

**BUDGET VIEWS AND ESTIMATES FOR FISCAL YEAR 2017**  
**COMMITTEE ON EDUCATION AND THE WORKFORCE**  
**114th CONGRESS, SECOND SESSION**  
**FEBRUARY 4, 2016**

**INTRODUCTION**

At a time when the country faces many difficult challenges – not enough full-time jobs, stagnant wages, rising costs in health care and higher education, and a lack of retirement security for workers and retirees – the American people expect Washington to make their priorities its priorities. The President would prefer to accept the failed status quo as the new normal, but fortunately the American people know we can do better. The Committee on Education and the Workforce will continue to demand better.

In 2015, the Committee led a congressional effort that successfully replaced *No Child Left Behind*. This effort was based on the premise Washington should no longer be in the business of micromanaging the nation’s K-12 classrooms, and instead, decisions affecting a child’s education should be left to state and local leaders. By placing less faith in the federal government and more faith in the American people, the country now has a new education law that empowers parents, teachers, and school leaders to deliver the excellent education every child deserves.

The Committee intends to apply this same approach to the other challenges facing the country, such as reforming higher education, protecting small businesses, improving career and technical education, and strengthening the retirement security of workers and current retirees. Whether through conducting aggressive oversight or advancing commonsense legislative reforms, the Committee will work to ensure federal policies support – rather than hinder – the opportunity for success every American deserves.

**EDUCATION PRIORITIES**

Along with the growth in the Department of Education’s budget, the federal government’s role in education has grown significantly over the last 35 years. In FY 2016, the department operated more than 100 programs with more than \$68 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 questions about what the future holds for our schools and institutions. In response, the Committee is planning another active legislative agenda this year. The Committee’s work will focus on shrinking the federal role; ending wasteful, inefficient, and unauthorized spending to help balance the federal budget; 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 2017 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. That is why House Republicans led the effort to replace the *No Child Left Behind Act*. The *Every Student Succeeds Act*, signed into law in December 2015, reforms K-12 education policy to reduce the federal role, restore local control, and empower parents. The new law will reduce the federal government's interference in elementary and secondary schools and grant education reformers the flexibility to succeed.

Despite the President's rhetoric, his actions have perpetuated a top-down approach to education that has proven unsuccessful for students and families. The *Every Student Succeeds Act* puts an end to the President's overreach, but we expect his budget proposal to focus on some of the administration's programmatic priorities. We urge the Budget Committee to ignore these requests and instead fund K-12 education as Congress intended in the *Every Student Succeeds Act*.

Most importantly, the new law includes responsible funding authorizations for elementary and secondary education programs. The law focuses the federal role in education on supporting long-standing programs designed to improve student achievement and teacher effectiveness. The law consolidates dozens of programs previously authorized under the *Elementary and Secondary Education Act* (ESEA) into the Student Support and Academic Enrichment Grants program. This program will provide states and school districts more flexibility in the use of federal aid. The Committee urges the Budget Committee to incorporate into the budget resolution the important reforms made by the *Every Student Succeeds Act*.

#### *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. Congress has never come close to meeting this funding commitment. Republicans made significant strides in this area between 1995 and 2005, when IDEA funding increased from 8 percent to 18 percent of the national average per-pupil expenditure. However, the percentage has only decreased since then. 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. The 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, expand

early learning opportunities, or other valuable state and local initiatives are instead used to fill the gap in special education funding.

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

The Committee requests language in the budget resolution prioritizing function 500 to fund IDEA, with an increase for FY 2017 that would at least match at least 18 percent of the national average per-pupil expenditure, 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 a decade ago, has allowed thousands of students in the District of Columbia to attend private schools of their choice. If not for this critical program, more than 98 percent of students who receive scholarships, or 1,400 students in the 2014-15 academic year, would otherwise be forced to attend some of the district's lowest-performing schools. The Committee urges the Budget Committee 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 over 50 years, the federal government has supported students' ability to select the colleges or universities that best suit their postsecondary education needs. The diversity of educational programs offered by the more than 6,000 higher education institutions participating in federal student aid programs is vital to the strength of the nation's economy.

