

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES
APPROPRIATIONS FOR 2012

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

SUBCOMMITTEE ON THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES

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NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mr. Dicks, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

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**PART 6—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION,
AND RELATED AGENCIES APPROPRIATIONS FOR 2012**

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**DEPARTMENTS OF LABOR, HEALTH AND
HUMAN SERVICES, EDUCATION, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
2012**

THURSDAY, MARCH 17, 2011.

IMPROPER PAYMENTS

WITNESSES

**ELLIOT P. LEWIS, ASSISTANT INSPECTOR GENERAL OF AUDIT
DANIEL R. LEVINSON, INSPECTOR GENERAL, DEPARTMENT OF
HEALTH AND HUMAN SERVICES
KATHLEEN S. TIGHE, INSPECTOR GENERAL, DEPARTMENT OF EDU-
CATION
PATRICK O'CARROLL JR., INSPECTOR GENERAL, SOCIAL SECURITY
ADMINISTRATION**

Mr. REHBERG. Good morning. I apologize for the timing. As I think you have been informed, we anticipate a vote at 10:15 a.m. And so, what we will do is we will stay here until about 5 minutes left on the vote, so 10 minutes into the vote. Hopefully, that will take us to about—if it is at 10:15 a.m.—take us to about 10:25 a.m.

We will go over and vote. We have two. I anticipate a 15 and a 5, which never works out that way, and we will get back. And we will just suspend the hearing, and then we will get back as quickly as we can so we can have as much time with you.

I will end the meeting at noon, at 12:00 p.m. And so, if I could ask you to if at all possible to summarize your opening statement, just as, one, a courtesy to the rest of you and, two, so that we will have more time for questioning, that would be very helpful.

So we normally go in order of the titles of the bill. I think you have been informed of that as well. So, Mr. Lewis, we will start with you.

Oh, I am sorry. Ms. DeLauro.

Ms. DELAURO. Thank you. That is fine. Thank you, Mr. Chairman, again.

And happy St. Patrick's Day to all.

I want to thank today's panelists for coming to testify before us this morning. I think everyone in this room agrees that our Government should be as efficient as possible, and I know that the Administration has made improving program integrity and reducing improper payments a very high priority.

And to that end, the administration has moved aggressively with a vigorous effort to ferret out waste, fraud, and abuse. The President has signed an Executive Order 13520 to this effect. It requires

that improper payments be reduced by intensifying efforts to eliminate payment errors, waste, fraud, and abuse in the major programs that are administered by the Federal Government, while continuing to ensure that the Federal programs serve and provide access to their intended beneficiaries.

And to help implement it, this Congress included \$37,500,000 in the 2010 Consolidated Appropriations Act. The funds also establish a Partnership Fund for Program Integrity Innovation, helping States to create pilot projects to reduce improper payments without reducing participation among eligible populations. And every project must save at least as much as it costs.

And I see for the first time, we have tried to dedicate discretionary funds to fight waste, fraud, and abuse. The subcommittee has focused on these issues. The bill that reported out by the Labor-HHS, this subcommittee, last year included three major program integrity initiatives totaling \$1,400,000,000—an 89 percent increase above the level 2 years earlier—in the areas of healthcare, Social Security, and Unemployment Insurance.

The bill also took specific steps to respond to reports by the GAO concerning possible fraud in some of the discretionary programs at the Department of Health and Human Services' Administration on Children and Families. The bill responded with \$7,500,000 for the Inspector General to conduct comprehensive audits in those areas, funds to the program offices for better monitoring of grantees, a requirement that the Secretary report quickly concerning the steps that she was taking to address the GAO's concerns.

My hope is that our subcommittee will continue this commitment to taking concrete steps that will actually improve program integrity.

Unfortunately, right now, this Congress seems to be going in a different direction. We are going to hear today about problems of improper payments at Medicare. Yet even as the number of Medicare beneficiaries is rising, H.R. 1, the majority's appropriations bill that passed the House last month, cuts appropriations for Medicare and Medicaid operations by \$458,000,000, or 13 percent below last year.

This is a reckless cut, in my view, that will stop any progress on reducing fraud and improving payment accuracy dead in its tracks. The Center for Medicare Services will have a hard enough time just paying bills on time for services to Medicare patients by doctors and hospitals. Under the majority's budget, they will have very little chance to actually pay attention to and review what it is they are paying.

Similarly, as a result of increased need during the recession, Social Security has a large backlog of claims for disability benefits. Families are waiting for resources they both need and deserve.

But the resolution cuts funding for the Social Security Administration by over \$1,000,000,000 below the President's request. That means less staff, probably furloughs, even bigger backlogs, less chance to detect fraud and improve accuracy.

In the end, denunciations of waste and fraud are not enough. Adding more rules is not enough. Addressing problems of improper payments requires careful attention from skilled people who can scrutinize claims to look for troubling patterns and to make sure

systems are working correctly. You cannot furlough workers and reduce the size of the workforce and expect to get better results in program integrity.

We should also be focused not just on social insurance programs. There may be a tendency to concentrate on Social Security, Medicare, and UI because they are large and, therefore, produce dramatic numbers and because techniques are available for measuring payment accuracy rates. But we also need to be looking at other places where waste and inefficiency abounds, like Federal contracting. We ought to try to take a look at defense contracts as well.

Spending on contractors increased at an average rate of 12 percent per year between 2000 and 2008. Yet many agencies seemed to have little idea how many contract personnel were actually working for them or what they were all doing. The administration and the last Congress had been working to get a handle on those expenses and bring some rationality to the process. I hope those efforts will continue.

We also need to look at our tax system, the billions of dollars in tax revenues that are being lost through tax avoidance schemes, poor enforcement, companies that set up tax accounts overseas with the opportunity to limit their financial tax obligations to the United States.

In everything we should do, we should not just be looking at the little guy, but let's look at the large corporations, wealthy individuals who are gaming the system. No one should be allowed to commit fraud. No one should be getting more than they are supposed to. But in a time of limited resources, good business sense argues for concentrating our efforts where the biggest possible savings might be achieved.

I thank you again, and thank you, Mr. Chairman, as well. I look forward to your testimony.

Mr. REHBERG. Thank you.

Mr. Lewis.

Mr. LEWIS. Good morning, Mr. Chairman and Members of the subcommittee. Thank you for inviting—

Is it on now? Okay.

Good morning, and thank you for inviting me to testify today in my capacity as the Assistant Inspector General for Audit at the Department of Labor. I am pleased to discuss improper payments in the Unemployment Insurance program.

Recently, both the Administration and Congress have placed renewed focus on eliminating improper payments in benefit programs, such as UI. Pursuant to Executive Order 13520, OMB has designated UI as one of 14 high-error programs in the Federal Government.

For 2010, DOL reported an 11.2 percent improper payment rate, which represents \$16,500,000,000 in overpayments and \$936,000,000 in underpayments. Consistent with the committee's request, I will discuss OIG's audit oversight work in the UI program.

In 2003, OIG first audited the Benefit Accuracy Measurement program, or BAM, which is the Department's means of monitoring the accuracy of unemployment benefits. At that time, we found

that the BAM generally identified and projected improper payments accurately. However, we identified the need for improved detection of benefit payments to workers who had returned to work, which is still the primary cause of UI overpayments.

The OIG recommended ETA expand the use of the National Directory of New Hires to all States as a tool to identify overpayments early in the process, thus potentially preventing losses of unemployment funds. The National Directory is a consolidated database maintained by the Department of Health and Human Services that contains information on persons who have returned to work.

Our audit recommended that ETA revise its performance measurement system to give priority to measures aimed at preventing overpayments, use the BAM to identify trends, and work with States on initiatives to prevent overpayments. We are pleased to note that the Department is now planning to mandate that all States use the National Directory of New Hires.

ETA has also made changes in its performance measures and now includes overpayment detection as a core measure for States, consistent with our earlier recommendation. We also note that recently passed legislation requires employers to report the first day of earnings for new hires.

The OIG reviewed the Department's May 2010 report on improper payments, as required by the executive order. We found the Department's reduction plan did not include specific targets for preventing improper payments, sufficient details regarding meeting targets, or supporting analysis related to its integrity initiatives and their expected impacts. For example, five of seven initiatives focused primarily on detection rather than prevention.

Mr. Chairman, our audit work in the UI program is continuing, given the overall increase in unemployment benefits over the past few years, the rising improper payment rate, and new statutory mandates in this area. One of the areas we are currently focusing on is the quality of data that States are reporting to the Department and its usefulness in preventing improper payments.

In the year ahead, we have plans to conduct audits to evaluate the technique States are using to detect and prevent improper payments, how States assess the effectiveness of those techniques, and whether any States have best practices that other States should consider implementing. Additionally, we plan to look at the adequacy of systems operated by States to recover overpayments.

In conclusion, Mr. Chairman, with 60 percent of States currently borrowing Federal unemployment funds to pay unemployment claims, the expenditure of more than \$124,000,000,000 over the past three years for extended and emergency unemployment compensation, an increasing overpayment rate, and the current economic conditions, identification of overpayments is simply not enough. As we have previously recommended, the Department and the States must identify strategies not only to detect improper payments, but which successfully prevent them in the first place.

I thank you, Mr. Chairman, for the opportunity to testify at today's hearing. I would be pleased to answer any questions you or other Members of the subcommittee may have.

[The information follows:]

**WRITTEN TESTIMONY OF
ELLIOT P. LEWIS
ASSISTANT INSPECTOR GENERAL FOR AUDIT
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF LABOR**

**Before the House Committee on Appropriations
Subcommittee for Labor, Health and Human Services,
Education, and Related Agencies
March 17, 2011**

Good morning, Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify today in my capacity as the Assistant Inspector General for Audit at the U.S. Department of Labor (DOL). I am pleased to discuss improper payments in the Unemployment Insurance (UI) program. As you know, the Office of Inspector General (OIG) is an independent agency within the Department of Labor. The views expressed in my testimony are therefore based on the independent findings and recommendations of the OIG's audit work, and are not intended to reflect the Department's positions.

The Federal-state unemployment insurance program offers the first economic line of defense against the collective impact of unemployment. The Employment and Training Administration (ETA) within DOL oversees this nationwide system, which is administered by the states. The UI program is a social insurance program that generally provides benefits to those who have lost their jobs through no fault of their own. As a temporary, partial wage replacement to the unemployed, the UI program is important: in helping eligible, unemployed workers to obtain basic life necessities such as food, shelter and clothing; in maintaining purchasing power; and in stabilizing the economy. Given the nature of this program, states are challenged in paying claims as quickly as administratively possible while ensuring that benefits are paid properly.

While funding for the UI program comes primarily from state employer taxes, in recent years, more and more funding has come from Federal appropriations as extensions to emergency unemployment benefits have been enacted. In Fiscal Year 2010, \$156 billion in total UI benefits were paid, of which \$72 billion were for emergency unemployment benefits. In fact, more than \$124 billion in Federal funds for emergency unemployment benefits have been paid out since 2008. Moreover, it is important to note that 32 of 53 state UI jurisdictions currently owe the Treasury in excess of \$44 billion in loans needed to fulfill their UI claims, because their UI trust funds were insolvent.

Recently, both the Administration, through Executive Order 13520, and Congress, through the passage of the Improper Payments Elimination and Recovery Act of 2010 (IPERA), have placed a renewed focus on eliminating improper payments in benefit programs such as in the UI program. Pursuant to the Executive Order, OMB

has designated UI as 1 of the 14 “high error programs” in the Federal Government. This designation requires DOL to take certain actions to measure and reduce improper payments. For 2010, DOL reported an 11.2 percent improper payment rate for UI benefits, which represents \$16.5 billion in overpayments and \$936 million in underpayments.

OIG Oversight

The OIG has certain oversight responsibilities regarding the UI program. We carry out this oversight through a program of audits and investigations to identify program weaknesses and vulnerabilities, and to detect and prevent fraud within the program. For more than a decade, we have highlighted UI program integrity as one of the top management challenges facing the Department. We have also recommended legislative action to grant the Department access to state UI wage records, Social Security wage records, and employment information from the National Directory of New Hires for program evaluation and fraud detection purposes.

Consistent with the Committee’s request, I will discuss the OIG’s audit oversight of the UI program.

In 1987, the Department implemented the Benefit Accuracy Measurement (BAM) program to monitor the accuracy of UI benefit payments. BAM has been used to statistically project the amount of overpayments and underpayments in the program, which entails an extensive review of more than 20,000 UI claims each year.

In 2003, the OIG audited the BAM program.¹ At that time, we found that the BAM program generally identified and projected overpayments and underpayments accurately. However, we identified the need for improved detection of benefit payments to workers who had returned to work. To that end, the OIG recommended that ETA expand the use of the National Directory of New Hires database to all states as a tool to identify overpayments early in the process, thus potentially preventing future losses of UI funds.² The National Directory of New Hires is a nationally consolidated database maintained by the U.S. Department of Health and Human Services that contains information on persons who have returned to work. We also recommended that ETA revise its performance measurement system to give priority to measures aimed at preventing UI overpayments, use the BAM data to identify trends of overpayments, and work with State Workforce Agencies on initiatives to prevent overpayments.

Since 2003, our audit work has continued to demonstrate the importance of using the National Directory as an effective tool in the early detection of overpayments. For instance, in a 2004 audit of benefit payment controls, we found that compared to

¹ OIG Report No. 22-03-009-03-315, “Improved Quality Control Practices Within the Benefit Accuracy Measurement System Could Save the Unemployment Insurance Trust Fund Approximately \$400 Million Annually,” issued September 30, 2003

² At the time of our audit, 10 states were not using the National Directory of New Hires to detect overpayments and 8 states were using it on a limited basis.

cross matches involving state wage records, the new hire detection method identified overpayments earlier, allowing states to more promptly stop such payments and initiate recovery efforts.³ As a result of this audit, we made several recommendations to ETA, including seeking legislation to require employers to report a new hire's first day of earnings, and to increase the states' use of the new hire detection method.

Additional audit work done in the aftermath of Hurricane Katrina in 2006 provided further evidence of the scope of the return to work issue, and the potential usefulness of the National Directory, but also its challenges.⁴ In order to assess the amount of improper payments from the numerous UI claims filed after the hurricanes, the OIG worked with the State of Louisiana to perform a match between UI claimants in Louisiana and the National Directory. The match identified more than \$51 million in UI benefits that had been paid to more than 30,000 claimants after they had been reported as returning to work, which we reported to ETA. However, the National Directory did not require reporting of the specific date on which a claimant began paid services. This required Louisiana to begin follow up on more than 30,000 claimants before any action on their benefits could be taken.

In March of 2009, we reported to ETA that 49 of the 53 State Workforce Agencies were using the National Directory for benefit payment control.⁵ However, at that time, ETA indicated that it did not see the need to mandate that all states use the National Directory, as we had recommended 6 years earlier, because it expected that all states would soon be doing so voluntarily. We also noted that ETA could do more to ensure State Workforce Agencies were effectively using data from the National Directory to prevent overpayments, and recommended that ETA continue to pursue legislation to define the "Date of Hire" and mandate its reporting by employers.

We are pleased to note that the Department is now planning to mandate that all states use the National Directory of New Hires. ETA has also made changes to its performance measures, and now includes overpayment detection as a core performance measure for States consistent with our earlier audit recommendation. We also note that two UI provisions were contained in the recently passed Claims Resettlement Act of 2010, including the requirement for employers to report the first day of earnings for new hires to the National Directory of New Hires, as we previously recommended.

³ OIG Report No. 05-04-002-03-315, "Unemployment Insurance Benefit Payment Control," issued September 30, 2004.

⁴ OIG Report No. 06-07-003-03-315, "The Louisiana Department of Labor Paid \$51 Million in Hurricane-related Unemployment Benefits on Questionable Claims Management Letter," issued September 28, 2007.

⁵ OIG Report No. 06-09-002-03-315, "Enhanced Oversight Will Improve State Workforce Agencies' Use of the National Directory of New Hires to Prevent and Detect Unemployment Compensation Overpayments," issued March 31, 2009.

Improper Payment Reduction Mandates

Under Executive Order 13520, the Department was required to establish a maximum target rate for UI improper payments. The target rate for 2011 is 9.8 percent. However, the estimated improper payment rate has actually risen over the past 3 years from 10 percent to 11.2 percent. According to the Department, the primary causes of the high improper payment rate were increases in overpayments to claimants who continued to claim benefits after they returned to work, claimants ineligible for benefits because they voluntarily quit their jobs or were discharged for cause, and claimants who failed to meet active work search requirements.

Under the Executive Order, the Department was also required to provide the OIG with a report containing its methodology for identifying and measuring improper payments, and a description of its efforts to meet reduction targets. We reviewed the Department's May 2010 report and found that the UI improper payment reduction plan did not include specific targets for preventing improper payments, sufficient details regarding meeting the targets, or supporting analysis related to the implementation initiatives and their expected impact. For example, in the UI improper payment report, seven "integrity" initiatives were mentioned to detect, recover, and prevent improper UI payments, which should reduce improper payments. However, 5 of the 7 initiatives focused the majority of their efforts on detection rather than prevention of overpayments. Also, the Department's methodology for identification and measurement of improper payments in the BAM did not evaluate temporary programs such as the Emergency Unemployment Compensation and the Extended Benefits programs, which are currently all federally funded.

Current OIG Audit Work

Mr. Chairman, last fall we identified the need to conduct additional audit work on UI improper payments in light of the overall increase in UI benefits over the past few years, and the fact that the improper payment rate has increased in recent years.

One of the areas we are currently focusing on is the quality of the data that states are reporting to the Department and its usefulness in preventing overpayments. In the year ahead, we have plans to conduct audits at the state-level to evaluate the techniques states are using to detect and prevent improper payments, how states assess the effectiveness of those techniques, and whether any states have best practices that other states should consider implementing. Additionally, we plan to look at the adequacy of systems operated by the State Workforce Agencies to recover identified overpayments in a timely manner.

Lastly, under IPERA, the Department is required to file an annual compliance report with OMB. We will be conducting audits each fiscal year to determine whether the Department is in compliance with the requirements of IPERA.

Conclusion

In conclusion Mr. Chairman, 60 percent of the states are currently borrowing Federal funds to pay their UI claims and owe the Treasury \$44 billion. This is over and above the expenditure of more than \$124 billion in Federal funds paid out over the past 3 years for extended and emergency unemployment compensation. Given these facts, an increasing overpayment rate, and the current economic condition, identification of overpayments is simply not enough. As we have previously recommended, the Department and the states must identify strategies, such as maximizing the use of the National Directory, that not only detect overpayments, but which successfully prevent them in the first place.

Thank you, Mr. Chairman, for the opportunity to testify at today's hearing. I would be pleased to answer any questions you or the other members of the Subcommittee may have.

Mr. REHBERG. Thank you.

Mr. Levinson.

Mr. LEVINSON. Thank you.

And good morning, Chairman Rehberg, Ranking Member DeLauro, and Members of the subcommittee. My testimony this morning summarizes our recommendations to prevent improper payments in HHS's two largest programs—Medicare and Medicaid.

Although our recommendations are tailored to specific vulnerabilities, the actions we recommend to CMS fall into the following four categories: increase prepayment and post payment review of claims, increase oversight and validation of supporting documentation, strengthen program requirements to address vulnerabilities, and provide education and guidance to providers.

OIG has consistently recommended that CMS enhance both prepayment and post payment review of claims. For example, OIG's analysis of claims for diabetes testing supplies identified \$270,000,000 in improper payments. Prepayment edits could have helped prevent improper claims for these testing supplies.

We also have recommended increased oversight and validation of supporting documentation. We found that for 18 percent of Medicaid claims for personal care services, the provider's qualifications were not properly documented. This resulted in \$724,000,000 in improper payments.

In certain areas, CMS should strengthen program requirements to address program integrity vulnerabilities. For example, we have recommended that CMS establish a payment cap on chiropractic claims to prevent improper payments for maintenance therapy.

Provider education is also critical to ensuring compliance and protecting beneficiaries. We found that 82 percent of hospice claims for beneficiaries in nursing facilities did not meet at least one Medicare coverage requirement, requirements that are in place to protect beneficiaries' health and well-being.

Medicare paid about \$1,800,000,000 for these claims. We recommended that CMS provide hospices with guidance on the rules for certifying terminal illness and a checklist of items that must be included in the plans of care.

For our part in provider education, OIG is conducting free training seminars in six cities to educate providers on fraud risks and share compliance best practices. We also recently published "A Roadmap for New Physicians," which provides guidance on complying with fraud and abuse laws.

Furthermore, we believe that error rates could be reduced by directing efforts to areas of recurring vulnerability, such as documentation deficiencies and providers with a history of claims errors. For fiscal year 2009, inpatient hospitals, durable medical equipment suppliers, hospital outpatient departments, physicians, skilled nursing facilities, and home health agencies accounted for 94 percent of Medicare improper payments. OIG plans to conduct additional analysis of the claims of individual providers with a history of claims errors.

Although not all improper payments are fraudulent, all payments resulting from fraud are improper. And our efforts to combat fraud are achieving historic results.

Just last month, OIG and DOJ strike forces engaged in the largest Federal healthcare fraud takedown in history. Teams across the country arrested more than 100 defendants in 9 cities, including doctors, nurses, healthcare company owners, and executives. Their alleged fraud schemes involved more than \$225,000,000 in Medicare billing.

To prevent improper payments from depleting the Medicare Trust Fund, OIG refers credible evidence of fraud to CMS to implement payment suspensions, helping to turn off the spigot to prevent payment for fraudulent claims.

Improper payments cost taxpayers billions of dollars each year. Executive Order 13520 states that the Federal Government must make every effort to confirm that the right recipient receives the right payment for the right reason at the right time. OIG is committed to this goal.

Thank you for your support of our mission, and I look forward to answering your questions.

[The information follows:]



Testimony before the United States House of Representatives

Committee on Appropriations

Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies

"Improper Payments"

Testimony of:

**Daniel R. Levinson
Inspector General
U.S. Department of Health & Human Services**

**March 17, 2011
10:00AM
2358-C Rayburn House Office Building**



Testimony of:
Daniel R. Levinson
Inspector General
U.S. Department of Health & Human Services

Good morning, Chairman Rehberg, Ranking Member DeLauro, and other distinguished Members of the Subcommittee. I am Daniel Levinson, Inspector General of the U.S. Department of Health & Human Services (HHS or the Department). Thank you for the opportunity to testify about the HHS Office of Inspector General's (OIG) efforts to monitor and make recommendations to reduce improper payments. My testimony will describe the scope of the problem and our recommendations to prevent improper payments, with a focus on improper payments that exist in the Department's two largest programs -- Medicare and Medicaid. I will also discuss OIG's efforts to oversee the Department's measurement of improper payments and to prevent, detect, and recoup wasteful payments.

Improper Payments Cost Taxpayers Billions of Dollars Each Year

In 2010, the Office of Management and Budget (OMB) designated 14 programs as "high-error" based on improper payment information included in agencies' annual performance and financial reports. HHS administers five of these high-error programs -- Medicare Fee-for-Service, Medicaid, Medicare Advantage, Children's Health Insurance Program, and Medicare Prescription Drug Benefit. For fiscal year 2010, HHS reported improper payments totaling \$56.8 billion in Medicare Fee-for-Service and Medicaid alone.

OIG has long been at the forefront of measuring, monitoring, and recommending actions to prevent improper payments, including developing the first Medicare payment error rate in 1996, a time when there were few existing error rate models in Government. OIG identifies improper payments for specific products and services, assesses internal control and payment vulnerabilities, and makes recommendations to prevent future improper payments. To

¹
U.S. House of Representatives, Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, March 17, 2011

maximize the impact of these reviews, we assess program risks and employ data analysis to target our audits, evaluations, and investigations.

OIG Reviews the Measurement of Medicare and Medicaid Improper Payment Rates

Measuring error rates is key to monitoring program integrity and the scope of inappropriate payments. In 2003, CMS assumed responsibility for, and OIG began providing oversight of, the error rate process. CMS established the Comprehensive Error Rate Testing (CERT) program to produce a Medicare fee-for-service error rate.

OIG reviews CMS's estimates of improper payments and has analyzed the error rate by types of providers and by types of error. This analysis supports CMS's efforts to reduce the error rate by detailing what types of errors are most frequent and which provider types are committing those errors, so that CMS can refine and target its remediation efforts accordingly. For example, OIG found that in the FY 2009 CERT, inpatient hospitals, durable medical equipment suppliers, hospital outpatient departments, physicians, skilled nursing facilities, and home health agencies accounted for 94 percent of improper Medicare payments. We also found that insufficient documentation, miscoded claims, and medically unnecessary services and supplies accounted for about 98 percent of the improper payments attributable to the six types of providers. OIG is also planning audit work to follow up on "error-prone" providers, i.e., individual providers with erroneous claims in each of the past four CERT cycles, to test those providers' populations of claims and identify improper payments.

In addition to the CERT program, CMS developed the Payment Error Rate Measurement (PERM) program to measure improper payments in Medicaid and the Children's Health Insurance Program (CHIP). OIG's review of the PERM program has included testing and analysis of the PERM sampling and estimation methodology, the medical records request

process, medical review, and the error estimation calculation. Measuring payment errors and their causes in the Medicaid and CHIP programs is particularly challenging because of the diversity of State programs and the variation in their administrative and control systems. OIG is performing audit work to determine whether problems similar to those discovered in the CERT program exist in the PERM program.

OIG Reviews Identify Improper Payments and Recommend Corrective Actions

OIG conducts targeted reviews to determine the scope of improper payments for specific service types and recommends actions to improve program safeguards. By reviewing medical records and other documentation associated with a claim, we identify services that are undocumented, medically unnecessary, or incorrectly coded, as well as duplicate payments and payments for services that were not provided. In doing so, we uncover payment vulnerabilities and make recommendations to address them.

For some services, we have found pervasive documentation errors. For example, we found that during the first half of 2007, 60 percent of Medicare claims for standard and complex rehabilitation power wheelchairs did not meet one or more documentation requirements. These claims accounted for \$112 million in improper Medicare payments. We have also found significant rates of documentation error for certain types of pain management services. We recommended that CMS take several actions to address these errors, including improving controls, educating providers, and clarifying guidance.

Medically unnecessary services are particularly concerning, as beneficiaries may be subjected to tests and treatments that serve no purpose and may even cause harm. In some cases, as with durable medical equipment, beneficiaries may also be charged significant copayments for items or services that they did not need. For example, we reviewed claims for certain types of support surfaces used to prevent and treat bedsores and found that more than 1 in 5 claims were

medically unnecessary. To address these and other types of errors, we recommended that CMS take a variety of actions to ensure that claims are paid appropriately, including conducting additional prepayment and postpayment medical reviews.

In some cases, documentation or coding errors may signal broader vulnerabilities affecting patient care that need to be addressed to prevent improper payments and help ensure quality of care. For example, we found that 82 percent of hospice claims for beneficiaries in nursing facilities did not meet at least one Medicare coverage requirement – requirements that are in place to protect beneficiaries' health and wellbeing. Problems we identified included failing to establish plans of care and providing fewer services than outlined in beneficiaries' plans of care, potentially putting the beneficiary at greater risk. To prevent these problems from recurring and to better protect hospice patients, we recommended that CMS educate hospice providers about coverage requirements, provide tools to hospice providers (e.g., guidance, templates, and checklists), and use targeted medical reviews and other oversight to improve compliance.

Similarly, a recent review of Medicaid personal care services found that for 18 percent of claims, personal care service attendant qualifications were not properly documented, resulting in \$724 million in improper payments. Without documentation of attendant qualifications, it is difficult to determine whether vulnerable beneficiaries are receiving care from appropriately screened and trained individuals. We recommended that CMS work with States to ensure that they verify attendants' qualifications.

In addition to medical record reviews designed to flag individual improper claims, OIG also conducts data analysis to identify broader patterns indicative of improper payments and potential fraud and abuse. For example, through this type of analysis we have identified “outliers” who bill for services at an unusually high rate, as well as patterns in which certain

geographic areas exhibit unusual billing, and also have matched claims and other data to identify billing patterns that raise concern. These types of analyses can generate leads for investigations, audits, and further medical record review. In addition, these reviews can lead to recommendations to CMS to strengthen its program oversight activities and prevent future improper payments. For example, OIG recently reviewed high-utilization claims for blood-glucose test strips and lancet supplies, and identified an estimated \$270 million in improper Medicare payments for these supplies. We recommended that CMS contractors implement various payment edits, such as edits to identify claims with overlapping dates of service.

OIG Will Continue to Monitor and Recommend Actions to Reduce Improper Payments

OIG's work helps CMS to better identify, track, and prevent improper payments. For example, based on OIG concerns that the Medicare error rates for certain provider types may be understated, CMS made substantial changes in the CERT medical record review process in 2009. In addition, we have recommended that CMS enhance pre-payment review of claims, including by using specific edits to address identified payment errors, and work with providers to educate and enforce program requirements, including documentation requirements. We also have made recommendations aimed at preventing and reducing improper payments for specific items and services, as described above.

OIG currently is conducting in-depth reviews of claims and associated documentation for evaluation and management services, power wheelchairs, and Part A payments to skilled nursing facilities to determine whether these payments met Medicare coverage requirements. We also are conducting data analysis to identify potential improper payments in a variety of areas, including lower limb prostheses, Part D drugs, portable X-ray, and home health care. Additional planned work includes a review of prior year improper payments that have subsequently been overturned on appeal, a pilot project to obtain missing documentation identified during the

comprehensive error rate testing, and a review of FY 2008 PERM testing, which includes an independent medical review of claims to determine if the conclusions reached by the CMS contractor are in accordance with PERM guidance.

Conclusion

Executive Order 13520 states that the Federal Government must make every effort to confirm that the right recipient receives the right payment for the right reason at the right time. OIG is committed to this goal. Thank you for your support of our mission. I would be happy to answer any questions.

Mr. REHBERG. Thank you.

Ms. Tighe.

Ms. TIGHE. Chairman Rehberg, Ranking Member DeLauro, and Members of the subcommittee, today I will quickly summarize our written testimony, focusing particularly on two program areas. The first of these areas is the Federal student aid program.

In this area, I would particularly like to highlight a series of audits we issued on improper special allowance billings by lenders. A report of one lender, the National Education Loan Network, or Nelnet, found that the lender had improperly billed the Department for loans that did not qualify under a special allowance rate.

We estimated that Nelnet had received about \$278,000,000 in improper payments for the time period reviewed. And if the abuse was not stopped, an additional \$882,000,000 of improper payments would be paid over the life of those ineligible loans.

The Department concurred with our audit and ceased payment on that particular type of special allowance to 40 different lenders until independent audits were conducted. We worked in collaboration with the Department to develop a methodology to identify improper loans and also published a special audit guide to be used by the independent auditors.

These audits, conducted over the next year, identified that 90 percent of the loans billed to the Department were ineligible and, as a result, prevented well over \$1,000,000,000 in overpayments.

Another area at risk of improper payments is within the elementary and secondary education programs. As part of our proactive efforts to assist the Department in enhancing internal controls at State levels prior to substantial amounts of recovery funding going out, we compiled a report on the pervasive fiscal issues reported in over 40 OIG audits of State and local education agencies.

These audits collectively had identified approximately \$62,000,000 in unallowable costs, \$119,000,000 in inadequately documented costs, and \$1,400,000,000 in funds determined to be at risk. These amounts were, in most cases, a direct result of internal control weaknesses, including a lack of adequate policies and procedures and a lack of understanding regarding program regulations and guidance.

To address these weaknesses, we suggested that the Department enhance its guidance to State and local education agencies on how to implement the administrative requirements of Federal grants and ensure that they understood the importance of complying with the requirements. The Department developed a technical assistance plan and training for State and local education agencies that included issues we raised in our report, such as cash management, recordkeeping, and allowable activities.

The report was also used by us to plan the first phase of our Recovery Act audit work of individual States that reviewed their systems of internal controls.

Department officials have stated that they need to continue to explore additional opportunities for identifying and reducing potential improper payments and to ensure compliance with the new requirements embodied in the recently passed Improper Payments Act and the President's Executive Order. We are committed to helping them do so, and we will continue to provide recommenda-

tions in this area through our reviews of the Department's quarterly reports on high-dollar overpayments, our mandated annual review of the Department's compliance with the Improper Payments Act requirements, and otherwise.

I note that we have initiated a review to more closely examine the Department's methodology for identifying high-dollar overpayments.

Thank you very much.

[The information follows:]

Statement of Kathleen S. Tighe, Inspector General
U.S. Department of Education Office of Inspector General
Before the Committee on Appropriations
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
United States House of Representatives
March 17, 2011

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee:

Thank you for inviting me here today to discuss the work of the U.S. Department of Education (Department) Office of Inspector General (OIG) involving improper payments. This is my first opportunity to testify before this Subcommittee since my confirmation last year as the Inspector General. It is an honor to lead this organization and to have the opportunity to work with this Subcommittee to help ensure that the taxpayer dollars that fund the Department's programs and operations are used in accordance with Federal statutes and regulations and meet the needs of America's students and families.

For over 30 years, the OIG has worked to promote the efficiency, effectiveness, and integrity of Federal education programs and operations. We aggressively identify and pursue waste, fraud, and abuse involving the Department's programs and operations. An integral part of this work includes our efforts to help the Department prevent and detect improper payments. Our work related to improper payments has evolved and increased over the years to include evaluating specific Departmental controls to prevent and detect improper payments; reviewing and providing recommendations on the Department's improper payment risk assessments; auditing the Department's Federal Student Aid office's (FSA) methodology for estimating improper payments in the Federal Family Education Loan Program (FFEL); and reviewing, auditing, and

investigating major recipients of Federal funds. Where we have identified improper payments, we have provided recommendations for improvement. The Department has generally been receptive to our suggestions and has taken corrective actions to address identified weaknesses, which in some cases, have led to the recovery of improperly disbursed funds.

As requested, I will discuss the major areas where we have identified improper payments, the Department's response to those findings, and our current efforts to help the Department address the challenges it faces in preventing, identifying, and recovering improper payments.

Improper Payments involving Federal Student Aid Programs

One area where we have identified improper payments is the Federal student aid programs. As a result of the *Improper Payments Information Act of 2002* and guidance from the Office of Management and Budget (OMB), the Department identified FFEL as a program at significant risk of improper payments and thereby subject to additional oversight, including an annual estimation of improper payments. To help the Department improve both its estimation of improper payments and its controls to stop ongoing and prevent future improper payments, we conducted an audit of the Department's FFEL improper payment estimation process, as well as a series of audits on improper special allowance billings by lenders.

Our audit of the FFEL improper payment process found that FSA used different methodologies for estimating the improper payment rates for FY 2006 and FY 2007 and planned to use another methodology for FY 2008. While FSA consulted with OMB staff during the design and execution of the methodologies and generally followed the statutory definition and OMB guidance for loan guarantee programs, we found several significant factors affected the

reliability of the calculated rates. To resolve the audit, OMB met with FSA and our office. Agreement was reached that rather than trying to calculate an overall rate for an extremely complicated program with many different payment streams, FSA would not calculate and report a rate for several years while it developed a methodology focusing on specific types of high-risk payments. FSA's risk analyses to date have not yielded any result that could help inform decisions on improper payment measurement and no error rate or estimate for the FFEL Program for FY 2010 was reported.

In 2005-2007, OIG issued a series of audits on improper special allowance billings by lenders. Our report of one lender, the National Education Loan Network or Nelnet, found that the lender had improperly billed the Department for loans that did not qualify under a special allowance rate. We estimated that Nelnet had received about \$278 million in improper payments for the time period reviewed, and if the abuse was not stopped, an additional \$882 million of improper payments would be paid over the life of the ineligible loans. The Department concurred with our audit and ceased payment on that particular type of special allowance billing on all pending December 2006 claims from 40 lenders until independent audits were conducted. We worked in collaboration with the Department to develop a methodology to identify eligible and ineligible loans and also published a special audit guide to be used by independent auditors. Independent audits conducted over the next year identified that 90 percent of the loans billed were ineligible and, as a result, prevented well over a billion dollars in improper payments.

Improper Payments involving Elementary and Secondary Education Programs

In recent years, we have performed a substantial amount of work addressing fiscal issues at State educational agencies (SEA) and local educational agencies (LEA). For example, in January

2010, we issued an audit of the Philadelphia School District in which we found that expenditures totaling more than \$138 million were either unallowable or inadequately supported. Also, in July 2009, we compiled a report for the Department on the pervasive fiscal issues reported in over 40 OIG audits of SEAs and LEAs, which collectively had identified approximately \$62 million in unallowable costs, \$119 million in inadequately documented costs, and \$1.4 billion in funds determined to be at risk. These amounts were, in most cases, a direct result of internal control weaknesses, including a lack of adequate policies and procedures, policies and procedures that were in place but not followed, and a lack of understanding regarding program regulations and guidance. To address these weaknesses, we suggested that the Department enhance its guidance to SEAs and LEAs on how to implement the administrative requirements of Federal grants and ensure that SEA and LEA officials understand the importance of complying with the requirements. In some cases, the Department has taken action by issuing guidance to reduce the risk of improper payments and by requiring the States to return funds.

Our work has also uncovered fraud which could have been prevented by stronger internal controls or proper supervision and oversight. We worked with the Department to develop a technical assistance plan and training curricula for SEAs and LEAs on detecting and reporting fraud.

Current OIG Efforts

Our history of work involving improper payments has enabled us to be proactive in helping the Department and recipients prevent and reduce improper payments. Perhaps nowhere is this more evident than with our Recovery Act work. Based on our previous work involving fiscal issues at SEAs and LEAs, we developed and implemented a strategy to proactively and quickly identify

potential control weaknesses and improve the administration of Recovery Act funds prior to substantial monies going out. The response to our efforts has been generally positive, with the Department and a number of State and local agencies taking timely action to address our findings and implement our recommendations, which should reduce the occurrence of improper payments. While our Recovery Act work is still underway, we have not yet confirmed any significant improper payments involving Recovery Act funds by any of the SEAs or LEAs we have thus far reviewed.

Compliance with New Requirements

In 2010, both the White House and the 111th Congress took actions to require Federal agencies to better identify and reduce improper payments. In its FY 2010 Annual Financial Report, Department officials stated that they need to continue to explore additional opportunities for identifying and reducing potential improper payments and to ensure compliance with the new requirements. We are committed to helping them do so and will continue to provide suggestions to identify, reduce, and recover improper payments. In addition, we are initiating a review to more closely examine the Department's methodology for identifying high-dollar overpayments. We will continue to review the Department's quarterly reports on high-dollar overpayments and evaluate actions it is taking. Furthermore, we will evaluate the Department's compliance with the *Improper Payments Elimination and Recovery Act of 2010* and issue an annual report on the Department's compliance, as required by the statute.

Mr. Chairman, this concludes my remarks. I am happy to answer your questions.

Mr. REHBERG. Thank you.

And this is your day. Mr. O'Carroll.

Mr. O'CARROLL. And I am the only one—I am the only one with no green. [Laughter.]

It is probably in protest since I am not in New York at the parade. [Laughter.]

Good morning, Chairman Rehberg, Congresswoman DeLauro, and Members of the subcommittee.

Thank you for the invitation to testify today.

Federal agencies must spend taxpayer dollars wisely and efficiently, and they must make sure Government benefits are administered correctly. SSA and agencies across the Government have increased their efforts to reduce improper payments in recent years, particularly since President Obama signed the executive order on improper payments and the Improper Payments and Elimination and Recovery Act.

Since my office was established in 1995, our primary goal has been to identify and reduce SSA's improper payments. Our auditors work diligently to identify program vulnerabilities, and our investigators achieve hundreds of millions of dollars in SSA recoveries, restitutions, and savings every year. With a history of identifying SSA's improper payments, our office was asked by the IG community to assume a leadership role with OMB and the Treasury on implementing the improper payments order and legislation.

For fiscal year 2009, SSA reported improper payments totaling \$8 billion. The agency's Retirement, Survivors, and Disability Insurance Program had \$2.6 billion in overpayments and \$600 billion in underpayments. Its SSI program had \$4 billion in overpayments and \$800 million in underpayments.

SSA seeks to improve both programs. The agency said it plans to commit nearly \$800 million towards program integrity efforts this year, with an emphasis on error detection tools, such as continuing disability reviews, or CDRs, and SSI redeterminations. My office has continually recommended that SSA allocate funds to these stewardship tools, and we are pleased that the agency is dedicated to improving payment accuracy.

SSA's number of completed medical CDRs declined by 65 percent in recent years. At the end of last fiscal year, SSA had a backlog of more than 1.5 million CDRs. We estimated that SSA would have avoided paying \$1 billion in 2011 if the CDRs in the backlog were conducted when they were due.

Redeterminations also decreased by 60 percent from 2003 to 2008. We estimated that SSA could have saved an additional \$3 billion during 2008 and 2009 by conducting redeterminations at the same level it did in 2003.

While it is critical to identify improper payments that have been made, it is equally important to utilize tools that can prevent payment errors before they occur. My office for years has encouraged SSA to use data matching to protect agency funds.

On an OIG recommendation, SSA sought several thousand agreements with Federal, State, and local corrections facilities so that it could match prisoner data against its records, halting payments to prisoners. In 2006, SSA's Office of the Actuary estimated savings of over \$500 million per year.

Similarly, to reduce SSI overpayments, OIG recommended SSA obtain beneficiaries' bank account information rather than rely on self-reporting of resources. The agency in recent years implemented the Access to Financial Institutions Project, which allows SSA to check an applicant or recipient's bank account to verify resources.

We have made other data recommendations to SSA involving potential matches of beneficiary information to marital status, workers, compensation, and vehicle ownership. We also are pursuing an exemption from the Computer Matching and Privacy Protection Act to facilitate our work in this area.

In conclusion, SSA and other agencies have made strides to comply with requests to report their improper payments, identify causes, and allocate resources to prevent future errors. My office will continue to work with this subcommittee and SSA in these and future efforts to reduce improper payments in SSA's benefit programs.

Thank you for the invitation to testify today, and I will be happy to answer any questions.

[The information follows:]

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies



Statement for the Record

Hearing on Improper Payments

The Honorable Patrick P. O'Carroll, Jr.
Inspector General
Social Security Administration

March 17, 2011

Good morning, Mr. Chairman, Congresswoman DeLauro, and members of the Subcommittee. It is a pleasure to appear before you, and I thank you for the invitation to testify today to discuss the Federal government's efforts to identify and reduce improper payments.

Federal agencies reported \$125 billion in improper payments for Fiscal Year 2010—an increase of \$15 billion from FY 2009. As Federal employees, we must ensure that taxpayer dollars are being spent wisely and effectively, and that government benefits are administered correctly. President Obama signed into law the *Improper Payments Elimination and Recovery Act* (IPERA) in July 2010, with the goal of reducing improper payments by \$50 billion by 2012. Since the President issued Executive Order 13520 on Reducing Improper Payments in November 2009 and signed IPERA, Federal agencies and their inspectors general have worked closely with the Office of Management and Budget (OMB) and the Treasury to identify and reduce improper payments.

Since the Office of the Inspector General (OIG) at SSA was established in 1995, our primary goal has been to identify and help reduce SSA's improper payments. Our auditors recently completed reviews on potential SSA overpayments—*Federal Employees Receiving Both FECA and Disability Insurance Payments*—as well as potential underpayments—*Dedicated Account Underpayments Payable to Children*. And in FY 2010, our investigators achieved \$62.6 million in SSA recoveries and restitution and totaled \$293.2 million in projected savings from programs like our Cooperative Disability Investigations (CDI) initiative, which detects potential fraud and limits improper SSA disability payments.

Executive Order 13520 and IPERA included a number of provisions that required input from the Council of Inspectors General on Integrity and Efficiency (CIGIE). With a history of identifying SSA's improper payments, our office was asked to take a leadership role in this process; SSA/OIG serves as

liaison for CIGIE to work with OMB on implementation of IPERA and the Executive Order. For FY 2010, SSA reported improper payments totaling \$8 billion, including underpayments and overpayments, the third-highest amount of improper payments in the year, behind the Department of Health and Human Services (DHHS) (\$71.4 billion) and the Department of Labor (\$17.5 billion). SSA's Supplemental Security Income (SSI) program made \$48.3 billion in total payments, including \$4.8 billion in overpayments *or* underpayments, for a 10 percent improper payment rate; SSA projects it will reduce that rate to 9.6 percent in FY 2011 and to 8.7 percent by FY 2013. SSA's Retirement and Disability Insurance (RSDI) program made \$659.6 billion in total payments, including \$3.2 billion in overpayments *or* underpayments, for a 0.5 percent improper payment rate; SSA projects it will reduce that rate to 0.4 percent in FY 2011. SSA has reported it has a number of programs in place to protect the public's tax dollars, including:

- The Agency plans to commit \$796 million toward program integrity efforts in FY 2011, an increase of \$38 million over last year's funding.
- SSA conducts both medical and work-based continuing disability reviews (CDRs) to determine if a beneficiary remains eligible, as well as SSI redeterminations to re-evaluate any nonmedical factors that would affect eligibility or the benefit amount.

We released two reports toward the end of 2010 related to SSA's reporting of improper payments:

- In *SSA's Reporting of High-Dollar Overpayments Under Executive Order 13520*, we determined that SSA addressed Executive Order requirements and provided payment accuracy results based on its stewardship review sample cases, but the Agency's methodology did not detect existing overpayments. We determined overpayments could have been identified through analysis of SSA's systems.

- In SSA's *Plan to Reduce Improper Payments Under Executive Order 13520*, we encouraged SSA to continue to seek funding to cover the cost for key prevention tools such as CDRs and SSI redeterminations; and to evaluate legislative proposals to determine those that would have a positive effect on the detection, prevention, and collection of improper payments.

We have made many recommendations in recent years to SSA that support OIG's primary focus on program integrity. In a March 2010 report, we determined SSA's number of completed medical CDRs declined by 65 percent from FY 2004 to FY 2008, and SSA estimated a backlog of more than 1.5 million medical CDRs at the end of FY 2010. We estimated SSA would have avoided paying as much as \$1.1 billion in during Calendar Year 2011 if the medical CDRs in the backlog had been conducted when they were due.

In a July 2009 report, we found that redeterminations decreased by more than 60 percent from FY 2003 to FY 2008, and we estimated that SSA could have saved an additional \$3.3 billion during FYs 2008 and 2009 by conducting redeterminations at the same level it did in FY 2003. SSA agreed it would like to conduct more redeterminations, but budget limitations and increases in SSA's core workloads have interfered.

Just as it is critical to identify improper payments that have been made, it is as important to utilize tools that can prevent payment errors before they occur. My office for years has encouraged SSA to use data matching to ensure program integrity and protect Agency funds. On an OIG recommendation, SSA sought several thousand data-matching agreements with Federal, State, and local corrections facilities so that it could match prisoner data against its RSDI and SSI records, halting payments to prisoners. In 2006, SSA's Office of the Actuary estimated savings of over \$580 million per year.

Similarly, to reduce SSI overpayments, OIG recommended SSA obtain beneficiaries' bank account information rather than rely on SSI recipients' self-reporting of resources. The Agency in recent years implemented the Access to Financial Institutions (AFI) Project, which allows SSA to check an applicant or recipient's bank accounts to verify resources. AFI has been implemented in 25 States, which represents about 80 percent of the SSI population, and SSA plans to implement AFI in the remaining States this year. SSA expects AFI to yield \$20 in savings for every \$1 spent on the program by 2013 when the program is fully implemented. By 2013, SSA projects approximately \$900 million in lifetime program savings for each year the Agency uses AFI.

We have also recommended SSA obtain death information electronically, as well as information on beneficiaries' marital status; explore exchanges with States that maintain automated workers' compensation databases; and consider obtaining vehicle information from States to verify the resources of SSI recipients.

We in OIG also conduct data-matching efforts, but the Computer Matching and Privacy Protection Act requires formal computer-matching agreements that can take years to complete. This prolonged process can delay or derail time-sensitive audit and investigative projects. In 2010, DHHS obtained an exemption for data matches designed to identify fraud, waste, or abuse. We are pursuing a similar exemption.

Our CDI program is another critical piece of our improper payment reduction effort. The CDI program was established in FY 1998 as a joint effort by SSA and OIG, working with State Disability Determination Services, and State or local law enforcement agencies, to pool resources for preventing fraud in SSA's disability programs before improper payments are made. The program currently consists of 22 units covering 20 states. Since the CDI program was established, through January 2011, CDI

efforts nationwide have resulted in \$1.7 billion in projected savings to SSA's disability programs; and \$1 billion in projected savings to non-SSA programs. We are committed to expanding the CDI program, with plans to open four new units in FY 2011 and increase CDI coverage to 24 states.

In conclusion, the President has outlined an aggressive plan of action to reduce improper payments by \$50 billion by 2012. Thus far, agencies have made strides to comply with requests to report their improper payments, identify causes and allocate resources to prevent future errors. This important collaboration among Federal agencies, OMB, the Treasury, and the CIGIE will continue in an effort to improve administrative efficiency and service delivery. We will continue to provide information to SSA's decision-makers and this Subcommittee, and we look forward to assisting in these and future efforts.

I thank you again for the invitation to be here with you today. I'd be happy to answer any questions.

Mr. REHBERG. Thank you.

For the benefit of the committee Members that were not here on time, we were going to ask questions until 5 minutes left on the vote. And then we will adjourn the meeting and come back after the two votes.

And so, we have about 10 minutes' worth of time, which probably gets us through me and the ranking member, and we will get you off to the vote so you don't miss anything.

Thank you very much, and I appreciate all of your hard work and time that you spend trying to find not just the waste, fraud, and abuse, but we know that it is accident-related as well. It is not always one of those three arenas.

I guess, Mr. Lewis, and maybe the rest of you can answer the question, but it is not nearly as appropriate perhaps as for Medicare and Medicaid. But how do you hold States responsible? Is there a mechanism for you to go back on the States or to tell us where the problems exist? Do we have anything, an oversight capacity within our ability to go back on the States and recapture some of the money?

Mr. LEWIS. Well, the Department certainly has oversight responsibility of the program that the States are running. The UI program is unique in that being a Federal-State program, the States do have a vested interest in complying.

The bulk of these overpayments we are talking about are really their State UI tax dollars. So it is in their interest to recover the funds. But the Department does approve of their program, authorize their program to operate. So it does have the means to do oversight and push for enforcement of the rules.

But I think it is a strong incentive that it is the State's own tax monies in the trust fund that they are protecting, as well, by doing this.

Mr. REHBERG. Okay. I am still learning a lot about this subcommittee's work. And at the purest sense, I look at the Social Security Administration, and I think you have about 65,000 employees versus the Department of Labor. And I have no idea how that equates into number of seniors per employee or number of unemployed per employee.

Can you draw any kind of a comparison? Why are there any mistakes if you have got 65,000, how many employees within the Department of Labor deal with—

Mr. LEWIS. Oh, 18,000 total, roughly. I am not sure how many are dealing with UI. There are people down in the State level that are administering—

Mr. REHBERG. And maybe I am not fairly making a comparison. But it seems to me like they will joke about, "Why is he crying? His farmer died." It is almost like why are there any mistakes when you have 65,000 employees? How many of them are actual caseworkers that are sitting there making these kinds of determination whether there should be the proper payment? Is that a fair question?

Mr. O'CARROLL. Chairman, SSA is very service oriented. It is pretty much the face of the Government to many people. And because of that, service to the public is a hallmark of SSA, and a lot

of SSA's employees are out in the field dealing directly with the public.

However, there are a lot of complications in terms of the programs that SSA manages, especially with regard to self-reporting of income or other eligibility factors. As you mentioned before, SSA has to deal with the States in terms of matching of information on death, divorces, other types of vital statistics.

So even with the large amount of employees that SSA has, a lot of their time is spent on service. And I think what will come out of this hearing, our biggest concern is stewardship, making sure that the right people are getting the right amount of money, and that SSA is putting the right amount of attention toward stewardship. As an example, to make sure that their medical condition hasn't improved and they haven't become better, and that they don't need benefits anymore.

Mr. LEWIS. Well, the UI program has some similarities in that it is dependent on a lot of self-reporting or initial self-reporting that is later confirmed with employers. The program, given the nature of the program, is to be a supplement or a stand-in for basic needs for folks when they are out of work. That if the States waited until they had verified everything before initiating the first payments, then we would be holding up a payment for a considerable length of time, in some cases.

So a lot of it is that the volume they are dealing with and the need to go back to employers, for example, to confirm things.

Mr. REHBERG. Okay. Thank you.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

And thank you all for your testimony and for your commitment to public service. You do a great job.

Could one or more of you help us to understand what is meant by improper payment? It has been alluded to a couple of times here. I think that when some people hear the term, they hear there are billions of dollars in improper payments in programs like Medicare, and they equate that with waste or fraud.

And some of the payments, quite honestly, undoubtedly reflect fraud and abuse. I have no question about that. But also, listening to all of you, there is also overpayment, underpayment, so I'd like some clarity of what an improper payment is. In a program like Medicare, aren't many improper payments the result of things like improper coding, inadequate documentation?

In other words, it is not that healthcare wasn't provided or wasn't necessary, but that the services may not have been properly described or documented as to medical necessity. That may have been missing in terms of the material.

I don't mean to suggest in any way that we shouldn't try hard to reduce these kinds of problems. We should. That is what we ought to be about. We have rules about information and documentation for good reason. Miscoding of services may mean that the wrong amount is paid. But I think we need to be clear about what improper payments are to help put the numbers in perspective.

So, as I said, I'd like for one or more of you to help us really to try to understand this.

Mr. LEVINSON. Thank you. Thank you, Ms. DeLauro.

And actually, I think that that is a great way of opening up the subject. And improper payments manifest itself, I think, in such different ways for different programs that I think you will get different and important perspectives on this issue depending upon who you talk to, going right down the panel. And for that matter, with respect to virtually all of the department OIGs around Government.

With respect, for example, to Medicare, in fee-for-service, the main types of errors—and there are three—are insufficient documentation, medically unnecessary claims, and miscoded claims. These account for most, the great majority of the \$34,300,000,000 that have been identified as payments that don't meet program requirements.

Now you are absolutely correct in noting that it is unlikely that all payments that simply don't meet program requirements are necessarily—

Ms. DELAURO. Fraud.

Mr. LEVINSON [continuing]. Bad in the sense of not serving a particular beneficiary in a way that the beneficiary needed to be served and, going back and looking at the claim, could be corrected. It is not a valid substitute for a fraud figure, and in fact, as we have often said around our office, the best fraudsters do the paperwork perfectly so that the improper payment rate is not a good figure. There is fraud that occurs.

Perhaps the best fraud occurs outside of the improper payment. Because if you are really good, you are going to buy off the doctor or buy off the beneficiary, and the paperwork is going to look excellent.

So it is important to distinguish that. That isn't to say that there are and unquestionably fraud schemes that are embedded that exist within the figure. But teasing out, drilling down and understanding what that is, it is so much, of course, for the size of HHS, it is a huge data challenge. And it is very, very helpful to have now the monies flowing into our data systems that will allow for real-time understanding of transactions and doing the kind of prepayment edits that are really necessary and the prepayment reviews to understand how the money actually is getting spent.

Being able to identify patterns effectively before the money goes out the door so you don't have to engage in so much "pay and chase," very important reforms.

Ms. DELAURO. I was taken with your commentary on the four areas that we should be focused on in this effort. So I thank you, really thank you for helping to clarify it.

And let me yield back, Mr. Chairman, because maybe someone can get in—

Mr. REHBERG. Well, we are going to cut it off right here.

Ms. DELAURO. Going to cut it off right now? Okay, fine.

Mr. REHBERG. And we will be back as quickly as we can.

Thank you.

[Recess.]

Mr. REHBERG. [presiding] Mr. Alexander.

Mr. ALEXANDER. Thank you, Mr. Chairman.

Good morning to all of you.

Mr. Levinson, in your statement, you mentioned that upon the first day of hiring for new people coming off of the unemployment roll, that the employer has to report the first day of hiring. Is that accurate?

Mr. LEVINSON. I think this is a Department of Labor.

Mr. ALEXANDER. Oh, okay. I am sorry. Mr. Lewis.

Mr. LEVINSON. That is quite all right.

Mr. LEWIS. Yes, it is actually an HHS database that is maintained.

Mr. ALEXANDER. Okay.

Mr. LEWIS. It was set up for a different purpose. But, yes, the employers are required generally within, I believe, 20 days to report that they have hired someone.

Mr. ALEXANDER. Okay. And they do that by paper? It is not something that has to be done electronically?

Mr. LEWIS. I am not sure exactly the mechanism they do that.

Mr. ALEXANDER. I was just thinking about speed. The more quickly they can report that, the better off we would all be.

Mr. LEWIS. Yes, I am not aware—there is the requirement to report, as I said, generally within 20 days, and I am not aware that there is a problem with employers not getting their report in within the 20-day limit.

Mr. ALEXANDER. Okay. And I just have a couple of questions.

Mr. Levinson, you mentioned something about a cap on the chiropractors and the services that they provide. Why would they be singled out over other healthcare providers?

Mr. LEVINSON. Mr. Alexander, the chiropractic example was exactly that. One example among many. And we would be happy to provide you details on a wide variety of healthcare providers where we have done reviews like this, which have indicated that we can do a better job in terms of the paperwork.

Mr. ALEXANDER. Well, there is one thing I would like for you to provide the committee that we have not been able to get in the past. We read various reports about how many healthcare providers, physicians, whoever, that are found doing something wrong or inappropriate. And we hear reports that some group submitted invoices of 1,200 claims from one location and maybe 1,000 procedures done by one individual during the course of a day, and they were paid for that.

My question is, all of these outsiders that we hear about that are arrested and some convicted, we have never heard anything about individuals on the inside that are participating. Now I have watched "The Godfather" and other shows where organized crime is the subject of matter. You never mention anything about it, but is organized crime part of the trouble that we have in some of these cases perhaps?

Mr. LEVINSON. Mr. Alexander, organized crime unquestionably is a part of the fraud problem.

Mr. ALEXANDER. Okay. Well, the reason I asked that is, again, I think it takes at least two or more to be organized. I don't think one individual robbing a service station would be considered part of organized crime.

So, again, the point being that it seems strange that we pay a tremendous amount of money out through fraud and abuse. Doesn't

anybody notice when an invoice comes in and some doctor does 1,000 procedures in the same day? Does somebody just write a check and say, "This is a hard-working doctor."

Again, it is hard for us to believe that there is a tremendous amount of fraud and abuse going on without somebody on the inside knowing about it. And we have not yet had one name submitted to us that worked at a governmental agency, at the local, State, or Federal level that was caught doing anything wrong.

Mr. LEVINSON. Well, I think this will be actually an excellent subject to dive down a little bit with your next panel, which will include CMS, that they can talk about the efforts to come up with better real-time data so that these transactions can be understood much more quickly. You know, as a result of prompt payment, historically there has been too much of a delay between the transaction and then people looking to see behind it.

But I can tell you that from our office's perspective, there is no automatic profile of who a fraudster is when it comes to healthcare fraud. And I certainly want to add that the great majority of physicians and other healthcare providers are honest, highly professional, and doing a very, very important job for the American people.

Mr. ALEXANDER. And we appreciate that.

Thank you, Mr. Chairman.

Mr. REHBERG. Mrs. Lowey.

Mrs. LOWEY. Thank you, Mr. Chairman.

And thank you to the panel for your hard work.

One of our highest priorities and one that I believe is shared by all of us on the subcommittee is to reduce Medicare fraud. First of all, we know it wastes taxpayer dollars. It is a slap in the face to the more than 46 million beneficiaries who depend on Medicare.

Mr. Levinson, last week, Secretary Sebelius testified before the subcommittee that the proposed 10-year investment in CMS program integrity in the fiscal year 2012 budget request will yield \$10,300,000,000 in Medicare and Medicaid savings. Do you know how the administration arrived at the \$581,000,000 discretionary funding proposal for fiscal year 2012 to improve CMS program integrity?

Now let me just say one other thing. I understand this is a substantial increase. But when I hear your testimony, \$56,800,000,000 in improper payments for Medicare and Medicaid in 2010, I want to ensure that we are doing everything we can to prevent fraud.

So, number one, if you can answer that \$581,000,000, and does HHS and the Inspector General's office have the capacity to grow improper payment programs at an even greater rate beyond what is included in the budget request so that if we were to invest more today, we would have more to spend tomorrow? Could you respond?

Mr. LEVINSON. Yes, I would be happy to, Mrs. Lowey.

On the first question, it is not that I am happy to do so, but I think I need to defer to the policymakers on your \$581,000,000 issue because CMS will be testifying after us, and they will be able to speak directly to the Administration's proposal. So I can't really look prospectively.

I certainly can speak with great confidence about our budget and the way in which we have been able to contribute, I think, in a

very significant way toward the Department being able to get a far better handle on the improper payment figure, as it appears before you today, and coming up with an effective plan to reduce those figures.

As I explained in my opening statement, so much of the improper payment dollars don't have to do with fraud so much as being able to get data collection, and the understanding of what that data actually means, understood and acted upon far more quickly. And CMS is taking steps, and I would say many of them are directly related to what the Affordable Care Act provided in terms of added funding and giving the Secretary far greater authority to restrict enrollment in areas where there has been abuse by fraudulent people easily being able to get provider numbers and entering the program for the sole purpose of taking advantage of it.

Provisions like that from the work that we have already done provide us, I think, with a very great sense of confidence that, going forward, these kinds of figures can be reduced significantly.

Mrs. LOWEY. I appreciate that point, and I know my colleague, Ranking Member DeLauro, made it clearly that it is not all fraud, and we have to really focus on get to the providers who are involved in fraudulent practices. Some of those, we have had those cases in my office where they are still writing them in by hand, and they don't even want to use the new technology. So this is an issue that we see all the time.

Another question. Mr. O'Carroll, happy St. Patrick's Day. You testified that 10 percent of total Supplemental Security Income payments in 2010 were either overpayments or underpayments. This seems to be an unacceptably high percentage, and it is far different than the 0.5 percent improper payment rate for the Retirement and Disability Insurance Program.

How does the SSI program, which is far smaller than RSDI, have such a higher improper payment rate?

Mr. O'CARROLL. Congresswoman, that is one of the ones when I mentioned earlier, a problem with the SSI program is a lot of it is self-reporting of your wages and your income on it. And because of that, it is susceptible to fraud in terms of a lot of people are going to be underreporting what their income is.

And because of that, we are recommending that SSA have better agreements with States on trying to match information that the States have on people's wages and information. But probably more important than that that they are doing now is this access to financial institutions, where the banks are now being able—so when a person puts down and says that they are destitute and they are looking for benefits, SSA at that point can be checking to see if they do have assets.

What we would like to do kind of again is get agreements going with the States to see if, for example, a person who claims that they are destitute has a number of vehicles. So, again, that is the biggest problem—

Mr. REHBERG. I am going to ask you if you have additional information to put it in for the record. We would love to have that.

Mr. O'CARROLL. Yes, Chairman.

Mr. REHBERG. My intent is to finish this round with Mr. Flake and Ms. Roybal-Allard and then move on to the next panel so we have enough time for them to give their testimony as well.

Mr. Flake.

Mr. FLAKE. Let me shift to recovery rates for a minute. It is noted that improper payments totaled \$125,000,000,000 in 2010. The agencies recovered about \$687,000,000. That would seem to be extremely low.

In the private sector, you have issues like this. Recovery rates are far, far higher for vendors that don't pay or whatever else. And I am wondering, are there incentives that can be offered, that are offered to these agencies to have a higher recovery rate? What is the difference, I mean, between those who are working on recovery, the agency itself?

Is it treated any differently by the Congress in the next year's budget? Are there employment incentives or bonuses that are attached? What is the difference to an agency if they have, what is this, a 0.05 percent recovery rate, as opposed to a 50 percent recovery rate? Is there any material or tangible difference with how an agency is treated by the Congress or by the executive branch or anybody else?

Go ahead, Mr. Levinson.

Mr. LEVINSON. Mr. Flake, this, once more, actually is a question that will be best handled by CMS, which is supposed to appear right after me. Because CMS does devote significant resources to Recovery Audit Contractor programs, a major amount of the money. Although we are funded several hundred million dollars in our mission to protect programs against fraud, waste, and abuse, CMS is in the billion-dollar category when it comes to program integrity.

And a significant amount of those dollars are devoted to coming up with a Recovery Audit Contractor program, where there are major operations employed throughout the United States whose purpose is to recover improper payments, and there are incentive programs. In other words, compensation is tied to the recovery.

I don't have before me the details of those figures, but those figures certainly can be gotten to you quite easily.

Mr. FLAKE. Well, with a recovery rate of \$687,000,000 on \$125,000,000,000 improper payment, the payment to these collectors, if you will, may be improper as well. I mean, it is the fact that we are collecting so little says to me that we need some new incentives in place or penalties or something attached to this because would you not agree that this recovery rate is strikingly low?

Anybody else? I hear a head nod there. Kathleen.

Ms. TIGHE. I would certainly agree with that. I think at Education, I think recovery of monies is a big challenge for the Department.

I think in part it is due to incentives. I think there are incentives built into the Improper Payments Act, supposedly through allowing a certain amount of the recoveries to come back to departments. I am not sure that is going to be enough to overcome some of the hurdles to getting money back in certain programs at Education, for example, Title I programs going out to States.

I think I mentioned, the 41 audits we had. Thirty-three of those have been resolved, worth about \$53,000,000. The Department is only going after about \$3,000,000 and hoping to get it back. The reasons for that are built into the statute; they have to show that there has been harm to the Federal interest.

And what that means is, look, if the students are already getting served, and there really isn't— it is hard to make a school district pay money back.

Mr. FLAKE. I understand that more than I do on the medical services and whatever else. That is bigger money and easier, it would seem, money easier to be reclaimed.

Anyway, when I look at this, I think we have got to change the incentive somehow because this is a very, very low recovery rate.

Thanks.

Mr. REHBERG. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Inspector O'Carroll, let me begin, first of all, by commending you for the efforts that the Social Security Administration is making to reduce improper payments in its three programs. However, I keep hearing from my constituents how confusing it is to navigate through the system, and the paperwork is also very difficult.

And my minority and disabled constituents are the ones that are the most frustrated, and this makes me think that perhaps the complexity of your programs and of the paperwork play a significant role in improper payments, particularly in the Social Security Disability Insurance and Supplemental Security Income programs.

Do you track what proportion of overpayments and underpayments have resulted from misunderstandings of the process or confusion about the paperwork? And what is being done to simplify your programs, improve transparency in the reporting requirements, and ensure that the process is culturally and linguistically appropriate for minority populations?

Mr. O'CARROLL. Congresswoman, that is probably better answered by SSA when their panel is there, in terms of the simplification of the different forms on it. But to give you some of the work that we have done in that area, we have been taking a look at, as an example, with the applying for Social Security benefits, one of the things is with the iClaims, which is the Internet claims on it, which has been designed by the agency. It has been, I guess, vetted. It is simpler.

It seems to be well liked by the claims reps in SSA itself. And we just did an audit on that, and we found that about 95 percent of the people that have been using this online claims form are very happy with it. They like it, and they are doing it. So I am thinking is that SSA is going in the right direction in terms of simplifying the application process.

As far as if we are finding out on the underpayments and overpayments if there is a problem in terms of the application process itself, if you don't mind, let me take a look at that, and I will get back to you on the record with our findings on that one. I don't have any recent audit work on that to be able to give you a direct answer.

Ms. ROYBAL-ALLARD. Okay. And I have another series of questions, which I probably will submit for the record if I don't have time to ask them later.

Inspector Levinson, first of all, thank you for your testimony and your excellent summary of what HHS is doing to address improper payments in Medicare and Medicaid. And I recognize the importance of improving CMS program integrity, but I would like to focus for a moment on some of the other programs that you oversee, which also face challenges in program integrity.

There has been a long history of controversy about cash welfare programs in this country. And while I understand that States set their own TANF cash benefits levels and are responsible for the integrity of their own programs, \$16,500,000,000 annually is a relatively large Federal grant program, and the Federal Government does have a vested interest in how States use these funds.

It is my understanding that the application of the Improper Payments Act to TANF has been contentious and that States have opposed the development of a national error rate for TANF. Where does the administration stand on the development of an official error rate for TANF programs, and what specific obstacles are you facing in developing a national rate?

Mr. LEVINSON. Ms. Roybal-Allard, there have been legal questions regarding how the improper payment calculation would apply to the TANF block grant, in particular. That does raise unique issues of the Federal-State relationship. And our understanding is that the Department, the Administration is working on options to how they might remedy the issues.

We are outside of that policy loop. So I would defer our colleagues in ACF to provide a more detailed response.

Ms. ROYBAL-ALLARD. Okay. Do you have any idea whether or not the tools that have been developed by HHS to address improper payments in Federal programs has been effective in promoting integrity in State TANF programs?

Mr. LEVINSON. Well, we do have some TANF work, but it doesn't apply specifically to improper payments. We are reviewing States' use of smart card technology to validate the identity of TANF recipients. I mean, this does certainly have an impact on appropriate payments, to ensure payments are used for authorized items.

We have a review of ACF oversight, if States is compliant with TANF work participation and the verification requirements. So there is important review work being done in the TANF program.

Ms. ROYBAL-ALLARD. Okay.

Mr. REHBERG. Thank you.

We are going to excuse this panel.

THURSDAY, MARCH 17, 2011.

IMPROPER PAYMENTS

WITNESSES

GAY GILBERT, ADMINISTRATOR, OFFICE OF UNEMPLOYMENT INSURANCE, EMPLOYMENT AND TRAINING ADMINISTRATION

DEBORAH TAYLOR, DIRECTOR OF THE OFFICE OF FINANCIAL MANAGEMENT, CENTERS FOR MEDICARE AND MEDICAID SERVICES

**THOMAS P. SKELLY, DIRECTOR, BUDGET SERVICE AND ACTING CHIEF
FINANCIAL OFFICER**

CAROLYN COLVIN, DEPUTY COMMISSIONER OF SOCIAL SECURITY

Mr. REHBERG. All right. Let's get going. Ms. Gilbert?

Ms. GILBERT. Chairman Rehberg, Ranking Member DeLauro, and subcommittee Members, thank you for this opportunity to discuss the Unemployment Insurance program and strategies for reducing UI improper payments, which is a top priority at the Department of Labor.

It is receiving the highest level of attention and focus from departmental leadership, and we are working aggressively to identify new strategies, tools, and resources to support our State partners in bringing the UI improper payment rate down. The entire UI system, both Federal and State, has a longstanding commitment to program integrity. We use highly sophisticated sampling and audit methods to prevent, detect, and recover improper payments.

Unfortunately, the improper payment rate has increased during the course of this recession. As of the most recent reporting period, it stands at 11.2 percent, of which 10.6 percent represents overpayments.

The four main reasons for improper payments in the UI program are, one, payments made to individuals who continue to claim benefits after they return to work; two, employers failing to provide timely and adequate information on the reason for the individual's separation from employment; three, the inability to validate the individual has met the State's work search requirements; and fourth, the failure of the claimant to register with the State's employment service, pursuant to the State's law.

The recession has severely stressed our UI system and has been another cause in the rise of the UI improper payment rate. As a result of the overwhelming workload over the last 2 years, States have reprogrammed their integrity staff to actually take claims instead of working to reduce improper payments. And technology solutions that could have controlled or reduced improper payments were put on hold during all of the changes in the Emergency Unemployment Compensation program.

Improper payments due to claimant fault have also increased during the recession. Improper payments resulting from claimants' failure to complete their work search requirements have risen as a result in large part due to lack of jobs. This type of improper payment is extremely workload intensive and costly to detect given the size of the UI population, which today numbers 8.8 million.

Despite these challenges, the department has one overarching goal, and that is to get the improper payment rate down. Working with our State partners, the department has a number of robust strategies already underway, as well as newly identified strategies for prevention, which is the key to getting the rate down.

To address the issue of claimants' continuing to claim benefits after they return to work, the department will be mandating expanded use of the National Directory of New Hires as both a detection and a prevention tool and will provide new protocols, resources, and technical assistance to States to enable them to use the directory most effectively.

We have appreciated Congress's support for the Reemployment and Eligibility Assessment Initiative, a critical UI integrity investment that reduces improper payments through early detection of eligibility problems and speeds claimants' return to work. To date, 40 States have REA programs that support claimant eligibility reviews and development of reemployment plans at their One-Stop career centers. The \$70,000,000 requested in the fiscal year 2012 budget will fund 980,000 claimant REA visits and save State UI trust funds an estimated \$237,000,000.

To ensure that States are able to get timely and accurate separation information to prevent improper payments when a claim is first filed, the department has joined with States to implement the State Information Data Exchange System, or SIDES. SIDES provides a secure electronic data exchange between States and employers or their representatives, and it both speeds up the process and improves the completeness and the accuracy of the information. The department is actively working with States now to rapidly accelerate implementation of SIDES.

To improve recovery of improper payments, I am pleased to report that a necessary regulation and system is now in place for States to implement the Treasury Offset Program, which enables States to recover UI overpayments by offsetting Federal income tax refunds against UI debts. States are already showing impressive recovery numbers as a result.

Given that States are the key to getting the rate down, it is our intent to provide new tools and intensive technical assistance, particularly to high-impact States, to improve prevention. With Congress's support, we will continue to provide States with supplemental funding to improve UI integrity. In addition, the President's fiscal year 2012 budget includes a request for \$10,000,000 for incentive awards to States with the most improved integrity performance.

In order to get more resources and new tools in the hands of States, we are extremely pleased that Congress passed two of the provisions of the UI, the Unemployment Compensation Program Integrity Act of 2010 in the last Congress. However, we continue to believe all of the provisions in the Integrity Act are important to the UI system's ability to control improper payments.

Therefore, the President's budget also proposes a reintroduction of the Integrity Act, which includes the option for States to retain up to 5 percent of their recovered overpayments and to use those for integrity activities. We anticipate transmitting the new legislation to Congress in the coming weeks.

In conclusion, the department is committed to working with our State partners to bring down the UI payment rate, and we look forward to working with you as well. And I will be glad to answer any of your questions.

[The prepared statement of Gay Gilbert, Administrator, Office of Unemployment Insurance, Employment and Training Administration, follows:]

STATEMENT OF GAY GILBERT
ADMINISTRATOR
OFFICE OF UNEMPLOYMENT INSURANCE
EMPLOYMENT AND TRAINING ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE FOR LABOR, HEALTH AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES

March 17, 2011

Good morning. Chairman Rehberg, Ranking Member DeLauro, and distinguished members of the Subcommittee. Thank you for this opportunity to discuss the Unemployment Insurance (UI) program and strategies for improving program integrity. Reducing improper payments in the UI program is a top priority at the Department of Labor. As such, it is receiving a high level of focus and oversight in close coordination with the Office of Management and Budget. We are aggressively working to identify new strategies and tools to support our state partners in addressing the rising UI improper payment rate.

The entire UI system, including federal and state partners responsible for administering the UI program, has a longstanding commitment to the integrity of the UI program. We employ highly sophisticated sampling and audit methods and tools to prevent, detect, and recover improper UI benefit payments. Unfortunately, the UI improper payment rate has increased during the course of the recession. For the most recent reporting period (July 2009 to June 2010)

required under the Improper Payments Information Act (IPIA), the rate was 11.2 percent, of which 10.6 percent were overpayments

The four main reasons for improper payments in the UI program are: (1) payments are made to individuals who continue to claim benefits after they have returned to work; (2) information regarding the claimant's separation from work is received after a claim is paid, often due to failure of employers or their representatives to provide timely and adequate information on the reason for an individual's separation from employment; (3) the inability to validate that the individual has met the state's work search requirements; and (4) the failure to register the claimant with the state's Employment Service pursuant to the state's law. Attachment A is a graphic display of these and other root causes for UI improper payments.

Impact of the Recession

The recession has impacted the UI improper payment rate in a number of ways. State staff and the information technology systems used to process claims have been severely stressed in managing the overwhelming workload. During times of high workload, ensuring timely payments to eligible workers is the first priority. As a result, many states transferred program integrity staff to process claims during much of the recession, and report anecdotally that they are only now staffed up sufficiently to begin moving staff back or are hiring new staff to focus on integrity activities. In addition, integrity strategies that involve technology solutions were put on hold during the recession, as a result of the

technology demands created by the many extensions and expansions of Federal unemployment programs.

Improper payments due to claimant fault, or in some cases fraud, have also increased during the recession. As a part of the federal-state integrity workgroup we have heard anecdotally from states that some claimants, when confronted with discrepancies in their claims, tell state staff they are simply desperate and willing to risk committing fraud to get money to feed their families. In addition, the severe shortage of jobs for unemployed job seekers served as a disincentive for workers to apply for jobs. Thus it is not surprising that improper payments resulting from the failure of claimants to complete their work search requirements rise during a period of slow job growth. This type of improper payment is extremely challenging to prevent, workload intensive and costly to detect for the full universe of UI claimants, which today numbers 8.8 million.

Strategies to Address Improper Payments

Despite these recent challenges, the Department has one overarching goal with respect to improper payments -- to get the improper payment rate down. The Department, working with our state partners, has been focused on the issue of improper payments for many years. A number of robust strategies are under way, new strategies are in the process of being rolled out, and we have been working collaboratively with our state partners to identify additional strategies

that focus on the prevention of overpayments focusing on the root causes which will yield the highest impact. These strategies include:

(1) preventing claimants from continuing to claim benefits after they return to work through state workforce agencies' use of the National Directory of New Hires (NDNH);

(2) reducing improper payments through early detection and prevention of eligibility problems and speeding claimants' return to work by conducting Reemployment and Eligibility Assessments (REAs);

(3) getting more timely and accurate separation information from employers or their representatives through use of the State Information Data Exchange System (SIDES), an automated separation information exchange;

(4) recovering outstanding overpayments by intercepting Federal income tax refunds using the U.S. Department of the Treasury's Treasury Offset Program (TOP); and

(5) providing tools, resources, and intensive technical assistance to states, and initiating innovative pilots, to improve prevention in order to bring the improper payment rate down.

I will elaborate on each of these strategies.

National Directory of New Hires

To address the issue of individuals continuing to claim benefits after returning to work, one of the most effective tools for detecting improper payments is the use of NDNH, a data base maintained by the Department of

Health and Human Services for child-support-enforcement purposes. The database collects quarterly wage and unemployment-compensation information on new hires from employers. Legislative authority exists that allows states to match their claimant files with the NDNH data to identify that a claimant is working and to capture the weeks of unemployment for which claims were paid when the claimant was no longer eligible for benefits. The Department will be mandating expanded use under current authority of the NDNH for both detection and prevention activities and provide new protocols to states for using the NDNH most effectively.

Reemployment and Eligibility Assessments

The REA initiative also has been an important investment in UI integrity. This initiative provides funds to states to perform in-person reemployment assessments typically conducted in a One-Stop Career Center. These assessments determine individuals' UI eligibility, provide the individual with labor market and career information, and develop a reemployment plan for each individual that includes referrals to One-Stop services. These REA activities reduce improper payments through early detection and prevention of eligibility problems and speed claimants' return to work.

During FY 2010, Congress provided \$60 million in funding to states to support REA and integrity activities, for which we thank you. To date, 39 states and the District of Columbia have REA programs. The FY 2012 budget requests \$70 million, which will fund 980,000 claimant REA visits and save state UI trust

fund accounts an estimated \$237 million. Another integrity proposal contained in the President's FY 2012 Budget is a request for \$10 million for incentive awards to states to improve their UI integrity activities related to improper payments.

State Information Data Exchange System

Another key initiative that addresses one of the top root causes of UI improper payments is the SIDES. This initiative is designed to help employers provide the information required to determine a claimant's eligibility to states more quickly by providing a secure electronic data exchange between states and employers or their third party administrators. In addition to speeding up the process, the SIDES system includes prompts and edits to improve completeness and accuracy of the information. Implementation of SIDES slowed during the recession due to other technology demands on the UI system; however, the Department is working with states and employers and their representatives to rapidly accelerate implementation.

Treasury Offset Program

I am pleased to report that as of this past month a necessary regulation and system is in place for states to implement use of the Treasury Offset Program, which enables states to recover UI overpayments by offsetting Federal income tax refunds against UI debts. States that were ready to implement this system immediately are already showing impressive recovery numbers as a

result. From February 14 through February 28 the states of New York and Wisconsin have collected nearly \$10.1 million and \$1.4 million, respectively.

Technical Assistance

We plan to provide intensive technical assistance to those states that have the highest improper payment rates in each of these root causes of improper payments. Included in that assistance is a plan to train state adjudication staff to better recognize issues that could result in a finding of ineligibility for benefits, and adopting an additional state performance measure focused on improper payments that more effectively targets prevention. We are also working with states with the highest improper payments resulting from issues associated with registration of claimants with the state's Employment Service to analyze the state-specific challenges and develop strategies to address them.

FY 2012 Legislative Proposals

We are extremely pleased that last year Congress passed two of the UI integrity proposals transmitted by the Administration in FY 2011: (1) requiring the inclusion of the specific date individuals start work in the information reported to the NDNH to facilitate identification of fraudulent UI claims; and (2) expanding the use of TOP to collect UI debts beyond cases of fraud to permit recovery of any UI debt incurred due to the individual's failure to report earnings to the UI agency. The President's FY 2012 Budget includes some UI integrity proposals submitted previously that have yet to be enacted and an

additional enhancement to the data reported to the NDNH. Specifically, the proposals include:

- (1) Providing new dedicated resources for state integrity activities by permitting states to use up to 5 percent of recovered overpayments and delinquent contributions due to fraud to prevent, detect, and recover these overpayments, ensuring integrity activities are a priority;
- (2) Requiring a 15 percent penalty on outstanding fraudulent benefit overpayments, similar to the penalty employers face for delinquent tax payments in many states. States may only use these funds for integrity activities or for benefit payments. At present some states that have these provisions in their state laws allow the funds to be used for other purposes, some of which are non-UI integrity related;
- (3) Requiring that employer accounts be “charged” if an overpayment is the employer’s, or their representative’s, fault due to failure to respond timely or adequately to a state’s request for information; and
- (4) Requiring employers to report to the NDNH individuals re-hired after a separation from employment of at least 60 days. Currently, only new hires are required to be reported. This addition to the NDNH would provide another important improper payment detection tool for the UI system.

We anticipate transmitting the legislation incorporating these proposals to Congress in the coming weeks.

Conclusion

With Congress' support, we will continue to provide states with resources to improve UI integrity, including for activities such as the implementation of SIDES and technology upgrades necessary for the states to more effectively utilize the NDNH as a prevention tool. The Department provided \$26.9 million to states in FY 2009 and \$10.7 million in FY 2010 for these activities. We continue to pursue new tools and data sources and other strategies to help states improve prevention efforts. As part of our efforts to address the root causes of improper payments in the UI program, we are committed to working with states to conduct innovative pilots to test additional actions to prevent, reduce, and recapture improper payments. For example, we are working with the Office of Management and Budget's Partnership Fund for Program Integrity Innovation to identify and fund potential pilots of new strategies. In addition, we will pursue other state pilots within our existing resources and regulations that could reduce improper payments, such as pilots utilizing cutting-edge fraud detection technology and forensic accounting. If successful, these pilots could have a significant return on investment in addressing improper payments in the UI program. Having resources available to support state integrity activities and new initiatives designed to lower the improper payment rate - including those identified in my testimony - are critical.

We look forward to working further with Congress as you consider ways to enhance Federal and state efforts to reduce improper payments in the UI program. I will be glad to respond to any questions you may have.

Mr. REHBERG. Thank you.

Ms. Taylor.

Ms. TAYLOR. Good morning, Chairman Rehberg and Ranking Member DeLauro and Members of the subcommittee.

Thank you for the opportunity to be here today to discuss the corrective actions that the Centers for Medicare & Medicaid Services (CMS) are taking to reduce improper payments in the Medicare and Medicaid programs. CMS is committed to reducing the rate of improper payments and ensuring that our programs pay the right amount for the right service to the right person in a timely manner.

Like other large and complex Federal programs, Medicare and Medicaid are susceptible to improper payments, and CMS does calculate, on an annual basis, the improper payments rate for these programs. I think we have talked a lot about it this morning, but improper payments are generally errors. They are not fraud.

These errors generally result from the following situations. First, a provider fails to submit any documentation or submits insufficient documentation to support the services paid. Secondly, the services provided are incorrectly coded on the claim. And thirdly, the documentation submitted by the provider shows the services were not reasonable and necessary.

CMS is committed to reducing these improper payments and is working aggressively on corrective actions to deter and reduce them. I would like to talk a little bit about each of these programs and the corrective actions we are taking currently.

First, the traditional Medicare fee-for-service program represents the majority of Medicare spending. This program is administered by CMS through contracts with private companies that process close to 5 million claims each day. That is over 1 billion claims a year. CMS uses the Comprehensive Error Rate Testing program, known as CERT, to estimate an improper payment rate for this program.

Last year, CMS was able to reduce the improper payment rate by 1.9 percent, from 12.4 percent to 10.5 percent. The CERT program provides valuable information to the Agency to assist in the development of corrective actions. The best way to address these problems—and I think you heard from the OIG, Dan Levinson—is robust provider enrollment, increased review of medical records, and enhanced systems, edits, and automated processes and analytic tools.

Some of our recent provider education efforts include the development of comparative billing reports, issuance of quarterly compliance reports to providers, and conducting routine forums to discuss Medicare policies and documentation requirements.

And CMS recently also implemented the national recovery audit program. This program provides valuable information about areas where increased education and outreach are needed, as well as where prepayment medical review is most productive. Together, these tools provide valuable information to assist in the development of automated edits that will detect and reject claims before they are paid.

We believe that all these efforts will go a long way in helping us achieve the goal to cut the Medicare fee-for-service improper payments rate in half by 2012.

While CMS administers the Medicaid program, this program is essentially more than 50 programs. CMS developed the Payment Error Rate Measurement program, known as PERM, to review improper payments in three components of Medicaid—fee-for-service claims, managed care claims, and eligibility cases. In fiscal year 2010, the Medicaid improper payment rate was 9.4 percent, and this was a reduction from the prior year of 9.6 percent.

While causes of improper payments vary from State to State, PERM helps CMS identify trends and common errors across States. States are critical partners to CMS efforts to reduce Medicaid improper payments. All States must develop corrective actions to address their improper payments, and based on the corrective action plans, which CMS does review and approve, many States intend to enhance their provider education efforts and improve the responsiveness and completeness of documentation.

CMS also collects and disseminates best practices that are shared among the States to help them learn from each other and ensure that they continue to reduce their errors. CMS has made progress in reducing errors. We believe that the expansion of the recovery audit program to Parts C and D, which are the managed care and prescription drug programs, as well as the Medicaid program, as required under the Affordable Care Act, will greatly help us reduce errors even further.

We are also looking at private sector techniques, such as electronic health records, more analytic tools, and other items that the private sector currently uses to help us reduce this. I believe that these efforts will help us further reduce error rates, and we look forward to working with you. And I would be happy to answer any questions.

[The information follows:]

STATEMENT OF

DEBORAH TAYLOR

CHIEF FINANCIAL OFFICER AND DIRECTOR,
OFFICE OF FINANCIAL MANAGEMENT
CENTERS FOR MEDICARE & MEDICAID SERVICES

ON

IMPROPER PAYMENTS

BEFORE THE

U.S. HOUSE COMMITTEE ON
APPROPRIATIONS, SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES

MARCH 17, 2011

**U.S. House Committee on Appropriations
Subcommittee on Labor, Health and Human Services, Education and Related Agencies
Hearing on Improper Payments
March 17, 2011**

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee, thank you for the invitation to discuss the Centers for Medicare & Medicaid Services' (CMS) efforts to reduce improper payments in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). The Administration is strongly committed to reducing the rate of improper payments and ensuring that our programs pay claims in an accurate and timely manner.

Background on Improper Payments

Like other large and complex Federal programs, Medicare, Medicaid, and CHIP are susceptible to payment, billing and coding errors—called “improper payments.” These rates are determined annually in an open and transparent process required by the Improper Payments Information Act (IPIA), as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010. While these improper payments represent a fraction of total program spending, any level of improper payment is unacceptable and CMS is aggressively working to reduce these claims processing, coding and documentation errors.

