professor of Economics, Rochester Institute of Technology, and Brenda Efinger, Hamlet Response Coalition.

This hearing uncovered that government regulation, however effectively designed or well intentioned, imposes significant costs on those regulated and indirectly on the rest of society. Many of the costs related to regulations are obvious and measurable, while others are hidden and difficult to quantify. At this hearing, several economists presented their accounting of federal regulations.

*Economics of regulation*

A February 2, 1995 hearing held by the Subcommittee noted that regulation increases the price of labor, which causes employers to hire fewer employees or to decrease wages to account for the added cost of their compliance with these regulations. While some of these costs are offset by improved working conditions for employees, it is unclear whether the employees would, if given the option, choose the improved conditions over their lost wages or their own (or their co-workers) loss of employment. Because the effects of regulations are hidden, many workers are unaware that they bear much of the cost of compliance without being allowed any choice over the matter.

The Center for the Study of American Business summarized the economic costs of regulation as follows:

Regulation costs the taxpayer in increased taxes to support regulatory bureaucracy; the consumer in higher prices to cover the expense of regulation; the worker in lost jobs and lower wages; the economy in the loss of small businesses due to compliance costs; and society in the loss of new and better products, and lower standards of living.

While this may be an oversimplification, the bottom line is that regulation costs money.

*The trend toward increased regulation*

Two of the economists testified that the beneficial returns to regulation have been steadily decreasing since the early part of this century. While not universally accepted, it is thought that with the onset of the industrial revolution, there may have been many business excesses that lent themselves easily to the corrective nature of regulation. As the economy became more advanced, however, many of these once corrective laws became burdensome and unnecessary.

While the return to regulation has been steadily decreasing, these economists noted that the desire to regulate has not. Probably the most disturbing testimony from our economists concerned the recent trend toward increased regulation. As measured in the following three ways, budgets of regulatory agencies, staff size of regulatory agencies, and numbers of pages in the Federal Register (where new regulations are written), regulation is once again on the rise. While these three measures are anecdotal, they are a fairly consistent indication of income and employment. Specifically, increases in regulation have been correlated with decreases in incomes and employment. Recent passage of new regulations (Americans with Disabilities Act (ADA), Civil Rights Act of 1990, Family Medical Leave Act (FMLA)) and the continued implementation of new rules for existing regulations, will drive down both income and employment.

*Economy wide costs of regulation*

Regulations impose significant costs on society. Several economists have attempted to estimate this cost, but caution that such a task is nearly impossible. The following are some “best estimates” of the cost of regulation made by economists that testified before the Committee.

\$600 billion is spent annually on direct regulatory compliance by regulated firms. Government expenditures on enforcement and administration are not included in this figure.

This is equal to an annual tax of \$6,000 per family—an amount equal to half of all taxes collected by the federal government.

The above regulatory costs do not include the hidden cost associated with lost productivity due to forced changes in efficient firm practices required to meet regulatory compliance.

Listed below are specific costs associated with some of the regulations under the jurisdiction of the Committee on Economic and Educational Opportunities.

\$500 million to \$1.2 billion in additional costs to the federal government from inflated wages in federal contracts required under the Davis-Bacon Act.

Annual costs of \$8.5 billion to comply with the Occupational Health and Safety Act as of 1988—well before the increased burdens promulgated in the late 1980’s.

Equal Employment Opportunities Commission direct costs of compliance of \$900 million.

For the EEOC, total costs, including litigation and lost productivity, have been estimated at several hundred billion dollars.

*Regulatory harmonization*

In light of the regulatory costs uncovered at the Subcommittee’s February 1995 hearing, and coupled with the repeated complaints received by the Subcommittee concerning overlapping and duplicative regulations, the Subcommittee held a follow-up hearing on “Conflicts and Inconsistencies in Workplace Regulations” on April 4, 1996.

Because Executive Branch agencies often have different priorities, many of the regulations that are written and implemented overlap and are inconsistent and sometimes conflict. When conflicts and overlaps occur, non-compliance, confusion, and costs increase. Additionally, the Subcommittee learned that employers often face dual enforcement and dual penalties due to regulatory overlaps.

The Subcommittee heard from Ms. Sally Katzen, the Administrator of the Office of Information and Regulatory Affairs (OIRA) at the OMB. This is the lead agency in charge of the Administration’s oversight of federal regulations and is specifically charged with finding and eliminating regulatory conflict. Ms. Katzen admitted that regulatory conflicts have become a serious problem, but that agencies should not be held responsible for conflicts inherent in laws passed by Congress. Furthermore, she noted that OIRA, under the direction of Executive Order 12866 was in the process of reviewing all regulations to root out such conflicts.