Non-traditional, or contemporary, students (those beyond the traditional 18- to 22- year-old high school graduate), now make up the majority of students enrolled in our nation's colleges and universities. Additionally, these students, along with their traditional college-aged counterparts, are more aware of the growing cost of college and the perils of excessive student loan debt.

The Committee is planning to reauthorize the *Higher Education Act* to ensure the law provides institutions the flexibility necessary 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 help simplify and improve student aid; empower students and families to make informed decisions; promote innovation, access, and completion; and ensure strong accountability over and limit the federal role. The Committee seeks to accomplish these reforms in a budget neutral manner and believes any potential savings arising from changes to the law should be reinvested into other reforms in higher education.

### *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 students, are bogged down with the complexity of the current system, which ultimately deters them from accessing aid that will make college an affordable reality. The Committee seeks to streamline the federal student aid programs, including the various repayment options, to assist students and families in navigating their options for financing postsecondary education. The Committee is also dedicated to enhancing student financial aid counseling, so students and families better understand the financial commitments they are making. Because the system is already extremely complex, the Committee is concerned by the administration's creation of yet another repayment plan. Such proposals to create new and duplicative programs will exacerbate problems caused by the existing maze of programs.

### *Promoting College Accessibility and Affordability*

#### Providing Better Information to Students and Families

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 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 using different methodologies, creating a fractured and confusing display of information.

The Committee believes the federal government should 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 and eliminate data requirements that are unnecessary, unhelpful, or overly burdensome for institutions to collect.

In this vein, the Committee is deeply concerned about a number of executive actions and regulatory initiatives being pursued by the Department of Education. While the Committee welcomes the Department's decision to abandon its misguided college ratings system, the new College Scorecard – released as an alternative to the rating system – adds another layer of confusing and misleading information available to students and parents. Rather than simplify and streamline information for students, the Department of Education has made it more complicated and confusing for students to get the information they need to make smart decisions about their college education. The Committee supports increased transparency, but it does not believe the role of the federal government is to impose a one-size-fits-all formula on our nation's higher education system.

## Eliminating Burdensome Red Tape

The Department of Education has churned out 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 Budget Committee 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.

Finally, the Department of Education has proposed a worrisome multi-billion dollar new program to offer “free” community college to every American. Encouraging more individuals to pursue additional education or earn a postsecondary credential is an important priority and community colleges play a vital role in that effort. However, providing free community college tuition for all students is neither free nor a good idea. The multi-billion dollar price tag of this proposed program would compete with existing programs for limited taxpayer dollars, making it even harder to meet our existing commitments to the neediest students who want to pursue a college degree or credential. The Committee looks forward to working with the Budget Committee to meet our existing higher education commitments and explore ways to reform the law in a way that strengthens access to higher education for all Americans.

## *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 reforms. Currently, students wishing to move quickly through their college career cannot do so because they are unable to receive Pell Grant assistance to take summer semester classes. 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 changing eligibility requirements through the FY 2012 *Consolidated Appropriations Act*, annual program costs for Pell Grants are projected to grow over the next decade. From FY 2006 to FY 2016, the Congressional Budget Office (CBO) noted discretionary program costs increased from \$12.8 billion to \$23.6 billion. From FY 2017 to FY 2026, the CBO estimates discretionary program costs are expected to grow from \$24.1 billion to \$28.1 billion. When mandatory funding is included, expected program costs jump from \$30.4 billion in FY 2017 to \$35.4 billion in FY 2026.

