

BUDGET VIEWS AND ESTIMATES FOR FISCAL YEAR 2016

COMMITTEE ON EDUCATION AND THE WORKFORCE

114th CONGRESS, FIRST SESSION

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In the 114th Congress, the Committee on Education and the Workforce will act on a legislative agenda that advances responsible reforms that help make a difference in the lives of students, employers, teachers, and working families.

On February 2, 2015, the President released a budget proposal that calls for more spending, more taxes, and more borrowing to create new government programs. The Obama administration continues to call for new rules and regulations that stunt economic growth, put employee rights at risk, and make it difficult for employers to raise wages and create new jobs. Under the President's budget, elementary and secondary schools would continue to face a waiver system that creates confusion and undue burdens and college students would face flawed regulatory schemes that would deny students access to the college or university of their choice.

The Education and the Workforce Committee will move forward with legislation to provide employers certainty and flexibility so they can grow their businesses, create new jobs, and give workers the raise they've earned. We must help more students pursue the dream of a college degree without taking on exorbitant levels of student loan debt. We must advance elementary and secondary education reforms that empower parents, teachers, and local decision-makers. We must modernize our pension system and hold the administration accountable for policies that make it harder for individuals to succeed in the workplace.

The American people are desperate to move the country in a new direction. The Committee looks forward to working with the Committee on the Budget to advance an agenda will lead to a stronger education system, more good paying jobs, and higher incomes for working families.

EDUCATION PRIORITIES

Along with the U.S. Department of Education's budget, the federal government's role in education has grown significantly over the last 35 years. In Fiscal Year (FY) 2015, the department operated more than 100 programs with more than \$67 billion in total discretionary funds. Federal education spending has more than quadrupled since 1980, yet student achievement levels largely remain flat. Clearly, more money is not the answer.

Instead of working with Congress to address the problems in our education system, the Obama administration continues to bypass the legislative process in favor of creating new programs and initiatives that coerce states, school districts, and higher education institutions to adopt the President's preferred reforms. This heavy-handed approach has expanded federal control and raised serious questions about what the future could hold for our schools. The Committee is planning a very active agenda this year. All of our reauthorizations will focus on shrinking the

federal role; ending wasteful, inefficient, and unauthorized spending to help restore fiscal discipline; and limiting burdensome regulations imposed on states and schools.

The Committee respectfully offers the following recommendations for consideration by the Committee on the Budget as it prepares its FY 2016 budget resolution.

Empowering State and Local Education Reform

Across the country, state and local leaders are promoting innovative solutions to raise achievement and foster school and teacher accountability to ensure students have the skills necessary to graduate high school. The Committee believes the federal government should reduce its interference in the day-to-day operations of our elementary and secondary schools and grant education reformers the flexibility to succeed.

Despite the President's rhetoric, his actions perpetuate more of the same top-down approach to education reform that has proven unsuccessful for students and families. In his attempt to use executive fiat to rewrite the *No Child Left Behind Act* (NCLB) through conditional waivers, President Obama replaced one set of federal mandates with another, forcing states to adopt the administration's preferred education reforms in exchange for uncertain and temporary relief. The Committee wants to encourage innovation by freeing all states and school districts from the overly-prescriptive requirements under current federal K-12 law. To this end, the Committee continues to work aggressively to reauthorize the *Elementary and Secondary Education Act* (ESEA) in a way that removes the barriers to critical state- and locally-led reform efforts.

The *Student Success Act* (H.R. 5), the Committee's reauthorization of ESEA, builds on the exceptional progress being made at the state and local levels, while also including responsible measures to help ensure all students have access to a quality education. The bill focuses on reducing the federal footprint and restoring local control, while empowering parents and education leaders to hold their schools accountable for effectively teaching their students.

Most importantly, the *Student Success Act* includes responsible funding authorizations for elementary and secondary education programs and rejects the administration's insistence on creating winners and losers in the federal budget. The legislation eliminates programs and consolidates funding for dozens of programs currently authorized under ESEA into a single Local Academic Flexible Grant to provide states and school districts maximum flexibility in the use of federal aid.

The Committee believes Congress should fulfill its current commitments to federal education initiatives before creating new programs and mandates. Therefore, the *Student Success Act* does not authorize funds for Obama administration priorities like Race to the Top, Investing in Innovation, School Improvement Grants (SIG), or Promise Neighborhoods. The SIG program is a particularly egregious example of misplaced priorities. Data from the U.S. Department of Education show decidedly mixed results for the taxpayers' \$7.3 billion investment in the program, with one-third of recipient schools actually performing worse than they did prior to receiving funds. The Committee urges the Committee on the Budget to reject the administration's approach to public education and incorporate into the budget resolution our

efforts to streamline federal K-12 education programs and provide funding flexibility to states and school districts.

