

POLITICS OVER PEOPLE:

How the Administration's Corruption, Cover-Ups, and Incompetence Hurts the American People



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Executive Summary

Since taking office, the Trump Administration has repeatedly taken actions that have harmed the education, financial security, and health of the American people. In response, the Committee on Education and Labor (Committee) has exercised its oversight authority – through hundreds of letters, meetings, public hearings, and even subpoenas – to investigate the actions under the Committee’s jurisdiction. Regrettably, over the last four years, the Administration has refused to work in good faith with the Committee and, instead, clearly demonstrated a culture of incompetence, cover-ups, and corruption.

For example, in response to the COVID-19 pandemic, the Department of Education (ED) bungled the urgent relief Congress secured for students through the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. Instead of following the law by halting collections on federal student loans and quickly distributing billions of relief dollars to students with the greatest needs, ED continued to collect on loans, attempted to block undocumented students from accessing relief, and tried to divert relief funding from low-income public-school students to private schools. After facing significant pushback from both Congress and the courts, ED was forced to reverse course and implement the law as intended.

Similarly, the Department of Labor (DOL) failed to justify making severe cuts to critical workforce development programs. In 2019, DOL suddenly announced its intent to close down nine Job Corps Civilian Conservation Centers, even though Job Corps is one of our nation’s most valuable education and job-training programs for at-risk youth. After failing to provide to the Committee any evidence-based justification for closing these sites, DOL reversed its decision.

Beyond failing to execute the law as intended by Congress, the Administration hid critical information regarding the consequences of its proposed policies from the general public. For example, the Department of Agriculture (USDA) proposed changing the eligibility requirements for the Supplemental Nutrition Assistance Program (SNAP) and refused to release its analysis of how many children would be impacted by the proposal. It was not until the night before a public hearing with the Committee that USDA revealed the rule would cause over one million children to lose access to free or reduced-price school meals. Facing pressure from Congress and the public to protect children’s access to nutrition programs, USDA never finalized this rule.

The National Labor Relations Board (NLRB) also failed to be transparent about its Members’ conflicts of interest. Former labor lawyer and current NLRB Member William Emanuel, in particular, has repeatedly voted in favor of companies that have ties to his previous employer, in violation of his ethics pledge. The NLRB has been so determined to cover-up Member Emanuel’s conflicts and obstruct Congress’s oversight that Chairman Robert C. “Bobby” Scott (VA-03) subpoenaed for documents from the NLRB in October 2020.

Most insidious perhaps is the Administration’s consistent pursuit of personal or political agendas over the interests of the American people. For example, a Committee investigation found that high-ranking officials at ED willfully helped an unaccredited institution of higher education – Dream Center Education Holdings – mislead its students by illegally providing access to federal funds and pressuring accreditors to “retro-actively” accredit the Dream Center institutions.

While not an exhaustive list, the following report documents key examples of the Committee’s oversight over the Administration’s incompetence, cover-ups, and corruption. Taken together, these examples reveal an Administration that prioritizes politics over the American people. Accordingly, as the 116th Congress comes to a close, the Committee remains committed to conducting rigorous oversight and ensuring we have a federal government that works for the people.

U.S. Department of Agriculture

The Department of Agriculture attempted to conceal how many children would lose access to free and reduced-price school lunches because of the Department's proposed changes to SNAP.

On July 24, 2019, the Department of Agriculture (USDA) issued a proposed rule, *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*, that not only proposed to change SNAP eligibility, but would also have had a significant impact on children's eligibility for free or reduced-price school meal programs.¹

When questioned about the impact of this change by Committee staff on a phone call, USDA staff revealed that more than 500,000 children were estimated to lose their automatic eligibility for free school meals. However, when the rule was later published in the Federal Register, the formal analysis of how many children would be impacted was missing. The Committee pushed for this formal analysis as required by law.² USDA resisted providing any such written analysis, and the Committee called for a hearing on October 16, 2019. The night before the hearing, USDA released the formal analysis showing that the true estimate was double what USDA initially claimed – one million children were estimated to lose their automatic eligibility for free school meals. As a result of this new and damning information, USDA was forced to reopen the comment period for its proposed rule. Facing an immense amount of pressure from Congress and the public, USDA has yet to finalize the rule.

U.S. Department of Education

The Department of Education rescinded key civil rights guidance intended to protect students of color from discriminatory discipline practices.

In 2014, the Obama Administration sought to address systemic discrimination in education by directing the Departments of Education (ED) and Justice (DOJ) to issue guidance documents that underscored schools' responsibility to combat racial disparities in discipline practices. The guidance provided tools to help schools examine and remedy discriminatory practices without jeopardizing school safety.³ The guidance was rooted in data showing students of color are disciplined more severely and at higher rates than their white peers for the same or similar offenses. Without supporting evidence, ED rolled this guidance back in 2018, claiming that the guidance would risk increasing the incidence of school shootings.⁴ The Government Accountability Office (GAO) debunked this claim in 2020, and, though the Committee has called on ED to re-implement the original guidance, ED has ignored fact-based policymaking in favor of racialized scapegoating.⁵

Combined with its decision to halt the collection of critical civil rights data, ED's abandonment of the 2014 Discipline Disparities guidance exacerbates existing inequitable structures in our nation's education system and undermines our ability to correct failed policies in the future. Our public schools are more segregated today by race and class than at any time since the 1960s and getting worse⁶. To counterbalance the Trump Administration's discriminatory policies, the U.S. House of Representatives (House) passed the *Equity and Inclusion Enforcement Act* on September 16, 2020. This law would restore the private right of action for students and parents to bring *Title VI* discrimination claims based on disparate impact and hold schools accountable for providing equal access to quality education for all students.