Although CBO recently projected a temporary surplus in the program for FY 2017 due to revisions to previous estimates and one-time funding included in the BCA, the program is expected to experience a future multi-billion dollar funding gap (assuming the program is funded at FY 2016 levels). This funding gap is predicted to grow, even if Congress continues to provide historically-high appropriations for the Pell Grant program. The Committee looks forward to working with the Budget Committee to ensure we can pursue reforms that will balance the needs of contemporary college students with the desire to put the Pell Grant program back on the path to long-term stability, thereby helping millions of low-income students pursue the dream of a postsecondary education. One reform to put the Pell Grant program on a more sustainable path would be to streamline the funding streams that fund the program. Maintaining the maximum grant award while moving all funding for the program to the annual discretionary appropriations

process, while maintaining the Committee's commitment to funding the maximum grant award, would make the funding for the program more transparent to taxpayers and more dynamic over the long term to meet the changing needs of students.

### *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 commends the Budget Committee for passage of H.R. 1872, the *Budget and Accounting Transparency Act*, last Congress. 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 were approximately \$550 million lower than expected. In addition, the savings from the administration's previous budget proposals to expand the Perkins Loan program and bring it onto the government's books vanished entirely.

Furthermore, in May 2014, CBO released a report comparing the estimated budgetary costs of all of the 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, grad 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 savings; subsidized Stafford loans are a cost to the government. On a fair-value basis, two of the four loan programs would be a cost; gradPLUS and parent PLUS loans still produce savings under fair-value scoring.

The Committee agrees the program should 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. During a time when students and families are grappling with high levels of student loan borrowing, we owe it to the American people to put policies in place that rein in over-borrowing. Enabling the Committee to utilize a more accurate estimate of the federal government's costs associated with the student loan programs will ensure reforms of the law make sense for students, families, and taxpayers.

### **Improving Early Childhood Care and Education Programs**

The Committee believes early childhood care and education plays an important role in the health and success of the most vulnerable children and delivers numerous benefits for working families and local communities. Research has shown early education can help children be better prepared to succeed academically and develop key interpersonal skills that will serve them well later in life. Quality child care is essential for working families and parents, and the federal government should make sure the investment made in early education and childhood care supports those parents' and families' choice in programs. However, the federal government currently administers approximately 45 programs tied to early childhood care and development, some of

which overlap or are duplicative and result in fragmentation. In a January 2014 analysis, the Government Accountability Office (GAO) noted 12 of these programs with early childhood care and development as a primary objective annually spend at least \$14.2 billion in taxpayer funds. Unfortunately, rather than improve existing services for low-income children and families, the President has proposed creating new early education programs. Recognizing the very real fiscal challenges facing the country, policymakers have a responsibility to examine and reform existing early care and education programs before creating new programs.

### *Head Start*

Through a federal investment of over \$9 billion, the Department of Health and Human Services (HHS) 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.

Unfortunately, not all Head Start programs provide lasting gains. A 2010 Head Start Impact Study conducted by HHS 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 participated in the program had dissipated by the time he or she reached first grade. The Third Grade Follow-Up to the Impact Study released in December 2012 found similar results: the few benefits achieved by participating children were seldom 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 hardworking taxpayers and, more importantly, vulnerable children.

The Committee is committed to meeting the needs of vulnerable children and families, while also balancing the interests of taxpayers. The Committee has outlined five principles for reforming Head Start, including reducing unnecessary regulatory burdens, encouraging local innovation, and strengthening coordination between Head Start and programs at the state and local levels.

In the same vein, the Committee is concerned with HHS's Proposed Rule (NPRM) updating the Head Start Performance Standards. At an estimated cost of \$1.15 billion, or a 13 percent increase above funding levels at the time of the proposal, the NPRM would lead to a reduction in 126,448 children's slots and a reduction of 9,432 teachers' jobs if the additional funding needs are not met. The Committee intends to pursue lasting reforms to the Head Start program and requests no funding for the administration's proposed performance standards and any new initiatives

### *Preschool Development Grants*

In 2014, the administration developed a new, unauthorized preschool development grants (PGD) program, intended to build, develop, and expand access to high-quality preschool programs with the goal to lay the foundation for Obama's Preschool for All initiative. The administration requested \$750 million for the PDG program, as well as \$75 billion (over 10 years) for the Preschool for All initiative, in FY 2016. The PGD was provided \$250 million annually for FY 2014, 2015, and 2016, which was disbursed through the Department of Education (ED).