Making Special Education a Priority

In 1975, Congress passed the *Individuals with Disabilities Education Act* (IDEA) and committed to pay states up to 40 percent of the average per-pupil expenditure to educate students with disabilities in the nation's public schools. To date, Congress has not come close to meeting this funding commitment. Republicans made significant strides in this area between 1995 and 2005, when funding increased from 8 percent to 18 percent of the national average per-pupil expenditure. However, the percentage has only decreased since then, and the administration is not helping. The Obama administration's FY 2016 budget proposal includes only a nominal increase over FY 2015 that likely will result in a reduction in the federal government's share of special education costs. The Committee firmly believes the federal government must keep the commitment it made to states, school districts, parents, and students with disabilities.

The Committee recognizes current budgetary constraints make it difficult to fully fund IDEA. However, the administration's ongoing failure to provide meaningful increases in IDEA funding in favor of advancing new, untested programs is extremely alarming. This failure to fulfill our most basic obligation to students only exacerbates ongoing budget challenges at the state and local level. Funds that could support important upgrades to technology in classrooms, expanded early learning opportunities, or many other valuable state and local initiatives are instead used to fill the special education gap.

Some would argue the best way to fulfill this obligation is to convert IDEA funding into yet another entitlement. But with our nation's debt, driven by explosive growth in entitlement spending, now is not the time to add to our children's burden. In addition, because entitlements are so notoriously difficult to reform, converting IDEA into an entitlement would make it nearly impossible for parents, educators, and policymakers to periodically update the law to ensure it continues to meet the needs of our families and communities.

The Committee requests language encouraging appropriators to use funds allocated under function 500 to prioritize IDEA, with an increase for FY 2016 to \$13.1 billion (an increase of \$1.6 billion over FY 2015) in order to at least match the highest percentage the federal government has contributed to special education costs.

Continuing the Successful D.C. Opportunity Scholarship Program

The Committee continues to support expanded school choice options that allow parents to select the best school for their children. The D.C. Opportunity Scholarship program, created almost a decade ago, has allowed thousands of students in the District of Columbia to attend a high-performing private school of their choice. If not for this critical program, more than 87 percent of students who receive scholarships would otherwise be forced to attend some of the district's lowest-performing schools. The Committee urges the Committee on Budget to support funding for the D.C. Opportunity Scholarship program to help families in the District of Columbia access quality education options for their children.

Expanding College Access and Promoting College Affordability

For 50 years, the federal government has supported students' ability to select the college or university that best suits their postsecondary education needs. The diversity of the more than 6,000 higher education institutions participating in federal student aid programs is vital to the strength of the nation's postsecondary system.

Colleges and universities now enroll a majority of non-traditional, or contemporary, students (those beyond the traditional 18-to-22-year-old high school graduate), many of whom are workers eager to quickly gain the necessary knowledge and skills to excel in the workplace. Additionally, these students, along with their traditional college-aged counterparts, have become more cost-conscious as result of the growing cost of college and the perils of excessive student loan debt.

The Committee is planning to move comprehensive legislation to reauthorize the *Higher Education Act* to ensure the law is flexible enough to allow institutions to adapt to the changing student demographics on campus and assist students and families as they make their postsecondary education decisions. The reauthorization of the *Higher Education Act* will focus on simplifying and improving student aid; empowering students and families to make informed decisions; promoting innovation, access and completion; and ensuring strong accountability and a limited federal role. The Committee seeks to accomplish our bold reforms in a budget neutral manner and believes any potential savings arising from proposed changes to the law should be reinvested into other reforms we are pursuing.

Simplifying Federal Student Aid Programs

The Committee supports efforts to simplify, streamline, and improve federal student aid programs. Many students, particularly first-generation and low-income, are bogged down with the complexity of the current system, which ultimately deters them from accessing the aid that will make college an affordable reality. The Committee will seek to streamline the federal student aid programs, including the various loan repayment options, to assist students and families in better understanding their options for financing postsecondary education. While the Committee welcomes several reforms included in the administration's FY 2016 budget request to disincentivize excessive borrowing and eliminate loopholes in the income-based repayment plans, the Committee is exceptionally concerned by the proposal to expand the Pay As You Earn repayment plan. The Committee also remains troubled by the administration's proposals to create new and unnecessary programs which will exacerbate the existing maze of programs.

Promoting College Accessibility and Affordability

The federal government plays an important role in ensuring students and families have access to the information necessary to choose the college or university that meets their unique needs. Unfortunately, the amount of information institutions of higher education are required to disclose to the public and report to the U.S. Department of Education has grown exponentially over the last decade, with limited evidence of its value. Additionally, current federal regulations require

institutions of higher education to disclose information on a number of data points using different methodologies, creating a fractured and confusing array of information.