Without cause, the Department of Education unnecessarily delayed Obama-era regulations meant to address disparate treatment of students of color with disabilities.

In 2004, Congress reauthorized the *Individuals with Disabilities in Education Act (IDEA)* with specific language to address disparate treatment of students of color with disabilities. For the first time, Congress required states to identify school districts with gross inequities in their treatment of students and to direct federal resources to address the problem.⁷ Congress knew then, as it knows now, that students of color are over-identified for special education services, placed in more restrictive settings, and disciplined at higher rates than their white peers. Fifteen years later, too many states and districts continually fail to uphold their legal responsibility to address disparities arising from the overidentification, placement, and discipline of students of color with disabilities. The Obama Administration created regulations to correct these inequities.⁸

Though these regulations were set to go into effect July 1, 2018, ED attempted to delay their implementation. The Committee called on ED to abandon this misguided delay.⁹ Fortunately, a federal court ruled that ED had “failed to provide a reasoned explanation for delaying” this regulation and therefore the delay was “illegal,” forcing ED to implement the rule in May 2019.¹⁰

The Department of Education has enabled the misuse of federal funds to purchase guns to arm teachers.

Over the last two decades, Americans have been forced to grapple with repeated and increasingly frequent mass shootings in schools. These tragedies stem from a variety of factors, including insufficient mental health support in our schools and lax-to-nonexistent gun safety laws. Instead of addressing these obvious root causes, some have incorrectly asserted that adding *more* guns in schools by arming teachers would address the epidemic of gun violence.¹¹

In 2018, the White House asked ED to determine whether federal funds intended to support safe and healthy learning environments for students could be used to purchase firearms to arm teachers and other school staff. It is the Committee’s view that arming teachers is not authorized under the statute and would therefore constitute a misuse of funds. At an April 10, 2019 Committee hearing, Secretary DeVos was asked about her authority to restrict states and localities from using taxpayer money to purchase firearms for teachers.¹² Secretary DeVos denied she has the authority to prevent states from doing so, paving the way for the states to purchase guns to arm teachers.¹³ However, the Committee released an internal ED memorandum which made clear that she does, in fact, have the authority not withstanding her statement to the contrary.¹⁴

The Department of Education delayed implementing Borrower Defense rules – unfairly denying defrauded borrowers’ relief and changing the rules to help for-profit executives.

Borrower Defense is a program that allows defrauded student borrowers to have their federal student loans forgiven if their college engaged in blatant misconduct.¹⁵ Following the collapse of Corinthian Colleges, the Obama Administration uncovered pervasive fraud and turned to Borrower Defense to quickly provide students relief. In January of 2017, the Obama ED approved more than 28,000 claims¹⁶ and prepared more than 50,000 more for quick approval and discharge. At that time, ED projected that all eligible borrowers would obtain relief within six months.¹⁷ Instead of continuing this work, the Trump Administration abruptly stopped processing

claims from defrauded borrowers for roughly 18 months, illegally garnished student borrowers' wages, and overhauled the Borrower Defense process to restrict relief for past and future borrowers.

ED's current Borrower Defense policies directly harm borrowers by delaying and denying debt relief. While various federal courts have struck many of ED's most damaging Borrower Defense policies, some remain in place,¹⁸ and the futures of hundreds of thousands of applicants remain uncertain¹⁹. The Committee sent numerous inquiries to the Department to better understand its implementation of these regulations, held a hearing with Secretary DeVos and Office of Federal Student Aid (FSA) Chief Operating Officer Mark Brown, and released a report detailing the Department's unlawful policies that favor predatory for-profit colleges over students.

The Department of Education officials aided for-profit college executives perpetrate fraud against their students, then lied to Congress about their involvement.

In early 2018, Dream Center Education Holdings (Dream Center) purchased more than 60 colleges from the troubled for-profit giant Education Management Corporation. After a tumultuous 18 months, Dream Center closed down most of these colleges and sold the remainder, leaving taxpayers to foot the bill – at least \$600 million²⁰ but possibly more than \$1 billion.²¹ A Committee investigation found that although two of Dream Center's colleges lost accreditation, Dream Center executives, with the aid of ED officials, misled students on accreditation status these institutions.

Although the Committee initially raised questions to ED on July 17, 2019, ED refused to meaningfully respond to this investigation in the following 15 months. Without the help of ED, the Committee was able to obtain documents that revealed ED's actions harmed students by facilitating Dream Center's misrepresentations to students and unlawfully increasing those students' exposure to unnecessary debt. As a result of ED's obstruction, in October 2020, the Chairman was forced to subpoena career officials for their deposition about their involvement in the handling of the Dream Center collapse.

The Department of Education failed to faithfully implement the Public Service Loan Forgiveness program, leaving tens of thousands of public servants with unexpected and unnecessary debt.

Congress created the Public Service Loan Forgiveness (PSLF) program and the newer Temporary Expanded PSLF program to reward public-sector service by forgiving a portion of public-service workers' student loan debt. While borrowers have been eligible to apply for forgiveness since September 2017, ED has only approved 1 percent of applications²² and has passively watched as its loan servicers cause systematic program failures by providing borrowers with misleading or false information about PSLF.