In the 2015 bipartisan reauthorization of ESEA, Congress moved the program from ED to HHS and refocused its purpose on better coordination and alignment of existing programs. The

program now addresses existing duplication and fragmentation, promotes an integrated mixed delivery system among local agencies, private and public organizations, and faith-based providers, and provides governors discretion to determine grant recipients in their states rather than the federal government steering funds only to state departments of education.

### **Enhancing Career and Technical Education**

The Bureau of Labor Statistics (BLS) recently reported more than 2.8 million Americans between the ages of 16 and 24 are looking for jobs. Meanwhile, industries critical to our economy have jobs to fill and not enough qualified applicants to fill them. It is the unfortunate reality that many of the career and technical education programs intended to educate young Americans have not kept pace with changing employer needs.

The Committee believes strengthening career and technical education programs funded through the *Carl D. Perkins Career and Technical Education Act* (Perkins Act) can better prepare high school and community college students to compete in a global economy. To achieve this goal, the Committee urges the Budget Committee to support our efforts to provide states with the flexibility needed to implement innovative programs and ensure students and employer needs are met through the reauthorization of the *Perkins Act*.

### **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 empowered the federal government to micromanage school lunches, breakfasts, suppers, snacks, and other food sold on school campuses. The Committee believes the Department of Agriculture's regulatory policies implementing the 2010 law are 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 in certain areas, more must be done. The Committee will work to reduce the cost and burden of new federal requirements as it reauthorizes the *Child Nutrition Act* and *Richard B. Russell National School Lunch Act*. The Committee urges the Budget Committee to help ensure child nutrition laws are reauthorized in a budget neutral manner.

## **WORKFORCE PRIORITIES**

With the final year of the Obama administration now beginning, workers, employers, and job seekers are still facing significant challenges. According to the BLS, there were 7.9 million unemployed people in December 2015, a number which has changed little from the previous two



months. Since June 2015, the number of long-term unemployed also remained essentially unchanged at 2.1 million. Six million Americans were working part-time because their hours had been cut or because they were unable to find full-time jobs. Of particular concern is the workforce participation rate, which stood at 62.6 percent in December 2015 – its lowest point since December 1977.

Overall, total payroll employment grew by 2.7 million jobs in 2015. However, the Committee notes the rate of growth was less than the previous year, when 3.1 million jobs were created. In December 2015, BLS published a sobering report concerning the current trajectory of employment, which stated the U.S. economy is projected to add a total of 9.8 million payroll jobs, a gain of 6.5 percent, from 2014 to 2024. Service-providing industries will account for more than nine out of 10 new jobs, with the health care and social assistance sectors alone accounting for more than one-third – or 3.8 million – new jobs. However, BLS forecasts a net decline in manufacturing employment, which will account for less than 11.5 million workers in 2024.

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

### **Improving our Nation's Workforce Development System**

In the 113th Congress, House Republicans led the effort to reform the nation's broken workforce development system. That effort culminated in the passage of the *Workforce Innovation and Opportunity Act* (WIOA). Signed into law in 2014, 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. Therefore, the Committee is extremely disappointed that the Department of Labor has repeatedly failed to meet the statutory deadlines associated with the implementation of this important law. Rather than continuing in this bipartisan effort and focusing time and resources on implementing the new law, the administration has instead focused its time and energy promulgating punitive and unnecessarily burdensome regulations that make life harder for working families and small business owners. Delays such as these inhibit the ability of states and local areas to implement the law and stymies efforts to effectively reform the workforce development system.

