

**Minority Views to the Report on the Activities of the
Committee on Education and the Workforce for the
115th Congress
January 2, 2019**

Introduction

Committee Democrats in the 115th Congress advanced a legislative and oversight agenda focused on improving equity in education, protecting and expanding access to affordable health care, and ensuring the right to a safe workplace where workers can earn a decent wage, free from discrimination. These policy goals reflect our values and commitment that America is a place where everyone can succeed, not just the wealthy few.

Early Childhood Education

Research is clear on both the short- and long-term positive outcomes of quality preschool programs, including reduction of achievement gaps in elementary and secondary education and significant returns on investment through reduced criminal activity and reliance on federal benefits. State and local elected officials, and business, school, law enforcement, military, and economic leaders, have all expressed broad agreement that increased investments in quality early childhood education are critical to our country's economic growth and military readiness. Democratic members of the House Committee on Education and the Workforce (Committee Democrats) continued their commitment to improving access to early childhood education during the 115th Congress.

On March 16, 2017, House Committee on Education and the Workforce (Committee) Ranking Member Robert C. "Bobby" Scott (D-VA) (Ranking Member Scott), in partnership with House Committee on Ways and Means' Subcommittee on Human Resources Ranking Member Danny K. Davis (D-IL) (Ranking Member Danny Davis), sent a letter to the U.S. Government Accountability Office (GAO) requesting it examine the benefits of the Child Care and Development Block Grant (CCDBG) for middle class families whose incomes are too high to qualify for the program. GAO is expected to finalize its report during the first half of 2019.

On July 13, 2017, the Committee's Subcommittee on Early Childhood, Elementary, and Secondary Education (ECESE Subcommittee) held a hearing titled *Opportunities for State Leadership of Early Childhood Programs*. The hearing provided an overview of federal investments in early learning, detailed efforts by states to complement federal funding, and highlighted the need for increasing access to high-quality early learning opportunities. Committee Democrats invited expert testimony from Dr. Pamela Harris, President and CEO of Mile High Early Learning in Denver, Colorado, who discussed the importance of federal partnership in supporting state efforts to improve access and quality.

On September 14, 2017, Committee Democrats introduced H.R. 3773, the *Child Care for Working Families Act*, which would address the high cost of child care by ensuring that no family making under 150 percent of the state median income pays more than seven percent of their income on child care. The bill would also support universal access to high-quality

preschool programs for all 3- and 4-year olds. Finally, the bill would significantly improve compensation and training for the child care workforce to ensure that our nation's teachers and caregivers, as well as the children they are caring for, have the support necessary to thrive. Despite co-sponsorship by 137 members of Congress, the Committee has taken no action on the bill.

On January 18, 2018, Ranking Member Scott and House Appropriations Committee's Subcommittee on Labor, Health and Human Services, Education, and Related Agencies (Labor-HHS-ED) Ranking Member Rosa DeLauro (D-CT) (Ranking Member DeLauro) sent an oversight letter to the U.S. Department of Health and Human Services (HHS) requesting HHS' reasoning for closing the Office of Early Childhood Development. On March 20, 2018, HHS sent a response letter saying that while the Office of Early Childhood Development closed, its responsibilities to administer Preschool Development Grants (PDGs) and coordinate a unified vision of early learning are still a responsibility of HHS and have been incorporated into other aspects of the Administration of Children and Families (ACF).

Committee Democrats worked with their Republican and Senate colleagues to ensure that HHS, in consultation with the U.S. Department of Education (ED), faithfully implements PDGs authorized under the *Every Student Succeeds Act* (ESSA). On February 1, 2018, Ranking Member Scott, along with Committee Chairwoman Virginia A. Foxx (R-NC) (Chairwoman Foxx) and Senate Health, Education, Labor, and Pensions (Senate HELP) Committee Chairman Lamar Alexander (R-TN) (Senator Alexander) and Ranking Member Patty Murray (D-WA) (Senator Murray), sent an oversight letter to HHS and ED clarifying the intent of the law and expectations for faithful implementation of the grant's first year. On March 28, 2018, ED provided a written response describing agency efforts to transition the grant to HHS while still maintaining ED's role in administering the grant. HHS met with bipartisan Committee staff on at least two occasions to brief and consult with staff about the grant's Funding Opportunity Announcement.

On March 6, 2018, the ECESE Subcommittee held a hearing titled *Strengthening Welfare to Work with Child Care*, which focused on how investments in child care, including CCDBG, support working parents, alleviate generational poverty, and boost the economy. Committee Democrats invited expert testimony from Dr. Tammy Mann, President and CEO of the Campagna Center in Alexandria, Virginia, and President of the National Association for the Education of Young Children (NAEYC), who discussed the lack of access to affordable, high-quality child care and the need to pass H.R. 3773, the *Child Care for Working Families Act*, in order to address access and quality shortfalls.

K-12 Education

Implementation of the Every Student Succeeds Act

Committee Democrats led a Democratic Caucus effort to oppose the Republican Majority's use of a *Congressional Review Act* (CRA) resolution of disapproval to repeal all *Elementary and Secondary Education Act* (ESEA) accompanying regulations clarifying state and school district flexibilities and responsibilities relating to accountability, data and reporting, and state plan

requirements under ESSA. Under a CRA resolution of disapproval, the disapproved rule cannot take effect, and such a rule cannot be reissued in substantially the same form unless authorized by Congress. In the face of unified Democratic opposition, H.J. Res. 57 passed the U.S. House of Representatives (House) on February 9, 2017, by a party-line vote of 234-190. H.J. Res. 57 went on to pass the U.S. Senate (Senate) by a vote of 50-49 on March 9, 2017. The measure was signed into law on March 27, 2017, leaving ESSA's core equity provisions unregulated.

On March 10, 2017, Committee Democrats and Senate HELP Committee Democrats sent a letter to U.S. Secretary of Education Betsy DeVos (Secretary DeVos) seeking clarification on ED's updated consolidated state plan template, issued in the wake of enactment of H.J. Res. 57. The letter asked Secretary DeVos for additional information concerning ED's oversight of state compliance with statutory requirements. A response was received from Assistant Secretary Jason Botel on May 26, 2017, acknowledging receipt of the March 10th letter but failing to provide the information requested. At the time the response was received, the first round of ESSA state plans had already been submitted to ED.

The Committee held a hearing titled *ESSA Implementation: Exploring State and Local Reform Efforts* on July 18, 2017. Committee Democrats invited expert testimony from Mr. Phillip Lovell, Vice President of Policy and Government Relations for the Alliance for Excellent Education. Mr. Lovell's testimony and subsequent answers to questions focused on the need for (1) strong oversight from Congress, and (2) equity to meet the requirements of the law and statutory intent, particularly given ED's failure to faithfully implement the law's statutory requirements. Committee Democrats spoke about: (1) the necessity of balancing the law's flexibilities with strong oversight and enforcement of ESSA protections for historically underserved students; (2) the wide variance in quality among, and statutory violations contained in, consolidated state plans under ED's review; and (3) the need for Congress to support ESSA implementation through increased funding for ESEA programs.

By September 2017, ED had approved fourteen ESSA consolidated state plans. Committee Democrats asserted that inconsistent ED feedback and lack of technical assistance had resulted in numerous submitted and approved state plans containing proposals that violated both the plain reading and bipartisan intent of the law. On September 18, 2017, Ranking Member Scott and Senator Murray sent an oversight letter to Secretary DeVos articulating the core requirements of Title I-A's state plan compliance, many of which were in question in the approved plans. A response from Secretary DeVos was received on October 24, 2017, stating her intent and commitment to implement and enforce ESSA statutory requirements, but lacking information to clarify how ED would assist states where necessary to amend consolidated plans to uphold the requirements and intent of the law.

On March 7, 2018, ten Committee Democrats joined leaders and members of the Congressional Asian Pacific American Caucus (CAPAC), Congressional Black Caucus (CBC), and Congressional Hispanic Caucus (CHC) – jointly known as the Congressional Tri-Caucus – in sending a letter to Secretary DeVos expressing concerns with ED's approval of consolidated state plans that violated both the letter and spirit of ESSA. The letter focused on two of the law's provisions governing the development of statewide accountability systems, as required under Title I-A: lack of state education agencies' (SEA) attention to subgroup performance and

conflated categories of identification for schools in need of school improvement. Both provisions were top priorities for the Congressional Tri-Caucus during the 2015 ESSA negotiations and critical to securing vocal caucus support for final passage of ESSA. Secretary DeVos responded to the letter on June 22, 2018, asserting that all approved consolidated state plans are compliant with the law's minimum requirements.

On May 16, 2018, Ranking Member Scott joined Senator Murray in sending an oversight letter to Secretary DeVos regarding her misuse of the law's transition authority to waive core ESEA requirements upon request. ED had denied a request by the North Dakota SEA to waive core ESEA assessment requirements, citing the proposal's lack of statutory compliance and justification for the waiver. ED subsequently approved the state to move forward with its waiver proposal – uncorrected to account for its previous denial – but using Secretary DeVos's transition authority. No response was received.

On May 22, 2018, Secretary DeVos appeared before the Committee to testify in defense of the Administration's proposed Fiscal Year 2019 budget. This hearing was the first appearance of Secretary DeVos before the Committee. Committee Democrats pressed Secretary DeVos on ESSA implementation, questioning her approval of state plans that violate statutory requirements, including plans that ignore the performance of subgroups of students. Committee Democrats also questioned Secretary DeVos on systems of annual meaningful differentiation, school improvement efforts, and the lack of ED oversight efforts to ensure faithful implementation of the law.

On July 12, 2018, Ranking Member Scott and Senator Murray sent an oversight letter to Secretary DeVos urging ED to reject the Utah SEA's request that ED misuse transition authority to grant the state a one-year reprieve from the law's 95 percent testing participation rate requirement. Secretary DeVos subsequently denied Utah's request to use transition authority to waive the 95 percent testing participation rate requirement, and a response from Secretary DeVos was received on September 17, 2018.

Public School Infrastructure

On May 17, 2017, Committee Democrats introduced H.R. 2475, the *Rebuild America's Schools Act*, to create a \$70 billion grant program and \$30 billion tax credit bond program for high-poverty schools with facilities that pose health and safety risks to students and staff. Additionally, the bill would leverage federal, state, and local resources for an overall investment of \$107 billion, creating over 1.9 million jobs based on an Economic Policy Institute analysis that each \$1 billion spent on construction creates 17,785 jobs. The bill was introduced with 28 original cosponsors.

On June 8, 2017, Committee Democrats convened a briefing on the physical and digital infrastructure of public schools.

On January 17, 2018, Committee Democrats led a Democratic Caucus letter to President Trump about the introduced *Rebuild America's Schools Act* in response to the President's comments to rebuild the Nation's infrastructure, including schools. The authors of the letter invited the

President to work toward passing the *Rebuild America's Schools Act* to meet that goal. The letter was signed by 154 members of Congress. No response was received.

On October 23, 2018, Ranking Member Scott wrote Chairwoman Foxx to request a hearing on the *Rebuild America's Schools Act* before the close of the 115th Congress. No response was received, and no hearing was convened.

Significant Disproportionality

On December 6, 2017, Committee Democrats supported Representatives A. Donald McEachin (D-VA) and Sean P. Maloney (D-NY) in holding a briefing titled *The Over-Identification and Discipline in Special Education: Protecting Minority Students with Disabilities*. The briefing highlighted the importance of the 2016 Equity in IDEA regulation on significant disproportionality and the need for ongoing oversight on over-identification, inappropriate placement, and misuse of discipline of students of color with disabilities. The panel included expert testimony from Ms. Diane Smith Howard, Senior Staff Attorney with the National Disability Rights Network; Mr. Michael Yudin, former Assistant Secretary for the Office of Special Education and Rehabilitative Services at ED; Mr. Daniel Losen, Director of the Center for Civil Rights Remedies at the Civil Rights Project at UCLA; and Ms. Selene Almazan, Legal Director for the Council of Parent Attorneys and Advocates.

Secretary DeVos announced ED's intent to delay the Equity in IDEA regulation in a Notice of Proposed Rulemaking (NPRM) on February 27, 2018. Committee Democrats joined with Senate HELP Committee Democrats to submit a formal comment in opposition to the proposed delay on May 14, 2018. The formal comment explained the legal requirements of significant disproportionality, the need for a standard methodology due to years of inconsistent implementation, the need for standardization for enforcement, the lengthy comment period already provided from the original regulation, and the harm the delay would cause children. Despite more than 80 percent of the comments received by ED opposing the delay and with no evidence-based rationale for such delay, ED finalized the two-year delay of the Equity in IDEA regulation on June 29, 2018.

School Choice

On February 2, 2017, the Committee held a hearing titled *School Choice and Equitable Access to a Quality Education*. Committee Democrats invited testimony from Ms. Almo Carter, who spoke about her experience navigating public and private school choice options in the District of Columbia in pursuit of a quality education for her son, Jacob, who is a student with disabilities. Ms. Carter's testimony emphasized the need for educational choice policies that support all parents to make informed choices among high-quality, accountable public school choice options that serve all students. Committee Democrats emphasized, and focused their questions on, the inequitable opportunities for students with disabilities and lack of civil rights protections in private school voucher programs.

On Wednesday June 13, 2018, the Committee held a hearing entitled *The Power of Charter Schools: Promoting Opportunity for America's Students*. Committee Democrats invited

testimony from Mr. Jonathan Clark, a parent and community activist from Detroit, Michigan. Mr. Clark spoke about the need for equitable, high-quality public school options for all children in Detroit. He also addressed the state of Michigan's underfunding of traditional public schools and the lack of oversight over Detroit's low-quality and chaotic charter school system. Committee Democrats engaged with Mr. Clark and other witnesses to discuss (1) the role of public school choice in achieving a strong public education system and quality public education for every child, and (2) how Michigan's rapid expansion of low-quality and for-profit charter schools has undermined the state's public education system and negatively impacted student learning.

School Climate

Ranking Member Scott requested a GAO report on alternative schools that serve public elementary and secondary students on May 3, 2017. The request asked GAO to examine types of alternative schools, school climate, compliance with federal and civil rights requirements, and educational impact for enrolled students.

On July 26, 2017, Committee Democrats led an oversight letter addressed to Secretary DeVos concerning SEA compliance with ESEA statutory requirements to address school conditions and exclusionary discipline procedures and practices. The letter outlined the federal requirements for reduction of exclusionary discipline and urged Secretary DeVos to support states and school districts in the implementation of evidence-based practices to reduce exclusionary and aversive discipline. Sixty-two House Democrats signed the letter. Secretary DeVos responded to the letter on October 2, 2017, outlining various grant programs ED administers on school climate, but failing to address the concerns regarding lack of compliance with ESEA requirements.

Ranking Member Scott submitted public comments on January 16, 2018, in response to the U.S. Commission on Civil Rights' public briefing titled *The School-to-Prison Pipeline: The Intersections of Students of Color with Disabilities*. The public comments outlined the ongoing work by Committee Democrats to ensure that legal protections for students of color with disabilities are upheld by both ED and the U.S. Department of Justice (DOJ) under the Trump Administration.

On March 15, 2018, Ranking Member Scott sent a letter to Secretary DeVos reiterating congressional Democrats' request to maintain the 2014 ED-DOJ School Discipline Guidance Package. This request was first articulated by Ranking Member Scott to Secretary DeVos during an in-person meeting on January 11, 2018. The letter was sent following ED's review of a GAO report finding that exclusionary discipline is disproportionately used on black students, boys, and students with disabilities. The letter urged Secretary DeVos to maintain the guidance package and ensure full civil rights protections for students. No response was received.

On April 4, 2018, Committee Democrats and Democrats from the House Committee on the Judiciary (Judiciary Committee Democrats) released a GAO Report titled *Discipline Disparities for Black Students, Boys, and Students with Disabilities*. The report found that the pattern of disproportionate discipline persists regardless of the type of disciplinary action, level of school poverty, or type of school attended.

On October 24, 2018, H.R. 6, the *Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act* or the *SUPPORT for Patients and Communities Act*, became law. Committee Democrats successfully fought for the inclusion of a new grant program to support school districts in expanding access to evidence-based student support services to mitigate the negative impact of childhood trauma. This \$50 million program sets an important precedent for federal K-12 education law in its recognition of both the impact of childhood trauma on student outcomes and the need to improve trauma-informed services and social and emotional learning to increase student outcomes.

On November 14, 2018, Committee Democrats joined Representative Don S. Beyer (D-VA) and 34 additional original Democratic cosponsors to introduce H.R. 7214, the *Keeping All Students Safe Act*. The Act prohibits student seclusion and limits the use of physical restraint on students in any school receiving federal funds, and it authorizes a competitive grant program to support the use of evidence-based preventative training strategies for educators and other school personnel. The bill sets federal minimum safety standards in schools, requires states to monitor compliance with such standards, and increases transparency and oversight to prevent future abuse of students. Previous versions of the bill have been introduced each congress since 2009, and the House passed the bill during the 111th Congress (H.R. 4247) on March 3, 2010, by a vote of 262-153.

School Safety

On February 16, 2018, Committee Democrats sent Chairwoman Foxx a formal request to conduct hearings on school shootings and school safety. The request was sent in the wake of the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018. No response was received, and no hearing was convened.

While awaiting a response from Chairwoman Foxx, Committee Democrats convened a forum entitled *Preventing School Shootings: A Comprehensive Approach* on March 20, 2018. The forum focused on evidence-based solutions to school safety, including violence prevention and improving school climate, and the importance of maintaining student civil rights protections for all students. Committee Democrats heard from and engaged in dialogue with a panel of expert practitioners, educators, and a student, including: Dr. Akil Ross, a school principal from South Carolina; Ms. Stacey Lippel, a teacher from Parkland, Florida; Dr. Dewey Cornell, a clinical psychologist and researcher from the University of Virginia; Mr. Coldayne Hayden, a student from New York, New York; Mr. Joaquin Tamayo, a former Obama Administration official; and Dr. Dianna Wentzell, Connecticut Commissioner of Education. Invitations to participate in the forum were extended to Secretary DeVos and to Committee Republicans through Chairwoman Foxx on March 13, 2018. Neither Secretary DeVos nor Committee Republicans attended the forum.

On May 23, 2018, Committee Democrats joined Representative Frederica S. Wilson (D-FL) and other congressional Democrats at a *Gun Violence Prevention Forum* with students from Marjory Stoneman Douglas High School, Miami Northwestern Senior High School, and other schools around the nation. The forum focused on the educational impact of gun violence on schools and

communities. Committee Democrats in attendance at the forum discussed police presence in schools, evidence-based solutions to improve school safety, and civil rights protections.

On July 19, 2018, Ranking Member Scott and House Judiciary Committee Ranking Member Jerrold L. Nadler (D-NY) (Ranking Member Nadler) requested that GAO examine school safety and the impact of school safety programming. The request asked GAO to address funding and programming, characteristics of schools experiencing safety incidents, and discipline reform initiatives.

In response to Secretary DeVos's testimony before the Senate Appropriations Committee's Subcommittee on Labor-HHS-ED, Committee Democrats sent a letter to Secretary DeVos regarding the Federal Commission on School Safety on June 8, 2018. The letter requested that Secretary DeVos provide a written response to the question of whether the Commission would study gun violence prevention. No response was received.

On August 28, 2018, Committee Democrats led a letter to Secretary DeVos expressing strong opposition to any action by ED to allow funds authorized under Title IV-A of ESEA, as amended by ESSA, to be used for the purchase of firearms or firearms training. The letter called upon Secretary DeVos to uphold Administration precedent, and the spirit and intent of ESEA, and issue Title IV-A subregulatory guidance to clarify that no such purchases are allowed. The letter was signed by 173 House Democrats. On August 31, 2018, Secretary DeVos responded, claiming statutory ambiguity and a lack of Executive discretion to issue any such clarification, despite broad authorizing statutory language and the issuance of similarly-situated subregulatory guidance concerning allowable uses of U.S. Department of Homeland Security (DHS) grant funding that excludes firearms purchases.

In the wake of Secretary DeVos's failure to faithfully implement Title IV-A, on September 7, 2018, Committee Democrats sent a letter to congressional leaders and appropriators in the House and Senate urging the adoption of language in the final Fiscal Year 2019 Labor-HHS-ED funding measure to prohibit funds authorized under Title IV-A of ESEA, as amended by ESSA, from being used for the purchase of firearms or firearms training. No such language was adopted.

On December 18, 2018, Committee Democrats responded to the Federal Commission on School Safety's (Commission) final report, which made policy recommendations to improve school safety that ignored the research consensus, undermined students' civil rights, and failed to address the role of gun violence in school shootings. The 177-page report consisted of three sections: (1) Prevent; (2) Protect and Mitigate; and (3) Respond and Recover. Nearly a third of the report focused on what to do once the shooter was in the parking lot or after the shooting occurred. The bulk of claims made in the report lacked peer-reviewed citations or an evidence-base. The Commission recommended a rescission of the 2014 ED-DOJ Discipline Guidance Package, suggesting, without substantiating evidence, that the guidance created unsafe schools. The Commission further suggested that use of disparate impact analysis to enforce title VI of the Civil Rights Act is an inappropriate mechanism to determine whether policies and practices have a discriminatory effect. Most notably, the report indicated that, moving forward, ED will enforce

title VI of the Civil Rights Act only when violations result from intentional discrimination in discipline, in contravention of the statute and accompanying regulations that remain in effect.

On December 21, 2018, the Trump Administration rescinded the 2014 ED-DOJ Discipline Guidance Package. The decision to rescind the guidance came after the release of the Commission’s final report suggesting, without substantiated evidence, that the guidance contributed to unsafe schools that ultimately resulted in school shootings. The guidance rescission follows the Spring 2018 release of a GAO audit finding that Black students, boys, and students with disabilities receive harsher punishments than their classmates for similar or lesser offenses. Ranking Member Scott released a statement to the press decrying the rescission and noting that school districts are still obligated to comply with title VI of the Civil Rights Act and accompanying regulation, which expressly prohibits policies and programs that disproportionately impact students of color, regardless of intent.

Educational Equity and Civil Rights Enforcement

Committee Democrats led a Democratic Caucus effort to oppose the Republican Majority’s use of a CRA resolution of disapproval to repeal *Higher Education Act of 1965* accompanying regulations to improve teacher preparation program quality. In the face of strong Democratic opposition, H.J. Res. 58 passed the House of Representatives on February 9, 2017, by a vote of 240-181. H.J. Res. 58 went on to pass the Senate by a vote of 59-40 on March 8, 2017. The measure was signed into law on March 27, 2017, eliminating data transparency to support student achievement and quality instruction.

In response to a public comment period from ED relating to the Civil Rights Data Collection (CRDC), Committee Democrats joined Senate HELP Committee Democrats to submit a comment on February 28, 2017. The comment articulated strong support for the CRDC and current data elements and urged Secretary DeVos to maintain the CRDC without amendment.

Marking the anniversary of the 1954 *Brown v. Board of Education* Supreme Court decision, Committee Democrats and Judiciary Committee Democrats reintroduced H.R. 2486, the *Equity and Inclusion Enforcement Act* (EIEA), on May 17, 2017. The EIEA restores a private right of action to disparate impact claims brought under title VI of the *Civil Rights Act of 1964* (Civil Rights Act), and it requires school districts and institutions of higher education to employ Title VI coordinators to ensure compliance. The EIEA has 19 cosponsors.

On May 22, 2017, Committee Democrats requested that GAO examine how students with disabilities and English learners are included in the National Assessment of Educational Progress (NAEP).

On May 22, 2017, Committee Democrats requested that GAO examine how states are carrying out the “child find” requirements under the *Individuals with Disabilities Education Act* (IDEA) and whether ED’s oversight mechanisms are sufficient to ensure eligible students are identified for services under IDEA.

Secretary DeVos appeared before the House Labor-HHS-ED Appropriations Subcommittee on May 24, 2017, during which she discussed the education of children with disabilities. In response to her comments, Committee Democrats led an oversight letter on June 29, 2017, requesting two key assurances regarding the legal requirements of educating students with disabilities. Secretary DeVos sent a response on October 5, 2017; it did not directly respond to the assurances but did clarify that ED expects all states receiving funds under IDEA to follow the requirements of the law.

On August 28, 2017, Committee Democrats sent a letter to Chairwoman Foxx requesting a hearing to examine how institutions of higher education are meeting their responsibilities under title VI of the Civil Rights Act. While awaiting a response from Chairwoman Foxx, Committee Democrats, together with Judiciary Committee Democrats, convened a forum on September 8, 2017, entitled *Affirmative Action, Inclusion, and Racial Climate on America's Campuses*. Committee Democrats heard from and engaged with a panel of student officers, representatives from institutions of higher education, and key legal experts to discuss the role of title VI of the Civil Rights Act in ensuring that students are welcomed to a safe learning environment. The panelists included: Mr. Payton Head, Former Student Body President, University of Missouri; Mr. Weston Gobar, President, Black Student Alliance, University of Virginia; Ms. Taylor Dumpson, Student President, American University; Ms. Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund; Mr. Richard Cohen, President, Southern Poverty Law Center; Dr. Benjamin Reese, Vice President of the Office for Institutional Equity, Duke University; Dr. Theresa Sullivan, President, University of Virginia; and Dr. Roger Worthington, Chief Diversity Officer, University of Maryland.