The IPIA uses the term “improper payment” to describe these errors, however it is important to clarify what these billing anomalies are – and are not. They can result from a variety of assorted circumstances, including: 1) services with no documentation, 2) services with insufficient documentation, 3) incorrectly coded claims, or 4) services provided that were not determined “reasonable and necessary.” Further, improper payments do not always represent an unnecessary loss of Medicare, Medicaid, or CHIP funds. They are usually not fraudulent nor necessarily payments for inappropriate claims; rather, they tend to be an indication of errors made by the provider in filing a claim or inappropriately billing for a service. Most improper payments by providers are classified as such because they relate to claims where the information in the medical record did not support the services billed. Examples of common payment errors made by Medicare providers include services that were performed in a medically unnecessary setting¹, or were incorrectly coded.² Other payment errors result when providers fail to submit

¹ Medically unnecessary setting: Medicare claims fall into this category when services are provided in a more intensive (and expensive) setting than is considered reasonable and necessary by Medicare. For example, if a minor surgery is done in an inpatient hospital setting on a healthy beneficiary, instead of in an outpatient setting, the entire claim is classified as an “improper payment.”

documentation when requested, fail to submit adequate documentation to support the claim, or when Medicare pays a claim that should have been paid by a different group health plan or other liable party.

The Administration is committed to reducing waste and improper payments across the government. On November 20, 2009, President Obama issued Executive Order 13520 calling on all Federal agencies to reduce waste and improper payments across Federal programs and CMS is working hard to carry out the Order. In addition, the President has: issued a memorandum on intensifying and expanding payment recapture audits (March 10, 2010); issued a memorandum to enhance payment accuracy by creating a "Do Not Pay" List (June 18, 2010), and signed IPERA into law (July 22, 2010),

Improper Payments in Medicare Fee-for-Service

The traditional, Medicare fee-for-service (FFS) program represents the majority of Medicare spending, with hospital and other institutional services representing the largest shares of this spending. This component of Medicare is administered by CMS through contracts with private companies that process claims for Medicare benefits.

In keeping with requirements to promptly pay claims in Medicare, our claims processing systems were built to quickly process and pay the roughly 4.8 million claims that we receive each day, totaling approximately 1.2 billion claims in fiscal year 2011. Due to the volume of claims processed by Medicare each day and the significant cost associated with conducting medical review of an individual claim, CMS heavily relies on automated edits to identify inappropriate claims. Nevertheless, most claims are paid by CMS without requesting or individually reviewing the medical records associated with the services listed in the claim.

CMS uses the Comprehensive Error Rate Testing (CERT) process to sample and review Medicare FFS claims to project an improper payment rate. At the recommendation of the Department of Health and Human Services (HHS) Office of the Inspector General, CMS applied a stricter and improved methodology for calculating the Medicare FFS error rate in FY 2009. As a result of this change, the FY 2009 and FY 2010 overall error rates were higher than in FY 2008; 12.4 percent and 10.5 percent in FY 2009 and FY 2010 respectively. The Administration announced last year that CMS will cut the

² Incorrect coding: Claims are placed into this category when providers submit medical documentation that support a lower or higher code than the code submitted. (CMS Improper Medicare Fee-For-Service Payments Report, https://www.cms.gov/CERT/10_CERT_Reports_and_Data.asp#TopOfPage).

Medicare FFS improper payment rate in half by 2012, from 12.4 percent to 6.2 percent. CMS is making progress in meeting this goal, with a 1.9 percent point reduction in the error rate between FY 2009 and FY 2010.

In addition to measuring the Medicare FFS error rate, the CERT program guides CMS in developing corrective actions to reduce improper payments in the future. CMS continues to analyze the improper payment data garnered from the CERT program and also uses the results to provide feedback to Medicare contractors to inform and enhance their medical review efforts, focus on high risk areas, and improve overall operations.

To help reduce medical necessity errors, which occur when documentation submitted by a provider does not sufficiently establish the beneficiary's medical need for an item or service, CMS has developed Comparative Billing Reports, which compare a provider's billing pattern for various procedures or services to their peers on a State and national level. Also, Medicare's automated systems can detect and reject payment for medical services that are physically impossible, such as a hysterectomy billed for a male beneficiary. Additionally, CMS has developed "medically unlikely" payment systems edits, which catch services when the quantity billed exceeds acceptable clinical limits.

Recovery Audit Program in Medicare FFS:

The Recovery Audit program is another tool in CMS' efforts to detect and reduce improper payments. The Recovery Audit program began as a 6-State demonstration project required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.³ Congress expanded the Recovery Audit program in the Tax Relief and Health Care Act of 2006, directing CMS to implement a permanent national Recovery Audit program in Medicare FFS by January 1, 2010. Recovery Auditors work to identify overpayments and underpayments in previously submitted and paid claims; per the statute, these contractors are paid on a contingency fee basis. The permanent Medicare FFS Recovery Audit program, as of March 1, 2011, corrected a total of \$261.5 million in improper payments, including \$43.6 million in underpayments corrected and \$217.9 million in overpayments collected.

More importantly, the Recovery Auditors help CMS identify areas where policy changes, systems changes, and provider education and outreach can help prevent future improper payments. CMS

³ CMS began this demonstration in Florida, California, and New York in 2005, and later expanded to Massachusetts, South Carolina, and Arizona.

employs a robust system to identify patterns in the vulnerabilities identified by Recovery Auditors and to undertake appropriate corrective actions. During the demonstration, Recovery Auditors identified a number of improper payments in claims related to inpatient rehabilitation facilities (IRF). CMS recognized that the Agency's policy was outdated and published a regulation (CMS 1538-F) to update the policy and also conducted extensive provider education to ensure that providers bill IRF claims correctly. In the national program, Recovery Auditors have identified several areas where edits can be helpful in preventing improper payments. CMS is implementing edits to stop the payment of claims after a beneficiary's date of death, stop the payment of durable medical equipment while the beneficiary is receiving care in an inpatient setting, and to stop the payment for individual services that should have been bundled into another payment. In addition, the claim processing contractors have been able to implement local system edits to stop improper payments relating to durable medical equipment bundling (wheelchair and accessories and knee prosthetics) and drugs paid exceeding recommended dosages.

Some vulnerabilities cannot be fixed with automated edits and may require ongoing medical review and other more resource intensive activities. As such, the President's FY 2012 Budget Request includes a legislative proposal that would allow CMS to retain a dedicated portion of the funds recovered by Recovery Auditors to implement additional corrective actions to prevent future improper payments, such as targeted prepayment review and provider education. Funding these activities to prevent future improper payments is estimated to generate net savings of \$230 million over 10 years.

Improper Payments in Medicare Parts C and D

The Medicare Advantage managed care benefit (Part C) and the prescription drug benefit (Part D) differ significantly from Medicare FFS and, as a result, require different approaches to measure and address improper payments. Unlike Medicare FFS, CMS prospectively pays Medicare Part C and Part D plans a monthly capitated payment. Each per-person payment is based on a bid amount, approved by CMS, that reflects the plan's estimate of average costs to provide benefit coverage to enrollees. CMS risk-adjusts these payments to take into account the cost associated with treating individual beneficiaries based on health status. In addition, Part D payments are also reconciled against expected costs, and risk-sharing rules set in law are applied to further mitigate plan risk.

The Part C error rate reported for FY 2010 (based on payment year 2008) is 14.1 percent, a reduction from the FY 2009 rate of 15.4 percent. Most of the Part C payment error rate is driven by errors in risk adjustment data (clinical diagnosis data) submitted by Medicare Advantage (MA) plans to CMS for

payment purposes. Specifically, the risk adjustment error reflects the extent to which diagnoses that plans report to CMS are supported by medical record documentation.

To reduce the level of Part C improper payments due to risk adjustment error, the President's FY 2012 budget includes a proposal to require CMS to conduct contract-level Risk Adjustment Data Validation (RADV) audits, and to extrapolate the sample results for each MA contract to all enrollees in that contract for a given year. That is, the payment error for a contract's sampled beneficiaries, which is based on diagnoses not supported by medical record documentation during the RADV process, would be extrapolated from the sample to all contract enrollees. Enactment of this proposal would result in increased collections of improper payments made to MA plans, and is estimated to save \$6.16 billion over 10 years.

CMS has made strides in developing a Medicare Part D composite error estimate based on a series of payment error sources, and plans to report a Part D composite error rate beginning in FY 2011. For FY 2010 reporting, a total of four component error estimates were reported. The four components were: 1) a Part D payment system error of 0.1 percent, 2) a low-income subsidy payment error of 0.1 percent, 3) payment error related to Medicaid status for dual eligible Part D enrollees of 1.8 percent, and 4) payment error related to prescription drug event data validation of 12.7 percent. The majority of the prescription drug event data error rate was due to missing prescription documentation from pharmacies. To reduce this error rate, CMS has provided Part D sponsors with additional guidance and addressed the timing of documentation submissions to assist them in improving collection of prescription documentation from pharmacies

Recovery Audit Program in Medicare Parts C and D:

The Affordable Care Act expanded the Recovery Audit program to Medicare Parts C and D and the Medicaid program, and CMS is drawing from the lessons learned from the Medicare FFS Recovery Audit program as we implement this new statutory authority. In January 2011, CMS awarded a contract to identify incorrect payments and recoup overpayments in Medicare Part D. Additionally, we are seeking public comment through a solicitation issued on December 27, 2010 in the Federal Register on innovative strategies for review of additional Medicare Parts C and D data, including the effectiveness of sponsors' anti-fraud plans.

Improper Payments in Medicaid and CHIP

While CMS administers the Medicaid Program and CHIP, these two programs are essentially more than 50 individualized programs around the country, in which CMS works with each State and Territory to administer a program that meets the particular health care needs and level of benefits established by that jurisdiction, within Federal guidelines. The measurement of nationwide improper payments is therefore correspondingly difficult, and efforts to reduce improper payments in Medicaid and CHIP require cooperation from both the Federal government and individual States.

In 2005, CMS developed the Payment Error Rate Measurement (PERM) program to review improper payments in three components of Medicaid and CHIP: Fee-for-Service (FFS) claims, managed care claims, and eligibility cases. The PERM program uses a rolling 17-State three-year rotation for measuring improper payments, so that CMS measures each State once every three years. In addition, starting in FY 2010 with Medicaid, a three-year weighted average national rate is also produced. As required by the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, CMS published a final regulation in August 2010 (CMS -6150-F) that to help ensure error measurements are as meaningful and accurate as possible, while avoiding unnecessary burdens on States and providers.⁴

The FY 2010 Medicaid three-year weighted average national error rate (which includes data reported in 2008 through 2010) is 9.4 percent. Though causes of improper payments vary from State to State, PERM helps CMS identify trends and common errors across States. The vast majority of Medicaid errors are due to insufficient documentation to support the services provided and cases reviewed for eligibility that were either not eligible or their eligibility status could not be determined.

While the PERM process identifies and classifies types of errors, States are critical partners in CMS's efforts to reduce Medicaid improper payments. States are required to submit Corrective Action Plans (CAPs) 90 days after they are notified by CMS of their error rates. While CAPs vary from State to State, the results of the recent 2010 reporting period suggest that many States intend to target provider education to improve the responsiveness of submission of requested documentation and reduce errors in State eligibility processes and procedures.

⁴ CHIPRA prohibits CMS from calculating or publishing any national or State-specific error rates for CHIP until six months after the new final rule for PERM is in effect. As a result, CMS recently resumed CHIP measurement and will report CHIP improper payments in 2012.

Recent improvements to the PERM program and the corrective actions process should lead to more effective State CAPs and decreases in States' improper payments. CMS plays an important role by overseeing CAPs, as well as collecting and disseminating best practices to allow States to learn from others' successful efforts to reduce improper payments. CMS has developed and shared a model CAP example to guide State efforts and also conducts quarterly "best practice" calls, during which State leadership share their corrective action success stories with other States. States have successfully implemented a number of corrective actions that have reduced insufficient documentation and eligibility errors. Some States have conducted education and outreach sessions prior to the start of the PERM measurement to educate providers on documentation requirements and the consequences of non-compliance and are targeting specific provider types that in the past have been difficult to reach or non-compliant.

Recovery Audit Program in Medicaid:

To implement the expansion of the Recovery Audit program to Medicaid included in the Affordable Care Act, CMS issued a State Medicaid Director letter in October 2010 that offered initial guidance on the implementation of the Medicaid Recovery Audit requirements and also published a Notice of Proposed Rulemaking on November 10, 2010. To date, CMS has provided significant technical assistance to States through all-State calls and webinars and has begun the coordination with States that have Recovery Audit contracts in place, as required by the statute. Further, on February 17, 2011, CMS launched a Medicaid Recovery Audit Contractor At-A-Glance web page on the CMS website.⁵ The page provides basic information to the public and interested stakeholders about each State's Recovery Audit program.

Lessons Learned from the Private Sector

CMS is also examining the techniques used by insurance companies and other private sector entities to better inform our efforts to combat improper payments. Though our Federal programs differ from private insurance in some significant ways, CMS is eager to learn from successful private sector efforts to reduce errors and improper payments. In addition to harnessing improved data analysis and predictive modeling to fight fraud, CMS is using these approaches to identify areas to target with additional medical review. As part of this effort, CMS will evaluate the accuracy of commercial products and whether these products are feasible to implement and could reduce improper payments.

⁵ <https://www.cms.gov/medicaidraacs/home.aspx>

CMS is also examining other tools, such as prior authorization for certain services. Private sector insurers and other Government healthcare programs use this tool successfully to ensure upfront approval for certain high cost, non-emergency services. In addition, CMS is pursuing ways to link claims data and provider data within and across our various healthcare programs. The ability to identify trends sooner and link data is an important improvement to preventing improper payments. Additionally, CMS is exploring way to leverage existing compliance programs within the provider community to inform and educate providers about payment vulnerabilities. Getting providers actively involved in the identification and prevention process will keep improper payments from occurring in the first place.

Conclusion

CMS' number one goal is to ensure our Medicare, Medicaid, and CHIP beneficiaries receive the right services, at the right time, in appropriate levels of care and at the right price. While CMS has made progress in reducing improper payments, we acknowledge that more work remains. Reducing waste and errors in our programs will allow us to target taxpayer funds to provide health care services for our beneficiaries.

I am confident that the systems controls and ongoing corrective actions that CMS is undertaking across our programs will result in continued reductions in improper payments. I look forward to working with the Subcommittee to ensure that CMS has the necessary administrative resources and tools to continue our efforts to carry out this important work.

Mr. REHBERG. Boy, right on the nose. Good job.
 Ms. TAYLOR. Thanks. [Laughter.]

IMPROPER PAYMENTS—PELL GRANTS

Mr. REHBERG. Mr. Skelly. We normally go in order of title within the bill.

Mr. SKELLY. Thank you, Mr. Chairman and Ms. DeLauro, Members of the subcommittee.

With one exception, Department of Education programs have been below the Improper Payment Act threshold for reports on susceptibility to significant improper payments. The threshold is 2.5 percent. The one exception at the Department has been the Pell grant program.

In Pell, we estimate that about 2 percent of the recipients get overpayments, and 1 percent get underpayments. The combination 3.12 percent is above the 2.5 percent threshold.

Even though our other programs fall below the threshold for reports on improper payments, we still subject them to risk assessments and monitoring, especially the student loan programs. But Pell is the program that has the required reports under the Improper Payment Act.

Pell grants provide need-based aid to low-income undergraduates. The estimated improper payment of just over 3 percent results primarily from incorrectly reported applicant income data. Our risk assessments found that this incorrect student and parent self-reported financial information on the Free Application for Federal Student Aid, or FAFSA form, is what is causing the problem.

The FAFSA requires applicants to provide nearly two dozen pieces of information, many of which they also provide to the Internal Revenue Service on their Federal tax forms. And sometimes, they get it wrong.

As a check on what applicants report, the Department requires postsecondary institutions to verify key items on up to 30 percent of their students' FAFSA forms. Students selected for verification must provide copies of their or their parents' tax returns and supporting documentation to financial aid administrators at the colleges.

The financial aid administrator then manually compares the applicant's tax return data against the information provided on the applicant's FAFSA. This lengthy process is burdensome to students, families, and schools, and it fails to eliminate inappropriate Pell payments based on inaccurate income information.

In 2009, our Office of Federal Student Aid implemented a voluntary process where applicants can access information from their past tax returns electronically through an automated process with IRS. They can then put that information into the online FAFSA form. In the current 2010–11 academic year, 500,000 applicants have used the automated process so far. It is voluntary.

But most still enter their FAFSA data manually. It is about 20 million, 21 million students who apply for Pell each year.

Starting in the 2012–13 academic year, applicants will be directed to use the IRS data retrieval process to populate their FAFSA automatically. They can just press a button. It would be real-time recovery of that information from IRS into their tax re-

turn. They won't have to do anything more. It still will be voluntary. Applicants who file their taxes after they have filed their FAFSA will be reminded to update their FAFSAs with IRS data.

Finally, most applicants who are selected for verification by colleges will be required to correct their FAFSA with IRS data or provide their school with an IRS-approved transcript of their tax data, instead of simply supplying a copy of their tax return.

Using IRS data to pre-populate the aid application and enhance aid verification procedures for financial aid administrators will simplify the FAFSA application for students, but it will also reduce the improper payments for Pell by an estimated \$340 million in 2012. And we estimate by \$4 billion over the next 10 years.

That is the highlights of Department of Education improper payments, and I will submit the rest of the statement for the record.

[The prepared statement of Thomas P. Skelly, Director of Budget Service and Acting Chief Financial Officer, follows:]

Department of Education

Statement by

**Thomas P. Skelly
Director, Budget Service and Acting Chief Financial Officer**

on

Improper Payments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss Improper Payment Prevention.

With one exception, all Department of Education programs have consistently been below the Improper Payment Information Act functional thresholds for susceptibility to “significant improper payments” (2.5 percent and \$10 million) or “significant erroneous payments.” The one exception has been the Pell Grant program.

I would like to focus today on how the Department has addressed the Pell Grant deficiencies and the steps taken and actions planned to comply with the Improper Payment Information Act of 2002 and the amendments enacted as the Improper Payments Elimination and Recovery Act of 2010. I can also provide for the record how we carried out our annual review and assessments of all programs and activities to identify those susceptible to significant improper payments as part of our internal control process. Even though the other programs fall below the Act’s functional threshold, we still subject them to on-going risk assessments, monitoring and validation to limit improper payments. I will also discuss the recovery procedure we are undertaking to get back any improper payments.

Pell Grant Payments and Income Data

As reported in our 2010 Agency Financial Report (AFR), the Pell Grant program is the Department’s only program that exceeds the 2.5 percent and \$10 million threshold for susceptibility to “significant improper payments.” Pell Grants provide need-based grants to low-income undergraduate and certain post-baccalaureate students to promote access to postsecondary education. The program has an estimated improper payment rate of just over 3 percent, resulting from incorrectly reported recipient income. This 3 percent amounts to just over \$1 billion in estimated total improper payments in 2010. Of these, approximately \$648 million (2.01 percent) were overpayments and approximately \$361 million (1.12 percent) were in underpayments, yielding \$287 million (0.89 percent) in net overpayments. Our risk assessments found that incorrect student and parent self-reported financial income on the Free Application for Federal Student Aid (FAFSA) was

the most significant root cause of potential Pell improper payments. The FAFSA requires applicants to provide nearly two dozen pieces of information, many of which they also provide to the Internal Revenue Service (IRS) on their Federal tax forms.

The Department requires postsecondary educational institutions to verify key items on up to 30 percent of their students' FAFSA forms, focusing on those individuals that qualify for Pell Grants. Students selected for verification must provide copies of their (and their parents') tax returns and supporting documentation to college financial aid administrators. The financial aid administrator then manually compares the applicant's tax return data against the information provided by the applicant on the FAFSA. This lengthy process is burdensome to students, families, and schools and fails to eliminate inappropriate Pell payments based on inaccurate income information.

In 2009, our office of Federal Student Aid implemented a voluntary process where applicants can access information from their past tax returns electronically (through an automated process with the IRS) and import that information directly into the online FAFSA form. In the current (2010-11) academic year, half a million applicants have used the automated process so far, but most still enter the data manually.

Beginning with the 2011-2012 academic year, the IRS automated data retrieval process will be enhanced to increase usage. The tool was made available on January 30, 2011, for use during the peak of the FAFSA application cycle. Additional improvements will make data available to students filing corrections and will include improvements in the IRS tax filer authentication process. These enhancements will improve the administration and integrity of the Pell Grant program by ensuring that applicants receive the correct Pell Grant for which they are eligible and that Pell Grants go to the neediest applicants.

Starting in the 2012-13 academic year, applicants will be directed to use the IRS data retrieval process to populate the FAFSA automatically with required IRS items once their tax return has been filed. Applicants who file their taxes after they have filed their FAFSA will be reminded to update their FAFSAs with IRS data. Finally, most applicants who are selected for verification by colleges will be required to correct their FAFSA with IRS data or provide their school with an IRS-approved transcript of their tax data instead of simply supplying a copy of their tax return. Using IRS data to pre-populate the aid application and enhance aid verification procedures for financial aid administrators will reduce the improper payments for Pell by an estimated \$340 million in 2012 alone, and an estimated \$4 billion over the next 10 years.

Programs Other than Pell Grants and Recovery Efforts

Beyond the on-going internal control reviews conducted under the Federal Managers Financial Integrity Act (FMFIA) and OMB Circular A-123, a primary tool that the Department has used to identify and prevent improper payments in non-Federal Student Aid (FSA) programs have been recovery audits and risk assessments. For example, from 2004 through 2006, the Department retained an independent certified

public accounting (CPA) firm to conduct recovery audits for contracts and purchase orders on a contingency fee basis. Over the course of the 3-year recovery audit contract period, ED recovered a total of \$112,506, which is less than one hundredth of one percent (.0025 percent) of all contract and purchase order payments at ED. Due to the fact that very few improper payments were actually identified and the insignificant amount that the firm recovered, ED decided not to continue the work for 2007. The Department has continued to implement a contract recovery auditing initiative in-house since 2007.

Also, since 2002 ED has used a statistically valid methodology to assess the risk of improper payments uniformly for all ED non-FSA grant programs. This work is completed through an interagency agreement with the Department of Energy's Oak Ridge National Laboratory. For 2010, these assessments included a risk assessment of the Elementary and Secondary Education Act of 1965, Title I Grants to Local Educational Agencies (Grants to LEAs) formula program. In 2010, the Grants to LEAs program appropriation was \$14.5 billion, and the Oak Ridge risk assessment yielded an estimated improper payment rate of 0.04 percent, or \$4.7 million (.04 percent of total funds obligated and drawn). This finding confirms previously reported data indicating that the risk of improper payments for most education programs is extremely low.

Within FSA, the office responsible for management and oversight of the student loans programs, funds have been committed for a new support contract to respond to new improper payment related requirements. This work will include processes and strategies for improper payment reporting, identification, reduction, and recovery for all student aid programs including Pell grants and student loans.

OMB recently established quarterly reporting requirements for Federal agencies on "high-dollar overpayments" in response to Executive Order 13520 on Reducing Improper Payments, issued in November 2009. The Department has submitted four such quarterly reports. These reports included a total of four high-dollar overpayments. These overpayments were attributable to bank account routing errors, a processing error in connection with a new servicing process implementation, or duplicate payments. All funds have been recovered.

More details on our work on Improper Payments can be found in our Annual Financial Report on the web: <http://www2.ed.gov/about/reports/annual/2010report/5a-improper-payments.pdf>

Future Activities

Not unlike the other agencies we have heard from today, the Department is currently considering a number of new strategies and tools to satisfy the expanded improper payment requirements and to prevent improper payments before they occur. For example, the Department is exploring the cost-effectiveness of data mining and hunting software that could be used to detect anomalies and potential issues in agency financial data prior to obligation, and the creation of a team to follow-up when anomalies

are identified. This new tool would be used to examine payment records and identify issues such as duplicate payments, payments for services not rendered, overpayments, and fictitious vendors. The agency is also investigating root causes of improper payments when they do occur and developing corrective action plans to address any systemic weaknesses. This software is one example of a tool that would enable the Department to shift from traditional back-end detective activities to front-end prevention. The Department is also considering the cost-effectiveness of implementing an expanded payment recovery audit program, the scope of which would include both Department contracts and grant programs. If such a program proves to be cost-effective, the Department would hire a private firm on a contingency basis to pursue recovery audits in many ED contracts and grant programs.

Thank you, Mr. Chairman and Members of the Subcommittee, for your attention to this important issue, and I would be happy to answer any questions.

Thomas P. Skelly**Biography**

Thomas P. Skelly has been the Acting Chief Financial Officer since October 2008. In this role, he provides accurate and timely accounting and financial management information about the Department of Education and its programs, coordinates internal controls and audit follow up, and manages contracts and acquisitions. The Department's financial statements have received nine consecutive clean opinions and recognition for excellence in financial reporting from the Association of Government Accountants. He also served as the acting CFO from 1999-2001.

Mr. Skelly also serves as the Director of the Budget Service in the U.S. Department of Education. He is responsible for the Department's \$77 billion annual budget for 150 education programs and 4,200 employees as well as mandatory appropriations that funded over \$120 billion in student loans in 2010.

A Federal employee since 1974 and member of the career Senior Executive Service, Mr. Skelly has earned five Presidential Rank Awards including the Distinguished Award in 1992 and 2003 and the Meritorious Award in 1989, 2000, and 2007. Since 2008, he has also served as chair of the Governmentwide Budget Officers Advisory Council. Since 2007, under his leadership, the Department has been the Managing Partner for the interagency Budget Formulation and Execution Line of Business, which is a cross-agency effort to improve Federal budgeting tools and systems.

Mr. Skelly received his bachelor's degree in government from the College of William and Mary and his master's degree in government from the University of Virginia.

Mr. REHBERG. Thank you very much.

Ms. Colvin.

Ms. COLVIN. Thank you.

Chairman Rehberg, Ranking Member DeLauro, and Members of the subcommittee, thank you for inviting me to discuss the Social Security Administration's efforts to reduce improper payments. I want to highlight several points regarding our progress.

We pay nearly \$60 billion of benefits to almost 60 million people each month. As the agency's senior accountable official for improper payments, let me assure you that we are committed to making those payments timely and accurately.

In fact, there is an adage in the agency, "The right check to the right person at the right time." Minimizing improper payments is so important that we made preserving the public's trust in our programs a strategic goal. However, inadequate resources undermine our ability to achieve this goal.

For many years, Congress appropriated less than the President's budget, and we could no longer fulfill many key responsibilities. Hearing backlogs rose dramatically, and program integrity work declined significantly. Since 2007, we have been reversing these trends. Even as we have had to deal with surging workloads, we have steadily increased our program integrity efforts.

As a result, I am happy to report that in fiscal year 2009, 99.63 percent of all OSDI benefits were free of overpayment. The Supplemental Security Income, or SSI, program is more complex, and our overpayment accuracy rate reflects that complexity. Still, we have improved. In fiscal year 2008 our SSI overpayment accuracy rate was 89.7 percent. In fiscal year 2009, we raised it to 91.6 percent, a positive trend.

Our complex programs require knowledgeable and experienced employees to analyze cases, make decisions, and implement changes. Our employees are our best defense against improper payments, and all of the efforts I discuss today depend on having an adequate number of well-trained staff to fulfill our responsibilities.

It is important to understand that these employees are the same employees who review and decide on the initial applications for benefits and handle all of our other responsibilities. We balance serving the public with meeting our stewardship duties to the best of our ability, but with a record number of people requesting our services, we simply do not have enough employees to handle all of our work on a timely basis.

Operating under a continuing resolution only makes this situation worse. Our most valuable tools to maintaining the integrity of our programs are continuing disability reviews, or CDRs, and SSI redeterminations. We invested \$758,000,000 toward these efforts in 2010, and we propose to invest even more in fiscal years 2011 and 2012.

We estimate that every dollar invested in CDRs yields at least \$10 in lifetime program savings, including savings accruing to Medicare and Medicaid. Every dollar spent on SSI redetermination yields more than \$7 in program savings over 10 years, including savings accruing to Medicaid.

We use technology to help us prevent and detect improper payments. For example, unreported financial accounts and wages are

the major causes of improper payments in the SSI program. Therefore, we have developed a process called Access to Financial Institutions, or AFI, to electronically identify financial accounts of SSI applicants and recipients. We plan to complete AFI rollout by the end of the fiscal year. After 2013, we project that AFI could yield a \$20 return for every \$1 invested. In the past, SSI recipients had to either fax, mail, or bring their monthly wage reports to our offices. We made this process more efficient and user friendly by implementing an automated wage reporting system for SSI recipients to report wages over the telephone using either voice recognition or touch-tone software.

Our programs demand stewardship that is worthy of the promise of economic security. We are firmly committed to effectively reducing improper payments and to following up with appropriate enforcement and recovery actions.

In terms of enforcement, I want to highlight the agency's close working relationship with our Inspector General. When we receive allegations of fraud, we work with the IG's office to address these cases.

In fact, one of our most successful efforts against disability fraud is our Cooperative Disability Investigation, or CDI, units, the task forces that link our IG and local law enforcement with Federal and State workers who handle disability cases. These units are highly successful at detecting fraud.

The continued success of our programs is directly linked to the public's trust in them. Properly managing our resources and program dollars is critical to sustaining that trust. Equally important to our success is adequate and sustained funding to carry out our work.

Full funding of the President's 2011 and 2012 budgets will allow us to increase our program integrity activities and keep up with the public's demand for our services. For this reason, I am asking you to support this critical funding.

I am happy to answer any of your questions.

[The information follows:]



HEARING BEFORE

**COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES**

MARCH 17, 2011

**STATEMENT
OF
CAROLYN COLVIN
DEPUTY COMMISSIONER OF SOCIAL SECURITY**

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee, thank you for inviting me to discuss the Social Security Administration's (SSA) activities to prevent improper payments. I am SSA's Deputy Commissioner and the Agency Senior Accountable Official for improper payments.

Each month we pay nearly \$60 billion in benefits to almost 60 million beneficiaries, and we are committed to making those payments timely and accurately. In fact, there is an adage in the agency—the right check to the right person at the right time. We know that we must protect taxpayer dollars by minimizing improper payments, which is why we made preserving the public's trust in our programs a strategic goal. A lack of adequate resources undermines our ability to achieve this goal.

Between 1992 and 2007, Congress appropriated less than the President's budget, and we could no longer fulfill many key responsibilities. Hearing backlogs rose dramatically, and program integrity work declined significantly. Since 2007, we have been reversing these trends. With necessary investments, we have hired employees who are gradually gaining the experience needed to handle our complex work. Even as we have had to deal with surging workloads, we have steadily increased our program integrity efforts.

As a result, I am happy to report that in FY 2009, 99.63 percent of all Old Age, Survivors, and Disability Insurance (OASDI) payments were free of an overpayment. While this was a slight decrease from the FY 2008 accuracy rate of 99.66 percent, it still shows that the vast majority of OASDI payments were free of an overpayment. The Supplemental Security Income program is more complex. Benefits can change each month due to income and resource fluctuations. Our overpayment accuracy rate reflects that complexity. Still, we have improved. In FY 2009, the SSI accuracy rate related to overpayments was 91.6 percent, a statistically significant increase over the FY 2008 rate of 89.7 percent.

Efforts to prevent, detect, and collect improper payments are complex, and require knowledgeable employees to analyze the cases and make decisions. Our employees are our best defense against improper payments, and all of the efforts I discuss today are predicated on having an adequate number of well-trained staff to complete this work. It is important to understand that these employees are the same employees who also decide applications for benefits and handle all of our other responsibilities. We balance serving the public with meeting our stewardship duties the best we can, but with a record number of people requesting our services, we simply do not have enough employees to handle all of our work on a timely basis. A continuing resolution only exacerbates this situation. If we remain under a continuing resolution for the entire year, we will lose about 3,500 Federal and State employees. These employees are often the most knowledgeable and experienced employees, which is particularly critical to the success of our difficult program integrity workloads.

Our most valuable tools to maintain the integrity of our programs and avoid improper payments are continuing disability reviews (CDRs) and Supplemental Security Income (SSI) redeterminations. We invested \$758 million toward these efforts in FY 2010, and we propose to invest even more in FYs 2011 and 2012. We have delivered significant returns for every dollar invested in our program integrity efforts.

CDRs are periodic reevaluations used to determine if beneficiaries continue to meet the Social Security Act's medical criteria to receive benefits. We estimate that every dollar spent on CDRs yields at least \$10 in lifetime program savings, including savings accruing to Medicare and Medicaid. In the past, we had to limit the number of CDRs we completed due to inadequate funding. However, recent investments have allowed us to increase the volume of this work. With full funding, we estimate we would complete 360,000 full medical CDRs in FY 2011 and 592,000 in FY 2012.

For SSI redeterminations, we review factors in individual cases that affect eligibility for benefits or payment amounts. We estimate that every dollar spent on SSI redeterminations yields

more than \$7 in program savings over 10 years, including savings accruing to Medicaid. Since 2007, we have also significantly increased the number of SSI redeterminations, which has resulted in the increase in SSI payment accuracy. With full funding, we estimate that we would complete 2.4 million redeterminations in FY 2011, and 2.6 million in FY 2012.

Where possible, we are using technology to help us prevent and detect improper payments. For example, we know that unreported financial accounts and wages are the major causes of improper payments in the SSI program. Therefore, we have developed and are implementing an electronic process that allows us to quickly and easily identify assets of SSI applicants and recipients that exceed statutory limits. This process is called Access to Financial Institutions (AFI), and we use it in the SSI program to electronically identify financial accounts. We currently use AFI in 25 States; these States represent 80 percent of all SSI recipients. We intend to implement AFI in all remaining States by the end of the year. By 2013, we project approximately \$900 million in lifetime program savings for each year we use the AFI, which will potentially yield a \$20 return in detected and prevented overpayments for every dollar invested.

With regard to changes in wages, 86 percent of improper payments in FY 2009 occurred because recipients failed to timely report changes in their earnings or changes in their spouses' or parents' earnings that might affect their monthly payment. In the past, SSI recipients had to either fax, mail, or bring their monthly wage reports to our field offices. We have implemented an automated wage reporting system with a toll-free telephone number that allows recipients and their payees to report wages over the telephone using either voice-recognition or touch-tone software. This system automatically enters the wage data into the SSI system. The accuracy of wages reported using this system is very high--92.2 percent--as compared to the 75.5 percent accuracy of wages reported through direct contact with SSA employees.

We also use electronic data exchanges with other Federal, State and local agencies to prevent improper payments. Electronic data exchanges quickly provide us with information we need to change the amount of benefits we pay or to stop paying benefits altogether. A prime example is the comprehensive set of matches that we have with jails and prisons that allow us to

quickly suspend benefits to prisoners. Through numerous agreements with Federal and State agencies, we receive data to support our own programs and provide data to support State and other Federal agencies' programs. The Government Accountability Office has reported that the data that we provide are essential to helping our State and Federal partners streamline operations, reduce costs, and eliminate overpayments and fraud.

Congress has passed complex laws to encourage disability beneficiaries to return to work. While we strongly share the goal of providing options that assist beneficiaries in returning to work, these work incentives have proven difficult for our beneficiaries to understand and for our employees to administer. Payment errors attributed to disabled beneficiaries returning to work account for nearly half of all OASDI overpayment error dollars. Many of these overpayments occur because beneficiaries do not know when to report their work and earnings or understand the ramifications of work on their Disability Insurance (DI) benefits. When we do receive timely reports, we must undertake complex, labor-intensive development to determine if payments should be stopped. To address this issue, the FY 2012 President's budget included the Work Incentives Simplification Pilot (WISP) legislative proposal. WISP is intended to study ways to address these concerns by replacing complex rules with a clear, simple, unified process that is both easier to understand and easier to administer. Under the proposed pilot, work would no longer be a reason for terminating DI benefits. We would continue to pay cash benefits for any month in which earnings were below our established threshold, but would suspend benefits for any month in which earnings were above the threshold. We will evaluate if this pilot simplification reduces the number of improper payments due to work, and allows us to redirect those administrative resources to other areas.

The FY 2012 President's budget includes several other legislative proposals that will help prevent or detect improper payments. One proposal would require Federal wage reporting on a quarterly, rather than annual, basis. More frequent wage reporting would provide more timely information for federal means-tested programs, including SSI, and could potentially help identify DI beneficiaries who are working but not reporting their wages.

Other major causes of OASDI overpayments are the Windfall Elimination Provision (WEP) and Government Pension Offset (GPO). We have a legislative proposal that would require State and local government pension payers to identify and report on pensions paid to prior government employees based on work not covered by Social Security. This improved reporting mechanism would enhance our ability to determine, in a timely manner, whether a beneficiary should be subject to a reduction in benefits because of the WEP or GPO provisions.

The final legislative proposal would reduce improper payments related to workers compensation (WC) and public disability benefits (PDB). This proposal would require State and local governments and private insurers that administer WC and PDB plans to provide us with information on those payments. Requiring plan administrators to provide us with prompt payment information would reduce improper payments that result from beneficiaries not reporting WC/PDB changes timely.

In November 2009, President Obama issued Executive Order 13520, which focuses on reducing improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in Federal programs and calls on Federal agencies to provide transparency and allow for public scrutiny of efforts to address improper payments. We understand the need for addressing improper payments and promoting transparency, so we developed a website to provide the public with information about the amounts and causes of improper payments in our programs and explain our efforts to address them¹. The information on this site is continually updated and expanded and is, in effect, the scorecard of how we are doing toward eliminating improper payments.

Before I close, I want to commend our hardworking, dedicated employees who, as I said, are the key to maintaining the American public's trust in our programs. They have done a remarkable job. Our employees deserve our full support as they work diligently to provide responsible service and increase their productivity despite record-setting increases in our workloads. Since 2007, our employees have averaged nearly a four percent annual increase in

¹ <http://www.socialsecurity.gov/improperpayments>

productivity, fueled by hard work, better business processes, and smart investments in information technology. Few, if any, organizations can boast productivity gains of this magnitude.

The programs we administer demand stewardship that is worthy of their promise of economic security. We are firmly committed to sound management practices to prevent improper payments and to follow up with appropriate enforcement and recovery actions. The continued success of our programs is inextricably linked to the public's trust in them. Properly managing our resources and program dollars is critical to that success. Equally important to our success is Congress providing us with adequate and sustained funding to carry out our work. Full funding under the President's FY 2011 and 2012 budgets will allow us to increase our program integrity activities and to keep up with the public's demand for our service. For this reason, I ask that you support the critical funding that President Obama has requested for us.

BEST PRACTICES

Mr. REHBERG. Great. Thank you very much.

And in recognition of the time that is remaining in the hearing, I am going to shorten the questions on the part of the Members to 3 minutes. And hopefully, we will have time for maybe two rounds, but I doubt it. So we will limit ourselves to 3 minutes.

Ms. Taylor, you essentially mentioned private sector ideas. Could you expand upon some of the best practices? And then I will ask real quickly the rest of you, do you have something similar going on within your agencies for best practices that you can learn from banks and insurance companies and credit card companies and such?

Ms. TAYLOR. Sure. I would be happy to. And so, one of the efforts we currently have ongoing right now is encouraging providers to use electronic health records. Since documentation seems to be the bulk of our errors, as well as coding, we believe that electronic health records will help ensure that providers have in-house tools to help them code claims correctly, as well as understand our payment policies, so that they are billing correctly for the services that Medicare pays for. That is one.

We are also looking at private sector edits that would be able to be used up front in our claims processing systems to reject or detect erroneous claims so that we can stop them before they are being paid.

We are also looking at some private sector tools, such as buyer authorization, which is used by private insurers, as well as other Government insurance companies such as TRICARE. We believe that that also helps ensure that we are working with the private insurer.

Mr. REHBERG. Anybody else?

Ms. GILBERT. I might mention that we are working with the Office of Management and Budget and the Partnership Fund that was mentioned and that Ranking Member DeLauro discussed to explore and possibly pilot the use of banking payroll deposit information as a more real-time data source to determine that somebody has gone to work.

So that is one of the areas.

Mr. REHBERG. Okay.

Ms. COLVIN. We are certainly able now, with the AFI program, to determine whether or not individuals have resources in banks that they have not reported. We believe that moving to electronic services will reduce the number of improper payments. With our SSI wage reporting, as well as the data exchanges that we use to check our records against other records, we can see individuals who are working but have not reported their wages. So we think that we are doing much of what the private industry would do.

BEST PRACTICES TO REDUCE IMPROPER PAYMENTS AT ED

Mr. SKELLY. Two items. One is to contract for recovery audits, where the contractors only get paid if they recover money. So there is an incentive. The other thing is data mining or just using better analysis tools to figure out where there might be improper payments.

Mr. REHBERG. And you all have the authority for data sharing now? You don't need any additional authorization from Congress for data sharing?

Mr. SKELLY. We in the Department have that authority. If we were to, for example, require students to use their IRS data on the FAFSA form, we would need a different law for that. But we think within the current law, we can do it on a voluntary basis.

Mr. REHBERG. And you all do as well? Okay, great.

Thank you very much.

Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Ms. Taylor, I am going to try to do the same thing the chairman did here. The CMS program in H.R. 1 was cut back by about 13 percent below 2010, by \$485,000,000. Most of that appropriation is used to process claims for Medicare payments, as I understand it. I think that is right? Yes?

Ms. TAYLOR. That is my understanding. But it is not necessarily my area of expertise. So that is why I am—

Ms. DELAURO. Okay. Let me just say in terms of the effect of that cut on your effort to control fraud, reduce improper payments, with the 13 percent below last year's level, how much review and fraud detection would CMS actually be able to do?

Ms. Colvin, despite the amount of money we have been able to provide in the past few years as resources for review or redeterminations—you still have a backlog. We know what the size of that is. If we were able to get you more funds, would it produce net results or benefits for the Treasury and to the Social Security Trust Fund?

And you also are dealing with a backlog of claims for disability benefits. What does this mean in terms of cutting back \$500,000,000 from the IT and telecommunications investment fund? That could take some pressure off your operating budget.

So, Ms. Taylor, let me ask you to move first on what this 13 percent might mean—this is about the improper payments. Also I want to say I appreciate all of you talking about the fact that there is flawed data, but it is not always flawed. There are ways in which we can make this better by getting a better system that would allow for coding, et cetera, adequately.

Ms. TAYLOR. Correct. So one of the things that it would affect would be our ability to expand recovery audits into the managed care and prescription drug programs, as well as to Medicaid. And I think you have heard from a fee-for-service program being able to bring up recovery auditing, in the year and a half that we have had it implemented, we have already recovered over \$250,000,000 back to the trust fund. So that is hugely important.

It also does impede our ability to do some of the systems initiatives that we need to do, such as integrate our databases, be able to develop integrated data repositories, to be able to do those analytics of claims to identify places where fraud and abuse is occurring, as well as improper payments.

Ms. DELAURO. Ms. Colvin, you have to be quick. My time is going by.

Ms. COLVIN. Yes, let me just say I want to thank Congress for the resources they have made available since 2007 in the area of

program integrity. Our program integrity activities directly tie into our accuracy rate. And since 2007 when we got the funding from Congress and the President, you will note that our accuracy rate has gone up substantially.

Doing "redets" is the most effective tool we have to be able to reduce the improper payments. If our funds are reduced, then we are looking at being able to continue to do CDRs at basically the level that we are doing now. We had hoped that we would be able to increase the number of redets that we would be doing in 2011 and 2012, which would have a direct correlation to the reduction of improper payments.

Ms. DELAURO. Thank you very much.

Mr. REHBERG. Please submit it for the record if you have more information.

Ms. DELAURO. Please, yes.

[The information follows:]

As I said in my testimony, we have several important program integrity initiatives that provide net benefits to the Social Security's Trust Funds and to the General Funds. For example, we estimate that every dollar spent on CDRs yields at least \$10 in lifetime program savings, including savings accruing to Medicare and Medicaid. Every dollar spent on SSI redeterminations yields more than \$7 in program savings over 10 years, including savings accruing to Medicaid. Once fully implemented, our AFI system has the potential to return \$20 in total lifetime program savings for every dollar spent on AFI. With full funding of the FYs 2011 and 2012 President's Budgets, we would be able to complete significantly more of our cost-effective program integrity work.

Our technology spending is essential not only to maintain our infrastructure, but also to continue improving productivity and achieving our performance targets. As evidence of the significant savings we have achieved by investing in information technology, we had one employee for every 468 beneficiaries in FY 1980, while in FY 2010 we only had one employee for every 900 beneficiaries.

Without our IT investments, we could not have improved our productivity by about 4 percent a year for each year since 2007. These increases are largely attributable to our automation efforts. For example, without technology investments:

- We would not have been able to move from an entirely paper-based disability process to an electronic one that allows us to move cases around the country and relieve backlogged areas.
- We would not have been able to develop and offer iClaim, our internet application for benefits.
- We would not be using AFI – one of our most useful program integrity tools – which allows us to quickly detect overpayments due to excess financial resources.

Our IT funding will position us for the future through projects that include installing a more modern telephone system that will help us to balance calls to our field office and 800 number, developing a common disability case processing system to replace the patchwork of 54 separate systems we have now, and expanding video service technology to provide better service to many Americans. In this modern era, we are completely dependent on information technology. Not only do we need stable and robust systems to handle our day-to-day work, technology makes us more efficient.

Mr. REHBERG. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman.

Glad to be here for a change. Finally found the room. [Laughter]. Let me ask you, and I am actually here to learn more than I am anything else. So I don't have too many intelligent questions to ask you. But one thing that we in Congress have a tendency to think that when we look at whenever we want to save money and offset, we go to waste, fraud, and abuse because that is an easy thing to go after.

Same thing with tax gap. We want to raise money. It is what people should be paying in taxes. Often those numbers are over-inflated and stuff, and you mentioned, Ms. Taylor, in your comments that most of these are not fraudulent payments. They are made services with no documentation, services with insufficient documentation, incorrectly coded claims.

What happens, those are improper payments. If we find those as improper payments, that doesn't mean we necessarily recover the money, does it?

Ms. TAYLOR. What we recover is the actual overpayment we identify. So these improper payment rates that Medicare and Medicaid have are estimated overpayments. So we identify actual overpayments. We do collect that money, and we actually have a 90 percent collection rate on those actual overpayments.

This year, although the Medicare program had about \$32,000,000,000 in estimated improper payments, the actual improper payments were about \$5,000,000. So we have a very good record of collecting the actual overpayments we identify. But, yes, those do result in overpayments because we don't have the records or the documentation to support the payment of services.

Mr. SIMPSON. But if we had the correct documentation and stuff, it wouldn't be an overpayment?

Ms. TAYLOR. Correct.

Mr. SIMPSON. If they coded it correctly, as you see it, and having been involved in the medical field, to some degree, coding something is sometimes harder than you think. Because oftentimes, I have had the experience of doing a procedure on someone and then trying to find a code that fits it.

Ms. TAYLOR. Correct. And what we do is we work with the provider. So if we identify an overpayment, we tell them what documentation is missing. Sometimes they just can't find it. They don't have it.

But we cannot allow the payment because, technically, there isn't the log there to show that they did see the patient or that the patient did have the clinical condition as described in the code. But we do try and work with them to make sure they understand what is creating the improper payment, give them an opportunity to provide the documentation. If they still can't, we do have to collect the money.

Mr. SIMPSON. Well, thank you. Thanks for the work you do. I know it is a difficult task to do, and all of us want to get at improper payments and especially that fraud that occurs out there. And what we can do to address that certainly will help with the budget and the overall situation we are facing.

So thanks for what you do.

Mr. REHBERG. Mrs. Lowey.

Mrs. LOWEY. We all appreciate what you are doing because we are all looking for money so we can spend it. [Laughter.]

For good things, good things. To help cure people. And frankly, I have been working on this issue for so many years, and I don't even know if all the recommendations regarding computers that talk to each other have been put in place.

How long, Rosa, have we been working on that? It is astonishing because it seems to me if you have the appropriate technology, you could identify more easily some of these issues. That is why I wonder, Ms. Taylor, as I mentioned to Mr. Levinson, last week, Secretary Sebelius testified before the subcommittee that the proposed 10-year investment in CMS program integrity in the fiscal year 2012 budget request will yield \$10,300,000,000 in Medicare and Medicaid savings.

Can you tell me more clearly how did the administration arrive at the \$581,000,000 discretionary funding proposal for fiscal year 2012 to improve CMS program integrity?

Ms. TAYLOR. I can tell you how we came up with portions of that \$500,000,000. I can speak for the CMS pieces of that. It is, in fact, to help some of our systems be able to talk to each other.

We have—

Mrs. LOWEY. Are they talking to each other now?

Ms. TAYLOR. Well, we have shared systems.

Mrs. LOWEY. I am afraid to hear the answer. Rosa, we have been sitting here next to each other for 20 years. Yes?

Ms. TAYLOR. We have shared systems that manage our inpatient and Part A claims. We have shared system that manages our Part B physician and outpatient claims. And we have shared system that manages our DME, durable equipment, such as wheelchairs, claims. And it is very difficult to get these old systems to be able to talk to each other.

So there is a piece of it there. It is to be able to have real-time access to claims data. We have to pay within 14 days of a claim being submitted to Medicare. And so, being able to be in that front while we are trying to adjudicate the claim, check it against all the edits, make sure it is coded correctly, do all those things, it is very difficult to, at that point, have interventions to look at the claim and do some real human kinds of reviews on it.

So it would help us to have some real-time data. So it was not only to just expand some of the fraud and abuse stuff that would be related to provider screenings, but also some real systems initiatives that we need.

Mrs. LOWEY. Mr. Chairman, I think that is something we have to look at again because this issue has been discussed as long as I have been here on this committee, which is quite a while. And we are all trying to look and see how we root out fraud and abuse. We all understand that we have to do something about the deficit.

And to have equipment in place that is antiquated or not sufficient just doesn't make any sense. So if you can provide additional information to us, maybe this year, we will resolve it.

Thank you.

Ms. TAYLOR. I would be happy to.

[The information follows:]

Ms. Taylor: In FY 2012, the Administration has requested historic levels of funding to support CMS' program integrity work and our HHS and DOJ law enforcement partners' criminal, civil and administrative enforcement activities. The Administration is seeking \$581 million in HCFAC discretionary funds, a \$270 million increase in discretionary funds compared to FY 2011, which have shown a strong return-on-investment (ROI) and successful recoveries to the Trust Funds. CMS' Actuaries have determined that the multi-year discretionary HCFAC investment, starting with \$581 million in FY 2012, is estimated to save \$4.6 billion over five years and \$10.3 billion over ten years.

The increase in funds for FY 2012 will be split among CMS and its law enforcement partners and be used to continue and expand program integrity efforts. It supports ongoing efforts by the Administration to reduce the Medicare FFS error rate, rate expansion of HEAT Strike Force and civil pharmaceutical fraud and medical device enforcement activities, and will also be used to deploy new and innovative efforts such as:

- (1) State-of-the-art data analytics and national pre-payment edits to prevent potentially wasteful, abusive, or fraudulent payments before they occur;
- (2) The build-out of the Compromised Beneficiary and Provider Numbers database;
- (3) Further expansion of the Integrated Data Repository;
- (4) Enhancements to the Do Not Pay list;
- (5) Development of HEAT complaint maps to help target priorities and identify geographic "hot spots."

RECOVERY AUDIT PROGRAM

Mr. REHBERG. In the fiscal year 2012 budget, it is anticipated a recovery of \$2 billion, which is about 3 percent of the overpayments. Is that a reasonable number?

Ms. TAYLOR. I think you are referring to the recovery audit program?

Mr. REHBERG. Yes.

Ms. TAYLOR. And I know that we made up some portions of that. I think that is a Government-wide number. I think, as I mentioned, we already have collected over \$250,000,000 to date on recovery audit. And in the first year of a program that large, we anticipate that it will scale up and that we will start to see trends go higher.

I can't speak for the whole Government, but I think CMS believes we will be able to have significant savings—

Mr. REHBERG. Well, I think it is anticipated your area is going to increase to \$900 billion of expenditures by 2018. And if you have a 10.5 percent problem, it is astronomical to even think about it. So I just worry that \$2 billion, or 3 percent, is unreasonable.

Mr. SKELLY. At least the Department of Education, the way we are approaching it is trying to prevent the overpayments, not that we are not going after the recoveries. And in Pell grants, we would have a pretty low recovery rate. It takes some time to get the money back.

But by preventing that \$340 million in overpayments from occurring, we think we are contributing to the reduction of the deficit.

Ms. GILBERT. One of the tools that our States now have, as I mentioned in my testimony, is the Treasury Offset Program. As a result of the President's executive order, Treasury made some changes in how they permit the States to actually collect debts directly with them. And so, that we now have that tool available and will expect our collections to begin to go up as a result.

Ms. COLVIN. We have similar tools to the Treasury offset, and we do most of that on collections through reductions in benefits if mon-

ies are owed. So we do try to recover, and our recovery rate has been consistently improving.

Mr. REHBERG. Okay. Ms. DeLauro.

IMPACT OF H.R. 1

Ms. DELAURO. Thank you very much.

Let me just direct a quick question to you, Gay. H.R. 1 would cut funding for the administration's program to reduce overpayments in a variety of programs, including UI. It would cut ten million dollars from the partnership fund for reducing fraud and abuse?

Ms. GILBERT. The \$10,000,000 from the partnership fund, are you talking about OMB's partnership fund?

Ms. DELAURO. OMB. OMB's partnership fund, I am sorry.

Ms. GILBERT. Right. They have a \$37,000,000 pot and we are getting some tiny piece of that. But that would, if we have new strategies that they can help us with, yes, that would prevent us from having additional tools.

Ms. DELAURO. Okay. Is there something that the administration, as I understand it, has put into practice called the "unified do not pay list."? That is that people who have been listed as being barred, who are under investigation, or deceased, is that right?

I don't know what the other criteria are. Maybe it would be useful to know that and where that stands, if somebody could get that back? I mentioned the deceased part of it because we have had an enormous problem in agriculture with improper payments in that arena where we have seen that year after year, people who are deceased are continuing to get subsidies.

So it would be interesting, more than interesting. I would like to know what we have out there and what the criteria are and how that is moving along so that we know that we are barring people who don't need to have these payments any longer.

Ms. Taylor, let me ask you this question. The Affordable Care Act, can you describe briefly for us the provisions of the act that strengthens the authorities of CMS to reduce fraud and abuse?

Ms. TAYLOR. Well, you are really getting out of my area of expertise. But I can tell you that the bulk of it is exactly the point of being able to prevent and detect up front. And there is a lot of screening capabilities in there for provider enrollment, and that is one tool the agency is looking forward to having. So—

Ms. DELAURO. Ms. Gilbert, the company, is it TALX?

Ms. GILBERT. Yes.

Ms. DELAURO. They handle more than 30 percent of the Nation's requests for jobless benefits. They have come to dominate the industry.

Without admitting fault, they paid a \$12,000 fine in Connecticut, in a Connecticut case, agreed to tell clients in writing that it would not file basis appeals. And what they were trying to do, as I understood it, is really work to deal with not allowing for people's benefits, genuine benefits that they were entitled to.

What is the department doing in that regard to address fraud that allows some people to keep the unemployed from collecting their benefits? And I don't know if you can share with us, the committee, the cases that were successfully challenged, the number that was successfully challenged by their employer.

Ms. GILBERT. First of all, let me say that employers or their third-party administrators sort of game the system to prevent individuals from receiving benefits is of concern to the department. We have heard that concern from States, and I know that Connecticut has been particularly aggressive in their own State law in trying to control third-party administrators and being sure that they are doing things properly.

We have had conversations with TALX and expressed that concern as well, and their response to us is that they are taking steps to train their staff better to avoid this kind of activity. I will say that our Integrity Act speaks to this issue and——

Mr. REHBERG. If you would like to submit——

Ms. DELAURO. Thank you. If you could get us that information, it would be great.

Thank you, Mr. Chairman.

Mr. REHBERG. Mrs. Lowey, last question.

Mrs. LOWEY. Yes, and I will ask it very quickly. Last year, Congress passed the Improper Payments Elimination and Recovery Act. Maybe we can end this hearing on a high note.

How much money does your department estimate it will save in implementing the law? And you could respond very quickly.

Ms. GILBERT. I don't believe we have actually done that estimate. We would be glad to go back and do that and provide that to you.

[The information follows:]

The Improper Payments Elimination and Recovery Act of 2010 (IPERA), which amended the Improper Payments Information Act of 2002 (IPIA), established several criteria that Federal agencies must meet to be in compliance with the law. According to section 3(a)(3) of IPERA:

The term 'compliance' means that the agency ... (F) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 2(b) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

For the FY 2011 IPIA reporting period, the Department recently reported an improper payment rate of 12.0 percent (11.35 percent overpayment rate and 0.65 percent underpayment rate) for the Unemployment Insurance (UI) program. With the implementation of all planned activities by states, the UI improper payment rate is targeted to decrease from 12.0 percent reported in FY 2011 to meet the less than 10 percent threshold set by IPERA for FY 2012. Using the UI benefit outlays¹ of \$74.1 billion projected for FY 2012, a 2 percentage point drop in the UI improper payment rate would result in an estimated savings of \$1.5 billion in FY 2012. For the most recent 12-month period ending June 30, 2011, almost \$1.3 billion dollars of overpayments were recovered. Estimation of recoveries for future years is difficult to forecast given its dependency on benefit outlays and other economic assumptions including potential emergency UI program extensions. However, as required by IPERA, the Department has developed UI overpayment recovery targets for FY 2012 – 64% and FY 2013 - 72%. These targets are based on the rate of recovery (i.e., amount of improper overpayments recovered divided by the amount of recoverable improper overpayments identified).

The Department's focus on activities to reduce improper payments pre-dates the enactment of the IPIA and the IPERA. However, the enactment of IPERA further reinforced the Department's focus on the prevention, detection, and recovery of UI improper payments. Currently, the national effort to reduce improper payments in the UI program is a top priority for the

¹ Benefit outlays for the UI program are projected using the administration's economic assumptions. FY 2011 outlays are \$114.1 billion.

Department. All state UI administrators have been called to action to ensure the integrity of the UI program and develop state specific strategies to bring down the overpayment rate. Specific attention and assistance has been given to those states likely to have the largest impact on the dollar amount of improper payments and those with unacceptably high (percentage of payments) overpayment rates. In addition, in FY 2011, the Department provided states with approximately \$191 million in supplemental funding to implement strategies and technology-based infrastructure investments that will help the states in preventing, detecting and recovering UI overpayments, improve system performance and address outdated Information Technology (IT) system infrastructures necessary to improve UI integrity.

Mrs. LOWEY. Okay.

Ms. TAYLOR. I am not sure we have done that either, but we do know that recovery auditing is a huge saver for us.

Ms. COLVIN. Well, we have certainly seen a direct correlation between our program integrity initiatives and the accuracy rate. And we have found that when we have adequately sustained funding that we do, in fact, reduce our inaccurate or improper payments.

As I mentioned before, for every \$1 that you invest in us for CDRs, you get \$10 back in taxpayer money. For every \$1 that you invest in redets, you get \$7 back. And with the AFI, if we are able to fully implement that, as we plan to do by 2013, you would be getting back \$20 for every \$1 that you invest.

So I would say that if you would give us the adequate and sustained funding, significant dollars will come back, billions of dollars to the taxpayers.

Mrs. LOWEY. Mr. Skelly.

Mr. SKELLY. And at Education, I would hope we get the adequate resources also, and we don't have an estimate for the Improper Payment Act by itself. But consistent with that is our Pell grant proposal, where we think we would prevent \$340 million in improper payments.

Mrs. LOWEY. Maybe we can get some of this money back and use it wisely.

Mr. REHBERG. That would be nice.

Mrs. LOWEY. Thank you, Mr. Chairman.

Mr. REHBERG. Once again, thank you for being here and all the work you do.

This meeting is adjourned.

Questions for the Record for Kathleen S. Tighe
Hearing on Improper Payments
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
United States House of Representatives
March 17, 2011

Question for Kathleen Tighe, Inspector General, Department of Education from Chairman Rehberg

As you are aware, there was a recently exposed student aid fraud ring in January 2010 in which the ring leader pled guilty to defrauding the federal government of roughly \$539,000 in student-aid dollars. Her scheme involved dozens of people recruited to pose as phony “straw” students at Rio Salado College in Arizona where she made her bogus recruits look like real students by assuming their identities online to participate in classes and collect a share of their aid money. This highlights how the same technology that is expanding access to education for millions of online students may also expose the country’s federal student financial aid system to fraudulent payments.

Question: Has the Department considered requiring new or other technologies and practices that are effective in verifying student identity to not only to prevent improper payments of student financial aid but also to enhance the quality of online education with regard to academic integrity?

Inspector General Tighe Response

We are not aware of any specific technologies or practices that the Department may have considered. However, based on our previous investigative work, the OIG is working on an electronic fraud project that will use data analytics to identify fraud in the student aid arena, including fraud involving student identity. Over the past six years, we have discussed issues involving student identity with the Department, including our recent investigative work involving fraud rings that target distance education providers by fraudulently using personal identifiable information of others (with their consent) to steal Federal student aid. This work includes our now completed case involving the fraud ring at Rio Salado College, which you mention, as well as a fraud ring that obtained more than \$200,000 in Federal student aid targeting the Los Rios Community College District in California. It should also be noted that the concern you raised equally applies to identity theft in distance education programs. For example, in another one of our cases, a Texas man stole the identities of 31 individuals, many of whom were registered sex offenders, to enroll in on-line programs of the Dallas County Community College and the Houston Community College District, and also attempted to register more than 200 additional students at the schools under the guise of a church group.

HHS OIG Reply to QFRs

3/17/11 House Appropriations Hearing on Improper Payments

5/19/11

Congresswoman Barbara Lee

Questions for Daniel R. Levinson – HHS Inspector General

Understanding Issues Facing Health Providers

Identifying and measuring improper payments and conducting spot reviews of CMS systems and corrective actions to address such payments is clearly a critical function of your office.

I think we all agree that CMS needs continued support to ensure that our Medicare and Medicaid dollars are being spent wisely and for needed services to patients.

I worry though, that in this economic environment where jobs are scarce, and many health care organizations have put a freeze on hiring – that we aren't doing enough to reach out to health providers to understand and help them correct the reasons why such improper payments occur in the first place.

- Q: To what extent has your office been able to drill down into these improper payments beyond the issue of categorizing them by provider and type of payment?**
- Q: Are you able to provide, for example, a snapshot of why coding errors occur in the first place?**
- Q: Are we talking about health providers who don't have enough staff to file claims properly?**
- Q: Are we talking about overworked attending physician's and residents – who might need a little more administrative support who are making these errors in hospital settings for example? Or is this really more a function of ensuring that the people at health facilities that are charged with properly filing these claims just need more training?**
- Q: My concern is that while we work to address the clerical and administrative errors associated with reimbursement for services – that we are failing to really get at the underlying causes of why these improper payments occur in the first place. Is your office really able to examine how and why some of these errors occur in health facilities – beyond just conducting an analysis of data quality and management?**

Answer (the following responds to the five prior questions):

OIG reviews CMS's estimates of improper payments in Medicare (Comprehensive Error Rate Testing (CERT) program) and Medicaid (Payment Error Rate Measurement (PERM) program) and has analyzed the error rate by types of providers and by types of error. The average error rate associated with incorrect coding is approximately 1.3% of the total CERT and PERM error rate over the past 15 years. OIG also conducts targeted reviews to determine the scope of improper payments for specific service types.

For example, OIG found that in the FY 2009 CERT, inpatient hospitals, durable medical equipment suppliers, hospital outpatient departments, physicians, skilled nursing facilities, and home health agencies accounted for 94 percent of improper Medicare payments. We also found that insufficient documentation, miscoded claims, and medically unnecessary services and supplies accounted for about 98 percent of the improper payments attributable to the six types of providers. OIG is also planning audit work to follow up on "error-prone" providers, i.e., individual providers with erroneous claims in each of the past four CERT cycles, to test those providers' populations of claims and identify improper payments.

OIG's review of the PERM program has included testing and analysis of the PERM sampling and estimation methodology, the medical records request process, medical review, and the error estimation calculation. Measuring payment errors and their causes in the Medicaid and CHIP programs is particularly challenging because of the diversity of State programs and the variation in their administrative and control systems. OIG is performing audit work to determine whether problems similar to those discovered in the CERT program exist in the PERM program.

OIG conducts targeted reviews to determine the scope of improper payments for specific service types and recommends actions to improve program safeguards. By reviewing medical records and other documentation associated with a claim, we identify services that are undocumented, medically unnecessary, or incorrectly coded, as well as duplicate payments and payments for services that were not provided. In doing so, we uncover payment vulnerabilities and make recommendations to address them.

For some services, we have found pervasive documentation errors. For example, we found that during the first half of 2007, 60 percent of Medicare claims for standard and complex rehabilitation power wheelchairs did not meet one or more documentation requirements. These claims accounted for \$112 million in improper Medicare payments. We have also found significant rates of documentation error for certain types of pain management services. We recommended that CMS take several actions to address these errors, including improving controls, educating providers, and clarifying guidance.

Medically unnecessary services are particularly concerning, as beneficiaries may be subjected to tests and treatments that serve no purpose and may even cause harm. In some cases, as with durable medical equipment, beneficiaries may also be charged significant copayments for items or services that they did not need. For example, we reviewed claims for certain types of support surfaces used to prevent and treat bedsores and found that more than 1 in 5 claims were medically unnecessary. To address these and other types of errors, we recommended that CMS take a variety of actions to ensure that claims are paid appropriately, including conducting additional prepayment and postpayment medical reviews.

In some cases, documentation or coding errors may signal broader vulnerabilities affecting patient care that need to be addressed to prevent improper payments and help ensure quality of care. For example, we found that 82 percent of hospice claims for beneficiaries in nursing facilities did not meet at least one Medicare coverage requirement – requirements that are in place to protect beneficiaries' health and wellbeing. Problems we identified included failing to establish plans of care and providing fewer services than outlined in beneficiaries' plans of care, potentially putting the beneficiary at greater risk. To prevent these problems from recurring and to better protect hospice patients, we recommended that CMS educate hospice providers about coverage requirements, provide tools to hospice providers (e.g., guidance, templates, and checklists), and use targeted medical reviews and other oversight to improve compliance.

Similarly, a recent review of Medicaid personal care services found that for 18 percent of claims, personal care service attendant qualifications were not properly documented, resulting in \$724 million in improper payments. Without documentation of attendant qualifications, it is difficult to determine whether vulnerable beneficiaries are receiving care from appropriately screened and trained individuals. We recommended that CMS work with States to ensure that they verify attendants' qualifications.

In addition to medical record reviews designed to flag individual improper claims, OIG also conducts data analysis to identify broader patterns indicative of improper payments and potential fraud and abuse. For example, through this type of analysis we have identified "outliers" who bill for services at an unusually high rate, as well as patterns in which certain geographic areas exhibit unusual billing, and also have matched claims and other data to identify billing patterns that raise concern. These types of analyses can generate leads for investigations, audits, and further medical record review. In addition, these reviews can lead to recommendations to CMS to strengthen its program oversight activities and prevent future improper payments. For example, OIG recently reviewed high-utilization claims for blood-glucose test strips and lancet supplies, and identified an estimated \$270 million in improper Medicare payments for these supplies. We recommended that CMS contractors implement various payment edits, such as edits to identify claims with overlapping dates of service.

Although our recommendations are tailored to specific vulnerabilities, the actions we recommend to CMS generally fall into the following categories:

- Increase prepayment and post-payment review of claims;

- Increase oversight and validation of supporting documentation;
- Strengthen program requirements to address vulnerabilities; and
- Provide education and guidance to providers.

We believe the majority of providers are honest and well-intentioned, but provider education is a critical component of ensuring compliance and protecting beneficiaries. For our part in provider education, OIG recently conducted free training seminars in six cities to educate providers on fraud risks and share compliance best practices – these were live half day training sessions in locations around the country (Houston, Tampa, Kansas City, Baton Rouge, Denver, and DC) with the final training web cast live and will be made available as an enduring program on OIG’s website. We also recently published the “Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse,” which provides guidance on complying with fraud and abuse laws. The “Roadmap” is an educational program combining written material for self study and a narrated PowerPoint presentation that providers can also access on OIG’s website.

Scope of OIG Investigations

The scope of programs and activities within the Department of Health and Human Services is clearly quite broad.

Although it is clear that the bulk of your investigations and audits must focus on the largest programs within HHS, like Medicare, Medicaid, SCHIP, I’m curious about the ability of your office to examine other programs and agencies within the department.

Q: Can you provide the Subcommittee with a summary of your audits and investigations over the last few years by agency, program area, and category of review so that we can get a sense of where you’ve been able to focus the energies of the office?

Answer:

OIG’s program integrity and oversight activities are guided by the legislative and statutory requirements of our funding. As such, since the creation of the Health Care Fraud and Abuse Control Program (HCFAC) in 1997, approximately 80 percent of OIG’s annual funding and workload have been dedicated to oversight and enforcement activities with respect to health care fraud and abuse in Medicare and Medicaid.

OIG’s Office of Investigations (OI) investigates allegations of Medicare and Medicaid fraud, failure-of-care cases, Federal and State child support enforcement violations, grant and contract fraud, cybercrime incidents affecting HHS information systems, allegations of misconduct and breaches of integrity affecting and involving more than 65,000 OIG and Department employees. OI also exercise a wide range of mandatory and permissive authorities to exclude individuals and entities from

participation in Medicare, Medicaid, and all other Federal health care programs; administers OIG's Hotline, which receives and manages complaints of fraud, waste, abuse, and mismanagement related to HHS programs; manages OIG's emergency response plan, including Continuity of Operations, and provides emergency services support to other HHS operating divisions and Federal agencies as needed; and provides executive protection for the Secretary, the Deputy Secretary, the Surgeon General, and other high-ranking Department officials.

OIG's Office of Evaluation and Inspections (OEI) and Office of Audit Services (OAS) conduct national evaluations and specific audits across the spectrum of HHS programs and make recommendations to address program vulnerabilities. With respect to particular agencies and/or program areas, findings from OEI and OAS work have included:

- CMS
 - 60 percent of Medicare claims for power wheelchairs did not meet documentation requirements, leading to \$112 million in improper payments in a six-month period.
 - 13.5 percent of hospitalized Medicare beneficiaries experienced serious adverse events from medical care during their hospital stays, and an additional 13.5 percent experienced temporary harm. Hospital care associated with these events cost Medicare \$324 million in one month.
 - 75 percent of children enrolled in Medicaid in 9 selected States did not receive all required medical, vision, and hearing screenings.
 - Miami-Dade County accounted for more home health outlier payments in 2009 than the rest of the Nation combined; 23 additional counties nationwide also exhibited aberrant home health outlier payment patterns.
 - Part D plan sponsors' underestimation of rebates leads both the Government and beneficiaries to overpay for the Part D benefit; although the Government recoups some of the overpayments, beneficiaries do not.
 - Inappropriate payments made after a beneficiary's death.
 - Inappropriate payments for home blood glucose testing supplies.
 - Excessive payments made for Medicare services because of incorrect coding.
- Public Health & Human Services
 - FDA
 - FDA lacked authority to require manufacturers to recall pet and human food, and did not follow its own policies to assure effective oversight.
 - FDA inspected clinical investigators at less than 1 percent of foreign clinical trial sites.
 - ACF
 - Health and safety issues at Head Start grantee sites; unallowable adoption assistance payments.
 - Five percent of Head Start slots nationally were funded but not filled.

- CDC
 - Inaccurate and incomplete property inventory recordkeeping; noncompliance with contracting requirements.
 - CDC did not consistently implement quality system procedures in the CHEMPACK project.
- HRSA
 - Accounting and contract management control weaknesses at health centers.
- IHS
 - Weak internal controls to assure fulfillment of service obligations/repayments in scholarship and loan programs.
 - IHS and Tribes paid above the Medicare rate for 22 percent of hospital claims, resulting in \$1 million in overpayments in one quarter.
- NIH
 - Deficiencies exist in the National Cancer Institute's financial oversight of Research Project Grants.
- IT
 - Vulnerabilities with network management, security infrastructure, background checks, contractor oversight, and certification and accreditation of major systems.
- Financial Management
 - CFO Act audit internal control weaknesses; contract closing issues.
- ARRA
 - Reporting omissions and errors; some grantees incapable of handling ARRA funds.

Additional information can be found in OIG's *Semiannual Report to Congress*, available at <http://oig.hhs.gov/publications.asp>, OIG's *Office of Investigations Fact Book* (available upon request), and in the tables below, which tally OIG's evaluations, audits, and investigations for the past 3 years, by program category, as tracked within the individual component:

Evaluations and Audits:

CATEGORY	2008	2009	2010	2011 to present
CMS	275	340	313	239
Public Health & Human Services	61	56	199	15
IT Systems	27	104	64	57
Financial Management	62	41	55	45

Investigations:

OI FY-2010 Stats by Program Category*			
	Criminal Actions	Civil Actions	Total Money** (HHS/NHHS)***
IA-HHS/INCL.OIG		1	\$525
ACF-ALL OTHER		14	\$1,807,149
ACF-CHLD SUPPRT ENFRMENT		64	\$5,436,886
FDA		2	\$5,081
PHS-ALL OTHER		10	\$1,693,767
PHS-INDIAN HEALTH SERVICE		3	\$162,021
OS-CNTRACTS/GRANTS-NOT OIG		0	\$110,624
OS-INTERNAL PROGRAM NOT OIG		1	\$3,100
Total Non-Health Care		95	\$9,219,153
CMS		552	\$3,736,271,848
Total All		647	\$3,745,491,001

OI FY-2009 Stats by Program Category*			
	Criminal Actions	Civil Actions	Total Money** (HHS/NHHS)***
IA-HHS/INCL.OIG		3	\$2,325
ACF-ALL OTHER		29	\$1,401,474

ACF-CHLD SUPPRT ENFRMENT	102	0	\$6,617,320
FDA	1	0	\$77,991
CDC PROGRAMS	1	0	\$0
PHS-ALL OTHER	13	4	\$13,292,786
PHS-INDIAN HEALTH SERVICE	6	1	\$8,442,633
OS-INTERNAL PROGRAM NOT OIG	1	1	\$45,362
Total Non-Health Care	156	7	\$29,879,891
CMS	515	349	\$3,915,220,865
Total All	671	356	\$3,945,100,756

OI FY-2008 Stats by Program Category*			
	Criminal Actions	Civil Actions	Total Money** (HHS/NHHS)***
IA-HHS/INCL.OIG	1	0	\$891,964
ACF-ALL OTHER	8	1	\$2,306,757
ACF-CHLD SUPPRT ENFRMENT	98	0	\$4,941,398
CDC PROGRAMS	0	2	\$1,316,000
PHS-ALL OTHER	7	2	\$470,819
PHS-INDIAN HEALTH SERVICE	6	0	\$31,592
Total Non-Health Care	120	5	\$9,958,530
CMS	455	286	\$3,119,049,747
Total All	575	291	\$3,129,008,277

*Case results (i.e., indictments, criminal and civil actions, expected recoveries) may correspond to cases that are still open (e.g., if there are multiple subjects in the same cases and/or cases that were closed during previous quarters).

**"Total Money" reflects expected recoveries, which include court-ordered fines, restitution, penalties, and assessments. Actual recoveries are tracked by the Department of Justice and reported in the annual *Health Care Fraud and Abuse Control Program Report*, available at <http://oig.hhs.gov/publications.asp>.

***Non-HHS (NHHS) expected recoveries include, for example, States' share of Medicaid restitution.

Q: Do you believe that there is value in broadening the ability of your office to undertake reviews of other programs beyond CMS?

Answer:

OIG's program integrity and oversight activities are guided by the legislative and statutory requirements of our funding. As such, since the creation of the Health Care Fraud and Abuse Control Program in 1997, approximately 80 percent of OIG's annual funding and workload have been dedicated to oversight and enforcement activities with respect to health care fraud and abuse in Medicare and Medicaid. OIG's direct annual discretionary appropriation is used for its oversight efforts related to a broad range of Public Health and Human Services (PHHS) issues identified during the annual work planning process as high priority areas with the greatest potential impact on HHS programs or beneficiaries.

In FY 2012, OIG is requesting +\$13 million above the FY 2010 appropriated level to enhance our capacity for reviewing HHS programs beyond Medicare and Medicaid, with an emphasis on increasing capacity for PHHS evaluations, medical record reviews, safeguarding data and information systems, as well as increasing oversight of HHS grants and contracts.

OIG Role in Investigating and Auditing Global Health Programs

In 2008, working with former President Bush, we reauthorized all US global HIV/AIDS, tuberculosis, and malaria programs through FY 2013. As part of the reauthorization the bill required the development of an audit and investigation plan by the relevant agencies overseeing implementation of these important global health programs.

As you can imagine we spend hundreds of millions of dollars per year in various countries, helping them to get their AIDS epidemics under control and assisting them in building up their own health systems.

In many cases, HHS, the State Department, and USAID share joint responsibility in administering these programs – though there is usually one lead agency in charge in each country.

In order to ensure that taxpayer funds are being used effectively and accountably in each country, we must have a unified audit and investigations plan that examines what CDC is doing, as well as what USAID is doing.

To date however, it is my understanding that your office has not conducted any audit or investigations of our global health programs – either in conjunction with State or USAID or on your own.

Q: Can you explain to this Subcommittee why you have not been able to follow through and establish and audit and investigation plan for evaluating global health programs administered through HHS?

Answer:

HHS OIG has developed and been following a plan to audit HHS Global Health Programs/PEPFAR, as outlined below:

- In 2010, OIG initiated an audit of CDC's oversight of the PEPFAR program. We expect to issued a final report on this work later this spring
- OIG has been in regular contact with GAO, State OIG, and USAID OIG to coordinate follow-on work that will bring new scrutiny to the program and not duplicate work by these agencies.
- As part of this effort, OIG is currently developing additional plans to audit CDC's PEPFAR program in three countries.
 - It is anticipated that the work will have two phases: stateside fieldwork and in-country fieldwork. Both phases build on the work referenced in the above first bullet.
 - Following the stateside work, OIG intends to send auditors PEPFAR in-country locations to audit how PEPFAR is executed and managed by the CDC in-country office, the local Ministry of Health, and selected recipients of CDC PEPFAR funds.
- Prospectively, OIG plans to continue its efforts to oversee PEPFAR work conducted by HHS PEPFAR partner agencies, such as those conducted by HRSA.

Q: Do you need additional resources to carry out this directive?

Answer:

The Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/ AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 included \$15 million over five years for the oversight efforts of Inspectors General of the Department of State and Broadcasting Board of Governors, Department Health and Human Services, and the United States Agency for International Development (USAID). At this time HHS OIG is working with the Department of State to access funds provided for under this act for the work described in the response to the previous question. Moving forward, HHS OIG will continue to coordinate with its partner IG offices to determine and request additional resources, if necessary.

Questions for Deborah Taylor – CMS CFO and Director, Office of Financial Management

Understanding Issues Facing Health Providers

Identifying and measuring improper payments and conducting spot reviews of CMS systems and corrective actions to address such payments is clearly important.

I think we all agree that CMS needs continued support to ensure that our Medicare and Medicaid dollars are being spent wisely and for needed services to patients.

I worry though, that in this economic environment where jobs are scarce, and many health care organizations have put a freeze on hiring – that we aren't doing enough to reach out to health providers to understand and help them correct the reasons why such improper payments occur in the first place.

1. To what extent has CMS been able to drill down into these improper payments beyond the issue of categorizing them by provider and type of payment?

Answer: Implementing any effective corrective action for an improper payment requires an understanding of the likely causes of the error, so a corrective action can successfully address the underlying problem. Building on the efforts underway in the Recovery Audit program, CMS analyzes all the findings and corrections made by the Recovery Auditors to discern common payment vulnerabilities or areas where additional guidance to providers is needed. CMS then takes appropriate action to address the specific payment errors that prove to be common. For example, during the Recovery Audit demonstration, it was apparent that providers were unaware of a billing code update for a particular drug, Neulasta, and as a result, billed the drug incorrectly. In response, CMS implemented a national payment edit in the claims processing system to deny claims that contained this billing error, and reported on the discovery in the demonstration evaluation report that was issued at the conclusion of the Recovery Audit demonstration.

In addition to measuring the Medicare FFS error rate, the Comprehensive Error Rate Testing (CERT) program guides CMS in developing corrective actions to reduce improper payments in the future. CMS continues to analyze the improper payment data garnered from the CERT program. CMS uses the CERT results to provide feedback to Medicare contractors to inform and enhance their medical review efforts, focus on high risk areas, and improve overall operations. In addition, CMS uses this information to conduct additional provider education through routine listerv "Medicare Learning Network" articles, comparative billing reports for inpatient hospital and non-hospital providers, and quarterly provider compliance newsletters.

2. Are you able to provide, for example, a snapshot of why coding errors occur in the first place? Are we talking about health providers who don't have enough staff to file claims properly? Are we talking about overworked attending physician's and residents – who might need a little more administrative support who are making these errors in hospital settings for example? Or is this really more a function of ensuring that the people at health facilities that are charged with properly filing these claims just need more training?

My concern is that while we work to address the clerical and administrative errors associated with reimbursement for services – that we are failing to really get at the underlying causes of why these improper payments occur in the first place.

Answer: Coding errors occur when, for instance, providers submit medical documentation that should support a different code than the code submitted, the service was done by someone other than the billing provider, the billed service was submitted as several distinct services instead of appropriately bundled, or a beneficiary was discharged to a site other than the one coded on a claim. These coding errors can occur for a variety of reasons, ranging from a misunderstanding of CMS billing policies to simple clerical or human errors.

CMS strives to ensure that all providers and their staff have the information they need to file Medicare claims correctly. In some cases where claims are routinely submitted inaccurately, CMS seeks to provide clarifications to our billing guidelines or makes modifications in Medicare policy. For example, during the initial Recovery Audit demonstration, Recovery Auditors identified a number of improper payments in claims related to inpatient rehabilitation facilities (IRF). After analyzing the findings from Recovery Auditors, CMS recognized that the Agency's IRF payment policy was outdated and published a regulation (CMS 1538-F) to update the policy and also conducted extensive provider education to ensure proper submission of IRF claims.

CMS continues to look for ways to simplify the billing and compliance process for providers and suppliers and their staffs. For example, CMS recently revised the medical record request letters to clarify the components of the medical record that are required for a Comprehensive Error Rate Testing (CERT) review. The letter serves as a checklist for the provider or supplier to ensure that their record submission is complete. CMS also revised the subsequent follow-up medical record request letters to include information about the documentation that is missing to ensure the provider/supplier fully understands what documentation needs to be submitted. Additionally, when a DME supplier is contacted as part of medical record review to supply appropriate medical documentation, CMS also contacts the provider who ordered the DME to advise them of their responsibility to provide medical documentation in support of the supplier's DME claim.

3. Is CMS able to examine how and why some of these errors occur in health facilities – beyond just conducting an analysis of data quality and management?

Answer: Both the Medicare Comprehensive Error Rate Testing (CERT) program and the Recovery Audit program help CMS to identify improper payment patterns and better understand root causes of error. CMS holds weekly calls with claims processing contractors and Recovery Auditors to discuss findings and brainstorm possible corrective actions to address emerging vulnerabilities. Depending on the cause of the common payment vulnerability, corrective actions may include payment systems edits, policy clarifications, and additional provider outreach and education.

4. How do you convey the results of your analysis back to health providers to assist them in taking corrective actions?

Answer: As a proactive effort to help providers understand how their own billing behavior compares to their health care peers, CMS developed Comparative Billing Reports (CBRs) to help Medicare non-hospital providers analyze administrative claims data. CBRs compare a provider's billing pattern for various procedures or services to their peers on a state and national level. CMS also utilizes the Program for Evaluating Payment Patterns Electronic Report (PEPPER). The PEPPER allows Medicare inpatient hospital providers to also analyze their billing patterns by providing a comparison to other providers in their State and in the nation. Both reports help providers institute their own corrective actions based on their comparative billing data.

Additionally, in October 2010 CMS issued the first quarterly Medicare Provider Compliance Newsletter to physicians, providers, and suppliers to educate them on common billing errors found in the Medicare program and actions providers can take to resolve or prevent them from occurring in the future. Subsequent newsletters were published in February 2011 and April 2011. CMS also routinely publishes Medicare Learning Network educational articles for physicians and other providers/suppliers that emphasize the importance of accurate billing.

Recent article topics have included the importance of medical record documentation and timely submission of documents, hospital billing codes and the importance of quantifying the correct principle and secondary diagnoses and correct procedure codes when billing, and medical necessity reviews.

Actions Taken by CMS

Thank you again for your testimony. We've heard in broad brush strokes the extent of the issues that CMS has to deal with to reduce improper payments. But I'd like to get a little more flavor as to how CMS functions at the community/provider level to address this issue. Can you provide some more detail on specific actions that CMS has taken to reduce improper payments and the error rate over the last few years? I'd appreciate getting this perspective starting from the patient/provider level, through the claims process, how it gets dealt with at CMS, how errors are caught and brought back down to the provider level to produce a corrective action.

Answer: When a provider submits a claim it is first scrutinized by many payment systems edits and then either selected for prepayment medical review, paid or denied. If the claim is selected for prepayment review, medical records are requested to determine if the claim was billed correctly based on Medicare rules and regulations. If the claim is determined to be improper, it is denied and a letter is sent to the provider describing the denial and why the claim was denied.

CMS also conducts postpayment review (in the same manner as prepayment review) on claims after they have been paid. CMS contractors continually provide detailed rationale to providers regarding the results of the reviews. If a certain claim type proves problematic, CMS conducts additional provider education through Medicare Learning Network articles, Comparative Billing Reports and the Medicare Quarterly Provider Compliance Newsletters. A compendium of provider compliance educational materials can be found at https://www.cms.gov/MLNProducts/45_ProviderCompliance.asp.

CMS has instituted a variety of corrective actions over the last few years to reduce the improper payment rate. Summaries of key corrective actions can be found in the Improper Medicare Fee-For-Service Payments Reports available at https://www.cms.gov/apps/er_report/index.asp. In addition to ongoing educational efforts, CMS is ensuring that the medical reviewers focus their pre-payment review activities on areas that have been identified as particularly vulnerable to payment errors. CMS is examining the techniques used by insurance companies and other private sector entities to better inform our efforts to combat improper payments. We continue to aggressively pursue all avenues to reduce the improper payment rate.

CMS also uses the Payment Error Rate Measurement (PERM) to measure and address payment errors in Medicaid and the Children's Health Insurance Program (CHIP). States are required to submit Corrective Action Plans (CAPs) 90 days after they are notified by CMS of their error rates. Specific corrective actions vary State by State, depending on the types of errors, and many States have successfully implemented a number of corrective actions that have reduced claims and eligibility errors. States, as well as CMS, conduct education and outreach sessions prior to the start of the PERM measurement to educate providers on documentation requirements and the consequences of non-compliance. Using PERM results data, States also target education and outreach to specific provider types that in the past have been difficult to reach or non-compliant.

FY12 CMS Budget Proposals

According to your testimony, the President has proposed new legislative authority for CMS to retain a portion of funds recovered by Recovery Auditors to implement corrective actions – including through targeted prepayment review and provider education. Such an initiative has been estimated to save \$230 million over the next 10 years.

In addition, the President proposed requiring CMS to conduct contract-level Risk Adjustment Data Validation audits and to extrapolate the sample results for each Medicare Advantage contract to all enrollees in that contract for a given year. This proposal has been estimated to save \$6.16 billion over 10 years.

Barring action by other Committees, are there any other actions or activities that this Subcommittee should consider to help you enact such proposals, either by providing additional authority or flexibility in our own appropriations bill – in either bill language or report language form? Can you share any such proposals with the Subcommittee?

Answer: CMS appreciates the Subcommittee's interest in the legislative proposals included in the President's FY 2012 Budget Request. CMS is happy to work with interested members of the Subcommittee and other members of Congress to provide additional details and advance these legislative proposals.