## **Protecting Workplace Democracy**

Over the past seven years, the Obama administration has undertaken an agenda meant to benefit its special-interest union supporters at the expense of workers and job creators. Not only have the administration's labor-management policies threatened workers' rights to freely engage in or refrain from union activity, they have made labor relations more burdensome and difficult for employers. The Committee will continue to protect workers by engaging in robust oversight of the administration's actions and reporting its findings to the American people.

### *National Labor Relations Board*

Since 2009, the National Labor Relations Board (NLRB or Board) has consistently pursued an agenda that favors union activism at all costs, while turning a blind eye to employers, workers, and even rank-and-file union members. Despite strong opposition from Republican Board members and stakeholders representing employers and workers, the Democrat-controlled Board has restricted workers' right to a secret ballot; expanded protections for unions; made it more difficult for employees to challenge union representation, jeopardized the privacy of workers and their families; changed the test for determining employee bargaining units to allow unions to gerrymander the workplace with micro-unions; reduced employer protection from union attacks, and adopted representational election procedures that will significantly restrict employer free speech and employee free choice (i.e., "ambush elections"). Many observers – including this Committee – find the NLRB's actions over the past seven years to be unprecedented, as they have rewritten labor policies in place for decades under previous Boards controlled by both parties to the detriment of workers and employers alike.

The Committee has held hearings on the NLRB's actions and consistently engaged in a variety of oversight activities. In particular, the Committee has focused on the Board's "ambush election" rule and its decisions to establish "micro unions" and expand the joint employer standard. In October 2015, the Committee approved H.R. 3459, the *Protecting Local Business Opportunity Act*, which would restore the long-held definition of "joint employer" overturned by the Board in August 2015. The legislation would roll back a harmful Board decision, prevent the disruption of countless small businesses, and preserve the ability of entrepreneurs to pursue the American dream.

In addition, the Committee is concerned by the NLRB's actions that infringe upon the rights of Native Americans. In a 2004 decision, the Board broke from more than 30 years of precedent by deciding it has jurisdiction over tribal activities. The Committee strongly disagrees with this approach and in July 2015 approved H.R. 511, the *Tribal Labor Sovereignty Act*, to prevent the NLRB from exerting jurisdiction over Native American businesses operating on tribal lands. In November 2015, H.R. 511 was passed by the House of Representatives with bipartisan support.

### *Office of Labor-Management Standards*

The Department of Labor's (DOL) Office of Labor-Management Standards (OLMS) is responsible for ensuring unionized workers are provided transparency and accountability with respect to how union leadership manages and uses their dues. The Committee is concerned with actions taken by the Obama administration that weaken OLMS's safeguards for rank-and-file

union members and regulate the lawful activities of employers in ways that unfairly advantage union leadership. The most recent example of this union bias is OLMS's effort to redefine "advice" under section 203 of the *Labor-Management Reporting and Disclosure Act* through regulation. This proposed rewrite of the so-called "persuader rule" would end a policy dating back more than 50 years. The Committee is concerned the proposed change would limit the ability of employers to legally and efficiently communicate with their employees about union issues. Of even greater concern, workers will be denied the information they need to make fully informed decisions regarding union participation. Upon issuance of the new rule, the Committee anticipates engaging with workers, employers, and other stakeholders to determine this rule's impact on workplace democracy.

### **Safeguarding Retirement Savings**

The Committee will continue to advocate for policies that ensure workers and retirees have access to savings options that are voluntary, portable, and secure. The Committee will also promote a well-funded defined benefit system, while safeguarding against regulations that would stifle individual retirement savings. For example, the Committee will continue to examine the consequences of changes to the defined benefit pension funding rules and the finances of the Pension Benefit Guaranty Corporation (PBGC). In particular, the Committee intends to build upon the bipartisan *Multiemployer Pension Reform Act of 2014*. The Committee will closely oversee the administration's implementation of the law and work diligently to complete other reforms needed to modernize the multiemployer pension system.