On October 18, 2017, Committee Democrats requested that GAO investigate inequities in parents' abilities to exercise their special education due process rights based on race, ethnicity, and socioeconomic status.

On November 13, 2017, Committee Democrats submitted a public comment to the Notice of Proposed Priorities (NPP) released by Secretary DeVos. The NPP outlined proposed priorities for use in discretionary grant programs at ED. Committee Democrats expressed serious concerns with priorities one, two, three, and ten. The concerns focused on the promotion of privatization of public education, efficiency above effectiveness, low-cost and low-quality programs, and school climate practices that lack evidence and foster a climate of exclusion. On March 2, 2018, ED released the Final Supplemental Priorities. The only change made was broadening language around students to "children or students" to clarify several of the priorities may be used for children within the 0-5 age range.

On April 19, 2018, Committee Democrats and other congressional Democrats requested that GAO investigate public schools' compliance with the *Americans with Disabilities Act of 1990* (ADA). The request specifically asked GAO to investigate: ADA compliance rate, compliance data available at the local level, and plans in place to ensure removal of barriers necessary to provide equal access.

To honor National Teacher Day on May 8, 2018, Committee Democrats joined other congressional Democrats to introduce H. Res. 876, *Supporting the goal of increasing public*

school teacher pay and public education funding. The resolution affirms support for teacher pay that is comparable to other college graduates with years in the workforce in the state in which they are employed and increases state and federal investment in quality instruction, classroom materials, and student services and supports in public schools. The resolution garnered 114 cosponsors, but no legislative action was taken.

On May 17, 2018, the Committee held a hearing titled *Protecting Privacy, Promoting Data Security: Exploring How Schools and States Keep Data Safe*. Committee Democrats, in recognition of May 17th as the 64th anniversary of the Supreme Court's landmark ruling in *Brown v. Board of Education*, and considering the Committee Republicans' lack of oversight of the Trump Administration's attacks on student civil rights, used the hearing to emphasize the need for careful examination of the Administration's actions in the area of student civil rights. Committee Democrats invited expert testimony from Ms. Catherine Lhamon, attorney and former Assistant Secretary for Civil Rights at ED. Committee Democrats engaged Ms. Lhamon in discussion on: (1) the need to combat persistent educational inequity with strong enforcement of federal education and civil rights law; (2) efforts to undermine key statutory protections for underserved students in the era of President Trump and Secretary DeVos, including process and staffing changes in ED's Office for Civil Rights, deregulation to leave core equity protections unenforced, and threats to existing enforcement efforts; and (3) the lack of Committee oversight of ED activities. Committee Democrats emphasized the timeline of attacks on civil rights during the previous 17 months of Secretary DeVos's tenure. At the time of this hearing, neither Secretary DeVos nor any ED official had yet testified before the Committee during the 115th Congress.

Also on May 17, 2018, and in honor of the 64th anniversary of the Supreme Court's landmark ruling in *Brown v. Board of Education*, Committee Democrats joined the Democratic Caucus, Congressional Tri-Caucus, and Judiciary Committee Democrats in introducing H. Res. 902, *Expressing the sense of the House of Representatives regarding the obligation of the Office for Civil Rights at ED and the Civil Rights Division of the Department of Justice to enforce title VI of the Civil Rights Act of 1964 and its implementing regulations, and for other purposes*. The resolution reaffirms Congress' commitment to ensuring that education systems prepare all students for success after high school and recognizes that the Offices for Civil Rights at ED and DOJ have an obligation to enforce title VI of the Civil Rights Act, including implementation of title VI regulations and particularly in light of evidence of persistent racial discrimination in education. The resolution also calls on the House to hold oversight hearings to ensure enforcement of title VI of the Civil Rights Act and to consider EIEA, to restore the Title VI right to individual civil actions involving disparate impact.

On May 17, 2018, Committee Democrats joined Judiciary Committee Democrats and Democratic Caucus leadership in hosting a forum to examine current enforcement of the Civil Rights Act in U.S. schools. The panel opened with an expert from GAO, who discussed the release of a recent report titled *Discipline Disparities for Black Students, Boys, and Students with Disabilities*. The GAO expert explained the methodology of the report, the findings, and how the investigation and report answered the questions initially posed by the members. Following the discussion with GAO, the panel continued with expert testimony from: Mr. Todd Cox, Director of Policy at the NAACP Legal Defense and Educational Fund; Mr. Daniel Losen,

Director of the Center for Civil Rights Remedies at the Civil Rights Project at UCLA; and Ms. Khulia Pringle, a parent organizer with Students for Education Reform-Minnesota. The panelists discussed state and school district actions that undermine civil rights protections and hinder equity of educational opportunity. They also highlighted the need for strong enforcement of title VI, including the importance of disparate impact analysis in such enforcement and civil rights laws generally.

On September 6, 2018, Representative Marcia L. Fudge (D-OH) and other Committee Democrats introduced H.R. 6722, the *Strength in Diversity Act of 2018*. In response to ED's rescission of the diversity in higher education and elementary and secondary education admissions guidance on July 3, 2018, the bill recognizes the importance of improving diversity in public schools. Through a competitive grant program, local educational agencies or consortium of such agencies would be awarded federal funds to implement comprehensive plans to increase socioeconomic diversity and reduce racial isolation of their schools.

On October 17, 2018, Committee Democrats released a GAO report titled *Public High Schools with More Students in Poverty and Smaller Schools Provide Fewer Academic Offerings to Prepare for College*. The report found that students in relatively poor and small schools had less access to high school courses that would help them prepare for college.

Indian Education

The Federal Government has a trust responsibility to Indian tribes. In exchange for millions of acres of tribal lands, the Federal Government recognized tribes as distinct, independent political communities that possess certain powers of self-government, while also agreeing to provide for the health, safety, and welfare of tribal nations. This relationship means the Federal Government is required to provide benefits and services to tribes and their members, including public education. American Indian and Alaska Native (AI/AN) children can receive a public education through either public schools directly funded by the Federal Government or public schools that receive federal assistance. Schools that receive federal assistance are part of the state's public education system and are operated and funded in the same manner as all other public schools. Schools directly funded by the Federal Government (currently 183 such schools nationwide) are under the jurisdiction of, and receive funding from, the Bureau of Indian Education (BIE), which is located in the U.S. Department of the Interior (DOI).

On February 14, 2018, the ECESE Subcommittee held an oversight hearing titled *Examining the Government's Management of Native American Schools*. Mr. Tony Dearman, the Director of BIE, was the sole witness. Committee Democrats expressed deep concerns about the lack of a quality education afforded to Native students, President Trump's proposal to cut BIE funding by \$144 million (16 percent), the inability of the Federal Government to meet statutory and treaty obligations for Native students, and the need for a comprehensive federal approach to solve deep educational inequities.

On December 11, 2018, the House of Representatives passed S. 943, the *Johnson-O'Malley Supplemental Indian Education Program Modernization Act*, under suspension of the rules, after it passed the Senate by unanimous consent. The House made small changes to the Senate bill,

which the Senate approved by unanimous consent on December 19, 2018. The bill is with the President for signature at the time of this writing. The Johnson O'Malley program is administered by DOI and provides funds to tribes and tribal organizations to supplement the education of Native students. S. 943 requires DOI to annually count the number of native students and distribute Johnson O'Malley funds based on that count.

Educational Rights of Immigrant Children and Children of Immigrant Parents

On April 3, 2017, Committee Democrats led other congressional Democrats in sending a letter to U.S. Attorney General Jefferson Beauregard Sessions III (Attorney General Sessions), Secretary DeVos, and DHS Secretary John Francis Kelly. The letter expressed concern regarding recent changes in immigration enforcement policies and urged the Trump Administration to reaffirm its commitment to upholding the requirements of the 1982 *Plyler v. Doe* Supreme Court decision that held it is unconstitutional to deny any child, including an undocumented child, access to public education. The letter requested that DHS issue a statement making clear that schools are sensitive locations and students are entitled to be educated in an environment safe from fear of immigration enforcement actions. DHS issued a response to the letter on May 16, 2017. The response indicated only that the letter was received and would be responded to accordingly. Committee Democrats then received a joint ED-DOJ response on November 11, 2017, stating that effective agency guidance issued in 2014 serves as the Administration's position on the legal obligations of local educational agencies to provide educational services for all children, regardless of immigrant status.

On May 22, 2018, during Secretary DeVos's only appearance before the Committee during the 115th Congress, she made several concerning and false statements regarding the provision of educational services for undocumented children. Most troubling was Secretary DeVos's statement that local educational agencies (LEAs) have discretion to determine whether to report the presence of parents who may be undocumented to federal authorities for deportation, in violation of the precedent set by *Plyler v. Doe*. In response, Representative Adriano Espaillat (D-NY) led members of Congress in sending an oversight letter on June 4, 2018, to Secretary DeVos asking for a swift, decisive, and widely disseminated correction to her testimony to clarify state and school district obligations to serve all children regardless of immigration status. Secretary DeVos issued a statement that did not fully correct the record nor characterize her testimony as a misstatement, and it was not widely disseminated.

Congressional Award Act Reauthorization

On September 28, 2018, the *Congressional Award Act* was reauthorized by unanimous consent when the House agreed to S. 3509, the *Congressional Award Program Reauthorization Act of 2018*. The Congressional Award recognizes young Americans who achieve goals in four program areas: voluntary public service, personal development, physical fitness, and expedition/exploration. Participants can earn bronze, silver, and gold certificates as well as bronze, silver, and gold medals.

Career and Technical Education

On February 28, 2017, the ECESE Subcommittee held a hearing titled *Providing More Students a Pathway to Success by Strengthening Career and Technical Education*. Committee Democrats invited expert testimony from Ms. Mimi Lufkin, CEO of the National Alliance for Partnerships in Equity, who discussed the importance of equal access to quality career and technical education (CTE) programs, program accountability, and the need to measure student outcomes. Following the hearing, Committee Democrats worked to enshrine the principles discussed at the hearing in legislation and improve federal supports for CTE in an effort to ensure that all students have access to high quality CTE programs that prepare them with the academic and technical skills to excel in postsecondary education and workforce training. On May 4, 2017, Representatives Raja Krishnamoorthi (D-IL) and Glenn W. Thompson (R-PA) introduced H.R. 2353, the *Strengthening Career and Technical Education for the 21st Century Act*, to reauthorize and make needed improvements to modernize the *Carl D. Perkins Career and Technical Education Act*. The bill was marked up by the Committee on May 17, 2017, receiving unanimous support. The bill passed the House on June 22, 2017, by a voice vote under suspension of the rules. Following House passage, the Senate amended the bill slightly, then passed H.R. 2353 unanimously on July 23, 2018. H.R. 2353, as amended, was signed by the President on July 31, 2018.

Higher Education

Hearings

The Committee held five partisan hearings on higher education in the 115th Congress – three in the (full) Committee and two in the Subcommittee on Higher Education and Workforce Development (HEWD Subcommittee).

On February 7, 2017, the Committee held a hearing entitled *Challenges and Opportunities in Higher Education*. Committee Democrats invited expert testimony from Dr. José Luis Cruz, President of the City University of New York, who emphasized the need for equity by ensuring access, affordability, and completion for all students, particularly individuals who are underrepresented in college.

On March 21, 2017, the HEWD Subcommittee held a hearing entitled *Improving Federal Student Aid to Better Meet the Needs of Students*. Committee Democrats invited expert testimony from Mrs. Youlonda Copeland-Morgan, Vice President for Enrollment Management at the University of California, Los Angeles, who highlighted the need to strengthen the Pell Grant program, simplify student loan repayment, and invest in campus-based aid programs.

On April 27, 2017, the Committee held a hearing entitled *Strengthening Accreditation to Better Protect Students and Taxpayers*. Committee Democrats invited expert testimony from Mr. Ben Miller, Senior Director of Postsecondary Education at the Center for American Progress, who stressed the importance of strengthening the role of accreditors to better serve as true arbiters of quality and improve responsiveness of the sector to student outcomes and institutional actions.

On May 24, 2017, the HEWD Subcommittee held a hearing entitled *Empowering Students and Families to Make Informed Decisions on Higher Education*. Committee Democrats emphasized the need for accurate data necessary for students to make informed decisions, institutions to make campus-wide improvements, and policymakers to understand how students are faring in the higher education system. Committee Democrats invited expert testimony from Ms. Mamie Voight, Vice President of the Institute for Higher Education Policy, who stressed the importance of improving the availability of comprehensive postsecondary education data to uncover and address gaps in equity of educational opportunity.

On September 26, 2018, the Committee held a hearing entitled *Examining First Amendment Rights on Campus*. Committee Democrats invited expert testimony from Ms. Suzanne Nossel, Chief Executive Officer of PEN America, who highlighted how the Trump Administration's one-sided approach to free speech protections is politicizing and undermining the practice of free expression. Committee Democrats discussed how a partisan defense of free speech ignores the Federal Government's responsibility to support colleges and universities in protecting the civil rights of an increasingly diverse student body.

Markups

On December 12, 2017, the Committee held a markup of H.R. 4508, the *Promoting Real Opportunity, Success, and Prosperity through Education Reform Act* (PROSPER Act) introduced by Chairwoman Foxx and HEWD Subcommittee Chairman Brett Guthrie (R-KY) (Chairman Guthrie). H.R. 4508 amends the *Higher Education Act of 1965* (HEA) to reauthorize programs and make college more expensive for low-income students, restrict access to federal student aid for graduate students, and allow unregulated for-profit interests to access federal dollars without federal oversight and necessary consumer protections. H.R. 4508 passed out of Committee by a party line vote. Committee Democrats proffered 40 amendments to improve the bill. Most notably, Democratic amendments would have expanded the purchasing power of the Pell Grant and reformed the federal student loan and campus-based aid programs to better serve students and institutions. Additional Democratic amendments sought to ensure fiscal and programmatic accountability for for-profit institutions, allow for student-level data to improve higher education outcomes and policies, and restore the Public Service Loan Forgiveness (PSLF) program. Democrats also offered proposals to simplify and improve the Free Application for Federal Student Aid (FAFSA), improve competency-based education programs, restore funding for teacher preparation programs and prospective teachers, and invest in community colleges, Historically Black Colleges and Universities (HBCUs), other Minority-Serving Institutions (MSIs), foster students, homeless students, and students with disabilities. Committee Republicans rejected 38 of the 40 Democratic amendments that were considered.

Legislation

On February 16, 2017, Representative Alma S. Adams (D-NC) introduced H.R. 1123, the *HBCU Capital Financing Improvement Act*. This bill improves HBCU access to low-cost private loans for capital needs such as infrastructure repairs, maintenance, and construction by authorizing institutional financial counseling and replacing statutory references to "escrow account" with "bond insurance fund." The bill also revises reporting requirements.

In May 2017, Committee Democrats launched a legislative campaign entitled *Aim Higher*, focused on improving access, affordability, and completion in higher education. Throughout the first session of the 115th Congress, Committee Democrats introduced 12 measures to amend discrete portions of HEA as part of the legislative campaign. There were no Committee hearings to examine Committee Democrats' proposals to improve college access, affordability, and completion.

On May 16, 2017, HEWD Subcommittee Ranking Member Susan A. Davis (D-CA) (Ranking Member Davis) and other Committee Democrats introduced H.R. 2451, the *Pell Grant Preservation and Expansion Act*. This bill strengthens and modernizes the Pell Grant program, the cornerstone of Federal Student Aid for low-income students. The bill increases the maximum Pell Grant award by \$500 to give students more money to pay for college, extends Pell eligibility to 14 semesters, and permanently indexes the Pell award to inflation to maintain the purchasing power of the grant. In addition, to ensure program stability, it makes the majority of Pell Grant funding mandatory. The bill also allows students to exhaust full Pell eligibility on graduate studies following completion of a bachelor's degree and allows quality short-term programs to access Pell in order to strengthen the workforce.

On May 17, 2017, Representative Joe Courtney (D-CT) and other Committee Democrats introduced H.R. 2477, the *Bank on Students Emergency Loan Refinancing Act*. This bill allows borrowers to take advantage of lower interest rates by creating a refinance program through which borrowers can refinance their old debt at the same rates offered to new borrowers. Under the bill, borrowers with federal and private student loans are permitted to refinance using this program.

On June 8, 2017, Representative Espaillat and other Committee Democrats introduced H.R. 2845, the *Jumpstart on College Act*. This bill creates a matching grant program for institutions to establish partnerships with K-12 school districts to support the development of dual enrollment and early college high schools. The bill also provides states with funding to increase student access to early credit pathways, including dual enrollment, early college high schools, and Advanced Placement and International Baccalaureate programs. The bill authorizes Congress to appropriate \$250 million to support the expansion of dual enrollment programs in the first year.

On June 8, 2017, Representative Jared S. Polis (D-CO) and other Committee Democrats introduced H.R. 2859, the *Advancing Competency-Based Education Act of 2017*. This bill establishes a demonstration project that allows participating competency-based education (CBE) programs to request flexibility from some current statutory and regulatory requirements seen as barriers to implementation. The bill also requires annual, transparent evaluations of participating programs that allow policymakers to examine program quality and requires an institution's accrediting agency to set standards specific to CBE.

On June 20, 2017, Representative Donald W. Norcross (D-NJ) and other Committee Democrats introduced H.R. 2961, the *Remedial Education Improvement Act*. This bill provides grants to institutions of higher education to implement evidence-based remedial education reform

strategies that better serve students and reduce dropout rates. It also requires evaluation of program effectiveness in order to determine the best systems of support that lead to college degree completion.

On June 20, 2017, Committee Democrats joined Democratic members of the New York congressional delegation and Representative Grace Meng (D-NY) in introducing H.R. 2960, the *Community College Student Success Act*. This bill provides funding to public two-year colleges across the country, with priority given to under-resourced institutions with high percentages of low-income and minority students. Funding would help institutions develop and implement evidence-based programs that boost degree completion through academic and financial advising and other student supports. Programs would be monitored and required to measure academic progress toward clearly articulated program goals while simultaneously provided with flexibility to meet the unique needs of students, such as providing financial assistance to alleviate the cost of textbooks, living expenses, childcare, or other distinct supports that might assist with degree completion.

On July 12, 2017, Representative Mark J. DeSaulnier (D-CA) and other Committee Democrats introduced H.R. 3199, the *Improving Access to Higher Education Act of 2017*. This bill includes grants to train faculty to deliver accessible, inclusive instruction for students with disabilities; establishes an office of accessibility in every institution to facilitate access; provides grants to expand and implement universal design for learning campus-wide; increases access to accessible instructional materials and technologies; expands opportunities for students with intellectual disabilities; and improves data collection efforts to gain a better understanding of the success of students with disabilities in higher education.

On September 7, 2017, Committee Democrats introduced H.R. 3709, the *America's College Promise Act of 2017*. This bill provides states with grant aid to leverage reforms and rewards states that make tuition at state colleges and universities more affordable. In return, states must promise to maintain their investment in higher education, including their investment in state four-year institutions, and make an associate's degree at the state's public two-year colleges free for every student. The bill also provides grant aid directly to low-income students who transfer from a community college to a Minority-Serving Institution (MSI) for the remainder of their degree.

On September 12, 2017, Committee Democrats joined Representative Katherine M. Clark (D-MA) in introducing H.R. 3740, the *Higher Education Access and Success for Homeless and Foster Youth Act*. This bill authorizes a new grant program at \$150 million per year to help states, tribes, and territories establish or expand initiatives that help foster and homeless youth successfully transition to college, including wrap-around services for these students. The grant program also requires states to award funding to institutions to improve financial aid for homeless and foster youth.

On September 12, 2017, Committee Democrats joined Ranking Member Danny Davis in introducing H.R. 3742, the *Fostering Success in Higher Education Act of 2017*. This bill improves outreach, resources, and policies for foster and homeless youth. It requires institutions to provide housing options between terms, designate a single point of contact to assist foster and

homeless youth, and work with ED, when necessary, to streamline the financial aid process. The bill also encourages states to grant in-state tuition rates for foster and homeless students who have not had stable residency.

On November 16, 2017, Representatives Lisa Blunt Rochester (D-DE) and Gregorio Kilili Camacho Sablan (D-MP), along with Committee Democrats, introduced H.R. 4416, the *Simple FAFSA Act of 2017*. This bill reduces the number of questions on the FAFSA by placing the applicant into one of three pathways based on the complexity of a student's finances. Those with the lowest income and who received a means-tested Federal benefit in the previous two years would automatically receive a full Pell Grant without having to answer additional questions. The bill also requires dependent Pell Grant students to file the FAFSA only one time. The legislation also increases support for working students and provides the FAFSA in multiple languages, among other improvements.

On November 30, 2017, Representative David E. Price (D-NC) and Ranking Member Davis introduced H.R. 4491, the *Advancing International and Foreign Language Education Act*. This bill increases the authorization levels for HEA title VI programs that support students in obtaining expertise in language, cultural, and regional education from \$65 million to \$125 million. Further, it extends the authorization period of six currently funded programs that assist undergraduates, post baccalaureate students, and professionals in area study and language mastery. It also modernizes five other programs by consolidating them into two new programs that address the 21st century needs of educational opportunities that promote language, cultural, business, and other professional competencies for students, teachers, and employers. Finally, it codifies a grant process that allows the Secretary of Education to give priority to qualified MSIs or institutions that propose significant and sustained collaboration with a MSI.

Legislative efforts of Committee Democrats to improve HEA during the first session of the 115th Congress, including bills introduced as part of the *Aim Higher* legislative campaign and amendments offered during the markup of H.R. 4508, culminated in the July 26, 2018, introduction of H.R. 6543, the *Aim Higher Act*. With the *Aim Higher Act*, Committee Democrats introduced a comprehensive reauthorization of HEA designed to give every student the opportunity to earn a debt-free degree or credential that leads to a rewarding career. The bill makes higher education more accessible by: creating targeted programs that allow traditionally underrepresented students to enroll in and complete college; strengthening existing access to programs and supports for under-resourced institutions including community colleges, HBCUs, and other MSIs; simplifying the financial aid application; and supporting institutions to improve program quality. The *Aim Higher Act* also makes college more affordable today through increased grant and institutional aid, and it addresses the rising cost of college to reduce the burden on students in the future. Recognizing that the best measure of success is completing college, the bill invests in programs and services – such as career counseling and campus-based child care – that help students graduate and puts them on a path to success.

On September 5, 2018, the House passed H.R. 1635, the *Empowering Students Through Enhanced Financial Counseling Act*, a bipartisan bill introduced by Chairman Guthrie and Representative Suzanne M. Bonamici (D-OR). The bill makes key improvements to the timing and content of counseling that all federal student loan borrowers must receive. These changes

include ensuring students receive information about their borrowing options and obligations every year, requiring consumer testing of ED's online loan counseling tool, and explicitly advising students to exhaust their federal student loan eligibility prior to considering riskier private loans. The legislation is identical to legislation that was passed during the 113th and 114th Congresses, and it passed the House in the 115th Congress by a vote of 406-4 on September 5, 2018.

Committee Democrats successfully secured new higher education-related authorizing language and funding through the annual appropriations process in H.R. 1625, the *Consolidated Appropriations Act, 2018* and H.R. 6157, the *Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019*. Notably, Committee Democrats championed the following provisions: (1) in Fiscal Year 2018 and Fiscal Year 2019, the requirement that Secretary DeVos modify the existing HBCU Capital Financing loans for private HBCUs in financial distress, and commensurate funding; (2) in Fiscal Year 2018 and Fiscal Year 2019, funding for the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program (first created in Fiscal Year 2018) for borrowers erroneously denied PSLF eligibility; (3) in Fiscal Year 2019, the requirement that the Federal Student Aid (FSA) office at ED hold subcontractors accountable for better supporting student loan borrowers in distress; and (4) in Fiscal Year 2018 and Fiscal Year 2019, the creation of an Open Textbook Pilot program to support institutions of higher education expand access to lower the cost of attending college.

Oversight - Letters

Throughout the 115th Congress, Committee Democrats submitted 29 oversight letters to ED on higher education-related issues of importance to students and taxpayers.

On March 7, 2017, Representative Bonamici led a bipartisan letter to Secretary DeVos and U.S. Secretary of the Treasury Steven Terner Mnuchin, urging them to implement a multi-year consent system to allow the sharing of tax data over multiple years to automatically recertify student loan borrowers' income information for income-driven repayment plans. No response was received. Although ED has begun conversations with the U.S. Department of the Treasury (Treasury), borrowers are still unable to consent to multi-year tax sharing.