Due to the complexity of the PSLF program, successful administration of PSLF requires that ED provide clear guidance to loan servicers coupled with rigorous oversight to ensure compliance. Unfortunately, ED failed on both counts and has yet to change course despite two separate Government Accountability Office (GAO) reports and repeated requests and guidance from the Committee.²³ ED's failure to correct course harms America's teachers, firefighters, police officers, and other public servants. The Committee has requested documents from ED; conducted an oversight hearing with impacted borrowers, state attorneys general, and experts; produced a

Committee report detailing ED's failed implementation; and requested GAO perform a series of audits on the Department's program implementation.

Though federal law prohibited the Department of Education from garnishing wages or otherwise involuntarily collecting on federal student loans during the COVID-19 pandemic, the Department continues to do both.

In response to the global COVID-19 pandemic, Congress passed the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* on March 27, 2020. The law prohibited ED from garnishing student borrowers' wages or involuntarily collecting on loans held by the federal government for six months.²⁴ Yet, ED continued to unlawfully garnish wages and collect on certain borrowers' federal loans, complaining that it was not capable of stopping these activities entirely.

ED has largely ignored repeated requests for information from the Committee and continues to obstruct the Committee's investigations. ED's inefficacy and unaccountability is depriving some of the most at-risk borrowers – those subject to collections after default – of a protection that is mandated by law. Though students have sued ED, it may be months or years before they see meaningful relief.

The Department of Education bungled the roll-out of necessary guidance, delayed critical aid, and confused institutions in its attempt to deprive undocumented students of COVID-19 aid.

The *CARES Act* provided \$14 billion in aid to institutions of higher education (IHEs) and their students through the Higher Education Emergency Relief (HEER) Funds. Congress recognized that COVID-19 would disproportionately impact students currently enrolled at institutions and required institutions to direct at least 50 percent of allocated HEER funds to students.²⁵ In the months after Congress passed the *CARES Act*, ED repeatedly changed guidance for institutions' responsibilities to distribute these funds, in an attempt to prevent undocumented students from receiving access to the aid. Exacerbating this confusion, ED issued an interim final rule to prohibit institutions from disbursing funds to undocumented students and erecting barriers to distributing aid to students not currently receiving federal financial aid.²⁶

Though the Committee asked specific questions and requested specific documents to better understand ED's delays and policy reversals, ED has not responded to the Committee's requests. ED's unauthorized restriction on emergency funds will harm undocumented students and students not currently receiving federal student aid.

The Department of Education attempted to divert more than one billion dollars of COVID-19 relief aid intended for low-income public-school students to private schools.

The *CARES Act* provided more than \$16 billion to local educational agencies through two funds – the Governor's Emergency Education Relief (GEER) fund²⁷ and the Elementary and Secondary School Emergency Relief (ESSER) fund.²⁸ In a slap to the face of low-income students and teachers across the country, who are disproportionately impacted by COVID-19, ED attempted to divert more than one billion dollars in federal emergency aid away from public-school students to private-school students.

Despite multiple federal courts ruling that ED's ploy was unlawful,²⁹ ED allowed states and localities to divert some of these funds away from low-income public-school students by ignoring any violations of law that occurred prior to September 25, 2020.³⁰ Because Congress passed the CARES Act³¹ in early 2020, much of the emergency funding may have already been inappropriately distributed.

The Committee opposed the Department's policies from their inception and the House submitted an amicus brief in one of the myriad lawsuits against the Department's unlawful actions. Further, the Committee has requested the Department's Office of Inspector General (OIG) investigate the Department's decision to ignore illegal violations by states and localities.

U.S. Department of Health and Human Services

The Trump Administration's Department of Health and Human Services refuses to use a key tool that could have prevented Americans' lives and financial security from being needlessly put at risk during the COVID-19 pandemic.

In March 2020, during the early months of the pandemic, and despite calls from Congress – including this Committee – and over 200 health care advocacy groups,³² the Department of Health and Human Services (HHS) decided to make it more difficult for Americans to access comprehensive health coverage. HHS refused to establish a general Special Enrollment Period (SEP) that would have allowed uninsured and underinsured Americans to have more seamless access to comprehensive coverage through HealthCare.gov during the crisis.³³

The Administration prioritized its attempts to dismantle the *Affordable Care Act* (ACA) ahead of the interest of vulnerable Americans facing a public-health and economic crisis. Reports suggest that uninsured Americans receiving treatment for COVID-19 could face medical costs upwards of tens of thousands of dollars.³⁴ Too many uninsured and economically struggling individuals are avoiding medical treatment altogether at this time. Not creating a broad SEP through HealthCare.gov is even more worrisome in states that elected not to adopt the ACA's Medicaid expansion – as many lower-income Americans are now at risk of losing their jobs as a result of COVID-19 and have few options to gain affordable and comprehensive coverage.

Instead of using every tool at its disposal to protect Americans from the impacts of COVID-19, the Administration chose to undermine the health and financial security of families, exposing more Americans to costly medical bills. The Committee has continued to work to make a general SEP available to the American people during this difficult time, such as including a provision in House-passed the *Heroes Act*.

Facing political pressure, the Trump Administration pushed the Centers for Disease Control and Prevention to water down important COVID-19 safety recommendations for a major meatpacking plant.