In addition to strengthening the defined benefit system, the Committee will also defend defined contribution plans and Individual Retirement Accounts from regulatory threats that increase costs and reduce access to vital advice. For example, the Committee will work to prevent the Department of Labor from implementing any fiduciary regulatory proposal that would make it harder for low- and middle-income families to plan for retirement. DOL's initial proposal, issued in 2010, was withdrawn in 2011 in the face of fierce opposition from stakeholders and Members of Congress from both parties. The Department subsequently revised its rulemaking and published a new proposal in April 2015. Since 2011, the Committee has held a number of hearings and has engaged in extensive oversight through letters and briefings from DOL's Employee Benefits Security Administration (EBSA) officials. The Committee understands EBSA is now in the process of analyzing comments in anticipation of publishing a final rule in Spring 2016. In addition to pursuing a substantive legislative remedy, such as that embodied in H.R. 4293, the *Affordable Retirement Advice Protection Act*, the Committee will continue its oversight of the process by which this rule was written and the implications of its policy changes on workers and retirees.

Furthermore, the Committee will seek to identify and promote policies that expand retirement opportunities for workers and secure PBGC's ability to protect benefits in the future without the need for a taxpayer bailout. The Committee will also continue to oppose retirement-related policy proposals such as the one sought by the Obama administration in its FY 2016 budget request which would have provided the PBGC with the authority to set insurance premiums assessed to defined benefit pension plans. The Committee believes that rather than improving

PBGC's financial condition, such proposals may actually hurt the agency by discouraging plan sponsors from participating in the system.

### **Promoting Policies to Lower Health Care Costs**

The Committee realizes access to affordable health care and quality health services is a leading concern for many workers and their families. With its enactment in 2010, the *Patient Protection and Affordable Care Act* (PPACA) fundamentally changed the health care system. Of specific concern for the Committee are the detrimental changes PPACA imposed on employer-sponsored health care, including mandates and new taxes that increased costs for employers, employees, and their families.

Among its more onerous mandates, PPACA requires employers with 50 or more full-time equivalent employees to offer government-approved health insurance coverage to its full-time employees or face new tax penalties. Originally scheduled to take effect in 2014, this mandate has been delayed repeatedly through a series of unilateral actions by the Obama administration. By electing to delay the employer mandate, the Obama administration recognized PPACA's detrimental impact on our nation's workplaces. However, simply delaying this mandate does not ameliorate the laws' fundamental flaws, nor mitigate the significant harm it is inflicting on both employers and their workers.

More than 450 employers – including more than 100 schools – have publicly stated they are cutting or plan to reduce hours or make other staffing changes to avoid being subject to the employer mandate and penalties associated with the health care law. The CBO projects the health care law will result in two million fewer full-time jobs. PPACA's employer mandate is jeopardizing school systems around the country that operate on a fixed budget, resulting in diminished hours and wages for teachers and reduced services for students. The Committee is committed to continuing to examine PPACA, giving careful attention to its negative impact on employers, workers, schools, and students. While the Committee will continue to highlight the many glaring flaws in this ill-conceived law, the Committee will also continue working with other committees of jurisdiction to replace the law with responsible, affordable, patient-centered, and market-based reforms.

### **Access to Equal Employment Opportunity**

All workers are entitled to equal access to employment opportunities. In order to ensure federal policies protect individuals from employment discrimination, the Committee vigorously oversees the federal government's implementation and enforcement of laws such as Title VII of the *Civil Rights Act of 1964* and the *Equal Pay Act*. Through this oversight, the Committee has discovered the Equal Employment Opportunity Commission (EEOC) has engaged in overly punitive regulatory and enforcement activities. Specifically, the Committee is concerned with abusive investigations and litigation, failure by the agency to comply with its statutory duty to conciliate, and guidance limiting employers' use of criminal background checks during the hiring process. These misguided regulatory and enforcement activities divert time and resources away from pursuing claims of discrimination raised by employees. The Committee plans to continue to examine EEOC's actions and may consider possible legislative action to remedy the agency's overreach.