In March 2017, ED announced that the Internal Revenue Service's Data Retrieval Tool (IRS DRT) used by students and families to complete the FAFSA would be unavailable. Ranking Member Scott sent four bipartisan letters to ED and the IRS to request briefings and additional information about the cause and scope of the outage (three letters sent on March 16, 2017) and to urge ED's immediate action to alleviate problems for students impacted by the outage of the tool (letter sent on March 24, 2017). The first letter was sent to Secretary DeVos on March 16, 2017, with Chairwoman Fox and Senators Alexander and Murray. The second and third letters were sent on March 16, 2017, to Secretary DeVos and IRS Commissioner John Koskinen, respectively, with Chairwoman Foxx, House Committee on Oversight and Government Reform Chairman Jason Chaffetz (R-UT) and Ranking Member Elijah E. Cummings (D-MD) (Ranking Member Cummings), and other Members of Congress. The fourth letter was sent to Secretary DeVos on March 24, 2017, with Chairwoman Fox, Senators Alexander and Murray, and other

members of Congress. Mr. James Runcie, then-Chief Operating Officer at the FSA office, responded to these bipartisan requests and provided a bipartisan briefing to Committee staff. FSA also followed the recommended action steps.

On April 24, 2017, Ranking Member Davis and Representative Raul M. Grijalva (D-AZ) led a letter to Secretary DeVos, signed by 75 members of Congress, urging review of the PSLF employment certification process and providing specific recommendations to improve ED's transparency in its operation and implementation of the PSLF program. A response from Mr. James Manning, Acting Under Secretary of Education, was received on August 2, 2017, outlining the process for certifying employment for purposes of PSLF and defending the amount of information available to borrowers.

On April 26, 2017, Committee Democrats, along with Senate HELP Committee Democrats, led a letter to Secretary DeVos signed by more than 130 members of Congress to urge reversal of ED's decision to rescind Obama Administration policy directives to establish uniform loan servicing standards to improve the quality of federal student loan servicing, yielding better outcomes for both borrowers and the Federal Government. The letter also requested information explaining how, upon rescission of the directives, ED plans to procure a new contract for federal student loan servicing. No response was received.

On May 2, 2017, Representatives Espaillat and Krishnamoorthi joined a group of 30 bipartisan members of Congress in a letter to Secretary DeVos requesting reconsideration of the denied Upward Bound TRIO applications based on technical issues. On June 8, 2017, Ms. Kathleen Smith, then-Acting Assistant Secretary for Postsecondary Education, responded that, due to the funding and flexibility provided in the Fiscal Year 2017 Omnibus spending bill, Secretary DeVos would read and score applications that had originally been deemed ineligible due to technical formatting.

On June 12, 2017, Committee Democrats and Senate HELP Committee Democrats led a letter to Secretary DeVos with more than 150 members of Congress highlighting concerns with ED's decision to make changes to the student loan servicing contract procurement process to remove key student loan borrower protections. The letter also cited concerns with Secretary DeVos's decision to award all \$880 million in annual federal student loan servicing contract funding to a single company, a move that could create an unresponsive and "too big to fail" federal student loan system and negatively impact both borrowers and taxpayers. A response was received from Mr. Manning, dated October 26, 2017, stating that the new servicing solicitation would allow for the same outcomes that the rescinded Obama Administration policy directives had established. However, no evidence was provided, and ED has yet to create the new processing and servicing environment, leaving the current servicers without uniform standards. Further, Mr. Manning's response did not address concerns related to having one single contract servicer.

On July 13, 2017, Representative Bonamici and Senator Kamala Devi Harris (D-CA) (Senator Harris) led a letter to Secretary DeVos outlining concerns with ED's breakdown in the contracting process with private collection agencies and requesting information on how ED is assisting borrowers in default. No response was received.

On June 29, 2017, Ranking Member Scott and Senator Murray led a letter to Secretary DeVos opposing a delay to the borrower defense (BD) rule and specifying legal concerns with the justifications for the rule used by ED. No response was received. On September 12, 2018, U.S. District Court Judge Randolph D. Moss, of the U.S. District Court for the District of Columbia, ruled that Secretary DeVos had illegally delayed the rule.

On July 26, 2017, Ranking Member DeLauro, Committee Democrats, and Senate HELP Committee Democrats sent a letter to Secretary DeVos urging ED to reverse its decision to delay implementation of the Gainful Employment (GE) requirements for the disclosure of potential employment information to prospective students by career education programs and for-profit institutions. The letter also reminded ED of its obligation to implement and enforce current regulations while any new rulemaking process takes place. An insufficient response was received from Mr. Manning, dated October 16, 2017, stating that ED intends to re-regulate GE, but it did not address the concerns outlined in the letter.

On August 1, 2017, Ranking Member Scott and Representative David Young (R-IA) sent a letter to Secretary DeVos expressing concern with ED's move to contract one single loan servicer and reduce the servicing standards required under the contract. No response was received.

On August 18, 2017, Committee Democrats joined Judiciary Committee Democrats in sending a letter to Secretary DeVos and Attorney General Sessions to request information about how ED and DOJ intend to approach cases and matters involving systemic civil rights abuses and racial diversity in college and university admissions. A response was received on October 24, 2017, from Mr. Antonio Guzman, Human Resources Officer and Security Program Manager in the Civil Rights Division at DOJ. The response stated that media reports on the posting for a detail opportunity in the Civil Rights Division at DOJ were inaccurate. A response was not received from ED.

On September 14, 2017, Committee Democrats joined House Financial Services Committee Democrats to lead a letter to Secretary DeVos following ED's revocation of two agreements with the Consumer Financial Protection Bureau (CFPB) to share information about borrowers mistreated by student loan servicing companies. The letter outlined inaccuracies in ED's letter to CFPB announcing the termination of the agreements and requested documentation relating to the decision. A response was received from Mr. Manning, dated November 13, 2017, inaccurately stating CFPB's authority over federal student loan oversight.

On November 14, 2017, Committee Democrats and Senate HELP Committee Democrats led a letter to Secretary DeVos to express concerns regarding reports of ED's intent to limit the amount of student loan debt relief awarded to defrauded students and to request additional information on ED's proposal. No response was received.

On February 5, 2018, Ranking Member Scott, Ranking Member Davis, and Representative Bonamici, along with Senators Murray, Harris, and Elizabeth A. Warren (D-MA) (Senator Warren), sent a letter to ED's Inspector General Kathleen Tighe requesting a review of ED's contracts with private collection agencies to determine if there is any current or potential waste or misuse of taxpayer dollars. Additionally, the letter requested a review of the implementation status of corrective actions previously released by ED's Office of the Inspector General (ED-

OIG). Staff of the signees had a subsequent call with the ED-OIG to provide more guidance on the request under consideration. The request remains pending.

On May 8, 2018, Representative Adams and Ranking Member Scott, along with Representative Ted P. Budd (R-NC), sent a letter to Secretary DeVos urging deferment of and modifications to HBCU capital financing loans that meet the eligibility criteria established by Congress in the *Consolidated Appropriations Act, 2018*. Additionally, the letter asked ED to recognize unique situations that may arise in deferring or modifying the loans and recommended deferment and modification terms to avoid negative consequences for the institutions. A response was received from Ms. Diane Auer Jones, Principal Deputy Under Secretary, dated September 10, 2018, confirming that ED would implement the recommendations.

On May 17, 2018, Representatives Mark A. Takano (D-CA) and Bonamici, along with other Committee Democrats, sent a letter to ED's General Counsel Edward Muñiz, requesting information on the ethics and standards of conduct within the FSA Office. A response was received from Ms. Marcella Goodridge-Keiller, Assistant General Counsel and Designated Agency Ethics Official, dated July 10, 2018, stating that she was unable to conclude whether the involvement of specific individuals mentioned in the letter would constitute a violation of statutory or regulatory provisions related to impartiality.

On July 30, 2018, Ranking Member Davis, along with Chairman Guthrie, led a bipartisan letter to Secretary DeVos seeking clarification and information on the proposed Payment Card Program Pilot that would disburse financial aid for non-tuition expenses through a payment card. The letter expressed concern with student data privacy, pilot evaluation, and the goals of the pilot based on remarks made by ED officials. The letter also requested information prior to the release of any pilot solicitation. No response was received.

On October 16, 2018, Committee Democrats, along with Senate HELP Committee Democrats, led a letter with more than 150 signatories seeking additional information about the implementation of the PSLF program, a copy of ED's corrective action plan and a timeline for implementing those actions, and further details on ED's plan to use appropriated outreach funds to reach all Direct Loan borrowers about PSLF. No response was received.

On October 17, 2018, Representative Bonamici and Committee Democrats, along with Senators Murray and Warren, led a letter to Secretary DeVos requesting the full set of documents used as the basis for ED's staff recommendation to restore the federal recognition of the Accrediting Council for Independent Colleges and Schools (ACICS). This request came after new information indicated that the Senior Designated Official, Ms. Auer Jones, significantly misrepresented the endorsements of multiple accrediting agencies. No response was received.

On October 29, 2018, Ranking Member Scott, House Committee on Financial Services Ranking Member Maxine Waters (D-CA), House Committee on Veterans' Affairs Ranking Member Tim J. Walz (D-MN), and Representative Takano sent a letter to Secretary DeVos expressing concern and requesting additional information regarding changes to ED's College Scorecard. No response was received.

On October 31, 2018, Ranking Member Scott and Senator Murray sent a letter to Secretary DeVos outlining concerns with negotiated rulemaking that sought to modify regulations and student protections in the FSA programs. The letter outlined five major concerns with the negotiated rulemaking process, including that it is lacking in transparency, prohibitive of diverse viewpoints, and void of public participation. No response was received.

On December 10, 2018, Representative Takano and Senator Dick Durbin (D-IL) led a letter to Secretary DeVos urging ED to publish the amount and percentage of revenue received by for-profit colleges from all federal educational programs instead of only accounting for HEA title IV dollars. No response was received.

On December 11, 2018, Representative Bonamici and Senator Warren led a letter to Secretary DeVos urging ED to rescind the decision to reinstate the Accrediting Council of Independent Colleges and Schools (ACICS) as an accrediting body. The letter provided new evidence that ED has consistently misstated the acceptance of ACICS by other accreditors and calls into question the legitimacy of the decision. No response was received.

On December 17, 2018, Ranking Member Scott and Senator Murray sent a letter to Ms. Sandra Bruce, Acting Inspector General at ED, requesting an audit of Secretary DeVos's decision to grant re-recognition of the Accrediting Council of Independent Colleges (ACICS). This decision was made only two weeks before the Education Corporation for America (ECA), a school accredited by ACICS, abruptly closed leaving approximately 20,000 students scrambling to determine next steps. ED-OIG announced its intent to complete the audit, as requested, on December 18, 2018.

On December 21, 2018, Representative Bonamici, Ranking Member Cummings, and Senator Warren sent a letter to the Accrediting Council for Independent Colleges and Schools (ACICS) requesting information on its decision to accredit the recently collapsed for-profit company, Education Corporation of America. The letter provided a timeline of various events that should have triggered action from ACICS years ago. No response was received.

On December 21, 2018, Representative Bonamici, Ranking Member Cummings, and Senator Warren sent a letter to the President and Receiver of the Education Corporation of America to obtain information regarding its abrupt closure. The letter included 13 questions to the company in an attempt to better understand the company's actions to warn students and regulators about its financial standing. No response was received.

Oversight – Public Comments

Throughout the 115th Congress, Committee Democrats submitted a number of public comments in response to Executive branch administrative and regulatory proposals to weaken HEA student and taxpayer protections.

On November 13, 2017, Committee Democrats submitted a public comment to the NPP released by Secretary DeVos proposing priorities for use in discretionary grant programs at ED. The comment expressed serious concerns with Secretary DeVos's proposals to prioritize efficiency

above efficacy and send federal resources to low-quality and for-profit programs. On March 2, 2018, ED released the Final Supplemental Priorities. No changes were made to accommodate the concerns articulated by Committee Democrats.

On March 1, 2018, Ranking Member Scott and Ranking Member Davis sent a comment letter to the Chairman of the National Advisory Committee on Institutional Quality opposing any effort to recognize the Accrediting Council for Independent Colleges and Schools (ACICS) and outlining specific concerns.

On April 5, 2018, Ranking Member Scott, Representatives Nydia M. Velazquez (D-NY) and Jose E. Serrano (D-NY), Senator Kirsten E. Gillibrand (D-NY), and other members of Congress sent a comment letter to Secretary DeVos outlining concerns with ED's proposed process for institutions to access disaster relief funds appropriated by Congress in the *Bipartisan Budget Act of 2018*.

On June 11, 2018, Committee Democrats submitted a comment letter opposing ED's proposed two-year delay of the Program Integrity and Improvement regulations governing state authorization and other rules. The comment outlined the significant, negative implications the delay would have on students.

On July 16, 2018, Ranking Member Scott, Ranking Member DeLauro, and Senator Murray submitted a comment letter reiterating objections to ED's continued actions to suspend full implementation of the GE rule, specifically the student disclosures.

On August 30, 2018, Committee Democrats submitted a comment letter to express strong opposition to ED's proposed revisions to the Borrower Defense to Repayment rule. The letter explained seven major concerns with the proposed rule that would severely limit eligibility of defrauded borrowers to seek and ultimately receive relief and called on ED to abandon its proposal.

In September 2018, individual Committee Democrats submitted comment letters opposing ED's proposed repeal of the GE rule. This important consumer protection rule established the standard for compliance with and enforcement of the HEA requirement that career programs and for-profit institutions result in "gainful employment," cutting off federal aid to programs that produce graduates with unaffordable debt relative to earnings. The letter outlined the various unsubstantiated claims in the NPRM and urged ED to abandon the proposed rescission and restore the rule.

On September 14, 2018, Committee Democrats and Senate HELP Committee Democrats, along with more than 90 other Democratic members of Congress, submitted a comment letter expressing concerns with ED's intent to regulate and reregulate provisions of HEA through a negotiated rulemaking committee.

On December 26, 2018, Representative Takano submitted a public comment to RTI International recommending improvements to the Integrated Postsecondary Education Data System (IPEDS) Finance Survey. Specifically, the letter urged RTI International to require institutions to report

spending on “marketing and recruitment” separately from services that directly support student completion.

Oversight – Requests for GAO Investigations

Throughout the 115th Congress, Committee Democrats requested GAO investigations of ED’s administration of the PSLF program and the TEPSLF program, HBCU Capital Financing Program, student loan servicing, and cohort default rate.

Upon the request of Ranking Member Scott and Ranking Member Davis, GAO assessed ED’s management of the PSLF program. In a report entitled *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, released on September 27, 2018, GAO announced that more than 28,000 borrowers have applied for forgiveness but less than one percent have been approved. The report cites serious failures in implementation and faults ED for creating mass uncertainty and confusion for borrowers. Following this report, Committee Democrats requested a staff briefing from ED to learn about ED’s plans to implement GAO’s recommendations. Additionally, on October 25, 2018, Ranking Member Scott and Ranking Member Davis submitted a follow-up investigation request focused on the administration of TEPSLF.

Upon the request of Ranking Member Scott, Representative G.K. Butterfield, Jr. (D-NC), Senator Murray, and Senator Robert P. Casey (D-PA) (Senator Casey), GAO examined the capital project needs at HBCUs and assessed the participation of HBCUs in ED’s HBCU Capital Financing Program. In a report entitled *Historically Black Colleges and Universities: Action Needed to Improve Participation in Education’s HBCU Capital Financing Program*, released on July 26, 2018, GAO stated that, on average, 46 percent of building space at HBCUs is in need of repair or replacement. GAO also found that despite this need, fewer than half of HBCUs have used the HBCU Capital Financing program, which was specifically designed to help HBCUs address capital project needs.

Upon the request of Ranking Member Scott and Representatives Sanford D. Bishop (D-GA) and Emanuel Cleaver (D-MO), GAO reviewed ED’s efforts to implement prior GAO recommendations for improving oversight of federal student loan servicers. In its July 27, 2018, audit entitled *Federal Student Loans: Further Actions Needed to Implement Recommendations on Oversight of Loan Servicers*, GAO found that ED has only implemented two out of six recommendations made in 2015.

Upon the request of Representative Takano and Ranking Member DeLauro, GAO examined how institutions of higher education work with borrowers to manage cohort default rates and evaluate ED’s oversight of the strategies used by institutions and the default management consultants hired by the institutions. In a report entitled *Federal Student Loans: Actions Needed to Improve Oversight of Schools’ Default Rates*, released on April 26, 2018, GAO found that the default management companies were lying or providing incomplete information to borrowers about repayment options. GAO also found that 68 percent of borrowers who began repaying their loans had loans in forbearance at some point during the first three years.

Community Supports

Juvenile Justice

On February 15, 2017, the ECESE Subcommittee held a hearing entitled *Providing Vulnerable Youth the Hope of a Brighter Future Through Juvenile Justice Reform*. The witnesses – including a juvenile court judge, chief of police, state juvenile justice coordinator, and juvenile service provider – all stressed the pressing need to reauthorize the *Juvenile Justice and Delinquency Prevention Act of 1974* (JJJPA). The law was last fully authorized in 2002, and its authorizations of appropriations expired in 2007.

On March 30, 2017, Representative Jason M. Lewis (R-MN), introduced H.R. 1809, the *Juvenile Justice Reform Act of 2017*, with Chairwoman Foxx, Ranking Member Scott, Ranking Member Davis, and Representatives Frederica Wilson and Todd E. Rokita (R-IN) as original co-sponsors. The bill codified best practices that have emerged in various states over the past 15 years including: the use of evidence-based practices; the unique needs of girls in the juvenile justice system; the implementation of trauma-informed care; the preference for cost-effective alternatives to incarceration that do not harm public safety; and the efforts to end the “School to Prison” pipeline by aligning school discipline policies and juvenile justice systems. The bill was marked up by the Committee on April 4, 2017, and was ordered to be reported favorably to the House. H.R. 1809 was considered on the House floor under suspension of the rules on May 23, 2017, and it passed the House by voice vote. A JJJPA reauthorization bill also passed the House in the 114th Congress (H.R. 5963).

Instead of taking up H.R. 1809, the Senate acted on S. 860, the *Juvenile Justice and Delinquency Prevention Reauthorization Act of 2017*, authored by Senator Chuck Grassley (R-IA). S. 860 passed the Senate on August 1, 2017. While the House and Senate bills were remarkably similar, there was no clear procedural path to reconcile either bill to the satisfaction of both chambers.

In hopes of advancing compromise language through the legislative process, Representative Jason Lewis introduced H.R. 6964, the *Juvenile Justice Reform Act of 2018* in the House on September 28, 2018. This bill contains compromise language that reflects the priorities of the majority and minority caucuses of each chamber. Like H.R. 1809, the bill helps ensure the continuity of young people’s education while incarcerated, provides clear direction to states and localities to reduce racial and ethnic disparities among incarcerated youth, and provides resources for communities to plan and implement evidence-based prevention and intervention programs specifically designed to reduce juvenile delinquency and gang involvement. With bipartisan support, it was introduced, discharged from committee consideration, and passed on the House floor without objection, all on the same day.

The Senate, however, insisted upon modification of the bill. Three months later, on December 11, 2018, H.R. 6964, with amendments, passed the Senate by unanimous consent. Required to consider the bill yet again due to Senate amendment, the House received H.R. 6964, as amended by the Senate, and passed it by unanimous consent on December 13, 2018. The bill was signed into law on December 21, 2018.

Unaccompanied Minors in Federal Custody

Following the increase in detained unaccompanied minors resulting from the Trump Administration's immigration enforcement actions, including forced family separation, Committee Democrats wrote to the Secretaries of Health and Human Services, Education, Homeland Security, and Justice on June 28, 2018, seeking information on the oversight mechanisms and processes to ensure the provision of educational, health, and other services to unaccompanied minors in federal custody, as required by federal law, Supreme Court precedent, and the 1997 settlement agreement in *Flores v. Sessions*. In particular, the letter questioned the agencies regarding oversight at tender-age facilities, provision of trauma and health services, safety of unaccompanied minors at care provider facilities, provision of educational services to unaccompanied minors, services provided to unaccompanied minors with disabilities, and family reunification. No substantive responses were received from the relevant agencies as of the writing of this report.

Also, on June 28, 2018, Committee Democrats sent a letter to Chairwoman Foxx requesting a hearing regarding the roles and responsibilities of HHS' Office of Refugee Resettlement (ORR) with regard to the custody of thousands of unaccompanied minors. No response was received, and no hearing was convened.

On June 29, 2018, Ranking Member Scott joined Ranking Members Pallone and Nadler in sending a letter to the Inspectors General of DOJ, DHS, and HHS requesting an investigation into the Trump Administration's "zero tolerance" immigration policy and forced family separation at the border. The HHS Inspector General (HHS-IG) responded on July 16, 2018, reiterating an announcement of HHS' work reviewing ORR grantee facilities. The HHS-IG provided a commitment to update staff of the ongoing investigation.

Disaster Relief

The 2017 hurricane season saw multiple storms make landfall in the United States, impacting students, families, and schools. On August 26, 2017, Hurricane Harvey made landfall in Texas as a category four storm causing unprecedented flooding. Hurricane Irma made landfall in the U.S. Virgin Islands as a category five storm on September 8, 2017, before landing in Florida as a category three storm. On September 20, 2017, Hurricane Maria made landfall in the U.S. Virgin Islands and Puerto Rico as a category five hurricane that killed an estimated 2,980 people. Both Territories lost power and students were unable to return to school for months. Congress provided disaster relief for areas impacted by hurricanes in 2017 through three supplemental appropriations bills in October 2017, December 2017, and February 2018. Puerto Rico received \$589 million and the U.S. Virgin Islands received \$13.1 million to restart school operations.

On October 16, 2017, Committee Democrats led a letter to Secretary DeVos signed by 56 members of Congress requesting that ED provide temporary administrative reprieve to students in the Territories who hold federal student loans. ED responded to the letter on January 23, 2018, outlining that it had provided guidance to affected students and had provided direct loan

borrowers in the Territories a total of six months of administrative forbearance, however it declined to allow that forbearance to be interest-free as requested by Committee Democrats.

On November 9, 2017, in recognition of the gravity of destruction in the Territories that hindered the ability to restart school operations and insufficient federal response in the immediate aftermath of the storms, Committee Democrats wrote Chairwoman Foxx to request a hearing on the state of education in the affected territories and needed recovery operations. No response was received, and no hearing was convened.

Seven weeks after the February 2018 supplemental appropriation, ED established an emergency review of published documents that would have required institutions of higher education (IHEs) to complete multiple applications to receive institutional aid to restart operations. ED initially opened a 48-hour comment period on those documents. Committee Democrats expressed concern with the truncated timeframe and ED extended the deadline for comment by an additional week. Committee Democrats then led a comment letter, signed by 47 members of Congress, on April 5, 2018, that expressed concerns with ED's proposed process, including: the lack of a congressional directive to require multiple applications for aid, which was not required of schools in prior disasters; the lack of forms in Spanish; the lack of recognition that the process may be hard to navigate in areas still recovering from the disaster; and the stringent criteria proposed to allocate funding, which could require information about insurance and federal recovery estimates that IHEs in these territories may not yet have.

On September 20, 2018, the one-year anniversary of Hurricane Maria, Committee Democrats wrote Chairwoman Foxx again to request a hearing on the state of education in the Territories. No response was received, and no hearing was convened. On September 27, 2018, Committee Democrats and other congressional Democrats held a member forum to evaluate the progress the Territories had made toward restarting school operations. As of that date, ED confirmed that neither Territory had begun to draw down their allocated funding for developmental educational disaster recovery.

Child Safety

The *Missing Children's Assistance Act* authorizes the National Center for Missing and Exploited Children (NCMEC), a public-private partnership that helps prevent, find, and reunite children and youth affected by child victimization, most often child sex trafficking. Committee Democrats, together with Committee Republicans, drafted legislation to both reauthorize and make improvements to the *Missing Children's Assistance Act* to better support NCMEC in its efforts. H.R. 1808, the *Improving Support for Missing and Exploited Children Act of 2017*, introduced by Representative Courtney and Chairman Guthrie, received 19 cosponsors and passed the House by a voice vote under suspension of the rules on May 23, 2017. The bill's provisions were included in S. 3354, the *Missing Children's Assistance Act of 2018*, which passed both the Senate and House by unanimous consent on September 28, 2018. S. 3354 was signed by the President on October 11, 2018.

Family Well-Being

The *Family Violence Prevention and Services Act* (FVPSA) is the Federal Government's main effort to assist victims of domestic violence and their children in accessing emergency shelter and related assistance. Committee Democrats worked together with Committee Republicans to draft a bill that would reauthorize FVPSA. H.R. 6014, *To reauthorize the Family Violence Prevention and Services Act*, introduced by Representatives Gwen Moore (D-WI), Glenn Thompson (R-PA), Blunt Rochester, and Elise Stefanik (R-NY) on June 6, 2018, received 103 cosponsors and passed the House unanimously on September 28, 2018.