The Committee believes the federal government should better coordinate efforts to streamline higher education data collection requirements, thereby reducing confusion for students and curbing compliance costs for institutions. The Committee intends to continue evaluating all available consumer information to highlight the most useful data points and eliminate data elements that are unnecessary, unhelpful, or overly burdensome.

In this vein, the Committee is deeply concerned about a number of regulatory initiatives being pursued by the U.S. Department of Education. First, the college ratings system currently under development by the department will attempt to compare colleges based on access, affordability, and students outcomes. The administration is expected then to push for legislation that will tie federal financial aid to these ratings by the 2018-2019 academic year. While the Committee supports the goal of increased transparency, it does not believe it is the role of the federal government to impose a one-size-fits-all formula on our nation's higher education system. The rating system will unfairly judge our nation's diverse colleges and universities, restrict consumer choice, confuse families, and limit postsecondary options for low- and middle-income students.

Second, the Committee also opposes a proposal in the FY 2016 budget to include military education benefits in the 90/10 rule. Currently, the 90/10 rule requires only proprietary schools to derive 10 percent of their revenue from non-federal student aid sources and already has the perverse effect of causing institutions that serve low-income students to increase tuition and fees. The modification proposed by the administration will pose an additional obstacle for America's veterans seeking a higher education. Military education benefits are earned benefits provided to servicemembers or veterans as a result of their service in the military, whereas financial aid is provided to low-income students to assist them in accessing postsecondary education. Servicemembers are turning toward the proprietary sector because of their program offerings and flexible schedules. Including military education benefits in the 90/10 rule could cause institutions to increase their tuition or, worse yet, shutter programs that do not meet this arbitrary ratio, thereby restricting educational choice for the men and women who earned these benefits and should be permitted to use them at the institution that best suits their needs.

Finally, the U.S. Department of Education has issued several packages of so-called "program integrity" regulations with little regard for the true implications and costs for higher education institutions. Rather than continuing to push these burdensome and inflexible regulations, the Committee urges the Committee on Budget to avoid supporting any of these efforts and hopes the administration will work with Congress to promote state and institutional innovation, such as the use of competency-based education and performance-based funding.

Putting Pell Grants on a Path to Stability

The Pell Grant program is the foundation of our nation's commitment to help low-income students access higher education. However, the program is in need of reform. Currently, students wishing to move quickly through their college career are unable to do so because they do not receive Pell Grant assistance during the summer months. Additionally, the program is on an

unsustainable funding path. Even after enacting a number of short-term fixes through the *Budget Control Act* (BCA) and reducing student eligibility through the FY 2012 *Consolidated Appropriations Act*, the annual program costs for Pell Grants continue to grow. From FY 2006 to FY 2015, the Congressional Budget Office (CBO) noted discretionary program costs increased from \$12.8 billion to \$25.8 billion. From FY 2016 to FY 2025, the agency estimates discretionary program costs are expected to grow from \$26.1 billion to \$30.7 billion. When mandatory funding is included, expected program costs jump from \$32 billion in FY 2015 to \$39.1 billion in FY 2025.

Although a recent CBO estimate showed a temporary surplus in the program for FY 2016 — because of revisions to previous estimates and one-time funding included in the BCA — the program is expected to experience a \$3.9 billion funding gap in FY 2017, assuming the program is funded at FY 2015 levels. This funding gap is predicted to grow in the coming years, even if Congress continues to provide historically-high appropriations for the Pell Grant program. Instead of making tough choices about the future of Pell Grants, the Obama administration's FY 2016 budget continues to exacerbate the problem. The Committee looks forward to pursuing reforms that will balance the needs of the contemporary college student with the desire to put the Pell Grant program back on the path to long-term stability, thereby helping low-income students pursue the dream of a postsecondary education.

Assessing the True Taxpayer Costs for Student Loans

The Committee believes budget gimmicks have masked the true cost of federal student loan programs for decades, and it commends the Committee on the Budget for its passage in the 113th Congress of H.R. 1872, the *Budget and Accounting Transparency Act*. This important legislation requires the federal government to use fair value accounting and scoring to more clearly illustrate taxpayer costs associated with federal student loan programs. Congress has seen how CBO estimates are affected by taking market risk into account. Not only did the alleged “savings” from eliminating the Federal Family Education Loan (FFEL) program decrease dramatically, but the purported savings garnered from the administration's FY 2012 budget proposal to convert FFEL loans to Direct Loans shrank by approximately \$550 million. In addition, the savings from the administration's budget proposals to expand the Perkins Loan program and bring it onto the government's books vanished entirely.