The Committee will also continue to monitor EEOC's regulatory intrusion into the use of health care "wellness programs." These programs benefit both workers and employers. Despite explicit statutory authorization for these programs, EEOC has argued some violate the *Americans with Disability Act* (ADA) and the *Genetic Information Nondiscrimination Act* (GINA). This novel interpretation has resulted in considerable uncertainty for employers. The Committee anticipates EEOC will issue final rules attempting to reconcile its interpretation with existing health laws in spring 2016. The Committee will continue to protect these health programs from counterproductive rulemakings and litigation through oversight letters, hearings, and possible consideration of H.R. 1189, the *Preserving Employee Wellness Programs Act*.

The Committee will continue its oversight of the Office of Federal Contract Compliance Programs (OFCCP) with attention to its implementation and enforcement of expanded affirmative action requirements for federal contractors with respect to veterans and individuals with disabilities. Additionally, in 2014 the President signed two Executive Orders (EO) and issued a memorandum requiring OFCCP to collect data on compensation, bar pay secrecy policies, and prohibit discrimination based on sexual orientation and gender identity. Further, in January 2015, OFCCP announced a proposed rule updating and revising its sex discrimination regulations for contractors. These rules pose significant compliance challenges for job creators. Therefore, in 2014, the Committee requested the GAO undertake a top-to-bottom review of OFCCP enforcement. The report is expected in spring 2016. Informed by this report, the Committee will continue to ensure OFCCP's policies and enforcement practices actually protect workers and do not hinder job creation in the private sector.

### **Grants for Establishing State Paid Leave Funds**

The Obama administration's budgets have consistently requested financing for state initiatives designed to establish paid leave programs. Congress has firmly rejected these requests. These costly initiatives will not help businesses grow and hire more workers. The Committee recommends Congress again reject any effort to spend taxpayer money on this project in FY 2017.

### **Updating the Fair Labor Standards Act**

The Committee understands the lifestyles, demands, and needs of workers and employers are vastly different than when the *Fair Labor Standards Act* (FLSA) was originally signed into law nearly 80 years ago. Even with subsequent amendments, the FLSA has not been substantially revised in decades. Indeed, some portions of the law may not reflect the social and legal realities of the twenty-first century workplace. Given its importance as the primary law governing the wages, hours of work, child labor standards, and recordkeeping requirements for millions of private and public sector workers, the Committee is continuously evaluating the FLSA and its impact on workers and employers. The Committee intends to continue its review of the law and consider proposals to modernize the statute.

By contrast, instead of recommending legislative changes to update the FLSA, the Obama administration has pursued unilateral executive actions that will decrease economic productivity. For example, in March 2014, President Obama instructed Labor Secretary Perez to "update" the

overtime regulations under the FLSA, and a proposed rule was published in July 2015. The Committee opposes the proposed rule because it will limit opportunity and flexibility for workers. The Committee has also engaged with stakeholders, DOL officials, and the Small Business Administration's Office of Advocacy to better understand the dramatic costs this proposed rule will impose on a still-struggling economy. These regulations are slated to be finalized in spring 2016. At that time, the Committee will examine the rule carefully.

The administration is also limiting worker flexibility by implementing new policies that discourage the use of independent contractors. Many of these workers – some of whom are participating in the emerging so-called “sharing economy” – prefer the opportunity and flexibility this relationship offers in lieu of traditional employment. The Committee is concerned about regulatory efforts to increase requirements that would hinder businesses' abilities to engage independent contractors. For example, in July 2015, DOL's Wage and Hour Division issued an “Administrator's Interpretation” defining “employee” broadly, imposing burdens on workers and firms intending to participate in an independent contractor relationship. The Committee will continue to monitor employment and workplace trends, like the emergence of the sharing economy, and evaluate the extent to which DOL's interference could hinder economic growth and opportunity.