In response to a major COVID-19 outbreak at a Smithfield meatpacking plant, the South Dakota Department of Health (SD-DOH) requested the assistance of the Centers for Disease Control and Prevention (CDC) in the form of an Epidemiologic Assistance (Epi Aid) investigation. Following the CDC's visit to the plant in April 2020, the agency issued an Epi Aid report containing recommendations outlining how the plant can reduce disease transmission among workers.³⁵ However, the next day, the CDC withdrew the document and posted a watered-

down version that framed its science-based recommendations as purely optional by inserting phrases in directives such as “if feasible,” “consider,” and “if possible.”³⁶

During its investigation of this matter, the Committee learned that CDC Director Robert Redfield testified to Congress that changes were made simply to clarify that the recommendations were advisory and not regulatory requirements. Director Redfield also falsely claimed that he had no contact with USDA, the White House, or Smithfield about this matter.

However, other CDC Epi Aids do not include similar weakening phrases and the Committee confirmed that the CDC Director, USDA, and DOL had a phone call on April 22 regarding the subsequent “clarification” of the Epi Aid.³⁷ The CDC Director’s actions to weaken critical public-health and workplace-safety recommendations at the request of White House officials undermine the public’s trust in the government’s ability to protect them from the COVID-19 virus.

U.S. Department of Labor

Without cause or notice, the Department of Labor attempted to dismantle a key job-training program for low-income youth.

Job Corps – the nation’s largest and most comprehensive education and job-training program for at-risk youth (between the ages of 16 and 24) seeking jobs skills and paths to college or military service – has consistently been attacked by the Trump Administration. Specifically, the Department of Labor (DOL) has made no effort to expand the program to its intended capacity, destabilizing the program and leaving it at risk of having its funds impounded due to lack of use.

In May 2019, the Department of Agriculture (USDA) and DOL made a startling announcement to transfer all 25 Job Corps Civilian Conservation Centers (JCCCs) from USDA’s Forest Service to DOL, and DOL noticed its plan to permanently close nine of the JCCCs.³⁸ This action would also have resulted in the layoff of over one thousand Forest Service employees and thousands of Job Corps students, and eliminated an important source of forest firefighting training at a time when wildfires are more widespread and severe than ever.

The Committee led several bipartisan and bicameral briefings with USDA and DOL officials to push for a legitimate rationale for these closures as DOL continued to disinvest in Job Corps. At each briefing, neither USDA nor DOL could offer any evidence that closing the centers was justified by performance, attendance, or any other measure, despite claiming those were the reasons for the closures.

In the face of bipartisan Congressional opposition and the announcement of a Committee oversight hearing with Departmental officials, USDA and DOL reversed course on June 20, 2019.

The Department of Labor attempted to create an untested, illegal apprenticeship program, while undermining the current, successful Registered Apprenticeship program.

DOL is attempting to privatize the successful Registered Apprenticeship (RA) program. In June 2017, the White House issued Executive Order (EO) 13801, *Expand Apprenticeships in America*, in which the White House

directed DOL to develop a parallel program to RA called the Industry Recognized Apprenticeship Program (IRAP).³⁹

The Committee sent numerous requests to DOL to better understand the legal justifications for IRAP, to question the funding sources for IRAP activities, and to determine potential conflicts of interest. Regrettably, DOL failed to provide adequate justification in each of its responses.⁴⁰ On June 26, 2019, DOL proposed a rule to amend existing regulations and establish a new process for recognizing accreditation bodies for IRAPs, known as Standards Recognition Entities (SREs).

During this process, in violation of the law, DOL misused RA funds for the development and creation of IRAPs and SREs. This misuse of funds was worsened by the fact that DOL provided false statements to Congress regarding the misuse of funds at the Committee's DOL oversight hearing. Specifically, then-Secretary Acosta stated that "no Registered Apprenticeship funds have been provided to business or industry to set up IRAPs."⁴¹

At a subsequent Committee oversight hearing, the Department continued to claim that IRAPs were only receiving "incidental benefit" from the RA funds before finally admitting to misusing more than one million dollars for IRAPs.⁴² Additionally, DOL broke the law again by failing to formally notify Congress regarding its misuse of funds and its budgetary actions to rectify this illegal activity.⁴³ Every dollar DOL wastes on IRAPs is one less dollar that can be invested in expanding RAs and creating meaningful careers for American workers.

To strengthen the current RA system, the Committee reported the reauthorization of the *National Apprenticeship Act of 2020* in October 2020. This legislation would create nearly one million new apprenticeship opportunities on top of the current expected growth of the existing system.

For the first time in the Occupational Safety and Health Administration's history, and without scientific justification, the agency attempted to roll back health standards for an ultra-toxic substance that were intended to protect construction and shipyard workers.

Shortly after President Trump took office, the Occupational Safety and Health Administration (OSHA) attempted to roll back health protections for workers against exposure to an ultra-toxic substance. Had it succeeded, OSHA would have weakened an existing health standard for the first time. In 2017, OSHA issued a proposed rule related to beryllium exposure and its related compounds in the construction and shipyard sectors.⁴⁴ The rule would have eliminated exposure assessments and medical monitoring and training for a substance known to cause serious health risks, including lung cancer and berylliosis.

Over the course of the next three years, the Committee pushed OSHA to justify its decision, questioning the scientific justification for this unprecedented rollback of protections. In response to these inquiries, OSHA attempted to justify its rollback but could not provide evidence to back up its claims. Finally, on August 31, 2020, OSHA reversed its proposal to eliminate the protections. In doing so, OSHA explicitly admitted that these provisions were, in fact, not adequately covered by other regulations as it had previously claimed, and that revoking them would be inconsistent with OSHA's mandate to protect workers from the demonstrated and significant health risks resulting from exposure to these compounds.⁴⁵

In an attempt to cover up the harmful impact on workers, the Department of Labor buried analyses that would show how much workers would lose under their proposed wage and hour rules.