Furthermore, the CBO released a report last May comparing the estimated budgetary costs of student loan programs under the *Federal Credit Reform Act of 1990* (FCRA) to fair-value scoring. For fiscal years 2015 to 2024, CBO estimates the subsidized Stafford loan, unsubsidized Stafford loan, graduate student PLUS loan, and parent PLUS loan programs would yield budgetary savings of roughly \$135 billion using FCRA scoring. By comparison, the same analysis under fair-value scoring would yield budgetary costs of roughly \$88 billion. On a FCRA basis, three of the four largest student loan programs would yield a savings, and subsidized Stafford loans are a cost to the government. On a fair-value basis, two of the four loan programs would have a cost, and gradPLUS and parent PLUS loans would still produce savings under fair-value scoring.

The Committee believes we should utilize fair-value accounting to incorporate market risk, as it is a more accurate and fiscally responsible way to account for the government's liabilities in programs such as the Federal Direct Loan program.

Improving Early Childhood Education Programs

The Committee believes early childhood education plays an important role in the health and success of the nation's most vulnerable children. Research has shown early education can help children be better prepared to succeed in their academic career and even help them develop key interpersonal skills that will serve them well later in life. But the Committee questions the need for the federal government to administer 45 different programs tied to early childhood care and development. In a January 2014 analysis, the Government Accountability Office (GAO) noted these programs are housed in multiple agencies and amount to at least \$14.2 billion in taxpayer funds.

In his budget proposal, the President again calls for the creation of new early childhood programs under the Committee's jurisdiction, totaling \$75 billion over 10 years, and the expansion of existing services for low- and moderate-income children under the age of five.

Recognizing the very real fiscal challenges facing the country, policymakers have a responsibility to examine and reform existing early childhood care and education programs before creating new programs and promises. Toward that end, the Committee intends to build on our successful efforts in the 113th Congress to reauthorize the *Child Care and Development Block Grant Act* and next pursue reforms to the Head Start program.

The *Head Start Act* provides grants directly to organizations, school districts, and other community-based entities to promote school readiness in low-income children from birth to age five. Although the federal government dedicates \$8 billion to the program annually, Head Start is struggling to provide lasting academic gains for the children it serves. The U.S. Department of Health and Human Services' (HHS) 2010 Head Start Impact Study showed the program had little to no benefit for improving cognitive, social-emotional, health, or parenting practices of its participants and any benefits that may have accrued while a child is in the program had dissipated by the time he or she reached first grade. The Third Grade Follow-Up to the Head Start Impact Study released in December 2012 found similar results: the few benefits achieved by children enrolled in Head Start at the end of first grade were no longer present by the end of third grade. The Committee believes the proliferation of overlapping programs and lack of sustained program results in the early childhood sector are a disservice to vulnerable children and hardworking taxpayers. The Committee intends to pursue reforms to the Head Start program that would help reduce unnecessary regulatory burdens; encourage local innovation; strengthen coordination between Head Start and other programs at the state and local levels; improve the quality of eligible providers; and enhance parental engagement to support their children's best interests. The Committee urges the Committee on Budget to reject the administration's request for new programs and instead support our efforts to reauthorize the *Head Start Act*.

Enhancing Career and Technical Education

The Bureau of Labor Statistics (BLS) recently reported that more than 3.3 million Americans between the ages of 16 and 24 are looking for jobs. The Committee believes strengthening career and technical education programs funded through the *Carl D. Perkins Career and Technical Education Act* (Perkins Act) can help more of these young people gain an edge in the workforce.

The Obama administration's FY 2016 budget proposes reforms to the Perkins Act, such as linking more programs of study to in-demand industries. The Committee will consider these proposals as part of its efforts to reauthorize the law. However, the budget proposal would also redirect \$200 million from state grants to a new national competitive program. Given limited federal resources, the Committee disagrees with the administration's request for these new programs and seeks to strengthen the Perkins Act and prepare students for the 21st century workforce.

Ensuring Quality Child Nutrition

Programs under the *Child Nutrition Act* and *Richard B. Russell National School Lunch Act* are designed to combat hunger and poor nutrition among low-income children and families. According to the Congressional Research Service (CRS), federally-supported nutrition programs reach more than 40 million children and two million lower-income expectant and new mothers daily. In 2010, Congress passed the *Healthy, Hunger-Free Kids Act*, which updated and extended these programs. However, the legislation also opened the door to federal micromanagement of school lunches, breakfasts, suppers, snacks, and other food sold on school campuses. The Committee believes the regulatory agenda coming from the U.S. Department of Agriculture is overly burdensome, costly, and difficult to implement.