Child Welfare

Committee Democrats continue to prioritize efforts to ensure states and local communities are both protecting children from maltreatment and supporting cognitive and emotional development by providing children with safe settings and supporting reunification with supportive caregivers. On September 26, 2017, Ranking Member Scott authored an oversight letter with Chairwoman Foxx requesting that HHS provide an update about how HHS is supporting states to fulfill requirements for development and implementation of plans of safe care for infants exposed to substance use, as required by the *Child Abuse Prevention and Treatment Act* (CAPTA).

On February 6, 2018, Committee Democrats hosted a member discussion with national advocates and nonprofit organizations working directly with families and children suffering from exposure to substance use disorder to inform efforts to reauthorize and improve CAPTA and the federal response to the opioid epidemic. Experts included Ms. Teresa Rafael and Mr. Jim McKay of the National Alliance of Children's Trust and Prevention Fund, Ms. Christine Calpin of Casey Family Programs, Ms. Toni Miner of the Jefferson County (Colorado) Child and Youth Leadership Commission, and Ms. Marylee Allen of the Children's Defense Fund.

Committee Democrats, working with congressional Democrats and Republicans, helped develop and introduce three bills to assist families affected by substance use disorder. H.R. 5889, the *Recognizing Early Childhood Trauma Related to Substance Abuse Act*, was introduced by Representatives Tom O'Halleran (D-AZ) and Dave A. Brat (R-VA). H.R. 5889 works to reduce childhood trauma by requiring HHS to provide information, resources, and assistance to early childhood professionals. The bill received 19 cosponsors and passed the House by a voice vote under suspension of the rules on June 13, 2018. H.R. 5890, the *Assisting States' Implementation of Plans of Safe Care Act*, was introduced by Representatives Stephanie Murphy (D-FL) and Tom Garrett (R-VA). H.R. 5890 assists states in improving their support for infants, children, and families suffering from substance abuse. The bill received 16 cosponsors and passed the House by a vote of 406-3 on June 13, 2018. H.R. 5891, the *Improving the Federal Response to Families Impacted by Substance Use Disorder Act*, was introduced by Representatives Conor Lamb (D-PA) and Glen Grothman (R-WI). H.R. 5891 establishes an interagency task force to identify, evaluate, and recommend ways in which federal agencies can better coordinate responses to the opioid epidemic and carry out their authorized duties. The bill received 18 cosponsors and passed the House on June 13, 2018, by a voice vote of 409-8. Committee Democrats worked successfully to ensure that these measures, along with program authorizations for child welfare activities, were included in H.R. 6, the *SUPPORT for Patients and Communities Act*, which was signed into law by the President on October 24, 2018.

Community Service and Volunteerism

Service and volunteer opportunities administered by the Corporation for National and Community Service (CNCS) help build stronger communities and a stronger nation while simultaneously preparing workers for the 21st Century economy. During the 115th Congress, Committee Democrats defended national and community service from Trump Administration and Republican Majority attacks to defund and eliminate these popular programs.

Committee Democrats opposed the narrative of a national service agency that wastes taxpayer dollars presented by Committee Republicans at the March 28, 2017, hearing, *Examining the Corporation for National and Community Service and Its Failed Oversight of Taxpayer Dollars*. In reality, CNCS is improving its monitoring system and continuing to strengthen its oversight of programs. Service grantees who engaged in potentially prohibited activity received proportional, deliberate action from CNCS. Committee Democrats invited expert testimony from Dr. Elizabeth Darling, President and CEO of OneStar Foundation, who testified about the benefits of national and community service as well as how states, not just the Federal Government, work to ensure proper oversight of grantees. On April 17, 2018, the Committee convened an oversight hearing entitled *Fraud, Mismanagement, Non-compliance, and Safety: The History of Failures of the Corporation for National and Community Service*. Ms. Barbara Stewart, CEO of CNCS, was the sole witness and testified about how CNCS is incorporating its strategic plan to continue to provide grantees with improved service while also ensuring proper oversight and enforcement. During the hearing, Committee Democrats pushed for a bipartisan CNCS reauthorization to make program improvements.

Museums and Libraries

On September 28, 2018, Representative Grijalva introduced H.R. 6988, the *Museum and Library Services Act of 2018*, which reauthorizes the *Museum and Library Services Act*. The bill provides federal support to museums and libraries as anchor institutions for local communities and enhances the Act's workforce recruitment programs. It also makes programmatic updates that include expanding grant purposes to enhancing library and museum digitization, digital literacy, and technology, and it allows libraries to become disaster-ready for their communities. After the Senate passed the identical companion bill on December 4, 2018, the House passed it under suspension of the rules on December 19, 2018. The President signed the bill into law on December 21, 2018.

Expanding Opportunity for the Workforce

Investments in Skills and Training

During the 115th Congress, Committee Democrats have supported strong investments in our nation's workforce development system. Committee Democrats know that the solution to building a workforce ready for the in-demand jobs of both today and tomorrow requires an investment in proven job training programs.

The HEWD Subcommittee held three hearings on job training and building a highly skilled workforce. The first was a June 15, 2017, hearing entitled *Helping Americans Get Back to Work: Implementation of the Workforce Innovation and Opportunity Act*. The second was an October 24, 2017, joint hearing with the House Homeland Security Committee's Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies entitled *Public-Private Solutions to Educating a Cyber Workforce*. The third was a May 9, 2018, hearing entitled *Closing the Skills Gap: Private Sector Solutions for America's Workforce*. At each of these hearings, Committee Democrats reiterated support for the Workforce Innovation and Opportunity Act (WIOA) as the cornerstone of federal efforts to put Americans back to work and prepare workers for in-demand careers. Witnesses invited by Committee Democrats to provide expert testimony highlighted the importance of federal investments in the nation's workforce development system and expressed concerns that cuts to WIOA programs would shift costs to states and localities, effectively denying workers needed training and supports.

Job Corps

On June 22, 2017, the Committee held a hearing entitled *Student Safety in the Job Corps Program*, which focused, in part, on DOL's Office of the Inspector General (DOL-OIG) audits of Job Corps' centers' enforcement of student disciplinary policies. Though not called to testify at the hearing, DOL indicated it had implemented solutions to address the DOL Inspector General's (DOL-IG) concerns regarding student safety and was committed to working with the DOL-OIG on ways to improve the Job Corps program. Committee Democrats invited expert testimony from Mr. Jeff Barton, Academy Director of the Earle C. Clements Job Corps Academy in Morganfield, Kentucky. While acknowledging the program must improve safety, Mr. Barton highlighted how Job Corps, the nation's largest residential education and vocational training program for youth ages 16 to 24, provided much-needed opportunities for disadvantaged youth. Committee Democrats noted that the national mortality rate for young people ages 16 to 24 is 15 times greater than the rate for Job Corps students. Committee Democrats also reiterated opposition to eliminating or consolidating Job Corps.

Apprenticeships

The HEWD Subcommittee held two hearings on "earn-and-learn" and on-the-job training programs: the July 26, 2017, hearing entitled *Expanding Options for Employers and Workers Through Earn-and-Learn Opportunities* and the September 5, 2018, hearing entitled *On-The-Job: Rebuilding the Workforce Through Apprenticeships*. Committee Democrats used these opportunities to highlight Registered Apprenticeship programs as proven, on-the-job training programs. With increased national recognition of the benefits of apprenticeship programs, Committee Democrats have consistently emphasized the need to maintain quality in apprenticeship programs. In June 2017, the White House issued Executive Order 13801 to "Expand Apprenticeships in America." Executive Order 13801 initiated DOL's departure from the Registered Apprenticeship model as set forth in the *National Apprenticeship Act*. At the Committee's July 26, 2017, hearing, Committee Democrats expressed concern with the Executive Order and DOL's departure from the historically high-quality programming that Registered Apprenticeship programs have provided for both workers and employers. At both hearings, witnesses invited by Committee Democrats to provide expert testimony emphasized the

need for quality in apprenticeships. They cited the Registered Apprenticeship model as the gold standard, noting that it provides critical quality control mechanisms that ensure that apprentices finish their training with a stackable, nationally- and industry-recognized credential.

On November 15, 2017, Committee Democrats hosted a roundtable entitled *Expanding Apprenticeships into New Sectors*. Committee Democrats heard from industry leaders in the technology, health care, and construction industries on how the Registered Apprenticeship model is successfully expanding to new sectors. Committee Democrats reiterated their commitment to expanding high-quality, Registered Apprenticeship programs to new industry sectors through H.R. 2933, the *Leveraging Effective Apprenticeships to Rebuild National Skills (LEARNs) Act*. This bill would promote the growth of Registered Apprenticeships and pre-apprenticeships nationally and establish a stable source of funding for these programs.

On March 13, 2018, Committee Democrats led a Committee delegation to visit local apprenticeship programs, including a program run jointly by the Local Union 26 International Brotherhood of Electrical Workers (IBEW) and the Washington, D.C. Chapter of the National Electrical Contractors Association (NECA). Delegation members were able to experience first-hand the success of programs where labor and management work together to build innovative training programs.

On March 15, 2018, Ranking Member Scott joined a GAO assessment of the General Services Administration excess property disposition program, including DOL's disposition of excess property for apprenticeship programs.

Work Requirements in Federal Support Programs

On March 7, 2018, Committee Democrats held a roundtable on work requirements in federal support programs. Participants included: Dr. Donna Pavetti, Vice President for Family Income Support Policy at the Center on Budget Policy Priorities; Mr. Leo Cuello, Director of Health Policy at the National Health Law Program; Ms. Elizabeth Lower-Basch, Director of Income and Work Supports at the Center for Law and Social Policy; and Ms. Rebecca Vallas, Vice President of the Poverty to Prosperity Program at the Center for American Progress. These experts described current work requirements in the Temporary Assistance for Needy Families (TANF) program, Supplemental Nutrition Assistance Program (SNAP), and proposed work requirements in Medicaid, and reviewed the intersection of these programs with WIOA. They presented evidence that work requirements had little impact on a program participants' earnings and did not improve access to training and educational opportunities. They also presented evidence that most individuals enrolled in programs such as TANF and SNAP are already working and therefore it is misleading to assert that they are not.

On March 15, 2018, the HEWD Subcommittee held a hearing entitled *Strengthening Access and Accountability to Work in Welfare Programs*. During the hearing, Committee Democrats challenged the notion that individuals receiving work supports, including TANF benefits, SNAP benefits, and Medicaid, were not already working or did not want to work. Committee Democrats highlighted evidence that shows that TANF and Medicaid provide critical work supports for increasingly unstable, low wage work – enabling many people to continue to work

despite earning poverty level wages. Committee Democrats invited expert testimony from Dr. Heather Hahn, Senior Fellow at the Urban Institute, who outlined how expanding work requirements for SNAP and Medicaid runs the risk of undermining the employment and skill-development goals of the workforce development system while denying basic health care and food to adults and children who need it.

Occupational Licensing

On June 20, 2018, the HEWD Subcommittee held a hearing entitled *Occupational Licensing: Reducing Barriers to Economic Mobility and Growth*. Rather than discuss occupational licensing requirements, which are largely determined by the states, Committee Democrats focused on regulatory barriers to employment that Congress can remove through proposed legislation. Such legislation includes H.R. 1905, the *Fair Chance Act*; H.R. 6145, the *Fairness and Accuracy in Employment Background Checks Act*; H.R. 6677, the *Clean Slate Act of 2018*; H.R. 2417, the *Pregnant Workers Fairness Act*; H.R. 1869, the *Paycheck Fairness Act*; H.R. 3773, the *Childcare for Working Families Act*; H.R. 947, the *Family and Medical Leave Insurance (FAMILY) Act*; and H.R. 2942, the *Schedules that Work Act*. Committee Democrats invited expert testimony from Ms. Rebecca Vallas, Vice President of the Poverty to Prosperity Program at the Center for American Progress. Ms. Vallas testified that although there is a bipartisan movement at the state and federal levels to remove barriers to work for workers with criminal backgrounds, policymakers must not make the mistake of blaming licensing restrictions for barriers to employment, particularly those that strengthen wages and safety.

Increasing Employment for Opportunity Youth

In the 115th Congress, Committee Democrats continued their commitment to improving employment opportunities for young Americans. An estimated 4.6 million young people between the ages of 16 and 24 are disconnected from both school and work. Disconnection during this critical period can leave young people without the entry-level work experience and postsecondary credentials they need to succeed in the workforce. Disconnection also imposes significant costs on affected young people, their communities, and the overall economy. Instead of marginalizing this population, Committee Democrats strive to create opportunities to re-engage young people in ways that will benefit themselves, their communities, and local employers. In fact, disconnected young people are commonly referred to as “opportunity youth” because of their potential to contribute to our nation, and Committee Democrats seek to provide a stronger foundation for that potential. Committee Democrats introduced and supported H.R. 1748, the *Opening Doors for Youth Act of 2017*. This legislation expands opportunities for our nation’s at-risk and opportunity youth through increased federal funding for summer- and year-round employment opportunities and community efforts to keep youth connected to school and training.

On March 28, 2017, Committee Democrats held a briefing entitled *Opening Doors for Youth: Investments in Employment Opportunities for Opportunity Youth are Investments in Our Communities and Our Nation*. During this briefing, members heard from local leaders, researchers, and former opportunity youth on the federal investments needed to assist local communities in providing employment opportunities for youth. On July 18, 2017, the

Committee held a bipartisan panel discussion entitled *Investing in Our Next Workforce: The Business Case for Hiring Opportunity Youth*. Members heard from business leaders, a researcher, and a former opportunity youth on the barriers to hiring youth, the return on investing in opportunity youth, and employer-led solutions to youth unemployment.

Direct Care Workforce

On September 15, 2017, Ranking Member Scott and Ranking Member Davis introduced H.R. 3778, the *Direct Creation, Advancement, and Retention of Employment (CARE) Opportunity Act*, which would provide funding to entities that provide training and advancement opportunities for direct care workers. A direct care worker includes home health aides, psychiatric aides, nursing assistants, and personal care aides who assist seniors and persons with disabilities in their homes. The bill would invest in strategies to enhance the direct care workforce pipeline and respond to the needs of older Americans, people with disabilities, and others who require direct care services to remain in their communities.

Revitalizing Wage Growth

Wage Growth

On June 21, 2018, the Committee held a hearing entitled *Growth, Opportunity, and Change in the U.S. Labor Market and the American Workforce: A Review of Current Developments, Trends, and Statistics*. During the hearing, Committee Democrats highlighted how wages remain stubbornly stagnant, and for the typical worker, the link between rising productivity and increases in pay is broken.¹ Committee Democrats invited expert testimony from Dr. William Spriggs, Chief Economist at the AFL-CIO, who testified that the biggest challenge facing the labor market is wage growth. He noted that the purchasing power of the minimum wage has declined, and if it is not increased by June 2019, it will break the record for the longest period of time the minimum wage has gone unchanged since the *Fair Labor Standards Act (FLSA)* was passed in 1938.

Minimum Wage

On May 25, 2017, Committee Democrats introduced H.R. 15, the *Raise the Wage Act of 2017*. H.R. 15 would gradually raise the federal minimum wage to \$15 an hour. The bill would also phase out subminimum wages for tipped workers, workers with disabilities, and youth workers. This legislation has 171 cosponsors, including all Committee Democrats. The value of the federal minimum wage of \$7.25 an hour has declined significantly in real terms since it was last increased in 2009.² The value of today's minimum wage is lower than the minimum wage in 1968 on an inflation-adjusted basis, when the federal minimum wage peaked at \$11.77 an hour

¹ From 1973 to 2016, the typical worker saw a real (inflation-adjusted) hourly wage increase of just 12.5 percent despite overall productivity growth of 73.7 percent. *The Productivity-Pay Gap*, Economic Policy Institute (Nov. 27, 2018), <http://www.epi.org/productivity-pay-gap/>.

² David Cooper, *Raising the minimum wage to \$15 by 2024 would lift wages for 41 million American workers*, Economic Policy Institute (April 26, 2017), <https://www.epi.org/publication/15-by-2024-would-lift-wages-for-41-million/>.

(using 2018 inflation adjusted dollars). On July 24th, 2017, Committee Democrats sent a letter to Chairwoman Foxx requesting a hearing on H.R. 15. No response was received, and no hearing was convened.

Legislation to Weaken the Right to Overtime Pay

On April 5, 2017, the Committee's Subcommittee on Workforce Protections (Workforce Protections Subcommittee) held a legislative hearing on H.R. 1180, the *Working Families Flexibility Act of 2017*. This legislation amends the FLSA to permit private sector employers to enter into a voluntary agreement with their hourly employees to "compensate" them for hours worked beyond 40 in a week with one-and-one-half hours of compensatory time off ("comp time") at some point in the future in lieu of providing overtime (time-and-a-half) pay in an employee's next scheduled paycheck. Although promoted as expanding a workplace flexibility option that is available to public sector workers to private sector workers, in actuality, the bill offers the workers the opportunity to forfeit their hard-earned overtime pay in exchange for paid time-off to be used solely at the employer's discretion. Committee Democrats invited expert testimony from Ms. Vicki Shabo, Vice President for the National Partnership for Women & Families, who testified that nothing in the FLSA prohibited employers from providing their employees flexibility without compromising the employee's overtime pay. The Committee marked up H.R. 1180 on April 26, 2017, with all Committee Democrats opposing the motion to favorably report the bill to the House. Committee Democrats offered six amendments exposing weaknesses in this legislation – none of which were accepted. On May 2, 2017, the House passed H.R. 1180 by a vote of 229 – 197 with six Republicans voting against the bill.

Overtime Pay for Salaried Workers

On May 23, 2016, the Obama Administration's DOL issued a final rule (2016 Overtime Final Rule) raising the salary level (the level under which most full-time, salaried workers are eligible for overtime pay) to the 40th percentile of earnings of full-time, salaried workers in the lowest wage census region – or \$47,476 per year or \$913 per week in 2016 (up from \$23,660 per year set in 2004) – with automatic adjustments every three years. A Texas court permanently enjoined DOL from enforcing the 2016 Overtime Final Rule on a nationwide basis on August 31, 2017. Instead of defending the higher salary threshold in an appeal to the U.S. Court of Appeals for the Fifth Circuit, the Trump Administration asked the court to hold off on any decision while the Trump Administration worked on its own overtime rule. In the first stage of that effort, DOL issued a Request for Information (RFI) on July 26, 2017, seeking information on whether the salary level set in the 2016 Overtime Final Rule was reasonable or whether a lower level should be set.

On June 29, 2017, Committee Democrats led the introduction of H. Con. Res. 68, *Expressing the sense of Congress that the overtime rule published in the Federal Register by the Secretary of Labor on May 23, 2016, would provide millions of workers with greater economic security and was a legally valid exercise of the authority of the Secretary under the Fair Labor Standards Act of 1938*. On September 25, 2017, Committee Democrats led a comment letter urging the Trump Administration to maintain the salary level established in the 2016 Overtime Final Rule. On

November 30, 2017, Committee Democrats also introduced H.R. 4505, the *Restoring Overtime Pay Act*, which would codify in statute the 2016 Overtime Final Rule.

On February 16, 2017, the Workforce Protections Subcommittee held a hearing entitled *Federal Wage and Hour Policies in the Twenty-First Century Economy*. Committee Democrats highlighted the need to update our nation's wage and hour laws to ensure that the economy works for everyone, not just those at the top. Committee Democrats invited expert testimony from Mr. Andrew Stettner, Senior Fellow at The Century Foundation, who discussed the changing nature of the economy and key policy changes that could increase the effectiveness of the FLSA. These include raising the federal minimum wage, protecting workers in non-traditional work arrangements, and fair scheduling laws.

Paid Sick Leave and Family Leave Policies

On December 6, 2017, the HELP Subcommittee held a hearing entitled *Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families*. Committee Democrats expressed their commitment to policies that provide American workers with paid sick days, paid family and medical leave, and predictable schedules. Committee Democrats also expressed support for H.R. 1516, the *Healthy Families Act*; H.R. 947, the *FAMILY Act*; and H.R. 2942, the *Schedules That Work Act*. Committee Democrats invited expert testimony from Mr. Hans Reimer, the Montgomery County (Maryland) Council President, who strongly cautioned against legislation that would allow employers to circumvent local laws, including sick leave and scheduling laws. He called on the Committee to pass paid leave laws that will provide a strong federal floor that local policymakers can build upon.

February 5, 2018, marked the 25th anniversary of the Family and Medical Leave Act of 1993 (FMLA). The FMLA allows employees to take up to 12 weeks of unpaid, job-protected leave to care for a new child, a seriously ill or injured loved one, their own serious health condition, or to address military family care needs. To commemorate this hallmark legislation, Committee Democrats held a roundtable entitled *Building on the Successes of the FMLA*. Committee Democrats heard from an employer, a self-employed individual, an economist, and worker advocates on the need for a comprehensive, national paid family and medical leave program that provides at least twelve weeks of paid time off. Committee Democrats also discussed the economic benefits of paid family and medical leave and the need to establish a national paid family and medical leave program.

On Tuesday, July 24, 2018, the HELP Subcommittee held a hearing on H.R. 4219, the *Workflex in the 21st Century Act*. H.R. 4219 would allow employers to create a new type of Employee Retirement Income Security Act (ERISA) employee benefit plan (qualified flexible workplace arrangement plan) that would allow employers to pre-empt state and local paid sick days, scheduling, and overtime laws, if the employer adopts a specified minimum leave allowance and a "workflex option." H.R. 4219 does not guarantee all workers access to any type of paid leave or increase workplace flexibility; rather, the bill would allow its qualified flexible workplace arrangement plans to be offered to certain groups of employees but not others. Committee Democrats invited expert testimony from Rhode Island State Senator Gayle Goldin, who opposes H.R. 4219 because it would provide a pathway for employers to circumvent state and local laws

such as Rhode Island's earned sick and safe time law. Senator Goldin urged the Committee to reject H.R. 4219 and instead consider H.R. 1516, the *Healthy Families Act*; H.R. 947, the *Family and Medical Leave Insurance Act*, and H.R. 2942, the *Schedules that Work Act*.

Future of Work and the Sharing Economy

On September 6, 2017, the Committee convened a hearing entitled *The Sharing Economy: Creating Opportunities for Innovation and Flexibility*. Committee Democrats explored when it is fair, appropriate, and legal for sharing economy companies to classify workers as independent contractors instead of employees. Committee Democrats also considered whether the independent contractor paradigm prevailing in the sharing economy and other industries reflects what the future of work will look like in the United States. Committee Democrats reasoned that Americans' need for important protections, such as unemployment insurance and workers' compensation, does not evaporate when they are dispatched using new technologies. Committee Democrats invited expert testimony from Ms. Sharon Block, who served as the Principal Deputy Assistant Secretary for Policy at DOL during the Obama Administration. Ms. Block testified that Congress should support and encourage economic growth without undermining labor and employment laws that ensure a basic level of economic security for American workers.

Automation and the Future of Work

Innovation is changing America, from self-checkout lanes in grocery stores to driverless cars. Automation and AI technologies will transform the future of work, disrupting labor markets and displacing large numbers of workers. One widely cited Oxford University study from 2013 estimates that 47% of U.S. jobs are at risk of being automated by 2033.³ Automation could fall hardest on low-income workers.⁴ The Obama White House produced a report that found that 83 percent of jobs making less than \$20 per hour would come under pressure from automation, compared to only four percent of jobs making above \$40 per hour.⁵ A 2017 issue brief by the Joint Center for Political & Economic Studies found that automation will have a disproportionate effect on African American and Latino workers and will likely produce an almost two million net job deficit that disproportionately impacts workers of color.⁶ Following these findings by the Joint Center, Committee Democrats held three roundtable discussions with academic experts, businesses, and workers on the likely impacts of automation on American workers.

On April 11, 2018, Committee Democrats held a roundtable entitled *Automation and its Impact on Workers of Color: Transportation and Autonomous Vehicles*. Participants included Mr. Spencer Overton, President of the Joint Center for Political & Economic Studies; Dr. Susan Helper, Professor at Case Western Reserve University and former Commerce Department Chief Economist; Mr. Robert Chiappetta, Director of Government Affairs, Toyota Motor North

³ Carl Benedikt Frey and Michael A. Osborne, *The Future of Employment: How Susceptible Are Jobs to Computerization?*, Oxford Martin Programme on Technology and Employment (September 2013), <https://www.oxfordmartin.ox.ac.uk/publications/view/1314>.

⁴ *Artificial Intelligence, Automation, and the Economy*, Executive Office of the President (December 20, 2016), <https://www.whitehouse.gov/sites/whitehouse.gov/files/images/EMBARGOED%20AI%20Economy%20Report.pdf>.

⁵ *Id.*

⁶ Kristen Broady, *Race and Jobs at High Risk to Automation*, Joint Center for Political and Economic Studies (December 18, 2017), <https://jointcenter.org/blog/race-jobs-high-risk-automation>.

America; and Mr. Samuel Loesche, Legislative Representative, International Brotherhood of Teamsters. The roundtable examined how the emergence of autonomous vehicles could place nearly 3.8 million jobs at risk.