During the Trump Administration, DOL has proposed multiple rules without the legally required analysis to illustrate how each rule would impact the average worker's wages.⁴⁶ In 2019, DOL proposed a tip rule under the *Fair Labor Standards Act*⁴⁷ which lacked estimates of how much tipped workers would lose in real dollars under the rule.⁴⁸ This rule was proposed to replace a much-criticized 2017 rule that would have allowed employers to keep workers' tips. DOL also hid data that showed how much workers would lose under this scheme.⁴⁹ In both the 2017 rule and the 2019 rule, DOL made dubious claims that it lacked data to quantify impacts on workers. However, DOL later conceded it did have the necessary data to estimate impacts on workers.⁵⁰

As a result of the Committee's relentless inquiries over the proposed rules, the 2017 rule is currently the subject of an audit by the DOL Office of Inspector General (OIG) despite having been withdrawn.⁵¹ DOL continues to obstruct the Committee's oversight by covering up the harm its policies would inflict on workers. First, DOL claimed that oversight is no longer relevant since the proposed 2017 rule was withdrawn.⁵² Then, DOL cited the ongoing audit by the DOL OIG as the reason DOL was not permitted to share information on that proposed rule. However, the Committee's constitutional duty and authority to conduct oversight cannot be limited by any DOL-OIG investigation.⁵³ Moreover, DOL OIG has affirmatively stated that DOL should be as forthcoming with Congress as possible in response to the Committee's inquiries into the 2017 proposed rule.⁵⁴

The Department of Labor hurt health care workers who desperately need relief during the pandemic by failing to provide paid leave – as Congress intended – in the bipartisan Families First Coronavirus Response Act.

Congress acted swiftly in March 2020 to pass the *Families First Coronavirus Response Act* (FFCRA) to expand access to paid sick leave for workers. DOL responded by undermining these protections in violation of the law.

In FFCRA, Congress provided a number of expanded paid leave provisions for workers so that they could take care of their health and the health of loved ones during the pandemic. DOL, however, ignored Congress's clear intent and issued regulations that improperly expanded the definition of "health care providers" in order to limit the number and types of workers who could benefit from FFCRA. The Committee immediately sounded the alarm about DOL's harmful and inappropriate actions. At the same time, New York state sued DOL and, on August 3, 2020, a federal judge ruled in *New York v. the United States Department of Labor* that DOL's interpretation clearly violated the law and struck down that part of DOL's regulation.⁵⁵

Despite DOL's faulty implementation of FFCRA's paid leave provisions, new research finds that the paid sick leave benefits that Congress passed reduced the spread of COVID-19 infections by 56 percent from March through May 2020.⁵⁶ To strengthen workers' access to paid leave and prevent the spread of the virus, the House passed the *Heroes Act* in May 2020 and an updated *Heroes Act* again in October 2020.

National Labor Relations Board

The Trump Administration's National Labor Relations Board has tainted the Board's reputation and decisions with a Members' obvious conflicts of interest.

Despite campaign promises to bring “more jobs and better wages,” the Trump Administration has done just the opposite.⁵⁷ The National Labor Relations Board (NLRB) is the agency charged with protecting most private-sector workers' right to organize and improve working conditions. Yet, under the Trump Administration, NLRB has enacted an anti-worker agenda and repeatedly run afoul of federal ethics laws.⁵⁸

In March 2018, the agency was forced to vacate a decision on a matter regarding joint employer status after both NLRB's Inspector General and Designated Agency Ethics Official (DAEO) concluded that NLRB Member William Emanuel participated in that matter in violation of his ethics pledge.⁵⁹ Less than three months after vacating that decision, the NLRB announced its intent to initiate a rulemaking on the very same matter.⁶⁰ On September 13, 2018, the NLRB ignored the warnings of its Inspector General and DAEO and proposed a joint employer standard virtually identical to that of their ethically tainted decision.⁶¹ The agency's joint employer decisions and rules significantly limit workers' ability to bargain for better wages and benefits.

The NLRB again raised ethics concerns when Member Emanuel, delivered the deciding vote in a case to let the McDonald's Corporation off the hook for retaliating against employees who organized for the Fight for \$15.⁶²

After over a year of the NLRB obstructing the Committee's oversight, the Chairman subpoenaed for documents for the NLRB to produce documents related to the Members' conflicts of interest in September 2020.⁶³

¹ 84 Fed. Reg. 35,570 (July 24, 2019).

² Letter from Chairman Scott to USDA, the Committee on Education and Labor (July 26, 2020); Letter from Chairman Scott to USDA, the Committee on Education and Labor (Sept. 10, 2020).

³ See U.S. Department of Education, *U.S. Departments of Education and Justice Release School Discipline Guidance Package to Enhance School Climate and Improve School Discipline Policies/Practices* (January 8, 2014), <https://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package->

⁴ Erica L. Green, *Trump Finds Unlikely Culprit in School Shootings: Obama Discipline Policies*, *The New York Times* (March 13, 2018), <https://www.nytimes.com/2018/03/13/us/politics/trump-school-shootings-obama-discipline-policies.html>.