Recently, GAO released a report highlighting the challenges elementary and secondary schools face implementing the new regulations. The report found student participation in the program decreased and departmental guidance has been confusing and too voluminous for schools. While the department has acknowledged the need for additional flexibility on grain and protein portion sizes, more must be done. During the recent appropriations process, Congress directed the Secretary of Agriculture to develop a waiver process for school districts struggling with the costs of implementing the nutrition requirements. The Committee will work to reduce the cost and burden of new federal requirements as it begins the reauthorization of the *Child Nutrition Act* and the *Richard B. Russell National School Lunch Act*.

WORKFORCE PRIORITIES

After six years of the Obama administration, job seekers and workplaces across the country continue to face significant challenges. Approximately nine million workers are unemployed, while another 6.8 million individuals are working part-time when they need full-time jobs. Wages remain stagnant, and economic growth slowed in the last quarter of 2014. Although the unemployment rate is lower at the beginning of 2015 than it was at the beginning of 2014, there continues to be signs of instability in the labor market. Of particular concern is the workforce

participation rate, which stood at 62.9 percent in January 2015, one of the lowest participation rates seen since 1978.

Despite President Obama's statements that his number one priority is job creation, the President has consistently pursued an economic agenda skewed toward expanding government, creating a more litigious environment, and favoring organized labor leaders rather than focusing on creating quality private-sector jobs. During 2014, the President substantially increased his use of executive orders (EO) and presidential memoranda that will increase regulatory burdens, increase exposure to litigation, and hinder job creation. The President's State of the Union Address and Fiscal Year (FY) 2016 Budget request demonstrate his priorities continue to be more spending, more taxes, and more government, all of which will only exacerbate an already anemic economy, sluggish job growth, and stagnant wages. The Committee is concerned that while middle-class families are being squeezed, the President wants to double-down on the same failed policies of the last six years.

To help the country move in a new direction, the Committee will consider possible reforms to expand opportunity for working families and to spur job creation. The Committee's work will include focus on maintaining workplace democracy, advocating for safe and healthy working conditions, and continuing to pursue reforms to modernize the multiemployer pension system. The Committee will specifically examine the implementation of bipartisan laws — the *Workforce Innovation and Opportunity Act (WIOA)* and the *Multiemployer Pension Reform Act* — approved by Congress and signed by the President during 2014. Finally, the Committee will continue to conduct robust oversight of the Obama administration and its attempts to engage in regulatory overreach by scrutinizing the President's EOs and federal agencies' regulatory proposals.

The Committee respectfully offers the following for consideration by the Committee on the Budget as it prepares its FY 2016 budget resolution.

Improving our Nation's Workforce Development System

In the 113th Congress, House Republicans led the effort to fundamentally reform the nation's broken workforce development system. That effort culminated in the passage of WIOA. Signed into law last summer, WIOA integrates employment services at the local level under a unified workforce development system.

The reauthorization focused on streamlining the numerous federal workforce development programs and improving assistance for job seekers to strengthen their skills for the 21st century and get back to work quickly. Rather than continuing in this bipartisan effort and focusing time and resources on implementing the new law, the administration's FY 2016 budget proposes adding approximately \$22 billion in new and duplicative programs to the nation's recently streamlined workforce development system.

Our nation is already investing billions of dollars through WIOA for activities similar to the President's proposals. In addition, the government layering new programs on top of old

programs creates administrative inefficiencies at the federal, state, and local levels and confusion for job seekers struggling to access the services necessary to find and retain a job.

The Committee urges the Committee on the Budget to reject the administration's approach to job training and instead incorporate only the streamlined system created in WIOA into its budget resolution.

Protecting Workplace Democracy

The Obama administration has consistently pursued an agenda favoring its special interest supporters at the expense of workers and those seeking full time employment. The administration's approach to labor-management relations not only threatens workers' ability to make informed decisions about whether to join a union, but also it lessens the potential of employers of all sizes to hire and retain workers. The Committee will continue its vigorous oversight of the administration's policies and will continue to protect workers' access to workplace democracy.

National Labor Relations Board

Over the last six years, the National Labor Relations Board (NLRB) has advanced an aggressive union agenda, which has added greater uncertainty and strife to an unstable economy. Despite strong opposition from Republican board members, the Democrat-controlled Board has routinely taken action intended to tip the scales of labor-management relations in favor of organized labor. Among its most egregious actions, the NLRB has (1) restricted workers' right to a secret ballot, (2) expanded concerted activity, (3) made it more difficult for employees to challenge union representation, (4) changed the test for determining employee bargaining units to allow unions to gerrymander the workplace, (5) reduced neutral employer protection from union attacks, and (6) adopted representational election procedures that will significantly restrict employer free speech and cripple employee free choice. In some cases, the NLRB's actions have reversed case law and rewritten procedures in place for decades under both Republican and Democrat Board majorities. In sum, the NLRB's actions help ensure union victory in elections and limit challenges to union representation.