During the April 1996 hearing, it became apparent that several companies viewed regulatory agencies as “the enemy” and were

hesitant to seek counsel from such agencies for fear of becoming liable for any violations that were revealed while seeking advice. Additionally, each of the witnesses testified to the complexity of these regulations, and the apparent lack of flexibility afforded to the companies in meeting the stated goals of the original statutes.

*GAO study on regulatory burden*

Based on the testimony of the above two hearings, the Subcommittee requested that the GAO investigate the cost of regulations and the difficulty companies have in complying with the numerous rules and regulations issued annually by the myriad of federal agencies and departments charged with implementing these regulations.

A draft of the GAO report, "Regulatory Burden: Selected Companies' Concerns and Agencies Responses" was released in August 1996. While the findings are not yet final, several initial conclusions are apparent. First, the GAO sought broad participation in this study, but had difficulty finding companies that would be willing to participate and many of those that ultimately chose to cooperate chose to remain anonymous. This underscores the nervousness companies feel in having any federal agency review their regulatory compliance.

Second, the companies that did participate had difficulty developing lists of applicable regulations. Reasons noted for this difficulty ranged from the fact that some of the regulations were normal business practice anyway, to the overlap with State and local regulations, to general confusion about what regulations were applicable to a given company. Third, companies lacked data concerning the costs of regulations. This was due mainly to the fact that few companies separated out the incremental costs of actions taken because of regulation from actions that would have taken place anyway, regardless of any regulations. Fourth, several companies noted that some regulations have been beneficial, not only from a safety and health aspect, but from a competitive standpoint. In particular, having uniform rules reduced the chance that competitors would opt to undercut prices by shirking their responsibilities to provide safe work environments.

Finally, the draft GAO report documents 100 separate cases where companies cite specific concerns about the regulatory process. These span problems with the cost and reasonableness of compliance, excessive paperwork, severe penalties, a "gotcha" enforcement approach by regulators, and poor coordination between agencies and departments. In short, this report highlights many of the issues uncovered by the Subcommittee.

## II. MEETINGS HELD BY THE SUBCOMMITTEE

### *104th Congress, First Session*

January 26, 1995—Oversight hearing on reexamining old assumptions.

February 2, 1995—Joint oversight hearing on the impact of workplace and employment regulation on business, held with the Subcommittee on Regulation and Paperwork of the Committee on Small Business.



February 9, 1995—Oversight hearing on block grant/consolidation review.

February 16, 1995—Oversight hearing on the Occupational Safety and Health Act (OSHA).

March 22, 1995—Oversight hearing on education standards.

March 27, 1995—Oversight hearing on obtaining federal and state assistance.

April 4, 1995—Oversight hearing on identifying conflicts and inconsistencies in workplace regulations.

May 12, 1995—Oversight hearing on District of Columbia school reform.

May 19, 1995—Oversight field hearing on leading edge practices in education, held in Chicago, Illinois.

May 23, 1995—Oversight hearing on federal student loan programs.

June 8, 1995—Oversight hearing on District of Columbia school reform.

June 14, 1995—Oversight hearing on accreditation of graduate medical education.

June 27, 1995—Oversight hearing on District of Columbia school reform.

July 12, 1995—Oversight hearing on the National Labor Relations Board.

October 17, 1995—Oversight hearing on AmeriCorps.

October 23, 1995—Oversight field hearing on school choice, held in Milwaukee, Wisconsin.

October 31, 1995—Oversight hearing on union corporate campaign tactics (salting).

December 5, 1995—Oversight hearing on parents, schools and values.

December 6, 1995—Oversight hearing on parents, schools and values.

*104th Congress, Second Session*

January 18, 1996—Joint oversight field hearing on the Davis-Bacon Act/Oklahoma Fraud Allegations, held with the Committee's Subcommittee on Workforce Protections, in Oklahoma City, Oklahoma.

March 19, 1996—Oversight hearing on the financial findings of the Corporation for National Service.

April 25, 1996—Oversight hearing on abuse of power at the Department of Labor.

June 20, 1996—Joint oversight hearing on Davis-Bacon/GAO Report, held with the Committee's Subcommittee on Workforce Protections.

July 10, 1996—Oversight hearing on Split Decision: The Inspector General's Report on the Divided Management Structure of Student Aid Programs at the Department of Education.

September 26, 1996—Oversight hearing on the financial findings of the Corporation for National Service.

III. SUBCOMMITTEE STATISTICS

Total Number of Hearings .....	25
Field .....	3
Joint with other Committees .....	1