CMS continues to appreciate the Subcommittee's longstanding support for discretionary Health Care Fraud and Abuse Control (HCFAC) funding, which provides important resources in our effort to combat waste, fraud and abuse in CMS programs. The FY 2012 Budget requests \$581 million in discretionary HCFAC funding, which supports ongoing efforts to reduce the Medicare Fee-For-Service improper payment rate by 50 percent. These resources would allow CMS to

fund efforts including aggressive pre-payment review, increased provider education on proper billing in high error areas, and enhancements to a "Do Not Pay List;" and development of a national pre-payment edit module.

WEDNESDAY, APRIL 6, 2011.

NATIONAL LABOR RELATIONS BOARD

WITNESSES

WILMA LIEBMAN, CHAIRMAN, NATIONAL LABOR RELATIONS BOARD

LAFE SOLOMON, ACTING GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

Mr. REHBERG. Good morning and welcome. It is nice to have you here.

I want to welcome the National Labor Relations Board to our hearing today. We hold pretty closely to the time, and we will get many rounds in as we possibly can, and we will end promptly at noon, respecting your time.

And we will begin by an opening statement by our ranking member, Ms. DeLauro. Rosa.

Ms. DELAURO. Thank you very much, Mr. Chairman.

I want to welcome our speakers and guests this morning and thank you for joining us to testify.

Seventy-six years ago, the National Labor Relations Board, the subject of our hearing today, was established by an act of this Congress when the National Labor Relations Act, or the Wagner Act, became law. By granting workers the freedom to form or join labor organizations and designate representatives, the goal of the NLRA was to, quote, liberate the common man, end quote. As its Senate author, Robert Wagner, put it so eloquently, to empower employees to represent themselves in the workplace. This, of course, is one of the fundamental democratic principles at work.

The NLRB's charter and structure was amended to meet Republican concerns in 1947 by the Taft-Hartley legislation.

Today, the NLRB is simply doing its job as outlined in these two acts of Congress. Specifically, it works to find fair remedies for employees and employers in workplace disputes and prosecute violations whenever they may have occurred.

So, quite frankly, I find it peculiar from a budgetary perspective as to why we are having this hearing today. Of all the budgets to look into, I am not sure why we are taking this time to scrutinize an agency with a total budget of \$283,000,000. This is especially so given the broad jurisdiction of this subcommittee, which includes bigger budgets, such as the \$32,000,000,000 allotted to the National Institutes of Health, the \$11,000,000,000 to the Centers for Disease Control and the \$12,500,000,000 to the Social Security Administration. So this does not seem a balanced and credible approach to the oversight this subcommittee is charged with.

Perhaps today's hearing only makes sense when put in the context of recent events in Wisconsin, Ohio, and Indiana. Perhaps this hearing is only understandable as another front in the current ide-

ological assault we are seeing the majority wage against workers' rights all across the country. Apparently, the majority has decided they want to try to stir up an anti-union wind here in Washington as well.

In fact, there is nothing radical about the mission of the NLRB or the way it goes about doing its job. The Board's function is to defend rights that we should consider fundamental: the right to form or join a union, the right to be represented by that union in dealings with an employer, and the right to be free from retaliation from doing so. The Board also enforces laws that protect employers and third parties against certain practices by unions considered to be unfair or harmful.

What is radical is the anti-union measure that this majority has tried to enact as part of, in my view, their reckless and misguided budget. By cutting the NLRB funding by \$50,000,000, the majority's appropriations proposal in H.R. 1 would force the Board to cut back all agency operations. That includes investigating charges of unfair labor practices brought by workers or by management, holding secret ballot workplace elections, and settling or adjudicating election related disputes. In addition, the Board could be forced to furlough its staff for up to 3 months.

Obviously, these rollbacks and furloughs would undermine workers' rights throughout the country. In fact, that is exactly the point. Just as Republican Governors are attempting to roll back workers' rights in Wisconsin and Ohio under the guise of deficit cutting, the majority is not pushing a cut here to the NLRB for budgetary purposes. It seems to me a hard argument to make that this action is motivated by fiscal reasons. As in the Wisconsin and Ohio budgets, the severe cuts to the NLRB are not a serious attempt to restore jobs, restore economic growth, or address budget deficits. Rather, these cuts are an attempt to accelerate a race to the bottom; and they will further harm middle-class families who are already dealing with a tough economy.

I thank the chairman.

Mr. REHBERG. Thank you.

Ms. Liebman.

Ms. LIEBMAN. Thank you.

Chairman Rehberg, Ranking Member DeLauro, and members of the subcommittee, I am pleased to appear before you this morning with Lafe Solomon, our agency's Acting General Counsel. Thank you for your invitation.

Before discussing our budget, I would like to take a moment to talk about the importance of this agency in historical perspective.

Our current labor law is fundamentally a product of the Great Depression, when millions were out of work. Labor conflict was widespread, with violence common. In the summer of 1935, responding to this crisis, Congress passed the National Labor Relations Act.

It is worth remembering why Congress did what it did. To quote Section 1 of the new law: "The inequality of bargaining power between employees and employers substantially burdens and affects the flow of commerce and tends to aggravate recurrent business depressions by depressing wage rates and the purchasing power of wage earners."

In other words, the National Labor Relations Act was seen as a means of restoring the Nation to economic prosperity. The new law articulated basic rights, the right of workers, free from intimidation, to act together to improve their terms and conditions of employment and the right to bargain collectively with their employer.

The Act established a permanent independent agency to conduct elections in workplaces and to remedy unfair labor practices. Over the next decades, millions of workers achieved a middle-class way of life through collective bargaining and agreements that provided fair wages and benefits in major industries of the economy.

Labor law continues to trigger passionate debate, as we have seen in Statehouses and at the Federal level in recent months. Although I might wish it were less rancorous, I welcome the controversy. Its intensity is a sign that labor law still matters deeply in this country.

Labor law matters because democracy in the workplace is still basic to a democratic society and because collective bargaining is still basic to a fair economy. It allows labor and business to reach their own solutions in response to changing economic conditions.

The sharp debate over this law, which has not been significantly amended since 1947, has sometimes had a big impact on the Board's functioning. Contentious debates in the Senate over confirmation of a President's nominees have resulted in long-standing vacancies, often leaving the Board at less than full strength. Indeed, for 27 months, ending in April, 2010, the Board was reduced to just two members, member Peter Schaumber and myself.

Despite our significant political differences, we worked hard to resolve as many cases as we could and eventually issued nearly 600 unanimous decisions. The Supreme Court undid some of that work with its June, 2010, decision in *New Process Steel v. NLRB*, finding that the Board needed at least three members to issue decisions.

The Board has now been reconstituted for the last year. We have issued new decisions in 97 cases that were returned to us as a result of the Court's decision. Only seven such cases remain pending. We have also tackled many formerly deadlocked cases that had languished for years.

The Acting General Counsel will talk more specifically about our budget request and his side of the agency which employs the bulk of our employees.

On the Board side, we have significantly streamlined our operations as the number of cases brought to the Board for decision has declined. Our staff has gone from 153 full-time equivalents in 2001 to 113.2 FTEs in 2011.

Also, the number of Administrative Law Judges who hear unfair labor practice cases around the country has dropped from 60 to 40 during the same period. We have also moved to a model that allows our ALJs to work from home, thereby reducing infrastructure costs and creating a more mobile adjudication system.

We have initiated technology reforms, such as our new electronic agency-wide case processing system called NextGen. The investment in that technology will pay rich dividends and result in significant savings for the taxpayers in the long run.

Meanwhile, in fiscal year 2010, case intake crept up after years of decline. This agency clearly still has an important role to play in the Nation's economy, and we need adequate resources to carry out our statutory responsibilities.

Mr. Chairman, the 2012 budget request before you will allow our agency to keep up with the rising costs of rent and compensation in the short term and allow the agency to continue its trend toward a more efficient workforce in the long term. I look forward to working with you and this committee to ensure that the National Labor Relations Board and the National Labor Relations Act continue to endure and play an important role in the Nation's economic recovery.

[The information follows:]

STATEMENT OF
WILMA B. LIEBMAN
CHAIRMAN
NATIONAL LABOR RELATIONS BOARD

BEFORE THE

SUBCOMMITTEE ON LABOR, HEALTH, AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 6, 2011

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee, I am pleased to appear before you today. Thank you for your invitation. I am privileged to serve as the Chairman of this Agency, which celebrated its 75th anniversary last year.

Before discussing our budget, I'd like to take a moment to talk about the importance of this Agency, in historical perspective. Our current labor law is, fundamentally, a product of the Great Depression, when millions were out of work. Most major industries were unorganized. The law barely tolerated labor unions. Labor conflict was widespread with violence common. In the summer of 1935, responding to this crisis, Congress passed the National Labor Relations Act. It is worth remembering why Congress did what it did. To quote Section 1 of the new law:

The inequality of bargaining power between employees ... and employers ... substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners....

In other words, the National Labor Relations Act was seen as a means of restoring the nation to economic prosperity.

The new law articulated basic rights: the right of workers, free from intimidation, to act together to improve their terms and conditions of employment, and the right to bargain collectively with their employer. The Act established a system to enforce these rights; it created a permanent independent agency empowered to conduct elections in workplaces and to remedy unfair labor practices. Over the next decades, millions of

workers achieved a middle class way of life through collective bargaining and agreements that provided fair wages and benefits in major industries of the economy.

Labor law continues to trigger passionate debate, as we have seen in state houses and at the federal level in recent months. Although I might wish it were less rancorous, I welcome the controversy: its intensity is a sign that labor law still matters deeply in this country. Labor law matters because democracy in the workplace is still basic to a democratic society and because collective bargaining is still basic to a fair economy. It allows labor and business to reach their own solutions in response to changing economic conditions.

The sharp debate over this law, which has not been significantly amended since 1947, has sometimes had a big impact on the Board's functioning. Contentious debates in the Senate over confirmation of a president's nominees, have resulted in longstanding vacancies, often leaving the Board at less than full strength.

Indeed, for 27 months, ending in April 2010, the Board was reduced to just two members—Member Peter Schaumber and myself. Despite our significant philosophical differences, we worked hard to resolve as many cases as we could and eventually issued nearly 600 unanimous decisions. The Supreme Court undid some of that work with its June 2010 decision in *New Process Steel vs. the NLRB*, finding the Board needed at least three members to issue decisions.

The Board has now been reconstituted for the last year. We have issued new decisions in 97 cases that were returned to us as a result of the Court's decision. Only seven such cases remain pending. We have tackled many formerly deadlocked cases that had languished for years. I'd like to acknowledge the hard work of my three colleagues, and of our staffs, during very uncertain and challenging times.

The Acting General Counsel will talk more specifically about our budget request and about his side of the Agency, which employs the bulk of our employees, but I do want to say that we have significantly streamlined our operations on the Board side in recent years. Over the last ten years, as the number of cases brought to the Board for decision has declined, so has the Board side staff – from 153 full-time equivalents in 2001 to 113.2 FTEs in 2011.

Also, the number of Administrative Law Judges, who hear Unfair Labor Practice cases across the country, has dropped from 60 to 40 during that same period. We have also moved to a model that allows our ALJ's to work from home, thereby reducing infrastructure costs and creating a more mobile adjudication system. We have also initiated technology reforms, such as our new electronic, agency-wide case processing system, called NexGen. The investment in that technology will pay rich dividends and result in significant savings for the taxpayers in the long term.

Meanwhile, case intake has crept up after years of decline. At the ALJ level, case intake was up almost 7% in 2010 from the prior fiscal year and our trial backlog – cases

docketed and awaiting trial – was up 5.6%. This Agency clearly still has an important role to play in the nation's economy and we need adequate resources to carry out our statutory responsibilities.

Mr. Chairman, the 2012 budget request before you will allow our agency to keep up with the rising costs of rent and compensation in the short-term, and allow the agency to continue its trend toward a more efficient work-force in the long term. I look forward to working with you and this committee to ensure that the NLRB and the NLRA continue to endure and play an important role in our nation's economic recovery.

Mr. REHBERG. Thank you.

Mr. Solomon.

Mr. SOLOMON. Mr. Chairman and distinguished members of the subcommittee, it is an honor and a privilege to appear before you today as the Acting General Counsel of the National Labor Relations Board. Indeed, for a kid who grew up in Helena, Arkansas, and has now worked for the NLRB for nearly 39 years, honor and privilege feels like an understatement.

My 9 months as Acting General Counsel have been both challenging and rewarding. Like the General Counsels before me, I have emphasized the need for the regional offices to seek effective remedies for the most serious unfair labor practices. I am proud that in its first 4 months my initiative to seek quick injunctive relief for employees unlawfully discharged during an organizational campaign has resulted in 42 offers of reinstatement and over \$350,000 in back pay, with the average case taking just 61 days to process. I am also proud that we successfully ran the largest mail ballot election in our history last October, a unit of approximately 43,000 employees.

But whatever successes I have had are due mainly to the dedicated and talented career employees that we have at every grade level throughout the agency. They believe passionately in the mission of the agency and the Act that we administer and work tirelessly to enforce the rights and obligations of employees, unions, and employers under the Act.

The agency is all about people. In recent years, 25 to 30,000 charges and petitions have been filed annually in our offices around the United States. Each case is assigned to one of our 1,170 employees in our 51 field offices, and we have been remarkably successful year after year in resolving these cases quickly and efficiently.

Some statistics from fiscal year 10 illustrate this point: 86 percent of all representation cases were resolved within 100 days; 73 percent of all unfair labor practices were resolved within 120 days; approximately 85 percent of meritorious unfair labor practices are closed in compliance within one year. The regional offices recovered over \$86,000,000 on behalf of employees, and over 2,200 employees were offered reinstatement.

The Board's ability to resolve so many controversies in a relatively brief period significantly contributes to the maintenance of industrial peace, thereby saving expense to respondents, charging parties, and to the taxpayers. Yet these impressive results are completely dependent on our ability to maintain adequate staffing levels. Without adequate appropriations to maintain sufficient agency personnel to handle these cases, delays and backlogs will inevitably increase and the benefit of quick resolution to cases will evaporate. In short, budget shortfalls have a direct impact on staffing resources, case handling, and agency performance.

The \$287,700,000 requested in the President's budget will fund our essential staffing and case handling needs necessary to fulfill the agency's mission and goals. Most of our proposed fiscal year 2012 budget, about 80 percent, is dedicated to personnel costs; about 10 percent is required for rent and security; and the remaining percentage is allocated among all other operating costs and ac-

tivities. The \$4,300,000 increase we seek for fiscal year 2012 is less than a 2 percent increase over our current funding level of \$283,400,000 and is needed to keep pace with increased personnel costs associated with a stable, long-tenured workforce and increases in rent and travel costs.

We are also in the process of studying how, using our present and future technological advances, the agency would work in a more efficient and cost-effective manner. To this end, Chairman Liebman and I have created an agency-wide work group, including representatives from our regional offices, our headquarters, and our employee unions. We have instructed this group to do a comprehensive assessment of the agency's structure, processes, and footprint and to make recommendations to us by the end of this fiscal year of options for us to consider.

I am proud to be associated with the traditions that have made the headquarters and field operations of the Office of General Counsel such a fine example of effective public service. We look forward to working with you, Mr. Chairman, with this committee, and with Congress on this very important mission.

[The information follows:]

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STATEMENT OF

LAFE SOLOMON
ACTING GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD

BEFORE THE

SUBCOMMITTEE ON LABOR, HEALTH, AND HUMAN SERVICES, EDUCATION,
AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 6, 2011

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The Agency is all about people. In recent years, 25,000 to 30,000 charges and petitions have been filed annually in our offices around the United States by employees, unions, and employers. In each of these cases, employees are seeking an election or someone is claiming that an unfair labor practice has been committed by a union or an employer. Each case is assigned to one of the 1,170 employees in our 51 field offices, and we have been remarkably successful year after year in resolving those cases quickly and efficiently.

Some statistics from FY 2010 illustrate this point:

- Of the 3,044 representation cases filed, 86.3% of them were resolved within 100 days of filing.
- Of the 23,509 unfair labor practice cases filed, 73.3% of them were resolved within 120 days of filing.
- 64.4% of unfair labor practice cases filed were found after investigation to be without merit and were dismissed or withdrawn.
- 95.8% of unfair labor practice cases found meritorious after investigation were settled without litigation.
- The Regional Offices recovered \$86,557,684 on behalf of employees as backpay or reimbursement of fees, dues, and fines, and a total of 2,250 employees were offered reinstatement.

The Board's ability to resolve so many controversies in a relatively brief period significantly contributes to the maintenance of industrial peace, thereby saving expense to respondents, to charging parties, and to the taxpayers. Yet, these impressive results are completely dependent on our ability to maintain adequate staffing levels. Without adequate appropriations to maintain sufficient Agency personnel to handle these cases, delays and backlogs will inevitably increase, and the benefit of quick resolution to cases, most often by dismissal or settlement, will evaporate. In short, budget shortfalls have a direct impact on staffing resources, casehandling, and Agency performance. There is simply no way around that fact.

The \$287.7 million requested in President Obama's budget will fund essential staffing, space requirements, long-term investments in IT, casehandling costs, employee development needs, and other operational costs needed to achieve the Agency's mission and goals. Most of our proposed fiscal year 2012 budget--about 80% -- is dedicated to personnel costs; about 10% is required for rent and security; and the remaining percentage is allocated among all other operating costs and activities. The \$4.3 million increase we seek for fiscal year 2012 is less than a 2% increase over our current funding level of \$283.4 million and is needed primarily to keep pace with increased personnel costs associated with a stable, long-tenured workforce and increases in rent and travel costs.

We are also in the process of studying how, using our present and future technological advances, the Agency could work in a more efficient and cost-effective manner. To this end, Chairman Liebman and I have created an Agency-wide work group, including representatives from our Regional Offices, Headquarters, and our employee unions. We have instructed this group to do a comprehensive assessment of the Agency's structure, processes, and footprint and to make recommendations to us by the end of this fiscal year of options for changes that we should consider to improve our service to the public and use taxpayer money effectively, while at the same time continuing to carry out our statutory mandate. We are also mindful, however, that structural changes take time to implement successfully, including time to have meaningful consultations with our stakeholders.

I am proud to be associated with the traditions that have made the headquarters and field operations of the Office of the General Counsel such a fine example of effective public service. Speaking for all of our employees, we look forward to the challenges that lie ahead, steadfast in our desire to provide the highest level of service to the labor-management community and the

public whom we serve. We look forward to working with you, Mr. Chairman, with this committee, and with Congress on this very important mission.

Mr. REHBERG. Thank you.

In relation to the reason for the hearing, some of us don't feel that a \$290,000,000 budget is chump change. It is not a rounding error in the Federal Government. I hope I never get to the level of cynicism that each and every agency should not be looked at with a fine tooth comb. If we had the time, we would be looking at every agency possible, but we just don't have that time.

So I don't want you to think there is some nefarious reason for you sitting here, other than the fact I asked the staff which agencies have not had oversight within the most recent memory. I asked the Senate, I asked the members of my subcommittee, and they all agreed that this was one of the areas that we just had some questions, and we wanted to take a look at the budget, and we worry about the caseload and your ability to pay for it based upon the budget we are presenting.

Last December, the Board published a rather substantive notice of proposed rulemaking requiring over 6,000,000 private employers to post a government notice about union rights in the workplace. If an employer were to fail to post this notice, it would be construed as unfair labor practice, thereby exposing themselves to penalties or other sanctions.

I understand the Labor Relations Act, which hasn't been changed in a while, provides the Board with authority to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the NLRA. However, the NLRA does not require the posting of employee rights. Under what authority can the Board require these notices to be posted and assign a penalty for failing to do so?

Ms. LIEBMAN. Yes. Thank you, Mr. Chairman, for that question.

Let me start by saying that the Board does have authority in its statute to issue rules and regulations, as you mentioned, section 6. The Supreme Court has affirmed that the Board has the authority to do its business either through adjudication or through rulemaking.

The Board has historically chosen not to do much in the way of rulemaking. The petition that you mentioned was actually pursuant to a petition filed with us in 1993 by Professor Charles Morris, a law professor. Lest anyone say we act precipitously, that has been pending since 1993. We put it out for proposed rulemaking, and one of the specific questions that we asked for comment on was our authority to issue this rulemaking—

Mr. REHBERG. Including penalties?

Ms. LIEBMAN. Yes.

Mr. REHBERG. So you have the statutory authority to establish a penalty for not having—

Ms. LIEBMAN. We have put out for comment that precise question.

I should say that in the notice of proposed rulemaking it is quite clear that this is not intended to be a "gotcha" for employers. The clear intent was and the stated intent in the proposed notice is that if this is brought to an employer's attention—

Mr. REHBERG. I am not understanding. You put out for a question of the rulemaking as to whether you have the legal authority to apply a penalty or not?

Ms. LIEBMAN. Yes. Yeah. We—every—

Mr. REHBERG. Why wouldn't you know that from your legal counsel going into it, whether you have the legal authority to apply a penalty?

Ms. LIEBMAN. We clearly believe we have the authority. We believe this rulemaking is soundly within section 6 of our law, which says that we have the authority to issue regulations to effectuate the purposes of this Act. What we do is adjudicate unfair labor practices, and we believe that the failure to post a notice of this sort, once it was brought to the employer's attention—we are only looking to impose a penalty for willful violations.

Mr. REHBERG. Do you then intend or have you asked within the proposed rule Beck rights? Is it going to be an equal application to an employee's Beck rights?

Ms. LIEBMAN. Yes, that is another question which we posed. We are not proposing to require a posting of Beck rights because, in fact, the law already requires that unions provide Beck rights anytime they initially seek to represent a unit of employees, to seek to execute a union security agreement. So that full notice of Beck rights is already provided in our law. It would only apply in certain States, and it would only apply in cases where the workforce was unionized, which, as you know, is a small percentage of workplaces today.

Mr. REHBERG. Do you have any of these that you intend to have the rulemaking authority? I don't know how many you have going on. First of all, maybe you can answer that. How many other rule-making authority proposals do you have out at this time?

Ms. LIEBMAN. We have one out at this time.

Mr. REHBERG. Just this one?

Ms. LIEBMAN. Yes.

Mr. REHBERG. Do you intend to publish it before the end of the fiscal year?

Ms. LIEBMAN. We are in the process right now of reviewing almost 7,000 comments that were filed with us. So it is hard to predict exactly what the time frame would be. We are engaging in a staff review of these comments, and then everything will have to be brought back, and we would only be publishing a final rule if we had a majority vote to do so.

Mr. REHBERG. Ms. DeLauro.

Ms. DELAURO. Just a quick point of clarification, and then I will move to other questions.

Employers have to post notices regarding the minimum wage under the Fair Labor Standards Act and impose penalties and other pieces of legislation. Can you—

Ms. LIEBMAN. That is correct. I think virtually every piece of Federal workplace legislation requires a posting of a notice of rights, worker rights, under those statutes, except for the National Labor Relations Act.

Ms. DELAURO. Just for that measure. Thank you. Thank you very much for the clarification.

Ms. Liebman, H.R. 1, the majority's 2011 appropriations package that passed the House in February, cut the NLRB's budget by \$50,000,000, or 18 percent. Because the cuts were made halfway through the fiscal year, their effect would effectively be doubled, to

more than 36 percent in terms of a reduction. What would be the effect of this reduction on the NLRB's ability to carry out its responsibilities? Would you have to furlough employees? How many? What other steps would you have to take?

Ms. LIEBMAN. Yes. Thank you, Congresswoman, for the question.

We believe that this would be a very, very dramatic cut that would have a very detrimental effect on our agency's ability to do its work. As the Acting General Counsel said, our budget is 80 percent compensation and benefit costs. All we do is conduct elections and adjudicate unfair labor practice cases. That is all we do. That is what the statute says we have to do. So we don't have any programs that we can cut.

So if we are forced to accept a drastic budget cut, we believe the only thing we could do is to furlough employees. If there were another way to do it, we, of course, would be open to considering it. But we have not been able to come up with another way to do it. Our budget director was following this very carefully and advised us that if the proposed cut went into effect we would have to furlough every person in the agency for 55 days, which would essentially be half the time between now and the end of the fiscal year.

Ms. DELAURO. Just a follow-up on that. You outlined the two main functions, arranging and conducting elections to determine whether workers wish to be represented by a union and investigating and adjudicating complaints of unfair labor practices by either employers or unions. Both of the functions are initiated when some private party asks the NLRB to take action; is that correct?

Ms. LIEBMAN. Yes, that is correct. We do not initiate our own cases.

Ms. DELAURO. So the Board doesn't initiate investigations or call elections on its own.

Ms. LIEBMAN. That is correct.

Ms. DELAURO. Okay. So workers ask for an election to be held, to determine whether a union should be certified, or decertified, as their bargaining agent or someone—worker, union, employer—files a complaint charging that an unfair labor practice has been committed. Since all you do is respond to requests for action by citizens, if the budget is cut as dramatically as it is intended to be and with the consequences that you have talked about, the inevitable result in your view is that—is this correct—the citizens seeking action will have to wait longer, get less effective responses—often in cases where action is sought to protect basic rights for workplace democracy?

Ms. LIEBMAN. Yes, that is correct. By definition, if we were forced to furlough our workforce for half the time, all of our work would be curtailed. Things would slow down.

Workplace disputes don't go away just because our employees are furloughed. So the workplace disputes would continue to fester.

We have a proud record of resolving these disputes very quickly. That clearly would be affected. Our ability to do that would be affected very detrimentally. And even as is, we occasionally will get complaints from some of your constituents that a case is dragging on too long. I know you get these complaints.

Ms. DELAURO. Let me ask you one further follow-up. The recourse available to the worker who believes he or she has been

fired for engaging in union activity, to give one example of the kind of violations that NLRB is responsible for investigating and adjudicating, would they be able to get their own lawyer, bring the case to court themselves? I believe the answer is no, that under the NLRA there is no private right to bring legal action to protect those rights.

Ms. LIEBMAN. That is correct.

Ms. DELAURO. The only remedy, as I understand it, is by bringing the complaint to the NLRB.

Ms. LIEBMAN. That is correct.

Ms. DELAURO. So if the NLRB doesn't have the funding to act on these complaints in a timely manner, then, in effect, there is no effective remedy for violations of the law that protects workers' rights and protects management against improper actions by unions, for that matter. Am I correct?

Ms. LIEBMAN. That is absolutely correct.

Mr. REHBERG. Mr. Flake.

Mr. FLAKE. Thank you. Thank you for the testimony.

The budget justification mentions the agency requesting an increase of \$4,300,000. What is that going to go to?

Mr. SOLOMON. The \$4,300,000 is to cover the compensation increases and the rent and security increases. So we basically would be where we are today.

Mr. FLAKE. So it is just to stay afloat, the same kind of workload.

The budget justification also mentions the effort to create an Office of Public Affairs and to create a Facebook page, Twitter page, new brochures, increasing public outreach, attending—it mentions that agency representatives participate in more than 500 events annually. Among other things, I think the display in the Mall of America in Minneapolis or the Plaza Las Americas mall in Puerto Rico. How much of the agency's budget is spent on travel to these kind of events, travel or participation?

Ms. LIEBMAN. I don't have the exact number, but our budget director is sitting behind me, and I think she probably can get you an exact number.

I will tell you, though, that these expenditures are quite minimal. Our Office of Public Affairs was constituted as an Office of Public Affairs in September, 2009. It replaced the prior Division of Information. I believe actually we have three people in the Office of Public Affairs. Previously, 5 years ago, for example, there were six people. So we have actually shrunk the Office of Public Affairs.

In terms of a Facebook page, a Twitter feed, or whatever you call it, that I think is what virtually every organization is doing today, including, I am sure, Members of Congress and congressional committees, to communicate with the public.

Mr. SOLOMON. And if I could add, Congressman, the outreach program in the regional offices was established by my predecessor who put a very big emphasis on outreach. And regional directors are actually—part of their evaluation is the outreach program that their region conducts. And the reason that most of these activities are not costly is because they are conducted by the people in the regional offices that go to these various outreach activities.

Mr. FLAKE. Can you walk me through a typical complaint and how it is handled?

A complaint comes in to you. What is the first contact? At what point is the employer brought in? And just go through a typical complaint, if there is a typical complaint.

Mr. SOLOMON. If the charge would be either against a union or an employer, but they would both be handled the same way. They are docketed in the regional office where they are filed and then the first contact would be that the region sends to the employer or the union, the charged party, the charge itself.

Then the region would assign an investigator to that case. The investigator would start with the charging party, take the affidavit from the charging party, take the affidavit from the charging party's witnesses, and then would do the same for the charged party and go take their affidavits, collect their documents. And then the regional director will have a meeting to decide whether the case is meritorious or not meritorious.

Two-thirds of our cases historically—two-thirds of the charges are dismissed or found to be not meritorious, and then the regional director would contact the charging party and ask them to withdraw or else the regional director would dismiss the charge. If the case is found by the regional director to be meritorious, then the charged party would be contacted, and they would attempt settlement negotiations with the parties.

Mr. FLAKE. When you are talking about the 60-day average or a certain percentage are remedied in 60 days, is that referring to those that are found meritorious or including those that are dismissed?

Mr. SOLOMON. The 61 days I referred to were cases in which the regional director found that employees were in fact discharged during a union organizational campaign for union activities and the regional director issued a complaint or at least told the charged party that they wanted to issue the complaint. And these cases were, in fact, settled prior to a hearing.

Mr. REHBERG. Ms. Lee.

Ms. LEE. Thank you very much. Good morning. Thank you, Mr. Chairman.

First, let me thank you for being here, for your testimony. And let me just say I personally believe in the process of collective bargaining and the rights and protections that are afforded to workers, and I appreciate and fully support the work of the NLRB.

Quite frankly, labor unions, worker rights, and collective bargaining really has provided a path for many people of color to achieve middle-class status, which unfortunately now is, due to the recession, is eroding.

Last November, four States—I think it was Arizona, South Carolina, South Dakota, and Utah—adopted amendments to their constitutions that would eliminate an employer's right to voluntarily recognize a union when a majority of employees signed the authorization cards.

Now, I know that legislation has been introduced in the House—I think it is H.R. 1047, the State Right to Vote Act—which supports the rights of States to enact such laws. Other legislation that has been introduced really would eliminate all voluntary organizations. Have you had a chance to look at that legislation and how

it would affect the NLRB and how it would really affect workers throughout the country, especially in these States?

Ms. LIEBMAN. I am going to make sure I understand your question, Congresswoman. You are asking about the legislation in the States or in the House?

Ms. LEE. H.R. 1047, which is the State Right to Vote Act. Have you had a chance to look at that?

Ms. LIEBMAN. Is that the Secret Ballot Protection Act? Is that what that is called?

Ms. LEE. Yeah.

Ms. LIEBMAN. Congresswoman, there is a long tradition among Board members, which is not to comment on pending legislation. So I would ask that you all would respect that tradition. And in point of fact I really haven't had a chance to study it.

Ms. LEE. Have you had a chance to look at the States? Can you comment on what has happened in the States in terms of the amendments that would eliminate the employers' rights to recognize the voluntary—

Mr. SOLOMON. Yes, Congresswoman. The special litigation branch, which is under my supervision, did an analysis of the amendments in the four States that were passed; and they advised me that these amendments directly conflicted with the National Labor Relations Act and with Federal law. And I agreed with their recommendation, and I asked the Board to authorize me to contact the attorneys general in the four States to advise them of our position that these amendments were preempted by the National Labor Relations Act.

I wrote a letter to the four attorneys general. They responded, and we felt that they recognized that voluntary recognition was allowed under Federal law. So I wrote them a further letter that I thought that there were possibilities to enter into some sort of stipulation that these laws were preempted. The negotiations were not successful, and we are now studying what next step to take.

Ms. LEE. Has this ever happened before? It sounds like there is a stalemate.

Mr. SOLOMON. No—

Ms. LEE. There is no standard kind of process that could be followed now that that impasse is there?

Mr. SOLOMON. The Supreme Court has long recognized that the National Labor Relations Act has the authority to seek a court's order that State laws are preempted by the National Labor Relations Act and by the Federal scheme. My predecessors have taken very similar action to what I have done.

At the recent hearing before the House Education and Workforce Committee, former General Counsel Arthur Rosenfeld agreed that he wrote a similar letter to the State of North Dakota that their law that they had passed was preempted. And we recently intervened on behalf of the employer's side for a case that went to the Supreme Court, *Chamber v. Lockyer*, which we argued that the law was preempted, and the Supreme Court agreed.

Mr. REHBERG. Lest you think the chairman does not support job training, Kevin was in here over the weekend practicing with the clock. So far, he has only made one mistake.

Mr. Alexander.

Mr. ALEXANDER. Thank you.

Madam Chairman, good morning. How are you?

From 2001 to 2010, the NLRB's budget has increased almost every year, but the number of NLRB employees has decreased during that amount of time. We are told in the NLRB's fiscal year 2010 budget justification that 80 percent of the agency's budget is dedicated to personnel costs. So that means that during that period of time that I just described each employee's salary would have gone up about \$50,000. Can we justify that?

Ms. LIEBMAN. Well, thank you, Congressman.

I am not sure that the starting premise is accurate, that the budget has gone up every year. I believe that in some of those years there was a fairly flat appropriation or maybe even a slight cut.

I think during most of that time, there was a parity between the number of employees and the case decline. In fact, in 2010, we had a slight increase in our case intake. Our staff has gone down. But compensation and benefit costs are clearly outside of our control as are our rent increases. Certainly it is not accurate to say that everyone's compensation is increased by \$50,000.

We do however have a very senior workforce, long-tenured, people who have worked for the agency for many years, like our Acting General Counsel. We also have an agency that is heavily professional employees, 40 percent lawyers, who, by definition, are more highly paid.

Mr. ALEXANDER. Well, I am just looking at numbers from the Appropriations Committee. Let us go to 2001, 216,000,000; 226, 237, 242, 249, 251, 262, 283. It seems to me like that is going up.

Mr. Solomon, would you give us a couple of examples of unfair labor practice?

Mr. SOLOMON. Certainly, Congressman.

Seventy percent of our charges that are filed—and, as Congresswoman DeLauro said, we don't initiate any charges. Seventy percent are charged against employers, and a large percentage of those are that employees are discharged or otherwise disciplined for union activities. We also have charges filed by employees against unions, that they are not being fairly represented by the union. We have charges—jurisdictional disputes between two unions, both claiming the work from an employer. We have secondary boycott charges. They run the gamut.

Mr. ALEXANDER. So you are saying that not all of the unfair practices are employers taking advantage of employees?

Mr. SOLOMON. Correct. Correct.

And could I go back to the question you asked the chairman about the budget?

In the years between 2006 and 2008, we were at fairly flat budget increases that really didn't keep up with the inflationary compensation costs and rent and security. And we made many cuts to—we deferred employee training, we deferred IT investments, and the increases that you pointed out that we got in 2009 and 2010 really were to come back to these very important things for us to do.

Mr. ALEXANDER. Thank you. And I would like to remind the chairman that I have 26 seconds left. Thank you.

Mr. REHBERG. Very good.

Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Good morning and welcome.

As I understand it, the NLRB recently proposed rulemaking that would require employers to notify employees of their rights under the National Labor Relations Act by simply posting a notice. And I understand there is a general consensus that employees lack information about their rights under the NLR Act. How would the proposed rules address this information gap and if you could elaborate on maybe what some of the objections are to it?

Ms. LIEBMAN. The proposed notice posting is intended to address what we have reason to believe is a lack of awareness, by probably the vast majority of workers in the workplace today, that they have rights under the statute. I think it is a secret to some extent but a misperception that this law only applies in unionized workplaces. Actually, this law applies across the private sector to union and nonunion workplaces. I think the number is something like 6 million workplaces in the private sector.

And we have reason to believe that particularly with the decline of organized labor, with an increasing immigrant workforce, and with a lot of young people coming into the workforce today who have had no exposure to this law or to labor unions, that there is a general lack of knowledge. So this proposed rulemaking is intended to address that lack of awareness by workers and also by their employers.

We have reason to believe that a lot of businesses, particularly small businesses, particularly owned perhaps by younger people who also haven't had that exposure to this law and to labor unions and to what the law is about—so that is really what it is intended to do. It is intended to advise workers and their employers of these workplace rights, just as there is similar notices in workplaces about other workplace laws, minimum wage, et cetera, OSHA.

Ms. ROYBAL-ALLARD. That just requires placing the notice?

Ms. LIEBMAN. That is correct.

Ms. ROYBAL-ALLARD. There has been some concern voiced about how the Board is making decisions, whether or not they are within the discretion of the Board. Have the NLRB's recent decisions been consistent with prior precedents and within Federal law?

Ms. LIEBMAN. Yes, Congresswoman, I think they have definitely been within prior law. Let me just give you a little thumbnail sketch of what this Board has done in the last year.

First of all, we have been reconstituted as a proper quorum, in accordance with the Supreme Court's decision, for exactly one year. During this year, we have issued 394 decisions. Of those, approximately 100 were decisions issued as a result of the Supreme Court's decision overturning the two-member decisions. So about 100 of these cases came back to us, and new decisions have been issued. I believe every one of those decisions has been a unanimous decision. In fact, the vast majority of our decisions are unanimous decisions. So that is number one.

We have also dealt with some very old cases that had languished as a result of this 27-month two-member Board. My colleague, Member Schaumber, and I put aside about 60, 70 cases that remained deadlocked when we went to a two-member Board at the

end of 2007. Those were difficult cases, precedent-setting, novel issues. We put those aside; and the new Board, once constituted, has begun to tackle some of those cases.

Member Schaumber and I, I mentioned earlier, were successful in reaching agreement nearly 600 times over the 27 months, but he and I put aside maybe 60, 70 other cases where we couldn't reach agreement. So, again, the new Board has had to tackle those. Almost by definition, what we have been dealing with have been difficult issues, novel issues, issues that require delicate line drawing. I believe that all of those decisions have been well within the letter of this law, clearly within the letter of this law, the intent of this law, and within Supreme Court doctrines.

I thought my time was up.

There has been——

Mr. REHBERG. It is.

Mrs. LUMMIS.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Mr. REHBERG. That is what happens when you hesitate.

Mrs. LUMMIS. Following on this same line of questioning as the previous colleague about the notice of the proposed rule, I understand your interest in wanting to inform employees of their rights to unionize, but I don't understand why this proposed rule is not balanced. Why does it not inform employees of the consequences of unionization, such as the loss of the ability to bargain directly with management? Why does it not inform them of their right to withhold portions of their union dues or fees that are used for political purposes that they don't espouse? My concern is that the notice is about the rights to unionize and not the consequences of unionization. It is not a balanced rule. Could you comment on that, please?

Ms. LIEBMAN. Yes, thank you.

First of all, we put out the notice for public comment. We have received nearly 7,000 comments which we are in the process of reviewing. We expressly asked for comments on a whole range of subjects, including the contents of the notice. So I am assuming we are going to have comments on that. We have staff reviewing all of that right now.

We started out in this proposed notice using the notice that has been now adopted by the Department of Labor for Federal contractors. So our starting premise was the notice that they proposed, got comments on and I believe have now adopted.

Mrs. LUMMIS. So that is the one that is basically informing people of the rights to unionize but not the rights they are giving up if they choose not to unionize?

Ms. LIEBMAN. I don't have the notice language in front of me, but what I know it expressly said is that you have the rights to engage in activity to unionize and to improve your terms and conditions of employment. It sets out all the rights, and then it expressly said, or the right to refrain from any of those activities. So that is what section 7 of our Act, the free choice provision says. You have the right to do all of these things, and you have a right to refrain. That, in my view, is a balanced notice.

Mrs. LUMMIS. But it doesn't talk about the consequences, the loss of the right to bargain directly with the employer.

Ms. LIEBMAN. It probably does not spell that out. It doesn't spell out every nuance of Federal labor law and what it means to bargain collectively or—

Mr. KINGSTON. Would the gentlewoman yield?

Mrs. LUMMIS. Yes, I will.

Mr. KINGSTON. I think the question is, is it proposed in a balanced way or does it just have that one-line disclaimer at the end of a long list of this is what you can do, tilting it in favor of joining the union?

Ms. LIEBMAN. Well, I think that the notice pretty closely mirrors the language of the statute, the way the rights are set out in the statute. It makes clear what your rights are—what an employee's rights are with respect to an employer and to a union, if you happen to have one; and it sets out the right to refrain from any of these things, which is exactly what the statute says. I think it is fairly close to the language of the statute.

Mrs. LUMMIS. Will the gentleman yield back?

Mr. KINGSTON. Yes.

Mrs. LUMMIS. Thanks.

I also have a question about a case, especially health care, a case where apparently a union seeking to organize nurses apart from other employees in a non-acute health care facility and that that case may be an avenue to expand the concept of micro unions and micro bargaining to all occupations and industries. So my question is, what is the reasoning behind considering an expansion of the standard beyond non-acute health facility workers?

Ms. LIEBMAN. I believe, Congresswoman, that what we have done in that case—

First of all, it is not nurses. It is nursing assistants. I think it is certified nursing assistants. And what we have done is to ask for a briefing on the experience—since for about the last 20 years, under a decision called Park Manor, which was a decision of the Board through adjudication dealing with bargaining units in non-acute care health care facilities. It followed really the first and essentially only substantive rulemaking that the Board has done in its history, in the late 1980s, where it decided what the appropriate bargaining units would be in acute care hospitals.

That was done by informal rulemaking, by the way, and was challenged. It was challenged on the grounds that the Board should have done it through adjudication. The rulemaking was upheld by the Supreme Court unanimously saying that the Board is free to do rulemaking or adjudication.

Mr. REHBERG. Thank you.

Introducing a new member to the committee, Mr. Kingston. Welcome. It is nice to finally meet you in person.

Mr. KINGSTON. Good to see you, Mr. Chairman.

Madam Chair, I wanted to get back on that notice. Is your intention to give employees all the information, correct?

Ms. LIEBMAN. Well—

Mr. KINGSTON. In an unbiased way? Is that your intention?

Ms. LIEBMAN. Our intention is to raise awareness, as I said, of workers and their employers—

Mr. KINGSTON. But not to give it to them in an unbiased, balanced way? That is really my only question. Is it your intention to give it to them in a fair and balanced way?

Ms. LIEBMAN. Yes, absolutely.

Mr. KINGSTON. Then you would be in support of a bill or report language that reinforces that position in the House, correct?

Ms. LIEBMAN. I'm sorry?

Mr. KINGSTON. You would be in support of bill language or report language that reinforces that position, that the intent is to give information to employees in a fair and balanced way?

Ms. LIEBMAN. Yes our intent is to give the information in a fair and unbiased way. Of course.

Mr. KINGSTON. Thank you. And I hate to cut you off, but I know this chairman is notorious for being a timekeeper and so I just wanted to kind of move it quickly. Not that you ever would, but some witnesses do tend to run the clock on answers. And I think Mr. Solomon, the lawyer, I would be more suspicious of him than you.

Mr. SOLOMON. The chairman is a lawyer, also.

Mr. KINGSTON. Well, then I am suspicious all the way around.

So "quick snap", Mark Pearce has said he wants to implement quick snap. Is it your intention to do that?

Ms. LIEBMAN. Quick snap meaning—

Mr. KINGSTON. Quick snap, faster elections to unionize—as I understand it, the average election is 38 days. This would reduce it to a 5- to 10-day period of time.

Ms. LIEBMAN. I think the median time for our elections presently is 38 days. We are giving active consideration to another rule-making which would look at our procedures for conducting secret ballot elections. Our secret ballot elections are conducted pursuant to procedures that the Board has devised over the years. Periodically over our 75 years, the Board has looked at them and revised them. We are examining them to see if the procedures still work, if there are procedures that are unnecessary, if there are procedures that detract from the effective conduct of these elections.

Mr. KINGSTON. Well, Mr. Pearce comes at it with a bias, a very pro-union background. So when he advocates quick-snap elections, he wants more companies to unionize. And in your filter for the NLRB, I just want to make sure that, while he has the right to advocate that position, that the position of the Board would not necessarily be to tilt things in the direction of unionizing.

Ms. LIEBMAN. Congressman, first, let me say that Mark Pearce—my colleague, Mark Pearce, formerly represented unions, but I believe he understands his responsibility as a Board member to fairly enforce this Act. Let me say that—

Mr. KINGSTON. We will work with him on that.

Ms. LIEBMAN. The second thing is that each Board member has a vote. The Board presently has four members, and anything that we do will require at least a majority vote.

And, thirdly, let me say that I don't think what any of us are trying to do is to increase union membership. What we are trying to do is fairly enforce the provisions of this Act, which do give workers the right to choose unionization if they want or to refrain

from choosing unionization. That is all we are looking for, are fair procedures.

Mr. KINGSTON. Would it be safe to say that the NLRB would not be following the National Mediation Board on their recent decision to say the majority of workers present would be able to determine if a company unionizes or not?

Ms. LIEBMAN. Mr. Chairman, I will let my colleague answer that one.

Mr. KINGSTON. And you would admit that that is certainly not—that is an advocacy position of the National Mediation Board?

Ms. LIEBMAN. Congressman, what the National Mediation Board switched to is what the NLRB has done for its entire history. That is the way our votes are conducted.

Mr. KINGSTON. So you could be unionized with the members present?

Mr. SOLOMON. Yes.

Mr. KINGSTON. You can do that?

Mr. SOLOMON. The majority of those present voting.

Mr. KINGSTON. So the same procedures to de-unionize would be the same procedures to unionize?

Mr. SOLOMON. Yes.

Mr. KINGSTON. Because I think there has been some concern about that.

Ms. LIEBMAN. Our procedures and the way we conduct our elections are the same—to authorize or decertify.

Mr. KINGSTON. Thank you. Coming in under 5 minutes. Very good.

Mr. REHBERG. Well trained.

We are going to start round two, and I want to thank the committee for watching the time and allowing us an opportunity to have as many rounds as we possibly can.

My question is, can the Board ever reject an election and call for a second ballot?

Ms. LIEBMAN. Yes, and it does routinely do that pursuant to objections filed by one party or the other that some misconduct has gone on or the Board has failed to conduct a fair election. Objections hearings would be held and sometimes, occasionally, that results in a new election.

Mr. REHBERG. I want to get back to something that Mrs. Lummis was talking about with the unit determination and that is more of an appropriations question, and that is, if—and I don't expect an answer as to how you are going to rule and all—but what is that going to do for your annual budget or your FTE level if the determination is made to break up into additional categories or units, classifications? Have you addressed that issue? Is there an analysis out there to make a determination the effect it will have? Because, obviously, it is going to be a lot more controversial in the future. There are going to be probably clearly a lot more cases. So the question becomes, what kind of consideration has been made within your Board for FTE and your budget purposes?

Ms. LIEBMAN. Thank you, Mr. Chairman.

You are going back to the Specialty Health Care case. So far, the Board has not made any decision. All we have done is asked for briefing on a range of questions. That briefing time is not even con-

cluded yet. I think we have extended it at the request of some Members of Congress and the Senate until—

Mr. REHBERG. Can you give me an estimate of when a decision will be made, just for purposes of addressing it in the Appropriations Committee? We are going to deal with the problem.

Ms. LIEBMAN. Yes. As I said, all we have done so far is ask questions. No determination has been made about what our decision is going to be. It is hard for me to predict what the timing would be. I would obviously like to decide all cases pending before us sooner rather than later, but I have learned wisely over the years never to make too many predictions about when a case is going to issue. That takes on a life of its own.

Let me say, though, about that particular case—I don't want to go into the merits of it because it is a pending case. But it concerns the question, as the congresswoman said, about whether certified nursing assistants are entitled to have a bargaining unit on their own. That we may have asked for questions that go beyond that classification is really just to consider that issue in context.

Mr. REHBERG. Okay. Would you provide the committee with the data that shows that it is a problem in the first place? You know, there has to be a reason that the Board is even considering the issue, and so we would like to know, you know, what went into the decision-making process, within your own mind, that the unit size is a problem that needs to be addressed by NLRB.

Ms. LIEBMAN. Again, this is a matter currently under deliberations.

Mr. REHBERG. No, I am not arguing about this particular case. I am arguing about the necessity—what drove you to make a determination that unit size is a problem? There has to be—you know, we don't pass a law unless there is a reason to pass a law. You are not considering this unless you consider a unit size to be an issue. So I would like you to provide to the committee either the study, the analysis, or the data that drove you to this decision.

Mr. SOLOMON. Mr. Chairman, if I may, just to clarify, I asked for an analysis of what is our present experience on unit size; and I will be happy—I don't have it with me, and I don't actually remember the number. But the number presently, the number is quite small for our average unit size. We don't pick the units. People petition us. And, you know, the Act allows us to conduct an election in any appropriate unit, an appropriate unit, and the average unit size presently is, I am pretty sure, under 30.

Mr. REHBERG. I just recognize this as having a major impact on your budget, the potential for a major impact both FTE and annual budget, and so we need to have some proof that there was a reason or there is a reason for a changing of the unit size determination.

Mr. SOLOMON. I guess what I am trying to say, and maybe I didn't say it articulately. I am not sure—I mean, the Board will do what the Board will do, and the General Counsel will react to it, but I do not believe that even if the Board changed—whatever they decide in special health care, I do not believe will actually impact either our FTE in any adverse way.

Mr. REHBERG. Okay.

Ms. LIEBMAN. If I could just add, the number I think our Acting General Counsel is struggling to come up with is our median bar-

gaining unit size today—median, that means, you know, in the middle—is 25. So that means more than half will go over that size and more than half are under that size. The minimum size would be two people, because we wouldn't conduct an election if there were fewer than two.

Mr. REHBERG. Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

Just a point of clarification, you were petitioned to look at that, the size. You have a petition from a nurse's assistant—you don't decide to say, okay, I think that you ought to be doing this. It is like, you know, asking a judge what was it that made him take the case. Isn't that the—

Mr. REHBERG. If the gentlewoman would yield, though, the General Counsel—

Ms. DELAURO. Only if I can have the extra time.

Mr. REHBERG. Fair enough. Shut it off—not shut her off. Shut it off.

The General Counsel just said that he asked, which is a little different than the initial petition. He asked for initial—

Ms. DELAURO. I think—

Mr. SOLOMON. No, I just asked for an analysis of what our average unit size was right now.

Ms. DELAURO. Right, but I am just saying, in terms of looking at that effort, it would have to come from a petition.

Mr. SOLOMON. Yes.

Ms. DELAURO. Another point is, this has to do with the posting of the notice of employees' rights under the law. As I understand it—correct me if I am wrong—it is just that you can exercise your right or you can refrain from doing that. You don't talk about the benefits of joining a union or what it takes away. I mean, there isn't a value. It is just, in essence, you have got the right to move forward to do it or to refrain from doing it, as you pointed out. You don't attach the benefits or the consequences, is that correct, in your notifications?

Ms. LIEBMAN. It is fully correct. It is purely informational. It is not advocacy.

Ms. DELAURO. I think that is an important point to be made. Because it looked as if there was some view that this was advocacy rather than information.

Ms. LIEBMAN. Absolutely not.

Ms. DELAURO. So thank you for the clarification.

Mr. Solomon, it has been asked here already about four States that passed constitutional amendments which restrict freedom of employers and employees to enter into voluntary recognition agreements as a means to establish a union, even though it has been allowed under Federal law for 75 years. I want to enter into the record the letter from Arthur Rosenfeld, the Bush administration's NLRB General Counsel, where he testified that these constitutional amendments were on their face preempted under NLRA law; and Mr. Chairman, can I enter this?

Mr. REHBERG. You may, without objection.

[The information follows:]



NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

November 26, 2003

The Honorable Wayne Stenehjem
Attorney General
State of North Dakota
Office of Attorney General
State Capitol
600 E. Boulevard Ave., Dept. 125
Bismarck, North Dakota 58505

Re: Preemption of State of North Dakota Century Code Section 34-01-14.1 by National Labor Relations Act

Dear Mr. Stenehjem:

I am writing to apprise you of the National Labor Relations Board's concern that a North Dakota statute conflicts with the rights afforded employees by the National Labor Relations Act. The purpose of this letter is to ask for your assistance in determining whether the Board's concern can be addressed by your State.

The National Labor Relations Board was created by Congress in 1935 as an independent federal agency to administer the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, as well as the right to refrain from all such activity. The Act generally applies to all private sector employers involved in interstate commerce, with limited exceptions, such as airlines and railroads. It implements the national labor policy of assuring free choice regarding union representation and encouraging collective bargaining as a means of maintaining industrial peace. Thus, under the Act, employees are entitled to majority representatives of their own choosing to bargain collectively with employers. In turn, unions serving as exclusive bargaining representatives are obligated to treat all employees they represent fairly and equally, regardless of whether the employees are members of the union. See, e.g., Richardson v. Communications Workers of America, 443 F.2d 974, 977, 981-83 (8th Cir. 1971).

A provision of the Labor Act permits unions to negotiate with employers for a "union security clause," which conditions employees' continuing employment on their payment to unions of amounts to cover the primary representational services performed by unions - collective bargaining, contract administration, and grievance processing. See 29 U.S.C. § 158(a)(3). However, the Act also permits states to forbid employers and unions from

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negotiating such union security clauses. See 29 U.S.C. § 164(b). Such states are commonly known as "right to work" states, and North Dakota became such a state in 1947, by enacting Section 34-01-14 of the Century Code. In these states, employees cannot be required to make payments to unions which represent them in order to retain their employment, although they may voluntarily pay membership dues.

The North Dakota statute about which the Board is concerned is Section 34-01-14.1 of the North Dakota Century Code (attached), which was enacted in 1987, apparently to lessen the impact of the state's "right to work" law. The statute is entitled, "Collection of actual representation expenses from nonunion employees," and it authorizes unions to collect from non-union members expenses incurred on their behalf in grievance processing. Thus, this law permits unions to collect funds from employees who otherwise cannot be compelled to pay for union services. As explained below, however, this authorization by the state is not permitted under federal law.

North Dakota Century Code Section 34-01-14.1 came to the Agency's attention earlier this year as a result of an unfair labor practice charge filed by a North Dakota employee. This non-union member was fired by his employer, and was then required to pay \$10,000 to the union before it would process his grievance. The union told the employee that the North Dakota statute permitted the union to do this. That particular dispute was resolved by the union's repaying the \$10,000 and promising not to rely on the statute in the future. But the statute remains on the books as an invitation to other unions to similarly evade their obligation under federal law to treat all represented employees fairly and equally. Indeed, inquiries by our regional office have confirmed that the statute is relied upon regularly by other unions in North Dakota.

This North Dakota statute is preempted by federal law because it is directly contrary to the Labor Act and Board law finding that the charging of grievance processing expenses only to non-members is a violation of Section 8(b)(1)(A) of the NLRA. See Furniture Workers Div., Local 282 (The Davis Co.), 291 NLRB 182 (1988). The Board has consistently held that all represented employees are entitled to the impartial assistance of their exclusive representative in the filing and adjustment of grievances. A union evades its duty to provide such assistance when an employee must either pay a price for such help or forego it entirely. Hughes Tool Co., 104 NLRB 318, 327 (1953). The North Dakota statute licenses just such an evasion and thereby impermissibly alters the paramount federal law that requires an exclusive bargaining representative to fully and fairly represent all employees in the bargaining unit, whether or not they are fee-paying members.

Under the Supremacy Clause of the Constitution, federal statutes such as the National Labor Relations Act are binding on the states, notwithstanding conflicting state laws. See U.S. Const. art. VI, cl. 2. Because the North Dakota statute authorizes conduct that the NLRA prohibits under Section 8(b)(1)(A), it is preempted by federal law pursuant to the Supremacy Clause. See San Diego Building Trades Council v. Garmon, 359 U.S. 236, 244-46 (1959); Employers Ass'n, Inc. v. United Steelworkers, 32 F.3d 1297, 1300-01 (8th Cir. 1994); see also

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NLRB v. Nash-Finch Co., 404 U.S. 138, 144-47 (1971)(authorizing NLRB to seek declaratory and injunctive relief to invalidate state laws that conflict with rights under the NLRA).

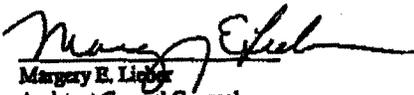
In these circumstances, the Board is concerned that this statute is impairing the federal rights of represented, non-union members in North Dakota to: (1) not be forced to pay for representation expenses, (2) not be coerced into joining a union, and (3) have grievances processed in the same manner as that of union members. Accordingly, I am hopeful that the State of North Dakota will agree to take voluntary measures to repeal this statute.

Please contact either Dawn L. Goldstein, Senior Attorney at (202) 273-2936, or Nancy E. Kessler Platt, Supervisory Attorney at (202) 273-2937, with any questions and to discuss the Board's concern about the North Dakota statute. Thank you for your attention to this matter. I look forward to your prompt response.

Sincerely yours,

ARTHUR F. ROSENFELD
General Counsel

By:


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Enclosure

active/north Dakota/letter to AG

Ms. DELAURO. And I might add with regard to that, Mr. Rosenfeld's view here is one that worked against the unions in North Dakota at the time; is that correct?

Mr. SOLOMON. That is correct, Congresswoman.

Ms. DELAURO. So Federal preemption of State law is something which has strong historical precedent, regardless of which party is in power.

Mr. SOLOMON. That is correct.

Ms. DELAURO. Can you describe recent litigation that has involved preemption of State labor laws? Have courts generally sustained the NLRB's views in litigation—without talking about pending matters?

Mr. SOLOMON. Well, the most recent was the Supreme Court case *Chamber of Commerce v. Brown*, which was in 2008; and we intervened on the side of the Chamber of Commerce. It was pro-union State law at issue there, and we said that it was, in fact, preempted, and the Supreme Court agreed.

Mr. DELAURO. The Supreme Court upheld your—

Mr. SOLOMON. Yes.

Ms. DELAURO. So, again, precedent. There is plenty of precedent, regardless of—

Mr. SOLOMON. Yes.

Ms. DELAURO [continuing]. The politics of whose party is in charge.

Mr. SOLOMON. That is correct. Many of my predecessors have sent the same letters that I sent.

Ms. DELAURO. Which also, by the way—I will get to that later.

Let me ask, Mr. Solomon. Some have taken issue with your efforts to make use of so-called 10(j) injunctions to assist people who have been fired or penalized for union activity. First, am I correct that any such injunction requires approval from a Federal judge?

Mr. SOLOMON. Yes.

Ms. DELAURO. Your role then is to ask the court to act, and it is the court that makes the decision?

Mr. SOLOMON. That is correct.

Ms. DELAURO. Second, can you tell us the circumstances in which your office is likely to pursue a 10(j) injunction and why is its remedy important to protecting democracy in the workplace?

And let me just add one piece to that. What has been your success rate as Acting General Counsel with these injunctions? Have the courts usually agreed with you and your staff and issued the requested injunction? So why is the remedy important, what are the circumstances, and how have the courts acted?

Mr. SOLOMON. The 10(j) has been in the statute since 1947. It has been used by many, many of my previous general counsels. My predecessor told the regional offices to pay particular attention to, first, contract negotiations and where there were unfair labor practices to go in and seek a 10(j) injunction.

10(j) injunctive relief is very important, because it puts the status quo back into place while the unfair labor practice is being litigated. In my—am I over?

Mr. REHBERG. No, go ahead.

Mr. SOLOMON. Just to give you some statistics for the win rate when you got to that, since I have been General Counsel, there

have been 32 10(j)s that the Board has authorized. I can only recommend them to the Board. The Board has the final decision. Of those, we have won five in district court, 12 have settled, and 15 are pending.

Mr. REHBERG. Mrs. Lummis.

Mrs. LUMMIS. You know, I have to relate, as an animal science and biology major, when I went to law school, I took labor law. And my professor said, well, I am delighted you want to take this class, but you are a rancher. When are you ever going to use that? And now, after this, I can call him and say, I used it. I used it. And it was fascinating. He was a great teacher, and it was a fascinating class, but finally, finally, a use for all that.

Question about—back to the specialty health care case. Here is the question that people have been asking me. The concern out there is that the specific question asked by the petitioners related to nursing assistants, and yet it appears that a broader application of the case may apply the concept of micro-unions and micro-bargaining to all occupations and industries. So my question is, are you considering expanding the standard beyond the non-acute health care facility workers that are involved in the petition, the subject matter of the case?

Ms. LIEBMAN. Congresswoman, I understand your concern, and I understand that this issue has received a fair amount of press. I have to say that one thing that is perplexing to me is that merely asking for amicus briefing on a set of questions has created so much controversy and concern. Because, at this point, all we are trying to do is get information and understand the issue in the broader context.

The case—and, again, I am reluctant to say too much because it is a pending case. The Board has not deliberated. In fact, the briefing period is not yet over. The case—you are absolutely correct—concerns the question of certified nursing assistants. This was a case where the union sought a unit of certified nursing assistants. The regional director found that that unit was appropriate, if I am not mistaken—I think I have it right. The nursing home, the employer, sought review with us on that issue, the appropriateness of that issue, claiming that the bargaining unit that the regional director found to be appropriate was too narrow under existing law.

Mrs. LUMMIS. So do you have a choice—I am going to try and ask you questions without getting to the heart of the specific case. Do you have a choice about whether to confine your decision to the specific facts in the case or apply it more broadly across classifications in businesses?

Ms. LIEBMAN. I am not sure that I would characterize it as a choice that way. In the course of an adjudication, we will decide the case before us. As is often the case in adjudication, your decision may have an impact, establish essentially a substantive rule of law that will then be applied in subsequent cases.

Mrs. LUMMIS. Okay, well let me ask it this way then. Are you willing to assure this committee that you will not, through adjudication, supersede or render superfluous any portion of the National Labor Relations Act, particularly section 9(c)(a), relating to the determination of appropriate bargaining units.

Ms. LIEBMAN. I think I can assure you, certainly on behalf of this Board member—I wouldn't dare to speak for my colleagues—that my decision will be fully consistent with the letter and intent and precedent under the statute.

Mrs. LUMMIS. Thanks. I appreciate that very much.

Now there is still a lot of concern about using this case as back door rulemaking. Do you agree generally that rulemaking ensures transparency and the opportunity for more people to participate in offering opinions about broad changes in policy, as opposed to adjudication?

Ms. LIEBMAN. Well, certainly that is one of the arguments that has been made for why the Board should use more rulemaking. It does involve allow more public participation and transparency, yes.

The Board has traditionally not done rulemaking. As I mentioned, the only real occasion where the Board has embarked on substantive rulemaking was back in the late 1980s when it did the rulemaking on appropriate bargaining units in acute health care facilities. Once it adopted that rule, it then decided the case on adjudication called Park Manor, which dealt with the standard to be applied in non-acute care; and it is that case which is really at issue here.

When the Board decided that case—I forget what year it was—1991, approximately—it said that this is an industry which is in flux, clearly changing, and what we should do is monitor the experience under this decision, under the Park Manor decision; and I think that is exactly what our request for amicus briefing in Specialty Health Care is following up on, a specific invitation to look at the experience under the Park Manor doctrine in an evolving industry.

Mrs. LUMMIS. Thank you very much.

Mr. REHBERG. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Thank you, Mr. Chairman.

I just have one final question, Chairwoman Liebman. At a time of economic uncertainty and persistent high unemployment, it is more important than ever that the NLRB is provided with adequate resources to do their job effectively. Yet H.R. 1 would cut funding for the NLRB by \$50,000,000, and we have already heard that this would require all of the NLRB's employees to be furloughed for 55 workdays, or nearly 3 months between now and the end of September. What impact would these furloughs have on the NLRB's mission to reduce interruptions in commerce caused by conflicts between employers and employees and what impact would it have on our recovering economy?

Ms. LIEBMAN. Thank you, Congresswoman.

First of all, thank you for your support of our adequate funding. We mentioned this a little bit earlier. If we were forced to furlough all of our employees essentially for half time for the remainder of the year, by definition all of our operations would have to be curtailed.

We do two things. We conduct elections in workplaces. So our ability to do that in a prompt, efficient way would be slowed down. We also adjudicate unfair labor practices. We investigate the charges that are filed with us. We settle the vast majority of them.

We have to trial in some; and all of that, of course, would be slowed down if everyone was working half time.

That would mean that not only would workplace disputes fester longer, but, for example, employers might have to have illegal strikes or illegal picketing go on at their workplaces for longer periods of time. Workers might be illegally locked out. So our ability to carry out our mission, to do the two things that Congress has instructed us to do, would I think by definition be curtailed.

Of our funds, 80 percent goes to paying for our workforce of approximately 1,670 employees. We recognize certainly the economic times, but we think that our ability—we have no programs to cut, other than to furlough our employees to meet such a drastic budget cut; and in a difficult economy we think that our reducing the efficiency of our resolving disputes could contribute to destabilize relations and make things worse in the workplace.

Mr. SOLOMON. And if I may just add a few specifics.

We have estimated that our backlog would grow exponentially. Every decision point in a case would be delayed by about 3 months. And, as I mentioned, our overarching goals for the agency is to resolve our representation cases in 120 days, resolve unfair labor practice cases—representation cases in 100 days, unfair labor practice cases in 120 days, and we have done a remarkable job of that, but any cut of this size would definitely impact significantly on any of those.

Mr. REHBERG. Mr. Kingston.

Mr. KINGSTON. Thank you.

Let me ask you, in terms of the case about Facebook and employees saying disparaging things about their employers on Facebook, what is the NLRB's position on that? I think you have a case on it, right?

Mr. SOLOMON. I issued complaint. The complaint settled, but our position was that the employee engaged in a conversation on her Facebook page with other employees about her supervisor and that that is covered under the Act, protected concerted activity; and we issued a complaint that her discharge for that conversation and that protected activity was unlawful under the Act.

Mr. KINGSTON. Do you see a trend there or something that we should examine in terms of where the balance is on free speech and where the line should be?

Mr. SOLOMON. Well, certainly.

Mr. KINGSTON. Is that something you can kind of see from both sides—you know, a small amount okay?

Mr. SOLOMON. Certainly social media is going to increase exponentially, even in ways that you and I can't envision probably.

Mr. KINGSTON. Yes.

Mr. SOLOMON. We have a case before us that involves Twitter. We have the other Facebook cases. I think there is consternation among the employer community of writing policies that cover social media, what is allowed and what is not allowed. You know, we can, again, only deal with cases that come to us; and we will decide—I will, my staff will decide whether we should, you know, issue complaints.

Mr. KINGSTON. Was that the case—did they own their own computer when they were doing that?

Mr. SOLOMON. Yes.

Mr. KINGSTON. It would be different if the employer owned the computer, I suppose.

Mr. SOLOMON. It could very well make a difference—again, whether the employer’s policy is tailored to various ways. Because, I mean, people can at work talk about working conditions and engage in protected concerted activity.

Mr. KINGSTON. I want to just share something with you for the good of the order here.

I was in Mexico about 2 weeks ago, and we were in Mexico City talking to them about a myriad of subjects but including the immigration to America for jobs. And you may know remittance to Mexico from Mexicans working in America is 21 to 24 billion dollar a year, a huge amount of money.

And I was asking one of the—why aren’t there more jobs down here? And he said, well, I have been with my current job 3 months. If I quit today, I quit, I get 5 months’ salary. If my employer fires me and I win the dispute over it, he will have to pay me 5 years’ salary. He says, as a result of that, that is why there aren’t any jobs, because we have made it so hard to fire people in Mexico.

And, you know, that is just one of those things that—just throwing that out. I don’t necessarily want you to comment on it, but I have 5 minutes.

But what I do want you to comment on in terms of coming from an open-shop State and believing in the workers’ right to choose, do you think that there is an inherent conflict between public employees—and I know you don’t regulate public employees—but public employees’ collective bargaining, so to speak, and donating to people who set their salary? It appears to me that there is a conflict there, which is one of the things that these open or closed shops States are going through right now; and I just—I know it is not in your jurisdiction but just your philosophical thoughts.

Ms. LIEBMAN. Well, because it is not in our jurisdiction and because we have enough difficult issues to deal with under our statute, I would be reluctant to delve into that.

Mr. KINGSTON. I can see not only are you a lawyer but you are a good one.

Ms. LIEBMAN. I do want to go back to your Facebook inquiry for just a moment.

Last week, I was in Minneapolis addressing a group of management lawyers. It was a reception held at a management law firm, and they invited some of their community. And one of the lawyers said to me, you know, we were really sorry when that Facebook case settled, because we were really looking to see what the NLRB policy was going to be. Because we need to know, as we consider drafting social media policies, whether it is consistent with the Title VII of the equal employment laws and the NLRA.

It reminded me of a conversation I had had about 10 years ago with a very prominent management attorney. And at that time he said the most important thing from the business perspective is for the NLRB to decide what the rules are with respect to use of e-mail in the workplace. So that is what has happened. We have gone from e-mail now to Facebook.

So, you know, it is not just workers and unions that were looking to us to set the rules of the games but employers, also. They want to know how to structure workplace policies. So it is—you know, even if they don't have a case before us, they want to see what we do—

Mr. KINGSTON. It is an interesting area.

Mr. REHBERG. I was going to turn it over to you, Ms. DeLauro, but I am next.

I appreciate your comments about advocacy versus information, but I am also aware of a Google ad, if I could quote from it: Labor organization info. Find info on how to start a union. Get the process and more on our site www.nlr.gov.

If I were to click on to that ad, what would I get?

Ms. LIEBMAN. Well, Mr. Chairman, I don't know, actually. I have never seen the ad. But, to my surprise, I learned—I think it was on March 4th—that there were some Google ads that when you clicked on certain words, I guess on Google, that these ads would come up. It was something I knew nothing about.

Within a few hours, we pulled the ads down. I asked our Inspector General to look into this. He has done that. I am happy to make his report available to you.

We also, subsequent to that, got an oversight request from the House Education and Workforce Committee on the subject. We have turned over the report to them.

In a nutshell, what our Inspector General found was that in 2007, as the then Chairman Battista was looking to improve the agency's technology and Web presence and all, that there were some discussion at the staff level about how to increase traffic to our Web site; and one of our IT specialists apparently, we have learned, applied for a Google grant and drafted the text of a couple Google ads. And we didn't pay for them. He got this Google grant, I guess.

Mr. REHBERG. And, again, I will go back to the advocacy versus information. One of the things I am continually—and, Mr. Kingston, I often say that I have over 6,000 friends on Facebook and turns out they are not all friends. But you can call themselves fans and friends, but they are not necessarily.

Mr. KINGSTON. You have got 50 to 60 friends.

Mr. REHBERG. I do. I can name them.

But, again, and you both being attorneys—and I married mine. So I am pretty smart, too. Words do matter. When you talk about advocacy versus information, again, on the posting of the new six million business fliers, if there isn't a Beck's rights provision within that, then it is an advocacy piece, any way you look at it. Because the Google ad should have said, if you are interested in union information or nonunion information, then it probably would have been okay. Because all you are doing is to try to increase business, and I am okay with that. But if you ultimately come out with a ruling or a decision based upon all the information you are receiving to post a notice that only talks about one side, you are an advocate, any way you want to look at it.

Ms. LIEBMAN. Well, obviously, we haven't made a final decision based on our review of all this—

Mr. REHBERG. No, but our reaction will be interesting if it comes out with an interpretation that one side needs to be notified and the other side is left out of that notification. I just want to say that we are watching.

Ms. LIEBMAN. We understand. We understand.

Mr. SOLOMON. Mr. Chairman, may I just say that my understanding was—I also never went to the Google ads—but if you clicked on the Google ad, all you would have gotten was the NLRB Web page. So it is not like—

Mr. REHBERG. Yeah, but you are driving a certain kind of person to a site, as opposed to an information either/or, A or B.

Mr. SOLOMON. But the Web site would have told you, you know, where our regional offices are, what our procedures are.

Mr. REHBERG. Well, you are a good lawyer but not a very good advertiser then. Because advertisements are to try and drive a certain customer or clientele into a business; and if you want to run it like a business, you are bringing a certain kind of clientele in by a one-sided click ad.

Mr. SOLOMON. I understand what you are saying. But just the intent behind the ad, as I understand it from what the Inspector General found, was to increase hits on our Web page. And so it was just to bring traffic to our Web page.

Mr. REHBERG. Would you mind then for a period of 2 days putting up a little ad that suggests, if you want to reject the union within your workplace, please click this ad? And then, you know, it would be the same.

Mr. SOLOMON. I would also point that the ad that you read only ran, from the Inspector General's report, point 7 percent of the time. The one—

Mr. REHBERG. I am just asking for equal time.

Mr. SOLOMON [continuing]. Running 99.3 percent of the time was a much more even-sided—

Mr. REHBERG. I am just suggesting, if you don't think it was an advocacy ad, why don't we—whatever percent—run the same ad?

Ms. LIEBMAN. We removed both ads as soon as we learned about them, and we didn't think they were appropriate to continue, any more than what you are proposing would be appropriate. So we stopped them as soon as I learned about it. I knew nothing about it before that.

Mr. REHBERG. Ms. DeLauro.

Ms. DELAURO. I think that is the point. They are not there anymore. Did you know about it? Someone did it. You saw it. IG report. Bang. Done. Finished. Over. All right.

So no advocacy involved, unlike what happened at Yale University where they put together a document to distribute to the employees when there was an organizing drive and a manual put together of how, in fact, you challenge the fact, talk about what all the bad consequences there are in terms of joining a union. And, quite frankly, what has really upset me was that basically implied that the people who are trying to put the union together are Mafia based. Actually, there was a ruling on that against the University in that case. But that is advocacy and not right. It shouldn't happen in any question.

Anyway, I think the Facebook thing is very interesting, because 51 percent of Americans are on Facebook today. That was about 8 percent in 2008. It is a new world. Clearly, it is a new world for me in that regard.

Mr. KINGSTON. It was better when it was just for kids.

Ms. DELAURO. Anyway, a couple things. I don't know about the effect in terms of your transparency and your ability to communicate. This has to do with if we see the \$50,000,000 cut. You talked about this weekly summary of cases making what you do more transparent to the public. How would that initiative be impacted by the proposed cuts?

Ms. LIEBMAN. Well, our ability to do all of our jobs would obviously be slowed up. We wouldn't be able to do it as quickly, I would assume.

Ms. DELAURO. So in terms of transparency or what the cases are about, what the rationale is, both sides, all of the balance of what this effort is about would be transparent to the public. In the absence of the resources, that kind of thing goes away.

Ms. LIEBMAN. That is correct.

Ms. DELAURO. Amicus brief, if I can, Chairman Liebman. Some people have tried to suggest that the current Board is pursuing an activist agenda, and the evidence they point to sometime is the invitations that have been issued for amicus briefs in the recent cases. Is requesting briefs from others not directly involved in the proceedings indeed a sign of activism or are there other reasons you would want to solicit broader views on a few of the cases that are before you?

Ms. LIEBMAN. Congresswoman, I have been quite perplexed by the criticism leveled at our seeking amicus briefing. To me, amicus briefing is a good practice. It is open. It is transparent. It is engaging. It invites participation by a broader segment of the labor management community than just the immediate parties to the dispute. It is open in the sense that it tells people what issues we are considering and thinking about; and it invites comments of any nature, whether it is legal argument, empirical evidence.

To me, it is a good process. It doesn't say anything about the ultimate outcome of a case. Amicus briefing is all about being informed, being open, inviting participation. To me, it is a form of good government.

Ms. DELAURO. I might add that, in terms of third party briefs, Cynthia Estlund, who is the Catherine Rein Professor of Law at NYU—this is on the rulemaking issue, just the point you made before—talks about its advantage. It allows for more thorough consideration of a wider range of views on policy issues with implications that extend beyond the parties to a particular case, facilitates more efficient adjudication of cases raising recurring issues, tends to promote policy stability because rules tend to last longer than precedents adopted through adjudication.

So these are about the—rulemaking in amicus briefs in terms of soliciting a broader range of ideas, et cetera.

Let me just ask—I think I have a second here, in which case I don't know if I can—

Mr. REHBERG. Go ahead.

Ms. DELAURO. We have got some time. Thank you, Mr. Chairman.

Mr. REHBERG. Mrs. Lummis.

Mrs. LUMMIS. Mr. Chairman, no further questions, but I might just comment to my subcommittee chairman over in the AG Committee that when you have got lawyers in front of you and lawyers to the left of you and lawyer spouses to the right of you, it is a little bit like that Jimmy Buffet song "Fins". You know, fins to the left, fins to the right, and you are the only bait in town.

Thanks, Mr. Chairman.

Mr. REHBERG. Mr. Kingston.

Ms. DELAURO. No lawyer here or spouse.

Mr. KINGSTON. Mr. Chairman, I have some questions I want to submit to the record regarding the St. George warehouse case and the Groversnor Resort case, which I understand the counsel has asked for stiffer penalties for unfair labor practices. And if you want to say anything about it, I have a series of questions I don't think I can cover in 5 minutes, but I wanted to—

Mr. REHBERG. And, as always, we will keep the record open for the purposes of submitting questions for the record and ask that you in a timely fashion respond.

Ms. LIEBMAN. Be happy to.

Mr. KINGSTON. Another question I have, how does the Board select which cases appear before you? Because I know that there are more cases than you can deal with. How do you decide?

Ms. LIEBMAN. Well, I am not sure I understand the question. We do not have a certiorari procedure except for our pre-election representation case matters where a party would seek review and we grant review only if we think there is a serious issue presented. Otherwise, we have to decide every case that is presented to us. If a party files exceptions to our decision, whether it is the general counsel responding, an employer or union, they have a right to file those exceptions, and we have an obligation—

Mr. KINGSTON. So you have to do every one then.

Ms. LIEBMAN. We have to do every one. We can pick the order, but we have to decide every one.

Mr. KINGSTON. Okay. And then let me just get back on this Google case. How much money was spent by that employee to get the ad? You say it was a Google grant?

Ms. LIEBMAN. No money. It was a Google grant.

He misunderstood. He applied for this grant. Apparently, you have to represent whether you are a 501(c) organization. He told the Inspector General that he thought that the government doesn't make a profit so it comes within that. So he made a mistake.

Mr. KINGSTON. Who was the employee and was he fired?

Ms. LIEBMAN. He was not fired. He is a junior-level IT specialist, and he was—we use the word—the parlance—"counseled". He was—

Mr. KINGSTON. But he was acting on his own?

Ms. LIEBMAN. He was acting on his own.

Mr. KINGSTON. Was his supervisor fired then if he was kind of an innocent junior—

Ms. LIEBMAN. I believe that—

Mr. SOLOMON. We have counseled both the employee and the supervisor, and we have also put in place a system of checks and balances that it could never happen again, that no employee outside of the contracting office, the acquisitions office has authority to sign anything on behalf of the National Labor Relations Board; and we will make sure that this never happens again.

Mr. KINGSTON. It seems, you know, we all have sort of a general policy that the only ones who can talk to the press, for example, would be the Member or the press person, and certainly the military has those rules. And it would appear that it would take a high degree of audacity or lack of supervision for somebody just to go out on his own and put in an ad like that and there not to be some very serious repercussions.

Mr. SOLOMON. As I said earlier, the intent was simply to get more traffic to our Web site, and—

Mr. KINGSTON. Why would that employee—is that his job, to get traffic to your Web site? He is an IT guy. Why would he—

Mr. SOLOMON. In hindsight, no. But he thought it was a good thing. He helped design the Web site, and he thought it was a good thing to do. I mean, the chairman and I—

Mr. KINGSTON. He could do all this and no one knew it? He was just designing Web sites and going out—

Mr. SOLOMON. It was a fluke. The supervisor thought that, even under the grant, that it only lasted 3 months. And so the supervisor never checked, and it just kept going. And the chairman and I knew nothing about it, and the moment we did, it stopped.

Mr. KINGSTON. All right.

Mr. REHBERG. We will start another round, and thank you all.

Can you estimate for me how many times you have an election off site or remote by absentee ballot? And what I want to get at is the e-card check opportunity or potentiality and the rulemaking that is going along with allowing the opportunity for voting on the Internet. So I will give you a heads-up as to where I am heading with this, but I would like to know currently what percentage of votes occur off site or in remote locations.

Mr. SOLOMON. I will have to get you that statistic, but it is a very small percentage of our elections that are handled presently by mail ballot. Our presumption is that they are by manual ballot and the manual balloting occurs on the employers premises only. The only times it doesn't is if the employer refuses to allow us on the premises, and then we arrange a remote site.

Mr. REHBERG. One of the things that we hold near and dear to ourselves is we do not allow remote voting in Congress for one reason or another. We want people to be here. I would never come to Washington if I didn't have to. I would stay in Montana. And so you can understand the potential for abuse when you have off-site, remote voting, especially over the Internet.

What kind of comments are you getting on the e-card rule?

Ms. LIEBMAN. We have not done a rulemaking on—

Mr. REHBERG. But you are gathering information, so there is a difference between—

Ms. LIEBMAN. Some months ago, we put out a request for information through the acquisition or procurement process just to find out what firms are out there, what businesses are out there that

provide electronic voting services for either on-site or remote electronic voting. The National Mediation Board I believe was using this pretty consistently for their elections.

We know that electronic voting is conducted or is permitted in several States. So it is an evolving technology, and we put out this request for information just to find out what firms are doing it, how they do it, what safeguards there are, and—

Mr. REHBERG. Do you think it would be a necessity for a statutory change to allow the opportunity for e-voting or do you think you have the statutory authority to go through a rulemaking procedure and create a rule that, in effect, circumvents the will of Congress so far on the card check concept?

Ms. LIEBMAN. Well, let me just say that all we have done so far is seek the information through the acquisition procurement process.

Mr. REHBERG. Right.

Ms. LIEBMAN. Should we ever decide that we wanted to propose electronic voting of some sort, we would certainly do it through a public rulemaking process with opportunity for notice and comment.

Mr. REHBERG. So you think you have the statutory authority to create e-card check.

Ms. LIEBMAN. What the statute provides is that the Board shall certify a union, if it wins after a secret ballot election. And, of course, at the time the statute was written, no one had electronic voting in mind.

So the question I think would be whether electronic voting would be within that statutory language. We got these comments from a variety of firms that do this. We got some comments—really sort of unsolicited comments—on the merits of it. That wasn't what we were asking at the time. We had those comments.

I can tell you that the Board has taken no further action on this issue. We have not engaged in further—

Mr. REHBERG. Would there be a judicial review of a regulation if the rulemaking authority occurred?

Ms. LIEBMAN. Sure, there is judicial review of any rulemaking permitted, just as there is judicial review of our unfair labor practice decisions. A little different standard, but there is judicial review available.

Mr. REHBERG. There is judicial review in all rulemaking within the NLRB? I was under the assumption or understanding that not necessarily.

Ms. LIEBMAN. Well, I guess my lawyer will correct me if I am wrong, but we have done this—as I said, we have done substantive rulemaking essentially once, and it was subject to challenge, as I mentioned, in 1991. It was unanimously upheld. We just haven't done it in between, but my understanding is that, under the Administrative Procedure Act, that judicial review is available if an agency does rulemaking. That has happened with a lot of other agencies.

I stand corrected if I am wrong on that.

Mr. SOLOMON. You are right.

Mr. REHBERG. All right. Then I stand corrected. I am going to go back and look at my documentation and my data and see, and then I will correspond with you one way or the other. Thank you.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

Let me just ask a follow-up question, Ms. Liebman. Is the NLRB planning to effectuate the Employee Free Choice Act by rule-making?

Ms. LIEBMAN. No, Congresswoman, we are not able to do that.

Ms. DELAURO. Would those changes to labor law, in your view, require a statutory change?

Ms. LIEBMAN. The changes that were proposed in the Employee Free Choice Act, in my view, would require Congress to effectuate; and we certainly respect what we are able to do and what we are not able to do. We have no intent to usurp the role of Congress.

Ms. DELAURO. I thank you. Because I want that to be part of the record. Thank you.

Let me also mention to you, there is always a lot of discussion that we hear about the NLRB. It is partisan place, a polarized place, conflict between the Republican and Democratic Members, between the supporters of management and the supporters of labor. I wonder how much that view reflects reality.

In your statement, Chairman Liebman, you mentioned the 2-year period when there were only two Board members, yourself and a Republican Board member; and I believe you said that the two of you reached agreement on some 600 cases.

Ms. LIEBMAN. Correct.

Ms. DELAURO. What lessons do you draw from that experience? Does it tell us that there really is pretty broad agreement about much of the fundamental day-to-day work of the Board?

Ms. LIEBMAN. Yes, thank you for your question.

I completely agree with the point you just made. For the vast bulk of what this agency does on a day-to-day basis, there is broad agreement. No one disagrees with the basic principles of law which are stabilized and have been stabilized for decades. A very small percentage of the cases actually come to the Board itself for adjudication. The vast majority, as you heard, are settled before that. And of the cases that come to the Board for decision, well more than half of those decisions are unanimous. It is probably maybe 2 percent of those cases that create any noise, and they are generally cases of topical interests, novel issues, some ways new. So there are people who have strong interests in the outcome of those decisions.

Just to answer the question a slightly different way, the Board is supposed to have five members at any one time—three members of the President's party, two of the opposition. The composition of the Board are terms of 5 years. They expire on a rotating basis. So at any one time there are going to be different views on the Board.

I did spend 27 months alone with Member Schaumber; and we, to the surprise of many, were able to reach agreement nearly 600 times. I think that tells you in part how stable the vast bulk of the doctrines and the precedent and the law are under this statute.

Let me also mention that I have been on the Board now for 13 and a half years. I am the third-longest-serving member of the

Board in its history. I have served with 16 different individuals, both Democrats and Republicans. I think I have enjoyed good relations with all of them, both Democrat and Republicans. We sometimes have differences about how to approach the law, but that is just part of this law. That is part of the legal system. That is part of what goes into this rule of law under this very important statute.

Ms. DELAURO. Isn't it also true that some would say that because there were two people, three people, et cetera, that the decisions are—you know, skewed. We can't really call into question the decisions, but there hasn't been over the years a full complement—can you just comment on that—a full complement of members. Would that there would have been, because, obviously, it is the way to go. But just give us a comment on that, if you will.

Ms. LIEBMAN. I don't remember this—we actually looked this up recently, but I think there has been a full complement of members—meaning all five—probably less than two-thirds of the time. In my 13-and-a-half years, I have served on every single configuration—five member, four member, three member, two member, and even 6 weeks by myself. So that is unfortunate, that the appointment process has become so difficult.

Ms. DELAURO. Thank you very much.

Thanks, Mr. Chairman.

Mr. REHBERG. Mr. Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman.

Madam Chair, one of the things, though, that is just the reality right now in our budget situation, and I think your testimony scanned both of them, and what you just said to Ms. DeLauro is right out of your testimony. I think it has been very good. You still have a 2-percent increase, which isn't much, and Lord knows if we, Republicans and Democrats alike, had been holding Federal spending to a—

Now, how is my light red, Mr. Chairman? Who is keeping track over there?

Mr. REHBERG. Final round.

Mr. KINGSTON. I have a question. What I still don't understand, though, is I think, even if this committee advocated for you for the 2 percent, I think it is going to have a difficult time getting it passed in this budget environment. So my question would be—and I am not the chair, don't hold the majority of votes, but let's just say we came back to you and said, we have got to do a 5-percent cut. What would happen to you?

Mr. SOLOMON. You mind if I take this?

Mr. KINGSTON. Well, actually, it is your testimony, not Ms. Liebman's anyhow, so yeah.

Mr. SOLOMON. In a nutshell, we would have to cut our FTEs. We presently are at 1671. As it has been said, 90 percent of our budget is fixed. It is compensation and rent and security, and so FTEs would have to be cut. We would have to cut training. We would have to cut investments in IT, which are critical to our future and—

Mr. KINGSTON. But let me ask this. There is an assumption in this town that all employees are working their tails off. Let's say

there is an assumption in this building, there is even a pretense that everybody is actually killing themselves.

I actually know of somebody whose son worked for the Department of Labor, very bright college kid, got a summer job there, was paid \$11 an hour and never given any work, and after 2 weeks quit because he said, you know, it is wrong for me to go in every day and read a novel.

I talked to people at the Pentagon; and you know if you stand in the parking lot at 3 o'clock in the day, you are taking your life in your hands.