⁵ After the horrific shootings at Marjory Stoneman Douglas High School, the Department of Education led the Federal Commission on School Safety (the “Commission”) to research and recommend solutions to improve school safety. Its results were disappointing. Aside from ignoring common-sense gun control measures, an entire chapter of the Commission's report focused on rescinding the 2014 discipline disparities guidance. U.S. Departments of Education, Justice, Homeland Security, and Health and Human Services, *Final Report of the Federal Commission on School Safety* (December 18, 2018), at 69-76, <https://www2.ed.gov/documents/schoolsafety/school-safety-report.pdf>. It is unclear why the Department would use a report on school-targeted shootings, which occur more frequently at schools with predominantly white student populations, to rescind guidance designed in part to ensure equitable treatment for students of color.

⁶ <https://www.gao.gov/products/GAO-16-345>

⁷ *Individuals with Disabilities Education Improvement Act of 2004*, Pub. L. No. 108-446, 118 Stat. 2647 (2004).

⁸ Assistance to States for the Education of Children with Disabilities; Preschool grants for children with Disabilities: 81 Fed. Reg. 92376 (December 19, 2016) (To Be Codified at 34 C.F.R. pt. 300), <https://www.govinfo.gov/content/pkg/FR-2016-12-19/pdf/2016-30190.pdf>.

⁹ Letter from Chairman Scott and Chairman Richmond to Secretary Betsy DeVos (Mar. 22, 2017).

¹⁰ *Council of Parent Attorneys and Advocates, Inc., v. Elizabeth (Betsy) DeVos, Secretary of Education; Johnny W. Collet, Assistant Secretary for Special Education and Rehabilitative Services; U.S. Department of Education*, 1:18-cv-01636-TSC, Memorandum Opinion, P. 28 and 48 (D.C. Cir. 2019), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv1636-31, <https://www.clearinghouse.net/chDocs/public/ED-DC-0008-0002.pdf>.

¹¹ See, e.g., Arvin Campbell, *A Case for Arming Teachers and Administrators in Public Schools with Firearms*, The Bill Blackwood Law Enforcement Management Institute of Texas (February 2016).

¹² *Examining the Policies and Priorities of the U.S. Department of Education: Hearing before the House Committee on Education and Labor*, 116th Congress (2019) (questioning by Rep. Jahana Hayes of Secretary Betsy DeVos), available at <https://edlabor.house.gov/hearings/04/03/2019/examining-the-policies-and-priorities-of-the-us-department-of-education>.

¹³ *Id.*

¹⁴ *Examining the Policies and Priorities of the U.S. Department of Education: Hearing before the House Committee on Education and Labor*, 116th Congress (2019) (Questions for the record sent on April 29, 2019).

¹⁵ Specifically, the statute provides that, “Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.” 20 U.S.C. § 1087e(h). Regulations implementing this law were promulgated in 1995, 2016, and 2019. The vast majority of borrowers with pending claims are subject to the 1994 and 2016 rules. The 1995 rules apply to loans issued before July 1, 2017, and include provisions aimed at protecting borrowers from school’s misconduct. See *id.*; see also 34 C.F.R. § 685.206(c). The Obama Administration further refined the rules in 2016, applicable to loans issued between July 1, 2017 and July 1, 2020. See Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 FR 49,788, at 49,814, September 23, 2019 (codified at 34 C.F.R. § 668, 34 C.F.R. § 682, 34 C.F.R. § 685). Also, see <https://ifap.ed.gov/electronic-announcements/112519implschoolnoticerequnder2016bordefensereg> and Borrower Defense to Repayment; Applicable Law, Dep’t of Educ., <https://studentaid.gov/manage-loans/forgivenesscancellation/borrower-defense>. In September 2019, ED finalized another set of rules that apply to newer loans and are scheduled to go into effect in 2020. Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49,788 (Sept. 23, 2019) (to be codified at 34 C.F.R. parts 668, 682, and 685).

¹⁶ Dep’t of Educ., *American Career Institute Borrower to Receive Automatic Group Relief for Federal Student Loans* (January 13, 2017), <https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receiveautomatic-group-relief-federal-student-loans>.

¹⁷ Dep’t of Educ. *Office of Federal Student Aid, Enforcement office, Report on Borrower Defense*, 1 (October 28, 2016), <https://www2.ed.gov/documents/press-releases/borrower-defense-report.pdf>.

¹⁸ See, e.g., *Bauer v. DeVos*, No. 1:17-cv01330-RDM, Memorandum Opinion and Order, (D.D.C. September 12, 2018) and *CAPPS v. Secretary DeVos*, No. 17-999, p. 2-4 (D.D.C 2018); Compl. at 21, *Williams v. Secretary DeVos*, No. 16-cv-11949-LTS (D. M.A. 2018).

¹⁹ While the department stated in September that there are 79,956 cases to be adjudicated, a federal court recently tossed out 160,000 of FSA’s adjudications that the court found “[hung] borrowers out to dry.

²⁰ U.S. Dept. of Education Responses to Sen. Murray Questions for the Record dated June 13, 2019, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>, 69, (last visited October 8, 2020).

²¹ Letter from Brent Richardson to Secretary Betsy DeVos (Nov. 23, 2018).

²² Melissa Emrey-Arras, GAO, GAO-18-547, PUBLIC SERVICE LOAN FORGIVNESS Education Needs to Provide Better Information for the Loan Servicer and Borrowers (2018). <https://www.gao.gov/products/GAO-18-547>.

²³ See *id.*; see also Melissa Emrey-Arras, GAO, GAO-18-547, PUBLIC SERVICE LOAN FORGIVNESS Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion (2019). <https://www.gao.gov/products/GAO-19-595>.

²⁴ The *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. No. 116-136 § 3513

²⁵ The *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. No. 116-136 § 18004(c)

²⁶ Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 85 Fed. Reg. 36,494 (June 17, 2020) (to be codified at 34 C.F.R. pt. 668).