On May 8, 2018, Committee Democrats held a roundtable entitled *Retail Automation and its Impact on Women and Workers of Color*. Participants included Mr. Spencer Overton, President of the Joint Center for Political & Economic Studies; Ms. Jana Barresi, Senior Director of Federal Government Affairs, Walmart; Dr. Michael Mandel, Chief Economic Strategist, Progressive Policy Institute; and Ms. Ademola Oyefeso, International Vice President, United Food and Commercial Workers International Union. Participants discussed how cashiers and retail salespersons are two of the occupations most at-risk from automation. Combined, they employ more than 6.5 million workers accounting for more than four percent (one-in-twenty-five) of all jobs.⁷ Participants discussed the ways in which automation will eliminate jobs due to the emergence of e-commerce. Participants also found that there is the possibility that automation may create jobs as well due to the changing needs of companies and consumers.

On July 18, 2018, Committee Democrats held a roundtable entitled *Automation and the Future of Work: Federal Policy Solutions*. Participants included Mr. Spencer Overton, President of the Joint Center for Political & Economic Studies; Dr. Thomas Kochan, Professor of Management, Sloan School of Management, MIT; Dr. Tom Mitchell, Professor of Computer Science, Carnegie Mellon University; and Dr. Maya Rockeymoore, President and CEO, Global Policy Solutions. Participants discussed that while technology is already transforming work, there remains a great deal of uncertainty and disagreement about how fast automation, artificial intelligence, and robots will be adopted and how they will impact jobs and the labor market. While there has always been technological change in the marketplace, participants suggested that job displacement from these new technologies will be qualitatively different than in the past. Participants considered policy decisions that have eroded labor market institutions and social supports necessary to reduce the impacts to losers from economic transformation.

Proposed Tip Regulations Under the Fair Labor Standards Act

On December 5, 2017, DOL published a proposed rule to rescind parts of a 2011 rule that clarified that tips are the property of the employee, regardless of whether the employer takes a tip credit. The proposed rule provides that tips are the property of employees only if the employer takes a tip credit. In issuing the proposed rule, DOL failed to include any quantitative analysis of the proposal's benefits or costs, as expressly required under Section 1(c) of Executive Order 13563. On December 11, 2017, Committee Democrats wrote a letter requesting that DOL extend the initial 30-day public comment period for the proposed rule by a minimum of 30 days to allow for a complete economic analysis of its impact. Subsequently, DOL granted the request, extending the public comment period 30 days, from January 4, 2018 to February 5, 2018. Due to strong public interest in the proposal and the lack of a quantitative analysis that demonstrates its benefits justify its costs, Committee Democrats sent a letter on January 22, 2018, urging DOL to hold public hearings to provide an additional opportunity for DOL to hear from economists on the costs of the proposed rule – including employees' loss of income from the transfer of tips

⁷ *Id.*

from workers to employers – in light of the lack of quantitative economic analysis. No response was received, and no public hearings were held.

On February 1, 2018, Bloomberg BNA reported that DOL had prepared and intentionally withheld an economic analysis that showed workers would lose billions of dollars under the proposal;⁸ in proposing the rule, DOL stated it did not conduct any such quantitative analysis.⁹ Pursuant to oversight responsibilities, Committee Democrats sent a letter to DOL on February 2, 2018, requesting any draft, interim, proposed, or completed quantitative or economic analysis for the proposal, as well as any communications related to the decision to withhold the analysis.

On February 15, 2018, Committee Democrats hosted a member forum entitled *Exploring the Policy and Process Behind the Labor Department's Proposal to Allow Employers to Pocket Their Employees' Tips*. During the forum, members heard from a former Chief Economist for DOL on the agency's capacity to conduct a quantitative economic analysis and from a regulatory expert on the implication of DOL's divergence from rulemaking standards. Although invited, DOL did not participate in the forum. While DOL has indicated it will withdraw the proposal following amendments made to FLSA in March 2018, it has yet to provide the Committee with the requested documents relating to the withheld economic analysis as well as a rationale for the departure from rulemaking standards. A February 20, 2018, response letter from DOL failed to directly respond to any of the Committee Democrats' requests for information and documents.

Enforcement of Wage and Hour Laws

In addition to stagnant wages, wage theft remains a serious issue for our nation's workers. A 2017 study from the Economic Policy Institute found that in the ten most populous states, workers lost \$8 billion annually to minimum wage violations.¹⁰

On June 6, 2018, Committee Democrats asked GAO to evaluate and audit the enforcement practices of DOL's Wage and Hour Division. On October 16, 2018, Committee Democrats asked GAO to review DOL's enforcement of the Service Contract Act of 1965 (SCA), including whether DOL is making use of debarment procedures under SCA for willful and repeat violations, and whether contracting agencies are reviewing prospective contractors' history of SCA and wage and hour violations in awarding contracts.

Child Labor

On July 14, 2018, the U.S. Office of Management and Budget (OMB) began reviewing a DOL NPRM entitled *Expanding Employment, Training, and Apprenticeship Opportunities for 16- and*

⁸ Ben Penn, *Labor Dept. Ditches Data on Worker Tips Retained by Businesses*, BLOOMBERG BNA (February 1, 2018), bna.com/news/bna.com/daily-labor-report/labor-dept-ditches-data-on-worker-tips-retained-by-businesses.

⁹ *Tip Regulations Under the Fair Labor Standards Act* (FLSA), 82 Fed. Reg. 57395, 57404 (proposed December 5, 2017).

¹⁰ David Cooper and Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, Economic Policy Institute (May 10, 2017), <http://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies>.

17-Year-Olds in Health Care Occupations under the Fair Labor Standards Act, which would modify Hazardous Occupation Orders (HOs) regarding health care establishments. On August 1, 2018, Committee Democrats wrote to DOL and OMB urging DOL to request that the National Institute for Occupational Safety and Health (NIOSH) perform a comprehensive literature review to inform any proposed rulemaking on this subject. Although to date no formal review has been published by NIOSH, on September 27, 2018, DOL published a proposed rule that would revise DOL's Hazardous Occupations Order 7. Under the proposal, the HO would no longer prohibit 16- and 17-year-olds from operating or assisting in the operation of power-driven patient lifts. This NPRM would allow these young workers to use this equipment independently and with no training. This proposal stands in contrast to DOL's 2011 non-enforcement policy that only allows 16-and 17-year-old trained workers to assist trained workers 18 years of age or older in the operation of this equipment. The 2011 non-enforcement policy is consistent with a 2011 NIOSH review of available data and scientific literature and biomechanical analysis that concluded these workers cannot safely perform this work by themselves. On October 30, 2018, Committee Democrats sent DOL a letter requesting that DOL publicly disclose a 2012 survey it relied upon, in part, to assert an adverse impact on training opportunities, rather than safety. Committee Democrats also requested that DOL extend the public comment period to give stakeholders adequate time to examine the information. In response, DOL extended the comment period but failed to include the 2012 survey in the proposed rule's docket. On December 11, 2018, Committee Democrats submitted comments to the proposed rule underscoring the risk to patient and worker safety as a result of the proposed change and urging DOL to withdraw the proposed rule.

Guestworker Visas and Immigration

Committee Democrats conducted oversight relating to upholding and strengthening labor standards for temporary, nonimmigrant worker visa programs. On May 17, 2017, Committee Democrats sent DOL a letter raising concerns over expansion of the H-2B program, given potential wage suppression and displacement of U.S. workers and a history of abuse of foreign workers under the program. The letter urged DOL to employ meaningful labor market tests when making recommendations to DHS for determining whether to increase the number of H-2B visas available for the remainder of Fiscal Year 2017. Committee Democrats also sent an oversight letter to DOL on September 13, 2018, requesting information on the legal basis upon which DOL determined that it is unable to prevent employers from laying off similarly employed U.S. workers and replacing them with nonimmigrant guestworkers under the H-2B program. Committee Democrats received a letter from DOL on December 11, 2018, asserting that DOL "can —and does—enforce employers' non-displacement obligations" but remains unable to enforce corresponding employment provisions due to an appropriations rider.

On October 3, 2017, Committee Democrats wrote a letter to Chairwoman Foxx requesting that the Committee seek sequential referral of H.R. 4092, the *Agricultural Guestworker Act*, a bill that would replace the existing H-2A nonimmigrant, temporary agricultural work visa program with a new H-2C program that weakens or eliminates existing labor protections. This legislation presents concerns regarding the wages and working conditions for temporary and U.S. farmworkers. Despite the request, no hearings or markups of the bill were conducted in the Committee. On November 17, 2017, Committee Democrats sent a letter to the Departments of

Labor, Agriculture, State, and Homeland Security urging the Departments to maintain strong labor protections under the H-2A visa program and requesting information on the scope, goals, and plans for stakeholder feedback for the Interagency Working Group established to consider changes to the program. DOL acknowledged receipt in a December 21, 2017, letter but failed to provide the information requested or any substantive response. A December 27, 2017, response from the U.S. Department of Agriculture (USDA) acknowledged that it spearheaded the Interagency Working Group but failed to provide the information requested about the working group. A December 18, 2017, letter from the U.S. Department of State outlined its role in administering the H-2A program through its consulates but failed to acknowledge the Interagency Working Group or to provide the information requested.

Workers with Disabilities

On October 23, 2018, Ranking Member Scott partnered with Senator Casey to request that GAO examine the demographics of individuals with disabilities employed pursuant to Section 14(c) certificates under FLSA, which authorizes employers to pay such employees less than the minimum wage. Specifically, the request asked GAO to review: trends in employment under section 14(c) certificates; the characteristics of individuals employed under 14(c) certificates; counseling and support provided to individuals employed under 14(c) to move employees to competitive, integrated settings; and oversight and management of 14(c) certificates by DOL.

Unemployment Statistics

On February 3, 2017, Committee Democrats wrote to President Trump to inquire whether he and his Administration will continue the longstanding and bipartisan tradition of standing behind DOL's Bureau of Labor Statistics' (BLS) monthly employment situation report. Committee Democrats believe their inquiry was warranted due to the skepticism and distrust of the nation's unemployment rate expressed by President Trump and his White House staff during the 2016 presidential election campaign. No reply was received.

Deregulatory Policy and its Impact on Workers

Compliance with Labor, Civil Rights, and Safety Laws by Federal Contractors

On February 2, 2017, Committee Democrats joined Oversight and Government Reform Committee Democrats in opposing H.J. Res. 37, *Disapproving the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation*. H.J. Res. 37 was a CRA resolution of disapproval, which nullified a Federal Acquisition Regulation implementing President Obama's Executive Order 13673, *Fair Pay and Safe Workplaces*. The regulation, which was issued in August 2016, ensures that contractors entrusted with taxpayer dollars treat their workers fairly and that those who willfully, repeatedly, and pervasively violate workplace laws do not get a competitive advantage over contractors that follow the law. H.J. Res. 37 passed the House by a vote of 236 – 187 and nearly unanimous opposition from House Democrats. It passed the Senate by a vote of 49 – 48 and was signed by the President on March 27, 2017.

Oversight of Department of Labor Deregulatory Plans

During his first week in office, President Trump issued Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs*, which required agencies to identify two existing regulations for elimination for every new regulation proposed (the “Two-for-One Rule”) in Fiscal Year 2017. Issued a month later, Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, requires each agency to appoint new regulatory reform officers and form a regulatory reform task force to evaluate and make recommendations for repealing, replacing, or modifying existing regulations, including identifying regulations that “eliminate jobs, or inhibit job creation.” On November 9, 2017, prior to DOL Secretary Alexander Acosta’s (Secretary Acosta) appearance before the Committee, Committee Democrats requested information and documents from DOL relating to the implementation of these Executive Orders. Specifically, the letter requested an unredacted version of a May 23, 2017, memo sent by senior DOL officials to Secretary Acosta that referenced the number of regulations targeted for deregulatory action for each DOL sub-agency and discussed setting up a “bank” of regulations targeted for future deregulatory actions. On December 8, 2017, DOL responded, but it refused to provide any of the requested information asserting it was “non-public and deliberative material.”

On May 23, 2018, the Workforce Protections Subcommittee held a hearing entitled *Regulatory Reform: Unleashing Economic Opportunity for Workers and Employers*. The hearing provided an overview of the Trump Administration’s efforts to delay or roll back workforce protections. Committee Democrats invited expert testimony from Dr. Heidi Shierholz, Senior Economist and Director of Policy for the Economic Policy Institute, who reviewed how the Trump Administration’s deregulatory efforts and questionable regulatory processes will reduce overtime pay, limit opportunities for retirement savings, expose workers to preventable workplace illnesses and injuries, and enable continued discrimination in the workplace.

Labor Law and Collective Bargaining Rights

Overview

A key to revitalizing wage growth and rebuilding the middle class is restoring workers’ rights to collectively bargain. During the past eight years, there have been concerted efforts to use the Committee’s authority to undermine unions and weaken the National Labor Relations Act (NLRA). This is evidenced by the fact that the Committee has held 38 hearings and markups aimed at weakening the protections afforded under the NLRA, which is more legislative activity than on any other topic, including higher education (29), job training (32), K-12 education (30), or health care (25).

National Labor Relations Board – 2014 Union Representation Election Rule

In 2014, the National Labor Relations Board (NLRB) streamlined its procedures governing union representation elections, reducing unnecessary delays between the time a union filed for an election and the date of the election (2014 Election Rule). On February 10, 2017, the Committee

held a hearing titled *Restoring Balance and Fairness to the National Labor Relations Board*, during which Committee Democrats defended the merits of this rule. Committee Democrats invited expert testimony from Ms. Susan Davis, a lawyer representing unions and workers, who explained that the 2014 Election Rule accomplished its goal of reducing unnecessary delays.

On December 12, 2017, three Republican members of the NLRB voted to issue a RFI seeking input on whether to rescind or modify the 2014 Election Rule. On December 21, 2017, Committee Democrats requested data from the NLRB on the implementation of the 2014 Election Rule. On January 16, 2018, Committee Democrats requested that the NLRB extend the RFI deadline for comments because the NLRB had not yet produced the requested information. The NLRB's response on February 15, 2018, left 12 of the 23 queries completely or partially unanswered, and Committee Democrats replied on March 28, 2018, requesting that the NLRB produce responses to the outstanding requests. The NLRB, on April 13, 2018, produced partial responses to four of the outstanding 12 requests, but did not address the remaining eight outstanding requests. On April 18, 2018, Committee Democrats submitted comments demonstrating the effectiveness of the 2014 Election Rule, using the data provided by the NLRB.

Exempting Tribal Enterprises from the National Labor Relations Act

On March 29, 2017, the HELP Subcommittee held a hearing on H.R. 986, the *Tribal Labor Sovereignty Act*. This bill would exempt tribal enterprises on tribal lands – such as casinos, hotels, and sawmills – from the definition of “employer” under the NLRA. Although couched as protecting tribal sovereignty, the bill’s purpose is to strip workers of their rights under federal labor law to organize and collectively bargain at any enterprise owned and operated by a recognized Indian tribe on tribal land. Committee Democrats invited expert testimony from Mr. Jack Gribbon, the California Political Director for UNITE HERE, who testified that the NLRB had carefully balanced the sovereign rights of tribes in matters of local self-government with workers’ rights to organize and bargain collectively in *San Manuel Indian Bingo and Casino*. The Committee marked-up H.R. 986 on June 29, 2017, with all Committee Democrats opposing the motion to favorably report the bill to the House. In the Rules Committee, the text of H. R. 986 was added to S. 140, *A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund*, which included two non-controversial bills involving tribal land and water rights. The House passed S. 140, as amended, by a recorded vote of 239 – 173 on January 10, 2018. The bill, as amended by the House, failed to pass the Senate.

Union Organizing and Collective Bargaining in the Private Sector

On June 14, 2017, the HELP Subcommittee held a hearing entitled *Legislative Reforms to the National Labor Relations Act: H.R. 2776, Workforce Democracy and Fairness Act; H.R. 2775, Employee Privacy Protection Act; and H.R. 2723, Employee Rights Act*. All three bills are designed to make it more difficult for workers to form labor unions. H.R. 2776 would mandate waiting periods in union representation elections and enable employers to gerrymander employees into the bargaining unit prior to the election as a means to dilute the voting strength of supporters. H.R. 2775 would reduce the amount of information to be included in the list of voters’ contact information employers must provide to unions prior to an election. H.R. 2723

would modify voting procedures for union representation elections by counting all non-voting employees as votes against the union and require delays in the representation election process. Subcommittee Democrats objected to these bills because they undermine workers' rights to join unions. Committee Democrats invited expert testimony from Mr. Jody Calemine, General Counsel for the Communications Workers of America, who explained how the bills would undermine the ability of workers to vote in union representation. The Committee marked up H.R. 2775 and H.R. 2776 on June 29, 2017, with all Committee Democrats opposing the motions to favorably report the bills to the House. The Committee did not take up H.R. 2723.

On December 6, 2017, Committee Democrats introduced H.R. 4548, the *Workplace Action for a Growing Economy Act* (WAGE Act). This bill would strengthen the NLRA by putting teeth into its enforcement provisions, authorizing civil penalties for employers who commit serious violations, increasing remedies for workers who have been unlawfully discharged, and establishing a private right of action so workers could directly seek relief in federal district court.

On June 13, 2018, Committee Democrats, in conjunction with House and Senate Democratic leadership, introduced H.R. 6080, the *Workers' Freedom to Negotiate Act*. This bill builds on protections under the WAGE Act (H.R. 4548) by prohibiting employers from permanently replacing employees who exercise the right to strike or requiring employees to participate in anti-union captive audience meetings as a condition of employment. It also amends the NLRA to authorize unions and employers to agree in a labor contract that the payment of "fair share" fees shall be a condition of employment following initial hiring.

On April 26, 2018, the Committee held a hearing entitled *Worker-Management Relations: Examining the Need to Modernize Federal Labor Law*. This hearing focused on whether DOL should regulate worker centers in the same manner as unions for purposes of reporting under the *Labor Management Reporting and Disclosure Act* (LMRDA). Worker centers are community-based nonprofit organizations that advocate for and organize on behalf of low-wage workers. Committee Democrats invited expert testimony from Professor Anne Marie Lofaso, Professor of Law at West Virginia University College of Law. Professor Lofaso explained that the LMRDA should not apply to worker centers because it was designed to ensure that unions are accountable to their members, while worker centers are distinct from unions because they do not engage in collective bargaining as the exclusive representative of workers.

Collective Bargaining Rights of Public Sector Employees

On June 27, 2018, the Supreme Court held in *Janus v. AFSCME Council 31* that the First Amendment prohibits state and local governments from requiring non-member employees who benefit from union representation to pay "fair share" fees to the union to cover the costs of those services. In anticipation of that decision, Committee Democrats joined other House Democrats in a Special Order on the House floor on January 29, 2018, to explore how the Supreme Court's expected decision will have an adverse impact on workers. One day after the Supreme Court's decision, Representative Matthew A. Cartwright (D-PA), in conjunction with Committee Democrats, introduced H.R. 6238, the *Public Service Freedom to Negotiate Act*, to establish the principle in federal law that state and local government workers – such as firefighters, police, and teachers – have a right to organize a union and collectively bargain. This bill authorizes the

Federal Labor Relations Authority (FLRA) to make determinations on whether a state, territory, or locality meets minimum federal standards in allowing public employees to join unions and collectively bargain. If such standards are not adopted, the FLRA is given authority to conduct union elections for such public employees, and to require the state or local government agency to recognize and bargain if a labor organization is selected by the employees.

Erosion of Federal Employees' Collective Bargaining Rights

On March 9, 2018, ED informed the union representing its employees, the American Federation of Government Employees (AFGE), that it would cease negotiating a new collective bargaining agreement and instead unilaterally implement terms. On June 26, 2018, Ranking Member Scott and Ranking Member Cummings wrote ED requesting that it return to the bargaining table with AFGE and that it produce information documenting its decision to cease bargaining with AFGE. On August 10, 2018, ED responded, but it did not produce requested documents regarding the basis for its refusal to bargain with the union or communications on that topic between the White House and ED.

HHS declared an impasse with its employees, represented by the National Treasury Employees Union (NTEU), on August 13, 2018, after one day of bargaining. HHS has since refused to return to the bargaining table. On October 11, 2018, Committee Democrats wrote HHS Secretary Alex Azar (Secretary Azar), urging HHS to resume bargaining with NTEU and to do so in good faith.

Joint Employer Standards

Labor and employment laws have long held that when more than one employer controls terms and conditions of employment, an employee may have multiple employers, also known as “joint employers.” The standard for joint employment determinations under the NLRA was articulated in the 2015 decision *Browning-Ferris Industries*. On February 10, 2017, the Committee held a hearing titled *Restoring Balance and Fairness to the National Labor Relations Board* during which Committee Republicans attacked the joint employer standard in *Browning-Ferris* along with a critique of the NLRB’s 2014 union election rule and a decision allowing graduate research assistants to form unions. Committee Democrats once again invited expert testimony from Ms. Susan Davis, who represents workers and unions in legal matters, who explained how the *Browning-Ferris* decision was modestly crafted to comport to the standards for determining an employer-employee relationship under the common law of agency. Committee Democrats stressed that the *Browning-Ferris* decision ensures that workers are able to collectively bargain with all of the employers that actually control the terms and conditions of employment, and not merely the payroll employer.

On July 12, 2017, the Committee held a hearing entitled *Redefining Joint Employer Standards: Barriers to Job Creation and Entrepreneurship* that explored joint employer standards under the NLRA and the FLSA. Committee Democrats emphasized that current standards ensure that employers who violate the law are accountable to their employees. Committee Democrats invited expert testimony from Ms. Catherine K. Ruckelshaus, General Counsel for the National Employment Law Project, who described how wage theft and other labor violations persist in

workplaces where outsourcing is prevalent and workers are not sure who their employer is. Committee Democrats also invited expert testimony from Professor Michael C. Harper, Professor of Law at Boston University Law School and Reporter for the *Restatement of Employment Law*, who testified that the *Browning-Ferris* decision conformed to common law standards. He also observed that legislation to overturn *Browning-Ferris* could lead to a contraction of franchisees' independence.

On September 13, 2017, the Workforce Protections and HELP Subcommittees held a joint hearing on H.R. 3441, the *Save Local Business Act*. This bill would narrow the standard for whether an employer is liable as a joint employer under the NLRA and FLSA. Committee Democrats invited expert testimony from Mr. Michael Rubin, an attorney who litigates cases involving joint employers, who detailed how the bill, as drafted, effectively eliminates joint employer liability. Committee Democrats emphasized that the bill would permit entities to control working conditions while escaping liability, even creating situations where an employee could be found to have no employer liable for labor law violations. The Committee marked up the bill on October 4, 2017. Committee Democrats offered a series of amendments highlighting inequities to workers and franchisees. The House passed the bill on November 7, 2017, by a recorded vote of 242 – 181.

On March 12, 2018, Committee Democrats sent a letter to NLRB General Counsel Peter Robb requesting information about a settlement with McDonald's USA, LLC, in its litigation before the NLRB on whether it is a joint employer and thus jointly liable for unfair labor practices committed against its franchisees' employees. The letter requested the record of the consolidated litigation against McDonald's before the NLRB. The NLRB provided most of the transcripts from the litigation on March 30 and May 3, 2018, but did not provide any other requested documents.

On September 14, 2018, the NLRB issued a NPRM to overturn the current joint employer standard articulated in *Browning-Ferris*. The proposed rule would only find an entity to be a joint employer if it exercised control over terms and conditions of employment directly and immediately. As such, it would not find an entity to be a joint employer if the putative joint employer exercised control indirectly, through an intermediary, or if it reserved control in its contract. On October 10, 2018, Ranking Member Scott and Senator Murray requested data from the NLRB regarding its handling of cases alleging a joint employer relationship. That letter also inquired whether the NLRB issued the proposed rule prior to the completion of the ethics and recusal review (see below). The NLRB responded on October 23, 2018, with lists of cases that included the phrase "joint employer," but it did not produce information responsive to the request.

Oversight of Conflicts of Interest at the National Labor Relations Board

Committee Democrats have conducted oversight on conflicts of interest involving NLRB members who were previously employed by law firms that represent clients litigating before the NLRB. The most prominent area of these conflicts centers on the joint employment standard.

On December 14, 2017, the NLRB overturned *Browning-Ferris* – the decision annunciating the standard governing when employees have joint employers under the NLRA – in *Hy-Brand Industrial Contractors*. One Board member, William Emanuel (Member Emanuel), participated in the decision to overturn *Browning-Ferris* even though his former law firm represents a party in that case. Member Emanuel participated in a second vote directing the NLRB General Counsel to seek a remand of *Browning-Ferris* from the D.C. Circuit Court of Appeals. On December 21, 2017, Ranking Member Scott and Senator Murray requested information regarding Member Emanuel’s decision to participate in *Hy-Brand* and the remand vote for *Browning-Ferris* despite the apparent conflict of interest. Member Emanuel responded on January 26, 2018, stating that he did not know his former firm represented a party in *Browning-Ferris*. However, after Member Emanuel’s July 13, 2017, confirmation hearing, he answered written questions demonstrating his awareness of his former firm’s involvement in the case. After knowledge of this discrepancy became public, Member Emanuel issued a second letter on February 1, 2018, stating that he would issue a “further response, clarification or correction.” Ranking Member Scott and Senator Murray followed up with Member Emanuel on February 6, 2018, to inquire about this discrepancy and his participation in the vote to pursue remand of *Browning-Ferris*. Member Emanuel issued his clarification or correction on February 12, 2018, claiming that he had forgotten about his former firm’s involvement at the time he participated in *Hy-Brand*. However, he did not respond to any of the requests for information in the February 6th letter.