Lots of people within these departments will say, yes, there is a critical core in every agency and every administration that works their tails off 20 to 30 percent and then there is a whole bunch of folks who just really don't. They stretch, you know, a 2- to 3-hour workday into 8 hours and probably—

Ms. DELAURO. I think probably the same is true of the Congress, Jack.

Mr. KINGSTON. Certainly not in any office from Connecticut or Georgia. Maybe Montana. I don't know.

But I mean, you know, really as managers and stewards of public dollars in an environment where of every dollar we spend 40 cents is borrowed, we need to look at payroll, because that is where the money is.

Mr. SOLOMON. I understand that, Congressman, and it is hard for me to come up with an answer other than trust me. But, you know, we are lean and mean. We have cut our FTE through the years to what we feel is absolutely essential for us to serve the public, to serve the taxpayers, to help the economy in resolving these workplace disputes; and, as has been said several times before, we have no programs to cut. All we can cut are people. And, you know, a 5-percent cut would mean 40, 50 or even more cut in our FTE; and it is going to directly detrimentally affect how we do our business and how we serve the public.

Mr. KINGSTON. I know it is difficult. In our own office, we have three less employees this year. Each one of those three employees was very productive, but as the Appropriations Committee took a 9-percent cut, then individual offices took 5 percent. So if you were a Member of Congress on the Appropriations Committee you had a deeper cut than other offices. And I understand it, but then I think, you know what, this is what the environment is.

Mr. SOLOMON. And, Congressman, as I said in my opening statement, we have put together a task force to really study whether we are going to an electronic case filing system, which means that employees will be able to access their files anywhere, anytime. So we will look at our footprint around the country and our business processes, and I think there will be economies of scale in that, but it still takes people to handle these cases.

Mr. KINGSTON. Yeah. It is very tough, and I understand. So thanks.

Mr. REHBERG. Which brings me to I guess a question about the regional offices. Are you looking, as part of your study, at the opportunity to consolidate the regional offices and use the new—

Mr. SOLOMON. Yes, Mr. Chairman.

Mr. REHBERG. I won't take my full 5 minutes. I will turn it over to Rosa in just a second here.

Mr. REHBERG. I knew I had read it somewhere.

I was reading a paper on specialty health care, and maybe you could respond to this. Because this is a representation case—which, obviously, I don't know what a representation case is—there will be no opportunity for direct judicial review and the Board could begin implementing the decision immediately in other cases. So that—

Ms. LIEBMAN. If I could just clarify that. What happens in the judicial review process is that the representation case decision—that is where we decide that we are going to hold an election in XYZ unit. That is not immediately appealable. If the union wins the election, the employer can then get judicial review by refusing to bargain. We then issue an unfair labor practice complaint charging the employer with a refusal to bargain, and then it goes to court.

Mr. REHBERG. The question then becomes, do you then move beyond just that particular case waiting for judicial review or a lack thereof and you begin applying the same unit determination broadly?

Ms. LIEBMAN. Well, as with all of our decisions, once they are in place, we would follow it. If another similar fact pattern came up and if the same legal principle was at issue, yes. I mean, we tend to follow our decisions in like cases. But there is judicial review available through that mechanism.

Mr. REHBERG. But my fear is again the budgetary aspect of representation case then being broadly interpreted among many other entities, creating additional units and then ultimately it costing us more in our annual budget that we look at in the FTEs.

Ms. LIEBMAN. I really don't foresee any major change in our budget needs as a result of the Specialty Health Care decision.

Mr. REHBERG. Ms. DeLauro, you will be the last.

No, you have gotten your chance.

Ms. DELAURO. Sorry, Jack.

Mr. KINGSTON. My first time on the committee.

Ms. DELAURO. I would like to place into the record a letter from Fred Feinstein, who was the former General Counsel of the NLRB from 1994 through 1999, and his point that he is concerned about the \$50 million in cuts. The principal effect of underfunding the agency would be to increase the time it takes to resolve issues, disputes before the agency, et cetera.

So for the record, Mr. Chairman.

Mr. REHBERG. Without objection.

[The information follows:]

**Fred Feinstein
7114 Sycamore Ave
Takoma Park, MD 20912**

April 4, 2011

The Honorable Dennis Rehberg, Chair
The Honorable Rosa DeLauro, Ranking Member
Committee on Appropriations
Subcommittee on Labor, Health and Human Services,
Education and Related Agencies
U.S. House of Representatives
H-307, U.S. Capitol
Washington, DC

The Honorable Tom Harkin, Chair
The Honorable Richard Shelby, Ranking Member
Committee on Appropriations
Subcommittee on Labor, Health and Human Services
Education and Related Agencies
U.S. Senate
S-128 U.S. Capitol
Washington, DC 20515

Dear Representatives and Senators,

I served as General Counsel of the National Labor Relations Board from 1994 through 1999. I also served as chief counsel to the Labor Management Relations Subcommittee of the House of Representatives for 17 years. In recent years I have been a senior fellow at the University of Maryland and a consultant to several unions.

I am concerned about the proposed fifty million dollars in cuts to the NLRB budget. The principle effect of underfunding the agency would be to increase the time it takes to resolve the issues and disputes brought before the agency. Backlogs and delays are costly to both business and labor. They raise litigation costs but more significantly, workplace disputes that linger have an adverse effect on the productivity and profitability of a business and the well being of employees.

Reductions in funding levels do not change the law. They do not change the outcomes of disputes nor do they reduce the number of charges filed with the

agency. However the cuts clearly would slow investigations and lengthen the time it takes to reach a decision about the merits of a case filed with the agency. Likewise, budget cuts would not change the result of an election for union representation but it could delay the time it takes to resolve issues and finalize the results of an election.

I recognize concerns exist about how the agency might apply the law in a particular dispute. There are also concerns about the law the agency enforces and concerns about how the Board interprets the law. However budget cuts do not address or affect these concerns. Both employers and unions, with a range of views about these concerns, benefit from and appreciate the expeditious resolution of disputes.

The NLRB has rightfully been proud of its record over many decades of investigating and dismissing approximately two thirds of the cases brought before the agency within a few months of the filing of a charge. Most of the remaining cases found to have merit are usually expeditiously settled. That is an enviable record for a law enforcement agency that would be significantly undermined by the proposed cuts.

From my experience as General Counsel I can only conclude that the cuts will bog down the resolution of cases, seriously undermining the agency's ability to resolve significant disputes in a reasonable time frame. It will have the real world effect of increasing business costs and decreasing productivity that ultimately is more expensive than the cuts themselves. I believe this is a view supported by both employer and employee representatives who are effected by the workings of the NLRB. In addition to these costs, the proposed cuts would compromise the agency's ability to enforce an important law that protects the rights and interests of both employers and employees.

Thank you for considering these views and I urge the Congress to continue to fund the agency at the existing levels.

Respectively submitted,

A handwritten signature in black ink, appearing to read "Fred Feinstein", with a long horizontal line extending to the right.

Fred Feinstein
Former General Counsel of the NLRB

Ms. DELAURO. And then I would just ask our two witnesses here, in your statements both of you talked about the importance of the National Labor Relations Act, the work of the Board. Yet I wonder if some people have the idea that your work is no longer relevant. Could you help us to understand why the law and the work of your agency is still very much relevant—how important it is and how much it matters to the lives of working people, which goes back to what it was about when it was established in 1935?

Mr. SOLOMON. Thank you, Congresswoman.

I would just give you a little sense of the 9 months that I have been Acting General Counsel. I had a case come before me in which we felt that the employee was fired for union activity and, in reading the facts of the case, the employee was not, in fact, paid minimum wage. In fact, he received no wages, except tips; and a benefit that he received—and I put benefit in quotes—was that he could live in the employer's bathroom. And this is 2011, and I feel that he needs our help.

On the other end of the scale, we have the NFL owners who have filed a charge in our Manhattan office that, if we find merit to it, we would force the players association back to the bargaining table; and there are those that would love for us to do that in the hopes that we would save the football season.

And, in the meantime, we have the things like Facebook and Twitter that are coming up.

And so, in short, there is 7 percent of the workforce that is unionized, but there is 93 percent that is not unionized. The Act applies to them equally, to the ones that are unionized. And these people need us. On both sides.

Ms. DELAURO. Ms. Liebman.

Ms. LIEBMAN. Thank you.

I think Mr. Solomon stated it eloquently. But let me also add that it may be hard for us in this room to remember 1935, but for any student of history I don't think anyone could doubt the value that this statute has had in our society and in our legal system.

What this law sets up is a rule of law, a system of governance for the resolution of conflict and disputes in the workplace. There will be conflicts and disputes between labor and business for as long as there is labor and business. We don't create the conflict. The conflicts come to us. We try to resolve them; and that is a very, very important social function, I think.

For workers, it gives them a possibility of a voice in the workplace, if they want it. For those workers who choose to engage in collective bargaining with their employers, the institution has served this country well. It enables the parties to reach their own solutions without government intervention. I think this continues to be a very important institution in the law for our society and our economy.

Ms. DELAURO. Many thanks for your service. Many thanks for the work of the agency in both protecting workers and employers. I think that you both demonstrated the evenhandedness with which this agency strives to and succeeds at achieving. So thank you very, very much.

Mr. KINGSTON. If the gentlewoman will yield.

Mr. REHBERG. Mr. Kingston, we would like to hear from you one more time.

Mr. KINGSTON. I would just like to say to our friend, the chair, that you spent 27 months with a Republican. Rosa and I spent 19 years together, and she can tell you how good it really can get.

Ms. DELAURO. I will tell you.

Mr. SOLOMON. Can I do one thing, just to clarify? I made a misstatement to Congressman Kingston. At a 2 percent cut, we would have to cut our FTE by 40 or 50. But with a 5 percent cut, we would probably be in the 100 to 120 range.

Mr. REHBERG. Meeting adjourned. Thank you.

**RESPONSES OF NATIONAL LABOR RELATIONS BOARD
TO QUESTIONS FOR THE RECORD
May 13, 2011**

*Department of Labor, Health and Human Services
and Education and Related Agencies*

**National Labor Relations Board FY12 Budget Request Hearing
April 6, 2011**

Questions From The Honorable Denny Rehberg, Chairman

Preemption of State Laws

Since the enactment of the National Labor Relations Act (NLRA), there have been several instances where state laws have been preempted by the terms of the NLRA. And this preemption has occurred without an actual legal challenge by the National Labor Relations Board.

Recently, four states have passed amendments to their own State constitutions protecting the right of secret ballot elections. These amendments were the result of a free, fair, and democratic election process. Yet, while there appears to have been no effort by these states to actually enforce these new laws, the Board has decided to pursue litigation against two, South Dakota and Arizona. Ostensibly, the reason behind this effort would be to uphold the terms of the NLRA. However, this is viewed by many as yet another attempt to enforce pro-union activities on right-to-work states.

1. What historical precedent exists that supports the Board's pursuit of litigation that seeks to overturn a State's duly enacted constitutional provision, law or ballot initiative?

Federal courts have consistently accepted the Board's authority to seek to enjoin the enforcement of state law that conflicts with federal law. *See, e.g., NLRB v. Nash-Finch Co.*, 404 U.S. 138, 140-141, 144 (1971); *NLRB v. State of North Dakota*, 504 F. Supp. 2d 750, 753-754 (D.N.D. 2007); *NLRB v. State of Illinois Dept. of Emp't Sec.*, 988 F.2d 735 (7th Cir. 1993); *NLRB v. Cal. Horse Racing Bd.*, 940 F.2d 536, 539-542 (9th Cir. 1991); *NLRB v. State of Fla., Dep't of Bus. Regulation, Div. of Pari-Mutuel Wagering*, 868 F.2d 391, 396-397 (11th Cir. 1989); *NLRB v. State of New York*, 436 F. Supp. 335, 339 (E.D.N.Y. 1977), *aff'd*, *NLRB v. State of New York*, 591 F.2d 1331 (2d Cir. 1978), *see also NLRB v. Comm. of Interns and Residents, and New York State Labor Relations Bd.*, 566 F.2d 810, 812 (2d Cir. 1977).

These preemption cases are all premised on the principle that, under the Supremacy Clause, U.S. Const. Art. VI, cl. 2, validly enacted federal statutes such as the National Labor Relations Act are “the law of the land,” notwithstanding any contrary, duly enacted provision in a state constitution or a state statute. Because the Supremacy Clause, by its terms, applies equally to state constitutional provisions and state statutes, the NLRA precedents holding state statutes preempted apply as well to state constitutional provisions in conflict with federal law. Indeed, there is special reason to bring established principles of federal preemption law to bear on state constitutional provisions that are in conflict with federal law because such measures, even if not enforced, are likely to have a widespread detrimental impact on the free exercise of federal rights.

While the preemption litigation at issue here seeks to protect the federal rights of employees, the preemption cases cited above illustrate that the NLRB has also sought the invalidation of state laws that conflict with the federal rights of employers. Other examples include *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008), where the Board, at the request of employer groups, joined the Solicitor General's Supreme Court brief in litigation aimed at establishing that a California statute improperly impaired employer rights to campaign for or against unionization. Further, the Board filed a brief in *Metro. Milwaukee Ass'n of Commerce v. Milwaukee County*, 431 F.3d 277 (7th Cir. 2005), successfully arguing that a Milwaukee ordinance impaired an employer's NLRA right to choose whether or not to enter a card check and labor peace agreement.

When a state statute or constitution provision conflicts with our federal labor law, it is the practice of the General Counsel to contact that state's attorney general questioning its validity on pre-emption grounds. This occurred, for example, when former General Counsel Arthur F. Rosenfeld sent a letter to the Attorney General of the State of North Dakota seeking a repeal of a state statute (North Dakota Century Code Section 34-01014.1) that charged grievance processing expenses only to non-union members, which is directly contrary to federal law. Recently, as a result of an inquiry from the National Right to Work Legal Defense Foundation, Acting General Counsel, Lafe E. Solomon, wrote to the Attorney General of the State of California questioning the legitimacy of California's "professional strikebreaker" law (Cal. Labor Code §§ 1130-1136.2), which prohibits and punishes employers who employ certain strikebreakers. While this state law apparently has been in effect for some time without prompting individual complaints, the Acting General Counsel nonetheless expressed his view that the law appears to be preempted by the NLRA, and sought to determine whether there is a need for the NLRB to consider taking action to prevent its future enforcement.

Finally, leading labor lawyers have expressed support for the Board's decision to prevent encroachment by these state constitutional amendments on the long-standing legitimacy of alternative paths to employee representation guaranteed by the NLRA. Former General Counsel Arthur Rosenfeld, appointed by President George W. Bush, stated “Board law, of course, acknowledges other means such as voluntary recognition, card check, voice votes . . .” and “I have to applaud the Board's quick authorization, the quick action in authorizing the acting general counsel in order to protect the Board's

jurisdiction.” *Emerging Trends at the National Labor Relations Board*, Hearing before the Subcommittee on Health, Employment, Labor and Pensions, Feb. 11, 2011 (112th Cong.) at p. 15 (<http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg64230/pdf/CHRG-112hhrg64230.pdf>).

2. In terms of the impact against the Board’s budget, how much funding and how many FTE will be allocated to this effort? Secondly, will additional funds be necessary in fiscal year 2012 to maintain your planned workload in addition to these new lawsuits?

Litigation of this matter will be handled by the NLRB’s Special Litigation Branch in the normal course of business. No additional funds will be necessary in fiscal years 2011 or 2012 to maintain the agency’s planned workload in addition to these lawsuits.

Secret Ballot Elections

Chairman Liebman, H.R. 972, the Secret Ballot Protection Act was recently introduced in the House of Representatives, while a companion bill has also been introduced in the Senate. Both bills would guarantee the right to secret ballot union representation elections.

1. What activities is the Board currently engaged in to promote alternatives to secret ballot elections? Have there been, or are there pending, any adjudicatory decisions or general counsel memoranda that would have the effect of eliminating, curtailing, or otherwise replacing secret ballot elections?

Section 9(a) of the National Labor Relations Act provides that a labor union may become the exclusive representative of employees in an appropriate bargaining unit if the union is “designated or selected for the purposes of collective bargaining by the majority of the employees.”

Under this statutory language, as the Supreme Court has explained, employees may choose union representation (1) through a secret-ballot election conducted by the Board or (2) through voluntary recognition of the union by the employer, based on other methods of establishing majority support for the union, such as signed authorization cards. See *Gissel Packing Co. v. NLRB*, 395 U.S. 575, 597-598 (1969).

Under Section 9(c) of the Act, certification of the union by the Board, which entails special statutory privileges for the union, may be based only on a Board-conducted election. No decision by the Board or memorandum by the General Counsel could, consistent with the Act, eliminate, curtail, or otherwise replace secret ballot elections as the exclusive basis for union certification by the Board. Nor, absent legislative change, could any decision by the Board prohibit voluntary recognition by employers of unions that have the uncoerced majority support of employees in an appropriate bargaining unit.

Unions may lose their representative status either (1) through a Board-conducted secret ballot election pursuant to Section 9(c) of the Act or (2) through the employer’s unilateral

withdrawal of recognition from the union, provided that the employer can establish, based on objective evidence in a context free of unfair labor practices, that the union actually has lost majority support. See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

The Board continues to administer and enforce the National Labor Relations Act in accordance with these established principles.

In *Dana Corp.*, 351 NLRB 434 (2007), the Board departed from 40 years of established Board law and practice respecting voluntary recognition agreements between employers and unions. See *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966). The *Dana* decision established new procedures requiring the posting of a notice to employees and providing for a secret-ballot election, if a valid decertification petition is filed by employees within 45 days of the notice or if a rival union files a valid representation petition. In a pending case, *Lamons Gasket Co.*, 16-RD-1597, the Board has invited briefs addressing various issues, including whether the Board should modify or overrule *Dana*.

2. Approximately, what percent of the Board's budget and FTE are dedicated to promoting the use of electronic and mail balloting for union elections?

No NLRB budget resources or FTEs have been dedicated to promoting the use of electronic balloting in union elections. On June 9, 2010, the Board did post a Request for Information (RFI) soliciting information regarding the technology, capacity, availability, methodology and interest of industry sources for procuring and implementing secure electronic voting services to process remote and on-site NLRB union representation elections. Minimal staff time was needed to issue the RFI and to review the ten responses related thereto.

For decades, mail balloting or a combination of mail and manual balloting in NLRB union representation elections may be, and has been, agreed upon by the parties or required by the Agency. These situations typically arise where employees are geographically scattered or have varied work schedules such that all bargaining unit employees cannot be present at a common place at a common time to vote manually. See *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Further, mail ballot representation elections ensure that unit employees serving in the military are not disenfranchised.

In FY 2010, the NLRB conducted 2031 total elections of which only 217 (9.3%) were conducted by mail or by mixed mail/manual balloting. This low percentage has been fairly consistent in recent years.

Collective Bargaining Unit Determinations

Chairman Liebman, the issue of collective bargaining unit determinations was brought up by a few Members, particularly as it relates to the Specialty Healthcare case currently before the Board. While I would not aim to prejudge or presume the outcome in this case, if the Board adopts a job classification standard, unit determinations are likely to become the most contested area of Board Law.

1. What data exists that suggests that “unit” size is actually a problem and needs to be reconsidered? Seeing as this data would not compromise this pending matter, please provide the Committee evidence that stipulates that unit size has become an issue.

The issue briefed by interested parties and currently under consideration by the National Labor Relations Board (NLRB) in *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, 356 NLRB No. 56 (Dec. 22, 2010), is the appropriate *scope* of bargaining units for union organizing and collective bargaining in long-term care facilities. The Board is not considering, nor has it asked interested parties to opine on, the appropriate *size* of bargaining units in long-term care facilities. Notably, under the NLRA, the Board has had the authority to conduct elections in bargaining units comprised of as few as two employees and has done so over the years.

Incidentally, the petitioner in *Specialty Healthcare* seeks to represent a unit of 53 certified nursing assistants at the employer’s nursing home. That unit size is well above the median unit size of 25 employees for elections conducted during fiscal year 2010 and over the last decade.

The NLRB first issued an opinion on bargaining units in nonacute care facilities in 1991. That Board unanimously expressed its hope “that after various units have been litigated in a number of individual facilities, and after records have been decided from these records, certain patterns will emerge and illustrate which units are typically appropriate.” *Park Manor Care Center*, 305 NLRB 872, 875 (1991).

The NLRB’s review, 20 years later, of appropriate units for nonacute facilities in *Specialty Healthcare* is simply an instance of the Board fulfilling its statutory mandate to ensure that the National Labor Relations Act (NLRA) continues to serve its purpose in an industry that “has undergone a radical transformation in the past 20 years in the face of an aging population, changing consumer preferences relating to the form and location of long-term care, and a more general restructuring of the provision of health care, most importantly, a drastic reduction in the average length of stays in acute care hospitals.” *Specialty Healthcare and Rehab. Ctr.*, 356 N.L.R.B. No. 56 at 2, 12/22/2010.

2. What sort of analysis has been done on the impact that this increased activity would have on the Board's annual budget, and would it not necessitate an increase in FTEs to support the additional workload?

The NLRB does not anticipate that any decision reached by the Board in *Specialty Healthcare* will have an impact on the agency's annual budget.

3. In cases related to unit determinations, how many cases have there been in which a federal court overturned the Board's ruling?

During the last 10 years, the courts of appeals have ruled on Board unit determinations in 16 cases, and have upheld the Board's ruling in 15 of them. See *NLRB v. Eastern Natural Gas*, 24 F.App'x 278 (6th Cir. 2001); *Virginia Mason Medical Ctr. v. NLRB*, 35 F.App'x 4 (D.C. Cir. 2002); *Massachusetts Society for Prevention of Cruelty to Children v. NLRB*, 297 F.3d 41 (1st Cir. 2002); *Overnite Transportation Co. v. NLRB*, 294 F.3d 615 (4th Cir. 2002); *NLRB v. Office Depot, Inc.*, 28 F.App'x 579 (7th Cir. 2002); *Werthan Packaging, Inc. v. NLRB*, 64 F.App'x 476 (6th Cir. 2003); *NLRB v. Palmer Donavin Mfg. Co.*, 369 F.3d 954 (6th Cir. 2004); *Fairfield Ford v. NLRB*, 116 F.App'x 601 (6th Cir. 2004); *NLRB v. Guardian Armored Assets, LLC*, 201 F.App'x 298 (6th Cir. 2006); *Marjam Supply Co. v. NLRB*, 213 F.App'x 4 (D.C. Cir. 2007); *NLRB v. Caswell-Massey Co.*, 247 F.App'x 381 (3d Cir. 2007); *Computer Sciences Raytheon v. IBEW Local 2088*, 248 F.App'x 66 (11th Cir. 2007); *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008); *NLRB v. 675 West End Owners Corp.*, 304 F.App'x 911 (2d Cir. 2008); and *Multi-Flow Dispensers of Toledo, Inc. v. NLRB*, 340 F.App'x 275 (6th Cir. 2009). In the one remaining case, *Sundor Brands, Inc. v. NLRB*, 168 F.3d 515 (D.C. Cir. 2002), the court remanded the case to the Board.

Persuader Reporting Orientation Program

In late January, the Office of Labor-Management Standards (OLMS) at the Department of Labor began a new initiative called the Persuader Reporting Orientation Program (PROP). Under this new program, OLMS notifies employers and consultants via a form letter about their duties to file reports under the Labor-Management Reporting and Disclosure Act (LMRDA). Specifically, it appears that OLMS is seeking information on financial agreements and arrangements between employers and third parties used to persuade employees on exercising their rights to unionize. According to its own news release (a copy of the text is provided beneath the following questions), OLMS compiles the names of employers and consultants from representation petitions filed before the National Labor Relations Board (NLRB).

One letter from OLMS to a stakeholder reads, in pertinent part (with identifying data omitted): "Information obtained by OLMS from the National Labor Relations Board (NLRB) indicates that you have identified yourself as the representative of XXXXX, an employer who is party to a petition for a representation election to be conducted by the NLRB..."

I am concerned that such filings are made publically available via OLMS' website as they would automatically become a tool for unions during a corporate campaign. If this initiative is a coordinated effort between the Department of Labor and the NLRB, then Congress and the public should be aware of any agreements, formal or informal, between the two agencies.

1. Does a cooperative relationship exist, in any way, between OLMS and the NLRB to share this type of data? If so, please provide a copy of all agreements, letters, or Memorandums of Understanding between the Board and the Department of Labor, or any of its sub agencies, relating to PROP or LMRDA reporting and information sharing.

The NLRB has a well established practice of cooperating with other Federal government offices and agencies in aid of the administration of their statutory mandates. This practice is required by the LMRDA, 29 U.S.C. 527, Section 607, which directs government agencies to engage in cooperative arrangements with or provide assistance to the Secretary in the performance of functions to avoid unnecessary expense and duplication.

In keeping with that practice, NLRB staff met with the Office of Labor-Management Standards (OLMS), at OLMS's request, to discuss whether data maintained by the NLRB would be useful in assisting OLMS. As a result of this meeting, the NLRB agreed to provide OLMS information concerning recently filed representation case petitions on a weekly basis. The NLRB began providing the information in October 2010. The information provided is also available to the public in accordance with the NLRB's current disclosure practices. There is no written inter-agency agreement or memorandum of understanding regarding the provision of this information.

2. What has been the NLRB's role, if any, in the creation and implementation of PROP?

The NLRB has no role in the creation or implementation of PROP.

Fiscal Year 2012 Budget Request

In all but one year since 2001, the Board has received an increase. H.R. 1, as passed by the House of Representatives, would have reduced the Board's budget to 2003 levels, approximately. According to your budget justification, in 2003, the Board received \$237 million, carried an FTE level of 1,873, and 28,871 Unfair Labor Practices (ULPs) charges. The 2010 appropriation reflects a nearly 20% increase, despite a 13% decrease in FTEs and an 18% decrease in ULPs. Your request for 2012 assumes an additional increase in funding, an increase of nearly 100 FTE and a sudden spike in ULP charges.

1. Given that the Board's budget is approximately 80% personnel compensation costs, and FTEs and caseload had been declining year after year, why has the Board's budget increased by nearly 21% since 2003?

Compensation costs, which are about 80% of the Agency's annual budget, and rent/security costs, which are about 10% of our annual budget, are the main drivers behind the increase in funding. From fiscal years 2003 to 2010, compensation costs increased by more than 30%, due to cost-of-living increases, contractual step increases and succession planning promotions. Similarly, for the same period of time, rent/security charges increased by more than 20%. Together, these increases accounted for about 20% of the Agency's total budget over the same period of time. From fiscal years 2003 to 2008 the agency's budget remained relatively static, and the agency was forced to defer training, infrastructure maintenance, and information technology advancements in order to cover the increased compensation, rent, and security costs.

2. Has the compensation for any Board member or staff been exempted from the President's executive order freezing the rates of basic pay or salaries for all Federal employees?

No. The compensation of Board Members, as Presidential Appointees, is set by Congress. The salaries of the staff of the Board Members have not been exempted from the Presidential Executive Order freezing pay or salaries of Federal employees.

- a. Has any Board member or staff received additional bonus compensation that would otherwise not be covered under the President's executive order? If so, please provide a listing of the job titles and the amount of bonus payment(s) received.

No Board Member or non-career staff have received or will receive bonuses. The Executive Order permits bonuses to career Senior Executive Service staff. Although no SES bonuses have been awarded yet this year, we plan to give awards to our career staff pursuant to standard OPM guidance, while adhering to the Administration's directive to cap spending on all awards at last year's level.

3. Since fiscal year 2011 has been operating under a continuing resolution, how many FTE has the Board added to its payroll during FY 2011?

The Board has added a net of 20 FTE to its payroll during fiscal year 2011, which accounts for about 1% of the total complement of Agency employees. These hires were primarily to fill longstanding vacancies in our Regional offices to support casehandling service to the public. The other hires were made to comply with government wide mandates related to Human Resources initiatives, security and acquisitions.

4. What assumptions is the Board making with your FY 2012 request that details a planned spike in ULP Charges and nearly 100 FTE over 2010 levels? Will the additional FTE be added at the start of the fiscal year, or will they be added incrementally throughout the year?

The projected increase in intake was based on the 4% increase in case intake that the NLRB experienced in fiscal year 2010. The FTE level in the FY 2012 request is the same as the level included in the FY 2011 request. It is comparable to the Agency's FTEs in fiscal year 2007, when case intake was lower than the projected intake for fiscal year 2012. The NLRB will continue to monitor case intake in fiscal years 2011 and 2012 and make adjustments to its hiring plans for those fiscal years, including adding FTEs incrementally, as appropriate.

Questions From The Honorable Jack Kingston

General Counsel Memoranda

Mr. Solomon, on March 11, 2011, you issued "Memorandum GC 11-07". In this memo, it seems that you are directing regional staff to identify cases through which the Board could overrule two 2007 decisions (*Grosvenor Resort* and *St. George Warehouse*, both having to do with back pay). It appears that you are in agreement with the dissenting opinions in those cases and therein lays the reason that you are seeking to overturn these decisions.

1. Were any of the regions consulted as to whether or not they were having difficulties with the findings in these two cases decisions? If so, can you provide the Committee evidence that these cases need to be overturned? In OM 08-54, *Grosvenor Resort*, the Regions were provided with guidance about placing greater emphasis on search for work issues during the initial stages of case processing to protect the viability of the Board's backpay orders when they reach the compliance stage. Similarly, in OM 09-01, *St. George Warehouse*, the Regions were provided with guidance for applying the new burden that increases the likelihood that Regions will have to litigate in compliance proceedings whether discriminatees conducted a reasonable search for work.
2. Are you in possession of facts that would support the conclusion that these cases unfairly shifted the burden of proof to the General Counsel's office?

Both cases modified longstanding Board precedent and judicial authority dating back over forty years. As discussed in detail in Memorandum GC 11-07, *Grosvenor Resort's* inflexible two-week deadline for initiating a search for work conflicts with the Board's and courts' "totality of the circumstances" approach to backpay mitigation, which requires the consideration of various factors that could reasonably affect the timing of a discriminatee's search for work. Similarly, *St. George Warehouse's* shifting of the burden onto discriminatees to prove that they properly mitigated backpay is inconsistent with the great weight of judicial authority properly placing that burden on the respondent, who is the violator of the statute, and is contrary to general principles of damages mitigation under the NLRA and other employment statutes.

3. Are the regions now spending taxpayer dollars in an effort to overturn these cases?

In Memorandum GC 11-07, regional offices were directed, in the normal processing of unfair labor practice charges, to identify appropriate cases in which to present an argument to the Board that it should reconsider *Grosvenor Resort* and *St. George Warehouse*. The decision to seek to overturn the Board's decisions in *Grosvenor Resort* and *St. George Warehouse* was based on an assessment that those decisions were inconsistent with well-established remedial principles under the NLRA, Title VII, and common law, as noted above.

Mr. Solomon, it's my understanding that the General Counsel's Office has issued memoranda requiring the Agency to seek stiffer penalties for unfair labor practice (ULP) charges in the context of organizing, and in the context of the negotiation of initial collective bargaining agreements.

1. Can you discuss what activities your office has taken to with regards to heightened penalties for ULP charges?

The NLRA does not provide penalties for violating the Act; rather, Section 10(c) authorizes the Board to order a respondent to cease and desist from its unlawful conduct and to take affirmative steps to restore victims of unfair labor practices to the status quo existing prior to the violations and to make them whole for losses suffered as the result of illegal acts. Consistent with the Board's broad authority to fashion remedies tailored to undo the harm created by unfair labor practices, my initiatives are designed to carefully consider the coercive and inhibitive effects of certain types of unfair labor practices and to seek remedies that will eliminate those effects and restore an atmosphere in which employees can freely exercise their Section 7 rights.

In the attached Memorandum GC 11-01, Effective Remedies in Organizing Campaigns, the Acting General Counsel instructed the regional offices to routinely seek the following remedies in response to serious unfair labor practices committed during organizing campaigns, where violations have a particularly devastating impact on employee free choice: reading of the Board's notice of violations and remedies to the employees (in addition to posting the notice at the workplace); granting the union access to employer bulletin boards to post its own notices; and requiring that employee names and addresses be provided to the union so that it can contact employees outside the workplace. If the employer's unfair labor practices have had such a severe impact on employee/union communication such that the above remedies are deemed insufficient to permit a fair election, Regions may also consider the propriety of the following additional remedies: granting the union access to nonwork areas during employees' nonwork time; giving the union notice of, and equal time and facilities for the union to respond to, any address made by the company regarding the issue of representation; and affording the union the right to deliver a speech to employees at an appropriate time prior to any Board election. These additional remedies may be warranted where an employer makes multiple unlawful "captive audience" speeches or where the employer is a recidivist and has shown a proclivity to violate the Act.

In the attached Memorandum GC 11-06, First Contract Bargaining Cases, the Acting General Counsel instructed the regional offices to routinely seek the following remedies in response to serious unfair labor practices committed during first-contract collective-bargaining, which is another period where violations have a devastating impact on employee free choice: reading of the Board's notice of violations to the employees (in addition to posting the notice at the workplace); a minimum six month extension of the bar on the filing of decertification petitions; and, where appropriate, the imposition of a bargaining schedule requiring the parties to meet a minimum number of times per month until agreement or a bona fide impasse is reached. Regions may also consider the

propriety of seeking to recover the union's bargaining expenses and/or litigation expenses of the Agency and the union in cases where the employer's bad faith bargaining or presentation of frivolous defenses has caused undue expense. This memorandum was a continuation of an initiative established by my Republican predecessor, General Counsel Ronald Meisburg, to ensure that employees' decisions regarding representation is protected by the Agency during a critical bargaining period.

THURSDAY, APRIL 7, 2011.

DEPARTMENT OF LABOR JOB TRAINING PROGRAMS

WITNESSES

ANDREW SHERRILL, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

DOUGLAS J. BESHAROV, PROFESSOR, UNIVERSITY OF MARYLAND SCHOOL OF PUBLIC POLICY, AND DIRECTOR, WELFARE REFORM ACADEMY AND CENTER FOR INTERNATIONAL POLICY EXCHANGES

MASON BISHOP, PRINCIPAL, WORKED CONSULTING AND FORMER DEPUTY ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

RAY UHALDE, VICE PRESIDENT, WORKFORCE/EDUCATION POLICY, JOBS FOR THE FUTURE, AND FORMER DEPUTY ASSISTANT SECRETARY, U.S. DEPARTMENT OF LABOR

Mr. REHBERG. Good morning, and welcome. Nice to have you all here this morning.

And we will begin by, I believe, an opening statement by Ranking Member DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman.

I want to say a thank you to our four distinguished witnesses for taking the time to testify for us this morning.

Mr. Chairman, as we sit here today, 13.7 million of our fellow Americans are unemployed. And at a time when jobs are harder to find than ever and our economy is changing so dramatically, we need efficient and effective job training services like those provided by the Workforce Investment Act in order to help citizens to get back on their feet.

No investment is more critical than investment in our human capital, and job training and reemployment services are part of the core, essential role for Government—helping responsible people succeed from their own hard work.

And yet, Mr. Chairman, the majority's budget for this year, H.R. 1, effectively terminates the Federal Government's role in workforce development. This is a vital role of Government that had the support of both parties under President Nixon and President Reagan.

Let us be clear about what this means. Currently, the Federal Government covers the vast majority of the cost of the public investment in job training and placement programs. If we terminate our investment in this area, States will not be able to afford to make up the difference. They will have no recourse but to shut these programs down.

Where will people go to get this vital job training and placement assistance? The majority does not seem to have an answer or even to be concerned about it. And so, under their plan, we are hearing

that 3,000 One-Stop career centers will suspend enrollment in programs this summer and will likely close their doors later this year.

Up to 30,000 disadvantaged students will lose access to work experience and earning opportunity through summer youth employment programs. The Job Corps will serve 10,000 fewer participants while also shuttering centers, and the Green Jobs Program will be eliminated. And at a time when long-term unemployment is staggering, millions of American workers would lose access to reemployment and job training services completely.

In fact, the Workforce Investment Act supports job training programs all across the country with proven results. Over the past 2 years, WIA programs have seen a 233 percent increase in participation from 3.4 million workers served in 2008 to just over 8 million in 2010. And even in this tough economy, of over half the people seeking help, 4.3 million Americans nationwide, have found jobs with the help of these services.

Businesses also rely on training programs to fill vacant positions with qualified and skilled workers. These cuts will hurt them, too.

Some have suggested that our federally financed workforce programs, as currently constructed, are not achieving adequate results. I am interested in pursuing that discussion today because according to the vast quantities of research that I am aware of, the opposite is true.

We will hear today about the need to move to a voucher program so that we can focus on training instead of core and intensive services. But I doubt that that is what the framers of this program had in mind.

Still, that does not mean that there is not room for improvement. We can always do better, especially when the livelihood of millions of Americans is at stake.

So, Mr. Chairman, I thank you for convening this hearing, and I am looking forward to today's testimony.

Mr. REHBERG. Great. Just a brief warning. Unfortunately, normally we do hold pretty strictly to the time. I try and respect your time as well as ours and have us out of here by noon. But it looks like we are going to be voting somewhere between 11:15 a.m. and 11:30 a.m., and we will not be able to reconvene because then we begin the debate on the CR, and we are not allowed to have an Appropriations Committee hearing at the same time that anything is being debated on the floor having to do with the budget.

So it is one of those technical issues. It is a rule. So we will do the best we can to hear your opening statements, and then I just implore the Members during their questioning if they don't feel compelled to fill the entire 5 minutes, that would be a good thing, and we will get more than one round in. Otherwise, chances are we will only get one round of questioning in.

So why don't we begin? Mr. Sherrill.

Mr. SHERRILL. Mr. Chairman, Ranking Member DeLauro, and Members of the subcommittee, thank you for inviting me here today to discuss the findings from our recent work on fragmentation, overlap, and potential duplication in federally funded employment and training programs and our prior work on the Workforce Investment Act.

As you know, we recently issued two key reports in this area. The first was mandated by Congress and outlined opportunities to reduce potential duplication across a wide range of Federal programs. The second focused more specifically on Federal employment and training programs and built on reports we have issued in this area since the 1990s.

Today, I will discuss what we have found regarding fragmentation, overlap, and duplication of Federal employment and training programs, the role that WIA activities can play in addressing these conditions, and what additional information would assist Congress.

For fiscal year 2009, we identified 47 federally funded employment and training programs administered across 9 Federal agencies. The programs reported spending approximately \$18,000,000,000 on employment and training services that year. Seven programs accounted for about three-quarters of this spending, including the WIA Adult, Dislocated Worker, and Youth Programs.

The target populations being served by the most programs were Native Americans, veterans, and youth. Forty-four of the 47 programs overlap with at least one other program in that they provide at least one similar service to a similar population. However, differences may exist in eligibility, objectives, and service delivery.

We did more in-depth analysis of three of the largest programs—Temporary Assistance for Needy Families, the Employment Service, and WIA Adult Programs. We found that these three programs maintain separate administrative structures to provide some of the same employment and training services, such as job search and job referral, to low-income individuals, although there are differences between the programs.

However, data limitations make it difficult to determine the extent to which individuals may be receiving the same employment and training services from these programs. Federal agency officials acknowledge that greater administrative efficiencies could be achieved in these services but also said that other factors, such as the proximity of services to clients, could warrant having multiple entities provide the same services.

Congress passed WIA partly in response to concerns about the fragmentation and inefficiencies in Federal employment and training programs. WIA established One-Stop centers and mandated that many Federal employment and training programs provide services through the centers in all local areas.

In our 2007 study, we found that a typical One-Stop center in many States offered services for eight or nine required programs onsite. And one State offered services for 16 required programs onsite. While co-location does not guarantee efficiency improvements, it affords the potential for sharing resources, cross-training staff, and may lead to the consolidation of administrative systems, such as information technology.

Consolidating administrative structures and co-locating services may increase efficiencies, but implementation could pose challenges. We found that Florida, Texas, and Utah have consolidated their workforce and welfare agencies, and officials said this reduced the cost and improved the quality of services, but they couldn't provide a dollar figure for the cost savings.

WIA Adult and Employment Service Programs are generally co-located in One-Stop centers, but TANF employment and training services are co-located to a lesser extent. We recently recommended that the Secretaries of HHS and Labor work together to develop and disseminate information on some of these initiatives at the State and local levels to shed light on the extent to which they could serve as models in other places.

As part of that effort, we recommended that they examine the incentives for States and localities to undertake that kind of initiatives, and the agencies agreed.

Nearly all employment and training programs track multiple outcome measures—most often entered employment, employment retention, and wage gain or change. However, little is known about the effectiveness of employment and training programs. We found that only 5 of the 47 had conducted any impact studies since 2004. Labor has been slow to comply with the requirement to conduct a multisite control group evaluation of the WIA-funded programs, and they currently have it underway. But it expects that it won't be completed until 2015.

Up to now, Labor has completed two nonexperimental, less comprehensive studies of the WIA Adult and Dislocated Worker Programs, which found that, on average, programs had positive impacts in the States examined.

The recently enacted GPRA Modernization Act of 2010 provides some opportunities for Congress to have additional oversight in this area because the act requires more crosscutting goals and programs and more congressional input.

In conclusion, sustained attention and oversight by Congress will be critical in addressing these issues of fragmentation, overlap, and potential duplication. And our work highlights two areas where congressional oversight could facilitate progress—enhancing program evaluations and performance information and fostering State and local innovation.

That concludes my statement. I would be happy to answer any questions.

[The information follows:]

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Labor,
Health and Human Services, Education
and Related Agencies, Committee on
Appropriations, House of Representatives

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**EMPLOYMENT AND
TRAINING PROGRAMS**

**Opportunities Exist for
Improving Efficiency**

Statement of Andrew Sherrill, Director
Education, Workforce, and Income Security Issues



Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee:

Thank you for inviting me here today to discuss the findings from our recent work on fragmentation, overlap, and potential duplication in federally funded employment and training programs and our prior work on the Workforce Investment Act of 1998 (WIA).¹ As you know, we recently issued two reports addressing fragmentation, overlap, and potential duplication in federal programs—one that outlined opportunities to reduce potential duplication across a wide range of federal programs² and another that focused more specifically on employment and training programs.³ This work and our larger body of work in the area will help government policymakers address the rapidly building fiscal pressures facing our nation's government—pressures that stem, in part, from our mounting debt and sustained high unemployment.

Our work to examine fragmentation, overlap, and potential duplication in employment and training programs has a long history. As early as the 1990s we issued a series of reports that raised questions about the efficiency and effectiveness of the federally funded employment and training system, and we concluded that a structural overhaul and consolidation of these programs was needed. Partly in response to these concerns, Congress passed WIA. The purpose of WIA, in part, was to transform the fragmented employment and training system into a coherent one, establishing a one-stop system that serves the needs of job seekers and employers. Since WIA was enacted, we have issued numerous reports that have included recommendations regarding many aspects of WIA, such as performance measures and accountability, one-stop centers, and training, among other topics.

GAO's work has continued to find fragmentation, overlap, and potential duplication in employment and training programs. The area is

¹Pub. L. No. 105-220, 112 Stat. 936.

²GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP (Washington, D.C.: Mar. 1, 2011). An interactive, Web-based version of the report is available at: <http://www.gao.gov/ereport/gao-11-318SP>.

³GAO, *Multiple Employment and Training Programs: Providing Information on Colocating Services and Consolidating Administrative Structures Could Promote Efficiencies*, GAO-11-92 (Washington, D.C.: January 13, 2011).

characterized by a large number of programs with similar goals, beneficiaries, and allowable activities that are administered by multiple federal agencies. Fragmentation of programs exists when programs serve the same broad area of national need but are administered across different federal agencies or offices. Program overlap exists when multiple agencies or programs have similar goals, engage in similar activities or strategies to achieve them, or target similar beneficiaries. Overlap and fragmentation among government programs or activities can be harbingers of unnecessary duplication. Given the challenges associated with fragmentation, overlap, and potential duplication, careful, thoughtful actions will be needed to address these issues.

My testimony today will discuss (1) what GAO has found regarding fragmentation, overlap, and duplication in federal employment and training programs, (2) the role that WIA activities can play in addressing these conditions, and (3) what additional information could help Congress minimize fragmentation, overlap, and duplication among these programs. In preparing this statement we relied on our previous work in these areas (please see the related GAO products appendix). These products contain detailed overviews of the scope and methodology we used. The work on which this statement is based was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, for fiscal year 2009, GAO identified 47 federally funded employment and training programs administered across nine agencies. Almost all of these programs overlap with at least one other program in that they provide at least one similar service to a similar population, but differences may exist in eligibility, objectives, and service delivery. WIA's structure provides the opportunity to reduce overlap and duplication because it requires that several of these programs provide services through the one-stop system, but they need not be on-site. Increasing colocation at one-stop centers, as well as consolidating state workforce and welfare administrative agencies could increase efficiencies, and several states and localities have undertaken such initiatives. To facilitate further progress in increasing administrative efficiencies, we recommended that the Secretaries of Labor and Health and Human Services (HHS) work together to develop and disseminate information about such efforts. Sustained congressional oversight is pivotal in

addressing issues of fragmentation, overlap, and potential duplication. Specifically, Congress could explore opportunities to enhance program evaluations and performance information and foster state and local innovation in integrating services and consolidating administrative structures.

GAO Identified 47 Federal Employment and Training Programs, and Most Overlapped with at Least One Other Program

For fiscal year 2009, we identified 47 federally funded employment and training programs administered across nine agencies, primarily the Departments of Labor, Education, and Health and Human Services (HHS) (for a list of programs and agencies, see appendix I).⁴ These programs reported spending approximately \$18 billion on employment and training services in fiscal year 2009.⁵ Seven programs accounted for about three-fourths of this spending, including the WIA Adult, Dislocated Worker, and Youth programs, which spent nearly \$6 billion on employment and training services (see table 1). Most participants received employment and training services through one of two programs: Employment Service/Wagner-Peyser Funded Activities (Employment Service) and WIA Adult.⁶ Together, these two programs reported serving over 18 million individuals, or about 77 percent of the total number of participants served across all programs.⁷

⁴We defined an employment and training program as a program that is specifically designed to enhance the specific job skills of individuals in order to increase their employability, identify job opportunities, and/or help job seekers obtain employment. We excluded certain programs that did not meet this definition, did not provide employment and training services, or were components of other employment and training programs. We included programs with broader missions if a primary purpose of the program was to provide employment and training assistance, including multipurpose block grants and career and technical education programs. We did not conduct a legal analysis in order to identify the programs or to determine their objectives, requirements, or goals.

⁵For information on the amount each program reported spending on employment and training services in fiscal year 2009, and the estimated amount spent in fiscal year 2010, see GAO-11-92, appendixes II and III.

⁶For information on the estimated number of participants receiving employment and training services, by program, see GAO-11-92, appendix IV.

⁷Officials provided estimates for the most recent year for which data were available. Reported participant numbers for the Employment Service program are for 2009, and reported participant numbers for the WIA Adult program are for 2008.

Table 1: Seven Largest Programs: Estimated Amount Spent on Employment and Training Activities in Fiscal Year 2009 and Estimated Number of Participants Served

Program (Agency)	Estimated Amount Spent on Employment and Training Activities in FY09 ^a	Estimated Number of Participants	
		Number of Participants	Year Served ^b
Rehabilitation Services –Vocational Rehabilitation Grants to States (Education)	\$2,956,743,700	979,409	2009
WIA Dislocated Worker (Labor)	2,421,340,000	671,786	2008
WIA Youth (Labor)	2,112,069,000	282,426	2008
Temporary Assistance for Needy Families (TANF) (HHS)	1,777,958,939	134,767 ^c	2008
Job Corps (Labor)	1,775,000,000	59,357	2008
WIA Adult (Labor)	1,356,540,000	5,171,158	2008
Employment Service (Labor)	1,203,677,000	13,472,624	2009
Total	\$13,603,328,639	20,771,527	

Source: GAO survey of agency officials.

^aEstimates may include funds provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act).

^bOfficials provided the estimated number of participants for the most recent year for which data were available.

^cThis number represents the monthly average number of individuals receiving TANF cash assistance who were engaged in work activities such as subsidized employment, work experience, on-the-job training, job search and job readiness assistance, community service, vocational educational training, job skills training, and in certain circumstances education directly related to employment. It does not include the number of individuals engaged in unsubsidized employment. Officials were unable to provide an annual estimate.

Almost all programs overlap with at least one other program, but differences may exist in eligibility, objectives, and service delivery. Forty-four of the 47 programs, which include broad multipurpose block grants, overlap with at least one other program, in that they provide at least one similar service to a similar population. Some of these overlapping programs serve multiple population groups, while others target specific populations, and some programs require participants to be economically disadvantaged. The target populations being served by the most programs are Native Americans, veterans, and youth. For example, all 8 programs that target Native Americans provide seven similar types of employment

and training services.⁸ However, some individuals within a population group may be eligible for one program, but not another because program eligibility criteria differ. One of the programs targeting Native Americans, for example, serves only disabled Native Americans residing on or near a federal or state reservation, and another program serves only Native Hawaiians.

Some efforts have been made to address overlap in programs and services. Officials from 27 of the 47 programs reported that their agencies have coordinated efforts with other federal agencies that provide similar services to similar populations. For example, Labor and HHS issued a joint letter encouraging state-administered youth programs to partner together using funds under the American Recovery and Reinvestment Act of 2009 (Recovery Act)⁹ to promote subsidized employment opportunities. In addition, an official from the Department of the Interior reported that the agency works with Labor and HHS to coordinate programs for Native Americans. Under law, Native American tribes are allowed significant flexibility to combine funding from multiple programs.¹⁰ Moreover, as part of its proposed WIA reforms, the Administration is proposing consolidating 4 employment and training programs administered by Education into 1 program.¹¹ The Administration also proposes consolidating Education's Career and Technical Education – Basic Grants to States and Tech-Prep Education programs, at the same time reducing program funding. In addition, the budget proposal would transfer the Senior Community Service Employment Program from Labor to HHS.

Three of the largest programs maintain separate administrative structures to provide some of the same services. The Temporary Assistance for Needy Families (TANF), Employment Service, and WIA Adult programs provide some of the same employment and training services—such as job search and job referral services—to low-income individuals, although

⁸We also found that five of the six programs that target veterans provide seven similar types of employment and training services, and the five programs that target youth provide seven similar types of employment and training services.

⁹Pub. L. No. 111-5, 123 Stat. 115.

¹⁰25 U.S.C. §3403.

¹¹This is part of the Administration's broader proposal to consolidate 9 Rehabilitation Act programs administered by Education into 3 programs. Some of these programs do not meet our definition of an employment and training program.

there are differences between the programs (see figure 1).¹² The TANF program serves low-income families with children, while the Employment Service and WIA Adult programs serve all adults, including low-income individuals.¹³ All three programs share a common goal of helping individuals secure employment, and the TANF and WIA Adult programs also aim to reduce welfare dependency. However, employment is only one aspect of the TANF program, which also has three other broad social service goals: to assist needy families so that children can generally be cared for in their own homes, to reduce and prevent out-of-wedlock pregnancies, and to encourage the formation and maintenance of two-parent families. As a result, TANF provides a wide range of other services beyond employment and training, including cash assistance.¹⁴

¹²See GAO-11-92. To identify areas of potential duplication across the 47 programs, we selected the TANF, Employment Service, and WIA Adult programs for more in-depth analysis. We selected these three programs because our prior work indicated they had the potential for duplication based on a high degree of overlap, and they were also among the largest of the 47 programs in terms of the amount spent on employment and training services.

¹³The WIA Adult program gives priority for intensive and training services to recipients of public assistance and other low-income individuals when program funds are limited.

¹⁴To reduce dependency, TANF requires many cash assistance recipients to participate in work activities such as subsidized employment, on-the-job training, or community service.

Figure 1: Employment and Training Services Provided by the TANF, Employment Service, and WIA Adult Programs, Fiscal Year 2009

Program name	Employment counseling and assessment	General Equivalency Diploma assistance	Development of job opportunities	Job readiness skills training	Job referrals	Job reentry training	Job search or job placement activities	Occupational or vocational training	On-the-job training	Remedial academic, English language skills, or basic adult literacy	Work experience	Other
Employment Service/Wagner-Peyser Funded Activities (DOL)	○	●	●	●	○	○	○	○	○	○	○	● ^a
Temporary Assistance for Needy Families (HHS)	○	○	●	○	○	○	○	○	○	○	○	● ^b
WIA Adult Program (DOL)	●	●	●	●	○	●	●	●	○	●	○	○

- Primary services
 - Secondary services
- Source: GAO survey of agency officials.
- ^aJob search workshops.
- ^bSubsidized employment.

Although the extent to which individuals receive the same employment and training services from TANF, the Employment Service, and WIA Adult is unknown, the programs maintain separate administrative structures to provide some of the same services to low-income individuals. Data limitations make it difficult to assess duplication of services, but Labor officials estimate that in program year 2008 approximately 4.5 percent of all WIA Adult participants who received training—about 4,500 of the nearly 100,000 participants who exited the program—were also receiving TANF. However, it is unclear whether the WIA Adult participants who self-identify as TANF recipients have received TANF employment and training services.¹⁵ Nonetheless, the three programs maintain separate administrative structures. At the federal level, the TANF program is administered by HHS, and the Employment Service and WIA Adult

¹⁵Labor's estimate likely understates the number of TANF recipients served by the WIA Adult program, as the program collects information on TANF receipt only if participants receive intensive or training services. Further, HHS officials told us that data are not available at the federal level on the total number of individuals who receive TANF employment and training services because HHS lacks the legal authority to require such reporting.

programs are administered by Labor. At the state level, the TANF program is typically administered by state human services or welfare agencies, while the other two programs are typically administered by state workforce agencies. At the local level, Employment Service and WIA Adult services are generally provided through the one-stop centers, while TANF employment and training services may be administered through the one-stop or through other structures. Federal agency officials acknowledged that greater administrative efficiencies could be achieved in delivering these services, but also said that other factors, such as the proximity of services to clients, could warrant having multiple entities providing the same services.

WIA's Structure Provides the Opportunity to Reduce Fragmentation, Overlap, and Duplication

Congress passed WIA partly in response to concerns about fragmentation and inefficiencies in federal employment and training programs.¹⁶ WIA authorized several employment and training programs—including Job Corps and programs for Native Americans, migrant and seasonal farmworkers, and veterans—as well as the Adult Education and Literacy program.¹⁷ WIA replaced the Job Training Partnership Act (JTPA) programs for economically disadvantaged adults and youths and dislocated workers with three new programs—WIA Adult, WIA Dislocated Worker, and WIA Youth.¹⁸ The Adult and Dislocated Worker programs provide three tiers, or levels, of service: core, intensive, and training. Core services include basic services such as job search assistance and labor market information and they may be self-service in nature.¹⁹ Intensive services may include such activities as comprehensive assessment and case management—activities that require greater staff involvement. Training services may include occupational skills or on-the-job training. Beyond authorizing these programs, WIA also established one-stop centers

¹⁶Pub. L. No. 105-220, 112 Stat. 936 (1998).

¹⁷David H. Bradley, *The Workforce Investment Act and the One-Stop Delivery System*, a report prepared for the Congressional Research Service (Washington, D.C., Jan. 10, 2011). According to CRS, WIA also amended the Wagner-Peyser Act of 1933, which establishes the Employment Service, to make the Employment Service an integral part of the one-stop system.

¹⁸For the repeal of JTPA, see Pub. L. No. 105-220 § 199(b)(2), (c)(2)(B), 112 Stat. 936, 1059. For the new WIA Adult and Dislocated Worker programs, see §§ 131 et seq., 112 Stat. 936, 982. For the new WIA Youth program, see §§ 126 et seq., 112 Stat. 936, 971.

¹⁹Unlike the JTPA adult program, WIA imposes no income eligibility requirements for adults receiving any of its core services.

in all local areas²⁰ and mandated that many federal employment and training programs provide services through the centers.²¹

Thirteen Categories of Employment and Training Programs Must Provide Services Through the One-Stop System

Under WIA, sixteen different categories of programs, administered by four federal agencies, must provide services through the one-stop system, according to Labor officials.²² Thirteen of these categories include programs that meet our definition of an employment and training program, and three categories do not, but offer other services to jobseekers who need them (see figure 2). These thirteen program categories represent about 40 percent of the federal appropriations for employment and training programs in fiscal year 2010.²³

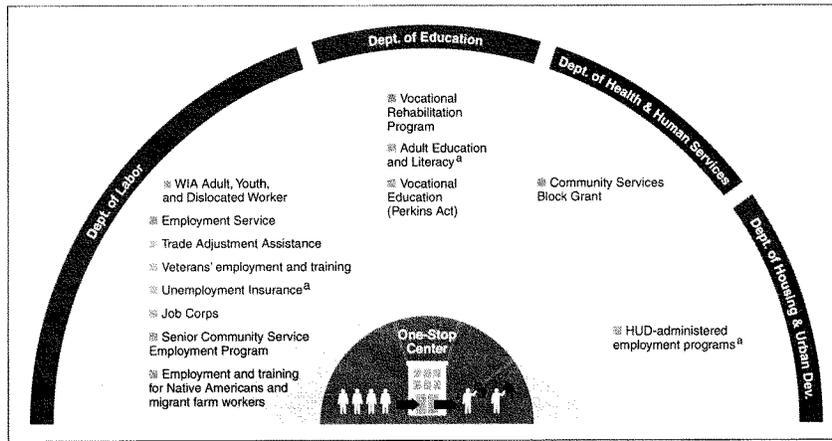
²⁰Pub. L. No. 105-220 §134(c), 112 Stat. 936, 992. WIA required that one-stop centers be established in local workforce investment areas in all participating states. States are responsible for designating local workforce investment areas, and each state must have one or more local areas. As of April 2007, we found that the number of local areas in each state ranged from 1 to 50.

²¹Pub. L. No. 105-220 §134(c)(2)(A), 112 Stat. 936, 993.

²²According to Labor officials, although WIA required 17 categories of programs to participate in the one-stop system, the Welfare-to-Work program has been discontinued, reducing the total to include 16 categories of required programs. For the purposes of this report, we refer to these 16 categories of programs as "required programs."

²³Fiscal year 2010 appropriations were reported by federal agency officials in GAO's 2010 survey of employment and training programs. Because the TANF program is not required to provide services through the one-stop system, the appropriations represented by these 13 program categories do not include appropriations for the TANF program.

Figure 2. Categories of Programs Required to Provide Services Through the One-Stop System and Related Federal Agencies



Source: Agency documents

Note: Vocational Education (Perkins Act) programs include the Career and Technical Education – Basic Grants to States and Tech-Prep Education programs. HUD-administered employment programs include the Community Development Block Grant and Housing Choice Voucher Family Self-Sufficiency programs.

^aProgram did not meet our definition of an employment and training program in our recent study of multiple employment and training programs.

One-stop centers serve as the key access point for a range of services that help unemployed workers re-enter the workforce—such as job search assistance, skill assessment and case management, occupational skills and on-the-job training, basic education and literacy training, as well access to Unemployment Insurance (UI) benefits and other supportive services—and they also assist employers in finding workers. Any person visiting a one-stop center may look for a job, receive career development services, and gain access to a range of vocational education programs. In our 2007 study, we found that a typical one-stop center in many states offered

services for 8 or 9 required programs on-site, and one state offered services for 16 required programs on-site.²⁴

In addition to required programs, one-stop centers have the flexibility to include other, optional programs in the one-stop system, such as TANF, the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program, or other community-based programs, which helps them better meet specific state and local workforce development needs. The Dayton, Ohio one-stop center, for example, boasts over 40 programs on-site at the 8-1/2 acre facility, including an organization that provides free business attire to job seekers who need it, an alternative high school program that assists students in obtaining a diploma, and organizations providing parenting and self-sufficiency classes. Under WIA, services may also be provided at affiliated sites—designated locations that provide access to at least one employment and training program.

While WIA requires certain programs to provide services through the one-stop system, it does not provide additional funds to operate one-stop systems and support one-stop infrastructure. As a result, required programs are expected to share the costs of developing and operating one-stop centers. In 2007, we reported that WIA programs and the Employment Service program were the largest funding sources states used to support the infrastructure—or nonpersonnel costs—of their comprehensive one-stop centers.²⁵ For program year 2005²⁶, of the 48 states that could provide funding information, 23 states identified WIA programs as the primary funding source and 19 states reported it was the Employment Service program. In addition, 27 states reported using TANF funds to pay for part of their one-stop center infrastructure costs, and 3 states identified TANF as the primary funding source. In 2007, TANF was on-site at a typical one-stop in 30 states.²⁷

²⁴See GAO, *Workforce Investment Act: One-Stop System Infrastructure Continues to Evolve, but Labor Should Take Action to Require That All Employment Service Offices Are Part of the System*, GAO-07-1096 (Washington, D.C.: Sept. 4, 2007).

²⁵See GAO-07-1096. We defined infrastructure costs as the nonpersonnel costs necessary for the general operation of a one-stop center, including the rental costs of the facilities, costs of utilities and maintenance, and equipment (including adaptive technology for individuals with disabilities).

²⁶Program year 2005 ran from July 1, 2005 through June 30, 2006.

²⁷GAO-07-1096.

Increasing Colocation of Services in One-Stop Centers and Consolidating State Administrative Structures May Increase Efficiencies

One-stop centers required under WIA provide an opportunity for a broad array of federal employment and training programs—both required and optional programs—to coordinate their services and avoid duplication. Although WIA does not require that programs be colocated within the one-stop center, this is one option that programs may use to provide services within the one-stop structure. Labor's policy is to encourage colocation of all required programs to the extent possible; however, officials acknowledged that colocation is one of multiple means for achieving service integration. We previously reported that colocating services can result in improved communication among programs, improved delivery of services for clients, and elimination of duplication.²⁸ While colocation does not guarantee efficiency improvements, it affords the potential for sharing resources and cross-training staff, and may lead, in some cases, to the consolidation of administrative systems, such as information technology systems. Our early study of promising one-stop practices found that the centers nominated as exemplary did just that—they cross-trained program staff, consolidated case management and intake procedures across multiple programs, and developed shared data systems.²⁹ Other types of linkages between programs, such as electronic linkages or referrals, may not result in the same types of efficiency improvements, but they may still present opportunities to streamline services.

Consolidating administrative structures and colocating services may increase efficiencies, but implementation could pose challenges.³⁰ Florida, Texas, and Utah have consolidated their workforce and welfare agencies³¹ and officials said that this reduced costs and improved the quality of services for participants, but they could not provide a dollar figure for cost savings. Even when states consolidate their agencies, they must still follow separate requirements for individual programs. With regard to colocating

²⁸Specifically, we reported that colocating community college staff at one-stop centers can result in these benefits. See GAO, *Workforce Development: Community Colleges and One-Stop Centers Collaborate to Meet 21st Century Workforce Needs*, GAO-08-547 (Washington, D.C.: May 15, 2008).

²⁹See GAO, *Workforce Investment Act: One-Stop Centers Implemented Strategies to Strengthen Services and Partnerships, but More Research and Information Sharing is Needed*, GAO-03-725 (Washington, D.C.: June 18, 2003). As part of this study, we visited 14 one-stop centers which were identified as exemplary by government officials and workforce development experts.

³⁰See GAO-11-92.

³¹In Utah, the workforce agency administers the TANF program in its entirety; in Florida and Texas the workforce system administers only TANF employment and training services.

services, WIA Adult and the Employment Service are generally colocated in one-stop centers, but TANF employment and training services are colocated in one-stops to a lesser extent. Efforts to increase collocation could prove challenging due to issues such as limited available office space, differences in client needs and the programs' client service philosophies, and the need for programs to help fund the operating costs of the one-stop centers.³² While states and localities have undertaken some potentially promising initiatives to achieve greater administrative efficiencies, little information is available about the strategies and results of these initiatives, so it is unclear the extent to which practices in these states could serve as models for others. Moreover, little is known about the incentives states and localities have to undertake such initiatives and whether additional incentives may be needed.

We recently recommended that the Secretaries of Labor and HHS work together to develop and disseminate information that could inform such efforts, including information on state initiatives to consolidate program administrative structures and state and local efforts to colocate additional programs at one-stop centers. As part of this effort, we recommended that Labor and HHS examine the incentives for states and localities to undertake such initiatives and, as warranted, identify options for increasing them. In their responses, Labor and HHS agreed with our recommendations. In addition, GAO is currently examining innovative one-stop strategies to enhance collaboration with employers and economic development partners to better meet local labor market needs.

To the extent that collocating services and consolidating administrative structures reduce administrative costs, funds could potentially be available to serve more clients or for other purposes. For the TANF program alone, GAO estimated that states spent about \$160 million to administer employment and training services in fiscal year 2009. According to a Department of Labor official, the administrative costs for the WIA Adult program were at least \$56 million in program year 2009. Officials told GAO they do not collect data on the administrative costs associated with the Employment Service program, as they are not a separately identifiable cost in the legislation. Labor officials said that, on average, the agency spends about \$4,000 for each WIA Adult participant who receives training services.

³²GAO-11-92.

**Congress Needs
Better Information on
Program Performance
to Address
Fragmentation,
Overlap, and Potential
Duplication in
Employment and
Training Programs**

Making informed decisions about where to invest scarce resources requires information about what's working and what's not but, despite improvements, performance data do not provide a complete picture of the employment and training system. Nearly all employment and training programs track multiple outcome measures and many programs track similar measures—most often an “entered employment” rate (the number of participants who found jobs), employment retention, and wage gain or change. We have made a number of recommendations regarding the performance management systems of the key employment and training programs, and Labor has made some progress addressing our concerns. However, two issues remain. First, only a small proportion of job seekers who receive services at one-stops are reflected in WIA outcome data. While customers who use self-services are estimated to be the largest portion of those served under WIA, job seekers who receive self-service or informational services are specifically excluded from performance calculations by the statute. Second, WIA’s performance measurement system contains no provision for measuring overall one-stop performance, relying instead on a program-by-program approach that cannot easily be used to assess the overall performance of the one-stop system.

Information about the effectiveness of these programs can also help guide policymakers and program managers in making decisions about how to improve, coordinate, or consolidate existing programs. However, little is known about the effectiveness of employment and training programs because only 5 of the 47 programs reported that they had conducted any impact studies since 2004.³³ Impact studies, which allow for determining the extent to which a program is causing participant outcomes, can be difficult and expensive to conduct because they take steps to examine what would have happened in the absence of a program to isolate its impact from other factors.³⁴ Such studies may not be cost-effective for smaller programs, particularly in periods of tight budgets, but strategically chosen impact studies can be an important means for understanding where efficiencies can be achieved. Labor has been slow to comply with a requirement to conduct a multi-site control group evaluation of the WIA-funded programs.³⁵ In 2004 and 2007, we recommended that Labor comply

³³However, agencies may currently have impact studies under way.

³⁴The five impact studies identified by officials generally found that the effects of participation were not consistent across programs, with only some demonstrating positive impacts that tended to be small, inconclusive, or restricted to short-term impacts.

³⁵29 U.S.C. § 2917(c).

with the requirements of the law and conduct an impact evaluation of WIA services to better understand what services are most effective for improving outcomes. Since then, Labor has completed a nonexperimental study of the WIA Adult and Dislocated Worker programs and also has an experimental design impact study of these programs currently under way. The nonexperimental study found that the WIA Adult program had positive impacts on average earnings up to 4 years after participant entry, but noted that the magnitude of this effect could have been due to the selection of applicants with greater income prior to participation and better job prospects. The study found that the impacts for participants in the Dislocated Worker program were also positive, but smaller.³⁶ Labor expects that the experimental design impact study currently underway will examine impact by funding stream, but will not be completed until June 2015.³⁷

Understanding how well the one-stop system is reducing fragmentation through coordinated service delivery would be useful in deciding where efficiencies could be achieved, but no study has been undertaken to evaluate the effectiveness of the one-stop system approach. While a few program impact studies have been done or are underway, these studies largely take a program-by-program approach rather than focusing on understanding which approaches are most effective in streamlining service delivery and improving one-stop efficiency. In addition, Labor's efforts to collaborate with other agencies to assess the effects of different strategies to integrate job seeker services have been limited. We previously recommended that Labor collaborate with Education, HHS, and HUD to develop a research agenda that examines the impacts of various approaches to program integration on job seeker and employer satisfaction and outcomes.³⁸ Labor has committed to collaborating with other agencies and has involved them in developing inter-agency initiatives

³⁶Carolyn J. Heinrich, Peter R. Mueser, and Kenneth R. Troske, *Workforce Investment Act Nonexperimental Net Impact Evaluation, Final Report*, December 2008. This nonexperimental study was a net impact evaluation that used a closely matched comparison group design rather than a random assignment design to assess the impact of the programs on participants' postprogram earnings.

³⁷The WIA impact study currently underway uses a random assignment experimental design to assess programs' impacts on participants' post program employment and earnings and their cost effectiveness.

³⁸GAO, *Workforce Investment Act: One-Stop Centers Implemented Strategies to Strengthen Services and Partnerships, but More Research and Information Sharing is Needed*, GAO 03-725. (Washington, D.C.: June 18, 2003).

for certain targeted activities, but has not yet evaluated the effectiveness of the one-stop system.

In January 2011, the President signed the GPRA Modernization Act of 2010 (GPRAMA),³⁹ further amending the almost two-decades-old Government Performance and Results Act of 1993 (GPRA).⁴⁰ Implementing provisions of the new act—such as its requirement to establish outcome-oriented goals covering a limited number of crosscutting policy areas—could play an important role in clarifying desired outcomes, addressing program performance spanning multiple organizations, and facilitating future actions to reduce unnecessary duplication, overlap, and fragmentation. Specifically, GPRAMA requires (1) disclosure of information about accuracy and validity, (2) data on crosscutting areas, and (3) quarterly reporting on priority goals on a publicly available Web site. Additionally, GPRAMA significantly enhances requirements for agencies to consult with Congress when establishing or adjusting governmentwide and agency goals. This information can inform deliberations on spending priorities and help re-examine the fundamental structure, operation, funding, and performance of a number of federal programs. However, to be successful, it will be important for agencies to build the analytical capacity to both use the performance information, and to ensure its quality—both in terms of staff trained to do the analysis and availability of research and evaluation resources.

In conclusion, removing and preventing unnecessary duplication, overlap, and fragmentation among federal employment and training programs is clearly challenging. These are difficult issues to address because they may require agencies and Congress to re-examine within and across various mission areas the fundamental structure, operation, funding, and performance of a number of long-standing federal programs and activities. Implementing provisions of GPRAMA could play an important role in clarifying desired outcomes, addressing program performance spanning multiple organizations, and facilitating future actions to reduce unnecessary duplication, overlap, and fragmentation.

³⁹Pub. L. No. 111-352, 124 Stat. 3866 (2011).

⁴⁰Pub. L. No. 103-62, 107 Stat. 285 (1993).

Sustained attention and oversight by Congress will also be critical. Our work highlights two key areas where congressional oversight could facilitate progress:

- Enhancing program evaluations and performance information; and
- Fostering state and local innovation in integrating services and consolidating administrative structures.

As the nation rises to meet its current fiscal challenges, GAO will continue to assist Congress and federal agencies in identifying actions needed to address these issues. Likewise, we will continue to monitor developments in the areas we have already identified.

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee, this completes my prepared statement. I would be happy to respond to any questions you may have at this time.

**GAO Contact and
Staff
Acknowledgments**

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Appendix I: Federally Funded Employment and Training Programs by Agency, Fiscal Year 2009

<p>Department of Labor</p> <ul style="list-style-type: none"> • Community-Based Job Training Grants • Disabled Veterans' Outreach Program • Employment Service/Wagner-Peyser Funded Activities • H-1B Job Training Grants • Homeless Veterans' Reintegration Project • Job Corps • Local Veterans' Employment Representative Program • National Farmworker Jobs Program • Native American Employment and Training • Registered Apprenticeship and Other Training • Reintegration of Ex-Offenders • Senior Community Service Employment Program • Trade Adjustment Assistance • Transition Assistance Program • Veterans' Workforce Investment Program • WIA Adult Program • WIA Youth Activities • WIA Dislocated Workers • WIA National Emergency Grants • WANTO • YouthBuild 	<p>Department of Health and Human Services</p> <ul style="list-style-type: none"> • Community Services Block Grant • Refugee and Entrant Assistance – Voluntary Agency Matching Grant Program • Refugee and Entrant Assistance – Targeted Assistance Grants • Refugee and Entrant Assistance – Social Services Program • Refugee and Entrant Assistance – Targeted Assistance Discretionary Program • Temporary Assistance for Needy Families • Tribal Work Grants^a
<p>Department of Education</p> <ul style="list-style-type: none"> • American Indian Vocational Rehabilitation Services • Career and Technical Education – Basic Grants to States • Career and Technical Education – Indian Set-aside • Grants to States for Workplace and Community Transition Training for Incarcerated Individuals • Migrant and Seasonal Farmworkers Program • Native Hawaiian Career and Technical Education • Projects with Industry • Rehabilitation Services – Vocational Rehabilitation Grants to States • State-Supported Employment Services Program • Tech-Prep Education • Tribally Controlled Postsecondary Career and Technical Institutions 	<p>Department of the Interior</p> <ul style="list-style-type: none"> • Conservation Activities by Youth Service Organizations^b • Indian Employment Assistance • Indian Vocational Training – United Tribes Technical College <p>Department of Agriculture</p> <ul style="list-style-type: none"> • SNAP Employment and Training Program <p>Department of Defense</p> <ul style="list-style-type: none"> • National Guard Youth Challenge Program <p>Environmental Protection Agency</p> <ul style="list-style-type: none"> • Brownfield Job Training Cooperative Agreements <p>Department of Justice</p> <ul style="list-style-type: none"> • Second Chance Act Prisoner Reentry Initiative <p>Department of Veterans Affairs</p> <ul style="list-style-type: none"> • Vocational Rehabilitation for Disabled Veterans^c

Source: GAO analysis.

^aAlso known as the Native Employment Works program.

^bFor the purposes of our study, this program includes several programs administered by Interior's National Park Service: Public Lands Corps, Youth Conservation Corps, Youth Intern Program, and Youth Partnership Program.

^cAlso known as the VetSuccess program.

Related GAO Products

Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue. GAO-11-441T. Washington, D.C.: March 3, 2011.

Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue. GAO-11-318SP. Washington, D.C.: March 1, 2011.

Multiple Employment and Training Programs: Providing Information on Colocating Services and Consolidating Administrative Structures Could Promote Efficiencies. GAO-11-92. Washington, D.C.: January 13, 2011.

Workforce Investment Act: Labor Has Made Progress in Addressing Areas of Concern, but More Focus Needed on Understanding What Works and What Doesn't. GAO-09-396T. Washington, D.C.: February 26, 2009.

Workforce Development: Community Colleges and One-Stop Centers Collaborate to Meet 21st Century Workforce Needs. GAO-08-547. Washington, D.C.: May 15, 2008.

Workforce Investment Act: One-Stop System Infrastructure Continues to Evolve, but Labor Should Take Action to Require That All Employment Service Offices Are Part of the System. GAO-07-1096. Washington, D.C.: September 4, 2007.

Workforce Investment Act: Additional Actions Would Further Improve the Workforce System. GAO-07-1051T. Washington, D.C.: June 28, 2007.

Workforce Investment Act: Substantial Funds Are Used for Training, but Little is Known Nationally about Training Outcomes. GAO-05-650. Washington, D.C.: June 29, 2005.

Workforce Investment Act: States and Local Areas Have Developed Strategies to Assess Performance, but Labor Could Do More to Help. GAO-04-657. Washington, D.C.: June 1, 2004.

Workforce Investment Act: Labor Actions Can Help States Improve Quality of Performance Outcome Data and Delivery of Youth Services. GAO-04-308. Washington, D.C.: February 23, 2004.

Workforce Investment Act: One-Stop Centers Implemented Strategies to Strengthen Services and Partnerships, but More Research and Information Sharing is Needed. GAO-03-725. Washington, D.C.: June 18, 2003.

Multiple Employment and Training Programs: Funding and Performance Measures for Major Programs. GAO-03-589. Washington, D.C.: April 18, 2003.

Workforce Investment Act: States' Spending Is on Track, but Better Guidance Would Improve Financial Reporting. GAO-03-239. Washington, D.C.: November 22, 2002.

Workforce Investment Act: Better Guidance and Revised Funding Formula Would Enhance Dislocated Worker Program. GAO-02-274. Washington, D.C.: February 11, 2002.

Multiple Employment and Training Programs: Overlapping Programs Indicate Need for Closer Examination of Structure. GAO-01-71. Washington, D.C.: October 13, 2000.

Workforce Investment Act: Implementation Status and the Integration of TANF Services. GAO/T-HEHS-00-145. Washington, D.C.: June 29, 2000.

Multiple Employment Training Programs: Information Crosswalk on 163 Employment Training Programs. GAO/HEHS-95-85FS. Washington, D.C.: February 14, 1995.

Multiple Employment Training Programs: Major Overhaul Needed to Reduce Costs, Streamline the Bureaucracy, and Improve Results. GAO/T-HEHS-95-53. Washington, D.C.: January 10, 1995.

Multiple Employment Training Programs: Overlap Among Programs Raises Questions About Efficiency. GAO/HEHS-94-193. Washington, D.C.: July 11, 1994.

Multiple Employment Training Programs: Conflicting Requirements Underscore Need for Change. GAO/T-HEHS-94-120. Washington, D.C.: March 10, 1994.

Multiple Employment and Training Programs: Major Overhaul is Needed. GAO/T-HEHS-94-109. Washington, D.C.: March 3, 1994.

Multiple Employment Training Programs: Overlapping Programs Can Add Unnecessary Administrative Costs. GAO/HEHS-94-80. Washington, D.C.: January 28, 1994.

Multiple Employment Training Programs: Conflicting Requirements Hamper Delivery of Services. GAO/HEHS-94-78. Washington, D.C.: January 28, 1994.

Mr. REHBERG. Great. Thank you.

Mr. Besharov.

Mr. BESHAROV. Mr. Chairman, Members of the committee, thank you very much for having me here.

I am a professor at the University of Maryland. And so, my claim to expertise in this regard is that we held a conference on WIA about 2 years ago and published many of the papers being discussed now. I have published the papers by Carolyn Heinrich and Kevin Hollenbeck that are being studied by the committee, but also papers on the other side that have said we need to do a better job on the research. So that is true as well.

In any event, I would like to shift this discussion just a little bit. Too often, the question asked is do we need WIA? Do we defund it? Do we reduce the funding?

We are in the middle of the deepest downturn for employment that we have had since we began keeping records. More than 10 percent of the American workforce is either unemployed, has given up looking, or is working part-time when they want to work full-time.

And yet, there are 2.8 million jobs available today. Business is saying that the unemployed aren't qualified for those jobs. It is looking for skills other than the skills of the unemployed workers today to fill those jobs, or they are going abroad with those jobs.

So I come to this problem by asking how do we fix our Nation's job training system, given this deep need? Spells of unemployment are now longer than they have been since we have been keeping records, since 1948, almost twice as long.

We have millions of people who don't have the skills for the future. We are going to talk a little bit about whether WIA's results are sufficient or not, and we may get into that in detail with some of the questions. For now, I am just going to say that my reading of the research, including the papers that I have published, tells me that WIA doesn't do nearly enough.

I am just going to read—because there is going to be, I think, a little bit of discussion about this—Carolyn Heinrich's actual assessment of her work and others. She says, "The Adult Program clearly satisfies the benefit-cost standard if the earnings impacts continue for 2 or 3 years." And this is what she said, "Which seems plausible." Not for sure. Plausible.

But she, like almost every researcher who has looked at this issue, thinks that the Dislocated Worker Program is not cost effective either for the Government or the trainees. In fact, Kevin Hollenbeck from the Upjohn Institute on Workforce Policy concludes that the average displaced worker who goes through the program loses 10 to 17 percent of his earnings over a period of time.

So this doesn't mean defund the entire program. What this means is we have a giant problem ahead of us. Let me take this opportunity to review what I think are the important things for this committee to consider. Many of them are parallel to what Mr. Sherrill said. I know Ray Uhalde's work. I think it is parallel to some of the things he stands for as well.

First of all, we really do have too many job training programs. This is the time to cut back the number, combine them. In the next years, we will add some back. And 10 years from now, we will come

back and we will cut them back again. But there has to be a little bit of haircutting going on, some combining of these 47 programs.

More importantly, I would say, as in Germany, as in the UK, we have to better connect our unemployment system with our job training program, something the Obama administration started to do and then didn't take it rest of the way. We have to realize that Pell grants and student loans are part of our national job training program, clarify what they do and how they work with WIA agencies.

These are big issues, and they involve many more billions of dollars than WIA itself.

We should require cost sharing from trainees to make the systems more accountable. I would also say that it is time to make the States help pay for this program. They should have some skin in this game. My experience is when someone helps pay for a program, it gets a little better.

And finally, I want to say, as someone who tries to use the data that comes from the Department of Labor—Andy said it the fancy way—no one believes the data that comes from the Department of Labor. How else can I put it?

There has been a decade and a half of reports from GAO that say please improve the data. And this has gone through a Republican administration, and a Democratic administration. If this committee does nothing but give added impetus to an improvement of the Department of Labor's recordkeeping and data collection, it would be making a major reform.

Thank you very much.

[The information follows:]



SCHOOL of
PUBLIC POLICY

Douglas J. Besharov
School of Public Policy
University of Maryland

Testimony
before the
House Appropriations Committee
U.S. Congress

April 7, 2011

Mr. Chairman and members of the committee, thanks you for inviting me to testify on this important topic.

My name is Douglas Besharov, and I am a professor at the University of Maryland School of Public Policy, where I teach courses on poverty alleviation and program evaluation and also direct our Welfare Reform Academy. Of particular relevance to this hearing, I am the coeditor of a forthcoming volume from the W. E. Upjohn Institute for Employment Research, *The Workforce Investment Act: Implementation Experiences and Evaluation Findings*.

This volume stems from a full-day conference that the University of Maryland Center for International Policy Exchanges, which I also direct, held in 2009. Contributors are a Who's Who in WIA research and evaluations, and include two fine researchers whose work the committee has reviewed: Kevin Hollenbeck and Carolyn Heinrich (as well as their associates).

To begin, I want to emphasize the importance of job training and education in these difficult economic times, but, as I will argue in a moment, it must be *job training and education that works*.

Unemployment and the skills mismatch

This hearing is being held at a time when the U.S. is in the midst of historically high unemployment. From a low of about 4 percent in 2000, unemployment rose during the 2001–2003 downturn to about 6 percent, after which it fell to a disappointingly high 4.5 to 5.0

percent. With the coming of the latest recession, unemployment rose from 4.9 percent in April 2008 to a high of 10.1 percent in October 2009. It remained between 9.5 and 9.9 percent through 2010, and has only recently declined to below 9 percent.¹

To put these figures in a more human perspective: In January 2011, five people were unemployed for every available job.

No wonder another million or so Americans are discouraged and are no longer looking for work. Add them with to the unemployed and the over eight million underemployed (those involuntarily working part-time), and about 10 percent of Americans sixteen and older are suffering in this economy.

Moreover, unemployment spells are longer than at any time since we started measuring them in 1948. The median number of weeks unemployed has ranged between twenty and twenty-one since November 2009, almost twice the previous highs in 1983 and 2003. The same is true for the average number of weeks unemployed which climbed as high as thirty-nine in March 2011, about twice the previous high of twenty-one weeks in July 1983.

And yet, there are many jobs available that are not being filled. According to the Bureau of Labor Statistics, there were 2.8 million jobs available in 2011. Of those available jobs, only about 9 percent were in the hardest hit industries of construction (2 percent) and manufacturing (7 percent). In contrast, the majority of available jobs were in the service industry, whether health or education (18 percent); business or professional services (18 percent); trade, transportation, and utilities (17.7 percent); and government (11 percent).

The job sectors that are experiencing growth demand different skills than the sectors that have been shedding jobs, creating a skills mismatch between the unemployed and the available jobs. In *Where are All the Good Jobs Going?: What National and Local Job Quality and Dynamics Mean for U.S. Workers*, Harry Holzer, a professor of public policy at Georgetown University, and his coauthors write:

Relatively high-quality jobs continue to be generated in the U.S., but not in the same sectors as before, and they require higher levels of education and skill than those of more traditional industries in the past Since good jobs increasingly require good skills, and since good jobs are important for the prospects of displaced workers as well as others, improving the skills of the disadvantaged and the displaced should be done with an eye towards improving their access to good jobs.²

¹European unemployment has also increased. According to the OECD, from 2008 to 2010, the unemployment rate for the twenty-seven countries in the EU increased from 7.0 to 9.6. Germany is the lone exception, having seen a decline in their unemployment rate, from 7.3 percent in 2008 to 6.9 percent in 2010, partly because as it has been able to maintain its exports.

²Harry P. Holzer, Julia I. Lane, David B. Rosenblum, and Frederik Andersson, *Where are All the Good Jobs Going?: What National and Local Job Quality and Dynamics Mean for U.S. Workers* (New York: Russell Sage Foundation, 2011), 207.

Many economists believe that this skills mismatch reflects permanent changes in the U.S. economy and that, if we are to return to the low unemployment rates of the 1990s, we will have to retool major segments of our labor force—through job training and education.

Done right, I have seen job training programs make a real difference in the lives of the unemployed or dislocated. But done wrong, they can actually harm participants.

That makes today's hearing and the future of WIA even more important.

WIA impact studies

WIA provides three levels of services: core, intensive, and training. All WIA recipients initially receive core services. If they are not able to find employment, they then receive intensive services, and, if necessary, training. Core services consist of assistance that can be provided with only limited staff involvement such as job listings, computer access, and workshops on resume writing. Intensive services consist of skill assessments, individual employment plans, counseling, and, in some instances, work experience placements. Training is the most intensive level of services. Recipients may be provided either with vouchers that can be used to choose their own training or with direct placement into a training program.

As requested, in my testimony, I am addressing the job training and educational aspects of WIA, and especially two studies of them by Kevin Hollenbeck of W.E. Upjohn Institute for Employment Research³ and Carolyn Heinrich of University of Wisconsin-Madison.⁴ I am not addressing not the approximately 57 percent of the program devoted to job search and job readiness services.

Although both the Hollenbeck and Heinrich studies are widely respected as first-rate work, neither are randomized experiments, considered the gold standard in program evaluation. Instead, both are based on statistical analysis of often incomplete and inaccurate administrative data, and their results should be taken as suggestive, at best. In general, when compared to the more causally valid randomized experiments, statistical matching procedures in job training programs often overstate impacts as they often cannot control for unobserved variables that might also have an effect on the findings. For example, in creating comparison groups, Heinrich

³Kevin Hollenbeck, Daniel Schroeder, Christopher T. King, and Weo-Jan Huang, *Net Impact Estimates for Services Provided Through the Workforce Investment Act* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, October 2005); and Kevin Hollenbeck, "Workforce Investment Act (WIA) Net Impact Estimates and Rates of Return" in *The Workforce Investment Act: Implementation Experiences and Evaluation Findings* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, forthcoming).

⁴Carolyn Heinrich, Peter R. Mueser, Kenneth R. Troske, Kyung-Seong Jeon, and Daver C. Kahvecioglu, "Net Impact Estimates for the Workforce Investment Act Program" in *The Workforce Investment Act: Implementation Experiences and Evaluation Findings* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, forthcoming).

did not have information about the educational status of participants and nonparticipants, raising additional questions about the comparability of the groups.

Moreover, Hollenbeck's 2005 study is based on only seven states, and Heinrich's on only twelve states—raising substantial questions about their applicability to the program as a whole.

Dislocated workers: For dislocated workers, Heinrich finds that when compared to a comparison group consisting of unemployment insurance recipients or other employment service recipients, recipients of any WIA services have slightly higher employment rates (between about 5 and 7 percentage points) and slightly higher average quarterly earnings (between about \$200 to \$400 higher). Hollenbeck, in contrast, finds much higher employment rates (13.5 percent) and higher average quarterly earnings (about \$930 higher).