<https://www.federalregister.gov/documents/2020/06/17/2020-12965/eligibility-of-students-at-institutions-of-highereducation-for-funds-under-the-coronavirus-aid>.

²⁷ The *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. No. 116-136, § 18002(b)(1) (2020).

²⁸ The *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. No. 116-136, § 18005 (2020).

²⁹ See, e.g., *NAACP v. Dep’t of Educ.*, No. 20-cv-1996-DLF, 2020 U.S. Dist. LEXIS 162662, at 13(D.D.C. Sept. 4, 2020); see also *Michigan v. DeVos*, No. 20-cv-04478-JD at 1 (N.D.CA Aug. 26, 2020).

³⁰ See Letter from Secretary DeVos to all Chief State School Officers (Sept. 25, 2020).

³¹ The *Coronavirus Aid, Relief, and Economic Security Act*, 20 U.S.C. § 3401 (Education Stabilization Fund § 18001–18008).

³² Letter from Chairman Richard Neal, Chairman Frank Pallone, Chairman Bobby Scott, Ranking Member Ron Wyden, and Ranking Member Patty Murray to Vice President Michael Pence and Secretary Alex Azar (Apr. 3, 2020); Letter from 200+ health advocacy organizations to Secretary Alex Azar, Administrator Seema Verma, and Vice President Michael Pence (Mar. 20, 2020) (accessible at: https://younginvincibles.org/wp-content/uploads/2020/03/Request_Emergency-Special-Enrollment-Period-to-Combat-COVID-19.pdf)

³³ Politico, *Trump rejects Obamacare special enrollment period amid pandemic* (Mar. 31, 2020), <https://www.politico.com/news/2020/03/31/trump-obamacare-coronavirus-157788>.

³⁴ *Total Cost of Her COVID-19 Treatment: \$34,927.43*, TIME (Mar. 19, 2020).

³⁵ Strategies to reduce COVID-19 transmission at the Smithfield Foods Sioux Falls Pork Plant, CDC (April 21, 2020).

³⁶ Strategies to reduce COVID-19 transmission at the Smithfield Foods Sioux Falls Pork Plant, CDC (April 22, 2020).

³⁷ In addition, the New York Times reported that according to a former administration official, Vice President Pence's office directed Dr. Redfield to soften the Smithfield report and Dr. Redfield dictated the changes to his staff at CDC from the White House. *Under Pence, Politics Regularly Seeped Into the Coronavirus Task Force*, The New York Times (Oct. 8, 2020).

³⁸ Job Corps Center Proposal for Deactivation: Comments Requested, 84 Fed. Reg. 25071

³⁹ Exec. Order No. 13801, 82 Fed. Reg. (June 1, 2017).

⁴⁰ Letter to the Honorable R. Alexander Acosta, Secretary, U.S. Department of Labor, requesting information about the U.S. Department of Labor's plans for proposed rulemaking, subregulatory guidance, and information collection requests regarding Industry-Recognized Apprenticeship Programs (IRAPs) and the development of IRAP "accreditors." (February 27, 2019). On March 14, 2019, DOL provided a response that described its work on IRAPs in general terms but left the majority of our requests from our February 27, 2019 letter unanswered.; Letter to the Honorable R. Alexander Acosta, Secretary, U.S. Department of Labor, following up on our February 27, 2019 request about Industry-Recognized Apprenticeship Programs (IRAPs) (June 4, 2019).

⁴¹ Responses to Questions for the Record provided to the House Committee on Education and Labor by the Department of Labor (2019).

⁴² Ben Penn, *Trump Apprenticeship Plan Under Fire for Alleged Misuse of Funds*, Bloomberg Law (Nov. 6, 2019), <https://news.bloomberglaw.com/daily-labor-report/trump-apprenticeship-plan-under-fire-for-alleged-misuse-of-funds>.

⁴³ Section 102 of the Further Consolidated Appropriations Act, 2020 P. L. 116-94 (which contains the funding provisions for ETA) states the following: Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985) which are appropriated for the current fiscal year for the Department of Labor in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: Provided, That the transfer authority granted by this section shall not be used to create any new program or to fund any project or activity for which no funds are provided in this Act: Provided further, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer. Per the clear language of this statute, the Department of Labor was permitted to transfer roughly \$360,000 of PA funds to be transferred to Apprenticeship without notifying Congress in the current fiscal year, but the Department of Labor transferred all \$1.1 million without notifying Congress (Responses of John Pallasch, Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, to Questions for the Record stemming from November 20, 2019, hearing of the Subcommittee on Higher Education and Workforce Investment, Committee on Education and Labor, U.S. House of Representatives.)

⁴⁴ 82 Fed. Reg. 29,182 (Jun. 27, 2017) (to be codified at 29 C.F.R. pts. 1915 and 1926).

⁴⁵ Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors, 84 FR 51377

⁴⁶ Executive Order 13653, *Improving Regulation and Regulatory Review*, requires agencies to "quantify anticipated present and future benefits and costs as accurately as possible" and "select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits." Exec. Order No. 13563, *Improving Regulation and Regulatory Review*, 3 C.F.R. § 13563 (2011). Executive Order 12866 requires that an agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Exec. Order No. 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 51735 (October 4, 1993). The Department of Labor has determined that this proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866. 84 Fed. Reg. 53967.

⁴⁷ Tip Regulations Under the Fair Labor Standards Act (FLSA), 84 Fed. Reg. 53956 (proposed Oct. 8, 2019).