An item of particular concern to the Committee in 2015 is the NLRB's regulation creating new representational election procedures, commonly referred to as the "ambush election rule." In an effort to speed up elections, the Board has trampled on employer free speech, as well as employee free choice and privacy. Additionally, the NLRB's effort to rewrite the joint employer standard would fundamentally alter the franchise system and contracting relationships. Such a change will have devastating consequences for small employers, the engine of our economy.

The Committee is alarmed by NLRB's extreme and unprecedented actions, and it will continue its work to protect employee and employer rights by aggressively engaging in oversight and plans to take legislative action early in 2015. Specifically, the Committee will take up H.J Res 29 under the *Congressional Review Act* to halt the NLRB's implementation of its ambush election rule. Additionally, the Committee also will consider other legislative action to address the Board's outrageous activities over the past six years.

Office of Labor-Management Standards

The U.S. Department of Labor's (DOL) Office of Labor-Management Standards (OLMS) has the important responsibility of ensuring workers who choose to join a union are provided transparency and accountability from union leadership about the management and use of their dues. However, the Committee is concerned the Obama administration has eroded safeguards for workers that promote union transparency and accountability. A strong example of this is OLMS's effort to redefine "advice" under section 203 of the *Labor-Management Reporting and Disclosure Act* through regulation. Such an effort would end well established policy — dating back to the Kennedy administration — that has exempted employer and labor consultant reporting if the consultant has no direct contact with employees and the employer is free to accept or reject the consultant's advice or materials. Despite concerns these changes could jeopardize the confidential client-lawyer relationship and employers' fundamental right to counsel, the Committee understands OLMS plans to finalize its rules by July 2015. The Committee will continue to voice its objections to these changes, and it will continue to promote the right of workers to have transparency and accountability from union leaders through its oversight of OLMS.

Safeguarding Retirement Savings

The Committee believes it is critical that workers and retirees have access to savings options that are voluntary, portable, and dependable as they plan for their retirement years. The best way to accomplish this is by decreasing regulations that impede individual retirement savings and by ensuring defined benefit plans remain viable and well-funded. The Committee will continue to monitor the consequences of changes to the defined benefit pension funding rules and the finances of the Pension Benefit Guaranty Corporation (PBGC). As part of these efforts, the Committee reached a bipartisan agreement in 2014 that saved millions of workers from financial catastrophe with the enactment of the *Multiemployer Pension Reform Act*. During 2015, the Committee will closely oversee the administration's implementation of the law and plans to build on these reforms with additional legislation modernizing the multiemployer pension system.

The Committee is also aware of a regulatory effort by DOL that could restrict access to financial information and increase costs for workers and retirees participating in 401(k) plans. When a similar regulation was proposed by DOL in 2010, it was strongly rejected by stakeholders and a bipartisan group of lawmakers based on the concern it would reduce retirement savings. The Committee stands prepared to closely review DOL's forthcoming new proposal to ensure such unwise policy is not repeated.

In addition, the Committee continues to oppose provisions included in the President's FY 2016 budget, including providing the PBGC with authority to determine insurance premiums assessed to defined benefit pension plans. The Committee will instead consider other policies to safeguard retirement opportunities for workers and to secure PBGC's ability to protect benefits without requiring taxpayer funds.

Promoting Policies to Lower Health Care Costs

The Committee understands that affordable insurance coverage and access to quality health services for themselves and their families is a chief concern for many workers. In March 2010, the *Patient Protection and Affordable Care Act* (PPACA) was enacted. It fundamentally changed the health care system by focusing on expanding access to health insurance coverage through a complicated structure of federal subsidies, Medicaid expansions, and new laws governing health insurance markets and employer-sponsored health care.

PPACA changed the law concerning employer-sponsored health care by imposing mandates and new taxes that have resulted in increased costs for employers, employees, and their families. Under PPACA's original employer mandate, an employer with 50 or more employees would be required to offer affordable health insurance coverage to its full-time employees or face new tax penalties. Through a series of unilateral delays by the Obama administration, the coverage requirements and implementation dates changed. Beginning in 2015, and until 2016, employers with 100 or more full-time equivalent employees (defined as those working 30 hours or more) will face a fine of \$2,000 per employee if they do not offer affordable health insurance to 70 percent of their full-time employees and if one full-time employee receives a federal subsidy for exchange coverage. Beginning in 2016, employers with 50 or more full-time equivalent employees must offer affordable health insurance to 95 percent of their full-time employees or face a fine if any full-time employee receives a subsidy. It is the Committee's view that by electing to delay the employer mandate, the Obama administration must have recognized PPACA's detrimental impact on our nation's workplaces. The Committee understands, however, simply delaying this mandate will not fully ameliorate the law's fundamental flaws nor mitigate the significant harm it is inflicting on both employers and their workers.