Heinrich and Hollenbeck's findings also differ for WIA training recipients compared to other WIA service recipients who are dislocated workers. Heinrich finds no difference in employment rates or average quarterly earnings for WIA training recipients. Hollenbeck, on the other hand, finds a slightly higher employment rate (about 5.9 percentage points) and slightly higher average quarterly earnings (about \$390 higher).

Hollenbeck did not include the opportunity cost of forgone earnings for dislocated workers, which has the effect of inflating the average findings for earnings. In additional WIA studies for individual states, Hollenbeck calculated the return on investment for dislocated workers of the first ten quarters after exit from the program and found that the return to investment *turned negative*, ranging between -10 and -17 percent.

Adults: Both Hollenbeck and Heinrich find that, when compared to a comparison group consisting of unemployment insurance recipients or other employment service recipients, recipients of any WIA service had higher employment rates (between about 6 and 13 percentage points, depending on the state) and higher average quarterly earnings (between about \$400 to \$800 higher) in the four years after leaving WIA.

For WIA recipients who received training services from WIA, both Hollenbeck and Heinrich find that, compared to WIA recipients of only core or intensive services, WIA training recipients had slightly higher employment rates (between about 4 and 5 percentage points) and higher average quarterly earnings (between about \$400 to \$800 higher).

Youth: Neither Hollenbeck or Heinrich report on youth findings, but few analysts seem to think the results are very good for this difficult to serve group. Most analysts cite the findings of a 2002 Mathematica Policy Research study of the Job Corps, which found that, although the program increased earnings and reduced criminal behavior after leaving the program, the benefits of the program were less than \$4,000 per participant compared to a cost of about \$16,000.

Cost-benefit analysis

As mentioned, in his 2005 study, Hollenbeck did not include the opportunity cost of participating in training. When he did so in subsequent studies in 2006 and 2009, he found that ten quarters after exit, WIA participants in the Adult Program had a positive benefit-cost ratio if measured from the individual or society's perspective, and a negative cost-benefit ratio from the taxpayer perspective. WIA participants in the Dislocated Workers Program had a negative cost-benefit ratio from all three perspectives.

When Hollenbeck estimated benefits and costs over workers' lifetime earnings, he found positive cost-benefit ratios for both the Adult Program and the Dislocated Worker Program from the three perspectives, with consistently higher cost-benefit ratios for the Adult Program. However, these estimates are based on the rather heroic assumption that the differences in earnings between WIA recipients and the comparison group endure over the course of a lifetime.

Hence, Heinrich's conclusions about WIA's cost-benefit ratio seem applicable to both studies:

the Adult program clearly satisfies a benefit-cost standard for both men and women if the earnings impacts continue for a period of just two or three years, which *seems plausible* (emphasis added). In contrast, using our best estimate of the impact on earnings for the Dislocated Worker program, in order for benefits for women to exceed costs, the improvement would need to be long lived, and estimated benefits for men could never cumulate to exceed costs at any reasonable interest rate.”⁵

* * *

In my opinion, Hollenbeck and Heinrich find that WIA has severely limited success, at best. Even if one accepts the findings of their nonexperimental studies, *average earnings after participating in the program are only about \$16,000 per year, not nearly enough to be self-sufficient.*

Barnow and Smith (2008) provide what I think is a reasonable summary of job training programs in general:

. . . most employment and training programs have either no impact or modest positive impacts. Many do not pass careful social cost-benefit tests, though some that fail may be worth doing on equity grounds. Existing evaluations have important analytic

⁵Carolyn Heinrich, Peter R. Mueser, Kenneth R. Troske, Kyung-Seong Jeon, and Daver C. Kahvecioglu, "Net Impact Estimates for the Workforce Investment Act Program" in *The Workforce Investment Act: Implementation Experiences and Evaluation Findings* (Kalmazoo, MI: W.E. Upjohn Institute for Employment Research, forthcoming).

limitations that bias them in favor of programs with short-term impacts and large spillover effects on non-participants via displacement or price changes.⁶

We need to be able to do better—and should be able to do so

Conclusions and recommendations

So, what does it all mean?

1. Based on the full job training literature, as well as the Heinrich and Hollenbeck studies, I conclude that it is unlikely that either WIA's Displaced Worker or its Youth Programs now pass a cost-benefit test *for taxpayers*. Worse, they seem to do little for participants, and may even lower their earnings.

2. On the same basis, I also conclude that, if WIA's Adult Program does actually pass a cost-benefit test for taxpayers, it barely does so—although many other analysts might disagree. While the Adult Program may improve earnings, it does not have sufficient impact to meet the needs of today's unemployed.

3. Why are WIA's impacts so disappointing? Some will blame the trainees, saying that WIA and other federal job training programs do not work because the trainees have such deep-seated problems that they are difficult to help. Especially for the youth in the program, that is surely part of the problem.

5. But after reviewing almost two decades' worth of GAO reports, one comes away with the inescapable conclusion that we have not created and monitored the kind of job training program that the unemployed and disadvantaged so severely need. The fact that so little effort has been made to understand WIA's operations, let alone its impact, speaks volumes about our lack of national commitment to provide quality job training.

I believe that this justifies major rethinking of the program, and would recommend the following:

1. Combine at least some of the forty-seven or so federal job training programs. (Also re-think the relationship with Pell Grants, student loans, etc., as well as to Unemployment Insurance and Temporary Assistance for Needy Families.)

2. Give states greater flexibility in the WIA services that they provide, and how they do so.

⁶Burt S. Barnow and Jeffrey A. Smith, "What We Know About the Impacts of Workforce Investment Programs," (paper prepared for Strategies for Improving Economic Mobility of Workers, Chicago, November 15–16, 2008), 13.

3. Require cost-sharing on the part of states and communities to encourage responsible planning of services. (Given the financial situation of the states, this might have to be phased in in some way.)
4. Allow trainees more say in how they are trained (through greater use of ITAs) and means-test the benefit (on a sliding scale) so that trainees become more responsible consumers.
5. Most important, initiate a true search for approaches to training and training management that work: Impose true performance measures and use the results, not to penalize states, but as a means of discovering approaches that seem to work better than others. Then, encourage other states (or local programs) to try them under conditions where they can be rigorously evaluated.

WIA's performance measures, and those of JTPA before it, have been widely criticized, and I recognize how difficult it will be to develop a system that accurately monitors program activities. But that does not make them any less indispensable to a building a better program.

Thank you.

Mr. REHBERG. Thank you.

Mr. Uhalde.

Mr. UHALDE. Good morning, Chairman Rehberg, Ranking Member DeLauro, and Members of the subcommittee. Thank you for inviting me to testify.

The Nation is at a crossroads, facing two urgent priorities. We have to restore fiscal discipline, reducing the Federal deficit and shrinking our long-term debt. But at the same time, we also must grow the economy in the face of intense international competition, creating jobs and expanding employment and economic opportunities for all Americans.

Most people agree economic growth and broadly shared prosperity depend importantly on the education and skills of America's workforce. As Congress and the administration negotiate the full 2011 continuing resolution and then go on to fiscal year 2012, it is essential that the urgency of deficit reduction not override the critical investments in the education and skills of the U.S. workforce, especially at this fragile point in our recovery with 13.5 million people still unemployed.

So we have to move forward on both fronts. H.R. 1 or similar cuts would eliminate all funding for the WIA Adult, Dislocated Worker, and Youth Programs for states and local communities, and several vital national programs in program year 2011, starting this July 1st, leaving about 8 million people who used WIA last year without services or a place to turn for help finding work.

And those who think that the unexpended carryover funds would see the system through to next year are just misinformed. I urge the Members of the committee to avoid the cuts to programs such as WIA that contribute to our economic growth and job opportunities.

And it is no secret that WIA is in need of reauthorization. It was originally authorized in 1998, signed in August when the unemployment rate stood at 4.5 percent. Not only do we face a much different economy, but practice in the field has also progressed significantly.

Both the House and Senate authorizing committees, we hope, will emphasize proven practices and system innovations in proposals for reauthorization that are currently under development. To say that WIA should be reauthorized, though, is not the same as saying that WIA programs are not effective. On the contrary.

My reading of the evidence is pretty clear that WIA's core and intensive services and the training for disadvantaged adults have been shown time and again to pay off in terms of higher employment rates and earnings. The evidence on training effectiveness for dislocated workers is mixed, but strong results have been shown in studies examining community college training for dislocated workers, particularly if training is provided for 1 year or more for technical occupations including healthcare.

This focus on long-term, high-demand training is precisely what the workforce system used with the Recovery Act funds that were received and which we expect WIA reauthorization to push forward on.

When WIA was enacted in 1998, Congress was responding to an earlier GAO report identifying 163 Federal programs. WIA consoli-

dated 50 of them into what is now the Nation's primary workforce delivery system. WIA further streamlined service delivery by integrating access to at least 13 of these federally funded programs at the street level in the One-Stop career centers.

Today, GAO has identified 47 different programs. In reality, 76 percent of all funding and 91 percent of all participants identified by the GAO are served through the programs under the Workforce Investment Act.

While improved system alignment, more co-location at One-Stops, and some consolidation where appropriate would likely improve quality and efficiency, significant savings shouldn't be expected. Most of these programs, including those under WIA, have received funding reductions in real dollar terms over many years and are significantly underfunded relative to their mission and need, especially given the 234 percent increase in demand for services the last 2 years. Congress should use the GAO findings as a guide to obtain increased system alignment and administrative savings, but not as a rationale for significant cuts in program services.

To enhance the effectiveness of training, especially for dislocated workers, and address many of the concerns raised by the evaluations, at least three strategies should be adopted.

First, sector-based and on-the-job training should become common practice nationwide to boost earnings, as in the Jacobson and P/PV-Aspen studies. Second, reduce the substantial foregone earnings dislocated workers experience while they are in training by accelerating their completion time to credential attainment and reemployment. This can be done. And third, expand the use of technologies and career navigation strategies to better match workers with either jobs or training.

Finally, the Congress has to reauthorize the Workforce Investment Act.

Thank you very much.

[The information follows:]

Statement of Raymond J. Uhalde
Vice President, Jobs For The Future
Before the Subcommittee on Labor, Health and Human Services, Education
and Related Agencies, Committee on Appropriations
United States House of Representatives
(202) 540-5300 x404, ruhalde@jff.org
April 7, 2011

Good morning Chairman Rehberg, Ranking Member DeLauro and Members of the Subcommittee. Thank you for inviting me to testify about employment and training programs authorized under the Workforce Investment Act (WIA) – their goals, services, effectiveness, and recommendations to better ensure positive results for job seekers and businesses.

The nation is at a crossroads, facing two urgent priorities. We must restore fiscal discipline by reducing the Federal deficit and shrinking our long-term debt. At the same time, we also must grow the U.S. economy in the face of intense global competition – increasing employer productivity, expanding markets, creating jobs, and expanding employment and economic opportunities for all Americans. Most experts agree economic growth and broadly shared prosperity depend in large part upon the education and skills of America’s workforce.

As Congress and the Administration engage in negotiations on the full FY2011 Continuing Resolution and then on to FY2012, it is absolutely essential that the urgency of deficit reduction not override critical investments in the education and skills development of U.S. workers, especially at this fragile point in our economic recovery with 13.5 million Americans still unemployed. We must make smart decisions as we move forward on both fronts.

While my testimony will focus on the goals, results and effectiveness of the nation’s workforce system, I am compelled to first explain in very direct terms for Members of the Subcommittee the devastating effects that the funding reductions in H.R. 1 (or similar cuts) would have on the U.S. workforce investment system. H.R. 1 would have eliminated all funding for the WIA Adult, Dislocated Worker, and Youth programs for states and local communities in Program Year (PY) 2011, beginning July 1 of this year. And those who think that unexpended carryover funds would see the system through next year are misinformed, as well over half of these funds are already obligated or encumbered for training and other purposes. The bill would have zeroed out all funding for YouthBuild and ex-offenders, slashed support for the Job Corps and the Senior Community Service Employment Program, and crippled our federal capacity to respond to mass layoffs and the employment consequences of natural disasters. These programs help employers turn vacancies into jobs; prepare workers whose jobs have disappeared for new careers; and train America’s workforce for the demands of a 21st century global economy.

Imagine the landscape next year if workforce cuts of this magnitude were to be enacted. Who would provide employment assistance to the over 8 million jobseekers served by WIA last year; the over 4.3 million who secured jobs through the system in a severely depressed economy; or the hundreds of thousands of WIA participants who received training to prepare for new careers? We know that nearly 70 percent of adults who received training last year entered employment compared to 53 percent of those who did not; and 76 percent of dislocated workers who received

training entered employment compared to 47 percent who did not. If we see cuts of this magnitude, nearly 3000 One Stop Career Centers that provide access to a broad range of employment and training programs in local communities would be forced to dramatically curtail services and nearly all would close as the year progresses. States' ability to respond quickly to plant closings and mass layoffs would be sharply curtailed if not eliminated. The federal government would be unable to provide vital employment assistance to those impacted by catastrophic natural disasters like floods, hurricanes and oil spills without WIA's National Emergency Grants. Disadvantaged out-of-school youth in YouthBuild and Job Corps would have few places to turn to for help in acquiring the academic and vocational skills and credentials that employers demand. And thousands of low-income senior citizens who provide valuable community services, while earning a much-needed paycheck, would be without employment.

This is clearly not a prescription for shared economic growth and prosperity. Nor is it consistent with the admonition of our current Federal Reserve Chairman who said last month:

“No economy can succeed without a high-quality workforce, particularly in an age of globalization and technical change... In a dynamic economy in which job requirements are evolving more rapidly than ever, individuals already in the workforce need opportunities to improve their skills throughout their lives. ...Although helping workers acquire up-to-date skills is always important, it is especially critical now, when long spells of unemployment are threatening the longer-term employability and productivity of many.”

Numerous studies confirm that education and training enhance labor productivity and innovation by developing workers' analytical and job skills, and by advancing creativity.

So I urge Members of the Committee to pursue deficit reduction judiciously. We cannot simply cut our way to prosperity. Avoid cuts to programs that contribute to our economic growth and to meaningful job opportunities for our citizenry and future generations. The Department of Labor's (DOL) workforce development programs play a relatively small yet vital role in this mission by expanding postsecondary education and training opportunities for low-income adults, dislocated workers, and disadvantaged youth, and by helping businesses hire, prosper, and grow.

Of course it matters greatly that our federally funded workforce development programs are effective in boosting employment, earnings and credential attainment for those who are served. In the balance of my statement I will address: (1) evidence on the effectiveness of WIA's employment and training services; and (2) recommendations for system improvement. I respectfully request that the attached summary of study findings and discussion of carry over funds be submitted into the record along with my testimony, providing additional information for the Subcommittee on program effectiveness and the impact of funding reductions.

The Effectiveness of WIA's Employment and Training Services

It is no secret that WIA is in need of reauthorization to better align planning and service delivery, and strengthen the system's relevance for today's economy. It was, after all, originally authorized in August 1998 when unemployment stood at 4.5 percent. Not only do we face a much different economy now, but practice in the field also has progressed significantly, becoming much more sophisticated about employer engagement, community college partnerships, sector training strategies, career pathway initiatives, and regional cooperation in support of economic growth.

These and other proven practices and system innovations are expected to be emphasized in proposals for reauthorization under development by both the House and Senate authorizing Committees.

To say that WIA should be reauthorized is not the same as saying that WIA programs are not effective. On the contrary, the evidence is pretty clear that WIA's core and intensive services and training for disadvantaged adults have been shown time and again to pay off in terms of higher employment rates and improved earnings. The evaluation evidence on training's effectiveness for dislocated workers is mixed, but strong results have been shown in studies examining community college training for dislocated workers, particularly if training is provided for one year or more in technical occupations, including healthcare. This increased focus on longer-term, high demand training is precisely how the workforce system used the additional funding received under the Recovery Act. WIA reauthorization will push these reforms further as well.

Adults and Dislocated Workers. The Department of Labor has initiated a new evaluation of WIA with an experimental design, but results are years down the road. The evidence we have in hand from highly credible non-experimental econometric studies (e.g., IMPAQ, Hollenbeck), the Jacobson study on dislocated worker training, and the P/PV-Aspen Institute experimental study on sector-based training is useful in informing public policy decisions. The weight of the evidence is clear and convincing that employment and training services under the WIA Adult Program generate significantly higher earnings and employment rates, and the impacts persist for several years. These programs likely result in a minimum 10 to 15 percent boost in annual earnings for disadvantaged adults, and return \$1.50 for every dollar invested by society. Women's earnings are boosted by as much as 25 percent (\$2400 annually) and men's earnings by 10 to 15 percent (\$1700 annually) from the program's services. Core and intensive counseling and job placement services are cost effective, raising employment rates by 6 to 10 percent quarterly; and training increases earnings by at least 10 percent, with training most closely connected to employers (such as on-the-job and sector-based training) creating returns of 15 to over 20 percent.

While evaluation evidence on WIA's Dislocated Worker Program is more mixed, several studies by Hollenbeck have found strong positive and statistically significant employment and earnings effects from program participation for dislocated workers, ranging from \$310 per quarter increases in Indiana, \$598 to \$855 in Washington State, to \$1189 in a seven state study. Hollenbeck's returns to training averaged 4 to 7 percent of earnings. In an important study by Jacobson, solid evidence was found that one year of technical training at community college can yield handsome returns to participants, on the order of 15 to 20 percent or more. WIA's core and intensive counseling, job search and placement services for dislocated workers appear to be very cost effective, speeding reemployment, increasing earnings and reducing UI payments, based on two experiments evaluated in Texas and New Jersey by Mathematica. In contrast, the 2008 IMPAQ analysis suggests that dislocated workers achieved very modest though significant earnings gains of about \$350 per quarter for women and \$310 for men after three to four years, but that possible selection bias pulled these estimates down. Most of these studies, however, look only at employment and earnings as their measures of net impact. They do not consider benefits to employers such as increased productivity and profitability, nor benefits to workers such as

fringe benefits and improved mental health from peer support, personal and financial counseling, and the encouragement instilled by program participation.

Youth Programs - The most recent random assignment evaluation of WIA youth programs has been of Job Corps, the nation's premier residential training program for disadvantaged youth. The authors found the Job Corps program improves outcomes for participants, increasing educational and vocational credential attainment, reducing criminal activity (arrests, convictions and incarcerations), increasing earnings for several program years, and boosting the receipt of health benefits. But based on the most recent follow up analysis using tax data, the earnings increases for Corps members were only sustained beyond four years for participants 20-24 years of age. Nonetheless, the 12 percent statistically significant earnings gain experienced by participants four years after enrollment "makes Job Corps the only large-scale education and training program that has been shown to increase earnings of disadvantaged youth."

Numerous smaller youth programs have been studied with positive results. A 2009 MDRC random assignment evaluation of the National Guard Youth ChalleNGe residential program, operating in 27 states, offers considerable promise for high school dropouts ages 16-18 of any income level. Preliminary findings suggest increased rates of high school credential attainment, increased college enrollment and employment. A 2008 DOL-sponsored evaluation of WIA's Youth Opportunity Grant program found positive results, noting increased educational attainment, Pell Grant receipt, labor market participation, employment rates and earnings for more than 90,000 program participants in 36 high poverty neighborhoods. A non-experimental cost-benefit analysis of YouthBuild's program aimed at youthful offenders found that graduates of the Offender Project displayed significant positive outcomes in educational attainment and reduced recidivism compared to participants who do not complete the program. And Hollenbeck found statistically significant employment rate impacts in three states among WIA youth, and a statistically significant impact in earnings for WIA youth in Washington. Finally, I would note that the WIA system responded impressively to the rapid implementation of its Summer Youth Employment programs in 2009, starting virtually from scratch providing over 355,000 disadvantaged young people with valuable summer work experiences in public, nonprofit and private sector workplaces, and recruiting thousands of employers to participate in the program.

Are there negative findings in some of these and other studies on the effectiveness of certain youth programs? Yes, but it is important that we consider the cost of doing nothing. Over 1 million youngsters drop out of high school each year and the costs to society by some estimates exceed \$260 billion in lost wages, foregone taxes, and reduced productivity over their lifetime, not to mention the negative societal costs. Federally funded workforce and education programs are important in helping to provide disadvantaged and out-of-school youth with jobs, hands-on exposure to the workplace, and opportunities to get back on track and earn secondary and post-secondary credentials. We simply must do a far better job, on a much larger scale than we have in the past, especially for disadvantaged out-of-school youth -- for they should be the special focus of the Department of Labor.

After an extensive examination of the literature and their own research, King and Heinrich (authors of two contrasting studies previously referenced) jointly conclude that the weight of the evidence suggests, "Workforce development does work. Workforce investments produce

widespread benefits for employers and society as a whole.” They go on to state that the returns on investment are “particularly remarkable given [the] magnitude and intensity of workforce investments relative to size and complexity of barriers they address.” I agree completely with this summary of the evidence.

Recommendations and Conclusion

When the Workforce Investment Act (WIA) was enacted in 1998, Congress was responding in part to an earlier GAO report that identified 163 federal programs across 15 different agencies that provided employment and training services. WIA consolidated over 50 of these programs into what is now the nation’s primary workforce delivery system. WIA further streamlined service delivery by integrating access to a minimum of 13 federally funded employment and training programs at the “street level” through its One-Stop Career Centers. Further consolidation was considered at that time, but differing Committee jurisdictions thwarted those attempts. Today, the GAO has identified 47 different federal programs, totaling \$18 billion, that provide some form of employment and training services. In reality, 76 percent of all funding and 91 percent of all participants identified by the GAO are served through programs authorized under WIA. That there are multiple programs is not in dispute. It is not the case, however, that there is widespread duplication in the actual provision of services to individuals. Many of these programs were created to address the very special needs of targeted populations such as the disabled, Native Americans, migrant and seasonal farm workers and veterans. Others were established as components of larger block grants with broader purposes such as the employment and training services of TANF. While improved system alignment, more co-location at One Stop Centers, and some consolidation (where appropriate) would likely improve quality and efficiency, significant savings should not be expected. Most of these programs, including those under WIA, have received funding reductions in real dollar terms over many years and are significantly underfunded relative to mission and need. Congress should use the GAO findings as a guide to achieve system alignment and administrative savings, but not as a rationale for further cuts in program services.

In recent years, WIA has experienced a 234 percent increase in demand for services, and the system has risen to the challenge with the employment of millions of individuals annually. The system operates on the front lines as a key partner in the nation’s response to plant closings, mass layoffs, and business realignments; and in the skilling of America’s workers in support of job creation and economic recovery efforts. It provides vital labor market information, skills assessments, career guidance, counseling, employment assistance, support and training services to jobseekers and workers who need help in getting a good job. Programs established under WIA have been driven by very straightforward performance measures for nearly 30 years – measuring how many people get jobs, retain jobs, what they earn, and how many attain industry-recognized credentials. Importantly, DOL is improving WIA’s performance system by introducing regression adjustment of performance targets at the national, state and local levels. Performance management enables the system to continuously assess whether short-term outcomes are consistent with long-term employment and earnings impacts and goals.

The workforce system also provides vital services to employers, especially small and medium sized businesses, brokering training and helping employers find the skilled workers they need to be competitive. Local workforce boards perform the essential function of convening system

stakeholders and service providers – leveraging federal, state, local and private resources and partnering with businesses, labor, economic development, education, community-based and philanthropic organizations to identify and meet the employment and skill needs of their regions. Often overlooked, these partnerships and their resources that expand the reach of the public system, such as the regional funding partnerships spawned by the National Fund for Workforce Solutions which leverage millions in additional funding for workforce services, would be at great risk if budgets for WIA were eliminated or severely cut.

To further enhance the effectiveness of WIA services, especially for dislocated workers, the following strategies would improve participant outcomes and address many of the concerns raised by the evaluations discussed above. First, sector-based and on-the-job training should become common practice nationwide. As the Jacobson and P/PV-Aspen results show, the right training that is market-sensitive and dual customer oriented results in higher earnings and net benefits to workers and society. Second, reduce the substantial foregone earnings dislocated workers experience while in training by accelerating their time to credential attainment, program completion and reemployment through such approaches as: revised course sequencing; full day/full week course scheduling; contextualized and integrated instruction for basic and vocational skills; and credit for prior learning. In other words, restructure postsecondary training programs to better serve the time-sensitive needs of adults. Third, expand the use of effective technologies, tools and career navigation strategies that assess the skills of dislocated workers and match them with the skill sets needed for regional job openings or to determine training for those jobs, improving job placement efficiency and better informing who should receive training. With higher post-completion earnings, lower foregone earnings while in training, and better matches for training and employment, net benefits to workers and society would increase. These seem to be approaches that the House and Senate authorizing Committees are considering as they prepare to reauthorize WIA this Congress. It is also the approach that DOL is taking through guidance and in three new initiatives: (1) a recent award of \$75 million to 41 states for on-the-job training to help dislocated workers learn while they earn; (2) competitive grants under the Trade Adjustment Assistance Community College Career Training program to fund institutional innovations at community and career colleges; and (3) the Re-envisioning Reemployment Services for UI Claimants initiative.

U.S. competitiveness and shared prosperity is dependent on our ability to ensure that all Americans, including low wage and structurally unemployed workers, have genuine opportunities to gain new high-value skills and good jobs through sector strategies, career pathways and other innovations that support regional growth. Make no mistake, the best workforce systems in this country are already engaged in many of these approaches; and the best business-led workforce boards are leading or partnering in efforts to develop regional knowledge-based, innovation economies. The WIA system performed admirably in response to the nation's economic crisis. Is the system perfect? No, but we expect that House and Senate authorizers and the Administration are committed to enacting changes that will update WIA and make the improvements needed to further ensure success for the system's dual customers: America's workers and employers. I strongly urge that you consider this and the importance of the nation's employment and training programs to workers, employers and our economy when making further decisions on the U.S. budget and appropriations. Thank you for the opportunity to share my testimony with you.

Mr. REHBERG. Thank you.

Mr. Bishop, welcome.

Mr. BISHOP. Thank you.

Chairman Rehberg, Members of the committee, thank you very much. And I appreciate the opportunity of being able to come before you and talk about how we improve economic opportunities for families through appropriate job training.

I come to you today as somebody who has both been involved at a large community college at the local level in Utah; somebody who has been involved in workforce and welfare reform at the local level, as was cited in the GAO report, in Utah; and somebody who oversaw national public policy.

And it seems to me that the real question before you today is one, what is our national policy goal with regard to these programs? Secondly, is the current system as designed adequate to meet that national policy goal? And third, if not, what kind of reforms do we need to implement in order to make it so?

To me, the national policy goal is very clear. Both President Obama and Vice President Biden in the last few months have discussed this, as well as the Gates Foundation, other foundations, and many other individuals. And that is we need to be able to provide better opportunities for individuals to enter postsecondary education and training in this country.

The data is staggering when it comes to those who do not have this access. If you have a high school education or less, you face lower earnings, higher unemployment, and all of the BLS and other data show that the fastest-growing jobs and the jobs that are going to be in demand over the next 10 years are going to require postsecondary education and training.

Therefore, it seems to me that as we have this discussion, we need to take a real hard look when it comes to job training programs, are we actually training individuals?

The evidence to me is pretty overwhelming that the current system as designed is not meeting this national public policy goal. In fact, the workforce investment system, when it was created in 1998, really had two overarching objectives, and we have heard some of this today already.

One was to consolidate funding streams. There were many more than there are today. And secondly, the idea was to create One-Stop career centers where, at the local level, a variety of programs would come together to fund that local One-Stop career center and fund programs and services to individuals who enter the doors of that One-Stop and access the myriad of these programs.

The problem is we didn't go far enough. And let me just explain what is really going on out there. We essentially, in my opinion, have two parallel job training systems in this country just within the Department of Labor.

The first is a State-based system called the Wagner-Peyser Act. You hear Employment Services discussed quite a bit. Wagner-Peyser funds the employment services. Employment services are essentially helping somebody find a job. It is light-touch, low-cost services.

Under a department regulation that was promulgated in the late 1990s, these services can only be provided by State employees, with

the exception of three States where they created a pilot program. And Colorado, Massachusetts, and Michigan have flexibility, but nobody else does. So employment services must be provided by State merit staff employees.

The second system we have is funded under the Workforce Investment Act, where the monies flow to the States and then continue and flow down to the local workforce investment boards, the bulk of the funding streams of these three funding streams. So, essentially, you have a locally based, locally administered WIA system and a State-based employment service system.

Now, the WIA system, as we have heard, authorizes three levels of services—core, intensive, and training. The irony is, especially with the fact that Wagner-Peyser is mandated to be provided by State employees, is that the core services provided by WIA by local employees are exactly the same as the State-based employment services.

So all of the core, in particular, that you hear about are the same as the employment services provided by the State employees, and this has major ramifications. And I discuss this in my testimony. I don't have a lot of time to do so today. Under current TAA grants that are out for competition that community colleges are applying for, it has created all kinds of confusion because TAA, under department regulation recently promulgated in the last year, must also be provided by only State employees.

So what are we going to do about it? I suggest in my written statement three overarching reform efforts. The first is we need to radically revamp programs in order to make funds more available for participants to enter into postsecondary education and job training.

We did an individual training account experiment a few years ago, and it showed that when given maximum choice, individuals will take the training funds and will enter appropriate training. It doesn't drive up costs, and the employment outcomes were exactly the same as those who are getting training through the current system.

Secondly, I do believe we need to consolidate major funding streams. The reality is we call them—WIA a job training program. It should not be called a job training program.

If we are lucky, right now, we are training maybe 250,000 people per year exiting out of those programs, if we are lucky. It is training very few individuals. These millions of people you hear getting services are primarily getting very light-touch core services coming into the One-Stops.

Finally, I think that—well, let me also mention that we also have a proliferation of job training programs throughout the Federal Government right now. Department of Energy, National Science Foundation, HHS, DOL, Department of Education, they are all putting out postsecondary education training grants, all over the country.

We have probably paid for things like energy efficiency training and curriculum about 10 times over.

Mr. REHBERG. Mr. Bishop, I am going to go ahead.

Mr. BISHOP. Yes, sorry. Yes, thank you.

[The information follows:]

Statement of:
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Before the:
SUBCOMMITTEE ON LABOR, HEALTH & HUMAN SERVICES, EDUCATION,
AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

April 7, 2011

Chairman Rehberg, Ranking Member DeLauro, and members of the Subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to discuss the U.S. Department of Labor's job training programs and reforms that can be implemented to improve economic opportunities for our country's workers and families. My testimony is not intended to be an indictment in any way on the many hard-working individuals who are providing services through the state and local workforce investment system; rather, my goal in providing this testimony is to provide a forthright assessment of our success in delivering job training services and to offer ideas for comprehensive reforms that can be implemented to improve U.S. economic competitiveness and employment opportunities.

My testimony is based on a 15-year career in workforce development and higher education at both the national and local levels. During the 1990s, I helped author Utah's approach at workforce services and welfare reform and recently finished a three-year stint as a Vice President at Salt Lake Community College. From 2001-2007, I was the principal Deputy Assistant Secretary at the Employment and Training Administration, U.S. Department of Labor, and provided management oversight for the portfolio of workforce investment programs and unemployment insurance. I have experienced how national policy is implemented "on the ground" and have seen how services are delivered from both the workforce system perspective and the higher education perspective. As a result, I am convinced that we have a national imperative to examine: (1) what the national policy goal is regarding employment and training programs; (2) whether the workforce investment system is adequately designed to meet that national policy goal; and (3) if the system is not designed adequately, what are the reform principles and infrastructure changes that must occur in order to best serve workforce investment customers.

NATIONAL POLICY GOAL

Ample evidence exists that our economy has changed dramatically over the two decades as a result of new technologies, up-to-the-minute global communications and the expansion and growth of international markets. This change has manifested itself in numerous forms, and has significantly altered the types of jobs and the skills needed by workers to successfully enter and retain employment in many labor market sectors and industries. As a

result, one truth has become abundantly clear and has universal agreement: workers in the United States need to continually gain new skills and competencies in order to compete and thrive in the labor market. Those skills and competencies are gained, in large part, through access to post-secondary education and requisite credentials, namely industry-recognized certificates and licenses, associate's degrees and bachelor's degrees.

This past October, President Obama called on businesses, community colleges and other job training providers to increase the number of individuals receiving post-secondary credentials by 5 million by 2020. Just two weeks ago, Vice President Biden issued a "call to action" to boost dramatically college completion rates and credentials attainment. Businesses, industry associations, foundations and other community-based organizations are all supporting initiatives and focusing resources on the reskilling and retooling of the American workforce.

The evidence supporting the importance of this issue is staggering. First, occupational projections data show that by the year 2018, two-thirds of all jobs in the United States will require post-secondary education and training beyond high school, and a majority of the fastest growing jobs require such education and training. In addition, Bureau of Labor Statistics data show that occupational and lifetime earnings increase with additional post-secondary education and training and credentials attainment, and those most impacted by unemployment typically have a high school education or less. Communities and regional economies that face the greatest prospect of economic growth are those that make post-secondary education and skills attainment a core goal and feature of their economic development strategic planning.

In light of the overwhelming evidence that access to, and completion of, post-secondary education and training is vital to our economic competitiveness, *it is incumbent that the public policy objective for federally-funded post-secondary education and job training programs should be to assist individuals with entering and completing a course of study that leads to a post-secondary credential, i.e., an industry-recognized certificate or license, an associate's degree, or a bachelor's degree.* In order to meet this public policy objective, it is important to note the convergence of what used to be seen as separate activities—post-secondary education is no longer about spending years getting a bachelor's degree, and job training is no longer about short-term "hands on" manual skills acquisition. The key notion is that people need a post-secondary credential that aligns with skills and competencies needed for particular occupations and careers.

WORKFORCE INVESTMENT SYSTEM DESIGN

When the current workforce investment system was designed in 1998, two overarching objectives were at the core of the reform effort: (1) consolidate numerous funding streams in order to more effectively target job training efforts and outcomes while creating efficiencies; and (2) create a One-Stop system infrastructure whereby a whole host of federally-funded employment, education and job training services could be accessed by participants. Unfortunately, when looking at these objectives against the public policy goal of significantly increasing access to post-secondary education and training, the current structure of delivery is woefully inadequate.

Workforce Investment System Delivery Efficiency and Effectiveness

The important feature to remember when discussing workforce system design and delivery is within the U.S. Department of Labor's portfolio, there are actually two separate and distinct delivery systems. The first is a state-based delivery system funded by the Wagner-Peyser Act—a legacy of the New Deal era. Under current employment and training regulations at the U.S. Department of Labor, there is a mandate that all Wagner-Peyser funded services must be delivered by state-merit staff employees. Three states are allowed an exception to this mandate, Massachusetts, Michigan and Colorado, under a “pilot” program that has been over a decade in the running. Wagner-Peyser services are **Employment Services**—help with searching for a job, writing a resume or employment referrals. Education and job training services are not authorized under this law.

The second and parallel delivery system is a locally-based system funded primarily under the Workforce Investment Act (WIA). Under WIA, local Workforce Investment Boards (WIB) provide management oversight, the One-Stop infrastructure is authorized and three programs are delivered: WIA Adult, WIA Dislocated Worker and WIA Youth. WIA authorizes three levels of services: **Core, Intensive and Training**. Core services are exactly the same as Employment Services under Wagner-Peyser—low-cost, “light touch” assistance with finding a job. Intensive services are more involved whereby a participant may receive career counseling or other staff-assisted services. Training services occur when a participant enters post-secondary education or training to gain new skills.

Inefficiencies exist as a result of this bifurcated system, but the confusion and “on-the-ground” ramifications are numerous. One recent example:

Currently, the U.S. Department of Labor has announced a \$500 million Solicitation for Grant Applications (SGA) for community colleges to apply for funds under the Trade Adjustment Assistance Community College and Career Training Grants Program. This funding is authorized under the Trade Adjustment Assistance (TAA) program—a program available to dislocated workers who have lost their jobs due to the impacts of foreign trade. The purpose of these TAA grants is to assist community colleges and other eligible providers with creating and building post-secondary education and training programs that help TAA-eligible participants gain skills, degrees and credentials in order to become reemployed in high-skill, high-wage jobs.

One of the requirements of the SGA is that community colleges and other eligible education applicants must engage partners and collect data, including gathering data from the local Workforce Investment Boards. Yet, under recent regulations promulgated by the U.S. Department of Labor, TAA services can only be provided by state-merit staff employees similar to the Wagner-Peyser program. So, higher education institutions are required to partner with the local workforce investment system, but the state administers TAA. This creates unnecessary hoops and confusion and highlights a major problem with the current workforce investment system.

One-Stop System Infrastructure

Because the One-Stop system infrastructure is designed and authorized under WIA, it is managed by local Workforce Investment Boards and staff. As a result, of the 17 federally-funded program partners brought together under the One-Stop rubric, local officials only have the three WIA funding streams within their direct control. Therefore, most of the formula WIA funds are used for core services and capital infrastructure. There is little cost sharing, and models of integrated service delivery are few and far between.

Thus, very few WIA participants are enrolled in training services. For example, according to the Employment and Training Administration's data, from April 2009 to March 2010 only 11 percent, or roughly 130,000, of WIA Adult participants who exited the program received training services, and only 7 percent, or 80,000 people, received an Individual Training Account to help pay for tuition and other education costs. The WIA Dislocated Worker and WIA Youth programs train even less participants than the WIA Adult program.

REFORM PRINCIPLES AND INFRASTRUCTURE CHANGES

Because of the disparity between the post-secondary skills national imperative and the structure of the workforce investment system, it is time for dramatic changes in the design and delivery of job training services. At least three principles/changes should be seriously examined:

1. **Revamp programs in order to make funds more available to participants for entry into post-secondary education and job training.** We cannot continue to invest billions of dollars in a system with duplicative infrastructure, confusing rules and very few people actually receiving training services. According to an evaluation of three approaches to providing Individual Training Accounts, the "maximum customer choice" approach, where customers were given an account and allowed to choose the training of their choice, demonstrated that (1) take up rates for ITAs were higher given "maximum choice"; (2) the average ITA award was the same as the "guided customer choice" approach; and (3) given choice, ITA customers do not choose counseling—only four percent partook of available counseling services. Yet, the employment outcomes of the "maximum customer choice" model were the same as the other approach employed at most One-Stop Centers. We must revamp the job training system in a way that targets less funding to staff-assisted and counseling services and more to help participants pay for the costs of post-secondary education and training.
2. **Consolidate major funding streams and eliminate the "silo" approach to post-secondary education and training.** There is no justification for maintaining a federally-funded matrix of programs that authorize the same or similar services, yet continue a maze of duplicative and costly service delivery structures. At a minimum, the three WIA programs and the Wagner-Peyser program should be consolidated and restrictions on which employees can provide services should be eliminated. States should be given more flexibility in how education and training services are delivered to fit their unique circumstances and workforce populations.

The President's 2012 budget calls for \$380 million to be invested in a new Workforce Innovation Fund using monies from various U.S. Department of Labor and U.S. Department of Education program funds. This is an important recognition of the duplicative nature of these funding streams, but given the myriad of programs—WIA, TAA, Wagner-Peyscr, Perkins, Adult Education and others—that fund the same or similar services with different delivery infrastructures, it is time to take bold action, consolidate a number of these programs and make more training services available to individuals.

In addition, the myriad of job training programs funded from multiple Federal agencies needs to be curtailed. Currently, the U.S. Department of Energy, the U.S. Department of Health and Human Services and the National Science Foundation are all funding community college education and training grants. The proliferation of funding for post-secondary education and training programs from Federal agencies with no experience in education and training issues, only serves to foster “mission creep,” duplication of effort and a waste of valuable resources.

- 3. Evaluate whether community colleges, non-profit providers and proprietary universities can serve as the “One-Stop Centers” in their communities.** The recession demonstrated the overwhelming demand and need for education and training programs so workers could gain skills and credentials for new and better paying jobs. All across the country, people turned to community colleges, non-profit providers and proprietary universities—the places where people actually receive post-secondary education and training. The current workforce investment system essentially conducts intake for workers needing services, provides some career counseling, and if a participant enters education or job training, assists with job placement after training ends. Because community colleges, non-profit providers and proprietary universities (1) have infrastructure already in place throughout communities across the country, (2) have cutting-edge online technology learning platforms (in particular the proprietary sector), and (3) engage employers around curriculum and program design, a real question exists as to whether education and training providers should deliver the entire array of workforce and education services. As stated earlier, there has been a convergence around post-secondary education and training, and at a time when resources need to target participant education and training, utilizing the strengths of the community colleges, non-profit providers and proprietary universities is a practical and responsible solution to addressing our country's workforce challenges.

CONCLUSION

While I recognize that much of what I have testified on today concerns the various authorizing committees of Congress, the budgetary impact of these issues is immense. Because our nation's economic competitiveness is at stake, along with people's ability to have meaningful access to high-growth, high-wage jobs, now is the time for bold action and sweeping reform.

Mr. REHBERG. I ask the first question, and I am going to grant you my time to continue.

Mr. BISHOP. Okay. So I can wrap up.

Mr. REHBERG. And then if you could, maybe at the same time answer, I was going to ask you about money going to One-Stop—

Mr. BISHOP. Yes.

Mr. REHBERG [continuing]. Versus vouchers, and I don't think the budget has changed much since you have left. So why don't you go ahead and finish your statement.

Mr. BISHOP. Okay.

Mr. REHBERG. And then use the rest of my time to answer my question.

Mr. BISHOP. Okay. Thank you, Chairman.

And I apologize. There is a lot to get in in a short amount of time.

Because the last thing I think we really need to ask ourselves, if the national policy goal is to help individuals enter postsecondary education and training, the question is, and it gets to the One-Stop infrastructure. I have now seen in the last 3 years, at least in one location or one State, in Utah, that I really believe we ought to take a hard look at whether community colleges and other education and training institutions could also provide the One-Stop functionality.

The reality is—and I have seen this through grant applications and other things we have done—is that community colleges, as they get education and training grants, are trying to figure out what is the role of the One-Stop system, the WIA system in this?

And that role really, at its best, is to help with intake of workers into these training programs, and then on the back end, they help—maybe help those people get employment. But the reality is the community colleges are also working with the same employers the WIA system is working with. We are all hitting up the same employers to help with curriculum and sit on workforce investment boards and the like.

And so, to me, the reason we are not training very many people through the WIA system is because we have this duality. Most of the costs of the programs of WIA and Wagner-Peyser are going to core services and to fund the infrastructure costs of the system, building leases, personnel costs, and those kinds of things. There is very little money left over for training.

Mr. REHBERG. And how much do you think that is?

Mr. BISHOP. Well, I can tell you, if you look at the four programs, taken together, in the \$4,000,000,000 to \$5,000,000,000 in funding, and we are maybe training 250,000 people. That tells you that the bulk of that money is going to infrastructure.

Mr. REHBERG. Okay.

Mr. BISHOP. And one of the things that can be looked at in regulation is the definition of administrative and program costs. I would recommend that as well because a lot of things that could be administrative costs are actually tagged as program costs in the program.

I don't have a dollar figure, Mr. Chairman. But it is pretty dramatic.

Mr. REHBERG. Okay. I am going to ask Mr. Besharov then a question, and that is, in your view, have the local workforce boards been effective in curbing unemployment, or has it been—how would you react to—I think I know your answer. So then how would you react to his suggestion of maybe consolidating the functions back at the local level?

Mr. BESHAROV. Well, I think there has to be a major consolidation. The question is how best to do it to create a mission-driven—oh, my goodness, we can use clichés here—but a mission-driven program, whether that means consolidating and creating one program at the local level or loosening the rules about One-Stops. My understanding is, for example, that most States now discourage private providers from even bidding on those programs.

Everywhere one looks, this seems to be a program, and I am going to go beyond WIA to job training in general, a program captured by the trainers, not the trainees. And so, I would be extremely supportive of exploring how to undo that, whether it is with a strengthened voucher or whether it is with a streamlined program at the local level.

Mr. REHBERG. Could it be done with a flexible grant to the States rather than picking winners and losers as far as a community college or something? Could we just identify the 50 States and divide it up and give them one flexible grant?

Mr. BESHAROV. If you did that, I hope you ask the States to participate in the spending. I would hate to have the States have this money without any responsibility themselves for this—

Mr. REHBERG. I wrote “skin in the game” down.

Mr. BESHAROV. Thank you.

Mr. REHBERG. So I got that message.

Mr. BESHAROV. It is a technical term. We talk about that at the university all the time.

Mr. REHBERG. Yes.

Mr. BESHAROV. The other thing I would add, just to make that point just a little further, we have an unemployment insurance system that is in crisis. The States are broke, and that is going to come back to haunt, I think, this Congress before the next election.

And more money is going to have to go into the State unemployment system. That will be a further time to think about the connection between the unemployment programs and the job training programs.

Mr. REHBERG. Mr. Sherrill, in about 30 seconds, do you have anything to add?

Mr. SHERRILL. I agree. I mean, looking for opportunities for consolidation, getting input from folks on the front lines, State and local views here. With regard to the vouchers, we have prior experience with what was called “career advancement accounts,” where three States plus some of the auto industry areas had some pilots and demos. So I think it would be a good idea. I don’t believe that the evaluations have been publicly issued on those to see how that could inform the discussion.

Mr. REHBERG. Okay.

Ms. DeLauro?

Ms. DELAURO. Thank you very much, Mr. Chairman.

Just a couple of comments. First I have some additional information on the subject of job training that I would like to have put into the record.

Mr. REHBERG. Without objection.
[The information follows:]

standardspeaker.com

Workforce development cuts a mistake

Published: March 15, 2011

Editor,

If devastating cuts proposed by the U.S. House of Representatives to the nation's workforce development system are adopted, the very programs that assist the nation's more than 14 million unemployed in finding jobs will begin to shut down this summer.

On Feb. 19, the U.S. House of Representatives passed H.R. 1, a continuing Resolution to authorize the government to continue operations for the remaining seven months of the current fiscal year, which runs until Sept. 30, 2011. The bill would cut \$3.8 billion from the nation's job training and employment programs under the federal Workforce Investment Act (WIA) of 1998. The bill would also rescind, or recall, \$175 million in funding already allocated to these programs. WIA programs retrain unemployed individuals for new jobs and provide training to adults, youth and low-skilled and disadvantaged workers to help them secure family-sustaining employment. They also assist employers in finding workers with the right skills to fill jobs. In Pennsylvania, these programs are primarily implemented by the state's 67 PA CareerLink centers, including the centers in Hazleton, Wilkes-Barre and Pottsville.

Congress approved a short-term spending plan to keep the government operating until March 18 while the House and Senate address differences between this plan and a Senate plan containing less drastic cuts.

For more than a decade, funding for the Workforce Investment Act has been used to support job training, local employment services, outreach to business, and economic development efforts delivered through more than 3,000 one-stop job centers (called PA CareerLinks in Pennsylvania). Local volunteer Workforce Investment Boards (WIBs), comprised of at least 50 percent businesses plus representatives from labor, education and community partners, guide the operations of these programs on a local level.

If these cuts are adopted by Congress, beginning July 1, 2011, Pennsylvania's local WIBs predict that they will severely cut services or close their doors altogether, thereby cutting off services to more than one million Pennsylvanians per year who benefit from these programs. This may also result in the closure of PA CareerLink offices starting this summer, as well as the layoff of employees who assist the unemployed in finding jobs. These cuts likely cause thousands of new job losses, not only for the workers who implement these programs, but also the many industries and partners that support them with training and other services.

Employers will also face difficulties in finding the right workers to meet their needs. If they can't find skilled workers here in the United States, they will shift operations to countries where skilled labor is readily available. In Luzerne County, the CareerLink offices in Hazleton and Wilkes-Barre served more than 2,000 businesses last year.

Helping workers to acquire up-to-date skills is especially critical now when long spells of unemployment threaten the longer term employability and productivity of many. With the unemployment rate at 8.9 percent nationally and 9.7 percent in Luzerne County, we cannot afford for Congress to disrupt the very programs people are using to get back to work. Many individuals have been out of work for more than two years.

In fact, Federal Reserve Chairman Ben Bernanke recently stated, "No economy can succeed without a high quality workforce, particularly in an age of globalization and technical change. ...Although helping workers acquire up-to-date skills is always important, it is especially critical now, when long spells of unemployment are threatening the longer-term employability and productivity of many."

If Congress' true aim is to get people back to work, jump start the economy and reduce the staggering unemployment problem in this country, the members should seriously reconsider the elimination of the very funding to assist in this effort.

Martha M. Herron, chairwoman,
Luzerne/Schuylkill Workforce Investment Board

The Mercury News
MercuryNews.com

Opinion: Don't let Congress derail workforce training programs

By Carl Cimino and Steve Van Dorn

Special to the Mercury News

Posted: 03/28/2011 08:00:00 PM PDT

What if you went to work today only to find that your position was being eliminated? You would be joining 13.7 million others who want to work but have no job.

Like them, you could visit one of our nation's 3,000 one-stop career centers for assistance in finding a new job or updating your skill set to better match those needed in today's labor market. But budget cuts threatened by the U.S. House of Representatives would close those centers July 1, leaving you and all the others on your own.

The importance of tackling the ballooning federal deficit is something we can all agree on; however, with this fragile economy, now is not the time to cut funding for programs that are critical to our future recovery.

H.R. 1 is a draconian act that would have zeroed out funding for workforce investment programs starting July 1, local programs that are helping residents get back to work and providing Silicon Valley businesses with a skilled workforce that is essential to their success. Fortunately, H.R. 1 failed to pass the Senate, but new proposals are being formulated to do virtually the same thing.

Nationally, the unemployment rate stands at 8.9 percent in February with 43.9 percent, or 6 million workers, counted as the long-term unemployed -- those out of work for 27 or more weeks. In California, the unemployment rate for January stands at 12.7 percent and in Santa Clara County, 10.5 percent. We know these numbers come as no surprise to the many unemployed residents who are still looking for work and to businesses that continue to shed jobs.

Now more than ever, workers require retraining and retooling to facilitate their transition from obsolete industries to growing sectors that will offer new opportunities to capitalize on their talents. Companies require ingenuity and entrepreneurship aligned with their business plans.

NOVA (www.novaworks.org), a local workforce development organization, serves a seven-city community in the heart of Silicon Valley. For more than 25 years, NOVA has demonstrated innovative solutions to bridge the gap between the needs of our businesses and the competencies of our workforce. During the recession, the number of client visits to the NOVA Job Seeker Center increased a dramatic 87 percent, with 98,472 visits this past year.

In good times, with the continuous churn in Silicon Valley, these job training programs are important to ensure a ready supply of qualified workers to address changing business needs. But

during economic downturns, they are absolutely essential to Silicon Valley's return to growth and vitality.

If the devastating cuts that were proposed in H.R. 1 are implemented, hundreds of employers and thousands of job seekers will go unserved here in Silicon Valley. The cuts will be destructive to Silicon Valley industries, the workforce and the economy. They will come at a time that could significantly stall our economic recovery efforts.

We applaud efforts to tackle the growing federal deficit, but not if they are at the expense of workers who are trying to get back to work and businesses that are trying to get back on track.

CARL CIMINO of Pipe Trades Training Center and STEVE VAN DORN of the Santa Clara Chamber of Commerce and Convention-Visitors Bureau are members of the NOVA Workforce Board. They wrote this article for this newspaper.

CINCINNATI!.com**Guest column: It's wrong time to cut
US job-training funds**

11:22 AM, Mar. 26, 2011|

The Fiscal Year 2011 Continuing Resolution passed by the U.S. House of Representatives on Feb. 19 proposes to eliminate our nation's employment and training system during one of the worst economic downturns in American history. Just as our fragile economic recovery begins to take hold, these cuts would zero out all new funding under the Workforce Investment Act that provides vital services to help unemployed Americans get back to work, and help businesses access qualified workers as they try to rebound from the recession. The Senate should reject these cuts.

At Frisch's Restaurants, Inc., we rely on the local public workforce system to help meet our diverse hiring needs. As a major regional employer, I can say that local businesses will suffer from any disinvestment in the workforce system. Last week, I attended a forum of more than 50 employers from various industries across our region on the topic of skills shortages. The majority of these employers said that they struggle to find workers with the skills and preparation needed to fill current job openings and to plan for future growth.

According to a local survey last year, nearly half of all businesses project a significant shortage of qualified workers in the next few years as the economy rebounds. Our federally funded One-Stop Centers helped 1,208 local businesses last year access the talent they need by screening new hires, providing training to prepare jobseekers for in-demand jobs, and averting layoffs through upgrading the skills of current employees. Now is not the time to take away these vital services. Without a skilled workforce, our region will be unable to attract, retain, or grow jobs. For the 14 million unemployed U.S. workers – 40 percent of whom have been unemployed for more than six months – the impact of dismantling the public workforce system could not be more devastating.

Over the past year, the public workforce investment system provided training, employment and support services to more than eight million jobseekers nationally. The four Workforce Investment Boards that administer federal workforce funding across our tri-state region served 48,058 residents and 2,124 youth last year. These services helped 6,891 jobseekers obtain employment. With governments at all levels facing staggering budget deficits, now is not the time to eliminate the very services that help get people back to work earning taxable income.

Congress faces difficult choices in today's fiscal climate, but eliminating federal investment in employment and training services will have an immediate impact on the ability of our unemployed workers to transition to new jobs, the ability of companies to find the skilled workers they need to grow, and the ability of our region and our nation to compete in the global economy. The Senate should reject the proposed funding cuts.

Michael Conner is Vice President of Human Resources for Frisch's Restaurants, Inc. and chairman of the Southwest Ohio Region Workforce Investment Board.



Vital to protect worker training

2011-03-16 18:38:00

As Arizona emerges from the deepest economic recession in nearly 100 years, existing businesses and new relocating companies statewide are already competing for qualified talent. As counterintuitive as it may seem, given the scores of thousands left unemployed by this prolonged economic slowdown, qualified talent can be hard to find.

A vital resource in developing, locating and hiring qualified workers is the state's network of One-Stop Career Centers, funded by the U.S. Department of Labor and overseen by business-led boards.

This network, known as Arizona Workforce Connection, effectively enhances the skills of the unemployed to levels accepted by a wide spectrum of employers by supporting training in recognized credentialing programs and by providing fundamentally important job-matching services between these qualified workers and private sector employers.

Workers who take advantage of federal Workforce Investment Act training while unemployed will offer their new employers stronger skill sets.

This service is so critical to Arizona's future competitiveness that the governor, the state Legislature and many local/regional government entities have chosen to supplement it by creating or enhancing job training programs as incentives to lure new businesses to the state. Growing businesses in an expanding economy need qualified workers identified and trained through the federal Workforce Investment Act's One Stop system.

Arizona Workforce Connection is under threat of drastic cuts in federal funding. Such cuts would severely cripple Arizona's economic recovery and would render virtually meaningless all of the efforts undertaken by the governor and the State Legislature to induce companies to grow within and relocate to the state.

Without a sustained and well resourced program like Arizona Workforce Connection, the qualified and certified talent base, so vitally needed to fuel Arizona's growth, will simply fail to materialize.

As Workforce Investment Board chairpersons from across the state of Arizona, we acknowledge the difficult choices that Congress must make in the coming weeks. We urge the members of Congress not to sacrifice the seed corn of economic recovery that Workforce Investment Act programs provide businesses across the state and throughout the nation.

Sam Pepper, Yuma County

Ron Curtis, Cochise County
Christine Mayer, Coconino County
Tim Rango, Gila/Pinal Counties
Lois Ann Moody, Graham County
Neil Alexander, Maricopa County
Chonna Marshall, Mohave County
Kenneth Light, Navajo/Apache Counties
Patrick Andrews, Nineteen Tribal Nations
Clayton Hamilton, Pima County
Alexa Ramirez, Santa Cruz
Ken Lain, Yavapai County



OregonLive.com

Everything Oregon

The wrong time for cuts to workforce training

Published: Friday, March 04, 2011, 7:00 AM

By James Paulson

Guest Columnist

According to a Gallup poll released on Feb. 11, 35 percent of Americans name unemployment as the most important problem facing the country, the highest percentage since the economic slowdown began and higher than at any point since October 1983. With a national unemployment rate of 9 percent, these sentiments should come as no surprise. In Oregon, we have the nation's seventh highest unemployment rate at 10.6 percent, with more than 200,000 Oregonians officially out of work and tens of thousands more underemployed or out of the labor market altogether. We currently have six unemployed Oregonians for every job opening, and we're not projected to return to pre-recession job levels until 2015.

Despite these numbers, the House of Representatives voted to eliminate the Workforce Investment Act and other job training programs as part of its continuing budget resolution, which cuts more than \$60 billion in spending through the remainder of the federal fiscal year. While spending reductions must be part of long-term deficit control, cutting job training programs now is counterproductive and threatens to undermine our still very fragile economic recovery.

The main criticism of federal job training efforts has focused on the need for greater coordination across federal workforce and training programs. Those of us on the executive committee of the Workforce Investment Board for the city of Portland and Washington and Multnomah counties couldn't agree more, and we've been working with our federal delegation and state partners for years to seek changes to existing laws that would more effectively coordinate these efforts.

Since 2005, local federal funding for workforce development has decreased by 45 percent while new unemployment claims have nearly doubled. Despite these challenges, we have worked locally with a broad array of funders and providers to align and coordinate local workforce and related efforts. As a result, 61,000 job seekers were served through the local workforce development system last year -- a 200 percent increase from pre-recession levels. Of those 61,000:

- 47,666 received job search assistance.
- 12,291 received personalized career counseling services.
- 3,274 enrolled in a computer literacy class.
- 3,025 engaged in occupational training in a regionally significant target industry or other high-growth or high-demand sector.
- 2,826 enrolled in a basic education class such as ESL or GED.
- 26,230 got a job!

Helping workers get the skills they need to return to work is not a partisan issue. It's an essential part of getting our economy back on track. It's time for Congress and the administration to work together to modernize and streamline federal workforce investments and provide the support we need to get our community and country back to work.

James Paulson is board chairman for Worksystems Inc. and is an investment advisor with NW Wealth Advisors Inc.

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LIVINGSTON
DAILY.COM

Federal training cuts have long-term cost

Apr 3, 2011

As a local business owner and chair of the Livingston County Workforce Development Council, I am writing to oppose recent action taken by the U.S. House of Representatives to eliminate all funding for local work-force programs.

The House recently passed HR 1, the fiscal 2011 continuing resolution to fund the U.S. government through Sept. 30, 2011. Included in the more than \$60 billion in cuts to the current fiscal year's budget are \$3.8 billion in cuts to the work-force and job-training programs administered by the U.S. Department of Labor.

These cuts eliminate all funding for Workforce Investment Act programs beginning July 1, and if enacted, will likely force the closure of the Michigan Works! Livingston Service Center and most of the more than 100 Michigan Works! Service Centers across the state.

We recognize that Congress faces difficult choices in today's fiscal climate, but eliminating federal investments in work-force programs will have an immediate impact on the ability of more than 14 million unemployed to transition to new jobs, the ability of U.S. companies to find the skilled workers they need, and on our ability to compete in the global economy.

Data shows that expenditures on work-force programs return more money to the treasury than is spent on them due to increased tax revenues and lower expenditures for welfare payments, food assistance and unemployment insurance.

A recent report by the Michigan Works! Association showed that even in the midst of the worst recession since the 1930s, Michigan Works! programs returned more than \$1.30 for every dollar spent. Eliminating these programs now will actually increase our budget deficits, not reduce them.

While these proposed cuts have passed the House, they still must be approved by the Senate and the president before they become law. I urge our citizens to contact Sens. Debbie Stabenow and Carl Levin and Rep. Mike Rogers to let them know how important these services are to our community.

Rick Currie

Brighton

Do Businesses Think Federal Funding Should Support Workforce Training?

Workforce Investment Act (WIA) funding helps businesses increase productivity, strengthen competitiveness, and meet skill and hiring needs, as it helps Americans gain skills businesses need, get jobs, and improve earnings. That's why over 900 employers across the US have signed a petition to their elected officials to preserve WIA funding on the National Association of Workforce Boards' website. (<http://www.nawb.org/portals/0/NationalLetter.pdf>)

WIA-funded programs assist businesses to create jobs.

- In 2009-10, WIA funding assisted **South Carolina** businesses to create 1,086 jobs and save 2,629. http://www.doleta.gov/performance/results/AnnualReports/PY2009/SC_PY_2009_State_Data_Book.pdf
- The OJT reimbursement from the state of **Mississippi** is a critical part of why: (1) We have stayed in Mississippi for over 14 years. (2) We recently expanded, spending an additional \$2.3 million and creating 30 new jobs and (3) why we continue to see Mississippi as a place where we can continue to expand and grow our business. *Bob Bolcyn, Plant Manager, EcoWater Systems LLC, Ripley, MS*
- "Through this tough economic time, our partnership with Michigan Works! has been critical to enabling business success in **Michigan** Operations. As Dow looks to maintain and grow business in this region, we look forward to developing other innovative programs and solutions together." *Jennifer Hayes, Organizational Effectiveness/Culture Change & Learning Leader, Dow Chemical, MI*

WIA meets small businesses' employment needs.

- **Kentucky's** on-the-job training helped a small business expand. It hired a worker and expects to hire another. "This has given us the opportunity to find workers and move into the future with better products that allow us to keep up with current technology." *Shawn Collins, owner, Ideal Print Shop, Middlesboro, KY*
- In **Oregon**, "I am part of a turn-around team that was put in place to restructure a 60-year old company that was not growing and losing money each year. The benefit that the Workforce Investment Act has provided to us in terms of training and motivating our employees has been tremendous. We now have had positive earnings and growth for three consecutive years and have increased our workforce by 15%." *Robert Degnan, President and CFO, Package Containers, Inc., Canby, OR*
- In **Illinois**, Joule Technologies, a fixture manufacturing company, used WIA training dollars to train their employees on new processes. "At Joule, we were able to invest in training that resulted in a 60 percent reduction of lead times, an increase of on-time delivery to 94.5 percent and a reduction of customer returns by over 80 percent. It's not just about increasing performance, it has allowed us to grow our business and retain employees." *Don Wallin, President, Joule Technologies, IL*

WIA-funded programs improve business competitiveness in the global economy.

- 84 percent of businesses reported that **Pennsylvania's** Industry Partnerships and training they provide helped them significantly increase their productivity (more than 6,300 businesses received services in the reporting year, 2008). Pennsylvania's Workforce Investment Boards are deeply involved in leading and supporting the Industry Partnerships (the Commonwealth's name for its regional sector initiatives) and the state targeted training funded by WIA to the high priority occupations Industry Partnerships focus on. (Sources <http://www.portal.state.pa.us/portal/server.pt?open=18&objID=490341&mode=2> and <http://www.portal.state.pa.us/portal/server.pt?open=18&objID=765961&mode=2>.)
- In **Illinois**, "Even in the middle of the recession we did better than other, similar facilities in our company. Our partnership with a sector initiative, Manufacturing Works, for assistance with recruiting and retention,

and our own cross-training and coaching, were major contributors to our profitability.” *Areli Cazares, Human Resources Manager, Wheatland Tube, Chicago, IL*

WIA-funded programs develop the skills businesses need.

- In **Illinois**, “UPS Integrad is a driver training program that combines technology, hand-on experience, and real-time feedback to get new driver candidates ready for the road. . . The results include a sharp increase in driver proficiency, and a reduction in first-year injuries and accidents. We encourage you to make funding of WIA a priority so that vital employment and training services like Integrad can continue.” *Ray Drake, Vice President, UPS State Public Affairs, IL*
- In **Ohio**, five more states, and Washington DC, CVS has partnered with One-Stop Career Centers to create Retail Learning Centers. “If you walked into it,” he says, “you would think you were in a CVS store. Everybody wins in this kind of situation. The clients of these agencies win because they get a career-path job. The agencies are trying to get these folks employed and given career-path opportunities. And we’re getting good employees.” *Steve Wing, Director of Workforce Initiatives for CVS in 2010, RI*
- In **Pennsylvania** “The Jobs to Careers behavioral health program at Temple University’s Episcopal Hospital Campus has benefited our workforce, our institution, and our patients. More education for the frontline staff through this pilot has translated into improved quality of care. We are also excited that the work-based learning curriculum supports career advancement for the mental health staff by qualifying successful completers with 21 college credits toward a degree as well as a pay increase.” *Kathleen Baron, Executive Director, Episcopal Hospital, Temple University Health System, PA*
- “As a business representative from Allete, Inc. on the Governor’s Workforce Development Council, I can attest to the growing demand for skilled workers in **Minnesota**. Demographic and educational attainment data make it clear that there is a need for more of the ‘right’ skill training, not less. I believe that WIA-funded skill training initiatives, like Minnesota FastTRAC which focuses skill training on industry recognized credentials, are the best solution to prepare readily available adults with the necessary skills to meet employers’ workforce needs. Strengthening the skills of our current workforce is the only way that Minnesota businesses will remain competitive and keep the state’s economy growing over the next 20 years.” *Inez Wildwood, Manager, Talent Acquisition & Development, Allete, Inc., Duluth, MN.*

Businesses use publicly funded workforce services and have a high level of satisfaction.

- In 2007, the GAO found that across the United States, “Most medium and large employers are aware of and use the system and are quite satisfied with its services.” <http://www.gao.gov/new.items/d071051t.pdf>
- **Alabama’s** workforce system attained 95% employer satisfaction in 2009-10. In **Minnesota**, employers who posted job orders and employers who received business services in 2009-10 reported Satisfaction Index scores of 79.5 and 81.1, respectively. WIA-funded programs have had high satisfaction levels over the years: for instance **Wyoming** attained 79% employer satisfaction in 2007-08 and **Montana** attained an 87% weighted employer satisfaction value in 2006-7. (Sources: state Workforce Investment Act reports.)

The National Association of Workforce Boards,



National Association of
Workforce Boards

National Network of Sector Partners,



National Network of Sector Partners
Linking Industries, Communities, and Workers

Ms. DELAURO. And I would also like to submit for the record a letter from 900 businesses, expressing their support for the current workforce system.

Mr. REHBERG. Without objection.
[The information follows:]



Honorable John Boehner
232 The Capitol
Washington, DC 20515H

Honorable Harold Rogers
2406 Rayburn House Office Building
Washington, DC 20515

Honorable Denny Rehberg
2448 Rayburn HOB
Washington, DC, 20515

Honorable John Kline
2439 Rayburn HOB
Washington, DC 20515

Honorable Nancy Pelosi
235 Cannon H.O.B.
Washington, DC 20515

Honorable Norman Dicks
2467 Rayburn House Office Building
Washington, DC 20515

Honorable Rosa DeLauro
2413 Rayburn HOB
Washington, DC

Honorable George Miller
2205 Rayburn HOB
Washington, DC 20515

Dear Representatives,

Nationally, Workforce Investment Act programs (WIA) have been at the heart of our nation's response to the recession -- Last year, **over 8.4 million jobseekers utilized the workforce system and over 4.3 million got jobs**, while others were placed in education and training to prepare them for new careers.

Attached are the signatures of 10,855 individuals who support the workforce system. Most of these individuals are job seekers and business owners who have provided comments on the importance of the workforce system in their success as people and as businesses. You can find similar examples on the importance of the WIA system in the comments of over 3,600 people who have indicated workforce as an important cause on Facebook.

Furthermore, we have collected over 900 signatures from employers who sit on local workforce investment boards. These 900 signatures represent the business leaders that serve as a majority on each of the nation's 575 workforce investment boards.

The National Association of Workforce Boards has created WorkforceInvestmentWorks.com to help tell the story of how the workforce system has impacted people and business; in a sense, a report on the investments Congress makes in the American worker.

We've also included a sample of what business has been telling us about workforce investment boards and the critical role the public workforce system plays in addressing their human capital needs and in increasing their efficiency and output.

Millions of people and companies turn to the public workforce system for help in making important decisions. Local business-led workforce investment boards strive to provide the information on which these decisions can be thoughtfully and strategically made. We appreciate your willingness to continue the discussions about how best to meet America's workforce needs. Please let me know if you have any questions.

Sincerely,

Ronald D. Painter
CEO
National Association of Workforce Boards

Attachments: *Business Support Signatures, WIA and Business Success Document, Public Petition, Op-Ed Samples*

NAME	WIB AFFILIATION	COMPANY	STATE
Douglas B. Ward	Alaska Workforce Investment Board member	Alaska Ship & Drydock, Inc.	AK
Sunni Hilts	Anchorage WIB (AK)	Flowers by Sunni	AK
Cheryl Williams	Board Chair - Mobile Works, Inc.	Spherion Staffing Services	AL
Lila Logan	Board Member/Secretary Treasurer	Sandra Beasley Independent Living Center, Inc.	AR
Wingo Johnson	Chairman of Western Arkansas Workforce Investment Board	WorldWise Recyclers	AR
Marion K. Littlejohn, PHR	Eastern Arkansas WIB	Robert Bosch Tool Corporation	AR
Shayne Kremers	WAEDA	WAEDA	AR
Jennifer Parks	Western Arkansas Employment Development	HealthPointe Insurance Services LLC	AR
Sherry Muck Hollingshead	Western Arkansas WIA Board Member	Arkansas Rehabilitation Services	AR
James W. Steele	Western Arkansas Workforce	Sebastian/Crawford County Labor Council	AR
Tina R. Shores	Western Arkansas Workforce Investment Board	Arkansas Division of Services for the Blind	AR
Dana Soller	Western Arkansas Workforce Investment Board	Simmons Foods	AR
Greg Bourns	Western Arkansas, Director	First National Bank	AR
Bill P.Hays	Workforce Board of Eastern Arkansas	Bill Hays Real Estate, Forrest City. AR 72336	AR
Margaret Voelkel	Workforce Educator	University of Arkansas-Fort Smith Bradley County, Arkansas Chamber of Commerce	AR
David King			AR
Sue Parker, DNP, RN		University of Arkansas-Fort Smith	AR
Martin Chaffin	Board Member	Arkansas Delta Development	AR
Carol Ethridge, District Manager	Board Member	Arkansas Rehabilitation Services	AR

John S. Lasater	NorthWest Arkansas	Arvest Bank	AR
Bill P.Hays	Workforce Board of Eastern Arkansas (AR)	Bill Hays Real Estate, Forrest City. AR 72336	AR
David Gustin	Northwest Arkansas	Communications Workers of America	AR
Greg Bourns	Western Arkansas, Director	First National Bank	AR
Billie G. Reed	Northwest Arkansas Local Workforce Investment Board (AR)	O.U.R. Education Cooperative	AR
Stephen M. Percival	Arkansas Workforce Investment Board, Region 1	Washington Regional Medical Center	AR
Teri Drew	Workforce Board Administrator and Member	Northern AZ Council of Governments	AZ
Thomas Orput	Alameda County Workforce Investment Board	Alameda Adult and Career Education	CA
Kathy Mello	Alameda County Workforce Investment Board	TGIF Body Shop, Inc.	CA
Elaine M. Kurtz	Alameda Workforce Investment Board	Bay Area Rapid Transit District	CA
Julia Barrett-Watts	Bakersfield, CA	Employers' Training Resource	CA
Kim Parker	Board Chair for Sacramento Works / SETA	California Employers Association	CA
Michele Lynn Piller	California - Nortec	Plumas Rural Services	CA
Lee Haven	Chairman, Riverside County Workforce Investment Board	Granite Construction Company	CA
Richard Roche	Chairman, Verdugo Workforce Investment Board (CA)	AT&T	CA
Susan L. "Tink" Miller	Chairperson, Golden Sierra WIB	Placer Independent Resource Services	CA
Philip Starr, Psy.D.	City of Los Angeles	Managed Career Solutions, Inc.	CA
Fred Freuhan	City Of San Bernardino Workforce Investment Board	Peppertree Distributors, Inc.	CA
Jerry Gaines	Commissioner, Los Angeles County WIB	South Bay Credit Union, Redondo Beach, California	CA
Joseph Treadwell		California Family Life Center	CA

Shari McCormick	Foothill Workforce Investment Board	Pasadena Center Operating Company	CA
David DeLeonardis	Golden Sierra WIB	Crossroads Diversified Services, Inc.	CA
Terry Paterson	Golden Sierra Workforce Investment Board	California Employers Association	CA
John Frahm	Humboldt county WIB, California	UFCW 5	CA
Terry Coltra	Humboldt County Workforce Board - California	Carson Block Property Management	CA
Helen Romaro Shaw	LA County WIB (CA)	Southern California Gas	CA
Dr. Dennis W. Neder, Chairman	Los Angeles County Workforce Investment Board	Full Spectrum Technologies, LLC	CA
Ted R. Anderson	Los Angeles County Workforce Investment Board	LA County Commission on Aging	CA
Richard E. Dell	Los Angeles County, Board Treasurer	Maple Dell McClelland Architects LLP	CA
Thomas Cochran	NorTec (northern California)	T. Cochran Consulting	CA
Susan L. Brevoort	One Stop and WIA-Orange County, CA	Brevoort Consulting	CA
Dale Anderson	ProNet Connections, Roseville, CA	California Employers Association	CA
Tom Donahue	Riverside County (CA) Workforce Investment Board	Marriott	CA
Laura E. Monti	Riverside County Economic Development (CA)	Education to Go	CA
Dominic Babiera	Riverside County WIB (CA)	Amtrak	CA
Monte Perez	Riverside County WIB (CA)	Moreno Valley Community College	CA
Jamil Dada	Riverside County WIB (CA)	Provident Bank	CA
Barbara Beeskow	Riverside County Workforce Center	ed2go	CA
Rick Wylie	Sacramento Employment and Training Agency	Beutler Corporation	CA
Phil Cothran	San Bernardino County WIB (CA)	State Farm Insurance Companies	CA

Michael Klieman	San Mateo County WIB	MK Advisory	CA
Scott Kincaid	Sonoma County, CA, Workforce Investment Board	First Community Bank	CA
Wayne Spencer	South Bay Workforce Investment Board Chairperson	Asepncer4hire Security	CA
Mayor Larry Guidi	Supporter	City of Hawthorne	CA
Paul J. Celuch	Verdugo WIB Board Member	Verdugo Hills Hospital	CA
Debbie S. Kukta	Verdugo Workforce Investment Board	KO Properties, LLC	CA
April MacLean	WIA	California Family Life Center	CA
Reginald M. Blom	Workforce Investment Board	Golden Sierra Connections Center	CA
Alex Rivera	Workforce Investment Board of Ventura County	AeroControlex Group Inc.	CA
Lenore DeJesus		California Family Life Center	CA
Mary Lew		Orange County Social Services	CA
Susan L. Brevoort	One Stop and WIA-Orange County, CA	Brevoort Consulting	CA
Lucy M. Burghdorf	Verdugo Workforce Investment Board	Burbank/Bob Hope Airport	CA
Eric Madden	eda	c.f.l.c.	CA
Krystal Williams		California Family Life Center	CA
Teresa Suarez	WIA	California Family Life Center	CA
Teresa LeRoy	WIA	California Family Life Center	CA
Jaime Quinonez	Riverside County	California Family Life Center	CA
Mindy Bradeen	EDD	California Family Life Center	CA
Patrick Ozzie Oswald	WIA	California Family Life Center	CA

Eddie J. Cruz	Riverside County	California Family Life Center	CA
Mercy Tudor	Riverside County	California Family Life Center	CA
Laura Enllanche	WIA Youth Center	California Family Life Center	CA
Sarah Maldonado	WIA	California Family Life Center	CA
Daniela Cervantes	WIA	California Family Life Center	CA
Jesse Vasquez	wia youth center	california family life center	CA
Brianna Strong	WIA Youth Center	California Family Life Center	CA
Vincent Cervantes	WIA	California Family Life Center	CA
Kourtney	WIA	California Family Life Center (Empower Youth)	CA
Anita Rivera	WIA	California Family Life Center- Empower Youth	CA
Jesus Medina	WIA	California Family Life Center/CFLC	CA
kathleen atkins	wwia	california life	CA
Guadalupe Villa-Dorado	Riverside County	California Planet Youth	CA
Christopher Lenz	Verdugo Workforce Investment Board (CA)	California State University, Los Angeles	CA
Rod Hoover	San Bernardino County	California Steel Industries, Inc.	CA
Maria	Riverside County	CFLC	CA
Maria Flores	Riverside County	CFLC	CA
CHristopher C. Eshelman	Riverside County	CFLC	CA
brian johnson	wia	cflc	CA
Crystal Lopez	EDA	CFLC	CA

Darell Randolph	WIA	CFLC Empower Youth	CA
Heather Allen	WIA	CFLC Empower Youth	CA
Monica Vasquez	Riverside County	CFLC Planet Youth	CA
Abraham Esquer		cflc planet youth	CA
Stephanie Randolph	WIA Program	CFLC-Empower Youth	CA
Heather Griffis	Riverside County	CFLC-Planet Youth	CA
Ken Hitts	Verdugo Workforce Investment Board	City of Glendale, California	CA
Lori Heredia	Verdugio WIB Glendale (CA)	Country Villa	CA
Nancy Pellegrini	Bay Area Workforce Development Board	Forward Service Corporation	CA
Gwen Matthews	Verdugo WIB Glendale (CA)	Glendale Adventist Medical Center	CA
Kristin J Bruno, Ph.D.	Member of Verdugo Workforce Investment Board, Glendale, CA	Glendale Community College	CA
Steven L. Gutierrez	Foothill WIB (CA)	I. J. Rager Flooring	CA
Monico Zamora	Verdugio WIB Glendale (CA)	NUHW	CA
Ray R. Gonzalez	City & County of San Bernardino WIB (CA)	Pacific Advisory Utility Services	CA
Scott Wildman	Member, Glendale, Burbank, Pasadena WIB (CA)	Pacific Federal Insurance	CA
Shari McCormick	Foothill Workforce Investment Board (CA)	Pasadena Center Operating Company	CA
Dennis Clarke	WIB of Solano County (Executive Board member/ Youth Council Chairman) (CA)	Poma Holding Company	CA
John Quinn	Golden Sierra WIB (CA)	Prime Labeling Systems	CA
marie lee	Southeast L.A. crenshaw worksource center, los angeles, ca	UAW L.E.T.C.	CA
Abigail Carter	Foothill WIB member (CA)	VONS, A Safeway Company	CA

Elizabeth E. Robles	LA Works, Irwindale, California (CA)		CA
Michael Wukitsch	Adams County, Colorado	The Children's Hospital	CO
Bill Skidmore	Arapahoe/Douglas County Workforce Board - Chairman	RK Mechanical	CO
Laura English	Denver Colorado Workforce Investment Board	chief finance officer, UnitedHealthcare	CO
Caren Swales	Denver Workforce Investment Board	Swales Consulting	CO
Cindy Semrau	Board of Directors member	Quinnipiac Chamber of Commerce	CT
Susan Jackson	Capital Area Workforce Board	WakeMed Health & Hospitals	CT
Cheryl Nagel	Capital Workforce Partners	Aetna	CT
Jill Larmett	Capital Workforce Partners	Career Team LLC	CT
Leticia Mangual	Capital Workforce Partners	Human Resources Agency of New Britain	CT
Karen Cirincione	Capital Workforce Partners	KRA Corporation	CT
Tokuji Okamoto	Capital Workforce Partners	Our Piece of the Pie, Inc.	CT
Kevin Deame	Capital Workforce Partners	Rosebud Development	CT
John Boyd	Capital Workforce Partners - Hartford CT	Fandotech	CT
George Fournier	Capitol Workforce Partners	Acme Monaco Corporation	CT
Donna Heim	Capitol Workforce Partners, Hartford, CT	CREC	CT
Deborah R. Gogliettino	Capitol Workforce Partners, Hartford, CT	Eastern Connecticut Health Network	CT
Brandi Hall	Capitol Workforce Partners, Hartford, CT	Sheldon Oak Centreal	CT
Valerie Roman	Central Connecticut	Capital Workforce Partners	CT
John Fisher	CT Workforce Alliance, New Haven	Shubert Theater	CT

Gloria Ortiz-Rivera	CT-Northcentral	Restoring Lives Community Development Corp.	CT
Marcel Cicero	Customer CWP Hartford CT	Community Renewal Team Hartford CT	CT
Mrs. Carolyn Coogan	East Hartford Site Coord/ In-School Youth	East Hartford Hihg School	CT
Emmett E Harper	Eastern Connecticut Workforce	General Dynamics/Electric Boat	CT
Bruce R. Sievers	Hartford CT	Urban League of Greater Hartford	CT
JoAnn Ryan	Northwest Regional Workforce Investment Board - C	Northwest Connecticut Chamber of Commerce	CT
Stephen Bull - Chair	Northwest Regional Workforce Investment Board (CT)	Greater Danbury Chamber Of Commerce	CT
Nancy Collins	South Central Connecticut	Yale-New Haven Hospital	CT
Richard A. Pearce	Workforce Alliance of South Central Connecticut	Evolution Enterprises LLC The Greater Meriden Chamber of Commerce,	CT
Sean W. Moore	Workforce Alliance, Inc., New Haven, CT	Inc.	CT
James N. Galvin	Workforce Alliance-New Haven County	Clinton Nurseries, Inc. Westbrook, Ct	CT
Larry McHugh yvonne b krosky mark krosky Krzysztof cebulak	Workforce Alliance-South Central Connecticut North central /CT	Middlesex County Chamber of Commerce	CT
Kim Oliver	Capital Workforce Partners	Careerteam.LLC Workforce Solutions Collaborative of Metro Hartford	CT
Elizabeth Hyman		CompTIA	DC
Gary Arenson	Broward Workforce Development Board, Ft. Lauderdale, Florida	Arenson and Sandhouse.	FL
Michael Biskie	Citrus, Levy Marion Workforce Connection, Ocala, FL, and NAWB Board Member	Monterey Boats	FL
Perley Richardson Michael C. Wilkerson, SPHR, CLRP	Florida Crown Workforce Board Florida Workforce Board Region 17	Syn-Aire Technologies POLK WORKS	FL FL

Anna Schneider	Operations Manager RWB7	Florida Crown Workforce Board	FL
Michael A. Micallef, Jr.	Polk County Workforce Investment Board (FL)	President & CEO of Community Southern Bank	FL
Sherry Sapp	Polk Works, Tampa Bay Workforce, Heartland Workforce	National Business Institute of Florida, Inc Mandarin Health Group / Florida Health Care Assoc.	FL
Cathy S. Sena	South Florida Workforce		FL
Joanna Key	Atlanta Regional Commission	Gwinnett Tech- GAP program	GA
Keisha Hull	Atlanta Regional Commission	Gwinnett Technical College	GA
Brian L. Wren	Atlanta Regional Workforce	Gwinnett Advancement Program	GA
Randy Hayes, Co-Chair	Atlanta Regional Workforce Board	Hayes Development Corporation	GA
Michael Romesburg	Atlanta Workforce Development Board	CVS Caremark	GA
Laura Bloom	Chair Southeast Georgia Workforce Investment Board	Coffee Regional Medical Center	GA
Mike Tabb	Chairman, Southwest Georgia Workforce Investment Board	Community Ventures, Inc.	GA
Towanda Gooden	Cobb, Georgia	Cobbworks	GA
Kenneth A. Williams	East Central Georgia Consortium	Thomson Construction Supply Co., Inc.	GA
Kevin R. Willoughby	Middle Georgia Workforce Investment Board	Unimin Corporation	GA
Priscilla Obi	Northeast Ga. Regional Commission	A Heavens Heights Medical Training Corp	GA
Rita Lawler	Northwest Georgia Regional Commission WIA	Mercy Senior Care	GA
Lesia Lambert	Northwest Georgia Workforce Investment Act Program	Northwest Georgia Regional Commission	GA
Rima Sullivan	WIA	Northeast Georgia Regional Commission	GA
John Bramlett	Work Ready	Technical Colleges of Georgia	GA
Roberta Lovett	Workforce Development Director	Southern Georgia Regional Commission	GA

Michele Petee	Regional Commission, Georgia	Athens Technical College	GA
Elroy Larimore	Georgia Mountains WIB (GA)	Hart Co industrial Authority	GA
Steve Williams	Middle Georgia Consortium - WIB (GA)	State Bank & Trust	GA
Rodney J. Thompson	Southwest GA WIB Blakey (GA)	Thompson Motor Company	GA
Steve Hall	Polk County Workforce Investment Board (FL)	IUPAT DC 78 - Painters and Allied Trades	GL
Carol Reimann	Advisory Board Member	Maui Hotel & Lodging Association	HI
Diane Zachary	Business Member	Kauai Planning & Action Alliance	HI
Debra Chuckas	Kauai County Workforce Board	Macy's	HI
Steven J. Lupkes	Kauai county, Hawaii	BASF Plant Science	HI
Kurt Akamine	Kauai Workforce Investment Board	Garden Isle Healthcare and Rehab Center	HI
Sheryl Grady	Kauai Workforce Investment Board	Kauai Island Utility Cooperative	HI
Jonathan J. Chun	Kauai Workforce Investment Board (HI)	Belles Graham Proudfoot Wilson & Chun, LLP	HI
Michael Machado	Kauai Workforce Investment Board (HI)	ILWU Local 142, Kauai Division	HI
Tricia L. K. Yamashita	Kauai Workforce Investment Board Member	Girl Scouts of Hawaii	HI
Ike Cockett	Kauai Workforce Investment Board (HI)	Courtyard by Marriott Kauai	HI
Victoria Bañales	Director of Continuing Education	Idaho State University, Pocatello, ID	ID
Judy Boyce	Idaho Workforce Investment Act	North Idaho College	ID
Joanne Thomas	CareerLink (WIB 16) in Bloomington, Illinois	Central Illinois Agency on Aging, Inc.	IL
Beverly L. Powell	CWDP (IL)	Workforce Investment Solutions	IL
Denisa McReynolds	Illinois-LWIA7	POET-President's Office of Employment and Training	IL

Tim Dempsey	Lake County II WIB (IL)	Dempsey Financial Services	IL
Rickie C Doty	LWIA # 16 Illinois	United Auto Workers	IL
Pamela A. Westerdahl	LWIA #16 - Illinois	Heartland Community College	IL
Michael J. Donnelly	LWIA #16- Illinois	Project Oz	IL
Steve Timmermann	LWIA #16-Illinois	First Farmers State Bank	IL
GARY R GEMBERLING	LWIA #16-ILLINOIS	GEMBERLING & ASSOCIATES CPAs	IL
Larry Crouch Jr.	LWIA #16-Illinois	Monge, Crouch & Mahoney, Inc.	IL
Kim Holman-Short	LWIA#16-Illinois	Housing Authority of the City of Bloomington	IL
Lorrice Denham-Knighten	LWIA7 Illinois	Presidents Office of Employment Training	IL
Jeffrey Rodriguez	Northern Cook County, Youth Jobs: Chair	UPS	IL
John R. Vogt	Vermilion County - Accountability Comm. Chair (IL)	Fiberteq, LLC	IL
Patricia Standwich	Vermilion County Investment Board	Viscofan USA, Inc.	IL
Jeff Fauver	Vermilion County Workforce Investment Board	Catlin Bank	IL
Pedro Enriquez	WIB # 2 Board Member	Illinois Migrant Council	IL
John B Klaus	Workforce Board of Northern Cook County	The Agora Group	IL
Sue Dexter	Workforce Investment Board of Western Illinois LWA14	McDonough District Hospital	IL
Kala P Waran	Workforce Investment Board (IL)	DeKalb Workforce Development	IL
Steve Timmermann	LWIA #16-Illinois (IL)	First Farmers State Bank Greater Owensboro Economic Development Corporation	IL
Becky McCubbins	Central Illinois WIB (IL)	Jane Addams Resource Corporation	IL
Regan Brewer	Chicago WIB (IL)	Jane Addams Resource Corporation	IL