⁴⁸ External experts estimated workers would stand to lose hundreds of millions under this portion of the rules. See, e.g., Heidi Shierholz and David Cooper, *Workers will lose more than \$700 million dollars annually under proposed DOL rule*, Working Economics Blog (Nov. 30, 2019), <https://www.epi.org/blog/workers-will-lose-more-than-700-million-dollars-annually-under-proposed-dol-rule/>.

⁴⁹ Ben Penn, *Labor Dept. Ditches Data on Worker Tips Retained by Businesses*, Bloomberg Law, (Feb. 1, 2018, 10:03 AM), <https://bna.com/news/bna.com/daily-labor-report/labor-dept-ditches-data-on-worker-tips-retained-by-businesses>.

⁵⁰ In the 2017 Tip NPRM, the DOL used this excuse to exclude estimates of impacts from proposed changes to tip pooling requirements, but was then able to make these types of estimates in the 2019 Tip NPRM based on comments from outside economists. 82 FR 57396; 84 FR 53968. The 2019 Tip NPRM uses the same “lack of data” excuse for a separate policy change (80/20 rule), creating a valid question as to validity for such claim. 84 FR 53966.

⁵¹ Memorandum from Elliot P. Lewis, Assistant Inspector General for Audit, U.S. Dep’t of Labor, Office of the Inspector General, to Bryan Jarrett, Acting Administrator Wage & Hour Div., (Feb. 5, 2018).

⁵² See, e.g., Letter from Robert C. “Bobby” Scott et al., Ranking Member, House Educ. & Labor Comm., to R. Alexander Acosta, U.S. Sec’y of Labor (February 2, 2018); Letter from Robert C. “Bobby” Scott, Chairman, House Educ. & Labor Comm., to R. Alexander Acosta, U.S. Sec’y of Labor (April 3, 2019).

⁵³ *McGrain v. Daugherty*, 273 U.S. 135, 177, and 181-182 (1927); *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 509 (1975).

⁵⁴ U. S. Dep’t of Labor Office of Inspector Gen., Call with the House Educ. & Labor Comm Staff (Feb. 3, 2020).

⁵⁵ *New York v. United States Dep’t of Labor*, No.20-CV-3020, 2020 U.S. Dist. LEXIS 137116, * at 1 (S.D.N.Y. Aug. 3, 2020).

⁵⁶ healthaffairs.org/doi/full/10.1377/hlthaff.2020.00863

⁵⁷ Donald Trump, Address at the New York Economic Club (Sept. 15, 2016), <https://www.c-span.org/video/?415315-1/donald-trump-delivers-economic-policy-address>.

⁵⁸ Exec. Order No. 13,770 (Jan. 28, 2017) (requiring appointees to attest that they will not “participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts”).

⁵⁹ See *Hy-Brand Industrial Contractors*, 366 NLRB No. 26 (2018); see also *OIG Report Regarding Hy-Brand Deliberations*; Report of Investigation – *OIG-I-541*, National Labor Relations Board Inspector General (Mar. 20, 2018) https://drive.google.com/file/d/1CiNGB3_cvcMOTI3wLUJMLu66O0MiK_i3/view; Recommended Action Plan Respecting the Board’s Adjudication of *Hy-Brand Industrial Contractors, Ltd.*, 365 NLRB No. 156 (2017), National Labor Relations Board Designated Agency Ethics Official (Feb. 21, 2018) <http://src.bna.com/ykl>.

⁶⁰ Office of Public Affairs, “NLRB Considering Rulemaking to Address Joint-Employer Standard” (May 9, 2018) <https://www.nlr.gov/news-outreach/news-story/nlr-considering-rulemaking-address-joint-employer-standard>.

⁶¹ The Standard for Determining Joint Employer Status, 83 Fed. Reg. 46681 (Sept. 14, 2018). Board Members “must be disqualified” from participating in a rulemaking “when they act with an ‘unalterably closed mind’ and are ‘unwilling or unable’ to rationally consider arguments.” *Air Trsnp. Ass’n of Am., Inc. v. NMB*, 663 F.3d 476, 487 (D.C. Cir. 2011) (citing *Ass’n of Nat’l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1170, 1174 (D.C. Cir. 1979)). By initiating a rulemaking to reach the same result that the NLRB was foreclosed from obtaining in adjudication due to a conflict of interest, the NLRB’s rulemaking appeared designed to circumvent federal ethics standards that forced the agency to vacate *Hy-Brand*. See 5 C.F.R. § 2635.101(b)(14) (Executive branch “[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”). The NLRB permitted Committee staff to view the ethics memo permitting Member Emanuel to participate in the rulemaking, but the memo failed to conduct any analysis applying the recusal standard to the rulemaking’s suspect procedural history. The Committee raised this concern in its public comment, but the NLRB only responded, without explanation, that it “does not undermine the DAEO’s determination.” Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. at 11190. The NLRB refuses to make this memorandum publicly available.

⁶¹ National Labor Relations Board, National Labor Relations Board’s Ethics Recusal Report (2019) <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/nlrbs-ethics-recusal-report-november-19-2019.pdf>.

⁶² 368 NLRB No. 134 (2019).

⁶³ Letter from Robert C. “Bobby” Scott, Chairman, House of Representatives Committee on Education and Labor, to John Ring, Chairman, National Labor Relations Board (Sept. 15, 2020), <https://edlabor.house.gov/imo/media/doc/NLRB%20Subpoena.pdf>.