Finally, the Committee will continue its oversight of the administration's implementation of PPACA, including the use of employer wellness programs that comply with health care laws. Over the last year, the Equal Employment Opportunity Commission (EEOC) has increased its scrutiny of employers' implementation of their wellness programs, claiming they are "involuntary" and therefore in violation of the *Americans with Disability Act* and the *Genetic Information Nondiscrimination Act*. PPACA provisions promoting employer wellness programs with employee participation incentives were enacted with strong bipartisan support, and the Committee will continue to work to protect these programs from unfounded EEOC litigation through oversight letters, hearings, and legislation.

Ensuring Equal Employment Opportunity

The Committee believes all workers must have equal access to employment opportunities. To ensure federal policies meet this aim, the Committee is continuing its close oversight of the federal government's implementation and enforcement of laws designed to protect individuals from employment discrimination, including but not limited to Title VII of the *Civil Rights Act of 1964* and the *Equal Pay Act*. The Committee previously introduced legislation aimed at increasing the transparency of EEOC's litigation strategies, by requiring the involvement of EEOC commissioners instead of just the general counsel when initiating litigation and by providing a safe harbor for employers complying with federal or state mandates requiring

criminal background checks. The Committee intends to continue its oversight of EEOC and will again consider possible legislative action should EEOC continue to be overly punitive in its use of its regulatory and enforcement authorities.

Additionally, 2014 was a particularly active one for DOL's Office of Federal Contract Compliance Programs (OFCCP). From April to July 2014, the President signed two EOs and issued a presidential memorandum requiring OFCCP to engage in regulatory activity. Pursuant to the President's April 8, 2014, memorandum, OFCCP plans to finalize in August 2015 a new regulation requiring contractors to submit summary data on compensation. Federal contractors question whether such data will assist OFCCP's enforcement efforts, but they are certain they will have to devote significant time and resources to comply with the new requirements. The Committee supports sound policies to protect workers from nondiscrimination; however, it must also examine EEOC's and OFCCP's policies and proposals that do little to protect workers and end up discouraging private-sector job growth.

Grants for Establishing State Paid Leave Funds

In DOL's FY 2016 budget, the administration has vastly expanded its so-called "State Paid Leave Fund" proposal to support competitive grants to states that establish paid leave programs. Despite Congress's rejection of previous years' requests for \$5 million to establish this fund, the FY 2016 budget requests \$35 million. In addition, the FY 2016 budget also requests authorization to create a new and costly program called the "Paid Leave Partnership Initiative." According to the President's budget, this program would cost \$2.2 billion over its first three years and would pay for up to half of the benefits and all the startup costs associated with creating paid leave programs in up to five states. The Committee continues to question the administration's devotion to such programs as there is no clear evidence showing how they would result in additional opportunities for businesses to grow and hire more workers.

Updating the Fair Labor Standards Act

The Committee understands that lifestyles, demands, and needs of workers and employers are different from those that existed when the *Fair Labor Standards Act* (FLSA) was originally written in 1938. Even with subsequent amendments, the FLSA has not been substantially revised in decades, and portions of the law are overdue for modernization. As FLSA is the primary law governing the wages, hours of work, child labor standards, and recordkeeping requirements for millions of private and public sector workers, it is continuously the subject of oversight and hearings conducted by the Committee. In 2015, the Committee intends to continue its review of the law and to consider, where appropriate, ways to modernize the statute.

Continued oversight is critical because not only is the law so expansive, but also it has been the focal point for the Obama administration's enforcement and regulatory overreach. The President's budget request for the Wage and Hour Division (WHD), the agency which enforces the FLSA, contains a 22 percent increase over the previous year. However, despite the high price tag, the administration is proposing nothing more than forcing compliance through aggressive enforcement, with little to no focus on assisting employers in understanding and abiding by their obligations under an extremely complex law. Instead, the Committee anticipates DOL's efforts

will burden employers with more paperwork and the threat of litigation. One such matter the Committee plans to evaluate is implementation of the President's March 2014 memorandum directing the Secretary of Labor to revise overtime requirements under the FLSA for executive, administrative, and other employees. The Committee will evaluate the WHD's enforcement activities and regulatory proposals with respect to the employment of independent contractors.

Finally, the Committee will closely monitor DOL's actions concerning its regulation changing the companionship services minimum wage and overtime exemption under the FLSA. Although DOL initially planned to begin implementation of this regulation on January 1, 2015, on October 24, 2014, it announced it would not take enforcement action until after June 30, 2015. The U.S. District Court of D.C. subsequently struck down two major portions of the final rule noting congressional intent concerning this provision of FLSA was clear and DOL exceeded its authority in revising this regulation. The Committee agrees with the court and is disappointed DOL has appealed the decision. The Committee will continue its oversight on this issue.