### **“Blacklisting” Executive Order**

For employers of all sizes, compliance with federal labor laws is a difficult task further complicated by regulatory changes. In July 2014, the President added to these burdens by signing the so-called “Fair Pay and Safe Workplaces” Executive Order. These new “blacklisting” regulations would effectively punish federal contractors and subcontractors that may have violated federal and state labor laws, even if the violation was inadvertent. These “blacklisting” rules threaten to undermine the federal procurement system, despite the fact the administration has failed to conclusively show any deficiencies in need of remediation.

The President's “blacklisting” proposal is fundamentally and irreparably flawed, so the Committee will continue to oppose any effort to unduly burden employers with onerous reporting requirements, further muddle existing labor laws, deprive contractors of due process rights, make it harder for small businesses to contract with the federal government, or increase taxpayer costs in an already expensive and often inefficient contracting process.

### **Updating Workers' Compensation Programs**

The Committee recognizes updates to workers' compensation programs are needed to ensure they can continue to provide much needed benefits and medical care coverage for injured employees and their families. Therefore, reforms to the *Federal Employees' Compensation Act* (FECA) are long overdue. The Committee has led bipartisan efforts to reform FECA, which resulted in House-passed legislation, the *Federal Workers' Compensation Modernization and Improvement Act* (H.R. 2465 of the 112th Congress) and continued review of the program during a May 2015 hearing. The Committee will continue its efforts to update the FECA program in 2016.

Benefits under the Black Lung Disability Trust Fund are in jeopardy because of increasing claims and inadequate revenue. The Black Lung Disability Trust Fund is responsible for paying benefits to coal miners diagnosed with black lung disease when no coal mine operator can be held liable for payments. A combination of a PPACA provision expanding benefits, inadequate revenues derived from the excise tax on coal production, and high interest loans to help cover compensation payments have resulted in billions of dollars of debt for the Trust Fund. In 2016, the Committee will work with DOL, the Department of the Treasury, GAO, and stakeholders to improve the Trust Fund's finances for injured miners and their families.

### **Protecting Workers' Safety and Health**

Ensuring workplace safety is critically important. The Committee believes the best way to accomplish this is to promote policies that combine proactive safety programs and compliance assistance with enforcement of workplace safety laws.

Unfortunately, the Occupational Safety and Health Administration (OSHA) under the Obama administration has instead emphasized punitive, enforcement-driven policies. Additionally, OSHA has pursued regulations with little demonstrated safety value. It has also circumvented the formal rulemaking process by using non-regulatory guidance, issuing letters of interpretation and enforcement guidance that rewrite regulations and policies without stakeholder comment or legislative involvement. Since 2011, the Committee has conducted aggressive oversight on these tactics through numerous hearings, letters, and agency briefings. The Committee anticipates a continued need for oversight in the final months of this administration. The Committee is particularly concerned with OSHA's attempts to expand its enforcement activities against franchisors and the rule OSHA expects to finalize in spring 2016 on occupational exposure to crystalline silica.

In addition, the Committee will continue to monitor the Mine Safety and Health Administration's (MSHA) implementation of enforcement programs to ensure it meets the goal of eliminating mining fatalities. The Committee will also continue to review MSHA's use of the administrative tools provided by federal mine safety laws to strengthen workplace safety for miners. Moreover, the Committee will continue to monitor MSHA's new and planned regulatory activities, including the continuing implementation of its regulation on respirable coal dust, and an anticipated study related to coal dust and rock dust. Further, the Committee is tracking MSHA's plans to propose its own regulatory change to respirable crystalline silica exposure limits. Finally, the Committee will monitor the extent to which the agency seeks stakeholder feedback regarding the use of refuge chambers in underground coal mines.

### **CONCLUSION**

The Committee on Education and the Workforce recognizes many challenges remain for students, workers, job creators, and retirees. However, the Committee is committed to advancing a positive, bold agenda that will serve all Americans – whether in the classroom, at the job site, or in a secure retirement. The Committee looks forward to working with the Budget Committee as it prepares its budget for FY 2017.