Melissa Bara	Central Illinois WIB (IL)	Methodist College of Nursing	IL
Glen R. Todd	River Valley WIB (IL)	New York Blower Company	IL
Connie Wessels, RN	LWA 14: chair of Youth Council Galesburg (IL)	OSF St. Mary Medical Center	IL
Rickie C Doty	LWIA # 16 Illinois (IL)	United Auto Workers	IL
Ed Carpenter	Indiana Balance of State WIB Member & Region 10 Regional Workforce Board Chair	GKN Sinter Metals	IN
Beth Blasdel	Indiana Region 9 Workforce Board	Blasdel Enterprises, Inc.	IN
Gerald Scheff, Past Chairperson	Northwest Indiana Workforce Board	Emerson Industrial Automation	IN
Adam Collins	Northwest Indiana Workforce Board	Kruz, Inc.	IN
Hank Jacoby	Region 10 Indiana Work One Workforce Development	Kimball Office	IN
Douglas E. Waters	Region 7 Indiana Workforce Investment Board	Waters & Associates	IN
Mary Caye Pfister	Workforce Network Region 7, Indiana	Pfister & Company, Inc.	IN
Clarence Hulse	Region 10 Indiana	City of Jeffersonville	IN
James W. Bye	Region 10, Indiana	Community First Bank, a division of First Savings Bank, FSB	IN
Gerald Scheff, Past Chairperson	Northwest Indiana Workforce Board (IN)	Emerson Industrial Automation	IN
Adam Collins	Northwest Indiana Workforce Board (IN)	Kruz, Inc.	IN
Mary Caye Pfister	Workforce Network Region 7, Indiana (IN)	Pfister & Company, Inc. Western KS Manufacturing Association	IN
Eddie Estes	LWIA #1 WIB	Association	KS
Scott Anglemyer	Workforce Partnership (Kansas Area III)	Workforce Partnership	KS
Karen A. Griffin, SPHR	Workforce Partnership, Local Area III, Kansas	Eskridge, Inc.	KS
Eddie D. Estes	Western Kansas WIB (KS)	WKMA, INC.	KS

Rickie Huntsman	Barren River	Farmers National Bank	KY
Robert P. Bennett	Barren River	Yahagi American Molding Inc.	KY
Rick Bagwell	Barren River Area Development District	Halton Company	KY
Virginia Davis	Barren River Area Development District	Hart County Chamber of Commerce	KY
Amy Walker	Barren River Area Development District, Kentucky	ACK Controls Inc.	KY
Randy Sexton	Barren River Area Workforce Board	DaRanco Inc	KY
Deborah Lyles	Barren River Workforce Investment Board	Quad/Graphics	KY
Larry Jagers	Board Member	Ky State AFL-CIO	KY
Dave Phillips	Green River Area Development District WIB (KY)	Tyson Foods, Inc.	KY
Rob Jordan	Kentuckianaworks	KCTCS	KY
Vickie Hutcheson	WIB Board Barren River	KY Farmworker Programs, Inc.	KY
Randy Sexton	Barren River Area Workforce Board (KY)	DaRanco Inc	KY
Ronald Joe Cox	Green River Workforce Investment Board Owensboro (KY)	Daymar College	KY
N. E. Reed	Barren River WIB (KY)	Edmonson County Fiscal Court	KY
Rickie Huntsman	Barren River WIB (KY)	Farmers National Bank	KY
Eldon Renaud	Barren River Area Development District (KY)	General Motors/United Auto Workers	KY
Nicholas Brake, Ph.D.	Green River WIB, (KY)	Greater Owensboro Economic Development Corp.	KY
Rick Bagwell	Barren River Area Development District (KY)	Halton Company	KY
Virginia Davis	Barren River Area Development District (KY)	Hart County Chamber of Commerce	KY
Jay Ingram	Barren River WIB (KY)	Ingram Brothers, LLC	KY

Vickie Hutcheson	WIB Board Barren River (KY)	KY Farmworker Programs, Inc.	KY
Larry Jagers	Board Member	Ky State AFL-CIO	KY
Randall Curry	Barren River WIB (KY)	Mayor of Horse Cave	KY
Robert S. Smith	Barren River WIB (KY)	S & M Construction	KY
Lee McBrayer	Barren River WIB (KY)	Scott, Murphy & Daniel, LLC.	KY
Richie Sanders	Barren River WIB (KY)	Scottsville-Allen Co. IDA	KY
Mildred F. Cox	Green River WIB, (KY)	Whirlpool Corp.	KY
Samuel Gerace	Louisiana Local Workforce Investment Area Twenty	Gerace Auto Parts	LA
Joe Bevilacqua	Merrimack Valley WIB	Merrimack Valley Chamber of Commerce	MA
William J. Tinit	North Shore Workforce Investment Board (MA)	Tinti, Quinn, Grover & Frey, P.C.	MA
James Bellstrom	Ohio WIB 17	Boston Retail Products	MA
Lori Golino	Montgomery County (MD) Workforce Investment Board	Social & Scientific Systems Inc,	MD
Austin J. Slater, Jr.	Southern Maryland WIB	SMECO	MD
Royce L. Sampson	Upper Shore WIB Maryland	Royce Enterprises	MD
David Cox	WIA Case Manager	Mayland Community College	MD
Rachel Rau		Johns Hopkins Hospital	MD
Joanne Miller, LSW, CSA, CMC	Coastal Counties WFDB Board Member	ASK...for Home Care	ME
Peter Kellman	Coastal Counties WIB - Maine	Maine AFL-CIO	ME
Denise Griffin	Coastal Counties Workforce Board (Maine)	The First, N.A.	ME
Cathy Cole	Coastal Counties Workforce Development Board	Lincoln County Healthcare	ME

George Fournier	Capitol Workforce Partners (ME)	Acme Monaco Corporation	ME
Tom Batchelder	Chair of Central Area Michigan Works! Consortium WIB	Tom Batchelder & Associates, PLLC	MI
Cheryl Carrier	NAWB Board Member	Ford Motor Fund	MI
Edith Kerr	Northeast Michigan	Northeast Michigan Consortium	MI
Helen Leithauser	Northeast Michigan Consortium	North Central Michigan College	MI
James Videto	SCMW Consortium Board Cairman	Jackson County Commissioner, Videto Vista Farms.	MI
Karen Farr	SCMW! Workforce Development Board Member	Eaton Corporation	MI
Charlotte Charlie Mahoney	SEMCA - Michigan	Four-M Associates	MI
Lynn Matzen	South Central Michigan Works!	Matrix Systems LLC	MI
Vicky Kropp	Northeast Michigan Workforce Development Board (MI)	Alpena Community College	MI
Kim Shearer	BCVB Michigan Works!	BCVB Michigan Works!	MI
DAVID R. ADAMS	NORTHWEST MICHIGAN WORKFORCE BOARD (MI)	BEAR LAKE ACE LUMBER AND SUPPLY	MI
Gayle Orange	Kent & Allegan Workforce Dev. Board - Michigan Works	Camp Fire USA West Michigan Council	MI
Julie Menard	EUP Michigan Works	Consolidate Community School Services Consolidated Community School Services	MI
Sharon Houghton	Eastern Upper Peninsula		MI
Nancy Ayres	Kent / Allegan Michigan	Flexco	MI
Sandra Lancaster	ACSET, Grand Rapids, MI	Grand Rapids Community College	MI
Emily Schoen	Kent County	Grand Rapids Community College Grand Rapids Community College/Kent Michigan Works	MI
Karen Riggs	Washtenow WIB (MI)		MI

Melissa Lancaster	Michigan Works! Kent and Allegan Counties	Grand Rapids Community College/Michigan Works!	MI
Carole Williams	Michigan Works!The Job Force Board (MI)	Grand Valley State University	MI
Don Eichberger	Northwest Michigan Workforce Board	H. W. Jencks, Inc.	MI
Daniel TenHooopen	Board Member, ASCET Kent-Allegan County, Michigan	Heart of West Michigan United Way	MI
Art Jeannot	Northwest Michigan Workforce Board (MI)	Jeannot Development Company	MI
Nathan Kalchik	Northwest Michigan Workforce Board (MI)	Kal Excavating	MI
Christine Pettibone	Northwest MI Workforce Board (MI)	Kalkaska Screw Products, Inc.	MI
Michael B. Scruggs	Washtenow WIB (MI)	Kent County Black Caucus	MI
Mike Tucker	Michigan Works Berrien-Cass-Van Buren (MI)	Lake Michigan College	MI
Lilia Gallardo	Michigan Works! Berrien Cass Van Buren WIB (MI)	Lake Michigan College	MI
LEROY L. REED	Capitol Area WIB (MI)	LEROY REED PRODUCTIONS	MI
M.J. Morell	Michigan Works! The Job Force Board	Lucent Tech Martin Marietta Magnesia Specialties LLC	MI
Joanne Dunbar	Northwest Michigan Workforce Board (MI)		MI
Wendy Berry	Washtenow WIB (MI)	Michigan Works!	MI
Kurt Ries	Northeast Michigan Workforce Development Board (MI)	Northeast Michigan Consortium President & CEO, Nursing Care Professionals	MI
Birthele Archie	Capitol Area WIB (MI)		MI
Robert Micheau	Michigan Works! The Job Force Board (MI)	Six county Employment Alliance	MI
Jo Ann Alexander	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Laura McLaurin	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI

Amy Fleury	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Sarah Micheau	Michigan Works! The Job Force Board (MI)	Six county Employment Alliance	MI
Christian Boden	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Lance Wolfe	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Michelle K. Meitner	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Rose M. Wilbur	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Lisa Broman	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Vern Westendorf	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Laurie Sovey	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Sarah Franks	Michigan Works! The job force board (MI)	Six county employment alliance	MI
Tracy Lauerman	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Troy M. Sovey	Michigan Works! The Job Force Board (MI)	Six County Employment Alliance	MI
Robert Eslinger	Michigan Works! The Job Force Board	Six County Employment Alliance	MI
Chris Lopac	Michigan Works! - The Job Force Board	Six County Employment Alliance	MI
Kathy Dollhopf	MichiganWorks the JobForce Board	Six County Employment Alliance	MI
Jennifer Spaulding	Michigan Works! the Job Force Board	Six County Employment Alliance	MI
Julie Nylund	Michigan Works! The Job Force Board	Six County Employment Alliance	MI
Angela Lundberg	Michigan Works! The Job Force Board	Six County Employment Alliance	MI
Carrie Zeleznik	The Job Force Board	Six County Employment Alliance	MI
Hope Rudden	Michigan Works the Job Force Board	Six County Employment Alliance	MI

Mary Lynch	Eastern Upper Peninsula WIB (MI)	Soo Co-op Credit Union	MI
David J. Smith	Kent/Allegan County WDB (MI)	The Employers' Association	MI
Jane Searles	Tri County LWIB Penobscot, Piscataquis, Hancock County	Women, Work & Community	MI
Mark Netzinger	Central Minnesota Workforce Investment Board	Physical Therapy Consultants, Inc.	MN
Cathy Weik	Dakota-Scott WIB (MN)	Stratis health	MN
Rebekka Wahala	Minnesota	Amherst H. Wilder Foundation	MN
Shonit Jain	Resource-MN	EYETOGRAPHY	MN
Libby Pegg	MN WFC - Minneapolis South (MN)	Benchmark Learning Jack's Sporting Goods/Voyager Marine Manufacturing	MN
James R. Dickerson	Central Region (19 counties) Missouri	Sheet Metal Workers Local 36	MO
Russell Unger	Central Region Workforce Investment Board, Inc.	MISSOURI CENTRAL REGION WIB	MO
TINA SOOTER	EXECUTIVE COMMITTEE BOARD MEMBER	Children's Mercy Hospital	MO
Kathy Hortenstine	Full Employment Council (MO)	Missouri Training Institute	MO
Dewey W. Thompson	Missouri Central Region Workforce Investment Board	American Indian Council, Kansas City, MO	MO
Christine Molle	WIA Section 166, Indian and Native American Employment and Training Programs		
John C. Vaughn	Central Region in Missouri (MO)	Business Member	MO
Laura Maas	Central Region WIB Board Member Rolla (MO)	Herget Bank, N.A.	MO
Mary G. Hughes	Central Region WIB Rolla (MO)	Hughes Brothers Sales Member - slot is	MO
Rev. Mr. Earl R. Horsefield	Central Region Missouri Workforce Investment Board	Community Based Organization	MO
Tina Sooter	Central Region WIB Board Member Rolla (MO)	Mid-America Bank	MO
Russell Unger	Central Region Workforce Investment Board, Inc.(MO)	Sheet Metal Workers Local 36	MO

Nancy Montgomery	Central Region WIB Board Member Rolla (MO)	Tacony Mfg	MO
David Bledsoe	Mississippi Partnership	Northwest MS Community College	MS
Brandon S Suga	Mississippi Partnership	Roll Form Group (U.S.) Inc.	MS
William K. Smith	Northwest Mississippi Workforce Development Department	Northwest Mississippi Community College	MS
Gary Mills	Three Rivers	Mississippi Dept.of Employment Security	MS
Jason Mattox	Three Rivers Planning and Development District	Northeast MS Community College	MS
Geneva Hodge	Three Rivers/MS Partnership	Mississippi Department of Employment Security	MS
ROSA I. ORTIZ VAZQUEZ	LOCAL WIB	CONSORCIO DE LA MONTAÑA	MT
Clarence A. Bender	Board of Director member Upper coastal plains Council of governments	Town Commissioner of Castalia N.C.	NC
David McCune Jr.	Cape Fear Workforce Development Board	McCune Technology	NC
Bob VanGorden, Board Chair	Centralina Workforce Development (7 counties of the Greater Charlotte NC Region)	BVG CONSULTING	NC
Janet Hudson	Centralina Workforce Development Board	Brooks Food Group Charlotte Regional Economic & Workforce Recovery Initiative	NC
Steve Partridge	Charlotte Mecklenburg WDB		NC
Robert Fish	Charlotte/Mechlenburg Workforce Development Board	Bankston Partners Lend Lease - Project Management & Construction	NC
Doug Rowe	Charlotte-Mecklenburg WDB, Charlotte, NC		NC
Jimmy Chancey	Charlotte-Mecklenburg, NC	Charlotte-Mecklenburg Schools	NC
Judy Darden	East Carolina Workforce Development Board (NC)	Darden Bookkeeping Service Inc	NC
Michael Kraszeski	East Carolina Workforce Development Board (NC)	Veneer Technologies, Inc.	NC
Teri Campbell	Eastern Carolina Workforce Development Board	Craven County Schools	NC
Ellen Sink	Eastern Carolina Workforce Development Board	Eastern Carolina Workforce Development	NC

		Board	
Duane Clark	Eastern Carolina Workforce Development Board	Greene Lamp	NC
Melinda Kornegay	Eastern Carolina Workforce Development Board	Lenoir Community College	NC
Eric Cedars	Eastern Carolina Workforce Development Board	Pamlico Community College	NC
Shastine Lee	Eastern Carolina Workforce Development Board (NC)	Greene County Schools	NC
Fletcher Bizzell	Eastern Carolina WorkForce Development Board, Inc	Croscill/ExCell/Glenoit	NC
Wanda Glosson	Eastern Carolina Workforce Development Board, Inc.	Carteret Community College	NC
Bruce Parson	Eastern Region WFDB New Bern N C	Lenoir Community College Kinston N C	NC
Ms. Lorraine Poe	Mountain Area Workforce Development Board (NC)	HR Private Consulting	NC
Mr. Robert Kendrick	Mountain Area Workforce Development Board (NC)	Kendrick & Associates	NC
Mr. William R. Ragland	Mountain Area Workforce Development Board (NC)	Steve Owens and Associates Realtors	NC
William Mance	Mountain Area Workforce Development Board (North Carolina)	Mission Hospitals	NC
Faith Mallette	Northeastern Workforce Development Board	Albemarle Commission	NC
Dale Hedrick	Owner / Small Business (NC)	Blue Ridge Solar	NC
Nancy Hobbs	Turning Point WDB	Edgecombe Community College	NC
William Wooten	Turning Point WDB	Edgecombe Community College	NC
Randi Dikeman	Turning Point Workforce Development Board	Edgecombe Community College	NC
Eric Evans	Turning Point Workforce Development Board	Edgecombe County Manager's Office	NC
Mr. George Dudikoff	Workforce Invesment Board of Solano County	Dudikoff Insurance Agency	NC
Paula Hazlewood	Board Member - Omaha	Gateway Development Corporation	NE

James L. Linderholm	Chair, Greater Lincoln (NE) Workforce Investment Board	Alfred Benesch & Company	NE
Gerry Tyler	Greater Lincoln Nebraska WIB	Tyler Graphic Services, Inc.	NE
Cherisa Price-Wells	Greater Lincoln Workforce Board Nebraska	ResCare Workforce Services	NE
Angela Caldwell	Greater Lincoln Workforce Investment Board - Lincoln, NE	Manpower	NE
James Winner	Heartland Workforce Services	Infogroup, Inc.	NE
Tom Whalen	Heartland Workforce Solutions	BlueCross BlueShield of Nebraska	NE
Amy Christensen	Heartland Workforce Solutions Board - Omaha, NE	Mutual of Omaha Insurance Company	NE
Thomas H. Warren, Sr.	Heartland Workforce Solutions, Inc - Omaha, NE	Urban League of Nebraska	NE
Rose Walz	Heartland Workforce Solutions, Omaha NE	Hilton Omaha	NE
Tracie Sayre	Land of Lincoln Workforce Investment Board	Hospital Sisters Health System	NE
phinis v hundley	lincoln trail	barnes distribution	NE
Carol Swigart	Lincoln Workforce Investment Board	Hillaero Modification Center	NE
Tammie Burns	Lincoln/Lancaster County NE WIB	Duncan Aviation, Inc.	NE
Wendy Boyer	Tri-County Workforce Investment Board, Omaha, NE	Greater Omaha Chamber	NE
Tom Whalen	Heartland Workforce Solutions (NE)	BlueCross BlueShield of Nebraska	NE
Paula Hazlewood	Board Member - Omaha (NE)	Gateway Development Corporation	NE
Wendy Boyer	Tri-County Workforce Investment Board, Omaha, (NE)	Greater Omaha Chamber	NE
Rose Walz	Heartland Workforce Solutions, Omaha (NE)	Hilton Omaha	NE
James Winner	Heartland Workforce Services Omaha (NE)	Infogroup, Inc.	NE
Richard E. Harding	Lincoln-Lancaster County Board, Lincoln, (NE).	MJK, LLC	NE

Amy Christensen	Heartland Workforce Solutions Board - Omaha, (NE)	Mutual of Omaha Insurance Company	NE
Cherisa Price-Wells	Greater Lincoln Workforce Board (NE)	ResCare Workforce Services	NE
Thomas H. Warren, Sr.	Heartland Workforce Solutions, Inc - Omaha, (NE)	Urban League of Nebraska	NE
Dante Rieti	Cumberland/Salem New Jersey	Cumberland County	NJ
Monica Nydick	Monmouth County N WIB (NJ)	Waters & Sims	NJ
Stephanie C. Hanosh,	Workforce Connection of Central New Mexico	Hanosh Resources, President & CEO	NM
Patrick W. Newman	Central Area Workforce Development Board-(NM)	Mid-Region Council of Governments	NM
Sheri Mooney	Buffalo & Erie County WIB (NY)	Damon Morey LLP	NY
Timothy R. Reidy	Buffalo and Erie County Workforce Investment Board, Inc.	Wire Electric	NY
Charles G. Jones Jr.	Buffalo and Erie County Workforce Investment Board, Inc.	Wittburn Enterprises, Inc.	NY
Linda Bailey-Stegall	Capitol Area WIB (NY)	Hughes Memorial Foundation	NY
Michael T.W. Hendrix	Cattaraugus-Allegany Workforce Investment Board	Both, Branch & Hendrix, Inc.	NY
Harold E. Smith	Finger Lakes	Halco Plumbing and Heating	NY
Robert Miniger	Orange County New York WIB	Balchem Corp.	NY
Dave Wheeler	Area 11 - Chairman (OH)	AEP Ohio	OH
Quentin L. McCorvey Sr.	Chair, Cleveland/Cuyahoga County (Ohio Workforce Area 3)	KeyBank	OH
susan muha	Cleveland Ohio	Cuyahoga Community College	OH
Alan Longstreth	Employment Source Ohio SDA 6	Morton Salt	OH
John Joy	Fayette and Clinton County OHIO WIA Board Member	Southern State Community College	OH
Ron Rothenbuhler	Lucas County WIB(OH)	United Brotherhood of Carpenters	OH

Greg Carney	Mahoning/Columbiana County, OH	Carney-McNicholas Inc	OH
Bryan Higgins	Ohio Area 17 Business Member	Team Office Technologies	OH
Audrey C. Null	Ohio Workforce Investment Board Member- Area 17	Salem Area chamber of Commerce	OH
Daniel Sack	Workforce One Investment Board of Southwest Ohio	Omnicom Solutions Group	OH
James Bellstrom	Ohio WIB 17 (OH)	Boston Retail Products	OH
Greg Carney	Mahoning/Columbiana County, (OH)	Carney-McNicholas Inc	OH
Audrey C. Null	Ohio Workforce Investment Board Member- Area 17 OH)	Salem Area Chamber of Commerce	OH
Bryan Higgins	Ohio Area 17 Business Member (OH)	Team Office Technologies	OH
Gloria Williams	Central Oklahoma	CoorsTek	OK
Gilbert Hall	Chairman-Eastern Workforce Investment Board-OK	Oklahoma Gas & Electric Company	OK
Tonya Russell	COWIB Oklahoma City/Canadian County	Youth & Family Services, Inc.	OK
Cathey Bowyer	North Central Oklahoma	Bowyer Painting	OK
Joe Payne	North Central Oklahoma	MerCruiser	OK
Kirk Huff	North Central Oklahoma	Youth & Family Services, Inc.	OK
Katherine Long	North Central Oklahoma WIB	Ponca City Development Authority	OK
Wanda Harley	North Central/Enid Oklahoma	OESC	OK
John Clemmons	Shawnee Oklahoma	lean2 Traning LLC Pauls Valley Housing Associates dba ChapelRidge Apartments	OK
Lynn Cunnigahm	Southern Oklahoma Work Force	Big Lots Distribution Center Durant, OK	OK
Donnalla L. Miller	Southern Vice Chair		OK

Kristi L. Lemmond	Southern Workforce Board	Big five Community Services, Inc.	OK
Dr. Rick Wetherill	Southern Workforce Board -- Oklahoma	East Central University	OK
Patty Mink	Southern Workforce Investment Board - Oklahoma	Choctaw Nation of Oklahoma	OK
Chuck Blehm	Southern Workforce Investment Board of Oklahoma	Michelin North America	OK
Samantha Hines		Oklahoma State University	OK
Ed Phillips	President ...Southwest Workforce Board (OK)	McDonald's	OK
Samantha Hines	Central Oklahoma WIB Still water (OK)	Oklahoma State University	OK
Barbara Ewert	North Central Oklahoma	Workforce OK Willow Creek Valley	OK
Sheryll Bates	Board Member - Private sector (Economic Development)	Economic Development Group	OR
Commissioner Cheryl Hukill	Klamath County representative on the Board	Klamath County	OR
Archie Linman	Klamath, Lake County RWIB Chair	Klamath Basin Equip.	OR
Rosie Pryor	Lane Workforce Network, Eugene, Oregon	Oregon Community Credit Union	OR
John Lively	Lane Workforce Partnership	CAWOOD	OR
Matt Parsons	Lane Workforce Partnership	Commonwealth Financial	OR
Sandra J. Gerber	Lane Workforce Partnership, Eugene, Oregon	Twin Rivers Plumbing, Inc.	OR
Arthur J. Hill	Oregon Workforce Alliance	Argo Resources	OR
Deborah Hayward	Oregon Workforce Alliance	Community Action Program East Central Oregon	OR
Julia Withers-Lyons	Oregon Workforce Alliance	Confederated Tribes of the Umatilla Indian Reservation	OR
Kris Latimer	Oregon Workforce Alliance	RAM Trucking	OR
Bob Schroth	Oregon Workforce Alliance	Schroth Financial Services	OR

Kathryn Gover-Shaw	Oregon Workforce Alliance and Oregon Region 13 Worksource Oregon Board	Behlen Mfg. Co.	OR
Patrick Struthers	Oregon Workforce Association	Pat Struthers Consulting Community Action Program of East Central Oregon	OR
Viki L. Desler	Oregon: Region 12		OR
Deborah Beeson	RWIB Chair/ OWA Board (OR)	Community Bank	OR
Shannon Jensen	The Oregon Consortium/Oregon Workforce Alliance	Training & Employment Consortium	OR
Elizabeth Moore	The Oregon Consortium/Oregon Workforce Alliance	Training and Employment Consortium	OR
Randy Scruggs	TOC/OWA	MCMC	OR
Darrel Wilson	TOC/OWA and Central Oregon Workforce Coordinating Council	Opportunity Foundation of Central Oregon	OR
Larisa Felty	Work Systems Inc.	Portland Community College	OR
Joyce Miller	Business Member of WIB	KeyStone Research Corporation	PA
Anna Wilson	Caseworker	Council of Three Rivers American Indian Center, Inc.	PA
Jamie Aurand	Central PA - CPWDC	Susque-View Home, Inc.	PA
Russell C Reitz	Central Pa Workforce Development Corp	State Farm Insurance Companies	PA
Rodney John	Lancaster Pennsylvania WIB	Council of Three Rivers American Indian Center, Inc.	PA
Robert R. Spaulding	North West Pennsylvania WIB	Spaulding Group	PA
Kenneth E. Smith	Northwest PA	Second Foundation Consulting Corporation	PA
Dr. William Shields	Northwest PA WIB member	Univ. of Pittsburgh at Titusville, PA	PA
Michael Chevalier	NW PA	Preferred Systems, Inc.	PA
Michael Chevalier	NW PA	Preferred Systems, Inc.	PA

Felix Folletti	NWPA WIB	Greater Pa Regional Council of Carpenters	PA
Dean B Girton	Past Chair, Central PA Workforce Board	Girton Manufacturing Co., Inc	PA
Patrick J. Eiding	Philadelphia WIB (PA)	Philadelphia AFL-CIO	PA
Shelley Mastrella	South Central WIB (PA)	Hershey Entertainment & Resorts	PA
L. Michael Ross	Southcentral Workforce Investment Board (PA)	Franklin County Area Development Corporation	PA
Neil Bassi	Southwest Corner (Pennsylvania)	Charleroi Federal Bank	PA
David F. VanAmburg	Treasurer, Northwest Pennsylvania Workforce Investment Board	MutualGravity, Inc. & VanAmburg Group, Inc.	PA
Reba B. Johnson	TriCounty WIB, PA	Ambulance Service Management Corporation	PA
Dale R. McBrier	Vice Chair Northwest Pa. WIB	Lyndal Enterprises	PA
Fatima Ball	WIA Counselor	Council of Three Rivers American Indian Ctr	PA
Kenneth E. Smith	Northwest PA WIB (PA)	Second Foundation Consulting Corporation	PA
Steven H. Kitchin, Chairman	Workforce Partnership of Greater Rhode Island	New England Institute of Technology	RI
Gary McGuckin	Trident WIB (SC)	Carolina One Real Estate	SC
Lou DuBon	Trident Workforce Investment Board	Agfa Materials Corporation, USA	SC
Janet Cappellini	Trident Workforce Investment Board	Alternative Staffing, Inc.	SC
Deborah Loyal	Trident Workforce Investment Board	Loyalty Business Solutions LLC	SC
Danny Allen	Upstate WIB (SC)	Allen Law Offices	SC
Terry Williams	Area 12	Northwest Tennessee Workforce Board	TN
Gladys Anderson	Board Member	Patients' Choice Medical Center of Erin, TN	TN
Joyce Brinkmeyer	Chattanooga	Chattanooga State Community College	TN

Diane Redmond	Local Workforce Investment Area Six	Workforce Solutions/Tulahoma TN	TN
Kelly Cherry	LWA #11 (TN)	PML, Inc.	TN
Jack Irby	LWIA # 9 in Nashville, TN	TN AFLCIO Technical Assistance	TN
Steve Williams	LWIA #04 Area (TN)	Johnson-Williams Funeral Home	TN
Patricia R. White	LWIA #9 (TN)	Tennessee AFL-CIO	TN
Libby Wickersham	LWIA 12	Northwest TN Workforce Board	TN
Thomas Ary	LWIA 12 TN)	United Steelworkers Local 878L	TN
Martha J Trammell	Member, Middle TN Workforce Investment Board (TN Area 9)	Nissan North America	TN
Robert Grimes	Middle Tennessee Workforce Board	Turner Universal Construction Company	TN
Nancy Eisenbrandt	Middle Tennessee Workforce Investment Board	Nashville Area Chamber of Commerce	TN
Lynsey Johnston	Montgomery County, TN	Hendrickson International	TN
Gail Phillips	Nashville Career Advancement Center - Nashville, TN	Nashville State Community College	TN
Roger Farley	Nashville Tennessee, Board Member	Safety One Strategies	TN
Rick Daugherty	North Tennessee Workforce Board	DuPont	TN
Mariyn Bristol	North Tennessee Workforce Board	RE/MAX Choice Properties	TN
Lionel Senseney	North Tennessee Workforce Board	SENSENEY ENTERPRISES	TN
Marla W. Rye	North Tennessee Workforce Board	Workforce Essentials, Inc.	TN
Albert Bennett	North Tn. Workforce Bd. (Finance Committee)	Gallatin Mini Storage Gallatin, Tn. 37066	TN
Tim Wright	Tennessee Area 6 WIB Member	International Association of Machinist and Aerospace Workers	TN

Jena DeMars	Tennessee Board of Regents	Tennessee Technology Center	TN
Lorraine Carter	Tennessee LWIA 6	Workforce Solutions	TN
Dianne Fletcher	Tennessee Technology Center-Hartsville Advisory Board	Joint Economic & Community Dev. Board of Wilson County	TN
Craig S. Butler	TN STATE WIA Board and the TN LWIA11 Board	FirstBank & Bow Properties, LLC	TN
Mae W. Perry	TN WIA 7,8, & 9	Tennessee Technology Center at Hartsville	TN
james a mc call	ttc hartsville edu	Tennessee Technology Center	TN
Lisa Bradford	West Tennessee Workforce Board, Jackson TN	Southwest Human Resource Agency	TN
Wilma L. Capps	WIA (TN)	Dyersburg State Community College	TN
Debby Rupe	WIA 4	Tennessee Technology Center @ Crossville	TN
Nita Darlene Winningham	WIA4	Tennessee Technology Center at Crossville	TN
Leslie Coleman	WIN - Memphis, TN	FedEx	TN
Steve Strong	WiN Memphis, TN	Riviana Foods, Inc	TN
Marybeth Bott	Worforce Essentials, Clarksville, TN	Brazeway, Inc.	TN
Frances Almany	Workforce One (TN)	Almany Realtors	TN
Tim Manley	Abilene, Texas	Wind Clean Corp	TX
Sarah Barnes	Alamo	New Horizons	TX
Robert Craigue	Beaumont, Texas	Lamar Institute of Technology	TX
Tracy Bristol	Board Chair - Workforce Solutions Upper Rio Grande TX	Marcus, Fairall, Bristol + Co. PLLC	TX
Teodoro Taveras	Board Chair, Heart of Texas Workforce Development Board, Inc.	Insurance Licensing Services of America, Inc.	TX
Larry Anglin	Chairman, Workforce Solutions of Central Texas	htcomp.net, Inc.	TX

Ginger Mullins Martinez	Gulf Coast	Lone Star College	TX
Michelle Greer	Gulf Coast	Lone Star College System	TX
Mike Paulsen	Gulf Coast Workforce Board	TechSkills	TX
John Fry	Heart of Texas Workforce Board	NRG Energy	TX
J. W. Reed	North Central Texas	Lockheed Martin	TX
James F. Stegall	North Central Texas Workforce Development Board	C & S Dairy Holdings	TX
Jason Mahoney	Northcentral Dallas County	TechSkills	TX
Lyn Fite	Permian Basin Board Chair Midland/Odessa Texas	Fite Fire and Safety	TX
Victoria Powell	Tarrant County Workforce Solutions Board	B.R. Powell & Associates, PC	TX
Elizabeth Conyer	Texas HGAC	HHSC state of Texas	TX
Cliff Anstead	Texas Workforce Commission (Dallas - 06 LWDA)	Texas Veterans Commission	TX
Loretta Priest	Upper Rio Grande	YWCA El Paso del Norte	TX
Leo A. Duran, Sr.	Upper Rio Grande Workforce Development Board Member	L & J Café, Inc.	TX
Dr. Gilda D. Morales	Upper Rio Grande Workforce Solutions	Southwest Wellness & Fitness	TX
LUIS T. PANIAGUA	Upper Rio Grande/El Paso	Texas Veterans Commission	TX
Mark C. Guthrie	Vice Chair, Gulf Coast Workforce Board, Texas	Winstead PC	TX
Steve Cunningham	West Central Texas Work Force Board	First Financial Bank, Abilene, Tx.	TX
Garvey Jackson, Chairman	Workforce Solutions - Deep East Texas	Axley & Rode LLP	TX
Federico V Garza	Workforce Solutions Cameron	South Texas Management Services	TX
Buddy Puente	Workforce Solutions for Tarrant County	Southwest Office Systems, Inc.	TX

Hilda Simpson	Workforce Solutions for Tarrant County and North Texas and North Central Texas	Workforce Network, Inc. Vickery Meadow Youth Development Foundation	TX
martha stowe Keith Muskrat / Workforce Improvement Committee Chair	Workforce Solutions of Greater Dallas	Byrne Construction Services	TX
Alice C. Andrade	Workforce Solutions of West Central Texas	Communications Workers of America	TX
Patricai Villalobos	Workforce Solutions Upper Rio Grande	barnhart-Taylor, Inc.	TX
Leticia Paez	Workforce Solutions Upper Rio Grande	The University of Texas at El Paso	TX
Julieta Hernandez	Workforce Solutions Upper Rio Grande	Vernin Learnin Center, Corp.	TX
David A. Schauer, Ph.D.	Workforce Solutions Upper Rio Grande, TX - Board Member	UT at El Paso, Inst. for Policy and Economic Development	TX
Diana Rodriguez		Houston Community College	TX
James A. Gillespie	Board Member	Russell County Virginia Board of Supervisors	VA
Howard A. Graves	College counselor working with hundreds of WIA unemployed	Danville (VA) Community College	VA
Regina Al-Jamaan	Danville-Pittsylvania WIB (VA)	Ecomnets Inc.	VA
Sybil Wheatley	Greater Peninsula WIB, VA LWIA 14	W. M. Jordan Company, Inc.	VA
Ron Cornell	Member of Danville/Pittsylvania County Chamber	Global Food Connection	VA
Ruben A. Miranda	Member, WIA Area 1	Serco North America	VA
Rhonda D. Thomas	Member, WIA Area One, Virginia	Serco North America	VA
M. Kate Berger	Pittsylvania County Chamber of Commerce	Southside Paralegal Service	VA
Tina Bessent	Richmond Area , Central Virginia, South Boston area	2-1-1 Va. United Way of Greater Richmond & Petersburg.	VA
Matthew Sheets	Richmond WIB (VA)	Virginia Commonwealth Bank	VA

Buffy Allgood	SCWIB	Southside VA Community College	VA
Delma Wilson	South Central Workforce Center - Charlotte County	Virginia Workforce Center Regin 8	VA
Debra Matney	Southwest Virginia	Clinch Valley Community Action	VA
Sarah Billips	Southwest Virginia Community College	Virginia Community College System	VA
Susan D. Campbell	Southwest Virginia Workforce Investment Board	First Bank & Trust	VA
Lisa A. Huff	Southwest Virginia Workforce Investment Board	First Century Bank	VA
Dennis A Ramey	Virginia Workforce Board Area 1	Pacer Construction Company	VA
Birl Edward Hannah, Jr.	Virginia, SDA 1	Eddie Hannah and Company	VA
D. Callands-Younger	West Piedmont Region 17	Pittsylvania County Sheriff's Dept.	VA
Laurie S. Moran	West Piedmont Workforce Investment Board (VA)	Danville Pittsylvania County Chamber of Commerce (VA)	VA
S Williams	Western Piedmont Council of Governments	Goodwill Industries of Northwest North Carolina Inc.	VA
Thomas Szott	WIA18 Illinois	Danville Area Community College	VA
Richard A. Difede	Virgin islands Workforce Investment Board	Private Sector - manufacturing	VI
Robert Mazur	Bennington County Workforce Development Partnership	SW VT CDC	VT
Lisa Bunch	Benton-Franklin County	URS	WA
Rick Peenstra	Chair, Benton Franklin (WA) WDC	Community First Bank	WA
Peter J Denis - Chair	Olympic Workforce Development Council - Washington State	The Chandler Financial Group, LLC	WA
Dennis Flabetich	South Central Washington Workforce Board	Del Monte Foods	WA
Robert Duron	Spokane WIB - Chair	Coffee Systems, Inc.	WA
Julie Meyer	Spokane WIB - Chair	Providence Health & Services	WA

Eric Hahn	Tacoma-Pierce County Workforce Development Council - WA	General Plastics Mfg. Co.	WA
Dale R. Peinecke	WDC Snohomish County (WA)	Giddens Industries, Inc.	WA
Dawn Harings	Workforce Development Board	Workforce Resource, Inc	WI
Richard Best	West Central Wisconsin Workforce Board (WI)	Workforce Resource, Inc.	WI
John T Schoolcraft	Advisory Board Member	Alpha Natural Resources	
Phil Eberly	ARC Workforce Board member	W.K. Dickson	
Beth DeLaney	Area 10 WIB Chairman (10)	Spherion Staffing Services	
Sandra Woods	Area 12 Workforce Board Member and State Board Member	J. Jerod and Assoc.	
Brittney Walker	Assistant Youth Coordinator	Elgin Community College	
Dottie Karst CPC,CSP	Board Member	Charles Foster Company	
Diana Simmons	Board Member	Fortis Institute	
Daniel L. Shelton, SPHR	Board Member	Foundation HealthCare Affiliates	
Brent Holland	Board Member	Holland Contractors Inc.	
Ruthi Davis	Board Member	Lawndale Chamber of Commerce	
Jerome W. Keating	Board Member	SKS Die Casting & Machining, Inc.	
Rodney J. Thompson	Board Member	Thompson Motor Company	
Evelyn Giddings	Board Member	Umpqua Bank	
Richie Sanders	BRADD	Scottsville-Allen Co. IDA	
Daniel Sack	Chairman	OmniCom Soutions Group, Inc.	
Allen E. Kennedy	Chairman Green River Area Development District	Quality Team Inc	

Sid Isler	Chairman- Santee Lynch Workforce Investment Board	Russell and Jeffcoat Real Estate, Inc.
Marcelina Werne	Cochise County Workforce Development	Horizon Health Care Institute, LLC
Judy Rich	Community College	Chandler-Gilbert Community College
Joseph F. Fleming	Crater Regional Workforce Investment Board	Human Resources Consultant
Nancy Montgomery	CWIB Board Member	Tacony Mfg
Marilyn Gordon	East Central Workforce Investment Board	Workforce Dynamics, Inc.
Brett Helgoe	employment action center	Gittleman Managment
Mary Wauford	Employment Partners	Daymar Institute
Dan Blakely	Instructor for ISO, Lean and Lean Six Sigma, Project Management	Greenville Technical College
Durham White, Jr.	Lumber River WDB, Chair	Southeastern Regional Medical Center
Dave Ezell	LWIA # 16	Schnucks Markets
Vicki Miranda	LWIB 8	Elgin Community College
Cathy Vaughan	Member	Murphy-Brown LLC
Richard Schumann	Member	SAS Inc.
Martha Samples	New River/Mount Rogers WIB, Area 2	RADVA Corporation
Rebecca Allen-Skelton	NWIWB Board Member	Enid News & Eagle
Sherrain Steele	OESC	OESC
Oscar Johnson	OWA	Computerworks
Sheila Semling	OWA private sector member & RWIB chair for Dist.#1	Semlings Pharmacy Inc
Robert Hitt	Pacific Mountain Workforce Board	Toad Hall Cranberry Farms

LeRoy Tipton	Pacific Mountain Workforce Development Council	Grays Harbor Chamber of Commerce
Sallee Beckett Wilson	PADD Office	Lake Barkley State Resort Park
Paulette Fox	Partner	OIC New Britain
James H. Crowell, Jr.	Past Chair and Board Member	Crowell CPA
Tara Rascoe	Pennyrile Area Development District	Hopkinsville Community College
Susan Ngim	Pleasanton EDD	Safeway Inc
Stacey Harmon	PMWDC Board Member	Cardinal FG, Winlock
John Quinn	ProNet	Prime Labeling Systems
Michael a. luna, Major US ARMY (RET.)	PRONET	Veteran
David Miller	Pulaski County Representative	Missouri Ozarks Community Action Inc.
Susan Tudor	Rapides Parish Workforce Investment Board LWIA#61	Christus St. Frances Cabrini Hospital
Mary Taylor	Region 7 - CoChairperson	Freeman Marine Equipment Inc.
Tammy Phillips	Region C	Isothermal Planning and Development Commission
Diane Hodge	Region C WDB	Isothermal Planning & Dev. Commission
Olga Sinichenko	School District	SCUSD
Diana L. Clarke, Ph.D.	Summit-Medina Workforce Development, Chair	Silverwood Associates
Laura Maas	Tazewell County	Herget Bank, N.A.
Jacquelynn Guzman	Training Provider	CleanEdison Inc
John Allen	Turning Point Workforce Development Board	Kaba Ilco Corp
Theresa Peaden	Turning Point Workforce Development Board	Wilson Community College

Jeremy Dull	Turning Point Workforce Development Board, NC	Edgecombe Community College
John Ruffini	USWIB	The Mergis Group
Eric Wright	Western Piedmont Council of Governments	TransTech, Inc.
Jessica Davenport	WIA	Gwinnett County Public Schools
Cathy Ward	WIA	Northeast Community College
Angela Boyd	WIA Education Coordinator	Holmes Community College
Consuelo Guillen-Torres	WIA Job Developer	Elk Grove Unified School District
Diane Clancy	WIA program for youth	Looking Glass
Eddie L. Thomas	WIA Youth Service Provider	SEACBEC
Mildred Henley	WIA/WAEDA	University of Fort Smith
Marsh R. Campbell, Sr, Chairman.	WIA13	Rhomar Community Concepts
Mark A Evans	WIB for Rock Island, Henry, and Mercer Counties	First Midwest Bank
Helen W Collins	Workforce Development WORKFORCE DEVELOPMENT BOARD OF ROCK ISLAND, HENRY AND MERCER COUNTIES - W. I. A. 13	Branch Banking and Trust Company
Mark E. Lohman		LOHMAN BROTHERS
Timothy M. Randall	Workforce Development Coordinantor	Brunswick Community College
Pat Eller	Workforce Development Educator	UA Fort Smith
Gregory M. Gallup	Workforce Essentials	Temple-Inland
Frank Wall	Workforce Investment Council	Plumbing & Mechanical Contractors Association
Victor M. Gonzalez, Jr.	Workforce Solutions of the Coastal Bend	Victor M. Gonzalez Jr. Ins. Agy Inc.
Stacey Wiggins	Youth Coucil Board Member	Bloomington Housing Authority

Jennifer Aguilar		CFLC/ Rubidoux Youth Opportunity Center
Jason Rehbein		Chippewa River Industries, Inc.
Milagros Gonzalez		Connecticut Puerto Rican Forum, Inc.
Michelle Matos		EmpHire
Jovan Elder		JPMorgan Chase
Dru Thomas		KMA Painting,LLC
Linda Nesbitt	Northern Kentucky Workforce Investment Board	(formerly) Northern Kentucky University
Jacob Maas	Michigan Works! Kent and Allegan Counties	ACSET
Ronn Morehead	Member of Workforce Investment Board LWIA #16	AFL-CIO Trades and Labor
Tami McCarty	NCOWIB	CDSA
Maria LaBoy	Board member and Secretary of Cumberland Empowerment Zone	Cumberland/Salem NJ
Todd Morell	Michigan Works! The Job Force Board	Dart Container, Mason MI
brenda trainor	Foothill Workforce Investment Board	FTI
Jamie Rhoads	Green River WIB	GRADD
Catherine Hardesty	Employment Specialist	Green River Area Development District
Susan Nelson	Brockton Area Workforce Investment Board	HarborOne Credit Union
J. Michael Baird	Center of Workforce Innovations board member	Harris Bank
James Stewart	Bussiness	Hutchens Construction
DAVID R MOOD	CET	INDIAN AFFAIRS
Adine Forman	Non-Profit Employment & Training Agency	Jewish Vocational Service - Los Angeles

Cheryl Morell	Michigan Works! The Job Force Board	Kanter Associates
Richard Parent	Coastal Counties	Knox County Commissioner
Pat Audirsch	Community Representative	Marianna Economic Development Commission
Frank A Mallo	ASCET/Michigan Works	Michigan Works/Grand Rapids Community College
Brenda S. Gagne	Coastal Counties Workforce Board	Noble Adult & Community Education
James J. Showers	EUP Work Force Development Board	Northern Transitions Inc.
Ross Parker, Jr	Northwest Arkansas Workforce Board Member	Parker Farms & Real Estate Rentals
Gwendolyn McGhee	Eastern Arkansas WIB	Phillips Community College
Georgina Becerra	Contractor	Richland College of the DCCCD
David Barch	Eastern Arkansas	SERCO
Steven Wallace	Coastal Counties Workforce Board (CCWI, Maine)	Southern Midcoast Maine Chamber
Valaria Seamans	Chair, South Central WIB	Southside Community Services Board
Stacy Minnick	Board Member	State Farm Insurance
Dasan McDonald	None	Teacher
Charles E. Crosby III	LWIB Board of Directors	The Cryer
John Ufer	Workforce Development Board - Easter UP of Michigan	UAW
Faye White		USDA Rural Development
Susan Sliger	EUP Workforce Development Board Member	War Memorial Hospital
Wayne Goodrum	Simpson County	Warren RECC
Alex Rivera	Ventura County (CA) WIB	AeroControlex Group Inc.

Larette A.Alexander	WorkForce One Board Region 22	Agency for WorkForce Innovations
Vicky Cintrón	LWIB Chair	Alianza Municipal de Servicios Integrados (Caguas, Puerto Rico)
Rosalia Lugo	Yuma County	Allstate Insurance Company
Tammy Frizell	Fiscal Officer of a WIA and a SCSEP Program	American Indian Center of Arkansas
Richard Harrington	Workforce Investment Board of the Pee Dee Area Of South Carolina	American Specialty
Kristen Cavallini-Soothill	Broward Workforce Development Board	American Yacht Institute
Charles D. Shope	Louisiana Area 81	Architecture+
Marilyn Cornelious	NOVA	Asante Solutions
Ivan Li	Chicago, IL	Asian Human Services
Matthew Pedraza	Asian Human Services of Chicago	Asian Human Services of Chicago
Jeanie Friar	Colorado Springs Chapter	Aspen Pointe Cafe
Bobbi Caton		Association House of Chicago
Doug Bourquin	Northwest Arkansas	Boone County Veterans Service Office
Lori Alford	Bunker Hill Community College - Student	Bunker Hill Community College
walt yeager	Seattle/King County Workforce Dev. C.	Business Resource Development, Corp.
Beth McCabe	Capital Workforce Partners	Career TEAM
Jose A. Fernandez	Executive Board Member	Centinela Valley Union High School District
Nancy Porrino	Workforce Development Council of Seattle King County	Charles River Clinical Services Northwest
Jayne Vellinga		Chicago Women in Trades
Suzanne Nocita	Heartland Workforce Solutions - Omaha, NE	Children's Hospital & Medical Center

Caren Swales	Adams County	Collbran Job Corps
Christopher Friel	beneficiary	CollegeAmerica
Nancy Peters		Colorado Coalition for the Homeless
Kay Wright	Chairperson WIB Knoxville, TN	Covenant Health
Tracie Hammons	Colorado Workforce	CP of Colorado
Cynthia King	Workforce Solutions Group	Crittenton Women's Union
Rowena Jacobe	City of Loong Beach Workforce Development Bureau	CWS Capital Partners LLC
Ken Williams	Board Member	Denver Merchandise Mart
Jeanette Freitas	Pee Dee Workforce Investment	Dillon County Council on Aging
Karyn Caradonna		dpiX, LLC
Abdiwahid Mohamud	SHWFC	EAC Resource
Mark A Ulm	San Joaquin County	EEDD
Allison Fulton	Training Provider	Everblue
Barbara L. Zale	Friend	Everblue
Velvet Nelson	Training Provider	Everblue Training Institute
Lesley Cowie		Everblue Training Institute
Mike Murphy		Everblue Training Institute
Miranda B Caldwell		Everblue Training Institute
Katie Dunn	Training Provider	Everblue Training Institute
Jamie Zelenak-Hyre	Training Provider	Everblue Training Institute

Layla Thomas	Training Provider	Everblue Training Institute
Bana Kopty	Education Provider	Everblue Training Institute
Darren Poole	Northwest Piedmont Council of Governments WDB	Evo Corporation
David R Ranck	South Central Workforce Investment Board	Executive Directions
Bob Ziobrowski	Chair, Southcentral PA WIB LEO Board	Franklin County Commissioner
Don Glenn	Broward	Glenn Consulting, Inc.
Thomas Perkey	Southeast Michigan Community Alliance	Goodwill Industries
Renee E. Clemmons	East Central OK Workforce Investment Board	Gordon Cooper Technology Center, Shawnee, OK
Marcus Manders	Michigan Works! Kent & Allegan Counties	Grand Rapids Community College
Carlene LeBlanc	Massachusetts	Greater New Bedford Workforce Investment Board
Elizabeth Tong	Greater Raritan	Greater Raritan One Stop
Paul Pappasergi		Henkels & McCoy, Inc
Shelley Mastrella	South Central Workforce Board	Hershey Entertainment & Resorts
Richard S Larson	former unemployed Coloradan	Hewlett Packard Co.
Josie Bacallao	Board Member, Workforce One Development Board, Broward	Hispanic Unity of Florida
Frank Horkey	Broward Workforce Development Board	Horkey& Associates, PA CPAs
Diane Burnham	Chicago Workforce Board	Howard Area Community Center
Dario Morell	South Florida	IBTA
Charles E. Juneau	Chairman of Bond/Madison Counties Workforce Investment Board	Juneau Associates, Inc., P.C.
Gail Stringer		Kaiser

Kathleen Connelly	Workforce Partnership	Kaiser
Roger Wilcoxon	KS Area III	Kaiser Group, Inc
Emily McGrew	Career Advisor	Kaiser Group, Inc.
John Golly	WIA	LeaderQuest
Louis Ashkar, M.D.	Leaderquest	Leaderquest
Nathan A. Smith		LeaderQuest
George Cohlma	None	LeaderQuest Holdings, Inc.
Frank DeTillio	Chairman	Lorain County Chamber of Commerce
Alycia Tomlinsong	GRADD	Madisonville Community College Full-time Student
Robert Faucett	Board Chair	Magnolia Financial, Inc.
Karen Tarca	Orange County, CA	Manpower
Linda L. Crane	San Mateo	Manpower, Inc.
Paul Williams	Board Member	Marvin Windows and Doors
Virginia O Trujillo		Materion Corporation
Jeremy Albergo	Camden County	McKesson
Charles Finin	Fulton, MONTgomery and Schoharie Counties, New York	Mesa Technical Associates, Inc.
Cynthia Whiston	Seattle King County Workforce Development Council	MPS
stacie dunnivant		MRC
Tim Condon	Heart of Texas Workforce Investment Board	MuRF Systems
Satu Pietarinen	Donator	Nokia Oyj

Althea Hairston	Northwest Piedmont Workforce Board	Northwest Piedmont Council of Government
B. Amrey Harden	Chairman - Northeast Georgia WIB	Oconee State Bank
Representative John E. Barnes Jr.	State of Ohio	Ohio House of Representatives
Joan G. Cirillo	South Shore WIB; Metro South/West Regional Employment Board	Operation A.B.L.E. of Greater Boston, Inc.
Peggy Specht	Approved Training provider	Orbit Educational Group
Barbara Ladner	Chairman, Workforce Board of McHenry County - Illinois	Pace Suburban Bus - Arlington Heights, IL
Wendy Eckert	Michigan Works	Paul Mitchell the School Escanaba
Taft Guile	WIA Board member	Pee Dee Community Action Partnership
Deann Davis	Area 17 Chair	PHD Manufacturing, Inc.
Mary Schuman	Adams County Workforce Investment Board	Platte Valley Medical Center
Ronald Enders	Board Member	Plumbers, Pipefitters & HVACR Technicians Local Union 520
Barbara Stadnicki		Polish american association
Wolak Mirella		Polish American Association
Agnes Sobczyk		Polish American Association
Santos Javier Cruz	Yuma County	Pre Paid Legal Services
Mioara Canciu	Hudson County, NJ	Pro Data, Inc.
Dave Drucker	none	Recovery Resource Center
Edda Daniele-Johnson	Workforce manager	Regional Employment Board
Dennis Kwan		Riverside County EDA
Peggy Gair	Colorado Rural Workforce Board Consortium, Upper Arkanas Workforce Board	Royal Gorge Bridge & Park

Tim Rango	Gila/Pinal Workforce Investment Area - Arizona	Seafab Metals
Greg Pope	Western Colorado	Self employed
Jeffrey W. Stapel	Virginia Shenandoah Valley Workforce Investment Board	Shickel Corporation
Margaret Wagner		Signature Networks PLUS
Stephen Braun	Michigan Works! The Job Force Board	Six County Employment Alliance
Jodi Canney	Michigan Works! The Job Force Board	Six County Employment Alliance
Lynn Buckner	Western WA Indian Employment & Training Program	Small Tribes Organization of Western WA
Sandhya Muljibhai	River Valley Regional Commission	South Georgia Technical College
Minnie williamson	River Valley Regional Commission	South Georgia Technical College
Carol J Warnke	SouthCentral Workforce Investment Board	SouthCentral workforce Investment Board
Michael Folsom		Southern California Indian Center
Ken Orr	Riverside Ca.	SouthernCalifornia Laborers Apprenticeship
Jane Matteson		Spectrum
Timothy Riley	St. Charles County Missouri	St. Charles County Missouri Career Center
Vicenta Valero	Spectrum	St. Stephen's Human Services
Tammy Foster		State of Colorado Governors Office of IT (CDHS)
Kim Christie	NorthWest Piedmont Council of Governments	Stokes County elink Youth Program
Tonya Couture-Grubb		Success for Youth/Seneca County, Ohio
Melinda Torres	Michigan Works! The Job Force Board	Sunbelt Staffing Inc.
Christopher Marx	Ulster County Workforce Investment Board Member, New York State	SUNY Ulster

Clyde Stewart	Northwest Piedmont Council of Governments	Surry/Stokes Friends of Youth
Christine Rodriguez	Partner	TCAA
Bert Miller	Workforce Solutions Brazos Valley board member	The Miller Agency Inc
Susan Huszagh	None	The Wickett Group, LLC
Angela McCabe	Boston	The Work Place One Stop Career Center
Tonette Anderson	CWIB - Central Missouri, Rolla Missouri	Town & Country Bank
Mark Corrigan	Coastal GA WIB	TrackSource Management Systems
Michael Smith	SEMCA	United Way of Monroe County
Joseph L Peters	Regional Employment Board Hamden County MA	Universal Plastics Corp
Ralph Beuc	Pikes Peak Workforce Center	US S.B.A.
Terry L. Pickering	Workforce Development Council of Seattle-King County	Viking Bank
DELMAS RHINEHART	VAN BUREN AR	WAEDA
Gene Bishop	Brown County, Ohio	White Oak Station Storage

Ms. DELAURO. Thank you.

With regard to administrative costs, an exhaustive study conducted by Demetra Nightingale of the Urban Institute concludes that the only way to save by consolidating job training programs is by cutting services. Administrative costs are so low that most of the costs in these programs are in services.

So there is conflicting information about with regard to administrative costs, and that report is entitled "Administrative Cost Savings Resulting from Federal Program Consolidation."

I was intrigued by Mr. Bishop's comments about the recommendation to evaluate whether community colleges, and especially proprietary universities, can serve as One-Stop centers. Right now, as I understand it, there are 195 One-Stops in community colleges and that the opportunity is open to proprietary colleges as well.

I might add with regard to the proprietary colleges, that the U.S. Department of Education data shows higher default rates for students who attend for-profit schools compared with those attending public or nonprofit schools. Staggering number of students are leaving for-profit schools, presumably many without completing a degree or a certificate.

To boost enrollment, some for-profit schools recruit large numbers of new students each year. Students at for-profit colleges make up less than 10 percent of people receiving higher education, but up to 44 percent of those defaulting on Federal student loans.

Nearly 25 percent of all Pell grant dollars, almost double the percentage from a decade before, go to for-profits. In 2008–2009, the three largest recipients of Federal financial aid in the country were for-profit colleges, and on average, they received three-quarters of their revenues from Federal grants and loans.

Further, as I looked at the background information, your own background information, Mr. Bishop, it appears that Phoenix University, with which you have a relationship, that is your employer, in essence, would benefit from the policies that you are advocating here today.

And with regard to Pell grants, I might also add, I will just say this. I heard your comment about Pell grants, that you are a strong proponent of Pell grants. But there are people on this committee who believe that Pell grants are a form of welfare. I don't happen to view it that way. I think that they are an opportunity to get an education.

But again, Mr. Bishop, given the data on Pell grants, where is the evidence that the proprietary schools would make better use of taxpayer dollars with training vouchers? I don't make up the data about proprietary schools. Perhaps your own association with a proprietary school could lend some information of how that is working in the face of what the data is with regard to those schools?

Mr. BISHOP. Okay. Well, first of all, let me make clear for the record that I am here representing myself. I started employment with the University of Phoenix on February 14th of 2011, and none of my comments reflect their position. So let me just say that for the record.

Ms. DELAURO. Well, but, in fact, you do have an relationship with a for-profit school.

Mr. BISHOP. Yes, right.

Ms. DELAURO. You are affiliated with a proprietary college?

Mr. BISHOP. Sure, I am. Yes, I am. Proudly so.

Ms. DELAURO. Good.

Mr. BISHOP. And I would say, secondly, that nothing in my statement makes any value judgments or determination on whether community colleges, nonprofit providers, or proprietary schools would do better, do worse, or get any sort of amount of any of this money.

What I suggest is, is that under the current structure of the system, very, very few people are getting training. We have lots of discussion. The current administration is very supportive of trying to help individuals get postsecondary education credentials, and this program is doing so at a very minimal rate.

Ms. DELAURO. I want to make a—

Mr. BISHOP. That is what I suggest.

Ms. DELAURO. I would like to make one other point with regard to your comments, which is about merit staffing.

Mr. BISHOP. Yes.

Ms. DELAURO. And you emphasized that.

Mr. BISHOP. I did.

Ms. DELAURO. Merit staffing is essentially the choice between federal dollars supporting public employees versus contractors. I happen to sit on the Agriculture Appropriations Committee and used to chair that committee just about a year ago. And the issue we dealt with was in the states of Texas and Indiana, which contracted out their services on the food stamp programs. Those cases became the two biggest failures that we have had in administering the food stamp program. We spent millions of taxpayer dollars to start that system, and now we have to pull back.

Both states had to stop using contractors versus what were called merit staff.

Mr. BISHOP. Mr. Chairman?

Ms. DELAURO. Thank you, Mr. Chairman. My time is—Mr. Chairman, my time is completed. The gentleman's time is completed.

Mr. BISHOP. May I just—

Mr. REHBERG. As a matter of courtesy, I would suggest to the ranking member that she not misquote the chairman of this committee. I have never said that Pell grants are a form of welfare. And I will correct the record, and I will continue to correct the record.

As a matter of comity, I would suggest we not enter down that path or the minority Members are not going to enjoy this subcommittee as well as they have enjoyed it up to this point.

Mr. Bishop, I give you the opportunity to respond.

Mr. BISHOP. Thank you.

My comments on State merit staffing have nothing to do with public versus private contracting. What they have to do with is the delivery of services because under Wagner-Peyser, a local county employee, public employee; a local city public employee; or any other public employee who is not a State employee can't provide Wagner-Peyser services.

So it has nothing to do with public versus private. It has to do with only State employees providing services that other public employees are providing through the WIA system.

Mr. REHBERG. Thank you, Mr. Bishop.

Mr. Alexander.

Mr. ALEXANDER. Thank you, Mr. Chairman.

Dr. Sherrill, it is doctor, isn't it? It doesn't say there. But in your testimony, you have said that little is known about the effectiveness of employment and training programs because only 5 of the 47 programs reported that they had conducted any impact study since 2004. Is that correct?

Mr. SHERRILL. That is correct.

Mr. ALEXANDER. You also say that the impact studies to measure the success of job training programs may not be cost effective for smaller programs. Does it make any sense at all for Congress to continue funding programs if we don't know whether they are working or not?

Mr. SHERRILL. Well, I think this is an important issue for you to consider as we look at opportunities for consolidation, et cetera, because this has been a recurring theme in our work on the Workforce Investment Act over the years. Not enough is known about what works, what doesn't work in terms of the research.

We have looked at the Department of Labor's research agenda recently. We found that more accountability is needed in terms of processes for tracking the studies, for issuing studies in a timely way so that they can inform public policy, in terms of getting expert input on their research agenda. So we really think that there are more opportunities on the research front.

Mr. ALEXANDER. The individuals that are running or working at the One-Stop centers, what qualifications do they have to be there? Are they professionals? Are they trained to do what they do? Who oversees that and makes sure that they are properly trained?

Mr. SHERRILL. Well, we haven't looked specifically at the training qualifications. Local areas have a lot of flexibility in terms of how they set up their programs, the extent to which they contract out for service providers, community colleges, et cetera, and in terms of the kind of people that they use in-house to do the programs.

The local workforce investment boards are supposed to have a key role in overseeing the process and having employers have an employer-driven focus there.

Mr. ALEXANDER. Thank you, Mr. Chairman. Note the time left, please.

Mr. REHBERG. Duly noted.

Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman.

Good morning. Let me thank all of you for being here, and this is such an important issue. For so many of our constituents who historically have been shut out of the workplace for whatever reasons, job training is essential as a pathway out of poverty.

In my district, and Mr. Uhalde, let me ask you about Job Corps. In my district, well, we have a Job Corps center in Treasure Island that serves young people in my district, and it trains about 800 students, employs about 245 staff. One of their emphases is on the healthcare occupations and professions. They train students as cer-

tified nursing assistants, licensed practical nurses, other healthcare occupations.

Wanted to ask you about funding cuts in terms of the impact on Job Corps' ability to train really the next generation of healthcare workers, EKG technicians, medical assistants, dental assistants. Because we know that the healthcare industry is a growth industry, and so I am concerned that some of the cuts could really stifle and stop the training for jobs that are going to be good-paying jobs of the future.

Secondly, let me just ask you as it relates to private sector employers, some believe that job training and readiness programs administered by the Department of Labor really provide virtually no benefit to private sector employees. So I would like to ask you in terms of what your take is on how job training and employment readiness programs have benefitted or not benefitted private employers?

Mr. UHALDE. Thank you.

With regard to Job Corps, of course, there is the proposed cuts in H.R. 1 that would eliminate \$300,000,000 from Job Corps' budget, and I believe there is a rescission of \$600,000,000 from the program. Those obviously will reduce the number of students or corps members that Job Corps is able to serve from about 70,000 to something less.

Job Corps is the one national program that we have that has been evaluated rigorously for youth that has been able to demonstrate a statistically significant improvement of about 12 percent in earnings up to 3 or 4 years for all the students. And for the older students, even more. It is a program that infuses both academic and occupational training and instruction. It is for very difficult to serve dropout youth, and that and a couple other programs around the country are about the only ones that are really effective.

So we should tread carefully. Job Corps is making a lot of improvements. They are moving more to high school diplomas rather than GEDs, more industry-recognized credentials. So I think that is important.

With regard to business, WIA provides a lot of services for business. The services include rapid response services. When businesses have mass layoffs, plant closings, States move in and actually start engaging workers in training and placement before they even leave the job sometimes.

Secondly is layoff aversion services for businesses. Third is economic development partnering to help grow economies and attract businesses. GAO in 2005 did a survey of WIA, found that about half of employers are aware of the One-Stop system. About three-quarters of large employers use some of the core services for the One-Stops.

Smaller employers, about one-quarter to one-half of them use it. And the primary use is to fill job vacancies, and about three-quarters of employers report they are satisfied.

So it has a terribly important role, and the last thing I would say is that it is important to get to know the needs of business in those industry sectors so that you can translate business needs into curriculum and training capacities in colleges or proprietary schools.

And that conversation has to be constant, and workforce boards do that.

Ms. LEE. Okay. Thank you, Mr. Chairman.

Mr. REHBERG. Who is next? Mr. Simpson.

Mr. SIMPSON. Oh, that would be me. Thank you. Thank you, Mr. Chairman, for holding the hearing today.

And thank you all for being here.

Everyone on this panel and I think everyone in Congress knows the importance of job training. I read a report not too many years ago that the average high school graduate is going to have to be completely retrained for a new job, not just upgraded skills, but a new job seven times in their lifetime.

The days of being able to graduate from high school, go to work in the factory, and retire 50 years later are gone. In fact, one of the most fascinating things I saw on TV a few years ago was they asked a bunch of fifth graders what they wanted to be when they grew up, and there was the typical answers of fifth graders. You know, I want to be a policeman or a fireman or whatever, or a cowboy. No, nobody said congressman. [Laughter.]

One student answered, though, that I thought was kind of interesting. He said, "I don't know. I don't think it has been invented yet." And that is the reality.

So we are all interested in job training. I was very interested in the aspect of community colleges because that is kind of where I have been focused, and I wrote it down before you said it that community colleges are going to be more and more important as lifelong education, not just continuing education. But lifelong education becomes more and more important in the future.

Let me ask you just a general question. If there was one or two things you could do, and I will ask each of you to answer it as briefly as you can, one or two things that you could do to improve the job training of this country. Not necessarily this program, but the job training in general, what would you do?

I will start with you.

Mr. SHERRILL. I think I hit the theme already in terms of just getting better information about what works and what doesn't and getting more of local innovation, State innovation at that level, too, is important to look for cost efficiencies and effectiveness.

Mr. BESHAROV. A number of the other witnesses have talked about the fact that there has been research and experiments about giving the trainees greater control of what training they get, and that research, I think, is accepted by most analysts. The trainees can be trusted to do as good a job as the public employees.

And the second point I would make, since you asked for two, I was listening to this argument about community colleges and so forth. It is a much broader problem than that. In the UK, the Labor government started a consolidation of job training, unemployment, and disability programs and privatized the provision not just of the training, but of the One-Stops. Privatized it to the amount of 1,600,000,000 pounds a year, and they thought it was perfectly fine to let all sorts of qualified bidders propose to provide job training programs.

I think we ought to open up the doors to more models, and the only way we are going to do that is to break the yoke of this being a one kind of program nationwide.

Mr. UHALDE. Mr. Simpson, I won't repeat some of the things that have been said. Let me say a couple things.

To draw from the evidence that has been presented on evaluations, there are two things that make the cost of the expenditures on training effective. One is to have a high rate of return after one leaves the program, and the other, particularly for dislocated workers, is to reduce the foregone earnings that dislocated workers experience when they are in training.

That is where I would disagree with Doug. I don't think trainees ought to have cost sharing. They share the cost. They give up earnings when they invest their time in training. So to improve the outcomes, we need to have closer connections with business and industry to have these sectoral and other approaches that make for a steeper rise in the earnings of individuals when they leave the programs.

And then, secondly—and this applies not only for WIA, but for community colleges and all training programs for dislocated workers—is we have got to recognize the time-sensitive nature of their time. They want to get back to work.

So eliminating this semester process for community colleges and other proprietary schools and being able to get workers into training quickly, compressing it so they do training 5 days a week, not Tuesdays and Thursdays for an hour and a half each day; articulate the sequence of the courses so that the end of one course's exam qualifies you for the next course, not some remediation.

So there are things to accelerate completion.

Mr. SIMPSON. Mr. Bishop, since we went down the line and you got left out, I will grant you 30 seconds to respond as well.

Mr. BISHOP. Thank you.

I will just say very quickly again if the goal of job training that is funded by the Federal Government is to help people get skills and credentials, then I think there are two overarching things that must happen. One is we have got to stop the proliferation of funding and appropriating millions and billions of dollars to programs all across the Federal Government for job training, especially in agencies and departments that have no business being involved in job training, and figure out how do we have a much more targeted approach.

And secondly, I would do every single thing I could to figure out the best ways to get funds in the hands of people to pay tuition, fees, and those other costs. The greatest barrier to individuals in this country right now getting access to postsecondary education and job training is financial.

Mr. REHBERG. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. The January 2011 GAO report notes that, and I quote, "Even when programs overlap, the services they provide and the populations they serve may differ in meaningful ways."

Mr. Uhalde, have you found this observation of our workforce development system to be true? And in your experience, have you

found that the program overlap documented by the GAO leads to duplicated services across programs?

Mr. UHALDE. I think the GAO has well documented the overlap of programs, the proliferation—I can't even say the word. But all these programs, particularly the programs beyond the Workforce Investment Act that are in a variety of these other departments and agencies. But that is a lot different than saying that any individual is getting benefits from multiple training programs.

Most of these programs are not funded to match their mission or their need. The Adult Program in WIA is a universal access program. So it is going to overlap every one of the other 46 programs. But it is not actually duplicating services.

Now the administrative efficiencies we talked about, I think, are pretty substantial in trying to make sure that they are coordinated and aligned, that they are pulling in the same directions. The common performance standards that the last administration tried to do across programs is terrific. I failed a decade ago trying to do the same thing, and it is important because you can't have people looking at different goals and expect their programs to line up and be complementary.

Ms. ROYBAL-ALLARD. And one of the reasons also is don't job training programs, aren't they tailored to meet unique needs of the American workforce, such as veterans, disabled workers, low-income youth, and migrants?

Mr. UHALDE. Absolutely. You wouldn't expect general services programs to be able to serve people with severe disabilities, for example, in many cases. Much of the proliferation of programs is, in fact, Native American programs because every time we legislate a program, we have to do it for the Indian Nation.

We have veterans programs that replicate these programs, and I don't think this Congress is going to be eliminating veterans employment and training services across the board. And there are special needs that migrant seasonal farm workers, for example, have that you need to have a program.

What we do, though, is we need to bring them within the workforce investment system, as we do with farm workers, Native American programs. I would advocate bringing TANF full bore inside the One-Stop system, food stamps, employment and training, the SNAP program. Not to eliminate these programs, but to make sure that we use the administrative efficiencies of workforce boards and the One-Stop and be able to align the services so that they are complementary and not at competing ends.

Ms. ROYBAL-ALLARD. I was very pleased that Secretary Solis recognized the importance of rigorous evaluation and created the Chief Evaluation Office in 2009 to increase the department's capacity to conduct high-quality, rigorous evaluations.

Mr. Sherrill, have you noticed any improvement since 2009 in random assignment evaluations by ETA, and how does that compare to the years between 2001 and 2008?

Mr. SHERRILL. Well, we have done, as I mentioned earlier, reports that have focused on ETA, Department of Labor's research program, and identified opportunities for further improvements in that area. And we have a report that will be issued in just a few weeks, later this month, that goes into further detail on the steps

that ETA has taken to improve its research program and the extent to which its research priorities reflect key national employment and training issues.

So please stay tuned for that further update on progress there.

Ms. ROYBAL-ALLARD. Okay. And does the GAO have any reaction to the \$10,000,000 rescission from ETA's evaluation funds for the current program year included in H.R. 1? For example, do these cuts have the potential to delay any further the evaluation improvements that Secretary Solis has funded and that the GAO has recommended since 2004?

Mr. SHERRILL. Well, in general, we think it is important to have sufficient money to do the research that is needed in these areas. We haven't looked specifically at the effects of that.

Mr. REHBERG. Mr. Flake.

Mr. SIMPSON. He's not here.

Mr. REHBERG. Is gone. All right. [Laughter.]

Well, Mr. Kingston, you are next.

Mr. KINGSTON. No, I think Mrs. Lummis is next.

Mr. REHBERG. Then Mrs. Lummis.

Mr. KINGSTON. One of the disadvantages of the way you keep time and call on people is that you are fair, and it is a real pain in the neck for those of us who come late. [Laughter.]

Mr. REHBERG. Mrs. Lummis.

Mrs. LUMMIS. Well, thanks, Mr. Chairman.

And I want to acknowledge, Dr. Besharov, I think I remember you from the Budget Committee, a Budget Committee hearing about a year ago, and I used to be on the Budget Committee. It is nice to see you again.

And you had some thoughtful, innovative ideas then. I see you do again. So I want to pursue that line of questioning, and I would ask others to chime in as you feel motivated.

You recommend allowing trainees more say in how they are trained and means testing the benefit on a sliding scale. And you know means testing makes some people squeamish, but it is an intriguing idea. And I say that because I come from the State of Wyoming, which has been identified as one of the two best-run States in the Nation, and we do a lot of experimentation, and we can, quite frankly, because we are more nimble than other States.

We have the smallest population in the Nation. And we do a lot of joint legislative-executive projects that allow the legislators and the executive branch to work together to try to reform things. So could you talk a little more about how you see that working? Especially the means testing component because I think you apply a different connotation to that term than sometimes we do here on Capitol Hill.

Mr. BESHAROV. It was my way of saying that—Thank you, by the way, for the very kind words. And I think there were a number of people here.

Ms. DELAURO. That were on the Budget Committee.

Mr. BESHAROV. Yes, yes. This is an indirect answer. Ray talked about the fact that much of this training is on the schedule of the trainer, not the trainee. And I have seen this time and again.

Often the training provided under WIA, for example, is provided during surplus hours, whether it is a community college or some

other job training program. And it is Tuesdays for 9 months, when it could be Monday, Tuesday, Wednesday, if not Thursday and Friday. I don't want to get carried away about this. I teach in a university. We don't want to go there. [Laughter.]

But our students, this is a graduate school where I teach, our students pay to sit in the room. And they get angry at us when we cancel classes. Undergraduate students don't get angry because their parents are paying.

Mrs. LUMMIS. Right. Yes.

Mr. BESHAROV. They have an investment in the training they are getting, and they are taking that training because they expect to get a better job when they graduate. That is why they pay us to talk to them.

Something like that, without getting carried away, I think should at least be tried—Ray just scratched the surface. I know only a little bit about the details of the programs around the country. But I see it wherever I look; job training programs that are provided because they have the equipment to do something that is no longer relevant, and the trainees don't have a choice because it is that or nothing.

I think the trainees need to be part of the team that says we want better training, and part of the way to do that is to give them—those who can afford it. Now I am not talking about people who are on welfare and so forth, but those who can afford it to help pay for it because then I think, like the students in my school, they will insist on a better training experience.

I wouldn't jump into this. I would try it, though, and see if it worked.

Mrs. LUMMIS. Well, thank you.

And my next question is about this proliferation of job training programs that has been alluded to. I think 47 job training programs across the \$18,000,000,000 Federal job training spectrum. And of course, they all develop their own little constituencies and advocacy groups, and so consolidating will be a challenge.

Again, referring to my own State, when we have done it, program consolidations and trying to rationalize, State government, we did it through these special committees, where you had some legislators and some executive branch people and then some people from the private sector or nonprofit community who could contribute their thoughts as well, such as our panelists today.

Can you, any of the panelists, in fact, any of the Members of Congress who are here, too, offer ideas about how that can be done successfully?

Mr. REHBERG. Your time is up. [Laughter.]

Mrs. LUMMIS. I was just getting rolling, Mr. Chairman.

Mr. REHBERG. I might point out that my staff tells me that I was, in fact, correct. Mr. Kingston was next.

But if you want to suggest to a woman from Wyoming, a rancher, that ladies first. Good luck. She is tough. [Laughter.]

Mr. KINGSTON. He is a southern gentleman.

Mr. REHBERG. Yes. You are up. Go.

Mr. KINGSTON. She is also on a subcommittee I might need her vote on. [Laughter.]

And she may go over to Ms. DeLauro on some issues. So I have to keep her happy.

But actually, where she left off, I would like to ask that question for the record under the assumption that you would not be able to answer it spontaneously right now. But for the next several months, there will be continuous talk about the 47 Federal jobs training programs.

So what I would like to ask you is could you each submit if you were the one to consolidate it, how would you consolidate those? Would you consolidate them down to 1 or to 10, 15, or would you expand them to 60? And if you could do that, I think it would be enormously helpful to all of us, wherever you are on the spectrum.

So I would like to ask that for the record.

[The information follows:]

Question: What federal employment and training programs are candidates for consolidation?

Response: While GAO's issued work does not include any recommendations for consolidating specific employment and training programs, we believe that a good starting point for Congress would be to consider the Administration's consolidation proposal. The Administration's fiscal year 2012 budget proposes consolidating 6 of the 47 programs that GAO identified in its recent study.¹ All 6 of these programs are administered by the Department of Education. According to the Administration's estimates, these consolidations would generate \$258 million in savings, as compared to fiscal year 2010 funding levels (see table 1).

- The Administration proposes consolidating the Career and Technical Education (CTE) State Grants and Tech Prep Education State Grants (Tech Prep) programs and reducing program funding to \$1 billion. According to the budget proposal, the activities currently conducted under the Tech Prep program may also be conducted under the larger CTE State Grants program and it is inefficient to maintain separate funding streams and administrative processes. The Administration estimates that this consolidation would generate \$264 million in savings.
- In addition, the Administration proposes consolidating 4 employment and training programs authorized under the Rehabilitation Act—the Vocational Rehabilitation (VR) State Grants, Supported Employment (SE) State Grants, Projects with Industry, and Migrant and Seasonal Farmworkers programs—into 1 program.² Specifically, the proposal would consolidate the SE State Grants, Projects with Industry, and Migrant and Seasonal Farmworkers programs into the larger VR State Grants program. According to the proposal, these three smaller programs provide services that are provided by the larger VR State Grants program or have accomplished their mission. The proposal would decrease funding for these three smaller programs by \$50 million and increase the funding for the VR State Grants program by \$56 million, for a net funding increase of \$6 million.³

¹ GAO, *Multiple Employment and Training Programs: Providing Information on Colocating Services and Consolidating Administrative Structures Could Promote Efficiencies*, GAO-11-92 (Washington, D.C.: January 13, 2011).

² This is part of the Administration's broader proposal to consolidate 9 Rehabilitation Act programs into 3 programs. Some of these programs do not meet our definition of an employment and training program. In GAO-11-92, we defined an employment and training program as a program that is specifically designed to enhance the specific job skills of individuals in order to increase their employability, identify job opportunities, and/or help job seekers obtain employment.

³ Overall, the broader proposal to consolidate 9 Rehabilitation Act programs increases funding by \$2 million.

Table 1: Administration's Proposed Consolidations of Employment and Training Programs, Fiscal Year 2012

Programs to be Consolidated (Education)	FY10 Funding	FY12 Request	Change from FY10 to FY12
Career and Technical Education (CTE) State Grants Tech Prep Education State Grants (Tech Prep)	\$1,264,000,000	\$1,000,000,000	-\$264,000,000
Vocational Rehabilitation (VR) State Grants Supported Employment (SE) State Grants Projects with Industry Migrant and Seasonal Farmworkers	\$3,135,000,000	\$3,141,000,000	+\$6,000,000
Total	\$4,399,000,000	\$4,141,000,000	-\$258,000,000

Source: Fiscal Year 2012 Terminations, Reductions, and Savings, Budget of the U.S. Government, Office of Management and Budget.

In addition, GAO's recent report on employment and training programs, which identified 47 such programs, focused on opportunities for increasing administrative efficiencies within current programs.⁴ In that report, we examined potential duplication among 3 of the largest programs and reported that collocating services and consolidating administrative structures could increase efficiency, but may involve challenges.⁵ We recommended that the Departments of Labor and Health and Human Services work together to develop and disseminate information about state initiatives to consolidate program administrative structures and state and local efforts to colocate new partners at one-stop centers. We also recommended that the two agencies examine incentives states and localities have to undertake such initiatives and, as warranted, identify options for increasing such incentives. In their joint response 60 days after the issuance of the report, officials from the two agencies said that they agree with the recommendation and are exploring a variety of efforts aimed at addressing the challenges, strategies, incentives, and results for states and localities to undertake such initiatives. These efforts include developing joint administrative guidance, providing technical assistance and outreach, and leveraging research resources.

⁴ GAO-11-92.

⁵ We selected the Temporary Assistance for Needy Families (TANF), Employment Service, and Workforce Investment Act (WIA) Adult programs for in-depth analysis because our prior work indicated they had the potential for duplication based on a high degree of overlap, and they were also among the largest of the 47 programs in terms of the amount spent on employment and training services.

Mr. KINGSTON. And then I want to know, Mr. Bishop, you talked about 250,000 people who come out of the system, and I want to get a clarification. Are you saying 250,000 actually graduate into the workforce and have a job, as opposed to millions who take the courses? What was that 250,000?

Mr. BISHOP. Thank you. Thank you, Mr. Kingston.

It is, right now, if you look at the “millions of participants” that are getting services through the workforce investment system, roughly 250,000 of them annually are participating in job training services. I reference in my written testimony that according to the last time period that is listed on the Employment and Training Administration’s Web site, under the WIA Adult Program, only 130,000 people out of about 1.2 million participated in actual training services.

Mr. KINGSTON. Well, what do the rest of them do?

Mr. BISHOP. They are involved in the core services and intensive services. It is light touch, low cost. Workers come into the One-Stop center. They may look on the—get some assistance with reemployment, get a referral to a job, and off they go.

Mr. KINGSTON. Can you give us, probably for the record, a breakdown of the 1.2 million? And I could see they don’t need all of it, but you are saying they do get what they want out of it, and they move on. And do they move on to the workplace?

Mr. BISHOP. Well, again, the Employment and Training Administration’s Web site and other reports have been cited, look at the employment earnings and job retention outcomes of various participants out of these programs.

Mr. KINGSTON. What I think would be of interest to this committee is where do we get the most bang for our buck—

Mr. BISHOP. Right.

Mr. KINGSTON [continuing]. In terms of investing it? And then the next question is in the three States—Colorado, Michigan, and Massachusetts—on the employment service programs, do you have their results versus the other States?

Mr. BISHOP. I do not personally know. I am not sure. Maybe Mr. Uhalde knows if a study was done on that. He was involved in that regulatory framework.

Mr. KINGSTON. How long has the pilot been going on?

Mr. BISHOP. Since the late ’90s, wasn’t it?

Mr. UHALDE. Since the late ’90s, and there is a study. Department of Labor can—

Mr. KINGSTON. How does it look? How does it look?

Mr. UHALDE. My recollection is there was certainly no difference between the three States that have pilots—

Mr. KINGSTON. No lessons learned? No distinction whatsoever?

Mr. UHALDE. You know, it has been a long time. But DOL would be glad to get that study and make it available for the record.

[The information follows:]

ADDITIONAL MATERIALS SUBMITTED BY
RAYMOND J. UHALDE
VICE PRESIDENT, JOBS FOR THE FUTURE
BEFORE THE
SUBCOMMITTEE ON LABOR,
HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 7, 2011

Can Carryover Fund the Workforce Investment System in Program Year 2011?

Documents disseminated by the House Appropriations Committee seem to imply that the workforce system can be sustained through next year with current year funding and carryover. In their summary of H.R. 1, the Committee states, “These programs have significant carryover balances from prior year appropriations and have already received \$1.5 billion in advance funding available for the current fiscal year.” This assumption is not accurate.

The \$1.5 billion referred to by the Committee is funding that was appropriated in the FY 2010 appropriations bill (out of FY 2011 advance funds) for use in the current program year ending June 2011. These funds were made available for use from October 2010 through June 2011. H.R. 1 eliminates all funding in FY 2011 for the WIA Adult, Dislocated Worker and Youth programs, and eliminates the entire advance in FY 2012 for use by the WIA Adult and Dislocated Worker programs from October 2011 through June 2012. This means that as of July 1, 2011 there would be no new WIA grants to States and local workforce areas under H.R. 1.

The assertion that carryover of \$1.1 billion in unspent funds from PY 2010 into PY 2011 will support the WIA system through next year also is simply not true because these numbers don’t account for obligations and encumbered funds for multi-semester training.

The WIA system has always been required by statute to obligate at least 80 percent of its funding each year. The system has been allowed to carry over not more than 20 percent of its unobligated funds for 2 additional years. In recent years however, appropriators have looked at the system’s “unexpended” instead of its “unobligated” funds when determining system carryover, an examination that does not take into account funds that are encumbered or set aside to pay for multi-semester training (for participants who are already enrolled) and other commitments that cross program years.¹¹

Last year, WIA Adult and Dislocated Worker programs carried over \$1.1 billion in unexpended funds from PY 2009 to PY 2010. This represented a 28 percent carryover of the total available for these programs in PY 2009, with local areas carrying over 21

percent of funds available to them in PY 2009 – or about \$600 million out of \$2.8 billion. Much of this “carryover”, however, is not really available. It is either obligated into contracts or encumbered, that is “set aside” to support individual training plans for multi-semester programs of study. Approximately 50 percent of the \$1.1 billion unexpended is reported as un-liquidated obligations for orders placed, contracts and grants awarded, services received and similar transactions that require payment. However much of the remaining \$550 million in unspent funds is encumbered or set aside to support individual training plans, but encumbrances are not reflected in reports to the Department of Labor.

We can learn a great deal from the prior rescission enacted by Congress. In FY 2008, when the WIA system lost \$250 million through a rescission of “unexpended funds,” \$114 million or 45 percent of the rescission had to be taken from PY 2007 current year funds. The rescission was based on the notion that unexpended balances of about \$1.1 billion carried into PY 2007, would cover the rescission. This assumption was wrong. If history serves as a guide, the anticipated carryover at the end of PY 2010 would also fall far short of amounts needed to carry the program through PY 2011. Moreover, those States and local areas that have had high demand for services and that have provided services aggressively would likely have very little, if any unencumbered funds to provide services to new enrollees next year. The attached chart for Texas’ local workforce investment areas illustrates this point graphically.

Effectiveness of the Workforce Investment Act’s Employment and Training Services

It is no secret that WIA is in need of reauthorization to better align planning and service delivery, and strengthen the system’s relevance for today’s economy. It was, after all, originally authorized in August 1998 when unemployment stood at 4.5 percent. Not only do we face a much different economy now, but practice in the field also has progressed significantly, becoming much more sophisticated about employer engagement, community college partnerships, sector training strategies, career pathway initiatives, and regional cooperation in support of economic growth. These and other best practices and system innovations are emphasized in proposals for reauthorization under development by both the House and Senate authorizing Committees.

To say that WIA should be reauthorized is not the same as saying that WIA programs are not effective. On the contrary, the evidence is pretty clear that WIA’s core and intensive services and training for disadvantaged adults have been shown time and again to pay off in terms of higher employment rates and improved earnings. The evaluation evidence on training’s effectiveness for dislocated workers is mixed, but strong results have been shown in studies examining community college training for dislocated workers, particularly if training is provided for one year or more in technical occupations, including healthcare. This increased focus on longer-term, high demand training in community colleges is precisely how the workforce system used the additional funding received under the Recovery Act. WIA reauthorization will push these reforms further.

Adult and Dislocated Workers - According to a Council of Economic Advisors (CEA)

2009 summary of the evidence on WIA's effectiveness, WIA participants benefit from the program, on average, although differences across states are substantial. The CEA reports that there is also mounting evidence from state evaluations that training for adults can have large positive impacts on earnings, particularly in studies that track participants for a longer period of time. Here is a closer look at some of the evidence.ⁱⁱ

A recent study referenced in the CEA report, a 2008 non-experimental econometric study by IMPAQ International,ⁱⁱⁱ found that outcomes in 12 states for participants in WIA's Adult Programs were quite positive with statistically significant impacts on both earnings and employment for its participants.

- Overall, the WIA Adult program was found to have a “substantial positive statistically significant effect” that was widespread across almost all the states studied. For both genders, participants earn between \$400 and \$700 more per quarter than comparable individuals in the comparison group. The return for women averaged about \$550 per quarter over the 16 quarters studied (\$2400 annually), while the impact for men averaged about \$400 per quarter (\$1700 annually).
- WIA Adult participants who received core and/or intensive services experienced increased earnings of \$100 to \$200 per quarter over the four years following program entry compared to non-participants -- substantial outcomes compared to the low costs of these counseling and job placement services. Core and intensive services are also shown to be effective in raising employment rates by 6 to 10 percentage points quarterly.
- Adults who received training saw lower initial earnings compared to non-participants, but earnings caught up within 10 quarters, with large gains of \$400 to \$700 per quarter higher in later quarters that held up over the 16 quarters studied. As with most such studies, gains were greater for women than men.
- Overall, WIA services for Dislocated Worker participants achieved very modest though significant earnings gains of about \$350 per quarter for women and \$310 for men after three to four years, but possible selection bias pulled these estimates toward zero. Employment rates for both genders were about 5 percentage points higher than the comparison group during the last two years of follow up.
- WIA training for dislocated workers was not found to have a statistically significant impact on the employment and earnings of either women or men.