On February 15, 2018, the NLRB transmitted to Congress a report from the NLRB Inspector General (NLRB-IG) documenting a “serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative process and the National Labor Relations Act with respect to the deliberation of a particular matter.” The NLRB-IG concluded that Member Emanuel should have recused himself from the deliberations in *Hy-Brand*, as they constituted the same particular matter involving specific parties as *Browning-Ferris*. On February 23, 2018, Committee Democrats requested a hearing on the NLRB-IG’s report in a letter to Chairwoman Foxx. No response was received. On February 26, 2018, the NLRB vacated *Hy-Brand*, citing a memorandum from the Designated Agency Ethics Official (DAEO) agreeing with the NLRB-IG that Member Emanuel should have recused himself. On March 22, 2018, the NLRB-IG completed a report concluding that Member Emanuel violated the ethics pledge found in Executive Order 13770, *Ethics Commitments by Executive Branch Appointees*.

On May 9, 2018, the NLRB announced that it was considering rulemaking to overturn *Browning-Ferris*. It also announced on June 8, 2018, that it initiated a comprehensive review of its policies and procedures governing ethics and recusal requirements for Board members. When announcing its review, NLRB Chairman John Ring (Chairman Ring) stated, “[r]ecent events have raised questions about when Board Members are to be recused from particular cases and the appropriate process for securing such recusals.”¹¹

As noted above, the NLRB issued its proposed rule to overturn *Browning-Ferris* on September 14, 2018, and Ranking Member Scott and Senator Murray submitted a letter on October 10, 2018, inquiring as to whether the NLRB completed its internal ethics and recusal review prior to

¹¹ Office of Public Affairs, *NLRB to Undertake Comprehensive Internal Ethics and Recusal Review* (June 8, 2018), <https://www.nlr.gov/news-outreach/news-story/nlr-undertake-comprehensive-internal-ethics-and-recusal-review>.

the issuance of its proposed rule. Chairman Ring responded on October 23, 2018, that “[t]here is no connection between the Board’s joint-employer NPRM and our internal ethics review.”

Disclosure of Employer “Persuader” Activities Under the Labor Management Reporting and Disclosure Act

On June 12, 2017, DOL published a NPRM to rescind the Persuader Rule, a 2016 rule that required employers and labor-management consultants to disclose the identity of and amounts paid to outside consultants who persuade employees on union organizing campaigns. Committee Democrats submitted a comment on August 10, 2017, urging DOL against rescinding the rule. This comment asserted that the Persuader Rule closed a loophole created by DOL’s longstanding misinterpretation of the Labor Management Reporting and Disclosure Act, and that the Persuader Rule fostered transparency by informing employees of how employers spend money in response to union campaigns. DOL rescinded the rule on July 18, 2018.

Home Care Workers’ Union Representation and Union Dues

On July 12, 2018, the Center for Medicare & Medicaid Services (CMS) proposed to rescind a 2014 regulation affirming that states may make payments to third parties on behalf of an individual provider “for benefits such as health insurance, skills training, and other benefits customary for employees.” This proposed rulemaking stated that its intent was to limit the ability of home care workers to contribute their wages to support their unions. On August 13, 2018, Committee Democrats opposed the proposed rule in a comment letter on the grounds that it would undermine the quality of care provided by home care workers, which includes benefits such as job training that home care workers’ unions had secured through collective bargaining. Committee Democrats also explained that the proposed rule would not have the intended legal effect because the 2014 regulation CMS is seeking to rescind governs payments from states to third parties while union dues are paid by employees to their unions.

Oversight of the Management and Policies of the NLRB General Counsel

In January 2018, the NLRB General Counsel was reportedly considering a restructuring of the agency’s regional offices, with a plan to demote the NLRB’s Regional Directors as part of an effort to centralize political power over the decision-making activities of career officials. The NLRB General Counsel also began amending the rules governing how the agency processes unfair labor practice cases. Committee Democrats submitted a request for information on October 15, 2017, regarding these practices. In a letter dated March 1, 2018, the NLRB General Counsel denied that he was considering a proposal to restructure the agency. In June 2018, the NLRB General Counsel informed the Committee that he was preparing to solicit employee applications for Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) to reduce the size of the agency. Committee Democrats requested additional information from the NLRB General Counsel on July 18, 2018, and the NLRB General Counsel responded in letters dated August 1 and August 17, 2018.

Blocking Workers' Rights to Engage in Collective Action via Pre-Dispute Arbitration Agreements

In the NLRB's 2014 decision in *Murphy Oil USA, Inc.*, it held that an employee may not waive the right to engage in joint, class, or collective litigation, without regard to a pre-dispute arbitration agreement signed between the employee and the employer. The NLRB, along with the U.S. Solicitor General, petitioned the Supreme Court for a *writ of certiorari* on September 9, 2016, to resolve a split among the U.S. Courts of Appeals on whether to uphold the NLRB's reasoning in *Murphy Oil*. Under President Trump, the Acting Solicitor General switched sides and opposed the NLRB's position in the case. On July 6, 2017, Ranking Member Scott joined Judiciary Committee Democrats in a letter to Attorney General Sessions questioning the basis for DOJ's reversal of its position. In *Epic Systems Corp. v. Lewis*, the Supreme Court in 2018 ruled against the NLRB's position and held that notwithstanding the NLRA's protections for employees to engage in "concerted protected activity for mutual aid and protection," the *Federal Arbitration Act* empowers employers to require employees to waive their right to engage in joint, class, and collective legal action.

Committee Democrats introduced H.R. 6080, the *Workers' Freedom to Negotiate Act* on June 13, 2018, which, among its provisions, overturns the Supreme Court's decision in *Epic Systems v. Lewis* by amending the NLRA to explicitly protect workers' rights to engage in collective legal claims.

On October 30, 2018, Committee Democrats joined Judiciary Committee Democrats in introducing H.R. 7109, the *Restoring Justice for Workers Act*, which amends the *Federal Arbitration Act* to prohibit pre-dispute arbitration agreements that require arbitration of employment disputes and further amends the NLRA to prohibit agreements and practices that interfere with employees' right to collectively litigate employment disputes. This bill provides a safe harbor for arbitration agreements that are included in collective bargaining agreements.

Workplace Safety and Health

Occupational Safety & Health

In 2017, 5,147 workers were killed on the job from work-related injuries (14 deaths per day),¹² and employers reported at least 3,475,000 recordable occupational injuries or illnesses, according to the Bureau of Labor Statistics.¹³ Despite the fact that disabling injuries cost the economy \$250 billion per year in both direct and indirect costs,¹⁴ the Trump Administration has launched a massive rollback of Occupational Safety and Health Administration (OSHA) protections. To protect and strengthen job safety, Committee Democrats have opposed these rollbacks, conducted oversight, and introduced four job safety bills.

¹² Census of Fatal Occupational Injuries Summary, 2017, Bureau of Labor Statistics (December 18, 2017). https://www.bls.gov/news.release/cfoi_nr0.htm

¹³ Industry Injury and Illness Data, Table 2, Bureau of Labor Statistics (2017), https://www.bls.gov/iif/oshwc/osh/os/summ2_00_2017.htm

¹⁴ Leigh, J.P., *Economic Burden of Occupational Injury and Illness in the United States*, The Milbank Quarterly, Vol. 89, No. 4 (2011).

On February 7, 2017, Representative Courtney and other Committee Democrats introduced H.R. 914, the *Protecting America's Workers Act* to update the *Occupational Safety and Health Act of 1970* by modernizing whistleblower protections, strengthening penalties for criminal violations, expanding coverage to 8.1 million state and local government workers, and ensuring timely abatement of hazards.

On May 16, 2017, Representative Takano and other Committee Democrats introduced H.R. 2428, the *Accurate Workplace Injury and Illness Records Restoration Act*, which clarifies OSHA's authority to issue a citation when an employer's violation of the recordkeeping requirements continues for more than six months from the date the employer should have first recorded the injury. H.R. 2428 also overturns the CRA resolution of disapproval, H.J. Res 83, *Disapproving the rule submitted by the Department of Labor relating to "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness"*. This bill enables OSHA to issue a rule that is substantially similar to the one that was nullified.

On November 8, 2017, Representative DeSaulnier and other Committee Democrats introduced H.R. 4304, the *Offshore Oil and Gas Worker Whistleblower Protection Act of 2017*, which provides offshore oil workers protections from retaliation if they blow the whistle on unsafe work practices. This implements a key recommendation from the National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling and the Chemical Safety and Hazard Investigation Board. On June 11, 2018, Committee Democrats wrote Chairwoman Foxx requesting a hearing and markup of this bill. No response was received.

On November 16, 2018, Representative Courtney and other Committee Democrats introduced H.R. 7141, the *Workplace Violence Prevention in Health Care and Social Services Act of 2018*, which requires OSHA to develop a comprehensive workplace violence prevention standard to protect workers in America's health care and social service workplaces. On January 3, 2017 – shortly before the end of the Obama Administration – OSHA wrote to Committee Democrats stating that OSHA was initiating work on a rule to prevent violence against health care and social service workers. However, shortly after President Trump took office in 2017, OSHA stopped work on this rule as part of its deregulatory agenda. This bill is based on findings from the GAO report, *Workplace Safety and Health: Additional Efforts Needed to Help Protect Health Care Workers from Workplace Violence*, which documented that workplace violence is a serious concern for 15 million health care workers, as well as peer reviewed studies demonstrating that workplace violence prevention programs and state legislation are associated with reductions in workplace violence.

The Republican Majority has taken no legislative action to improve workplace safety and health in the 115th Congress; rather, it has worked to weaken job safety through legislation and support for the Trump Administration's regulatory rollbacks. In contrast, Democrats have worked to defend worker safety standards.

On March 1, 2017, House Democrats broadly opposed a CRA resolution of disapproval (H.J. Res. 83, discussed above) that nullified an OSHA rule issued in December 2016 clarifying that

employers have a continuing obligation to record occupational injuries and illnesses on a log, and that such duty does not expire solely because the employer fails to create the necessary records when first required to do so. The resolution of disapproval passed the House by a vote of 231 – 191, and it passed the Senate three weeks later by a vote of 50 – 48. The President signed H.J. Res 83 on April 3, 2017. Invalidating this rule will exacerbate the serious problem of under-recording of injuries. The consequence is that patterns and trends of injuries are masked from employers, employees, and OSHA. Without this information, needed corrective actions are not flagged to save a life or a limb.

In Spring 2017, Committee Republicans, backed by marketers of beryllium-containing coal slag abrasives, pressed the Trump Administration to postpone and roll back new OSHA standards that protect shipyard and construction workers from exposure to ultra-toxic beryllium. In a letter to OMB Director Mick Mulvaney and Acting DOL Secretary Edward Hugler dated March 17, 2017, Ranking Member Scott opposed postponement of the rule. In June 2017, the Trump Administration proposed the elimination of key protections for construction and maritime workers. On August 28, 2017, Committee Democrats, in conjunction with Senator Warren, opposed OSHA's rollback in a letter to Secretary Acosta. The letter pointed out that there are cost-effective alternatives to coal slag abrasives that do not contain unsafe levels of beryllium, such as recycled glass, and urged DOL not to eviscerate worker health standards simply to protect the market share of vendors selling these toxic abrasives. On September 26, 2017, Ranking Member Scott wrote the Director of NIOSH seeking information on a NIOSH study that examined the beryllium content of various types of abrasives. On October 20, 2017, NIOSH responded with a detailed technical analysis.

During 2017 and 2018, OSHA shut down many of its safety and health advisory committees covering construction, general industry, maritime, federal employees, and whistleblower protection. In both 2016 and 2017, Committee Republicans blocked the inclusion of a provision to codify OSHA's Maritime Advisory Committee on Occupational Safety and Health (MACOSH) as a permanent advisory committee in defense legislation, despite labor and industry support. Committee Republicans insisted that a letter would suffice to ensure MACOSH would continue. On October 4, 2017, Committee Democrats joined a bipartisan letter from the House Shipbuilders Caucus urging Secretary Acosta to continue MACOSH. On November 17, 2017, OSHA responded, stating that it was working to keep MACOSH operating past the date when its members' terms were set to expire on January 20, 2018. However, when the terms of the members expired in 2018, MACOSH ceased operations.

Committee Democrats opposed a legislative and an administrative effort to eliminate OSHA's rule to *Improve Tracking of Workplace Injuries and Illnesses*. That rule requires large establishments (250 or more employees) to electronically transmit injury and illness logs and individual reports of injury to OSHA (with personal information removed) on an annual basis. In a September 28, 2018, comment letter, Committee Democrats noted that detailed injury and illness information enables OSHA to more effectively target its scarce inspection resources by identifying patterns and trends of occupational injuries and illnesses at the most hazardous worksites, without requiring inspectors to travel to each worksite to review the paper logs. As documented at an oversight hearing (see below) on February 27, 2018, OSHA only has sufficient

resources to inspect each workplace in its jurisdiction once every 158 years on average; thus, prioritization is essential to ensure the most dangerous workplaces receive timely inspections.

Committee Democrats opposed a provision inserted in H.R. 2, the *Agriculture Improvement Act of 2018*, which would weaken OSHA’s Process Safety Management (PSM) standard, a safety rule that helps prevent catastrophic chemical releases. Touted as a “retail exemption,” this provision would exempt any facility from the PSM standard that handles any of 140 hazardous chemicals and generates more than 50% of its revenue from sales to an “end user”. The facility would be exempted no matter how large the quantity of the covered chemical was manufactured, used, or stored. This loophole, which is touted as protecting mom-and-pop retail establishments, could, according to OSHA, “permit a large chemical facility to claim retail exemption status because it sells directly to an end user of the chemical. This could effectively eliminate the entire chemical manufacturing sector from coverage under the PSM standard, jeopardizing the safety and health of chemical facility workers.”¹⁵ The Senate bill did not include this provision, and the final conference report signed into law on December 20, 2018, deleted this provision.

On December 7, 2017, Committee Democrats, working with Senate HELP Committee Democrats, released a GAO report, *Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed to Help Protect Workers at Meat and Poultry Plants*. Among its findings, GAO reported that workers at many plants have trouble accessing the bathroom when they need it, going so far as to shun eating or drinking during their shifts to avoid reprimand from their supervisors for stepping off the production line. GAO also found that OSHA faces challenges identifying and addressing worker safety concerns in meat and poultry plants because workers fear employer retaliation for contacting OSHA. On February 2, 2018, Committee Democrats, in conjunction with Ranking Member DeLauro and Senator Murray, wrote Secretary Acosta seeking clarification on whether OSHA inspectors will follow GAO recommendations by asking workers about bathroom access and conducting offsite interviews as appropriate. Additionally, DOL was asked what steps it will take to better protect contracted sanitation workers who clean and disinfect meat and poultry plants and experience some of the highest amputation rates in the country. OSHA replied on March 19, 2018, agreeing to implement GAO’s key recommendations.

On December 13, 2017, Committee Democrats joined with the Congressional Black Caucus in a letter to U.S. Secretary of Agriculture Sonny Perdue urging USDA to reject a petition from the chicken processing industry that would exempt poultry plants from line speed limits set by Food Safety and Inspection Service rules. The letter noted that an increase from the current line speed limit of 140 birds per minute would exacerbate worker injuries, including carpal tunnel syndrome and amputations.

On February 27, 2018, the Workforce Protections Subcommittee held its only hearing on workplace safety and health in the 115th Congress, which was titled *A More Effective and Collaborative OSHA: A View from Stakeholders*. Prior to this, nearly two years passed since the Committee last held a hearing on workplace safety. During the hearing, Committee Republicans labeled OSHA’s standards burdensome and called for more agency cooperation with employers

¹⁵ Department of Labor comments on Section 9131 of the House-enacted *Agriculture Improvement Act of 2018* (H.R. 2).

and expanded compliance assistance. Committee Democrats noted that OSHA is under-resourced and only has enough inspectors to visit each facility in its jurisdiction once every 158 years on average, which requires them to maintain public awareness on workplace safety. Committee Democrats invited expert testimony from Dr. David Michaels, who previously served as the Assistant Secretary of OSHA from 2009-2017. Dr. Michaels pointed out that “compliance assistance is useful for those employers who voluntarily want to protect their employees,” but it is “no substitute for protective standards and strong, fair enforcement” in preventing injuries. Dr. Michaels also called for the enactment of H.R. 2428, the *Accurate Workplace Injury and Illness Records Restoration Act*, which would restore OSHA’s authority to cite employers who do not maintain accurate injury and illness logs.

On June 28, 2018, Committee Democrats requested that GAO assess how OSHA is using the annual summaries of injury and illnesses data it collected in 2016 and 2017 to target its scarce inspection resources as well as whether OSHA is abiding by its commitment to make this facility-specific information available to the public on its website.

Mine Safety and Health

Over the past eight years, Committee Democrats have called for a bipartisan effort to reform our nation’s mine safety laws, particularly in light of the lessons learned from the April 2010 Upper Big Branch (UBB) mine disaster. That mine explosion, which took the lives of 29 miners on April 5, 2010, was the worst coal mine disaster in 40 years, and it revealed significant weaknesses in the *Federal Mine Safety and Health Act of 1977* (Mine Act). These weaknesses include: the Mine Safety and Health Administration’s (MSHA) lack of subpoena authority for inspections and investigations; weak criminal sanctions for knowing violations of mandatory safety standards; and insufficient tools to collect overdue penalties, which allows scofflaws to readily escape paying delinquent civil fines.

On April 5, 2017, Committee Democrats introduced H.R. 1903, the *Robert C. Byrd Mine Safety Protection Act of 2017*, which, among its provisions, strengthens criminal sanctions under the Mine Act by making it a felony for an operator to knowingly violate mine safety standards and recklessly expose miners to risk of injury, illness, or death. Committee Republicans repeatedly stalled on legislation for the past eight years, stating that they wanted to wait for all of the UBB accident investigation reports to be completed. All six investigation reports were completed; the last report was released over six-years ago, in February 2012.

On February 6, 2018, the Workforce Protections Subcommittee held its sole hearing on mine safety in the 115th Congress. Entitled *Reviewing the Policies and Priorities of the Mine Safety and Health Administration*, this was the Committee’s first hearing on mine safety in over two years and the only witness was Mr. David Zatezalo, the Assistant Secretary for Mine Safety and Health at DOL’s MSHA. At this hearing, Mr. Zatezalo declined to answer what steps MSHA would take in light of recent NIOSH studies documenting a resurgence in the most severe forms of black lung disease. Democrats sought assurances that MSHA, as part of the Administration’s deregulatory agenda, would not roll back any part of MSHA’s 2014 respirable dust rule, which is aimed at helping end the scourge of black lung disease – a workplace illness that has already taken the lives of 70,000 coal miners. At this hearing, Committee Democrats probed a potential

conflict of interest with Mr. Zatezalo: in his previous capacity as a coal mine executive, Mr. Zatezalo had served on the Board of Directors of the Kentucky and Ohio Coal Associations, both of which had sued MSHA to invalidate the agency's Pattern of Violations rule and were now in negotiations with MSHA to settle the litigation.

Black Lung Disease

In the face of inaction by the Committee Majority regarding mine safety, Committee Democrats held four events (roundtables and briefings) to shine a spotlight on the resurgence of black lung disease and options to address the problem.

On March 6, 2017, Committee Democrats held a roundtable with leaders of black lung clinics from across Kentucky, Pennsylvania, West Virginia, and Virginia, along with leading researchers and physicians from Illinois and Virginia. The clinics' leaders shared that they are diagnosing rapidly increasing rates of progressive massive fibrosis (PMF) – the most lethal form of black lung disease – and they lack the capacity to keep up with the surge of miners seeking assistance. In response, Ranking Member Scott and Representative Morgan M. Griffith (R-VA) led a bipartisan House letter to President Trump urging him to increase funding for the black lung clinics program in his budget request for Fiscal Year 2018.

On July 13, 2017, Committee Democrats hosted a briefing with NIOSH Director John Howard and his staff regarding their efforts to document the rise in the number of cases of PMF among coal miners in southwest Virginia. In light of the National Public Radio investigation that found that NIOSH had undercounted the number of PMF cases by at least tenfold, and a subsequent request from House and Senate Democrats asking NIOSH to quantify the total number of PMF cases, NIOSH outlined their recent efforts at the briefing. They confirmed a large cluster of PMF cases based on their review of lung x-rays from coal miners in southwest Virginia and eastern Kentucky.

On June 28, 2018, Committee Democrats hosted a bipartisan briefing with the National Academy of Sciences on the findings from a congressionally-mandated study that examined the monitoring of coal miners' exposure to respirable coal mine dust. The report found that monitoring and sampling of dust exposures needs to go beyond current regulatory requirements to be effective. The report underscored that increased silica exposure from thin seam mining is a likely cause in the surge of PMF. The report identified the advent of new NIOSH-developed silica monitoring technology and called for its adoption as a next logical step in addressing the problem.

On September 24, 2018, Committee Democrats, spurred by the National Academy of Sciences report, hosted a bipartisan briefing for Jessica Kogel, Director of NIOSH's Office of Mine Safety and Health Research, and her staff featuring a demonstration of new field-based technology that would enable mine operators to monitor miners for silica exposure at the end of every shift. This low-cost technology could help reduce the incidence of black lung by allowing mine operators to know when miners are overexposed. Silica, which is ten to 20 times as toxic as coal dust, is seen as a likely culprit contributing to rising levels of PMF. NIOSH scientists at this briefing explained that silica exposure is increasing because as thicker coal seams have been mined out,

operators are mining thinner coal seams that result in larger amounts of quartz-bearing rock being cut along with coal.

Mine Safety Enforcement

On August 28, 2018, MSHA terminated a Pattern of Violations (POV) sanction against a West Virginia coal mine where there had been two fatalities, despite a statutory requirement that the mine must fully rehabilitate its safety record before securing enforcement relief. On September 21, 2018, Committee Democrats requested documents and internal agency communications relating to this unprecedented decision. The oversight request questioned whether MSHA's decision to prematurely terminate the POV – the agency's most powerful administrative enforcement tool – exceeded its statutory authority. This same question had been raised in a dissent by a Federal Mine Safety and Health Review Commissioner in an August 28, 2018 opinion opposing the arrangement that allowed MSHA to terminate the POV.¹⁶ In its October 1, 2018, reply, MSHA conceded that the mine had not fully rehabilitated itself, and it provided no legal basis for trampling the statutory mandate that only authorizes MSHA to terminate a POV sanction if no significant and serious violations have been cited during a complete mine inspection. MSHA also failed to provide internal agency communications which led to this decision. Instead, MSHA justified the decision based on improvements made at the mine since 2013 and vague references to ongoing litigation regarding a challenge to the POV rule.

Federal Workers' Compensation Programs

Black Lung Benefits Act

The Committee held no hearings on the *Black Lung Benefits Act* (BLBA) in the 115th Congress. Such oversight would have been especially timely because: (1) a statutory 55% cut in the excise tax rate on coal that funds the Black Lung Disability Trust Fund (BLDTF), which covers over 25,000 beneficiaries, was scheduled to go into effect – and did in fact go into effect – on December 31, 2018; (2) DOL's Office of Workers' Compensation Programs documented that the number of approved cases of black lung involving PMF grew at an average rate of 20% per year between 2012 and 2016, according to a February 24, 2017, letter from DOL to Ranking Member Scott; and (3) Trust Fund liabilities have been increasing due to DOL's apparent inability to place a lien on the assets of coal companies during bankruptcy proceedings to secure the future cost of black lung benefit claims.

Due to a disparity in medical and legal resources between coal miners and coal companies or their insurers, the adversarial claims adjudication process has been tilted against claimants. On April 5, 2017, Ranking Member Scott and Representative Cartwright introduced H.R. 1912, the *Black Lung Benefits Improvement Act of 2017*, to help level the playing field, so that claimants who have meritorious claims can secure the benefits they are entitled to under the law. This bill addresses the difficulty black lung claimants have in securing legal representation due to a

¹⁶ *The Mine Safety and Health Administration et al v. Pocahontas Coal*, Federal Mine Safety and Health Review Commission, Order vacating Petition for Discretionary Review by Pocahontas Coal for cases WEVA 2014-395-R, WEVA 2014-1028, WEVA 2015-854, Dissent of Commissioner Robert F. Cohen, Jr. (August 28, 2018).

limited pool of black lung attorneys, which is a concern that was raised by GAO in 2009 and by the DOL-IG in 2017.