Protecting Employers from the Fair Pay and Safe Workplaces Executive Order

The Committee is skeptical of the so-called "Fair Pay and Safe Workplaces" EO signed by the President on July 31, 2014, because it undercuts the existing federal procurement system by placing new reporting burdens on federal contractors while also subjecting them to redundant and unnecessary oversight procedures. The administration has failed to address what is problematic or lacking in the current system and is instead implementing an extra layer of hardships on contractors that are more punitive, effectively resulting in a "blacklisting" of these employers from federal contracts.

The EO accomplishes this by requiring federal contractors to disclose labor law violations from the past three years and authorizing agencies to deny federal contracts to employers with reported labor violations. The EO will be applied to new contracts greater than \$500,000 and requires contractors to report instances in which they, or their subcontractors, have a history or allegations of violating 14 federal labor laws and equivalent state laws. Prior to awarding a contract, each agency's contracting officer and a so-called "Labor Compliance Advisor" — a new regulatory position created by the EO — will review this information and decide whether the contractor's actions demonstrate a lack of integrity or business ethics, possibly disqualifying that contractor from consideration.

For employers both large and small, compliance with federal labor laws is further complicated by ongoing regulatory changes. Despite good faith attempts to comply with labor laws, companies are still often found in violation. As the EO is put into effect, the Committee will ensure any regulations or guidance issued as a result will not unduly burden large and small contractors with onerous reporting requirements, further muddling existing complicated labor laws, depriving contractors of due process rights, and delaying the award of contracts because of the new processes put in place with the Labor Compliance Advisors.

Updating the Federal Employees' Compensation Act

The Committee recognizes updates to the workers' compensation program for federal employees who are injured or become ill on the job are long overdue. The Committee will examine the

reform proposals being offered by the Obama administration and will continue to explore other legislative options for reforming the *Federal Employees' Compensation Act* (FECA). Previously, the Committee led a bipartisan effort to reform FECA, which resulted in the House-passed legislation, the *Federal Workers' Compensation Modernization and Improvement Act* (H.R. 2465 in the 112th Congress). In 2015, the Committee will explore opportunities to work with DOL to advance a bill updating FECA's benefit structures to ensure taxpayer dollars are well spent, while also providing much needed care for injured employees and their families and promoting return-to-work initiatives.

Protecting Workers' Safety and Health

The Committee is committed to ensuring workplace safety for American workers. To that end, the Committee will advocate for policies that combine proactive safety programs, compliance assistance, and reasonable enforcement of workplace safety laws. The Committee believes this is the best way to promote safe and healthy working conditions without hindering economic growth and job creation.

Occupational Safety and Health Administration

Over the course of the past six years, the Occupational Safety and Health Administration (OSHA) has focused its efforts on excessive enforcement and writing new rules and regulations. The Committee is concerned OSHA has stepped back from workplace safety policies that educate employers and workers and provide better compliance assistance. The Committee is also concerned by OSHA's circumvention of the statutorily-required rulemaking process, instead using non-regulatory guidance, letters of interpretation, and other administrative actions to essentially rewrite regulations and policies. Further, the Committee is concerned that beyond changing long-standing policies and practices with scant notice to or input from the public, OSHA has created a legal conundrum that endangers the integrity of its inspection and regulatory processes. Accordingly, the Committee will continue its close oversight of OSHA's use of administrative actions and will continue to insist OSHA engage in the statutorily-mandated rulemaking process. Finally, the Committee is aware OSHA intends to engage in a number of regulatory actions this year, including regulations lowering exposure to crystalline silica and to beryllium. The Committee will conduct oversight of these and other rulemakings the agency undertakes.

Mine Safety and Health Administration

The Committee will conduct oversight off the enforcement programs at the Mine Safety and Health Administration (MSHA) to ensure the agency meets the goal of zero mining fatalities. As part of this effort, the Committee will continue to review the extent to which MSHA is utilizing the tools provided to it under federal mine safety laws to strengthen workplace safety for miners. In addition, the Committee will also conduct oversight of MSHA's new and planned regulatory activities, including the implementation of its regulation on respirable coal dust, the extent to which it engages with stakeholders concerning the regulation on the use of refuge chambers in underground coal mines, and any proposed rule addressing exposure to respirable crystalline silica.

CONCLUSION

The Committee on Education and the Workforce recognizes many challenges remain for students, workers, job creators, and retirees. The Committee is committed to an agenda for 2015 that will address these challenges and bring reform to the many outdated, bureaucratic, and ill-advised policies that deny too many students a quality education and keep nearly 16 million workers from finding full time work. The Committee looks forward to working with the Committee on the Budget as it prepares its budget for FY 2016.