Kevin Hollenbeck of the Upjohn Institute and Christopher King of the University of Texas conducted a similar non-experimental econometric study in 2005^{iv} using the same database for seven of the states in the IMPAQ analysis. Upjohn found similarly positive and statistically significant results for WIA Adult Program participants, as did the IMPAQ study, though the Upjohn impacts are larger in magnitude. Importantly for our discussion, the Upjohn results are also positive and statistically significant for the

Dislocated Worker program overall and for those receiving training, both women and men. Furthermore, these employment and training services were shown to reduce reliance on public assistance. Specifically, Upjohn found the following statistically significant results:

- The overall impact of services for WIA Adult Program participants was \$743 per quarter, \$786 for women and \$685 for men. Months on TANF also were reduced by 2.6 percentage points.
- The impact of job training services for WIA Adult Program participants was \$669 per quarter, \$775 for women and \$552 for men.
- The overall impact of services for WIA Dislocated Worker participants was \$951 per quarter, \$1008 for women and \$895 for men. Months on TANF also were reduced by 1.9 percentage points.
- The impact of job training services for WIA Dislocated Worker participants was \$386 per quarter, \$422 for women and \$357 for men.
- The authors conclude that WIA services, including training, are effective interventions for adults and dislocated workers, raising employment rates and earnings and reducing reliance on TANF. On average, WIA services increase employment rates by about 10 percentage points and average quarterly earnings by \$800 (in 2000 dollars).

Another important non-experimental econometric study, conducted by Louis Jacobson, Robert LaLonde, and Daniel Sullivan, examined dislocated workers attending community college retraining programs in Washington State.⁷ The authors note that most displaced workers who receive subsidized retraining participate in programs authorized under WIA, and frequently enroll in community college courses. The authors found that:

- The equivalent of an academic year of community college schooling raises the long-term earnings of displaced workers by an average of about 9 percent for men and about 13 percent for women – a quite reasonable return on investment according to the authors. In dollar terms, the study found that a year of community college training increased workers' earnings by about \$800 per year.
- The study also found that earnings increased by \$1600 per year on average, or an increase of 14 percent for men and 29 percent for women, if the year of study was focused on more technically oriented vocational and math and science courses including healthcare. About one third of the increase in earnings associated with more technically oriented courses was estimated to be due to increases in wage rates, with the remainder attributable to increased hours of work.

The Jacobson study is particularly important because technically oriented vocational and math and science programs of study are precisely what WIA's dislocated worker training

programs are investing in. Of the ten most common occupations for those dislocated workers completing training in 2009, eight were in health care and information technology -- ranging from registered nurses, licensed practical nurses, nursing aides and medical assistants to health information technicians, bookkeepers and auditing clerks, and computer support specialists. These training choices reflect an ever-increasing sophisticated knowledge of industry needs on the part of the WIA system. And the Recovery Act, DOL policy, and WIA reauthorization when enacted, move WIA still further toward yearlong community college training, as appropriate, to attain industry recognized credentials.

As Workforce Investment Boards, community colleges, and other workforce intermediaries embrace industry sector training strategies to better meet the skill needs of employers in their regions, they are doing so with strong evidence of the effectiveness of this training strategy for low-income adults. Sector-based training programs work. They are effective for low-skilled workers and their employers. With the support of the Mott Foundation, Public/Private Ventures (P/PV) set out to answer the question: "Can well-implemented, sector-focused training programs make a difference in the earnings of low-income disadvantaged workers and job seekers?" P/PV examined three sector-based training programs: medical billing and accounting training offered by Jewish Vocational Services in Boston, Massachusetts (a WIA service provider); information technology training, provided by the social enterprise Per Scholas in the Bronx, New York; and training in the construction, manufacturing and healthcare sectors through the Wisconsin Regional Training Partnership in Milwaukee, Wisconsin – an association of employers and unions (WRTP is funded in part by WIA). The study recruited eligible participants from all three organizations and randomly assigned each person to participate in either the sector-based program or a control group. Trainees were followed up between 24 and 30 months after their enrollment to assess the effects of program participation. Key findings for the study include:^{vi}

- Sector-based program participants earned significantly more than individuals in the control group over a two-year period, with program participants earning over 18 percent more (about \$4,500) than those in the control group and 29 percent more (about \$4,000) in the second year.
- Sector-based program participants were significantly more likely to be employed when compared to the control group, and more likely to be steadily employed, with 52 percent of program participants working for the entire second year compared to 41 percent of the control group.
- Sector-based program participants were significantly more likely to be employed in a job that paid higher wages (above \$13 per hour), and that offered benefits like health insurance, paid vacation, and tuition reimbursement.
- In the Wisconsin Regional Training Partnership site, participants were significantly more likely to earn industry recognized credentials in construction and healthcare than were individuals in the control group, and employers responded by paying significantly higher wages.

- Fifty-five percent of the Per Scholas computer technician trainees received the A+ industry certification compared with 9 percent of their control group counterparts, and employers responded with higher wages and benefits.

This study demonstrates that sector-focused training programs delivered by organizations with a good understanding of and connection to industry needs can be very effective in raising employment and earnings for low-skilled, low-income adults. Moreover, sector-based training strategies have quickly become the norm among workforce investment boards and a wide range of other workforce intermediaries including the private sector led National Fund for Workforce Solutions, discussed below.

While WIA services have not been evaluated using experimental methods, its predecessor – the Job Training Partnership Act – was, and it can serve as an important benchmark for the non-experimental econometric analyses reviewed above.^{vii} The major findings for adults from the National JTPA Study include:

- JTPA caused a statistically significant increase in the earnings and employment of both disadvantaged women and men who enrolled in the program. Total earnings among women enrollees were increased by an average of \$2,738 (converted to 2005 dollars) over the 10 quarters following random assignment. For disadvantaged men, JTPA generated a somewhat smaller increase in earnings—\$2,383, on average. As a percentage of average control group earnings, the earnings increase for women of 15 percent was substantially larger than the 8 percent increase for men, but both net impact estimates are statistically significant. After accounting for program costs, the net benefits per enrollee were nearly identical for women (\$763 per enrollee) and men (\$781 per enrollee). Estimated impacts on post-assignment employment rates were 3.5 percentage points for women over the six quarters after random assignment and 4.8 percent for men.^{viii}
- A follow up analysis by the GAO found that earnings impacts persisted beyond the first 10 post-assignment quarters in the original study. Over the first five to six years post-assignment, JTPA increased earnings by an average of \$4,021 per woman assigned to the treatment group and \$3,996 per man. Because only about two-thirds of assignees actually enrolled in JTPA, the long-run effects per enrollee were over \$5,000, on average, for both women and men.^{ix}
- For all adults, the estimated impact of classroom training on earnings per enrollee was 11 percent in months 7-18 following assignment and 10 percent in months 19-30. Both estimates are statistically significant.^x Positive results for women and men separately were not statistically significant, but the impact of on-the-job training was large and statistically significant.^{xi} For adult women who were high school dropouts, however, JTPA boosted their attainment of a high school credential by a statistically significant 19 percentage points per enrollee.^{xii}
- The authors of the JTPA study conclude that, “Overall, we found that JTPA worked reasonably well for adults....For every \$1.00 invested by society in JTPA training for adults, the program returned approximately \$1.50 in earnings gains to enrollees.”^{xiii}

The Department of Labor has initiated a new evaluation of WIA with an experimental design, but results are years down the road, if ever, given the proposed cuts to the

program and to the evaluation budget. But the evidence we have in hand from highly credible non-experimental econometric studies, the P/PV experiment, and the JTPA study can usefully inform public policy decisions.

- The weight of the evidence is clear that the WIA Adult Program of employment and training services generates higher earnings and employment rates for women and men, and the impacts persist for several years. The overall set of WIA services likely result in a minimum 10 percent to 15 percent boost in annual earnings for disadvantaged adults, and the program returns \$1.50 for every dollar invested by society. Women's earnings are boosted by as much as 25 percent (\$2400 annually) and men's earnings by 10 to 15 percent (\$1700 annually) from the program's services.
- Core and intensive counseling and job placement services are cost effective, raising employment rates by 5 to 10 percentage points over 12-24 months.^{xiv} Job training works for adults, increasing earnings by at least 10 percent, with training approaches most closely connected to employers -- such as on-the-job training and sector based training -- generating returns of 15-20 percent.
- The available evaluation evidence on WIA's Dislocated Worker Program presents more of a mixed picture than for adults. On balance, the most rigorous studies offer modest evidence that WIA provides effective services for dislocated workers. On the one hand, the IMPAQ analysis suggests that program participants achieve very modest though significant earnings gains of about \$350 per quarter for women and \$310 for men after three to four years. However, after correcting for possible selection bias, these estimates approach zero. In contrast, Hollenbeck finds strong positive and statistically significant employment and earnings effects from program participation in several studies ranging from \$310 per quarter in Indiana, \$598-\$855 in Washington State, to \$1189 in the seven state study reviewed earlier.^{xv}
- Training for dislocated workers in WIA, on average, has not been show to be as effective as the overall program, nor as effective as for adults. Hollenbeck's returns average 4-7 percent.^{xvi} But it does appear that certain types of training matter more. The Jacobson study is evidence that one year of technical training at a community college can yield handsome returns to participants, on the order of 15-20 percent or more.
- WIA's core and intensive counseling, job search and placement services are very likely to be cost effective, speeding reemployment and increasing earnings, based on two experiments evaluated in Texas and New Jersey. Because of the findings from these demonstrations, Congress mandated that state UI agencies "profile" claimants who are likely to exhaust benefits and to direct them to receive intensive reemployment services, largely through WIA.^{xvii}

Youth Programs - The most recent random assignment evaluation of WIA youth programs has been of Job Corps, the nation's premier residential training program for disadvantaged youth.^{xviii} The authors found the Job Corps program improves outcomes for disadvantaged youth. Job Corps increases educational attainment of the GED and vocational credentials, reduces criminal activity (arrests, convictions and incarcerations), increases earnings for several program years, and boosts the receipt of health benefits.

However, based on the most recent follow up analysis using tax data, the earnings increases for Corps members were only sustained for the older participants, 20-24 years of age. Nonetheless, the 12 percent statistically significant earnings gain experienced by participants four years after enrollment “makes Job Corps the only large-scale education and training program that has been shown to increase earnings of disadvantaged youth.”^{xxix}

Other recent evaluations of smaller youth programs include:

- A 2009 report on the National Guard Youth ChalleNGe program that operates in 27 states offers considerable promise for this model. The program targets high school dropouts ages 16-18 with no income eligibility screen. The 17-month program includes an intensive 20-week residential experience, often on a military base. Preliminary findings from the random assignment experiment suggest increased rates of high school credential attainment, increased college enrollment and employment, and improved health and self-efficacy. MDRC is carrying out the study.^{xx}
- A 2008 Department of Labor-sponsored evaluation of WIA’s Youth Opportunity Grant program found positive results, noting increased educational attainment, Pell Grant receipt, labor market participation, and employment rates and earnings for more than 90,000 program participants in 36 high poverty neighborhoods.^{xxi}
- A cost-benefit analysis of YouthBuild’s targeted intervention program aimed at youthful offenders found (1) graduates of the Offender Project display significant positive outcomes in terms of educational attainment and reduced recidivism compared to participants who do not complete the program; and (2) a positive benefit-to-cost ratio, showing that every dollar spent on every court-involved youth is estimated to produce a minimum return of \$10.80.^{xxii} These positive results are only suggestive, however, because participants were not randomly assigned to treatment and control groups. The Department of Labor initiated a national random assignment evaluation of YouthBuild grantees in 2010 with an independent contractor team led by MDRC.
- Hollenbeck found no short-term earnings gains among WIA youth in three states despite statistically significant employment rate impacts. The longer-term earnings impacts were similar, though Washington State did evidence a statistically significant impact of \$325 per quarter for WIA youth during the third and fourth years after program exit.^{xxiii}
- And I would note the impressive way the WIA system responded to the huge challenge posed by the Recovery Act’s \$1.2 billion appropriation to provide urgently needed employment opportunities for disadvantaged youth 14-24 years old. Starting virtually from scratch in most communities around the country, and with short notice, WIA ramped up recruitment of over 355,000 young people and recruited thousands of employers to provide nearly 90 percent of the youth with valuable summer work experiences in public, nonprofit and private sector workplaces. Many communities

blended work with academic offerings such as recovery of school credits, GED preparation for dropouts, and remediation. Nearly half the sites reported that more employers responded to the initiative than were needed.^{xxiv}

- Finally, we must acknowledge the youth results from the National JTPA Study. These findings from a random assignment evaluation were particularly discouraging. JTPA did not significantly increase youths' earnings, or reduce their welfare benefits, over the 30-month follow-up period. However, many of the concerns raised in the study were subsequently addressed in WIA's youth program requirements.

How can we sum up these findings for disadvantaged youth? First, we should consider the cost of doing nothing. Over 1 million youngsters drop out of high school each year and the costs to society by some estimates exceed \$260 billion in lost wages, foregone taxes, and reduced productivity over their lifetime. Federally funded workforce and education programs can be critical to helping to provide disadvantaged and out-of-school youth with jobs, hands-on exposure to the workplace and opportunities to get back on track and earn secondary and post-secondary credentials. But in order to make an appreciable difference, we simply must do a far better job, on a much larger scale than we have in the past, especially among out of school youth -- who should be the special focus of the Department of Labor.

This is not to say that there are not wonderfully effective programs in the public and nonprofit sectors that transform lives in individual communities. Jobs for America's Graduates (with considerable WIA state funding) and Big Brothers Big Sisters are two that come to mind among nonprofits; and the Center for Employment Training in San Jose has demonstrated twice with random assignment evaluations the capability, with federal funding, of substantially increasing earnings for single teen mothers and dropout youth. But beyond Job Corps, National Guard Youth Challenge, and YouthBuild (hopefully), there is not a lot of evaluation evidence of broadly effective federally funded workforce development programs for disadvantaged youth.

In a delayed response to the youth findings from the National JTPA Study, this Committee in 1995 and the Congress slashed JTPA's budget for youth programs by 80 percent, including required funding for Summer Jobs. "By the time the results [from the National JTPA Study] were released, however, the JTPA's youth programs had been revamped, with, among other things, the creation of a separate youth program and targeted services to those with multiple employment barriers."^{xxv} Congress enacted the Workforce Investment Act in 1998, incorporating all that had been learned from JTPA and the latest findings from youth development efforts in other sectors. These youth reforms are substantial and their implementation has yet to be evaluated, except for Hollenbeck's three state studies. Fortunately, the DOL recently launched a WIA evaluation that will use an experimental design, but results are years down the road. In the meantime, WIA reauthorization provides an excellent vehicle to critically examine and incorporate what we know about effective program services for disadvantaged youth.

What are we to conclude from this brief review? After an extensive examination of the

literature and their own analysis, King and Heinrich (authors of two opposing studies previously referenced) jointly conclude that the weight of the evidence suggests, “Workforce development does work. Workforce investments produce widespread benefits for employers and society as a whole.” They go on to write that the returns on investment are “particularly remarkable given [the] magnitude and intensity of workforce investments relative to size and complexity of barriers they address.”^{xxvi} I agree completely with this summary of the evidence.

ⁱ In a 2009 report the GAO wrote, “Labor’s process for determining states’ available funds considers only expenditures and does not consider the role of obligations in the current program structure... As a result, Labor’s estimate of expenditure rates suggests that states are not spending their funds as quickly as they actually are. Labor’s Office of the Inspector General has also noted that obligations provide a more useful measure for assessing states’ WIA funding status if obligations accurately reflect legally committed funds and are consistently reported.”

ⁱⁱ Executive Office of the President, Council of Economic Advisors, Preparing the Workers of Today for the Jobs of Tomorrow, July 2009.

ⁱⁱⁱ Carolyn J. Heinrich, Peter R. Mueser, and Kenneth R. Troske, Workforce Investment Act Non-Experimental Net Impact Evaluation: Final Report. December 2008. IMPAQ International.

^{iv} Kevin Hollenbeck, Daniel Schroeder, Christopher King, and Wei-Jang Huang, Net Impact Estimates for Services Provided through the Workforce Investment Act, October 2005. Employment and Training Administration Occasional Paper 2005-06.

^v Louis Jacobson, Robert LaLonde, Daniel G. Sullivan, Estimating the Returns to Community College Schooling for Displaced Workers, February 2004, IZA Discussion Paper No. 1017.

^{vi} Sheila Maguire, Joshua Freely, Carol Clymer, Maureen Conway, and Deena Schwartz, Tuning In To Local Labor Markets: Findings From the Sectoral Employment Impact Study, Public/Private Ventures, 2010.

^{vii} Larry L. Orr, Howard S. Bloom, Stephen H. Bell, Fred Doolittle, Winston Lin, and George Cave, Does Training for the Disadvantaged Work?, 1996, The Urban Institute Press.

^{viii} Paul T. Decker, Ten Years of the Workforce Investment Act: Interpreting the Research on WIA and Related Programs, February 2010, Mathematica Policy Research, p. 7.

^{ix} *Ibid*, p. 8.

^x Orr, et al, op cit, p. 183.

^{xi} Orr, et al, op cit, p. 153.

^{xii} Orr, et al, op cit, p. 111.

^{xiii} Orr, et al, op cit, p. 215.

^{xiv} Kevin Hollenbeck, Workforce Investment Act Net Impact Estimates and Rates of Return, 2009, W.E. Upjohn Institute, p. 7.

^{xv} Kevin Hollenbeck, Does the Workforce Investment Act Work?, November 2009, W.E. Upjohn Institute.

^{xvi} *Ibid*, p. 5.

^{xvii} Decker, op cit, p. 15.

^{xviii} Peter Z. Schochet, John Burghardt, and Sheena McConnell, “Does Job Corps Work? Impact Findings from the National Job Corps Study,” American Economic Review, 2008, 98:5, pp 1864-1886.

^{xix} *Ibid.*, p. 1883.

^{xx} D. Bloom and A. Gardenhire-Crooks, et al, Reengaging High School Dropouts: Early Results of the National Guard Youth ChalleNge Program Evaluation, 2009, MDRC.

^{xxi} Russell H. Jackson, R. Malene Dixon, et al, Youth Opportunity Grant Initiative: Impact and Synthesis Report, December 2007, Decision Information Resources, Inc.

^{xxii} Mark A. Cohen and Alex R. Piquero, Costs and Benefits of a Targeted Intervention Program for Youthful Offenders: The YouthBuild USA Offender Project, March 2008, YouthBuild USA.

^{xxiii} Kevin Hollenbeck, “Short-Term Net Impact Estimates and Rates of Return”, in The Workforce Investment Act: Implementation Experiences and Evaluation Findings, edited by Douglas J. Besharov and Phoebe H. Cottingham, W.E. Upjohn Institute, forthcoming 2011.

^{xxiv} Jeanne Bellotti, Linda Rosenberg, Samina Satar, Andrea Mraz Esposito, and Jessica Ziegler, Reinvesting in America’s Youth: Lessons from the 2009 Recovery Act Summer Youth Employment Initiative, February 26, 2010, Mathematica Policy Research.

^{xxv} Douglas J. Besharov, Presidential Address: From the Great Society to Continuous Improvement Government: Shifting from “Does It Work?” to “What Would Make It Better?”, Presidential Address, 2009, Journal of Policy Analysis and Management, Vol. 28, No. 2, pp. 199–220.

^{xxvi} Christopher T. King and Carolyn J. Heinrich, How Effective are Workforce Development Programs? Implications for U.S. Workforce Policies in 2010 and Beyond, October 2010, University of Texas.

Mr. KINGSTON. Yes, when we do a pilot program, it would appear that we want to find out if there is a different way, a better way, or a worse way, and it would appear that there would be—that information would be readily accessible or something that is—

Mr. UHALDE. Yes, sir. It has been a decade since I was involved in that.

Mr. KINGSTON. Okay. I have a number of questions that I will have on the second round or submit for the record. But I don't think with the time allotted, I can start a new one. But that is what the questions were.

Let me see, one other program. I do want to say, Mr. Uhalde, Job Corps is privately administered in a lot of places. Correct?

Mr. UHALDE. Yes. Each center is contracted out, and except for a few run by Civilian Conservation Corps as I recall, type programs or Interior and Ag.

Mr. KINGSTON. And those contractors, some of them do a better job than others, we would assume?

Mr. UHALDE. That is correct. Sure, and they recompetete them, and they score them and rank them. And then some get thrown out, and they get new contractors.

Mr. KINGSTON. And I think that is something that we want to know about more because I think it would be of interest to both parties and all philosophies that this is a situation where you do have private contractors doing a Federal program, and you are grading those contractors on their effectiveness.

Mr. UHALDE. Absolutely.

Mr. KINGSTON. Thank you.

Mr. REHBERG. Thank you.

Dr. Besharov, you referred to the Heinrich study, and I was going to ask you a question about that. Can you tell us a little bit about how it was conducted and expand a little bit more on the findings of the Dislocated Worker Program?

Mr. BESHAROV. Let's see, do we have about 5 hours?

Mr. REHBERG. Yes.

Mr. BESHAROV. So the key issue is the difference between a randomized experiment and a statistical manipulation of data. That is not meant to be a negative word. In particular, the Heinrich study is called a propensity score matching study.

In a randomized experiment, we randomly assign people to a treatment group and a control group. And the reason we do it randomly is there are various characteristics of people that we can't observe. They are called unobserved characteristics.

So it is not enough to say that someone is a male in California with 3 years of experience doing this or that. There are other things we don't observe about people, such as motivation, and that is why we do a randomized experiment.

When a randomized experiment is not available, there are other statistical techniques that are attempted. One is called propensity score matching. We look at the people who are in a program, and we try to scale how likely they were to be in a program by whether they have 3 years of education, whether they were men, whether they were 42, whatever it is. And then we look statistically for people like that in the two groups and match them.

I have already described something that involves a lot of computer work back and forth, and it is extremely difficult, if not impossible, to judge the quality of this work unless one redoes it because it is a black box.

Carolyn Heinrich is one of the best researchers in the country. I am proud, as I said, to have published this paper. So I like it. A lot of people like it. But it is based on this kind of research, which is, in the end, very difficult to judge its validity. We all feel better if it is a randomized experiment.

The Department of Labor feels better if it is randomized experiments. Carolyn Heinrich would feel better if it was a randomized experiment. We all feel that way.

So she did this study—

Mr. REHBERG. I am going to ask you to wrap up real quick because I want to ask Mr. Bishop if he was there at the time.

Mr. BESHAROV. She did this study, and she found, like so many other people, that the Dislocated Worker Program—and I want to say this just yet again—was found not to be cost effective even for the people in it, let alone the taxpayers. And she found that the Adult Program could be cost effective, probably.

The important thing here is let's at least do something about the Dislocated Worker Program. Let's not defend the whole darned thing.

Mr. REHBERG. Okay. Mr. Bishop, were you there at the time of the study, or had you left already?

Mr. BISHOP. What year?

Mr. REHBERG. 2008, and we are just finding out about it. We are a little surprised about that.

Mr. BISHOP. I left in 2007.

Mr. REHBERG. Okay. Are you familiar with the study?

Mr. BISHOP. I am.

Mr. REHBERG. Could you respond to—

Mr. BISHOP. Well, again, Mr. Besharov is exactly right. The challenge we have is that on a lot of our evaluations, we don't know if the service delivery, the service that the individual got actually made an impact. And let me give you one example.

We talk about core services and the results of those core services. An individual could come into a One-Stop center, get registered in the program, meet with a career counselor, be registered as somebody getting core and intensive services, leave that One-Stop, go out and search for a job on his or her own, get a job on his or her own, and get credit under the WIA system that the WIA system helped that person get employment because they used the unemployment insurance wage record that that person now has as the cross-match against the WIA participant record.

So the problem and I think what Mr. Besharov is pointing out is without random assignment, we really don't know if that intervention made a difference or not because there are so many variables involved in that individual's job search. Not speaking for him, but—

Mr. UHALDE. Could I—

Mr. REHBERG. You bet. Absolutely.

Mr. UHALDE [continuing]. Augment that? But we do know for core and intensive services through six randomized experiments in

Texas and Washington, South Carolina, New Jersey, Minnesota, that core and intensive services for dislocated workers where either they are early UI claimants or getting ready to exhaust that it speeded up the reemployment of those individuals back to jobs, didn't harm their wage, and reduced unemployment insurance benefits and increased the tax revenue to the public so that these more than pay off the Government.

So 40 percent says GAO of WIA services are spent for training. My colleague says that is not enough. We should do more. But 60 percent are core and intensive services that are unequivocally cost effective and get people jobs quickly.

Mr. REHBERG. Thank you.

My time has expired. But if you have 30 seconds, do you want to answer that or not? Probably not. Stay out of it if you can. [Laughter.]

Mr. REHBERG. All right. Ms. DeLauro.

Ms. DELAURO. I thank you.

I want to thank Mr. Uhalde for that comment because that is what I wanted to press. Sixty percent is spent on core and intensive WIA services, job search assistance and career counseling. In addition to which with the individual training accounts, as I understand it, you have to provide about 5 hours of counseling before moving on to this effort, and it is that counseling and those efforts that make this—well, you are shaking your head no, Mr. Besharov. But it is in the data that the 5 hours are required.

Anyway, let me move on. I don't see a lot of money flowing these days. We are talking about \$50 a person for core and intensive training, and they have used the service. They go there. Anybody who has gone to a One-Stop watches what these folks are doing, and it is about \$4,000 per person for training.

I want to see where there is the impetus and where there is the will and the openness to try to look at what we are going to do in spending \$4,000 per person in this economy, in this budget year, when what we have seen with H.R. 1 is removing all of the funding essentially for Federal job training programs.

I would like to again submit for the record the comment, I have an op-ed from Carolyn Heinrich here, who says, in fact, that the dislocated workers, as you pointed out, Mr. Besharov, as accurate, but what continues to receive less emphasis are the positive program effects for typically more disadvantaged WIA Adult Program participants. So I think her op-ed in terms of her commentary on her own research, if we can put that into the record?

Mr. REHBERG. Without objection.

[The information follows:]

Preserve Training Program Funds for Disadvantaged Adults

This week, there will be a Congressional hearing that is expected to substantially influence the level of cuts made to federal employment and training programs under the Workforce Investment Act (WIA). A centerpiece of the evidence that will be discussed in the hearing is our 2008 study, which used nonexperimental methods applied to data on approximately 160,000 WIA participants and nearly 3 million comparison group members from 12 states to estimate WIA program impacts. In the last month, we have had countless conversations with Congressional staffers and others from both sides of the political fence about what can be concluded about employment and training program effectiveness from our study. We were very encouraged that research evidence is being seriously considered by those preparing to determine the appropriate level of cuts to WIA programs.

While recognizing that workforce development programs will not be spared the knife, we are concerned that a few key findings from our study may be lost in the political debate. When our study was first released, press attention focused on our findings of little to no impacts of the WIA dislocated worker program. What continues to receive less emphasis are the positive program effects for the typically more disadvantaged WIA Adult program participants. We estimated that the average increase in earnings associated with adult women's participation in WIA is nearly \$2,400 per year, or 26 percent of average earnings. The average impact for disadvantaged men is \$1,700, or about 15 percent of average earnings. Program participation increases employment in a given quarter for these women by approximately 7 percentage points, and for men by about 6 percentage points. Given that the employment rate in the absence of WIA participation is estimated to be in the range of 50-60 percent for these adults, this amounts to more than a 10 percent increase in employment. If these impacts are sustained for a period of just two or three years, investments in training for more disadvantaged adults clearly generate substantial *net* benefits for both men and women.

These results should be seen as extraordinarily welcome news, given that these services benefit persons who, as measured by their unemployment rates, are in most dire need of them (e.g., young, low-skilled adults, particularly men, who are very loosely attached if not already disconnected from the labor force). These are the groups most dramatically affected by the recent deep recession as well. For these low-skilled adults, WIA programs play a key role in linking them with opportunities to increase their education and skills, and ultimately, their employment and earnings.

President Obama has pushed for more evidence-based policymaking, and here is a case where it can confidently be used, if it is not trumped by politics. In making cuts to WIA programs, focus on preserving funding for the WIA Adult programs, which have in the past typically received about half of the funding allocated for dislocated worker programs.

Authored by Carolyn Heinrich,
Ken Troske, and
Peter Mueser

Ms. DELAURO. On just an aside point, I will say this. Mr. Chairman, don't take issue with the minority. I think the people that you need to take issue with are the Huffington Post and their recent article. And I just forward that to you personally, and you ought to correct the record with them if that isn't exactly what you said with regards to Pell grant.

Mr. REHBERG. If I might? And I won't take up your time.

Ms. DELAURO. This is my time. It is my time.

Mr. REHBERG. I won't take up your time.

Ms. DELAURO. Thank you.

Mr. REHBERG. You said somebody suggested that Pell grants were a form of welfare, and you will not find those words in that at all. "A form of welfare."

Ms. DELAURO. It says "are becoming the welfare of the 21st century." I just want you to take issue with the Huffington Post, not with the minority.

Mr. REHBERG. I take issue with your mischaracterization of my quote.

Ms. DELAURO. Well, it is not. You have got to take issue with the Huffington Post. It equates it with food stamps, with low-income energy assistance, Section 8 housing. This is not the purpose of this hearing, but we did talk about—

Mr. REHBERG. You brought it up.

Ms. DELAURO. I did. Because we talk about Pell grants. And we talk about how useful Pell Grants are in terms of training and getting an education but when we are looking at H.R. 1, it would cut back \$845 to the Pell grant program that would affect 9 million students.

Mr. REHBERG. So you are not willing to withdraw your misstatement or mischaracterization—

Ms. DELAURO. I don't have a misstatement, Mr. Chairman.

Mr. REHBERG. The words "a form of welfare" were never spoken.

Ms. DELAURO. I would simply direct you again to the Huffington Post.

I want to talk about studies, Mr. Uhalde. Some of the evidence presented today uses a quote from Barnow and Smith—and this is Mr. Besharov's testimony—2008, to sum up evidence on job training programs.

It looks as if the quote doesn't specifically apply to WIA or its predecessor program, the JTPA program, J-T-P-A. Earlier in the report, Barnow and Smith note the positive impacts of JTPA. It was studied carefully and was found to have positive overall results. Another specific study relating to WIA is the impact study. It, too, finds generally positive results.

We need to find better ways to train dislocated workers. Believe me, we have to do something about TAA, which has never worked for dislocated workers. But generally, there is positive results on training efforts.

And we looked at the literature. There is a study that was done for the World Bank by two eminent economists and former chief economist at the Labor Department, and the study is "What We Know About the Impacts of American Employment and Training Programs on Employment, Earnings, and Educational Outcomes."

Its summary, and I am quoting this—this is not my words. “It is one of the best of the large body of quantitative literature on the effectiveness of American training and employment services in improving labor market outcomes, complementary of U.S. training programs for disadvantaged adults and job search assistance.”

What is concerning to me is the notion that we should be stepping away from the WIA program and from providing a significant Federal commitment in this policy area during difficult economic times. With the weight of the evidence, should we be stepping away from the WIA program and what it is doing in an effective way in terms of job training in these times?

Mr. UHALDE. Thank you, Ranking Member.

Well, clearly, in my statement, I say, no, we shouldn't be stepping away. I think the weight of the evidence—I think the weight of the evidence for adults is positive and generally positive. Doug can barely get those words out, but it is. It is positive.

Mr. BESHAROV. I can't use the button. That is all. [Laughter.]

Mr. UHALDE. And that is one where you can go back to the randomized experiment in JTPA for disadvantaged adults, and JTPA is clearly positive and returns \$1.50 for every \$1 invested by the taxpayer for training and employment services for disadvantaged adults.

The problem we have is making dislocated worker training more effective. I have suggested a couple things. I would also endorse a couple things that we have done, trying to better link unemployment insurance with training for dislocated workers that is making sure that workers can get training while they are on unemployment insurance, which the Obama administration tried to do.

Ms. DELAURO. Thank you.

Mr. UHALDE. And Pell grants, trying to make them useful for adults because they are designed for 18- to 24-year-olds.

Mr. REHBERG. Mr. Alexander? Then Mrs. Lummis.

Mrs. LUMMIS. Oh, is it my turn?

Mr. REHBERG. No, but I am going to go to you next. [Laughter.]

Mrs. Lummis.

Mrs. LUMMIS. What about Ms. Lee? Don't we have—

Mr. REHBERG. Well, he passed. Mr. Alexander passed.

Mrs. LUMMIS. Okay.

Mr. REHBERG. Mrs. Lummis.

Mrs. LUMMIS. Thanks, Mr. Chairman.

Well, I would like to pick up that line of questioning that I had to drop earlier because I was too verbose, and it has to do with consolidating these programs. How do you recommend that we consolidate?

And an additional comment on Indian programs because I used to also be on the Natural Resources Committee, and I note that Indians have to go through the BIA and the agency of substance for everything. So they have an additional hoop for everything, and that seems completely ridiculous for the Indian nations as well.

So could you, anybody, jump in and comment, how do you recommend we go about this?

Mr. UHALDE. I won't suggest programs. I will suggest that there have been attempts. Back in '98, we tried to consolidate more than

we did under Workforce Investment Act. Fundamental problem is the committee jurisdictions in the Congress.

We have proliferation of programs across agencies. They proliferate across these committee jurisdictions, and it is very difficult for the HELP Committee in the Senate to reach over to the Finance Committee and do something about welfare reform and TANF, for example.

So it is somewhat easier in the House, and the issue may be that one way these things have been dealt with in the past is to have a committee, a special committee set up in the Congress that draws from the various committees to address an issue like this.

Mrs. LUMMIS. And then I would ask some of our veteran Members of Congress, have any of you ever participated in one such committee before?

Do they happen? Do they work? Does anybody—

Wow, nobody has.

Mr. BESHAROV. Well, I think the healthcare bill moved through the House that way.

Mr. KINGSTON. Yes, healthcare did that.

Ms. DELAURO. We have committees of the whole on the floor. We did that with regard to healthcare. We dealt through healthcare, we dealt with that kind of—

Mrs. LUMMIS. Oh, but you know, you didn't have committees where what is being suggested here is where the various committees of jurisdiction over job training programs that are peppered throughout Government getting together and saying we think this one works better than this one or consolidating—

Ms. DELAURO. Well, sure. You have got a recent proposed transfer, I think, of the elderly community service program. It is moving from Labor to HHS.

Mrs. LUMMIS. And how did that come about?

Ms. DELAURO. I am going to just assume that there were conversations—yes, well, I am just told this, that the administration has task forces like that. I can give you some examples with regard to food safety. You and I should talk about this because I have been wanting to consolidate the 15 agencies into one single food safety agency. We now have 15 today that deal with food safety. So there is always an opportunity to consolidate.

But you are looking at a number of places, particularly with this budget proposal that has come out in various areas, which looks at consolidating a number of programs. And the agency task force on food safety, it is Ag, it is HHS, and there is maybe one or others who are discussing this.

Mrs. LUMMIS. Okay. Well, I will talk to you about the Ag programs. How could we replicate that on job training programs? Any thoughts?

Mr. BESHAROV. Here is why we are having this argument about the effectiveness of WIA. In 1994, when the Republicans last took over, we had a proliferation of childcare programs. And one of the first things they did was to collapse and coordinate them.

Now I think everyone agrees that the coordination and the consolidation was good. There is an argument about how much money was put in and so forth. Here, the reason I think there is an argu-

ment about WIA is the question: What does the future of job training look like?

If you are satisfied with WIA, you consolidate by putting everything in WIA. If you are not satisfied with WIA, and with all due respect, I am not satisfied. It doesn't matter whether it is a little effective or not, it is not enough effective. And I would, like Mr. Uhalde, look at food stamp training. I would look at the coordination with Pell grants and student loans because that helps drive this.

And I would look at the unemployment program, and I would think about wrapping that up in a program to meet the skills mismatch in this country.

Mrs. LUMMIS. Thank you.

And Mr. Chairman, I yield back.

Mr. REHBERG. Thank you.

Ms. Lee, before we begin, I am told by staff that subcommittees do it the way I suggested. If somebody passes, it goes to the next on this side. That is how I will run this committee. I apologize if there was some confusion. It was not intended as a slight, and that will be the rule from here on out.

Ms. LEE. Thank you very much.

Let me ask Mr. Uhalde again, I just want to ask a little bit more about the budget cut implications for YouthBuild, the reintegration of ex-offenders, dislocated workers. In many communities, populations of people really and our constituents need job training. Of course, ex-offenders so that they have the skills so they can move forward and get a job and not go back to prison.

Our young people need the types of job training and skills. Some will or some may or may not go to college. Many now are helping with their families, paying the rent, buying food. And what just overall are the implications of these cuts?

And also what is the status of our summer youth job program? We tried last year to bump up to about \$3,500,000 for summer youth jobs. We never were able to get that done. And what is going to happen this summer?

Mr. UHALDE. Thank you, Ms. Lee.

With regard to YouthBuild and the reentry and ex-offender programs, the budget would zero out YouthBuild. It proposed a significant reduction in the ex-offenders.

These are particularly unfortunate because we are finding for ex-offender programs that, in fact, not only are they becoming effective in getting employment for ex-offenders, but because of that, it reduces recidivism. So you can look at these as public safety programs, crime reduction programs, by helping workers be able to get jobs who are ex-offenders.

YouthBuild has not had a random assignment evaluation, but something that is suggestive of their youthful offender program that also shows promise. And now the department has launched a random assignment experiment, and hopefully, it will confirm those results and others.

Summer jobs—Recovery Act provided \$1,200,000,000 to the department in February, and the department launched or the workforce system at the local level launched 350,000 summer jobs in a remarkable achievement. They recruited all the employers for that.

There is not a request, as far as I know, from the administration for continued funding for summer employment. But we need to look at it. We are at nearly 10 percent unemployment. It is depression-era unemployment for young people in this country. The employment rates are disastrous for young people.

Mr. REHBERG. Ms. Lee, if you would yield back some of your time, we could get the last two Members before we have to go vote.

Ms. LEE. Sure.

Mr. REHBERG. Because we can't come back. It is up to you.

Ms. LEE. Okay. That is fine.

I will just ask you later why the administration didn't request funding for summer youth jobs.

Mr. REHBERG. And the record will remain open.

Mr. Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman.

First of all, I wanted to say for the record and those who have been listening to the discussion about the chairman's comments on a radio program, which was reported by the Huffington Post. I have got the transcript, and I am going to quote for the record. I believe these are your words.

"I am not suggesting that college students are welfare recipients. I am just saying that the program itself is expending so quickly, it is moving beyond the Federal Government's ability to pay. And the reason, as I understand it, is that the Pell grants are going from \$19,000,000 to \$43,000,000 in a Department of Education budget that is only \$48,000,000."

So, to me, I want to associate myself with your remarks because I think they are critical and that we are spending \$11,000 in Pell grants per student if, right now, it is nationwide there are 9 million students on there. And they can be in school as long as 9 years with no requirement that they get a degree and that there is discretionary money in the program after they have paid for tuition, books, transportation, supplies, and room and board.

So I think it is something that, given an increase of anything that goes from \$19,000,000 to \$43,000,000, we do have to look at. So I just wanted to clarify that, as I understand it.

Also I wanted to ask for the record, I am concerned, are you guys—I know earned income tax credit does not come under your department, but do you coordinate with earned income tax credit? Because if the Hollenbeck study shows that the average wage for people getting out of WIA is \$16,000 a year and kind of the public assistance package, if you will, is about \$20,000 a year, then for many people who go through job training, there is no incentive. You have to have that earned income tax credit.

But do you guys talk to each other? Is there a coordination?

Mr. REHBERG. If you could answer very quickly, I want to—

Mr. KINGSTON. Then you know what? Let me ask you for the record, the other thing I want to mention also is I understand, I saw a statistic yesterday that really shocked me that from 2008 to 2010, 1.1 million jobs went to migrant workers, 35 percent who were illegal aliens. But 1.1 million jobs went to migrant workers.

And as we look at a 10 percent unemployment rate and an inner-city unemployment rate and a youth unemployment rate which are maybe twice to three times that number, certainly that has got to

be something that is of concern, too, as we look at the job situation—

Mr. REHBERG. Could we get that for the record?

Mr. KINGSTON [continuing]. And I would like to have your comments. And also, Mr. Chairman, if we ask a question for the record, we will have an answer before the markup. Correct?

Mr. REHBERG. Yes, that is correct.

Mr. KINGSTON. Thank you.

Mr. REHBERG. Ms. Roybal-Allard, you are the last. Yes?

Ms. ROYBAL-ALLARD. I would like to yield 30 seconds to the ranking member.

Ms. DELAURO. I think the Chairman needs to really take issue with Huffington Post because in the way they have characterized his remarks. Look, I have been often mischaracterized in a whole variety of publications, on the radio or elsewhere. But in this radio interview, it says he compared Pell grants to welfare.

Mr. REHBERG. And I do take issue with her. But I did not want to bring Huffington Post in as any kind of a—

Ms. DELAURO. Well, but I mean, it is a publication that is a reputable publication. Maybe some don't regard it that way. And I have taken my 30 seconds.

Ms. Roybal-Allard, your question?

Ms. ROYBAL-ALLARD. Mr. Uhalde, Mr. Bishop's testimony suggests that revamping the job training system in a way that targets less funding to staff-assisted and counseling services and more to helping participants pay for the costs of postsecondary education and training would be a good way to go.

As I understand it, among the unemployed 25 and older, 2.1 million have a bachelor's degree or more; 2.7 million have attended some college, including those who have completed an occupational or vocational program; 3.5 million have only a high school degree; and 1.6 million do not have a high school degree.

Given the different educational level of the participants, are there benefits to having both training and counseling services provided by WIA, and how do you think reducing counseling services, what kind of an impact will that have on the ability to support and train job seekers and get them into the workforce?

Mr. UHALDE. You know, the One-Stop career centers see a range of people. I think Mason is correct in saying that we shouldn't call WIA a job training program because it is both an employment and training program.

And that means that it has to do a diagnostic, an assessment of everybody that comes in, and try and help those people decide what services are best for them. WIA doesn't rubberstamp everybody and tell them what kind of service they need. WIA offers a menu, and people decide.

The counseling, as all of these six experimental studies have shown, is enormously valuable for those people that it is appropriate for. That is, counseling, job referrals, job placement, and those things.

If we want to beef up training, which I don't think anybody would object, it shouldn't come at the expense of those services. It should come in addition, and that means getting money from some-

where else. And since Congress won't appropriate new monies, we should probably look where it is best to bring other resources in.

Mr. REHBERG. I apologize for us having to leave. We will begin debating the CR afterwards. So, again, we can't.

The record will remain open for additional questions, and we would expect timely answers to those questions, as stated, before the markup of the subcommittee.

Thank you very much.

*Department of Labor, Health and Human Services and Education and
Related Agencies*

**Department of Labor Job Training Programs Hearing
April 7, 2011**

**QUESTIONS TO BE SUBMITTED FOR THE PUBLIC HEARING RECORD
For Mr. Mason Bishop**

The Honorable Denny Rehberg, Chairman

WIA Administration Costs vs. Program Costs

The current WIA system is structured so that the majority of expenditures are for infrastructure costs, such as leases, personnel, utilities, etc. As you suggested in your testimony, it seem that this would leave very little funding left for actual training.

1. Mr. Bishop, the level of funding for WIA state grants has changed very little, if at all, since you left the Department. In your recollection, approximately how much of the \$3 billion in annual appropriations (for the Adult, Youth, and Dislocated Worker programs) goes toward the One-Stop infrastructure, itself...things like personnel, utilities, etc?

This is one of the glaring weaknesses of the structure of the current workforce investment system—accountability for how dollars are being spent. There are two inherent problems with the current approach: (1) the definition of program costs is so broad as to allow many “overhead” costs to be categorized as programmatic, combined with no financial reporting system that tracks infrastructure costs, means that there is no way to accurately track infrastructure costs; and (2) the belief in 1998 that costs of the One-Stop system would be borne by the multiple funding streams identified as “mandatory partners” has not materialized, meaning that almost universally the costs of the One-Stop infrastructure are being paid by the three WIA funding streams and Wagner-Peyser.

These two problems lead to very few dollars being available to participants for job training.

2. Mr. Besharov spoke of a “skills mismatch” issue during his testimony. Would we not get more people trained for the jobs that are available if we reduced costly overhead and gave workers the flexibility to pursue training? How could the system be reformed to encourage more specialized training and close the skills-mismatch gap?

If the goal of the Workforce Investment Act is to provide opportunities for individuals to receive needed post-secondary education and training for good careers and increased earnings, then the system is in dire need of reform. While a number of changes can be made to the structure of the system, two would have the most dramatic impact: (1) consolidate the three WIA funding streams and the Wagner-Peyser Employment Service into a single, flexible formula grant to the states to be used to educate and train workers and youth for jobs and careers in-demand; and (2) allow for easier direct access by workers to the funds and eliminate unnecessary bureaucratic hoops and unnecessary employment counseling.

3. Other than being additional funding streams, what is the benefit of maintaining state-based Unemployment Insurance, Employment Service, and Trade Adjustment Act programs alongside a locally-funded WIA system?

There is no obvious benefit to keeping these separate funding streams. The Employment Service (Wagner-Peyser) provides the same services as the core services under WIA, so maintaining a separate delivery system is inefficient and confusing for customers. Trade Adjustment Assistance is a dislocated worker program that many hope to be deemed eligible for because of the entitlement to training that does not exist in WIA. TAA participants are a smaller subset of WIA Dislocated Workers and because each program provides similar, yet distinct, services, coordination must occur if participants are to receive the full menu of services offered by both programs. The Unemployment Insurance program is the most unique of the three in that it is a benefit program and doesn't provide training services. However, the employment assistance to UI claimants is supposed to occur through either Wagner-Peyser or WIA, meaning that another layer of coordination must occur if participants are to be served effectively.

State Merit Staffing

Mr. Bishop, you briefly mentioned the issue of state merit staffing as it relates to the delivery of services provided under Wagner-Peyser and Workforce Investment Act programs.

1. Can you elaborate on this discussion? What specifically is the issue when only State employees can administer Wagner-Peyser services whereas other public employees are providing WIA services?

As mentioned in my testimony, there are essentially two, duplicative employment and job training delivery systems: (1) a locally-based delivery system providing core, intensive and training services under WIA; and (2) a state-based delivery system providing employment services under the Wagner-Peyser Act. "Core" services under WIA and "Employment" services under Wagner-Peyser are exactly the same thing.

After passage of WIA in 1998, the U.S. Department of Labor promulgated the regulations for the legislation. Under 20 CFR Part 652, the Department maintained the

long standing tradition of state-merit staff delivery of Wagner-Peyser services while allowing three states to be exempt from this requirement under a “demonstration”: Colorado, Michigan and Massachusetts. The demonstration was allowed to occur because the merit-staffing requirement is not absolutely stated in the Wagner-Peyser statute; it is interpretative.

What is troubling is that the Department is currently extending this merit-staffing requirement to the Trade Adjustment Assistance program under rules promulgated in 2010. What this means is that WIA Dislocated Worker services are being provided by locally-based staff under WIA and have to be “coordinated” with state staff delivering the TAA program.

This continued “strengthening” of the duality of job training delivery through rulemaking is unnecessary, costly and has no basis in sound public policy.

2. In your opinion, what is the fiscal impact of expressly delineating who can provide what services when it comes to these two funding streams?

It is difficult to delineate it due to the lack of appropriate accounting, but it is very costly. In a number of states, there are WIA-funded “One-Stop Centers” and state-funded “Job Service” centers co-existing. Even when they are co-located in one building, the staff are often segregated causing confusion and unnecessary steps for customers. The costs in personnel and physical infrastructure likely run in the tens to hundreds of millions of unnecessary duplication and funds not going to workers needing education or training.

Program Year and Advance Funding

The Workforce Investment Act authorizes a program year funding schedule, which means that funds are not available until July 1 of the fiscal year in which they are appropriated, and they remain available until June 30 of the following fiscal year. Additionally, a portion of the funds are not made available until the start of the next fiscal year as an advance appropriation...to the tune of about \$1.7 billion annually for WIA state grant programs.

It is my understanding that the advance funding mechanism was first used around 2000 in an effort to avoid a significant score from the Congressional Budget Office for that fiscal year. Unfortunately, this gimmick has been repeated each year since, leaving the Subcommittee with an annual \$1.7 billion hit against the following year’s allocation.

1. Mr. Bishop, in your opinion, what benefit does the both program year and advance funding provide these programs?

I see no benefit whatsoever; in fact, this funding scheme causes additional costs to the Employment and Training Administration due to the additional accounting, tracking and guidance to states needed to maintain the system.

2. Perhaps better still, WHO does this funding cycle help...the States because it tracks with their own fiscal calendar, or the Department of Labor because it would inoculate these programs from continuing resolutions?

It is moot to the states—lining up a federal funding cycle to a state funding cycle does not matter. If this was the case, then there would be all kinds of issues with programs funded under the federal fiscal year (October-September). In fact, the Employment and Training Administration funds a number of programs on a Program Year basis, e.g. WIA and a number based on the federal fiscal year, e.g., TAA. This means states have to coordinate funding availability throughout the year anyway.

The advance funding mechanism is not a benefit to DOL; in fact, at any point during a year, ETA is accounting for three separate funding cycles—the program year, the fiscal year (advance appropriation) and the upcoming budget year. The burden of this is unnecessary and costly to DOL.

3. In your capacity as a former Assistant Secretary of Labor for Employment and Training, can you provide any insight into the accounting difficulties that the program year schedule and advance funding may cause or create when it comes to executing these programs? What would be the advantages in continuing to appropriate funds in this manner?

There is no advantage to continuing this funding mechanism. The more programs that could be aligned to the federal fiscal year, the more it would provide the ability for DOL accountants, budget officers and program officers to streamline the monitoring and tracking of funds. This also promotes transparency to the general public. Currently, unless someone is an “expert” at understanding this, it is virtually impossible for the public, and even for workforce system employees at the state and local levels to track federal budgets for workforce programs.

Individual Training Accounts

It’s my understanding that all training under the Workforce Investment Act is to occur through the use of what’s called an Individual Training Account, or ITA.

The ITA concept is one component that provides the benefit that customers of the WIA system are seeking. Yet, it seems that ITAs are seldom used. Last year, the Department reported that of the roughly 2.7 million participants in the WIA Adult program in 2008, just 98,000 received training...3.6%.

1. Mr. Bishop, what are the requirements for an individual to qualify for an ITA, or is it simply a matter of a customer *choosing* to pursue training services by way of an ITA?

To receive an ITA, a participant needs to be eligible for either the WIA Dislocated Worker or the WIA Adult program. Then, under the structure of the service delivery as mandated by WIA, the participant has to avail himself/herself of core and intensive services prior to training. In order to receive an ITA, the participant has to be deemed eligible for training and then negotiate an individual training plan with a WIA counselor. Because training services under WIA are not an entitlement, the participant can only access training if funds are available. Therefore, due to the infrastructure and other costs of the workforce investment system, few funds are even available for participant training, and if funds are available, participants must negotiate with local WIA staff.

2. How many customers choose to receive training services through the use of ITAs? There was a 2006 study on ITAs that found, specifically, that when participants are given an option to refuse career counseling in favor of a freedom of choice, their outcomes are just as good as those who got counseling. What this tells me is that freedom of choice at these One-Stops is far better than the sequential process that the system currently provides.

The study cited did find that customers who were given “maximum choice” had a higher rate of training, outcomes just as good as those who received pre-training counseling and training costs were no higher than the other two approaches which utilized varying degrees of counseling. The notion that people need some type of counseling in order to make solid training decisions is not verified through this study. In fact, given good information on jobs, careers and wages, people make solid choices for appropriate training on behalf of themselves.

3. In your informed opinion, can you comment on the extent the WIA system has turned into a personnel-heavy system?

Given that there are over 600 local workforce investment areas and that they grew under the 1998 law, it is a system laden with personnel at both the administrative and service-delivery levels. In addition, over time a belief has emerged that without lots of support and help people cannot find employment or the training needed to get new skills and competencies. This belief has become self-serving as it perpetuates a service delivery structure dependent on lots of personnel—the very people who have an interest in growing the workforce investment sector.

4. It seems to me that this ITA study confirmed one thing... that what the customers of the system really want is to be trained. And it seems the system is not fundamentally capable of meeting that requirement for all who would want training. Would you agree with that assumption?

As I stated in my testimony, if the workforce investment system under WIA’s main goal is to provide post-secondary education and training so participants can receive skills and

competencies needed for good-paying jobs and careers, then it is flawed system in need of significant reform.

WIA Dislocated Worker and Youth Job Training

Mr. Besharov's testimony references Carolyn Heinrich's study as suggesting "that the Dislocated Worker Program is not cost effective either the Government or the trainees". Additionally, he cited a study by Mr. Kevin Hollenbeck as finding that "the average dislocated worker who goes through the program loses 10-17 percent of his earnings over a period of time.

It appears that the dislocated worker programs (and I assume this includes the national reserve program, as well) has largely been singled out with the most critical reviews across a host of research that exists in the public domain.

1. In your opinion, what is the fundamental problem with the dislocated worker program? Is it simply a matter of an individual being laid off from a high paying manufacturing job, entering the WIA system as a dislocated worker, then exiting by assuming employment with a lower wage?

Part of the problem is outside the control of the workforce investment system. Globalization has brought a number of economic changes, but one with significant repercussions has been that highly paid people who have held lower skilled jobs are often losing employment. Globalization has leveled the playing field between skills and pay—higher levels of skills and post-secondary credentials are required to receive higher-paying jobs and career ladder advancement. No longer can someone without a high school diploma make \$25 per hour in a factory. As a result, it is difficult for any training program to get the individual near the wages he/she made prior to layoff.

However, within the system approaches to serving dislocated workers has been fragmented and sporadic. Some local workforce areas do a good job, but services are often funded through the various silo funding streams, e.g., WIA Dislocated Worker and TAA, or training is not available to those who need it most because of the inefficiencies and duplication inherent in the WIA service delivery structure.

2. Little has been discussed about the WIA Youth program. As with most of the other job training programs, there is a wide disparity of opinions when it comes to gauging the success of this program. I have heard opinions ranging from "very helpful to youth participants" to "these programs actually hurt the prospects for our youth".

- a. In your opinion, how effective is the WIA Youth program?

The WIA Youth program is very ineffective. Because there are so many local workforce investment areas, some are receiving \$100,000 or less as a youth

allotment. It is spread too thin across the country and making little impact with regard to scale.

- b. Do you believe it is receiving the return on investment that was envisioned when the WIA system dedicated a separate funding stream to youth activities?

No. We spend almost a billion dollars and spread the money so thin around the country that too few positive results are achieved. We would be better off focusing and concentrating funds toward programs with proven results from a rigorous evaluation if we want to realize significant results for the large investment.

Reforming the WIA System

1. How can the States become more active contributors in maximizing the benefit the customers of the WIA system can receive? What about other entities such as community colleges?

Because community colleges, technical colleges and proprietary universities are focused on educating and training the workforce of today and tomorrow, they should be the point of service delivery, not a separate workforce investment intake system. In fact, the higher education sector is engaging business and industry like never before in the structure of programs, development of curriculum and hiring of students after program completion. Maintaining a separate system that does not produce a clear benefit is inefficient.

2. What are the sort of outside the box solutions or alternatives to the current WIA system should the Department be considering to achieve maximum results from the taxpayer-subsidized job training program?

First, consolidate as many funding streams as possible and provide a flexible worker education and training formula grant to states. Second, allow governors to design creative solutions to serving workers and businesses hiring workers through closer coordination of economic development, workforce development and higher education. Finally, set clear outcome expectations that delineate the results desired for the funding—rate of education or training, credentials attained, employment and earnings tied to the labor market.

3. Do you believe the workforce investment system as currently structured has served and is serving workers impacted by the recession efficiently and effectively?

No it is not for the various reasons I have stated. Workers who are the most unskilled need access to education and training at rates that the current system design cannot accommodate.

The Honorable Jack Kingston

1. To your knowledge, has ETA, a State, or any other organization attempted to “grade”, “rate” or otherwise compare the effectiveness of One-Stop centers within each state as a tool to foster competition among One-Stops within states for resource allocations? Besides the standard formula allotment, what are your thoughts about using meaningful performance criteria to allocate funds?

States are allowed to put processes into place, and a handful of states cited in the GAO study and others have attempted funding and program consolidation and new service delivery models. However, these are few and far between because of either statutory or regulatory restrictions in place since 1998. The more competition that can be fostered among states and within states, the more workers will benefit from innovations in service deliver and economic development approaches tied to an improved workforce.

2. You are familiar with GAO’s report on duplicative programs, and you are no doubt familiar with the Labor Department programs that were identified in that report. Irrespective of whether they are discretionary or mandatory programs, if you were the one charged with consolidating duplicative programs within DOL, how and which programs would you consolidate?

At a minimum I would consolidate the three WIA funding streams and Wagner-Peyser. That is the baseline. Additional programs that I would consolidate include Carl Perkins, Adult Education and Vocational Rehabilitation in the U.S. Department of Education, Trade Adjustment Assistance and smaller carve out programs at the U.S. Department of Labor, the Food Stamp Employment and Training program at the U.S. Department of Agriculture, and I would stop the practice of allowing job training programs and grants to begin and continue at the U.S. Department of Energy, the U.S. Department of Health and Human Services and the National Science Foundation.

*Department of Labor, Health and Human Services and Education and
Related Agencies*

**Department of Labor Job Training Programs Hearing
April 7, 2011**

**QUESTIONS TO BE SUBMITTED FOR THE PUBLIC HEARING RECORD
For Mr. Douglas Besharov**

The Honorable Denny Rehberg, Chairman

Skills Mismatch

The Workforce Investment Act established the local areas as the backbone of the WIA system. From this vantage point, it was intended that the local workforce boards/associations would be to better address the employment needs of local businesses. Yet, your testimony highlighted what appears to be a growing problem that you referred to as a "skills mismatch". This issue was the highlight of a February, 2011, Washington Post article entitled "Why Does Fresno have thousands of job openings – and high unemployment?". To summarize, the article stated that there are thousands of jobs available in the Fresno, CA area, but not enough skilled laborers to fill those vacancies.

The taxpayer has provided nearly \$50 billion in grants to states over the 13 years since the Workforce Investment Act was enacted, and it seems the system is now struggling to meet its fundamental mission...to fill job vacancies with qualified workers.

1. The WIA system was supposed to address this "skills mismatch" problem. In your opinion, what is the fundamental problem that prohibits the WIA system from meeting its core mission?
2. What reforms to the WIA system need to occur that would address the skills mismatch issue?
3. Mr. Besharov, in your view has the WIA system, and in particular the local workforce investment boards, been effective in curbing unemployment, and has it been effective in filling job vacancies?

WIA Dislocated Worker and Youth Job Training

Your testimony references Carolyn Heinrich's study as suggesting "that the Dislocated Worker Program is not cost effective either the Government or the trainees". Further, you cite a study

by Mr. Kevin Hollenbeck as finding that “the average dislocated worker who goes through the program loses 10-17 percent of his earnings over a period of time.

It appears that the dislocated worker programs (and I assume this includes the national reserve program, as well) has largely been singled out with the most critical reviews across a host of research that exists in the public domain.

1. In your opinion, what is the fundamental problem with the dislocated worker program? Is it simply a matter of an individual being laid off from a high paying manufacturing job, entering the WIA system as a dislocated worker, then exiting by assuming employment with a lower wage?
2. Little has been discussed about the WIA Youth program. As with most of the other job training programs, there is a wide disparity of opinions when it comes to gauging the success of this program. I have heard opinions ranging from “very helpful to youth participants” to “these programs actually hurt the prospects for our youth”.
 - a. In your opinion, how effective is the WIA Youth program?
 - b. Do you believe it is receiving the return on investment that was envisioned when the WIA system dedicated a separate funding stream to youth activities?

Reforming the WIA System

1. How can the States become more active contributors in maximizing the benefit the customers of the WIA system can receive? What about other entities such as community colleges?
2. What are the sort of outside the box solutions or alternatives to the current WIA system should the Department be considering to achieve maximum results from the taxpayer-subsidized job training program?
3. Do you believe the workforce investment system as currently structured has served and is serving workers impacted by the recession efficiently and effectively?

(more)

The Honorable Jack Kingston

1. To your knowledge, has ETA, a State, or any other organization attempted to “grade”, “rate” or otherwise compare the effectiveness of One-Stop centers within each state as a tool to foster competition among One-Stops within states for resource allocations? Besides the standard formula allotment, what are your thoughts about using meaningful performance criteria to allocate funds?

2. You are familiar with GAO’s report on duplicative programs, and you are no doubt familiar with the Labor Department programs that were identified in that report. Irrespective of whether they are discretionary or mandatory programs, if you were the one charged with consolidating duplicative programs within DOL, how and which programs would you consolidate?

WEDNESDAY, APRIL 13, 2011.

**EXAMINING FRAGMENTATION AND OVERLAP OF
FEDERAL EDUCATION PROGRAMS**

WITNESS

GEORGE A. SCOTT, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE

Mr. REHBERG. Welcome. It is a pleasure to have you before our committee. As I suggested, we are only scheduled to go until noon. I doubt if it is going to take that long. Since you are the only witness, I am not going to turn the clock on on your opening statement, but I am going to turn it on for Ms. DeLauro now. No, not really.

Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Welcome, Mr. Scott.

As I said last month at our hearing on Medicare payments, I think everyone in this room agrees that our government should be as efficient as possible, and the hard work of the Government Accountability Office helps us to make that happen. Time and again, GAO research has helped us to fulfill our oversight responsibilities to see that the American taxpayers' dollars are being spent as wisely as possible. So I want to say a thank you to the office for compiling this report, and especially to you, Mr. Scott, Director of Education, Workforce, and Income Security at the GAO. I am again delighted that you are here today.

The report before us today looks to pinpoint overlapping responsibility and possible duplication in our Federal education and job-training efforts. We are specifically looking at education today and the programs that are designed to improve teacher quality. In drawing our attention to where repetition and fragmentation exists, this report is beneficial.

I agree with the concept that overlapping and duplicative mandates can degrade the quality of the Federal Government's response. For example, I know from my own work on food safety, that responsibility for keeping our food supply safe and uncontaminated is spread across 15 different departments and agencies. This is 14 agencies too many, and it is one of the main reasons why I have called for a single food agency, because duplication in this regard increases costs and increases redtape.

All of that being said, it would seem to me that the real question before us today is whether overlapping and duplication are one and the same thing. We need to delve deeper into the GAO findings, better understand what each of these terms mean and how GAO uses them. As the report states, quote, "Some overlap can occur unintentionally, but it is not necessarily wasteful." In other words,

while some of the teacher-quality programs may overlap in intent, they may not necessarily do so in execution. As such, we need to examine what exactly these education programs are intended to do and whether or not they are effective at reaching their goals. With such a great emphasis placed on teacher quality today and education reform efforts, it is imperative that we get this right. I hope this is something we can work towards today.

Also, as the report states, the administration has already begun the process of consolidating overlapping programs. For example, both the President's 2012 budget and his reauthorization proposal of the Elementary and Secondary Education Act argue for condensing and consolidating many of these programs. I presume these decisions are being made after careful study. And although not the purview of this subcommittee, I hope we will take advantage of the Secretary and his staff's expertise on these matters before making any decisions. I would also hope in discussing these potential consolidations of programs today that we all share the same goal of making the Federal Government's role in education more and not less effective.

Thank you, Mr. Chairman.

Mr. REHBERG. Mr. Scott.

Mr. SCOTT. Mr. Chairman, Ranking Member DeLauro, and members of the subcommittee, I am pleased to be here today to discuss what is known about fragmentation and overlap among teacher quality programs. In 2009, the Federal Government spent over \$4,000,000,000 to improve teacher quality. Based on our recent work, we identified 82 distinct programs designed to help improve teacher quality. However, there is no governmentwide strategy to minimize potential duplication among these programs. We believe that the Congress can take steps to help address this issue by considering options such as requiring improved evaluations of programs and consolidating existing programs.

Federal efforts to improve teacher quality have led to the creation of a variety of programs across the government. Specifically, we identified 82 programs administered across 10 Federal agencies designed to help improve teacher quality either as a primary purpose or as an allowable activity. Many of these programs share similar goals. For example, 9 of the 82 programs support improving the quality of teaching in science, technology, engineering, and math, and these programs are administered across 5 Federal agencies. Further, in fiscal year 2010, the majority of these programs we identified received \$50,000,000 or less in funding, and many have their own separate administrative structures.

The increased number of programs has resulted in fragmentation that can frustrate efforts to administer programs in a comprehensive manner, limit the ability to determine which programs are most effective, and ultimately increase costs. For example, 8 different education offices administer over 60 other Federal programs supporting teacher quality.

While all the Federal programs we identified support teacher quality efforts, several overlap. For example, we found that 14 of the programs administered by Education overlapped with at least 1 other program in terms of sharing similar objectives, serving similar target groups, or funding similar activities.

While a mixture of teacher-quality programs can target services to underserved populations and yield innovations, the current programs are not structured in a way that enables policymakers to identify the most effective practices. According to Education officials, it is typically not cost-effective to allocate the funds necessary to conduct rigorous evaluations of small programs. Therefore, many of these programs are unlikely to be evaluated. Also, it is more costly to administer multiple separate Federal programs because each program often has its own policies, applications, and reporting requirements.

As this subcommittee considers spending priorities and options to address potential duplication, approaches you can consider include enhancing program evaluations, fostering coordination across programs that span multiple Federal agencies, and consolidating existing programs. Information about the effectiveness of programs can help guide policymakers in making tough decisions about how to prioritize the use of resources and improve the efficiency of existing programs.

However, in 2009, we reported that while evaluations had been conducted for many or some of the teacher quality programs we identified, little is known about the extent to which most of them are achieving their desired results. Recognizing the importance of program evaluations, Education has proposed to increase the number of its discretionary programs that use evaluations and implement rigorous evaluations of its highest-priority programs and initiatives.

In addition to improving program evaluation, Congress can foster coordination for programs that cross Federal agencies. For example, Congress can establish requirements to ensure that Federal agencies are working together on common teacher quality goals.

Finally, Congress may choose to combine programs serving similar target groups into a larger program. To the extent that overlapping programs can continue, it is important that they be better aligned to ensure that they are complementary rather than duplicative.

In conclusion, reducing fragmentation and overlap among Federal teacher quality programs is clearly challenging. These are difficult issues to address because they may require agencies and the Congress to reexamine the structure, funding, and performance of a number of programs or activities. In light of these challenges, sustained attention and oversight by the Congress will be critical.

This concludes my prepared remarks. I will be joined today by Bryon Gordon, Assistant Director with us at GAO. He is one of our K-thru-12 education experts. We would be pleased to answer any questions you may have at this time. Thank you.

Mr. REHBERG. Thank you very much.

[The information follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Labor,
Health and Human Services, Education,
and Related Agencies, Committee on
Appropriations, House of Representatives

For Release on Delivery
Expected at 10:30 a.m. EDT
Wednesday, April 13, 2011

Opportunities to Reduce Potential Duplication in Federal Teacher Quality Programs

Statement of George A. Scott, Director
Education, Workforce, and Income Security Issues

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GAO-11-510T

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee:

Thank you for inviting me here today to discuss the findings from our recent work on fragmentation, overlap, and potential duplication in federally funded programs that support teacher quality. As you know, we recently issued a report addressing fragmentation, overlap, and potential duplication in federal programs that outlined opportunities to reduce potential duplication across a wide range of federal programs, including teacher quality programs.¹ Our recent work on teacher quality programs builds on a long history of work where we identified a number of education programs with similar goals, beneficiaries, and allowable activities that are administered by multiple federal agencies. This work may help inform your deliberations over how to prioritize spending given the rapidly building fiscal pressures facing our nation's government.

In recent years, the Department of Education (Education) has faced expanded responsibilities that have challenged the department to strategically allocate resources to balance new duties with ongoing ones. For example, we reported the number of grants Education awarded increased from about 14,000 in 2000 to about 21,000 just 2 years later and has since remained around 18,000, even as the number of full-time equivalent staff decreased by 13 percent from fiscal years 2000 to 2009.² New programs often increase Education's workload, requiring staff to develop new guidance and provide technical assistance to program participants. Our work examining fragmentation, overlap, and potential duplication can help inform decisions on how to prioritize spending, which could also help Education address these challenges and better allocate scarce resources. In particular, our recent work identified 82 programs supporting teacher quality, which are characterized by fragmentation and overlap.³ Fragmentation of programs exists when programs serve the same broad area of national need but are administered across different federal agencies or offices. Program overlap exists when multiple agencies or programs have similar goals, engage in similar activities or strategies to

¹GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP (Washington, D.C.: Mar. 1, 2011). Click on the link provided to access an interactive, Web-based version of the report.

²GAO, *Department of Education: Improved Oversight and Controls Could Help Education Better Respond to Evolving Priorities*, GAO-11-194 (Washington, D.C.: Feb. 11, 2011).

³GAO-11-318SP

achieve them, or target similar beneficiaries. Overlap and fragmentation among government programs or activities can be harbingers of unnecessary duplication. Given the challenges associated with fragmentation, overlap, and potential duplication, careful, thoughtful actions will be needed to address these issues.

My testimony today draws upon the results of our recently issued report and our past work and addresses (1) what is known about fragmentation, overlap, and potential duplication among teacher quality programs; and (2) what are additional ways that Congress could minimize fragmentation, overlap, and duplication among these programs?

The key points I will make today include the following:

- We identified 82 distinct programs designed to help improve teacher quality administered across 10 federal agencies, many of which share similar goals. However, there is no governmentwide strategy to minimize fragmentation, overlap, or potential duplication among these programs. The fragmentation and overlap of teacher quality programs can frustrate agency efforts to administer programs in a comprehensive manner, limit the ability to determine which programs are most cost effective, and ultimately increase program costs. In addition, our larger body of work on federal education programs has also found a wide array of programs with similar objectives, target populations, and services across multiple federal agencies. In past work, GAO and Education's Inspector General have concluded that improved planning and coordination could help Education better leverage expertise and limited resources; however, given the large number of teacher quality programs and the extent of overlap, it is unlikely that improved coordination alone can fully mitigate the effects of the fragmented and overlapping federal effort.
- Sustained congressional oversight can also play a key role in addressing these issues. Congress could address these issues through legislation, particularly through the pending reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA),³ and Education has already proposed combining 38 programs into 11 programs in its reauthorization and fiscal year 2012 budget proposals. Further, actions taken by Congress in the past demonstrate ways this Subcommittee can address these issues.

³Pub. L. No. 89-10, 79 Stat. 27, as most recently amended and reauthorized by the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

However, effective oversight may be challenging as many of the programs we identified, especially smaller programs, have not been evaluated.

In preparing this statement, we relied on our previous work in these areas (please see the Related GAO Products list at the end of this statement). These products contain detailed overviews of the scope and methodology we used. The work on which this statement is based was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

Proliferation of Programs That Support Teacher Quality Complicates Federal Efforts to Invest Dollars Effectively

In fiscal year 2009, the federal government spent over \$4 billion specifically to improve the quality of our nation's 3 million teachers through numerous programs across the government. Teacher quality can be enhanced through a variety of activities, including training, recruitment, and curriculum and assessment tools. In turn, these activities can influence student learning and ultimately improve the global competitiveness of the American workforce in a knowledge-based economy.

Federal efforts to improve teacher quality have led to the creation and expansion of a variety of programs across the federal government. However, there is no governmentwide strategy to minimize fragmentation, overlap, or potential duplication among these programs. Specifically, GAO identified 82 distinct programs designed to help improve teacher quality, either as a primary purpose or as an allowable activity, administered across 10 federal agencies. Many of these programs share similar goals. For example, 9 of the 82 programs support improving the quality of teaching in science, technology, engineering, and mathematics (STEM subjects) and these programs alone are administered across the Departments of Education, Defense, and Energy; the National Aeronautics and Space Administration; and the National Science Foundation. Further, in fiscal year 2010, the majority (53) of the programs GAO identified supporting teacher quality improvements received \$50 million or less in funding and many have their own separate administrative processes.

The proliferation of programs has resulted in fragmentation that can frustrate agency efforts to administer programs in a comprehensive manner, limit the ability to determine which programs are most cost

effective, and ultimately increase program costs. For example, eight different Education offices administer over 60 of the federal programs supporting teacher quality improvements, primarily in the form of competitive grants. Education officials believe that federal programs have failed to make significant progress in helping states close achievement gaps between schools serving students from different socioeconomic backgrounds, because, in part, federal programs that focus on teaching and learning of specific subjects are too fragmented to help state and district officials strengthen instruction and increase student achievement in a comprehensive manner. While Education officials noted, and GAO concurs, that a mixture of programs can target services to underserved populations and yield strategic innovations, the current programs are not structured in a way that enables educators and policymakers to identify the most effective practices to replicate. According to Education officials, it is typically not cost-effective to allocate the funds necessary to conduct rigorous evaluations of small programs; therefore, small programs are unlikely to be evaluated. Finally, it is more costly to administer multiple separate federal programs because each program has its own policies, applications, award competitions, reporting requirements, and, in some cases, federal evaluations.

While all of the 82 federal programs GAO identified support teacher quality improvement efforts, several overlap in that they share more than one key program characteristic. For example, teacher quality programs may overlap if they share similar objectives, serve similar target groups, or fund similar activities. GAO previously reported that 23 of the programs administered by Education in fiscal year 2009 had improving teacher quality as a specific focus, which suggested that there may be overlap among these and other programs that have teacher quality improvements as an allowable activity. When looking across a broader set of criteria, GAO found that 14 of the programs administered by Education overlapped with another program with regard to allowable activities as well as shared objectives and target groups (see fig. 1). For example, the Transition to Teaching program and Teacher Quality Partnership Grant program can both be used to fund similar teacher preparation activities through institutions of higher education for the purpose of helping individuals from nonteaching fields become qualified to teach.

Figure 1: Areas of Overlap among Selected Programs Administered by Education That Support Teacher Quality Improvement

	Even Start*	Striving Readers*	Mathematics and Science Partnerships*	Improving Teacher Quality State Grants*	Title I, Part A	School Improvement Grants	Transition to Teaching*	Advanced Certification or Advanced Credentialing*	Teacher Quality Partnership Grants*	Language Resource Centers	Teachers for a Competitive Tomorrow	Teachers for a Competitive Tomorrow: Mathlete*	Foreign Language Assistance Program*	Teach for America*
Objective														
Improve Education in Specific Subjects	•	•	•						•	•	•	•		
Improve Education in General	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Improve Education for Special Populations	•	•	•	•	•	•	•			•	•			•
Target Group														
Current Teachers	•	•	•	•	•	•	•		•		•	•		
Prospective Teachers				•		•		•	•	•	•			•
Other Education Professionals	•	•		•	•				•					
Activity^b														
Teacher Preparation			•		•		•		•	•	•			•
Professional Development	•	•	•	•	•	•		•	•	•	•	•		
Recruitment or Retention			•	•	•	•	•		•	•				•
Certification or Licensure			•			•	•	•		•	•			
Induction or Mentoring			•			•		•		•				•

Source: GAO analysis of Department of Education documents and interviews.

Note: The 14 programs shown in the table are a subset of over 60 Education programs supporting teacher quality improvement either specifically or as an allowable activity. Specifically, although Title I, Part A, School Improvement Grants, and Even Start allow program funds to be used for teacher quality activities, this is not their primary focus. The 14 programs presented above overlapped with at least one other program across objective, target group, and activity.

*Education has proposed consolidating this program under a broader program in its proposal for the reauthorization of the Elementary and Secondary Education Act of 1965.

^bThis is not an exhaustive list of activities allowed under these programs, but rather the activities GAO determined were most relevant for the purposes of this analysis.

Although there is overlap among these programs, several factors make it difficult to determine whether there is unnecessary duplication. First, when similar teacher quality activities are funded through different programs and delivered by different entities, some overlap can occur

unintentionally, but is not necessarily wasteful. For example, a local school district could use funds from the Foreign Language Assistance program to pay for professional development for a teacher who will be implementing a new foreign language course, and this teacher could also attend a summer seminar on best practices for teaching the foreign language at a Language Resource Center. Second, by design, individual teachers may benefit from federally funded training or financial support at different points in their careers. Specifically, the teacher from this example could also receive teacher certification through a program funded by the Teachers for a Competitive Tomorrow program. Further, both broad and narrowly targeted programs exist simultaneously, meaning that the same teacher who receives professional development funded from any one or more of the above three programs might also receive professional development that is funded through Title I, Part A of ESEA. The actual content of these professional development activities may differ though, since the primary goal of each program is different. In this example, it would be difficult to know whether the absence of any one of these programs would make a difference in terms of the teacher's ability to teach the new language effectively.

In addition, our larger body of work on federal education programs has also found a wide array of programs with similar objectives, target populations, and services across multiple federal agencies. This includes a number of efforts to catalogue and determine how much is spent on a wide variety of federally funded education programs. For example:

- In 2010, we reported that the federal government provided an estimated \$166.9 billion over the 3-year period during fiscal years 2006 to 2008 to administer 151 different federal K-12 and early childhood education programs.⁵
- In 2005, we identified 207 federal education programs that support science, technology, engineering, and mathematics (STEM) administered by 13 federal civilian agencies.⁶

In past work, GAO and Education's Inspector General have concluded that improved planning and coordination could help Education better leverage

⁵GAO, *Federal Education Funding: Overview of K-12 and Early Childhood Education Programs*, GAO-10-51 (Washington, D.C.: Jan. 27, 2010).

⁶GAO, *Higher Education: Federal Science, Technology, Engineering, and Mathematics Programs and Related Trends*, GAO-06-114 (Washington, D.C.: Oct. 12, 2005).

expertise and limited resources, and to anticipate and develop options for addressing potential problems among the multitude of programs it administers. Generally, GAO has reported that uncoordinated program efforts can waste scarce funds, confuse and frustrate program customers, and limit the overall effectiveness of the federal effort. GAO identified key practices that can help enhance and sustain collaboration among federal agencies⁷ which include

- establishing mutually reinforcing or joint strategies to achieve the outcome;
- identifying and addressing needs by leveraging resources;
- agreeing upon agency roles and responsibilities;
- establishing compatible policies, procedures, and other means to operate across agency boundaries;
- developing mechanisms to monitor, evaluate, and report on the results of collaborative efforts;
- reinforcing agency accountability for collaborative efforts through agency plans and reports; and
- reinforcing individual accountability for collaborative efforts through agency performance management systems.

In 2009, GAO recommended that the Secretary of Education work with other agencies as appropriate to develop a coordinated approach for routinely and systematically sharing information that can assist federal programs, states, and local providers in achieving efficient service delivery. Education has established working groups to help develop more effective collaboration across Education offices, and has reached out to other agencies to develop a framework for sharing information on some teacher quality activities, but it has noted that coordination efforts do not always prove useful and cannot fully eliminate barriers to program alignment, such as programs with differing definitions for similar populations of grantees, which create an impediment to coordination. However, given the large number of teacher quality programs and the extent of overlap, it is unlikely that improved coordination alone can fully mitigate the effects of the fragmented and overlapping federal effort. In our work we have identified multiple barriers to collaboration, including the conflicting missions of agencies; challenges reaching consensus on

⁷GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005).

priorities; and incompatible procedures, processes, data, and computer systems.

Options for Congress to Consider as It Addresses Fragmentation, Overlap, and Potential Duplication

As this Subcommittee considers its annual spending priorities, it may be an opportune time to consider options for addressing fragmentation and overlap among federal teacher quality programs and what is known about how well these programs are achieving their objectives. As you consider options for how to address fragmentation, overlap, and potential duplication, I would like to highlight three approaches for you to consider:

1. enhancing program evaluations and performance information;
2. fostering coordination and strategic planning for program areas that span multiple federal agencies; and
3. consolidating existing programs.

Enhancing Program Evaluations and Performance Information

Information about the effectiveness of programs can help guide policymakers and program managers in making tough decisions about how to prioritize the use of scarce resources and improve the efficiency of existing programs. However, there can be many challenges to obtaining this information. For example, it may not be cost-effective to allocate the funds necessary to conduct rigorous evaluations of the many small programs and, as a result, these programs are unlikely to be evaluated. As we have reported, many programs, especially smaller programs, have not been evaluated, which can limit the ability of Congress to make informed decisions about which programs to continue, expand, modify, consolidate, or eliminate. For example:

- In 2009, we also reported that while evaluations have been conducted, or are under way, for about two-fifths of the 23 teacher quality programs we identified, little is known about the extent to which most programs are achieving their desired results.
- In 2010, GAO reported that there were 151 different federal K-12 and early childhood education programs⁸ but that more than half of these programs have not been evaluated, including 8 of the 20 largest

⁸GAO-10-51

programs, which together account for about 90 percent of total funding for these programs.

Recognizing the importance of program evaluations, as part of its high priority performance goals in its 2011 budget and performance plan, Education has proposed implementation of a comprehensive approach to inform its policies and major initiatives. Specifically, it has proposed to 1) increase by two-thirds the number of its discretionary programs that use evaluation, performance measures, and other program data, 2) implement rigorous evaluations of its highest priority programs and initiatives, and 3) ensure that newly authorized discretionary programs include a rigorous evaluation component. However, Education has noted that linking performance of specific outcomes to federal education programs is complicated. For example, federal education funds often support state or local efforts, making it difficult to assess the federal contribution to performance of specific outcomes, and it can be difficult to isolate the effect of a single program given the multitude of programs that could potentially affect outcomes.

There are also governmentwide strategies that may play an important role. Specifically, in January 2011, the President signed the GPRAMA Modernization Act of 2010 (GPRAMA),⁹ updating the almost two-decades-old Government Performance and Results Act (GPRA).¹⁰ Implementing provisions of the new act—such as its emphasis on establishing outcome-oriented goals covering a limited number of crosscutting policy areas—could play an important role in clarifying desired outcomes and addressing program performance spanning multiple organizations. Specifically, GPRAMA requires (1) disclosure of information about the accuracy and reliability of performance data, (2) identification of crosscutting management challenges, and (3) quarterly reporting on priority goals on a publicly available Web site. Additionally, GPRAMA significantly enhances requirements for agencies to consult with Congress when establishing or adjusting governmentwide and agency goals. The Office of Management and Budget (OMB) and agencies are to consult with relevant committees, obtaining majority and minority views, about proposed goals at least once every 2 years. This information can inform deliberations on spending priorities and help re-examine the fundamental structure, operation,

⁹Pub. L. No. 111-352, 124 Stat. 3866 (2011).

¹⁰Pub. L. No. 103-62, 107 Stat. 285 (1993).

funding, and performance of a number of federal education programs. However, to be successful, it will be important for agencies to build the analytical capacity to both use the performance information, and to ensure its quality—both in terms of staff trained to do the analysis and availability of research and evaluation resources.¹¹

Fostering Coordination and Strategic Planning for Program Areas That Span Multiple Federal Agencies

Where programs cross federal agencies, Congress can establish requirements to ensure federal agencies are working together on common goals. For example, Congress mandated—through the America COMPETES Reauthorization Act of 2007—that the Office of Science and Technology Policy develop and maintain an inventory of STEM education programs including documentation of the effectiveness of these programs, assess the potential overlap and duplication of these programs, determine the extent of evaluations, and develop a 5-year strategic plan for STEM education, among other things.¹² In establishing these requirements, Congress put in place a set of requirements to provide information to inform its decisions about strategic priorities.

Consolidating Existing Programs

Consolidating existing programs is another option for Congress to address fragmentation, overlap, and duplication. In the education area, Congress consolidated several bilingual education programs into the English Language Acquisition State Grant Program as part of the 2001 ESEA reauthorization. As we reported prior to the consolidation, existing bilingual programs shared the same goals, targeted the same types of children, and provided similar services. In consolidating these programs, Congress gave state and local educational agencies greater flexibility in the design and administration of language instructional programs. Congress has another opportunity to address these issues through the pending reauthorization of the ESEA. Specifically, to minimize any wasteful fragmentation and overlap among teacher quality programs, Congress may choose either to eliminate programs that are too small to evaluate cost effectively or to combine programs serving similar target groups into a larger program. Education has already proposed combining 38 programs into 11 programs in its reauthorization proposal, which could

¹¹GAO, *Government Performance: GPRM Modernization Act Provides Opportunities to Help Address Fiscal, Performance, and Management Challenges* GAO-11-466T, Washington, DC: Mar. 16, 2011.

¹²Pub. L. No. 111-358, § 101, 124 Stat. 3982 (2011).

allow the agency to dedicate a higher portion of its administrative resources to monitoring programs for results and providing technical assistance. Congress might also include legislative provisions to help Education reduce fragmentation, such as by giving broader discretion to the agency to move resources away from certain programs. Congress could provide Education guidelines for selecting these programs. For example, Congress could allow Education discretion to consolidate programs with administrative costs exceeding a certain threshold or programs that fail to meet performance goals, into larger or more successful programs. Finally, to the extent that overlapping programs continue to be authorized, they could be better aligned with each other in a way that allows for comparison and evaluation to ensure they are complementary rather than duplicative.

In conclusion, removing and preventing unnecessary duplication, overlap, and fragmentation among federal teacher quality programs is clearly challenging. These are difficult issues to address because they may require agencies and Congress to re-examine within and across various mission areas the fundamental structure, operation, funding, and performance of a number of long-standing federal programs or activities. Implementing provisions of GPRAMA—such as its emphasis on establishing priority outcome-oriented goals, including those covering crosscutting policy areas—could play an important role in clarifying desired outcomes, addressing program performance spanning multiple agencies, and facilitating future actions to reduce unnecessary duplication, overlap, and fragmentation. Further, by ensuring that Education conducts rigorous evaluations of key programs Congress could obtain additional information on program performance to better inform its decisions on spending priorities. Sustained attention and oversight by Congress will also be critical.

Thank you, Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee. This concludes my prepared statement. I would be pleased to answer any questions you may have.

For further information on this testimony please contact George A. Scott, Director, Education, Workforce, and Income Security, who may be reached at (202) 512-7215, or ScottG@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs offices may be found on the last page of this statement. This statement will be available at no charge on the GAO Web site at <http://www.gao.gov>.

Appendix I: Related GAO Products

Opportunities to Reduce Fragmentation, Overlap, and Potential Duplication in Federal Teacher Quality and Employment and Training Programs. GAO-11-509T. Washington, D.C.: April 6, 2011.

List of Selected Federal Programs That Have Similar or Overlapping Objectives, Provide Similar Services, or Are Fragmented Across Government Missions. GAO-11-474R. Washington, D.C.: March 18, 2011.

Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue. GAO-11-441T. Washington, D.C.: March 3, 2011.

Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue. GAO-11-318SP. Washington, D.C.: March 1, 2011.

Department of Education: Improved Oversight and Controls Could Help Education Better Respond to Evolving Priorities. GAO-11-194. Washington, D.C.: February 10, 2011.

Federal Education Funding: Overview of K-12 and Early Childhood Education Programs. GAO-10-51. Washington, D.C.: January 27, 2010.

English Language Learning: Diverse Federal and State Efforts to Support Adult English Language Learning Could Benefit from More Coordination. GAO-09-575. Washington: D.C.: July 29, 2009.

Teacher Preparation: Multiple Federal Education Offices Support Teacher Preparation for Instructing Students with Disabilities and English Language Learners, but Systematic Departmentwide Coordination Could Enhance This Assistance. GAO-09-573. Washington, D.C.: July 20, 2009.