On September 27, 2017, the DOL-IG released the report entitled *Effect of OALJ Staffing Levels on the Black Lung Case Backlog*, which was requested by Committee Democrats. The report evaluated options to reduce a pendency of black lung cases within DOL's Office of Administrative Law Judges (OALJ), which had grown to an average 46 months.

On June 4, 2018, Ranking Member Scott and House Ways and Means Committee Ranking Member Richard E. Neal (D-MA) (Ranking Member Neal) released a GAO report, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*. The report projected that Trust Fund debt will rise from its current level of approximately \$5 billion to \$15 billion in 2050 if the coal excise tax rate is allowed to sunset. Since Committee Republicans did not hold a hearing on DOL's Fiscal Year 2019 budget request, there was no opportunity to probe Secretary Acosta on the Administration's plans to ensure the solvency of the Trust Fund.

Federal Employees' Compensation Act

During the 115th Congress, Committee Democrats continued oversight from the 114th Congress on policies to stem the spiraling costs of compounded prescription drugs being prescribed to injured workers under the *Federal Employees' Compensation Act* (FECA). Programmatic weaknesses in detecting and stopping provider fraud allowed FECA's costs for compounded pharmaceuticals to skyrocket from an estimated \$2.5 million to \$263 million between 2011 and 2016, according to data provided by the DOL-IG. Substantial reforms were implemented following joint oversight by Committee Democrats in conjunction with Oversight and Government Reform Committee Democrats during the 114th Congress, but new forms of provider fraud continue to challenge the program. On May 23, 2017, the DOL-IG made a series of legislative recommendations to reduce provider fraud from compounded drugs in an *Interim Report on Audit of Pharmaceutical Management in DOL Benefit Programs: OWCP Needs Better Controls Over Compounded Prescription Drugs*; however, the Committee Majority has failed to schedule hearings or a markup to consider these reforms.

On May 8, 2018, the Workforce Protections Subcommittee held a hearing entitled *The Opioid Epidemic: Implications for the Federal Employees' Compensation Act*. DOL faces the challenge of the nationwide opioid drug epidemic through its federal workers' compensation program. Through the end of Fiscal Year 2017, the FECA program was paying for approximately 19,000 new opioid prescriptions annually and had a legacy population of approximately 27,000 injured workers receiving opioid medications on an ongoing basis. Committee Democrats invited expert testimony from Mr. Joe Paduda, President of CompPharma, LLC. Although DOL implemented some limited prescribing reforms in August 2017, Mr. Paduda testified that DOL's policies regarding opioids are "five or six years behind the rest of the workers' compensation industry." He noted that under FECA, "prescribers are allowed to prescribe two different opioids for up to 60 days without any letter of medical necessity, much less any pre-screen, drug testing, opioid agreement, or functionality impact evaluation... most guidelines allow no more than 7 days, and then only if prescribing meets stringent tests." While evidence-based, post-injury pain management is key to decreasing opioid abuse, Committee Democrats emphasized that

eliminating or controlling workplace hazards to prevent workplace injuries should be the first line of attack. Committee Democrats noted that DOL did not appear as a witness at the hearing and requested that the Majority seek DOL's participation at a follow-up hearing.

DOL's Fiscal Year 2019 budget request called for cutting benefit levels under FECA, including cutting benefit levels for disabled workers with dependents and reducing benefits for disabled workers at retirement age. On June 28, 2018, Committee Democrats requested that GAO update its previous economic analysis from 2012 that evaluated the adequacy of FECA benefits.

Longshore and Harbor Workers' Compensation Act

On October 10, 2017, Committee Democrats wrote Armed Services Committee conferees opposing a provision in the House version of H.R. 2810, the *National Defense Authorization Act (NDAA) for Fiscal Year 2018*, that would block the eligibility of injured shipyard workers who repair large recreational vessels – especially luxury yachts and other large boats over 65' in length – to receive benefits under the *Longshore and Harbor Workers' Compensation Act (LHWCA)*. LHWCA provides fairer and greater benefits to injured workers than most state workers' compensation laws. The provision was not included in the Senate NDAA and was dropped from the final conference report.

Retirement Security

Department of Labor's Fiduciary Rule

In 2016, the Obama Administration issued a final rule updating the Employee Retirement Income Security Act of 1974 (ERISA). DOL's Conflict of Interest Rule, commonly known as the "fiduciary rule," ensures that financial advisors are held to a fiduciary standard when providing investment advice to their retirement clients. However, before the rule could be fully implemented, President Trump sought review of the rule. Committee Democrats opposed the Trump Administration's and Republican Majority's efforts to delay and repeal the fiduciary rule. On March 17, 2017, Committee Democrats joined with Financial Services Committee Democrats and wrote to DOL opposing its delay of the rule. On September 15, 2017, Ranking Member Scott, Ranking Member Waters, Senator Murray, Senate Finance Committee Ranking Member Ron Wyden (D-OR) (Senator Wyden), and Senate Committee on Banking, Housing, and Urban Affairs Ranking Member Sherrod Brown (D-OH) (Senator Brown) urged DOL not to move forward with an 18-month delay in the implementation of the fiduciary rule. Additionally, on May 2, 2017, Ranking Member Scott wrote a letter to Chairwoman Foxx requesting that she not waive the Committee's jurisdiction over H.R. 10, the *Financial CHOICE Act of 2017*, that included provisions repealing the fiduciary rule. Chairwoman Foxx did not formally respond to the Ranking Member's letter and failed to assert the Committee's jurisdiction over the bill.

On May 18, 2017, the HELP Subcommittee held a hearing entitled *Regulatory Barriers Facing Workers and Families Saving for Retirement*. Committee Democrats emphasized their willingness to work on meaningful bipartisan solutions to help Americans achieve a secure and dignified retirement. Unfortunately, Republican Majority and Trump Administration policies – such as undermining the fiduciary rule – are harming working people's ability to save for

retirement. Committee Democrats invited expert testimony from Dr. Jason Furman, who served as President Obama’s chair of the Council of Economic Advisers. Dr. Furman echoed Committee Democrats’ support for the fiduciary rule. He also importantly connected the subject matter of the hearing with the repeated Republican Majority attempts to repeal the *Patient Protection and Affordable Care Act* (Affordable Care Act or ACA). Specifically, Dr. Furman noted that repealing the ACA would have a net effect of reducing Americans’ after-tax incomes, thus increasing their financial insecurity and causing them to cut back on a wide range of activities – including saving for retirement.

On July 19, 2017, the Committee marked-up H.R. 2823, the *Affordable Retirement Advice for Savers Act*. This bill repeals the fiduciary rule and replaces it with a substandard alternative filled with loopholes that will weaken consumer protections. Representative Adams offered a substitute amendment to codify DOL’s fiduciary rule into law. The amendment failed by a voice vote. Committee Democrats unanimously opposed the motion to favorably report the bill to the House.

Congressional Review Act Resolutions Nullifying Department of Labor Retirement Rules

During the 115th Congress, Committee Democrats opposed Republican Majority efforts to nullify two DOL retirement savings rules that would expand savings options for private sector workers who lack an employer-sponsored retirement plan. Several states have responded to the retirement security crisis by establishing state-based retirement savings programs. New York City and other municipalities have been considering doing the same. One of the concerns is uncertainty regarding the applicability of ERISA to state or local government-sponsored payroll deduction plans. DOL rules created a safe harbor to remove the uncertainty on whether ERISA would apply to employers, states, and certain municipalities. On February 15, 2017, House Republicans – over the nearly unanimous objections of House Democrats – passed the following two CRA resolutions of disapproval: H.J. Res. 66, *Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by States for non-governmental employees*, and H.J. Res. 67, *Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by qualified State political subdivisions for non-governmental employees*. These resolutions nullified the DOL rules and will prevent DOL from reissuing any substantially similar ones in the future. The Senate followed suit and the President signed the resolutions of disapproval into law on May 17, 2017 and April 13, 2017, respectively.

Subcommittee Hearing on Retirement Savings Legislation

On May 16, 2018, the HELP Subcommittee held a hearing entitled *Enhancing Retirement Security: Examining Proposals to Simplify and Modernize Retirement Plan Administration*. The hearing focused on four bipartisan retirement savings bills: H.R. 854, the *Retirement Security for American Workers Act*; H.R. 4158, the *Retirement Plan Modernization Act*; H.R. 4604, the *Increasing Access to a Secure Retirement Act of 2017*; and H.R. 4610, the *Receiving Electronic*

Statements to Improve Retiree Earnings (RETIRE) Act. During the hearing, Committee Democrats expressed concern that too many Americans lack access to a retirement savings plan through their employer, and too few are saving enough on their own to enjoy a stable and dignified retirement. Committee Democrats urged Committee Republicans to mark-up the bills and pressed for further action to expand workers' access to retirement savings plans. Committee Democrats invited expert testimony from Dr. Mark Iwry, who served as Senior Advisor to the Secretary of the Treasury during the Obama Administration. Dr. Iwry praised the Subcommittee's bipartisan approach, raised several constructive points regarding how the bills could be strengthened and improved moving forward, and urged consideration of other legislative proposals – such as automatic enrollment into an IRA – to increase workers' access to retirement savings plans.

Multiemployer Pensions and the Pension Benefit Guaranty Corporation

On November 29, 2017, the HELP Subcommittee held a hearing entitled *Financial Challenges Facing the Pension Benefit Guaranty Corporation (PBGC): Implications for Pension Plans, Workers, and Retirees*. The Pension Benefit Guaranty Corporation (PBGC) operates two separate insurance programs: one for single-employer pension plans, and one for multiemployer pension plans (collectively bargained plans with more than one employer). The multiemployer pension program is currently projected to run out of money by the end of 2025, if not sooner. During the hearing, Committee Democrats pressed for bipartisan action to address the multiemployer pension program's looming insolvency. Mr. Tom Reeder, who serves as Director of the PBGC, was the only witness. Director Reeder reaffirmed the urgency for Congress to act. Specifically, Director Reeder made clear that the longer it takes to improve the solvency of the multiemployer program, the more disruptive and painful the changes will be for participants, plans, and employers.

Joint Select Committee on the Solvency of Multiemployer Pension Plans

The Joint Select Committee on the Solvency of Multiemployer Pension Plans (Joint Select Committee) was established as part of the *Bipartisan Budget Act of 2018*. Under that law, the Joint Select Committee was required to produce recommendations and legislative language by November 30, 2018, to significantly improve the solvency of multiemployer pension plans and the PBGC. House Democratic Leader Nancy Pelosi appointed Ranking Member Scott and another Committee Democrat, Representative Norcross, to serve on the Joint Select Committee.

On March 14, 2018, the Joint Select Committee convened its first public meeting to formally organize and approve its rules. On April 18, 2018, the Joint Select Committee convened its first public hearing entitled *The History and Structure of the Multiemployer Pension System*. The hearing was intended to provide Joint Select Committee members with an overview of the multiemployer system and the crisis confronting it. On May 17, 2018, the Joint Select Committee convened its second public hearing entitled *The Structure and Financial Outlook of the Pension Benefit Guaranty Corporation*. The hearing was intended to provide Joint Select Committee members with a better understanding of the PBGC and its financial outlook. On June 13, 2018, the Joint Select Committee convened its third public hearing entitled *Employer Perspectives on Multiemployer Pension Plans*. The hearing was intended to provide Joint Select

Committee members insight into how businesses of all sizes are at risk by the multiemployer pension crisis. On July 13, 2018, the Joint Select Committee convened its fourth public hearing entitled *Understanding What's at Stake for Current Workers and Retirees*. The hearing took place in Columbus, Ohio, and enabled Ohio-based workers, employers, and retirees to discuss how the multiemployer pension crisis impacts them directly. On July 25, 2018, the Joint Select Committee convened its fifth public hearing entitled *How the Multiemployer Pension System Affects Stakeholders*. The hearing enabled stakeholders to discuss challenges with the current multiemployer pension system and suggest possible policy options for the Joint Select Committee's consideration.

During the hearings, Ranking Member Scott consistently emphasized that the price tag of any bipartisan solution the Joint Select Committee might reach would be far less than the cost of doing nothing. If multiemployer pension plans fail and the PBGC goes insolvent, it will be catastrophic for workers, retirees, employers, and local communities, including reduced federal, state, and local tax revenues and increased social safety net spending on food stamps, Medicaid, and other assistance programs.

Department of Labor's Fee Disclosure Rules

On August 21, 2018, Ranking Member Scott and Senator Murray requested that GAO review DOL's fee disclosure rules pertaining to 401(k) plan sponsors and plan participants in order to examine whether the rules have been effective or need to be improved. These rules require the disclosure of costs associated with 401(k) plans and are intended to help workers evaluate the reasonableness of fees and expenses. GAO responded that it accepted the request and is beginning its review.

Civil Rights – Workforce Protection and Employment Discrimination

Committee Democrats have emphasized the continued need for robust civil rights protections in the workplace and sound data to inform its enforcement of employment discrimination laws.

Equal Employment Opportunity Commission

On May 23, 2017, the Workforce Protections Subcommittee held a hearing entitled *The Need for More Responsible Regulatory and Enforcement Policies at the EEOC*. Committee Democrats highlighted the Equal Employment Opportunity Commission's (EEOC) inadequate funding to address a backlog of discrimination charges. Committee Democrats also highlighted the importance of the EEOC's guidance documents, systemic and individual litigation as effective tools to prevent and remedy discrimination, and the EEOC's efficiencies in case handling through conciliation and mediation programs. Committee Democrats invited expert testimony from Mr. Todd Cox, Director of Policy at the NAACP Legal Defense and Education Fund, who emphasized discrimination's pervasive presence in the workplace today and reminded the Committee that the EEOC's work is far from over. He further testified that the EEOC must be able to develop new and innovative ways to combat unlawful discrimination.

Office of Federal Contract Compliance Programs

The Fiscal Year 2018 budget request for DOL proposed to merge DOL's Office of Federal Contract Compliance Programs (OFCCP) into the EEOC. On September 13, 2017, Committee Democrats and Judiciary Committee Democrats amended the House Labor-HHS-ED appropriations bill to prohibit the use of funds to prepare for or facilitate the transfer of OFCCP into EEOC.

Pay Data Collection

On September 26, 2016, after months of public comments, EEOC released its revised EEO-1 form to collect pay data as it relates to sex, race, or ethnicity. Committee Democrats expressed support for the collection of this data because it would help EEOC and OFCCP better enforce the nation's pay discrimination laws. OMB approved the revised EEO-1 form in 2016. However, on August 29, 2017, OMB's Office of Information and Regulatory Affairs (OIRA) reversed its position and issued a stay of the EEO-1 form's updates. On October 22, 2018, Committee Democrats, along with Representative Beyer, sent a letter to OMB asking the agency to rescind the stay.

International Labor Rights

North American Free Trade Agreement

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015, legislation to reauthorize Trade Promotion Authority (TPA), was signed into law on June 29, 2015. TPA established the House Advisory Group on Negotiations (HAGON) – comprised of the chairman and ranking member (or their designees) of the Committees in the House of Representatives that have, under House Rules, jurisdiction over provisions of law affected by trade agreements; HAGON includes the Education and the Workforce Committee chair and ranking member. HAGON has been particularly focused on the Administration's efforts to renegotiate the North American Free Trade Agreement (NAFTA) along with the pursuit of other trade agreements.

On June 12, 2017, Committee Democrats submitted comments regarding the NAFTA renegotiation and emphasized that any renegotiation of NAFTA must promote a fair-trade agenda that prioritizes and improves the lives of working families at home and abroad. The comment letter noted that priorities of a new NAFTA framework should include robust labor rights, worker protections, and enforceable rules that ensure compliance of labor standards across the continent. The letter underscored that without enforceable compliance of labor rights, a trade agreement could increase inequality and accelerate a global "race-to-the-bottom."

On July 14, 2017, House Democrats wrote to President Trump to explain their framework for a new NAFTA, entitled *Worker's Bill of Rights*. They outlined their priorities, including strong labor and environmental standards with effective enforcement; eliminating the Investor State Dispute Settlement (ISDS) provision; ending foreign tribunals that undermine U.S. trade enforcement laws; lowering the cost of prescription drugs; and protecting U.S. energy policy.

On January 23, 2018, House Democrats wrote to United States Trade Representative Robert Lighthizer (USTR Lighthizer) to express concern with the current negotiations on NAFTA, specifically to emphasize that any new NAFTA text must have strong, clear, and binding provisions that address Mexico's labor conditions. The letter noted that Mexico has yet to make meaningful progress on the suppression of wages, the lack of independent unions, and the inability of workers to collectively bargain. The letter urged the Administration to fix the faults of the original NAFTA by holding Mexico accountable for its labor practices and to ensure strong labor standards for all workers.

On April 20, 2018, House Democrats wrote to USTR Lighthizer to express their concern with the March 22, 2018, legislation introduced before the Mexican Senate that would maintain the corrupt system that prevents Mexican workers from exercising their freedom to organize and bargain for higher wages. The letter emphasized that the legislation would undermine ongoing efforts to create a fair playing field for U.S. workers and U.S. businesses through NAFTA renegotiation, specifically noting the unchanging wage disparity between the U.S. and Mexico in the 24 years NAFTA has been in effect.

Colombia

Committee Democrats took various steps to encourage oversight of existing trade agreements and to encourage governments to respect internationally recognized labor rights.

On March 22, 2017, Ranking Member Scott and House Democrats wrote to USTR Lighthizer and Secretary Acosta to request that the Administration withhold support of the Government of Colombia's (GOC) accession to the Organization for Economic Cooperation and Development (OECD) until GOC addresses significant longstanding violations of fundamental labor rights. The DOL Deputy Undersecretary for International Affairs responded in April 2017 outlining DOL's view that the GOC had made meaningful progress in the area of labor rights.

On July 19, 2017, House Democrats who are members of the Congressional Monitoring Group on Labor Rights in Colombia wrote to USTR Lighthizer and Secretary Acosta to emphasize significant concern regarding the failure of the Colombian government to implement and effectively enforce provisions in the U.S. – Colombia Trade Promotion Agreement and the Labor Action Plan. The letter cited the May 2016 petition filed by AFL-CIO and several Colombian labor unions alleging numerous labor obligation violations as required under the free trade agreement as well as the January 2017 International Labor Affairs Bureau (ILAB) report that found significant concerns regarding GOC's progress in TPA compliance. The letter concluded by expressing concern over a lack of Trump Administration leadership regarding labor rights in Colombia, and to emphasize recent events in Colombia that resulted in the murder of ten Colombian union leaders. A response letter was received from DOL indicating that DOL's work to address the issues identified in the July 19th letter is ongoing.

Bangladesh

On February 23, 2017, Ranking Member Scott and House Democrats wrote to Bangladeshi Prime Minister Sheikh Hasina to express concern over the arrest and detention of workers' rights

leaders in the garment industry and to highlight Bangladesh's criminalization of the lawful exercise of labor rights. The letter noted the recent pattern of arrests, surveillance, and harassment of garment worker union members and leaders in Bangladesh and urged for the government to drop all unsubstantiated charges. No response was received.

Department of Labor Budget and Administration

Fiscal Year 2018 Budget Request

On May 2, 2017, Ranking Member Scott asked Chairwoman Foxx to invite the secretaries of the cabinet agencies within the Committee's jurisdiction (Labor, Education, Health and Human Services, and Agriculture) to testify about their respective budget requests, particularly in light of preliminary Fiscal Year 2018 proposals to scale back ED by 13%, HHS by 17.9%, and DOL by 21%. On November 15, 2017, Secretary Acosta appeared before the Committee, six months after the Fiscal Year 2018 budget request was submitted but before appropriations legislation had concluded. Committee Democrats pressed the Secretary on his agency's first ten months of activity, which included initiatives to sabotage the Affordable Care Act, undermine access to contraceptive care services, attack overtime pay and workplace safety, weaken apprenticeship standards, and delay protections for retirement savers.

Secretary Acosta did not testify on DOL's Fiscal Year 2019 budget request.

Bureau of Labor Statistics Pathways Program

On August 31, 2017, Ranking Member Scott wrote to Secretary Acosta to express concern regarding letters sent by DOL terminating nineteen of the Bureau of Labor Statistics' (BLS) Pathways Program employees. The letter noted that the Pathways Program, which uses an apprenticeship model, is an effective method of recruiting, training, and retaining entry-level economists, and a plan to eliminate the Pathways Program demonstrates a failure to lead by example on apprenticeships. The letter requested documentation on the decision to eliminate the Pathways Program positions. DOL's October 17, 2017, response did not address many of the issues raised in the letter, nor did it provide the requested documentation.

Security Detail for the Secretary of Labor and Other Department of Labor Officials

In 2017, Secretary Acosta requested that Congress authorize legislation to establish a permanent security detail to cover his security and that of his family, as well as the Deputy Secretary and any other DOL official standing in for the Secretary. This legislation was requested following a decision by the DOL-IG to phase out the provision of security services for the Secretary of Labor. Aware of the need for appropriate security arrangements for the Secretary of Labor, who is within the chain of succession, Committee Democrats agreed to temporary legislation; at the same time, aware of the documented abuse of security details by other Administration officials, oversight was conducted on spending levels, the number of full time equivalent employees carrying out the security function, the cost for such security on overseas travel, and the use of the security detail by the Deputy Secretary and other senior agency staff under this temporary authority.

Health Care

Attempts to Repeal the Affordable Care Act

The Affordable Care Act, signed into law on March 23, 2010, was enacted to improve and expand access to health insurance for individuals across the nation. The ACA provided for more comprehensive health benefits in health coverage, with the goal of minimizing costs and improving quality. On January 13, 2017, the House Republican Majority approved a Senate-passed Fiscal Year 2017 budget resolution laying the groundwork for repealing large portions of the ACA through the budget reconciliation process. On January 11, 2017, Ranking Member Scott, along with House Committee on Energy and Commerce Ranking Member Frank J. Pallone (D-NJ) (Ranking Member Pallone) and Ranking Member Neal, wrote their respective Committee Chairs to ask for a transparent and public process for any legislation to repeal the ACA.

On January 20, 2017, President Trump issued Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*. The Executive Order directed executive branch departments and agencies to take steps to use their authority and discretion “to the maximum extent permitted by law” to waive, defer, grant exemptions from, or delay the implementation of certain provisions and requirements of the ACA. On February 8, 2017, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, and House Budget Committee Ranking Member John A. Yarmuth (D-KY), wrote to the Departments of Health and Human Services (HHS), Treasury, and Labor expressing concerns with implementation of the Executive Order. The letter specifically addressed the Executive Order’s proposals to expand association health plans (AHPs) and expand the allowable duration of short-term, limited duration insurance, undermining existing ACA protections. No response was received.

On February 1, 2017, the Committee held a hearing entitled *Rescuing Americans from the Failed Health Care Law and Advancing Patient-Centered Solutions*, during which Committee Republicans reiterated their opposition to the ACA and laid the foundation for further discussion of ACA repeal and “replacement” ideas. Committee Democrats invited Ms. Angela Schlaak of St. Joseph, Michigan, to share her personal story of how the ACA benefited her and her family. During the hearing, Committee Democrats highlighted the progress made since the ACA’s enactment, including increased consumer protections for job-based coverage. They also highlighted the negative impacts of repeal. According to estimates, repeal would leave 30 million Americans without health insurance and cost the economy 2.6 million jobs nationwide.¹⁷ Committee Democrats also unveiled a report entitled *Accessible, Affordable Health Care – A Right, Not a Privilege: How Repeal of the Affordable Care Act Threatens the Health and Economic Security of Working Families*. The report highlighted ten key ways in which the law benefits workers and their families and how ACA repeal would impact working people. On March 1, 2017, against the backdrop of developing repeal proposals, the Committee held a

¹⁷ The Commonwealth Fund, *What Are the Potential Effects of the Graham-Cassidy ACA Repeal-and-Replace Bill? Past Estimates Provide Some Clues* (September 20, 2017), <https://www.commonwealthfund.org/blog/2017/what-are-potential-effects-graham-cassidy-aca-repeal-and-replace-bill-past-estimates>.

hearing on three unrelated legislative proposals entitled *Legislative Proposals to Improve Health Care Coverage and Provide Lower Costs for Families*. Committee Democrats focused on how the Republican Majority's repeal proposals would halt the progress of ACA coverage and result in less comprehensive health care coverage. Committee Democrats invited expert testimony from Ms. Lydia Mitts, the Associate Director of Affordability Initiatives at Families USA, who also underscored how the Republican Majority's proposals would result in higher costs for many working people.

In March 2017, the Republican Majority introduced H.R. 1628, the *American Health Care Act*, a bill to partially repeal the ACA through the budget reconciliation process. The Congressional Budget Office (CBO) projected the bill would leave 24 million more individuals uninsured by 2026.¹⁸ On March 24, 2017, as Committee Democrats spoke in opposition to H.R. 1628 during floor debate in the House, the Republican Majority halted floor consideration of the bill. The Republican Majority subsequently passed an amended version of H.R. 1628 – without an updated Congressional Budget Office score – on May 4, 2017.

After efforts to repeal the ACA ultimately failed in the Senate, Committee Democrats wrote Republican House leadership and the Chairs of the House Committees on Education and the Workforce, Energy and Commerce, Ways and Means, and Budget on July 28, 2017, reiterating interest in working together to make improvements to the ACA, such as lowering costs, promoting stability in the individual market, and expanding access to coverage. Committed to building on the progress of the ACA, Committee Democrats supported H.R. 5155, the *Undo Sabotage and Expand Affordability of Health Insurance Act of 2018*. This legislation strengthens the ACA, makes coverage more affordable, and undoes harmful policies proposed and implemented by the Trump Administration. The bill includes provisions that ensure families who do not have an offer of affordable coverage from an employer can still qualify for subsidies in the Health Insurance Marketplace (Marketplace) and stops efforts to proliferate association health plans and short-term, limited duration plans that offer limited benefits and little financial protection from high health care costs. The bill also invests in state efforts to conduct outreach to increase enrollment in the Marketplace, educate consumers of their rights, and help individuals navigate the health insurance system. On May 4, 2018, Ranking Member Scott, along with Ranking Member Pallone and Ranking Member Neal, wrote to Speaker of the U.S. House of Representatives Paul D. Ryan (R-WI) to request that H.R. 5155 be brought to the House floor to counteract the Administration's and Republican Majority's efforts to sabotage the health care system through legislation, de-regulation, and Executive orders.

The Administration's Implementation of the Law

The Trump Administration has failed or refused to implement various pieces of the Affordable Care Act – actions that have threatened and compromised Americans' access to health insurance. House Democrats conducted oversight on the Administration's implementation of the ACA, including many of these and other policy changes that undermine access to affordable, comprehensive coverage. Estimates show that 6.4 million individuals will be left uninsured in

¹⁸ Congressional Budget Office, *Cost Estimate, American Health Care Act Budget Reconciliation Recommendations of the House Committees on Ways and Means and Energy and Commerce, March 9, 2017* (March 13, 2017), <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/costestimate/americanhealthcareact.pdf>.

2019 as the result of the Administration terminating cost-sharing reduction (CSR) payments, cutting federal funding for advertising and outreach, reducing open enrollment periods, and loosening rules regarding short-term, limited duration plans along with Congress' zeroing out the individual mandate penalty.¹⁹

On January 30, 2017, Ranking Member Scott, along with Ranking Member Pallone and Ranking Member Neal, sent a letter to HHS requesting information regarding the Administration's decision to halt advertising and outreach activities for Healthcare.gov and the Administration's plans to continue Marketplace activities for the remainder of 2017. The letter noted that the Administration's efforts to sabotage enrollment in the Marketplace will result in adverse risk selection, destabilize insurance markets, and increased premiums. No response was received.

On October 17, 2017, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, Senator Murray, and Senator Wyden, sent a letter to HHS requesting information on the Administration's unilateral decision to terminate CSR payments, specifically to understand the legal justification to terminate these subsidies and any analyses conducted of the impact of this decision on health insurance access and costs in the individual market and federal spending. No response was received. On October 20, 2017, Ranking Member Scott joined House Democratic leadership and Ranking Member Pallone, Ranking Member Nadler, House Committee on Appropriations Ranking Member Nita M. Lowey (D-NY) (Ranking Member Lowey), House Committee on Rules Ranking Member Louise M. Slaughter (D-NY) (Ranking Member Slaughter), and Ranking Member Neal in signing onto an amicus brief in a lawsuit involving the CSR payments, *California v. Trump*, supporting California and a group of states seeking injunctive relief.

On December 6, 2017, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, and Senators Murray and Wyden, wrote the Centers for Medicare and Medicaid Services (CMS) expressing concern regarding provisions in the 2019 Proposed Notice of Benefit and Payment Parameters that undermine critical consumer protections in the individual and small group market, including essential health benefits, medical loss ratios, and CSRs. The letter urged CMS to withdraw the proposed changes and commit to faithful implementation of the law and polices that improve the quality and cost of health care coverage. No response was received.

On February 21, 2018, HHS, DOL, and Treasury jointly published a proposed rule to extend the allowable duration of short-term, limited-duration insurance (STLDI) from three months to up to 12 months. On May 31, 2018, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, and Senators Murray and Wyden, wrote the Departments expressing concern with the flawed analysis provided in the Economic Impact and Paperwork Burden section of the proposed rule. The letter noted the wide differences in analysis prepared by HHS, Labor, and Treasury as compared to analyses prepared by nonpartisan sources that demonstrate the rule would cause serious harm to the health care system. Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, and Senators Murray and Wyden, also sent an April 12, 2018, comment letter noting that by expanding the use of STLDI, the availability of

¹⁹ Urban Institute, *Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending* (March 2018), https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf.

discriminatory, deceptive, and insufficient plans with fewer consumer protections will increase. The letter further notes that STLDI undermines the individual insurance market, increases premiums, exposes consumers to greater financial risk, and will lead to a greater number of uninsured Americans. No response was received.

On September 13, 2018, House Democrats introduced H.J. Res.140, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services relating to "Short-Term, Limited-Duration Insurance"*, a CRA resolution of disapproval of the rule.

On February 28, 2018, the Texas Attorney General and 20 other state attorneys general filed a lawsuit, *Texas v. United States*, seeking to invalidate the entirety of the ACA by challenging the constitutionality of the law after the individual mandate penalty was reduced to \$0 for 2019. On June 7, 2018, the Trump Administration filed a court brief declining to defend the constitutionality of ACA provisions guaranteeing coverage regardless of health status (“guaranteed issue”), prohibiting insurers from charging higher premiums based on health status (“community rating”), and prohibiting pre-existing condition exclusions. The Administration’s position would allow insurance companies to charge people with a pre-existing condition higher premiums or deny them coverage altogether as they were permitted to do prior to the ACA. DOJ’s decision to not defend ACA provisions breaks with longstanding traditions of defending laws enacted by Congress and illustrates Administration attempts to sabotage the ACA, while damaging the ability of millions of Americans to afford health insurance. On June 13, 2018, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, Ranking Member Cummings, and Ranking Member Nadler, wrote two letters to HHS and DOJ requesting information regarding HHS’ and CMS’ involvement in DOJ’s decision to not defend these key consumer protections. One of the letters also requested documentation and information on analyses on the effects of the elimination of key patient protections in the ACA; the effects of legal uncertainty from *Texas v. United States* on premiums in the individual market; and communications between HHS, CMS, and DOJ officials on the DOJ decision to not defend key provisions in the ACA. CMS responded on August 20, 2018, with a letter declining to comment due to ongoing litigation. On December 7, 2018, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, and Ranking Member Nadler, sent a follow-up letter to Secretary Azar and CMS Administrator Seema Verna reiterating their request for answers on the Administration’s decision to decline to defend protections for individuals with preexisting conditions in the *Texas v. United States* lawsuit.

On June 6, 2018, Secretary Azar testified at a Committee oversight hearing titled *Examining the Policies and Priorities of the U.S. Department of Health and Human Services*. This was the first appearance before the Committee of any HHS official during the 115th Congress. During the hearing, Committee Democrats questioned Secretary Azar on the Administration’s actions to undermine the ACA as well as its proposals to cut Medicaid funding. Additionally, Committee Democrats raised the harmful policies implemented by the Administration to separate families at the border – leaving thousands of children unaccompanied – and the lack of oversight to ensure that children receive the health and supportive services to which they are legally entitled.

On July 17, 2018, Ranking Member Scott, along with Ranking Members Pallone and Neal, and Senators Murray and Wyden, sent a letter to HHS with concerns about CMS' decision to suspend billions of dollars in risk adjustment payments and collections. The letter noted that risk adjustment is a mechanism for maintaining market stability and is a critical component of how the ACA has expanded access to affordable coverage; the suspension may result in insurers leaving the market and an increase in premiums for consumers. On July 24, 2018, CMS released a final rule to restart the program. CMS referred to this final rule in its September 5, 2018, response to the letter.

Committee Democrats also noted the growing number of consumers who are hit with "surprise bills" – higher than expected out-of-pocket costs from out-of-network providers. On October 1, 2018, Ranking Member Scott wrote DOL regarding surprise bills to seek clarity on whether DOL requires employer-sponsored plans to count out-of-network costs incurred in an in-network facility toward the ACA's annual out-of-pocket limits. No response was received.

On October 22, 2018, CMS and Treasury issued guidance relaxing the guardrails of Section 1332 of the Affordable Care Act, a provision allowing states to waive some ACA requirements with the goal of improving coverage, affordability, and comprehensiveness of benefits. On November 16, 2018, Ranking Member Scott, along with Ranking Member Pallone, Ranking Member Neal, Senator Murray, Senator Wyden, and Senator Casey (Senate Special Committee on Aging Ranking Member), sent a letter to CMS urging the agency to rescind the newly issued guidance. The letter stated that the new guidance will allow the approval of 1332 waivers that could result in less coverage, fewer consumer protections, and higher costs.

On December 21, 2018, Ranking Member Scott, along with Ranking Member Pallone and Ranking Member Neal, sent a comment letter to HHS, Treasury, and DOL on the proposed rule regarding Health Reimbursement Arrangements (HRAs). The letter expressed concern that the rule creates a perverse incentive for certain employers to shift sicker or older workers into the individual market, and it urged them to withdraw the proposal.

Association Health Plans

The Committee considered legislation, H.R. 1101, the *Small Business Health Fairness Act*, to promote and expand association health plans (AHPs). AHPs have been studied at length, including in a 2000 Congressional Budget Office report, *Increasing Small-Firm Health Insurance Coverage Through Association Health Plans and HealthMarts*, which found that they would have almost no impact in increasing health coverage. Instead, they are likely to exacerbate adverse selection and shift costs to workers. Such adverse selection would result in higher premiums in non-AHP plans; ultimately, higher-cost (sicker or older) groups could find it more difficult to obtain coverage.²⁰ The Committee marked up the bill on March 8, 2017, at which time Committee Democrats offered various amendments to apply strong consumer protections for workers covered in AHPs under the legislation, including a failed amendment to ensure that AHPs cover needed health services for women, such as maternity care and direct access to obstetrics and gynecology (OB-GYN) services. At the conclusion of the markup,

²⁰ The American Academy of Actuaries, *Issue Brief: Association Health Plans* (February 2017), <http://www.actuary.org/content/association-health-plans-0>.

Committee Democrats opposed the motion to favorably report the bill to the House. On March 22, 2017, during floor consideration of the bill in the House, Representative Carol Shea-Porter (D-NH), a Committee Democrat, offered a motion to recommit (MTR) to ensure that substance use disorder treatment services are available in AHPs. The MTR failed, and the bill passed the House by a vote of 236 – 175.

During his November 15, 2017, appearance before the Committee, Secretary Acosta faced questions from Committee Democrats regarding the Department’s plans to issue regulations to expand the use of AHPs. On January 5, 2018, the DOL proposed its AHP rule. Under the new regulatory structure in the proposed rule, associations can sell coverage to small businesses and self-employed individuals without meeting certain ACA standards that would otherwise apply to plans sold to these consumers, such as the requirement to cover essential health benefits, a prohibition against charging higher premiums based on factors such as gender or occupation, and a limit on charging higher premiums to older people.

The Committee conducted robust oversight over the proposal. This included multiple questions posed to DOL on the impact of the rule on workers, particularly workers with pre-existing conditions. On March 6, 2018, Committee Democrats provided comments in response to the proposed rulemaking pointing out the history of fraud and insolvencies in AHPs and expressing concern for small business owners and workers that may be negatively impacted under the proposal. The HELP Subcommittee held a hearing to review DOL’s proposed rule on March 20, 2018. Subcommittee Democrats invited expert testimony from Mr. John Arensmeyer, Founder and CEO of the Small Business Majority, who discussed the harm that the proposal may have on many small businesses and their workers. Notwithstanding the Democratic opposition and widespread opposition from consumer and patient groups, on June 19, 2018, DOL finalized the rule to promote enrollment in AHPs.

On July 26, 2018, eleven states and the District of Columbia filed suit against DOL seeking to invalidate the final AHP regulations. On November 29, 2018, Ranking Member Scott, Democratic House leadership, Ranking Member Pallone, Ranking Member Nadler, and Ranking Member Neal filed an amicus brief in opposition to the final rule, arguing that the rule is contrary to the fundamental structure of the ACA.

Access to Preventive Care

On October 6, 2017, the Trump Administration announced rules to allow employers and institutions of higher education to opt out of covering contraception based on a moral or religious objection. Previous policy ensured that employees had access to contraception even if their employer had a religious objection, giving 62 million women access to birth control without co-payments.²¹ The change threatens women’s access to essential contraceptive care. On December 5, 2017, Ranking Member Scott, along with Ranking Member Pallone and Ranking Member Neal, submitted comments on the Interim Final Rules (IFRs) regarding coverage of contraception for women. The comments noted that not only do the IFRs roll back the advances

²¹ Planned Parenthood, *Trump Administration Takes Direct Aim at Birth Control Coverage for 62 Million Women* (October 6, 2017), <https://www.plannedparenthood.org/about-us/newsroom/press-releases/trump-administration-takes-direct-aim-at-birth-control-coverage-for-62-million-women-2>.

made to women's health under the guise of religious liberty, they also violate a number of constitutional and statutory provisions. Litigation on the rules is ongoing, and final rules are expected in the coming months. Committee Democrats continue to fight to ensure that women have access to the full range of preventive health services as required under the ACA.

Civil Rights - Nondiscrimination in Health Care

On March 27, 2018, Ranking Member Scott, along with Ranking Member Pallone, sent a letter to Secretary Azar in response to HHS' Office for Civil Rights' (OCR) proposed rule, *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, which would allow for greater discrimination in the health care system and in HHS-funded programs and services. The letter emphasized that the proposed rule directly contradicts the mission of OCR by exacerbating inequities in the health care system by allowing hospitals, doctors, and other individuals and institutions to deny care to patients based on religious beliefs. The letter concluded that discriminated individuals and groups such as women, minorities, and LGBTQ members would face further discrimination if this proposed rule were to take effect. On May 23, 2018, a similar letter was sent by a large group of House Democrats, including many Committee Democrats, expressing concern to OMB regarding the proposed rule entitled *Nondiscrimination in Health Programs or Activities*. The letter emphasized concern that with the intention to roll back the first broad prohibition of sex discrimination in federal law.

The Committee considered legislation, H.R. 1313, the *Preserving Employee Wellness Programs Act*, which would permit the circumvention of important civil rights laws and threaten the privacy of workers by allowing employer-provided wellness programs to evade requirements under the *Americans with Disabilities Act* (ADA) and the *Genetic Information Nondiscrimination Act* (GINA). Committee Democrats repeatedly expressed concern with the fact that the legislation could be a proxy for discrimination. Committee Democrats offered a number of amendments that, if accepted, would have preserved some of the privacy and civil rights guardrails enacted through the ADA and GINA. Amendments to ensure that information obtained through a wellness program cannot be used in employment decisions, such as hiring or firing, or be sold, were also offered but failed. An amendment was also offered to remove the erroneous application of ADA's safe harbor provision to wellness programs; that amendment also failed.

On November 20, 2018, Committee Democrats requested information based on a New York Times report that the Administration plans to redefine gender to specifically exclude transgender identity.²² The letter, sent to Secretary Azar, asked the Administration to clarify its plans to redefine gender and requested data or other resources used to inform its decision. The letter further noted that such a definition would ignore scientific data and legal precedence for treatment of transgender persons and would remove civil rights protections for 1.4 million vulnerable Americans.²³

²² The New York Times, 'Transgender' Could Be Defined Out of Existence Under Trump Administration (October 21, 2018), <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html>.

²³ *Id.*

Surprise Medical Bills

Consumers incurring surprise medical bills may either face higher deductibles or coinsurance for out-of-network providers or balanced billing, where patients are asked to pay the portion of the out-of-network provider's charges for services left unreimbursed by their plan. The ACA includes a provision, section 2707(b) of the *Public Health Service Act*, to limit annual consumer spending for out-of-pocket costs, such as deductibles, copays and coinsurance; this protection was also incorporated into ERISA. Regulations issued by CMS clarify that Qualified Health Plans (QHPs) that cover out-of-network services must count cost sharing for an out-of-network ancillary provider in an in-network setting toward annual cost-sharing limits – providing some protection for consumers facing surprise bills. On October 1, 2018, Ranking Member Scott sent a letter to DOL asking whether these standards can also be applied to group plans that are subject to out-of-pocket limits. A response letter from DOL was received, however, the response left a number of the questions around DOL's authority unaddressed.

Addressing the Opioid Epidemic

During the 115th Congress, Committee Democrats remained concerned about the impact that substance use disorder, particularly opioid use disorder, is having on communities across the country and continued their efforts from the 114th Congress to combat the issue. Three hearings were held focusing on the opioid epidemic. The first was a joint hearing on November 8, 2017, by the ECESE and HEWD Subcommittees entitled *Close to Home: How Opioids are Impacting Communities*. Committee Democrats invited expert testimony from Dr. Leana S. Wen, Baltimore City Health Commissioner. Both Committee Democrats and Dr. Wen expressed the need for a holistic approach to combat the opioid crisis that provides wrap-around and supportive services for impacted communities, and they also discussed the importance of the ACA in this effort.

On February 15, 2018, a joint hearing by the HELP and Workforce Protections Subcommittees was held entitled *The Opioids Epidemic: Implications for America's Workplaces*. Committee Democrats again stressed the importance of evidence-based policies in the opioid epidemic response. Committee Democrats invited expert testimony from Dr. Christina M. Andrews, a Researcher at University of South Carolina, who discussed successful interventions and the importance of health insurance coverage.

The Committee continued to conduct oversight on the intersection of opioid use disorder and workers' compensation. This was the focus of the May 8, 2018, hearing in the Workforce Protections Subcommittee entitled *The Opioid Epidemic: Implications for the Federal Employees' Compensation Act*, which demonstrated that even more oversight is needed. In 2011, more than 25 percent of workers' compensation prescription drug claim costs were for opioid pain medications.²⁴ Recent studies show that more than half of injured workers off work

²⁴ National Safety Council, *Prescription Pain Medications: A Fatal Cure for Injured Workers* (2015), https://www.acoem.org/uploadedFiles/Public_Affairs/Policies_And_Position_Statements/Guidelines/Library_and_Reference_Material/Prescription%20Pain%20Medications%20A%20Fatal%20Cure%20for%20Injured%20Workers.pdf.

for more than seven days with pain medications, but who did not have surgery, received an opioid prescription, and many of them received opioids on a longer-term basis.²⁵ Committee Democrats remain concerned about how DOL will stem over-prescribing under the FECA program, while ensuring that injured workers get appropriate care.

Committee Democrats worked on a bipartisan basis to advance legislation to help combat opioid use disorder. One such effort was bipartisan legislation to create an advisory council to address the impact that opioid use disorder is having on the workplace. The advisory council would be comprised of a variety of stakeholders, including unions, employers, workplace safety and health professionals, and substance use disorder treatment and recovery experts. The bill, H.R. 5892, *To establish an Advisory Committee on Opioids and the Workplace to advise the Secretary of Labor on actions the Department of Labor can take to address the impact of opioid abuse on the workplace*, passed the House on June 13, 2018. On July 25, 2018, Representative Shea-Porter introduced H.R. 6535, the *Campus Prevention and Recovery Services for Students Act*, which would require colleges and universities to offer evidence-based substance use disorder prevention, treatment, and recovery support services to students. The Committee played an active role in drafting H.R. 6, the *SUPPORT for Patients and Communities Act*, which was signed into law on October 24, 2018. The Committee continues to seek additional ways to help communities improve access to care and support services for those affected by substance use disorder.

Supporting Older Americans and their Families

Committee Democrats continued to recognize and examine the challenges that an ever-growing population of older Americans faces. In the 115th Congress, the Committee worked on a bipartisan basis to pass two pieces of legislation that were signed into law that seek to support older Americans and their caregivers. H.R. 3759, the *Recognize, Assist, Include, Support, and Engage (RAISE) Family Caregivers Act of 2017*, directs the establishment of a Family Caregiving Advisory Council to provide recommendations to the Secretary of HHS on effective models of both family caregiving and support to family caregivers, as well as improving coordination across federal government programs. S. 1091, the *Supporting Grandparents Raising Grandchildren Act*, requires the establishment of an Advisory Council to Support Grandparents Raising Grandchildren. The Advisory Council will identify, promote, coordinate, and disseminate to the public information, resources, and best practices available to help grandparents and other older relatives both meet the needs of the children in their care and maintain their own physical and mental health and emotional well-being. Both these legislative accomplishments will further support the aging community and provide feedback for how Congress and the Administration can better assist older Americans and their families.

Promoting Opportunities for Older Americans

According to DOL, one in four U.S. workers will be 55 or older by 2024; this will more than double the rate from 1994, when 55-plus workers accounted for only 12 percent of the

²⁵ Workers Compensation Research Institute, *Longer-Term Dispensing of Opioids: 4th Edition* (August 2017).

workforce.²⁶ When older workers become unemployed, they are far more likely than other workers to join the ranks of the long-term unemployed, and age discrimination is a significant factor in their long-term unemployment. In a 2015 survey of older workers who lost their jobs, 51 percent said that age discrimination negatively affected their ability to get a new job.²⁷ In a 2017 survey, 61 percent of respondents indicated that either they or an acquaintance had experienced age discrimination in employment.²⁸ This number is up from 33 percent reported in 2012.²⁹ On May 25, 2017, Ranking Member Scott once again introduced H.R. 2650, the *Protecting Older Workers Against Discrimination Act* (POWADA), which has garnered bipartisan support in both the House and Senate over the past few Congresses as well as broad support from older Americans. The bill restores fairness in the workplace for older Americans by returning to the pre-2009 evidentiary threshold applied in discrimination claims and replacing the “but-for” test the Supreme Court adopted in 2009 in *Gross v. FBL Financial Services, Inc.* with the “mixed-motive” test that courts applied prior to 2009. Without this legislative fix, the heightened burden of proof to show age discrimination will continue to encourage employees to terminate older workers, causing them to experience economic hardship, greater health related and other costs, and the loss of business acumen and knowledge in the workplace. These costs are not insignificant to U.S. taxpayers who have to ultimately support the aged unemployed and their families through government services.

Ensuring Children Have Access to Healthy Meals

Committee Democrats worked to ensure that every child is able to grow and learn without the burden of hunger, regardless of the family’s financial situation. Committee Democrats helped draft H.R. 2401, the *Anti-Lunch Shaming Act of 2017*, introduced by Representative Michelle Lujan Grisham (D-NM) on May 8, 2017.

The ECESE Subcommittee held a hearing entitled *Examining the Summer Food Service Program* on July 17, 2018. During the hearing, Committee Democrats reiterated their support for both in-school and out-of-school feeding programs and recognized the invaluable contribution that nutrition programs and enrichments provide to communities. Committee Democrats invited expert testimony from Ms. Adele LaTourette, Director of the New Jersey Anti-Hunger Coalition, who discussed the importance of these feeding programs that often can mean the difference between going hungry and being fed for many children across the country.

On September 22, 2018, the Trump Administration announced a proposed rule that would make changes to “public charge” policies. Under the proposed rule, officials would consider use of certain previously excluded public benefit programs to determine if an individual is likely to become a public charge, including SNAP and Medicaid, among others. Particularly since SNAP and Medicaid are closely linked with other child nutrition programs in the Committee’s

²⁶ Insurance Journal, *Why Businesses Need to Plan for an Aging Workforce* (June 21, 2018), <https://www.insurancejournal.com/news/national/2018/06/21/492950.htm>.

²⁷ AARP, *The Long Road Back: Struggling to Find Work After Unemployment* (March 2015), http://www.aarp.org/content/dam/aarp/ppi/2015-03/The-Long-Road-Back_INSIGHT.pdf.

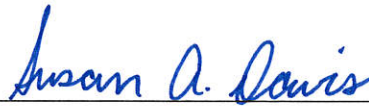
²⁸ AARP, *The Value of Experience: Age Discrimination Against Older Workers Persists* (2018), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2018/value-of-experience-age-discrimination-highlights.doi.10.26419-2Fres.00177.002.pdf.

²⁹ Insurance Journal, *Why Businesses Need to Plan for an Aging Workforce* (June 21, 2018), <https://www.insurancejournal.com/news/national/2018/06/21/492950.htm>.

jurisdiction, Committee Democrats submitted a comment letter to DHS on December 10, 2018, opposing the rule and outlining the impact that this rule will have on the health and wellbeing of children, including a negative effect on participation in child nutrition programs.



ROBERT C. "BOBBY" SCOTT
Ranking Member



SUSAN A. DAVIS



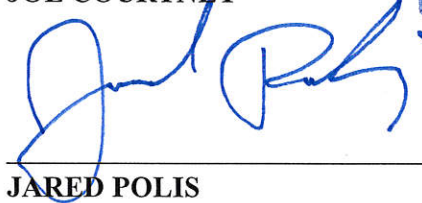
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