Teacher Quality: Sustained Coordination among Key Federal Education Programs Could Enhance State Efforts to Improve Teacher Quality. GAO-09-593. Washington, D.C.: July 6, 2009.

Teacher Quality: Approaches, Implementation, and Evaluation of Key Federal Efforts. GAO-07-861T. Washington, D.C.: May 17, 2007.

Higher Education: Science, Technology, Engineering, and Mathematics Trends and the Role of Federal Programs. GAO-06-702T. Washington: May 3, 2006.

Higher Education: Federal Science, Technology, Engineering, and Mathematics Programs and Related Trends. GAO-06-114. Washington, D.C.: October 12, 2005.

Special Education: Additional Assistance and Better Coordination Needed among Education Offices to Help States Meet the NCLBA Teacher Requirements. GAO-04-659. Washington, D.C.: July 15, 2004.

Special Education: Grant Programs Designed to Serve Children Ages 0-5. GAO-02-394. Washington, D.C.: April 25, 2002.

Head Start and Even Start: Greater Collaboration Needed on Measures of Adult Education and Literacy. GAO-02-348. Washington, D.C.: March 29, 2002.

Bilingual Education: Four Overlapping Programs Could Be Consolidated. GAO-01-657. Washington, D.C.: May 14, 2001.

Early Education and Care: Overlap Indicates Need to Assess Crosscutting Programs. GAO/HEHS-00-78. Washington, D.C.: April 28, 2000.

Education and Care: Early Childhood Programs and Services for Low-Income Families. GAO/HEHS-00-11. Washington, D.C.: November 15, 1999.

Federal Education Funding: Multiple Programs and Lack of Data Raise Efficiency and Effectiveness Concerns. GAO/T-HEHS-98-46. Washington, D.C.: November 6, 1997.

Multiple Teacher Training Programs: Information on Budgets, Services, and Target Groups. GAO/HEHS-95-71FS. Washington, D.C.: February 22, 1995.

Early Childhood Programs: Multiple Programs and Overlapping Target Groups. GAO/HEHS-95-4FS. Washington, D.C.: October 31, 1994.

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Mr. REHBERG. What areas identified in the report have the greatest potential for immediate savings? Of course, I really appreciate your report, and it was meaningful. We don't want to do damage, obviously, to any of our training programs in any of our areas of improvement for our teachers. However, as you know and you have summarized pretty well, we have a financial crisis looming, whether we want to admit it or not. So we are going to have to look at immediate midterm and long-term solutions. Most of the long-term solution is going to occur in the authorizing committees. As far as immediate savings, are there some areas that you can identify?

Mr. SCOTT. One of the challenges we faced in doing this work, is that it is often difficult to identify particular savings resulting from consolidating programs. However, as I noted, the Department has put forward a proposal to start to consolidate some of these programs—I believe 38 into approximately 11. So, from our perspective, at least that provides a common ground or a start of a discussion about where we can go in terms of potentially consolidating some future programs.

One of the challenges with identifying particular savings is that oftentimes administrative costs related to administering programs are not readily available in many instances. So although there may be some efficiencies gained, identifying particular cost savings can be challenging.

Mr. REHBERG. Of the 38 that are going into 11, your use of the \$50,000,000 or less was hard to evaluate. Are all of those 38 that are being recommended being consolidated at \$50,000,000 or less?

Mr. GORDON. No, they are not. For example, they include the Improving Teacher Quality State Grant program, which is a large program, nearly \$3,000,000,000.

Mr. REHBERG. Again, there will always be some controversy about the private sector, but are there some savings that might be able to be foreseen in the short term with better coordination with the private sector?

Mr. SCOTT. We don't address the issue of better coordination with the private sector in our work. One of the things we do point out is there can be some opportunities across various Federal agencies to improve coordination. GAO has done some work that speaks to this idea that to the extent you have common performance goals, common performance measures, to the extent agencies are coordinating in terms of their strategic planning to ensure that the programs across various agencies better align, I think there are clearly some opportunities to do better in that area.

Mr. REHBERG. There are only so many areas that we have the ability to have oversight. The question always comes about the Recovery Act dollars; the cost of applying for the grants. Have you done much as far as these grants to make a determination how much the grantee is having to spend to apply?

Mr. SCOTT. I know that is a question that frequently arises across a number of these competitive education grants. We are actually doing a couple of studies currently that we are hoping to report out this summer that may help address some of those questions. We are currently reviewing the Race to the Top program, which is a statutory mandate, and we are also conducting some work looking at the School Improvement Grants for the Senate Ap-

appropriations Committee. By the end of this year, early next year, we will have some work that might speak to this issue of not only the costs related to applying for these applications, but also the capacity of State and local education agencies to apply for these grants.

Mr. REHBERG. Are you going to be looking at the rate of return for the States on the Race to the Top, or is that outside the purview or your evaluation?

Mr. SCOTT. The Race to the Top work we are currently doing now is an early look at the Department's implementation of the program. We have visited a number of States. We will have some insights in terms of the State experience. But the primary focus of this initial study is looking at the Department of Education's early implementation of the program.

Mr. REHBERG. Beyond the 38 to 11, are you going to be making additional recommendations?

Mr. SCOTT. Not at this time.

Mr. REHBERG. So if we were to request a follow-up GAO investigation, there would be that opportunity or possibility?

Mr. SCOTT. We would be happy to discuss with you future work in this area. I would point out, though, that the consolidation proposal is by the administration. We did not recommend any specific proposal.

Mr. REHBERG. Great.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

Mr. Scott, I would like to know if you can discuss the distinction between administrative duplication and programmatic duplication and how such a difference is applicable to your findings regarding the teacher quality programs. Does this report distinguish between the two? Also, I know I would find it useful to go through the definitional difference between the terms "fragmentation," "duplication," and "overlap."

Mr. SCOTT. Thank you, Ms. DeLauro.

In terms of the framework we use to look at these programs, when we use the term "fragmentation," we are talking about instances where programs serve the same broad area of national need, but are administered across different offices or agencies. So that is fragmentation. That is the first step. You have a number of programs across a number of agencies or a number of offices within the Department. So that is the first step.

The second step concerns overlap, and that is an instance where you have multiple agencies or programs that have similar goals engage in similar activities or strategies to achieve them or target similar target groups. So that is the second step.

Finally, and what we discussed very broadly or generally in our report, is that the next step is duplication, where you actually have the same programs doing the same thing and the benefits being received by the same folks.

As we point out very carefully in our report, we used the phrasing "potential duplication," because in the course of our work, we did not actually find duplication of the programs. So we are always very careful to phrase it in terms of potential duplication.

Ms. DELAURO. So you found no duplication. Would duplication then be indicative? Because when the chairman asked you the question about savings and duplication, I just think of an example where we have two efforts to put together an engine for the Joint Strike Fighter. This is in defense. It was the same thing. Now, that I would regard as a duplication. We are spending money for the two pieces. So you didn't find duplication.

Mr. SCOTT. Correct.

Ms. DELAURO. I heard your answer. It was difficult to gauge savings, you said, in terms of looking at this. Were you able to identify any cost savings to be achieved through consolidation? Where did you find specific examples of taxpayers' dollars being wasted that we might address through the appropriations process?

Mr. SCOTT. In terms of specific waste, we did not look at this at a program-by-program level. Our work was focused on more generally the potential for, for example, administrative savings and efficiencies. If you talk to the folks at the Department of Education, they very clearly point out that to the extent you have multiple programs even within the Department, it does present challenges to them in administering those programs. I think that is partly the reason why they are putting forth this consolidation proposal, because they recognize to the extent you have fewer programs that you have to administer, it can also increase your effectiveness in terms of administering the fewer programs, as well as help you better target, for example, technical assistance to grantees.

Clearly, there are trade-offs here, but from the perspective of the Department, and we certainly concur with their thinking, to the extent that you can start to consolidate some of these programs, it will better position the Department to more effectively administer and oversee the remaining programs.

Ms. DELAURO. Many of the teacher-quality programs, as I understand it, cover many different areas. For example, you have got teacher preparation, professional development and incentives for teachers to work in high-need schools. These are diverse programmatic goals. Can you elaborate on how consolidating or eliminating some of these programs will still allow for these areas to be covered? Or can you elaborate on how we can consolidate or eliminate these programs without compromising their ability to cover these areas?

Mr. GORDON. In terms of consolidating and making sure that the intent of the underlying programs that are being consolidated are kept, I do think the Department in its proposal for consolidation goes through and makes the case for the programs that are being consolidated how grantees that are benefiting from them could access those same types of services under these new programs. That is not something that we analyzed specifically, but I do think in terms of taking a look and making sure there is no unintended consequences of the consolidation, that is an area that warrants looking at more closely.

Ms. DELAURO. And is that something you are going to be embarking on at someone's request, or do you do that?

Mr. SCOTT. We don't have any additional work planned on teacher quality, but to the extent there is continuing interest, we would

be happy to discuss with you further potential work you would like us to do.

Ms. DELAURO. Thank you.

Mr. REHBERG. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. Just out of curiosity, since much of this is really outside of our purview as an appropriations committee, has the authorizing committee asked you to testify before it on any of this, or have you done any reports with the authorizing committee on this?

Mr. SCOTT. Thank you, Mr. Simpson.

Actually, the Comptroller General was before the House Education and the Workforce Committee last week, testifying both on the teacher quality programs as well as the employment and training programs. And one of my colleagues, Andy Sherrill, was here last week testifying on those programs. So last week the Comptroller General did testify before the House Education and the Workforce Committee.

Mr. SIMPSON. I hope they take that seriously as they do the reauthorization that is coming up. This is an example, and it is not just the only one; there are multiple across government. I think Ranking Member DeLauro mentioned food-quality programs earlier. I am chairman of the Interior Appropriations Committee, and it seems like every single agency has specific money to do climate-change studies, but there is no overall strategy of climate change. And I have thought of consolidating all of the climate-change money into a line item that is probably overseen by USGC or somebody else like that so we can get some coordination between all the different agencies within the government in terms of climate change; sort of the same thing that Ms. DeLauro is thinking about with food safety. I could go on with example of example after example of this type of thing.

The first day I was on this subcommittee or on the Appropriations Committee, the first hearing I went to, there was an agency that we fund that does grants for small businesses to help them—low-interest loans, this kind of stuff. And I knew that there were other programs like that, and I had never heard of this one. I asked the guy how many programs there were that did essentially the same thing. He said, I don't really know. Afterwards, a lady came up to me and said, I do a conference on these types of programs, and there are 43 different programs that do essentially the same thing. Each one of them have a little different twist. This one is in the agricultural area, this one has minority population focus and stuff. I said, why couldn't you consolidate those into a program, because it makes it confusing for the constituents out there, when they are looking for a loan, where to go? The guy I was talking about actually was looking for a loan to start a small business and got it from the Department of Agriculture. Nobody would have ever thought of going there. You say that they are looking at consolidating—out of these 82 distinct programs designed to improve teacher quality, consolidating 38 to 11 in this budget.

Mr. SCOTT. Correct.

Mr. SIMPSON. That is a start. But in my count, that leaves 55 that do essentially the same thing. Has anybody talked about blowing up the system—and I only mean that in rhetorical terms—and

saying, the way this grows is every time we reauthorize a program, we add a new program, a new provision, and usually with some Senator's name attached to it, as a new program. Whether it duplicates or not, it is a new program that we start.

I would like to see somebody step back and say, okay, if we didn't have a program for teacher quality, none existed, what would we do to put one into place that made sense for the American people, for education, for our Federal budget? Is anybody doing that that you are aware of?

Mr. SCOTT. As I mentioned, the Department, to its credit, has put forward a proposal to start some consolidations of a number of programs. Additionally, one of the things the Department has done and is committed to doing is looking to obtain funds for additional evaluations of programs. One of the consistent messages you will hear from us at GAO is about the importance of conducting rigorous evaluations of various programs and activities so that we have a better sense of what works and what doesn't. To the extent we can conduct those evaluations, we may get a better sense, of those programs we might want to consider continuing. Likewise, for those that are not achieving the desired outcomes. Clearly, that is a topic for discussion about to what extent, if at all, do you want to continue to fund those kinds of programs.

In addition to the Department of Education proposal to do more rigorous evaluation, we also think it is important for agencies across the Federal Government to think more strategically and work more collaboratively across the various programs. For example, we are currently doing some work looking at STEM education. When we reported on this 6 years ago, we found that there were over 200 STEM programs across 13 Federal agencies, spending about close to \$3,000,000,000. Once again, to the extent that those Federal agencies can better coordinate, at least that will start to address some of the challenges in terms of ensuring these programs are working effectively and not unnecessarily overlapping or duplicating each other.

Mr. SIMPSON. One of the real challenges you have, and I found it on our side of the aisle, and I am sure it is true on the other side of the aisle, is that when someone proposes something like this, as the President is proposing, every one of these programs builds up its own constituency. It is difficult to overcome that, but we have to do that.

Thank you.

Mr. REHBERG. Mrs. Lowey.

Mrs. LOWEY. Thank you, Mr. Chairman.

I thank you, Director Scott, for your presentation. I want to make it very clear that whether we are Ds or Rs, all of us agree on the need to eliminate ineffective or unnecessary programs. We have to be good stewards of taxpayer dollars and maximize resources. In fact, I remember this was a key initiative of Al Gore way back when.

I am very pleased that you are focusing on this now. There are, however, some members of the committee who may truly believe that the Federal Government should have a more limited role in education, and that Federal programs are duplicative of State and local programs. Frankly, I would like to invite anyone with that

point of view, come to Yonkers. It faces a potential 37 percent workforce reduction for next school year. That comes on the heels of having to lay off 187 teachers and employees before this school year began.

So I just think we want good programs, effective programs, but more than ever our schools do need Federal assistance, including teacher quality programs. I guess if there were a cookie-cutter approach to teacher quality, for those of us who have been working on this issue way back when I was a PTA president, we would be doing it. So the large number of teacher quality programs is testament to the essential role teachers play in education. And we have a responsibility not to waste money, but to give the teachers the tools that they need.

I was very interested in your mentioning 200 STEM programs because I do think teacher quality programs should be provided and tailored for specific fields. For instance, STEM education is so vital to our economic future, we need to do a better job providing assistance to teachers in science, technology, math, the first two of which are ever-changing.

Looking at the numbers, 31 percent of public school students in fifth through eighth grades are taught math by a teacher with a degree or certificate in math. The physical sciences, it is only 7 percent. And these are difficult fields to master, but we have to focus on how do we help these teachers in tough budgets. That is why I am a strong supporter of helping teachers in STEM fields. In fact, when it comes to Teachers for a Competitive Tomorrow, which helps universities establish undergraduate programs leading to bachelor's degrees in STEM fields with teacher certification, more than \$450,000,000 has been authorized just last year. We only appropriated \$2,000,000. So maybe we have to look at that adjustment—\$450,000,000 authorized, \$2,000,000—when this is a key area where we really need help.

Now, we know we have to reduce, get rid of as best we can, unnecessary duplication, but I don't think it is a bad idea to have one program for STEM teachers and another for English teachers. So my question is, I know that a program with duplication is the difficulty. The problem with duplication is difficulty comparing programs. Can you tell us, of the 200 STEM programs, which ones have been most effective? Are you looking at eliminating some, and if so, which ones? And how are you making that determination?

Mr. SCOTT. The number I cited from STEM programs is from work we conducted and issued a report back in 2005. We are currently doing some work for Chairman Kline, the House Education and the Workforce Committee, where we are attempting to look to, first of all, update the numbers in terms of the number of STEM programs, the number of agencies, and the amount that is being spent on those programs. We are also—

Mrs. LOWEY. Do you know, by the way, of the 200 programs about how much is spent cumulatively on them?

Mr. SCOTT. I believe, from the report we did in 2005, it was about \$3,000,000,000. I think most of that was spent by NIH and the National Science Foundation. As I said, those numbers are dated. As I mentioned, we are in the process of updating that report.

In addition of better understanding the number of programs, the number of agencies and dollars spent, we are also looking at those programs in the same framework. We are going to try to determine to what extent there is the fragmentation, overlap, and potential duplication in those programs. Our plan is to report out late this year, early next year, on that. We anticipate it will be the part of the next round of overlap duplication reports that we will be issuing next spring. So stay tuned.

Mrs. LOWEY. I look forward to it. The sooner you can get that information out—I think you see support on both sides of the aisle. And I truly thank you.

Thank you, Mr. Chairman.

Mr. REHBERG. Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman.

Thank you for your testimony. With all these programs—and kind of leading on with what Chairman Simpson was saying—we seldom see these consolidations occur unless there is either a threat of withholding funds or some kind of cutback; is that not right? Is that the case? Or, do we see these actually take place, these consolidations, without that hammer?

Mr. SCOTT. As I acknowledged before, while we certainly haven't specifically evaluated the Department of Education's proposal in terms of at least taking a positive step forward, I would certainly like to acknowledge the Department for doing that. That said, that does leave a broad number of other programs across other agencies where those agencies haven't taken those steps thus far. And so clearly that is one place to start at, in addition to looking at the Department's proposal.

There can be opportunities for you all to hold other agencies accountable for their programs; for example, requiring them to, to the extent they fall under the jurisdiction of your committee, provide more detailed information in their budget justifications about the programs, what is known about the effectiveness of those programs. You might also build in some requirements, for example, they actually do conduct some rigorous evaluations of those programs.

So clearly for those agencies with teacher quality programs within your jurisdiction, there are opportunities for you all to directly hold them accountable for the activities they are undertaking and see to what extent they are trying to coordinate with the Department of Education and other agencies.

Mr. FLAKE. Your focus has been on the Department of Education here, but have there been other GAO studies on the other agencies, and is one agency doing more effective analysis and monitoring and some kind of metrics of their results? Are any other agencies, to your knowledge, doing it better than the Department of Education?

Mr. GORDON. In terms of program evaluations? Well, in terms of program evaluations, we looked at the Department of Education, HUD, and HHS in a study that we did last year, and actually the Department of Education does have some good practices in terms of how it plans for them and carries out its program evaluations. We can certainly provide you with some more details on what we found in that report.

Mr. FLAKE. Do I infer that the others do not?

Mr. GORDON. For that study what we looked at is we looked at agencies that we call the mature agencies in terms of program evaluations. We didn't look at other agencies to say in terms of what the best practices were. But we did see some consistent practices across those agencies in terms of how they plan for and carry out their program evaluations. For example, with the Department of Education, one thing that they do is they tie their planning process into their budgeting process to make sure they have the resources to carry out their plans. So they do have certainly some good practices at the Department of Education.

Mr. FLAKE. Thank you.

Mr. REHBERG. One of the things that we always try and do, there is always a clear difference of philosophy of whether the Federal Government ought to be involved in education and to what extent, and to what extent can we allow the flexibility at the local level. Did your report address at all an efficiency that could be created by larger block grants and additional flexibility for the local level as opposed to the Federal Government trying to manage all these independent programs?

Mr. GORDON. We didn't get into that analysis specifically. When we did work on teacher quality programs back in 2009, we did survey State agencies of higher ed as well as State educational agencies. We did hear from them that they did face some challenges in administering these programs and trying to coordinate across these programs. So to the extent there was any streamlining at the Federal level, that could also benefit at the State level.

Mr. REHBERG. You always worry about—because what you are really trying to do is put money in the hands of people that are actually going to be able to use it rather than the administrative costs and such. Are you looking as part of your new evaluation, your consideration of the evaluation of the programs, are you going to be looking at the difficulty of a grantee moving across programs? Clearly one teacher might be able to use additional programs. And it would help us in knowing both for the Education Committee, the authorization committee, for creating a streamlined process or a block grant process, but also understanding the difficulty we are creating for the grantees and the money that might be able to not necessarily be saved. We don't necessarily always have to be cutting money. We can also just take more money from the duplication of administration or grant application and apply it back to what we are attempting to do.

Mr. SCOTT. Clearly, through reauthorization there could be some opportunities, for example, to ensure that various definitions are more consistent across programs, and, that might ease the burden for grantees applying. As I mentioned before, hopefully some of the work that we are doing on the Race to the Top and the School Improvement Grants will help provide some additional insights into some of the challenges that grantees face when having to compete, at least in the case of Race to the Top and School Improvement Grants, almost simultaneously for some of these competitive grants. So hopefully later this year we will have more insights on that.

Mr. REHBERG. Have you moved beyond just the administration cost aspect into the economics; the inefficiency of the economics of some of the programs? Or is that beyond?

Mr. SCOTT. That is beyond the work that we have done to date.

Mr. REHBERG. But you could do it. It is just beyond.

Mr. SCOTT. Depends on the scope and how we define what we would be looking at.

Mr. REHBERG. It could become part of your protocol in your recommendations for greater evaluation.

Mr. SCOTT. Clearly, as I said before, one of the things that we will continue to say is that it is important for the Federal agencies as part of their—not only for existing programs, but to the extent they want to propose new programs or initiatives, to ensure that they state very clearly and have clear program goals or objectives; clear performance metrics so you know whether they have achieved the desired results; and have built in, to the extent feasible, a rigorous evaluation of those programs so that we can routinely check in to ensure that programs are achieving their desired results. Without those things it is pretty hard to know at the end of the day what works and doesn't.

So I think it is really incumbent on Federal agencies, including the Department of Education, to continue to make progress in conducting more rigorous evaluations of existing programs and providing better justifications for new programs they might want to propose.

Mr. REHBERG. Thank you.

Ms. DeLauro.

Ms. DELAURO. Thank you very much.

Have you formally evaluated the Department of Education's consolidation plan?

Mr. SCOTT. No, we have not.

Ms. DELAURO. I'm referring to the plan that is in the 2011 and 2012 budget requests. Is it your sense that they are on the right track, given what you have talked about in terms of consolidation?

Mr. SCOTT. As I mentioned, we haven't formally looked at it, so I want to be careful here, but from a standpoint of having a starting point, I do want to give the Department credit for that. At least it is a starting point.

Ms. DELAURO. You said you have looked at Education, HUD, HHS. Have you looked at, or have you been requested to look at, the Department of Defense regarding duplication and overlap, et cetera? How about the Department of Homeland Security or the Department of Agriculture? With Agriculture, you did on the food safety piece. But, in other words, in terms of looking at fragmentation, overlap, duplication, have you done those agencies?

Mr. SCOTT. In terms of various teacher quality programs?

Ms. DELAURO. No, I am talking more broadly in terms of this issue of, again, fragmentation, overlap, and duplication of programs.

Mr. SCOTT. Yes. Actually the large report we issued across a range of agencies and programs last month did address those various agencies, I believe. We would be happy to make sure you get a copy of that.

Ms. DELAURO. Fine. Thank you.

A couple of other things. You didn't find duplication among the education programs we are discussing here today?

Mr. SCOTT. Correct.

Ms. DELAURO. You didn't find waste, as I understood.

Mr. SCOTT. As I mentioned, we were not looking specifically for waste.

Ms. DELAURO. I understand that.

Mr. SCOTT. That was not within the scope of what we were doing.

Ms. DELAURO. It is hard to calculate the savings, as you said. And the Department is moving in terms of some consolidation.

Now, this is a question that is on my mind. Do we have enough trained staff, and do we provide enough in terms of appropriations to deal with the Department's program evaluation? Is there a level of appropriation that you would recommend for program evaluation at the Department for fiscal year 2012? Because your point before was in terms of the analysis at the agencies. So is there enough trained staff now? Should we provide additional resources to train personnel to carry out the analysis, and should we move as quickly as we can to see how we can impact fiscal year 2012?

Mr. GORDON. In terms of program evaluations at the Department of Education, what we have heard from them is that a lot of their funding for those evaluations comes out of the authority and the funds under the individual programs, which can be challenging for them, particularly with the smaller programs, because it doesn't create enough funds. The Department has currently embarked on a new process to develop a strategic plan for program evaluations, and they said as part of that process they will work to identify programs where they would need additional funds or where they lack authority to use funds for evaluations.

So to the extent that they have requested that, that would be an area that this committee could help with.

Ms. DELAURO. I appreciate that. Oftentimes, if that kind of request comes, there are differences in viewpoint as to whether or not that merits an appropriation. But I am asking for a professional view, given what you have looked at and what you have uncovered here. Are we currently providing sufficient appropriations to the Department for program evaluation? Do you have any suggestions as to a level that we ought to be looking at so that we can use our authority here to create a better outcome, if you will, and to avoid duplication and fragmentation or overlap?

Mr. SCOTT. In terms of level of appropriation for research evaluation, I am going to leave it to the Department to speak to sort of the adequacy of their evaluation funding.

Ms. DELAURO. Talk to me about the principle of doing that. You are a professional operation, the GAO, and you make recommendations. You make recommendations to us that we ought to take a look at increasing funding for program evaluation in order that these agencies—this agency—might be able to perform better.

Mr. SCOTT. As we previously mentioned, the Department has put forward a proposal. Given the stakes here, I think it is appropriate for you all to consider whether the Department should receive additional funding for research and evaluation.

That said, in an age of limited resources, I understand that there will be trade-offs here. But given the fact that until we know more

about what works and what doesn't, it puts us in—puts you all in a very tough policy standpoint of understanding where to make these difficult choices.

Ms. DELAURO. Mr. Scott, I am going to take that as a yes.

Mr. REHBERG. Mr. Kingston, you missed the first round. We are in round number two, and you can go next.

Mr. KINGSTON. Thank you, Mr. Chairman.

I wanted to ask you on page 8, your three recommendations, about number 3, consolidating existing programs. How much of that actually has to be done by Congress versus done within the agencies themselves? It would appear to me it would just kind of be a good government, commonsense thing, that where you could consolidate, particularly the infrastructure, the personnel, that it would make sense, without Congress mandating it.

Mr. SCOTT. To the extent you have specifically authorized programs, that will fall to the Congress to come back and consolidate those programs. I think, where possible, to the extent the various agencies can wring out some more administrative consolidations within agencies, clearly that is a possibility.

Mr. KINGSTON. I don't see, though, on page 10 where you list the ones that statutorily have to be—and just scanning it—and it might be in there, but if it is not in there, if you could provide it for the record on which ones actually would need congressional actions and which ones could be done in house.

[The information follows:]

The enclosure provides your question and our response for the record and supplements information provided to your committee in our testimony, *Opportunities to Reduce Potential Duplication in Federal Teacher Quality Programs* (GAO-11-510T, Washington, D.C.: April 13, 2011).

Question for the Record
The Honorable Dennis R. Rehberg, Chairman
Subcommittee on Labor, Health, and Human Services, Education and Related
Agencies
Committee on Appropriations

Question: Which federal education programs require congressional actions and which ones could be consolidated or eliminated by the existing authority of the Department of Education?

Federal programs are generally created in two ways—by Congress directly in legislation or through agencies' broad statutory authority to carry out their missions. Agencies must carry out congressionally-created programs as specified in the pertinent legislation, but the level of congressional direction may vary, affecting the degree of the agency's flexibility in implementing the program. Congress may provide broad direction to an agency without prescribing specific program features or requirements, allowing an agency more discretion in how to structure the program. Alternatively, Congress may provide very specific instructions on how a program is to operate, thereby reducing an agency's discretion. Generally, programs created by an agency pursuant to its broad statutory authority provide the agency with increased flexibility in program design and implementation, which may include the ability to end the program.

For more detailed information, we are attaching the Department of Education's written response to our request to explain their authority to consolidate teacher quality programs.

Attachment I

U.S. Department of Education Response to GAO Request for Clarification of Authority to Consolidate Programs

We are writing in response to your request for the Department's views on addressing duplication especially in "teacher quality" programs through the "Department's authority to consolidate programs."

INTRODUCTION

The Department has a multi-prong approach for addressing duplication. In summary, we agree that there is some duplication among some of our programs that address teacher quality initiatives, but we respectfully disagree that there is as much duplication as indicated by GAO's testimony.

If we want to reach President Obama's goal of "out-educating the rest of the world," we must become more efficient and productive. Eliminating duplicative Federal education programs is one part of this effort, but efficiency and productivity also result from ensuring alignment within the Department's priorities and coordination across programs. We have taken a number of steps to better align and coordinate our programs.

We primarily have addressed the issue of duplication through our proposal for the reauthorization of the Elementary and Secondary Education Act (ESEA), our "Blueprint for Reform," which calls for consolidating through legislation a number of programs, including teacher initiatives. In the absence of legislative action by Congress to reauthorize ESEA, we have proposed using the budget and appropriations process, better coordination of program implementation, and the use of Secretary's priorities in discretionary grant programs to effect program consolidations and achieve greater alignment of initiatives.

The Department also included proposals to consolidate programs in our Fiscal Year 2011 and 2012 Budgets. Each year, as part of our budget development process, we examine Department programs to determine what works and what doesn't, where programs overlap, and where services are duplicated. Under Secretary Duncan, this task has become an even higher priority, particularly as the Secretary has emphasized the "new normal" in education: the twin realities of constrained budgets in many States and increasing demands on educators and administrators to deliver world-class education and increase student achievement in the classroom for all students, so that the United States can continue to be economically competitive.

CONSOLIDATING AND ELIMINATING PROGRAMS THROUGH LEGISLATION

In the areas of teacher and school leader preparation, development, and effectiveness, our ESEA reauthorization proposal would consolidate nine ESEA programs into a single initiative, **Excellent Instructional Teams**, consisting of three integrated components: the **Effective Teacher and Leaders State Grants** program, which would provide formula grants to improve the effectiveness and distribution of teachers and school leaders; the **Teacher and Leader Innovation Fund**, which would provide competitive grants to support the development and implementation of innovative teacher and leader policies; and the **Teacher and Leader Pathways** program, which would competitively support efforts to recruit and prepare highly effective teachers and school leaders.

Our reauthorization proposal would also consolidate the ESEA's subject-area programs. As an example, we currently administer seven separate elementary and secondary education programs dedicated to instruction in specific subject areas like American history, the arts, civics and government, economics and financial literacy, and foreign languages. Clearly, we do not need eight different funding streams in order to support instructional projects in these subject areas effectively. Moreover, these narrow streams constrain State and local efforts to implement the comprehensive instructional reforms needed to boost achievement.

The Administration's ESEA reauthorization proposal would consolidate these seven programs into a single program, Effective Teaching and Learning for a Well-Rounded Education, which would support innovative practices to improve teaching and learning across a wide domain of academic subjects while ensuring that scarce Federal dollars can be leveraged in order to maximize their impact. In addition to consolidations brought about through the creation of the Effective Teaching and Learning for a Well-Rounded Education program, the proposed Effective Teaching and Learning for a Complete Education initiative would consolidate six currently authorized literacy programs into the Effective Teaching and Learning: Literacy program.

In total, the ESEA reauthorization proposal would consolidate 38 current programs into 12 broader and more flexible authorities. The Blueprint for Reform would increase flexibility for applicants through consolidations in other key areas. It would combine, into a single, more comprehensive program, three current programs that support accelerated learning opportunities or help prevent students from dropping out of school. It would replace six programs providing separate support for student well-being (including drug use and violence prevention, physical education, and mental health activities) with a single, more flexible authority. And lastly, it would build on the ESEA's support for public school choice by fusing five separate funding streams into a single program for projects that expand educational options.

Not only would these program consolidations provide greater flexibility to applicants and better target local needs; they would save time and money for everyone, both here in Washington and in the States and communities. Each of those 38 current programs brings with it separate administrative needs for the Department as well as application, record-keeping, and reporting burdens on grantees. Consolidating these programs would reduce those burdens at all levels, and would enable the Department to reduce administrative burdens at the State and local levels, and direct more of our resources toward effective technical assistance and support for our grantees.

The Administration has identified savings producing consolidations in other authorities as well. As part of a proposal to reauthorize the Workforce Investment Act, the 2012 request would consolidate 9 programs currently authorized under the Rehabilitation Act into three new authorities. These proposed consolidations would improve the provision of rehabilitation and independent living services while reducing administrative costs.

In addition to program consolidations, we also have identified programs that either don't work well or are just plain unnecessary. Not many of our programs fall into these categories, but for those that do,

our budget includes a simple request to Congress: eliminate them. In 2010, we worked with Congress to terminate four of these programs, providing a savings of \$360 million. In Fiscal Year 2011 and in the recently passed Fiscal Year 2012 appropriations bill, Congress eliminated a total of 45 programs. Going forward, we will continue to monitor our programs and recommend for elimination or consolidation those that do not produce results.

Finally, we must point out that the issue of program duplication is not always as simple as it seems. Our emphasis on flexibility—particularly in our larger formula grant programs—often allows States and school districts to tap several Federal programs at once to support similar activities. This allows alignment, focus, and flexibility that States and school districts request so that they can use multiple streams to respond to their unique needs. An oversimplified count of overlapping and duplicative programs can lead to confusion and misunderstanding about the number and identity of truly duplicative programs.

For example, a recent version of a report or testimony by the Government Accountability Office (GAO) on government-wide program duplication identified a number of Department programs under which teacher quality improvement is authorized as an allowable activity and that have common objectives and target groups. However, the report included programs that do not have improving teacher quality as their primary purpose—such as the Title I, ESCA Grants to Local Educational Agencies, School Improvement Grants, and Even Start programs—and the number of programs that focus primarily on teacher quality is smaller. That said, of the 11 other programs identified as potentially duplicative, our budget and reauthorization proposals would consolidate 10 of them into broader, more flexible authorities.

IMPROVING THE EFFECTIVENESS OF OUR PROGRAMS AND REDUCING DUPLICATION

As another means of reducing duplication and overlapping programs, Secretary Duncan is shifting the Department's culture away from a compliance-driven bureaucracy to a more flexible, supportive collaborative relationship with State and local leaders. To help realize this vision and provide the quality of service our grantees need, we are working hard to diminish the bureaucratic "silo effects" and improve coordination and information-sharing across Federal programs, offices, and agencies.

For example, the Department is working closely with other Federal agencies to coordinate our support for education in science, technology, engineering, and mathematics (STEM) fields. As you know, the recent reauthorization of the America COMPETES Act requires the Director of the Office of Science and Technology Policy to establish a STEM education coordinating committee. With the Department as an active contributor, the committee has compiled a detailed inventory of Federal STEM education programs in order to identify program overlap and duplication and improve evaluations of effectiveness.

Additionally, and perhaps most importantly, the Department has launched the Implementation and Support Unit (ISU), which is charged with administering signature reform programs such as Race to the Top and is designed to assist States in developing and implementing successful, lasting education reforms that work effectively across programs. The ISU serves as a key Department engine for

coordinating our technical assistance, data collection, and information-sharing to support innovation and reform efforts.

CONCLUSION

In conclusion, we strongly support appropriate efforts to reduce duplication in Federal education programs, such as those in our ESEA Reauthorization proposal. We are hopeful that we can work together with Congress to achieve our shared goal of more effective and efficient Federal support for teacher quality and State and local educational improvement.

Ms. DELAURO. Would the gentleman yield for a second? Because I think that is so relevant, what kind of legislative action should the Congress undertake in order to address the challenges. Let us look at ourselves first.

I thank the gentleman.

Mr. KINGSTON. Thank you.

And the other question that I had was on recommendation number one. And I notice that at the bottom of your page 8, you said that the GAO reports there were 151 different Federal K-12 early childhood education programs, but half of these have not been evaluated, including 8 of the 20 largest programs. Why is that the case? Why would we have a program that we don't evaluate?

Mr. SCOTT. The work that we reference there is from a report we issued in 2010. That work did not speak to the issues of overlapping, fragmentation, or duplication. That work was simply an attempt to catalog the number of K-thru-12 and early childhood education programs. As we point out, a number of those programs, including some of the largest, had not been evaluated. That said, however, some of the main programs had also undergone some evaluations. Oftentimes it just depends on agency priorities and available resources.

One of the things that we also point out, there are two challenges to doing this work. One of the challenges we always face in doing this kind of work is even defining exactly what a program is. Depending on who you talk to you, the various agencies, OMB, you come up with very different ideas what a program is, and therefore you end up with very different numbers.

The second point is the extent of evaluations, not all programs will rise to the level that you really want to make the significant investment to do rigorous evaluations. And other times some programs have been longstanding, and yet the agencies have not taken any actions to evaluate them.

So there are just a couple of things going on in terms of why there might be some gaps in evaluations.

Mr. KINGSTON. Switching back to page 2 or 3, you talked about congressional oversight would be very helpful. As a 19-year veteran up here, I do agree with you we do need more oversight. But I also know that there are certain dog-and-pony shows that this town enjoys, where you bring people up, you have a GAO report, press release, everybody pounds their chest for a while, and then it goes away.

The reason I was late today, I came from a defense hearing. As you know, the GAO report identified \$70,000,000,000 in waste and overruns. We are kind of getting into that a little bit. But in the testimony that the Secretary actually said that this—he said something, and I don't want to quote him because I will misquote him, but he said something like, we always get this from the GAO. And you are thinking, well, let's do something about it.

But on the oversight, from your standpoint, what would be the effective congressional oversight? Is it the rhetoric, is it the action? Because sometimes I just have to question is there actually a follow-up action? And this doesn't matter who the administration is or who the majority in Congress is.

Mr. SCOTT. As we pointed out in that broader duplication report, some of these programs, some of these challenges are longstanding. I think it is important for the Congress to continue, for example, to hold hearings like this to shed light and get a better understanding of exactly what is going on. Additionally, for programs within your jurisdiction, I think there are a couple of things you can do. As I mentioned before, you can require the departments to do better coordination. You can ask the departments in terms of their budget justifications to provide clear information in terms of what is the ultimate outcomes of these programs, what sort of performance metrics do they have in place, and how will we know at the end of the day whether these programs work.

These are specific questions that you can ask of the departments when they come up with their budget justifications. I think after that it is continuing to follow up to ensure that they are providing the necessary information you have requested.

Mr. KINGSTON. Thank you.

Mr. REHBERG. Mr. Simpson.

Mr. SIMPSON. When you mentioned that there were 82 distinct programs on teacher quality across 10 different Federal agencies, what are those 10 Federal agencies? I am trying to figure out who the hell is involved in teacher quality.

Mr. SCOTT. We are searching for our list here. The Department of Education, Department of Defense, Interior, EPA, the James Madison Memorial Fellowship Foundation, National Endowment for the Humanities, Department of State, Agriculture, National Science Foundation, and NASA.

Mr. SIMPSON. Wow. I suspect if you look at it, most of those are involved because of an authorization by Congress, and that it would take legislative action to change those things. While they might be able to coordinate different programs within an agency, if you are going to coordinate this across the Federal Government, it is going to take Congress' involvement to address this. And really, should the Department of Interior be doing teacher quality improvements versus somebody else, or should it be done better by someone else?

What this reminds me of—not really a question—but what it reminds me of is about 26 years ago, I started working on school consolidation in Idaho. We have 44 counties, 119 school districts. Everybody was really interested in that until it was their school district. I found out what their biggest problem was not the fact that you could save administrative costs. In some counties we have a countywide school system; in others, the county I live in, there are five school districts, which means you have five administrative costs, five superintendents, all of the staff that goes with that, and everything else. What parents were really afraid about is the Broncos wouldn't be able to play the Panthers. And we were never talking about closing schools, we were talking about consolidating administration. Today, 27 years later since I first started in that endeavor, there are still 44 counties, and there are still 119 school districts.

I suspect we are going to have the same difficulty in something like this in trying to reorganize it. What we need is instead of a plan to consolidate 38 into 11 in the Department of Education, we

need an overall plan, and that would involve more than just one authorizing committee. And somehow I think Congress needs to take on some of these challenges. And I don't have the answer to it, obviously, or I would be not in Congress.

But I appreciate your testimony. It is a challenge that we have not only in teacher quality programs, but in a variety of programs that continue to expand, build a constituency, and then seem to be there forever.

Mr. REHBERG. Will the gentleman yield?

Mr. SIMPSON. Yes.

Mr. REHBERG. You are absolutely right. But, unfortunately, it is a fundamental program with an unbalanced budget and no balanced budget requirement. The State of Montana had the same situation. We have a lot more school districts than you have. As a matter of economics, eventually some of those school district did, in fact, consolidate their administrative function. And yes, the biggest fights we had were what were you going to change the name of the team to. It actually, while not violent, becomes extremely emotional, on the edge of.

Mr. SIMPSON. We actually put in our funding formula an incentive to consolidate. They got more money if they consolidated. Still didn't happen. It is a gut-wrenching idea to do that.

Mr. REHBERG. We went through the same arguments during the 1980s in Montana and a little bit in the 1990s, in telecommunications, fiber optics, and such; a lot of the opportunity for consolidation there. Savings could be had, and school districts finally came to the conclusion, but ultimately was because the taxpayers got tired of paying for it. Here we just don't have that same pressure because we are allowed to run trillion-dollar deficits, and it is no big deal.

Mr. SIMPSON. Just to add to what you say, I think opportunities sometime present themselves when we have budget challenges like we have in this, in that it is going to force us to look at more effectively delivering these programs. I don't think anybody on this committee or anybody that I am aware of isn't in favor of teacher quality programs and improving teacher quality.

One of the other problems that really bothers me is that we have focused so much on teacher improvement and teacher quality. I have never seen a successful school, a really successful school, that didn't have a quality principal. And we don't focus on that, and we need to focus on it more. Thank you.

Mr. REHBERG. Mr. Flake.

Mr. FLAKE. Just a comment following on this. We have had the same fights in Arizona. I think every State has had the same. It just points out an observation I had before is that I don't think this is going to happen, even if the administration is calling for it or whatever else, unless there are budget cuts and it is forced. Frankly, that is what drives the process, as it should. One, we are spending too much in my view, the Federal Department of Education, without commensurate results. And to the extent that the cuts that have been proposed and are being proposed will force consolidation and force some realignment and reassessment, that is a good thing, because in my experience that is about the only thing that actually does force it. Thanks.

Mr. REHBERG. Ms. DeLauro. I am going to pass.

Ms. DELAURO. On that point, because I think we did have an earlier discussion here that you did not assess effectiveness of the programs identified, I think that is an important issue here. You did not assess the effectiveness of the report; is that correct?

Mr. SCOTT. That is correct.

Ms. DELAURO. We know we have 82 programs. You laid out your definitions of fragmentation, of overlap, of duplication. You have said you didn't find waste. They were not looking at that. You did not find duplication. And you said it was very hard to define savings. However, you did say that there is a need for an analysis of how one can look at these efforts. And clearly effectiveness is a measure. In order to determine whether or not a program is effective, one has to have an analysis of the effectiveness, and in order to do that, one needs to have resources in order to do evaluation. If we do not regard that as an important factor, and skimp at this end, we are never going to know whether or not what we are funding is working or not.

So I think you can't just say that if you just cut it all, then somehow you magically will come to a better system. It is about an analysis. It is about training people who understand analysis, can carry it out, so it isn't at the whim of one person or another of some uninformed judgment. Because analysis is a scientific process, and that will be a determinant as to whether or not this program works or this program doesn't work, and then we can say let us jettison what we don't think works and let us focus and put our funds into those that do. So that initial piece of analysis is critical, and the resources for that piece is critical.

Let me just ask you, Mr. Scott, in the report you note two programs have overlapped in teacher quality because they can both be used to attract career changers: Teacher Quality Partnership Grants and Transition to Teaching. I am interested in these specifically because I think they provide a good example of two separate and distinct programs in their mission and in the work that they do.

The Teacher Quality Partnership program, as I understand it, is designed to reform university-based teacher preparation through rigorous clinical preparation, collaboration with arts and sciences, preparing candidates to teach diverse learners, and partnerships between universities and high-need local education agencies and schools. While the program is open to career changers, I don't think that that is the goal or the mission of that program.

Transition to Teaching is a valuable program. It concentrates solely on developing roots for career changers to become teachers. It is not meant to reform teacher preparation.

Can you speak a little bit about why GAO decided to highlight these programs in a report? How are the programs duplicative or wasteful? Is it because both programs are open to career changers? It would seem to me that the programs are fundamentally different; would you agree?

Mr. GORDON. I think your example actually illustrates some of the challenges to doing these analyses because as we point out, many of these programs allow for multiple types of activities. So you can have two programs that have multiple objectives and allow

for multiple activities. So they do overlap, as you point out, in this case with career changers. So they may not be duplicative of each other, but they may overlap in some aspects that they have with each other. So the analysis is very complicated to try to tease out the extent to which they could duplicate each other.

Ms. DELAURO. But what would be useful is to understand how effective each of these programs is. That would appear to me to be the central question, and as far as I can tell from your report, we are not in a position right now to answer that question. If we truly want to find out what is working or not working, then we need program evaluation and resources to carry that out so we can say this program is a “yes” and this program is a “no.”

Thank you, Mr. Chair.

Mr. REHBERG. Getting close to the end. We have two Members that have additional questions, and we will call on Mr. Kingston first and then Mr. Flake.

Mr. KINGSTON. Thank you, Mr. Chairman.

And I think this is a great report, but I would say, though, it is kind of a teaser, because we are halfway across the water. I want to get back to my question which Rosa had also picked up on is I really would like under the consolidation of existing programs your recommendations of which ones do need statutory authority to do and which ones could be done maybe by report language urging the bureaucracy to do it themselves.

And then I want to go back to page 3 on teacher enhancement. Often when I am in a town meeting, I ask people, how many of you had a good teacher? And the hands go up. How many of you had a bad teacher? Hands go up. Then I say, can you give me how you could define the difference? And I notice that we do spend a lot of money for assessment tools on evaluation of a teacher and how a teacher could be distinguished, a good teacher from a bad teacher. Is there anything in the Department of Education that tackles that?

Mr. GORDON. I think I will have to get back to you on that one.

Mr. KINGSTON. Well, you know, it is very important because we have all had good teachers. We have all had bad teachers. We want to nourish good teachers. We want to get rid of the bad teachers, and the system wants to get the bad ones out. So I think it is something that it would be good to have a useful tool to know.

One question I would have, internationally, we see these tests that American students are falling behind on math scores. Have we ever looked at, well, how much of that is a teachers issue? Do we look at a Japanese math teacher versus an American math teacher or the way that they are teaching math in these countries that they are outscoring us so much?

Mr. SCOTT. Yes. I am not aware of any GAO work that has looked at that issue. We would be happy to go back, and to the extent we have some prior GAO work on that, we would be happy to send it to you, but I am not aware of any.

Mr. KINGSTON. Okay. Also, in Georgia we passed in 1985 QB—Quality Basic Education Act, and you know, it had some good and bad. It had a career ladder for teachers, and that was the one part, once the bill was passed, that people fought against, the teacher

groups did. But one result of that is continuing educations and master's degrees by teachers.

Have you ever evaluated the value added in a kindergarten teacher having a master's degree versus a kindergarten teacher that doesn't have a master's degree? Because as you know, once they get the master's degree, you get locked into a 5- to \$10,000 salary difference, and if a teacher is going to be there for 20 years teaching kindergarten, you are locked into that limit.

Mr. GORDON. We have not assessed the specific impact of credentials on student achievement ourselves.

Mr. KINGSTON. Well, would you venture to give an opinion that advanced degrees don't necessarily give a better product?

Mr. SCOTT. Actually we haven't done any work on that. So, no, I would not venture an opinion on that.

Mr. KINGSTON. But since States—and mostly States, but I think there is a Federal hook to it, too—are encouraged for their teachers to get graduate degrees, that is costing millions and millions of extra dollars in payroll. And it might be a waste of money; that somebody might just be a great teacher without all the fancy diplomas on the wall, and somebody with diplomas on the wall still might be a lousy teacher. And in terms of evaluating what is a good versus a bad teacher, it would appear that is in that mix, because, right now salary remuneration indicates if you have got a graduate degree, you are a better teacher, and we ought to be paying you more.

Mr. SCOTT. As Bryan mentioned, we haven't done any work on that issue, but we will go back and take a look at to see what Education may have done on that.

Mr. KINGSTON. Well, thank you very much.

Mr. REHBERG. Sorry, Mr. Flake. Mr. Simpson jumped in ahead of you.

Mr. SIMPSON. I just wanted to comment on the prior question on what Jack was just talking about and a short story to demonstrate the problem.

One day a friend of mine that I graduated from high school with—this was 5 or 6 years ago—we were out playing golf together, and we were talking. We were talking about our high school education, you know, the old days, the good old days. And I mentioned who I think was my best teacher. Everybody hated to take her class because she was tough, but in retrospect, I think she taught me more than any other teacher I had. And I asked Lynn, I said, what did you think about so-and-so? He said, I think she was the worst teacher I ever had. I said, who do you think was your best teacher? And when he mentioned it, I looked at him and said, you have got to be kidding; I would have put that down as my worst teacher.

When you are measuring teacher quality, it is tough, because different teachers connect with students differently. And the same thing that works for this high-quality teacher here may need to be somebody else for another group of students. So we need to be careful when we are just saying, you know, trying to measure teacher quality, that is a tough goal.

Mr. REHBERG. Mr. Flake.

Mr. FLAKE. Just, again, the gentle lady from Connecticut mentioned that we have got to analyze these programs scientifically and otherwise. The trouble I have there as well—and I am not saying we shouldn't—but it seems that every time we are presented with the analysis, we reject it and then say, we just need to spend more money. And Exhibit 1 is Head Start.

The last best information we have on Head Start is that any benefits gained are gone by the time the child exits first grade. We heard that at the last hearing. Now, there are studies that are under way again, but the last evidence we have is that. And now another program is the DARE program. We heard evidence a few years ago, a GAO study saying that the DARE program was not effective. I believe it was GAO. And I knew you wouldn't—

Mr. REHBERG. I knew this would happen. I knew it.

Mr. FLAKE. But the DARE program, again, no effectiveness. What did we do? We ramped up funding, I think, 20 percent.

On our side of the aisle, a lot of conservatives push for abstinence education. The last evidence we had there, it wasn't working there either; yet still we move ahead and plow ahead.

So it seems that nothing will lead to budget cuts unless we are just in a budget crunch, and that is my difficulty with, oh, let us do some more analyses. The analysis always comes back that, well, maybe if we spend a little more, we would get a different result, and so we never seem to get the costs under control. So I yield to the gentle lady to refute my claim.

Mr. REHBERG. Ms. DeLauro.

Ms. DELAURO. I would just say about Head Start—and I thank the gentleman. I know the gentleman brought up this study in another hearing but the fact of the matter is that there are many, many studies on Head Start, and there are many recent studies. I spent time a week ago in my district with the founder of Head Start, Dr. Edward Zigler, who would be the first person to say that Head Start programs that do not work should be shut down, and he has recommended such. In fact, he has a new book out talking about evaluating Head Start programs.

But Head Start programs were designed to address a combination of efforts and goals. They include academic development, the socialization of children, and the engagement of parents in the education of their children. Head Start attacks all of those things and more. There are myriad studies out there about what Head Start does and how Head Start is effective. Head Start kids are less likely to be at odds with law enforcement. They are healthier children. They are better educated children. The studies are there.

I want to reflect what has been said about the teachers. You can do all of the quality training of teachers that you care to do. That may be effective or ineffective. The fact of the matter is that we must also address the issues that we have in our communities and the environment where some of our kids are growing up today. Most low-performing schools are in high-poverty areas of this country. If you don't take a look at the school itself and the principal, training for teachers to deal with the problems that youngsters do bring to school, whether it is health or nutrition or other areas, then we are not going to succeed. You can have the best teachers in the world, but if they are not equipped to work with children

who are coming to schools with the deficits that they have, then we are not going to succeed.

And that begins with early childhood education wherein you try to make up some of that deficit, both academically and socially, in order that children can build on their experiences and be able to perform well and to be able to succeed.

I will provide you with all of the studies, and I will tell you that we know today. We have so many studies that tell us that when children learn, it is from zero to three, zero to five, and the kind of education you can provide and the quality of that education that you provide in those years sets the tone for their future. We don't need more studies in that area. We have them. We ought to heed them.

Thank you, Mr. Chairman.

Mr. REHBERG. Thank you.

Mr. SIMPSON, I couldn't agree with you more. I am actually reading a book right now by John Maxwell called Everyone Communicates; Few Connect, and I am going to give it to my daughter who is student teaching right now because it talks a lot about education and how some teachers connect and some teachers don't. Some teachers talk over the head, and they just want to impress their colleagues and be evaluated well. Others really do care about trying to make a connection with the kid.

And I have often said many times that everyone comes to education in a little different way. I joke about it with myself just to make the point about I was involved in music and sports, and that is what kept me in school. But frankly, it is one of the things that did keep me in school, and we participated together in a fraternal banquet last night. Again, that is one of the things that kept me in college is joining a social organization that kind of made studying cool as opposed to what it was.

So it is very difficult to evaluate teachers. That is why merit pay sometimes can be—you are not going to get a chance to talk, Jack.

Mr. KINGSTON. If the gentleman will yield.

Mr. REHBERG. I have to admit—

Mr. KINGSTON. I just want to know what fraternity made studying cool. For the record, we have to know. You all were a fun date.

Ms. DELAURO. I never belonged to a fraternity.

Mr. REHBERG. Well, the sororities were there last night as well. There were about 3- or 400 of us at the banquet last night. When I spoke, I picked on Mr. Kingston a lot. So that is why I am not going to allow him an opportunity to get in front of the mike.

So, just to close as well, as far as evaluations come and go, GAO has done some yeoman's work on Head Start, and one of the things you did identify within your GAO report—and I don't know if you did it, Mr. Scott—was the level of fraud that exists in Head Start with people that are signing up that are over the qualification income level and fraudulently signing kids up that don't even exist in some of these community programs, to the extent that it has been estimated that at least \$500,000,000 is being spent in fraudulent Head Start programs.

And so if we are not going to take your advice, how many more studies do we need you doing, or how many more evaluations, because that is one of the things or changes we tried to effect in this

subcommittee. We won't just willy-nilly try and cut programs just for the good of cutting the program, we are trying to effect savings.

So I want to thank you for identifying within the GAO organization some of the fraudulent actions that occur within Head Start. And, again, I am a fan. It is a big deal in Montana. We like it. But if we are not going to then seriously consider your studies, how many more evaluations need to be done—because if we even enter into, as Mr. Simpson said, an arena that has a built-in advocacy, all you are doing is inviting criticism without ever effecting change.

So thank you for your study. We look forward to working a lot with you over the years.

Ms. DELAURO. Mr. Chairman, I would just like to make one point if I can, because I think wherever fraud exists and abuse exists, it ought to be rooted out. We ought to be pretty even-handed about that. I told you—and you know that I serve on the Agriculture Committee—we have been paying people who have been dead for years in agriculture subsidies, I think. Am I right, Mr. Flake?

So I think we ought to be even-handed about rooting out that waste, fraud, and abuse in whatever program we have and whatever agency we have, and do so governmentwide. I think it would be a useful, useful effort.

Thank you, Mr. Chairman.

Mr. REHBERG. Thank you very much. Meeting is adjourned.

THURSDAY, APRIL 14, 2011.

UNITED STATES DEPARTMENT OF LABOR

WITNESSES

**DAVID MICHAELS, ASSISTANT SECRETARY OF LABOR, OCCUPATIONAL
SAFETY AND HEALTH**

**JOSEPH A. MAIN, ASSISTANT SECRETARY OF LABOR, MINE SAFETY
AND HEALTH**

INTRODUCTION OF WITNESSES

Mr. REHBERG. Welcome. Nice to have you. I appreciate you coming out today. Normally I do not give an opening statement, and I am going to turn it over to Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman. I wanted to say a thank you to our witnesses this morning, and I am delighted you are here and am anxious to hear your testimony.

We are here today to discuss the budgets of two vitally important Federal agencies, the Occupational Safety and Health Administration, OSHA, and the Mine Safety Health Association, MSHA. As it happens, this year marks the 40th anniversary of the Occupational Safety and Health Act.

Over those four decades, tremendous progress has been made in the realm of workplace safety. To note only a few examples, OSHA standards on cotton dust have virtually eliminated new cases of brown lung disease and its lead standard has dramatically reduced occupational lead poisoning.

Most importantly, the number of workplace fatalities has been cut by more than half. It is estimated that 410,000 lives have been saved by the Act. If anything, it is clear that we need to continue to strengthen our workplace safety efforts. In 2009, more than 4,000 workers were killed by injuries on the job, an estimated 50,000 to 60,000 people died of occupational diseases and there were more than 4 million work-related injuries or illnesses.

If we have any doubt about the importance of workplace safety, let us recall some of the tragedies we witnessed last year. The disaster at the Upper Big Branch mine which killed 29 coal miners; the explosion at the Tesoro refinery in Washington State which killed seven workers; the explosion and fire on the BP Transocean oil rig in the Gulf which claimed 11 workers' lives and did still untold damage to the environment and our economy.

My district was also touched by tragedy. In February 2010, six workers were killed due to an explosion at the Kleen Energy Plant in Middletown, Connecticut. Along with the Chemical Safety Board and the panel convened by the Governor, OSHA has been instrumental in helping us figure out exactly what went wrong so it will not happen again.

So, what these agencies do is tremendously important to protecting the health and the lives of American workers, and it is important for business as well. A robust OSHA and MSHA allow for a level playing field for small businesses and save companies money.

As is mentioned in your testimony this morning, according to Liberty Mutual Insurance, work-related injuries and illnesses cost companies between \$155 billion and \$232 billion a year in direct costs, lost productivity and work retraining, and that is why 95 percent of business executives believe investing in workplace safety has a positive impact on financial performance, with 61 percent arguing a \$3 return on every \$1 investment in workplace safety.

Yet during the previous administration, we saw years of slow growth in OSHA's budget that did not keep up with costs and the size of OSHA's staff dropped to the lowest level in the agency's history. The development of several important standards was stopped and enforcement was weakened.

In the last couple of years, Congress was able to turn around this declining trend in resources. With increased funding provided in 2009 and 2010, the OSHA workforce has been rebuilt back to 2001 levels. We have leadership at these agencies firmly committed to the mission of protecting workers on the job. Enforcement has been stepped up against those who violate the law willfully and repeatedly.

Unfortunately, the new majority has put these improvements at risk. H.R. 1, passed by the majority in February, would have cut OSHA's budget by almost \$100 million, forcing the agency to lay off something like one-fifth of its inspection staff and greatly reducing support for State compliance efforts. In addition, more legislation has been proposed that would hamstring the development of new standards and rules needed to address serious workplace hazards.

Fortunately, the appropriations legislation that the House takes up later today does not include any cuts to either OSHA or MSHA. In fact, we were able to secure a small increase for MSHA to help reduce the serious backlog of mine safety citations awaiting adjudication. However, I remain very concerned about the adequacy of the resources for both of these agencies and hope we will continue to keep in mind their importance as Congress works on future budgets.

This is not big government or intrusive government. Spending Federal resources to ensure worker safety is not a frivolous expense. It is a necessity. No one wants to see any more lives lost or ruined by readily preventable injuries in the workplace, and we should all be able to agree that we should do everything in our power to protect our workers.

I look forward to the testimony of our two witnesses, and thank you, Mr. Chairman.

Mr. REHBERG. Thank you.

Dr. Michaels.

ASSISTANT SECRETARY OF LABOR, OCCUPATIONAL SAFETY AND
HEALTH

Mr. MICHAELS. Chairman Rehberg, Ranking Member DeLauro, thank you for the invitation to testify about the fiscal year 2012 budget request for OSHA. As Secretary Solis said in her testimony last month, winning the future requires a successful competitive market where all firms are playing by the rules to keep workers safe. Protecting workers is the right thing to do, and it also makes economic sense. Workplace injuries, illnesses and fatalities takes an enormous toll on this Nation's economy, a toll that we can ill afford.

This year marks the 40th anniversary of the establishment of OSHA, and I think that by any measure this agency has been one of the true successes of government. Forty years ago, most American workers did not have the legal right to a safe workplace. Since that time, workplace fatalities and reported injury rates have decreased by more than 60 percent, but far too many preventable injuries and fatalities continue to occur.

Today, an average of 12 workers are killed on the job every day and tens of thousands more are estimated to die every year from work-related diseases. More than 3 million private sector workers are seriously injured each year. Far too many of these injuries permanently impact the worker's income and destroy their family's middle-class security. The President's request includes an expansion of the compliance safety and health officer workforce to continue OSHA's commitment to preventing injuries, illnesses and fatalities.

OSHA'S ENFORCEMENT PROGRAM

OSHA's enforcement program targets the most dangerous workplaces and the most recalcitrant employers. We recognize that most employers want to keep their employees safe and they make great efforts to protect them workplace hazards. But there are still far too many employers in high-hazard industries that cut corners on safety. For them, OSHA enforcement is clearly the best means to ensure the safety of their employees. Strong enforcement and meaningful penalties for those who don't follow the rules levels the playing field for those employers who are doing the right thing.

OSHA is a small agency, so we rely heavily on workers to help identify hazards and work with their employers to control them. To protect those workers from possible retaliation, section 11(c) of the OSHA Act seeks to protect employees from discrimination when they report hazards or exercise other rights. Since the Act was passed, Congress has added 20 additional whistleblower laws to OSHA's enforcement responsibility, protecting employees who report violations of trucking, airline, nuclear power, pipeline, environmental, rail, mass transit, consumer product safety and securities laws.

The fiscal year 2012 budget request includes additional resources to help reduce the backlog in whistleblower claims and expedite the handling of complaints.

DEVELOPING OSHA REGULATIONS

One of the primary responsibilities Congress has given to OSHA is to issue commonsense standards to protect workers. Developing OSHA regulations is a complex process that involves sophisticated risk assessments as well as detailed economic and technological feasibility analyses in order to ensure that our regulations protect workers and make sense for businesses. This process also includes multiple points where the agency receives extensive comments from large and small employers, professional organizations, trade associations, workers and labor representatives.

The request includes funds to ensure that OSHA is able to continue its efforts in this area, as well as for the development of a injury and illness prevention program rule. Under this standard, employers would develop a program to address hazards in a systematic proactive way. This approach has been modeled by OSHA's voluntary protection program members and will also be based on the experiences of 15 States that have similar requirements.

Finally, we know that the majority of employers want to do the right thing, but many just need more information and assistance. OSHA's active and growing compliance assistance program works to ensure that employers and employees understand workplace hazards and how to prevent them.

For example, OSHA's on site consultation program provides free evaluations and advice to small businesses. Last year the program conducted over 30,000 visits to small businesses. These programs are run by States and receive 90 percent of their funding from OSHA. The budget request includes a \$1 million increase for these activities.

The fiscal year 2012 budget request reflects one of the country's major priorities, ensuring that the Nation's working men and women are welcomed home safely from work to their families. Secretary Solis and I are fully committed to a simple goal, good jobs for everyone, and no job can be a good job unless it is a safe job. We can accomplish this goal while being good stewards of the public's money.

Mr. Chairman, thank you for inviting me today.

Mr. REHBERG. Thank you.

[The information follows:]

**STATEMENT OF DR. DAVID MICHAELS
ASSISTANT SECRETARY OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON LABOR,
HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

APRIL 14, 2011

Chairman Rehberg, Ranking Member DeLauro, and members of the Subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to discuss the Fiscal Year (FY) 2012 budget request for the Occupational Safety and Health Administration (OSHA).

As Secretary Solis said in her testimony last month, winning the future requires a successful competitive market where all firms are playing by the rules to keep workers safe. Workers should be safe in their jobs and we need to ensure that our worker protection efforts keep up with the changing economy.

Difficult Choices

As Secretary Solis described for you last month, the Department of Labor's (DOL) FY 2012 Budget makes difficult choices to help our nation on a sustainable fiscal path while also investing in programs and activities that will fuel economic growth. OSHA is focused on ways to carry out its mission more efficiently: moving toward electronic reporting of data, upgrading computer infrastructure to replace an inefficient and antiquated data system, enabling staff to conduct on-line meetings rather than traveling across the country and, where possible, replacing printed publications with on-line publications. The 2012 budget request for OSHA will also allow us to fulfill our core mission of protecting the health and safety of this nation's most important resource: its working people.

Not only is protecting workers the right thing to do, it also makes economic sense. Workplace injuries, illnesses and fatalities take an enormous toll on this nation's economy – a toll we can hardly afford in good times, and one that is intolerable in the difficult times we are experiencing today. A March 2010 Liberty Mutual Insurance company report showed that the most disabling injuries (those involving six or more days away from work) cost American employers more than \$53 billion a year – over \$1 billion a week – in workers' compensation costs alone.¹ Indirect costs to employers, such as costs of down-time for other employees as a result of the accident, investigations, claims adjustment, legal fees, and associated property damage can double these costs. Total costs to employees and their families through wage losses uncompensated through

workers' compensation, loss of home production, and family care for the workers further increase the total costs to the economy, even without considering pain and suffering.¹

OSHA: 40 Years of Protecting Workers

This year marks the 40th anniversary of the establishment of the OSHA, and I think by any measure, this agency has been one of the true successes of government efforts to protect workers and promote the public welfare.

It is difficult to believe that only 40 years ago, although some states had limited worker protection laws, most American workers did not have the basic legal right to a safe workplace. Instead they were told they always had a choice: They could continue to work under dangerous conditions, risking their lives, or they could move on to another job. We have made great progress since then.

The results of this law speak for themselves. In the four decades since the OSH Act was enacted, the nation has made dramatic progress in reducing work-related deaths and injuries. Since 1970, workplace fatalities have been reduced by more than 65 percent. Reported occupational injury and illness rates have decreased by over 67 percent since 1973, but far too many preventable injuries and fatalities continue to occur. In 1971, the National Safety Council estimated that 38 workers died on the job every day of the year. Today, the Bureau of Labor Statistics (BLS) puts that number at 12 per day, with a workforce that is almost twice as large. These 12 workers killed on the job today and every day do not account for the tens of thousands of workers estimated to die every year from work-related disease.

Despite these improvements, however, enormous challenges lay ahead for the safety of this nation's workers. Although these are notable successes, there is still much work to do.

In addition to those killed on the job, over 3 million private sector workers are seriously injured each year and far too many of these injuries end up permanently impacting a workers' income and destroying a family's middle class security. Too many workers still do not understand their rights under the law or are too intimidated to exercise those rights. Too many workers and employers still do not have basic information about workplace hazards and what to do about them. And too many employers still find it far too easy to cut corners on safety, and even when cited, consider low OSHA penalties to be just an acceptable cost of doing business.

In order to ensure that all employers provide safe workplaces to their employees, the FY 2012 budget request for OSHA is \$583.4 million and 2,387 full-time equivalents (FTE), an increase of \$24.8 million and 52 FTE over the FY 2010 level.

¹ "Accident Costs: Rethinking Ratios of Indirect to Direct Costs," Fred A. Manuele, *Safety Management*, January, 2011.

Why is the administration asking for an increase in OSHA's budget in these austere times? I will explain why this increase is important to the safety and health of this nation's most important resources.

Deterrence Through Enforcement

The President's request includes an increase of \$7.7 million and 25 FTE to expand the compliance safety and health officer (CSHO) workforce to continue OSHA's intensified commitment to preventing injuries, illnesses, and fatalities by deterring employers in the most hazardous workplaces who exhibit a profound disregard for worker safety and health. This funding will also be used to ensure that these new inspectors are properly equipped and trained to address workplace hazards in today's increasingly complicated workplaces.

OSHA's enforcement program specifically targets the most dangerous workplaces and the most recalcitrant employers. We recognize that most employers want to keep their employees safe and make great efforts to protect them from workplace hazards. OSHA has several programs that assist these employers, and I will return to describe them shortly. But there are still far too many employers in high hazard industries that cut corners on safety and neglect well recognized OSHA standards and basic safety measures that protect workers' lives. For these employers, enforcement is clearly the best means to ensure that their employees are able to come home safely to their families at the end of the workday.

Strong enforcement of the law has an important benefit for the vast majority of employers who are doing the right thing – a benefit that has particular importance during this difficult economic period. In the short term, responsible employers who invest in the health and safety of their employees are at a disadvantage competing with irresponsible employers who cut corners on worker protection and hazard abatement. Strong enforcement, accompanied by meaningful penalties, levels the playing field for those employers who are doing the right thing.

The core purpose of OSHA's enforcement program is prevention, not punishment. Just as it makes sense for the police to ticket a drunk driver *before* he kills a family rather than afterwards, it is OSHA's objective to encourage employers to abate workplace hazards *before* workers are hurt or killed, rather than afterwards when it's too late. This is the essence of prevention.

The job of OSHA inspectors is to ensure that employers are complying with federal law to keep their workplaces safe. OSHA has an enormous job. Between federal and state OSHA programs, there are approximately 2200 inspectors tasked with the enormous responsibility of ensuring the safety of over 7 million workplaces in this country. OSHA uses a variety of approaches to target our efforts to those industries and workplaces where workers are most at risk.

First, by law, OSHA is required to conduct inspections of those workplaces where there has been a fatality, multiple hospitalizations, where a worker files a formal complaint or where there is an imminent danger of a worker's death. In addition, through its Site Specific Targeting Program, OSHA focuses on those employers with the most injuries and illnesses in their workplaces. OSHA also has a variety of National Emphasis Programs (NEPs) and Local Emphasis Programs (LEPs) that target major hazards or hazardous industries. For example, following the British Petroleum (BP) Texas City explosion in 2005, OSHA implemented an NEP to inspect this nation's refineries. We have NEPs for combustible dust and LEPs focusing on grain engulfments where we've seen a large number of fatalities, many of which were very young workers, over the past year.

OSHA's Severe Violator Enforcement Program concentrates resources on inspecting employers who have demonstrated indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations.

Protecting Whistleblowers

When the OSH Act was passed, Congress realized that OSHA inspectors would never be able to visit more than a small fraction of the nation's workplaces in any given year. The OSH Act therefore relies heavily on workers to help identify hazards at their workplaces and to work with their employers to control those hazards.

But the authors of the OSH Act also understood that employees are not likely to participate in safety and health activities if they fear that they will lose their jobs or otherwise be retaliated against. That is why Congress wrote Section 11(c) – to protect employees from discrimination and retaliation when they report safety and health hazards or exercise other rights under the OSH Act. The OSH Act was one of the first safety and health laws to contain a provision for protecting whistleblowers.

Since the OSH Act was passed in 1970, Congress has passed, and added to OSHA's enforcement responsibilities, 20 additional whistleblower laws to protect employees who report violations of various trucking, airline, nuclear power, pipeline, environmental, rail, mass transit, maritime safety, consumer product safety, and securities laws. The most recent law to be added to OSHA's workload was the Food Safety Modernization Act. Despite this increase in OSHA's statutory load, the staff charged with enforcing those laws did not grow significantly until FY 2010 when 25 whistleblower investigators were added. In just the past year, however, four additional whistleblower laws were added to OSHA's enforcement responsibility.

The FY 2012 budget requests an increase of \$6.0 million and 45 FTE for the 21 whistleblower programs that OSHA administers. These additional resources and staff will help to reduce the backlog in whistleblower claims, expedite the handling of received complaints, and prepare for a high volume of complex cases associated with the recently enacted laws.

Several organizations including the Government Accountability Office, the DOL's Office of Inspector General, and Congress have raised serious concerns about the effectiveness of the whistleblower program. In response to these concerns, OSHA conducted a top-to-bottom review of the whistleblower program and plans to take steps soon to address the weaknesses and inefficiencies in the operation of the program, including programmatic changes to improve consistency and program delivery.

Common Sense Standards

OSHA's mission is to ensure that everyone who goes to work in the morning is able to return home safely every night. One of the primary responsibilities Congress has given to OSHA to achieve this goal is to issue common sense standards and regulations to protect workers from workplace hazards. OSHA standards have made working conditions in America today far safer than 40 years ago when the agency was created.

Developing OSHA regulations is a complex process that involves sophisticated risk assessments as well as detailed economic and technological feasibility analyses. These complicated analyses are critical to ensuring that OSHA's regulations effectively protect workers and at the same time make sense for the regulated community that will be charged with implementing the regulations.

The regulatory process also includes multiple points where the agency receives comments from stakeholders such as large and small businesses, professional organizations, trade associations as well as workers and labor representatives. To ensure that OSHA is able to continue its efforts to meet the wide range of safety and health threats in today's workplaces, the request includes a program increase of \$4.0 million to expand the agency's regulatory program. Additionally, OSHA requests \$2.4 million for the development of the Injury and Illness Prevention Program rule.

OSHA issues very few standards and all are the product of years of careful work and consultation with all stakeholders. Last year, OSHA issued a standard protecting workers from hazards associated with cranes and derricks. This standard, which OSHA had worked on for eight years, was initiated under the Bush administration and was the result of a rule negotiated between labor and management. It is expected to prevent 22 fatalities and 175 non-fatal injuries each year. This was only the fourth major standard that OSHA has issued in the past five years.

We are currently finalizing long-awaited standards to protect shipyard workers and electrical workers, a confined spaces standard for construction workers, as well as a standard that will harmonize chemical hazard communication with programs around the world. Later this year, we plan to propose an updated standard that will protect workers from the deadly hazards of crystalline silica. Silica has been known for hundreds of years to cause severe lung disease. This critical update to the current standard will better protect workers and modernize an antiquated and difficult-to-use rule that is almost 40 years old. All of the standards I have just mentioned – shipyards, electrical, confined

spaces, hazard communication and silica are longstanding priorities of the Department of Labor.

OSHA is beginning the process of developing an Injury and Illness Prevention Program standard that will require employers to develop a program to address their health and safety hazards in a systematic proactive way. Our approach has been modeled by OSHA's Voluntary Protection Program (VPP) members and will also be based on the experiences of 15 states that have similar requirements.

This standard will not tell employers how to address specific hazards, nor will it be a one size fits all regulation. Instead, it will require employers to develop a systematic plan to help them find and fix hazards in their workplaces. Small and large employers will be able to adapt their programs to the size of their business and character of the hazards they face. The standard will take into account the efforts by employers who already have effective safety and health programs in place.

OSHA has already held five stakeholder meetings around the country on this standard and will soon enter it into the small business review process. All comments from small businesses will be considered before a proposal is issued. Following issuance of a proposal, stakeholders – including small and large businesses, workers and labor organizations – will have several months to provide written comments and extensive public hearings will be held around the country.

In short, OSHA will give everyone that may be affected by this standard numerous opportunities to be heard and to provide their input.

Lending a Hand through Compliance Assistance

Finally, I want to be clear that, consistent with past history, OSHA is not just in the business of issuing and enforcing standards. We are well aware that the vast majority of employers want to do the right thing, but many need information and assistance to do so. OSHA's active and growing compliance assistance program works to ensure that employers and employees understand workplace hazards and how to prevent them. There are several principles under which our Compliance Assistance Program operates:

- We believe that no employer, large or small, should have difficulty providing a safe workplace because they can't get accurate and timely information about how to address workplace safety or health problems or how to understand OSHA standards. We are committed to providing access to the information employers and workers need.
- Every worker, no matter what language they speak or who their employer is, should be knowledgeable about the hazards they face, the protections they need and their rights under the OSH Act.

- Employers that achieve excellence in their health and safety program should receive recognition.

OSHA addresses these principles in a variety of different ways.

OSHA's On-site Consultation Program provides free workplace safety and health evaluations and advice to small businesses with 250 or fewer employees, and is completely separate and independent from OSHA's enforcement program with very few exceptions. Last year, the Consultation Program conducted over 30,000 visits to mostly small businesses.

These programs are run by the states and receive 90% of their funding from OSHA. This important program is currently funded at \$54.8 million. The FY 2012 budget includes a \$1 million increase to ensure that small employers continue to get all the assistance they need.

OSHA continues its strong support for various cooperative safety programs, including OSHA's landmark VPP, as well as the OSHA Consultation's Safety and Health Achievement Recognition Program (SHARP) which recognizes small businesses that have achieved excellence. In order to participate in these programs, employers commit to implement model injury and illness prevention programs that go far beyond OSHA's requirements. These employers demonstrate that "safety pays" and serve as role models to all businesses.

OSHA also provides extensive outreach and assistance to employers and workers to help them prevent injuries and understand OSHA requirements and best practices. Accompanying OSHA standards are web pages, fact sheets, guidance documents, on-line webinars, interactive training programs and special products for small businesses. In addition, there is a compliance assistance specialist in almost all of OSHA's 75 area offices who assists employers and workers in understanding hazards and how to control them.

A major new initiative of this administration has been increased outreach to hard-to-reach vulnerable workers, including those who do not speak English or only speak English as a second language. These employees often work in the most hazardous jobs, and may not have the same employer from one week to the next.

We have particularly focused on Latino workers because of the high number of fatalities among these workers. According to the BLS, an average of 13 Latino workers are killed on the job each week. To prevent deaths and injuries, these workers must understand their rights under the law and understand the hazards they are exposed to and what to do about them.

OSHA's Susan Harwood Training grant program provides funding to non-profit organizations – universities, unions and business associations to provide training and assistance to workers about job hazards and protections. This program is also increasing

its focus on organizations involved in training vulnerable, non-English speaking, and other hard-to-reach workers. We are pleased that business associations, unions, and community groups have joined us in this effort.

OSHA is requesting an additional \$1.25 million for the Harwood Training Grant Program. During the 2010 grant cycle, in which Capacity Building and pilot grants were first introduced, OSHA received a high number of applications – receiving requests for \$38.4 million from 165 applications in Capacity Building grants – but was only able to award \$8 million to 50 applicants. This increase will allow OSHA to offer more training grants and to support grants that will offer innovative training techniques and alternative technologies including webcasts, distance learning and social networking.

OSHA State Plans

Twenty-one states and one territory administer their own state OSHA programs for private and public sector employees. In addition, four states and one territory administer OSHA programs for only public employees. All together, 40% of this nation's employees are covered by state plans. OSHA values its state programs because they address challenges differently from Federal OSHA and there is much to learn from their experience.

The federal government is responsible for ensuring that these programs are at least as effective as the federal program and that they conduct their enforcement, compliance assistance and standard setting responsibilities properly. Over the past two years, OSHA has initiated efforts to identify and correct problems with the operation of some state plan programs.

The agency expects the States to continue to address performance and structural issues identified in the FY 2009 special baseline evaluations conducted in FY 2010 and follow-up evaluations done in FY 2011. OSHA will issue comprehensive evaluations of all State Plans again in FY 2012, by conducting extensive oversight of State Plan performance during FY 2011 to ensure that it is at least as effective as Federal OSHA.

For FY 2012, OSHA requests \$105.9 million for State Plan Programs, a \$1,500,000 increase over FY 2010 to provide the necessary inflationary increase for State Programs. States are required to match at least 50% of the federal contribution. As you are aware, many states are facing severe budget constraints that have led to budget cuts, furloughs and reductions in force. The federal contribution to State Plans covers not only the states' enforcement programs, but also their standard setting, compliance assistance, cooperative and whistleblower programs.

Technical Support

Under technical support, the critical day-to-day enforcement operations of the agency as well as the agency's important homeland security and emergency response functions are funded. OSHA is particularly proud of its response last year to the Deepwater Horizon

Oil Spill where the agency was tasked with protecting the safety of the 40,000 workers cleaning up the spill.

This item also funds OSHA's Salt Lake City Technical Center which analyzes industrial hygiene samples and conducts in-depth investigations to develop or validate sampling and analytical methods to assess worker exposure to a variety of health hazards. OSHA's Health Response Team and occupational physicians and nurses provide critical expert support to OSHA's enforcement staff and are also available to other agencies to assist in addressing chemical, biological and physical hazards.

Safety and Health Statistics

This activity funds OSHA's popular web page which is an instrumental provider of compliance assistance materials to employers and workers across the country. OSHA's webpage receives 180 million hits every year. This activity also provides for the collection, maintenance, evaluation and analysis of inspection and statistical data that support agency activities, including inspection targeting compliance assistance and evaluation of the effectiveness of OSHA's programs. This item also supports OSHA's computer infrastructure and OSHA's new OSHA Information System (OIS) which will replace the agency's antiquated Integrated Management Information System. OIS will enable inspectors to better analyze, track and target high-risk industries in their particular geographic jurisdiction and provide useful enforcement and compliance assistance data for the public.

This item is currently funded at \$34.9 million, and no increase is requested.

Conclusion

The FY 2012 OSHA budget request reflects one of this country's major priorities – ensuring that this nation's working men and women have the right and the ability to come home from work to their families safe and sound. OSHA's flexible common sense efforts focus on assistance to employers who are trying to do the right thing, while using our enforcement resources to deter employers who neglect their responsibilities so that we can prevent injuries illnesses and fatalities in this nation's workplaces. Secretary Solis and I are fully committed to a very simple goal: *Good Jobs for Everyone*. And no job can be a good job unless it's a safe job. We can accomplish this goal while being good stewards of the public's money and while focusing on our shared long-term goal of reducing the federal deficit.

Mr. Chairman, thank you for inviting me today. I am happy to respond to any questions that you may have.

ASSISTANT SECRETARY OF LABOR, MINE SAFETY AND HEALTH

Mr. REHBERG. Mr. Main.

Mr. MAIN. Thank you, Chairman Rehberg, Congresslady DeLauro and members of the subcommittee. I appreciate the opportunity to be here today to discuss the President's request for the Mine Safety Health Administration's budget for fiscal year 2012.

First, I would like to report on MSHA's action since the April 5, 2010, explosion at the Upper Big Branch mine that tragically took the lives of 29 miners. We have made significant progress in MSHA's investigation of the Upper Big Branch explosion and most of the costs of the Upper Big Branch investigation have been supported by funds provided in the 2010 supplemental, which remain available through this July.

The underground investigation, which has been extensive, is nearing completion. Based on the evidence we have gathered so far, it appears that a low volume of methane and/or methane from natural gas provided the fuel for the initial ignition on or near the face of the tailgate side of the long wall shearer or cutting machine. Small methane ignitions are not uncommon in coal mines, but when proper safety measures are followed, these ignitions are generally controlled and extinguished.

Our preliminary analysis shows, however, that at Upper Big Branch this small ignition was not contained or quickly extinguished. Instead, a small methane ignition transitioned into a massive explosion fueled by an accumulation of coal dust that propagated the blast. While the investigation is not yet complete, we know already that explosions in mines are preventable and that a workplace culture which puts health and safety first will save lives and prevent tragedy.

I have deep respect for those who choose mining as a career. That is where I started my career as well. Mining is critically important to our economy and I believe that a commitment to safety is fully compatible with a thriving industry. In fact, we not only owe it to our miners, but also to those mine operators who play by the rules to do what we can to encourage all operators to live up to their obligations to provide a safe and healthful workplace.

FY 2012 BUDGET REQUEST FOR MSHA

The budget request for MSHA for fiscal year 2012 is \$384.3 million. These funds will allow us to ensure that we continue to use all the tools at our disposal to effectively enforce the Mine Act and the MINER Act.

After the explosion at Upper Big Branch, we needed to rethink how we approached mine safety and health. That took on new urgency, I think, for all of us. Our fiscal year 2012 budget priorities reflect this urgency.

For example, the President's budget request allows MSHA to meet its responsibilities to conduct complete and annual inspections of each mine and target the most egregious and persistent violators using MSHA's most aggressive enforcement measures, such as the impact inspection, the pattern of violations program and injunctive actions.

Our impact inspections have proven to be one of our most effective enforcement tools and our ability to continue them is essential. We have conducted these impact inspections at times during off hours, taking hold of phone lines to prevent advance notice and covering key parts of the mine quickly before hazards could be hidden or covered up.

The Upper Big Branch disaster also focused attention on the need to address the backlog of contested mine enforcement cases at the Federal Mine Safety and Health Review Commission. Delays in swift resolution of contested mine cases undermine MSHA's enforcement tools and put miners' lives at risk. The 2010 supplemental has allowed the Commission, the Solicitor of Labor and MSHA to begin to reduce the case backlog. The 2012 budget requests an additional \$18.3 million to continue the administration's backlog reduction efforts.

The fiscal year 2012 budget also proposes \$5.5 million for our regulatory program, an increase of \$2.1 million from fiscal year 2010. The standards we are planning on moving forward are critical to implementing what we have learned from the Upper Big Branch disaster and to protecting the mine safety and health of our Nation's miners.

One particularly important regulatory initiative is our effort to improve the broken pattern of violations program. We adopted new screening criteria and used those criteria to put 14 mines on a potential pattern of violation. Some of these mines have successfully reduced their violations and some have not. MSHA has also published a proposed pattern of violation rule which would address laws in the current rule to meet the intent of the statute.

END BLACK LUNG ACT NOW INITIATIVE

Another major regulatory effort is our work on dust initiatives. We will move forward on our End Black Lung Act Now initiative, which is designed to fulfill the promise made 40 years ago by Congress to eradicate black lung disease. Thousands of miners have died from black lung and miners are still getting the disease, including younger miners.

We are also reducing the risk of explosions in coal mines by moving forward our emergency temporary standard on rock dust. Our fiscal year 2012 budget includes two important dust initiatives, which will allow us to improve how we handle analyses of both respirable dust and rock dust.

MSHA has taken a number of other actions as well to ramp up our efforts. This includes a proposed rule that would revise requirements for operator examinations of underground coal mines, as well as the issuance of a number of targeted compliance guidelines.

I believe that many mine operators want to find and fix hazards in their mines themselves before they cause accidents or injuries. In order to assist mine operators, MSHA has undertaken extraordinary education and outreach efforts. That is why the President's fiscal year 2012 budget seeks \$36.3 million for education policy development activities.

I have traveled the country—

Mr. REHBERG. Sir, we will allow you the opportunity to have your testimony submitted for the record, if you could summarize very quickly, please.

Mr. MAIN. I have traveled the country speaking to miners, mine operators, mining organizations and associations and listening to their ideas and concerns. We are working together to improve consistency in enforcement of the mining standards as well as to implement new compliance programs and initiatives to improve mine safety and health.

I look forward to working with the committee so MSHA has the resources it needs to accomplish our shared goal of protecting our Nation's miners and assuring that they return home every day from work safe, and free of injury and illness.

Thank you very much.

Mr. REHBERG. Thank you very much.

[The information follows:]

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STATEMENT OF
JOSEPH A. MAIN
ASSISTANT SECRETARY OF LABOR
FOR MINE SAFETY AND HEALTH
BEFORE THE
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN
SERVICES, EDUCATION, AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

APRIL 14, 2011

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee:

I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) to discuss the President's request for our Fiscal Year (FY) 2012 budget.

The total request for MSHA for FY 2012 is \$384.3 million. The budget will provide for a completion of its mandatory safety and health inspections; support MSHA's enhanced enforcement initiatives and pattern of violation (POV) enforcement against flagrant violators and scofflaws; and allow MSHA to promulgate new standards that will reduce health hazards and ensure that miners return home from work every day in a safe and healthy condition. The request also allows MSHA to support the Agency's high priority performance goal of reducing fatalities and injuries and to continue its work to enhance mine rescue and emergency operations. Finally, the request will permit MSHA to continue to address the backlog of contested mine enforcement cases at the Federal Mine Safety and Health Review Commission (FMSHRC). MSHA is currently working to use all the resources at its disposal to effectively enforce the Mine Act and MINER Act, and to partner with the mining industry to ensure that the industry and those who derive their livelihood from the industry - especially those that play by the rules --

continue to thrive. The FY2012 budget, which includes a modest increase in resources, will allow MSHA to continue its efforts to protect the safety and health of miners.

THE TRAGEDY AT UPPER BIG BRANCH

I would like to give you a brief update on MSHA's ongoing investigation into the explosion on April 5, 2010 at the Upper Big Branch (UBB) mine in West Virginia that needlessly took the lives of 29 miners. The accident at UBB, which occurred a year ago--was the worst mining disaster since the creation of MSHA by the Mine Act and the deadliest coal mine disaster this nation has experienced in forty years.

Most of the costs of the UBB investigation have been supported by funds provided by Congress to the Department of Labor in the Supplemental Appropriations Act, 2010 (P.L. 111-212). These funds are available through July 2011. We have conducted the investigation in as transparent a manner as possible and have honored our commitment to the families to keep them as informed as we can about the findings of the accident investigation team. The families have been very much in our hearts and prayers and we work to conclude this complex investigation as quickly as possible. We have held seven family briefings during the continuing investigation and have briefed Congress and posted on our website information that we are able to release to the public.

To continue to be as transparent as possible, MSHA will hold a briefing on June 29, 2011 in Beckley, W. Va. to share with the public information gathered on the investigation.

MSHA's investigative team has been conducting an exhaustive investigation. Based on the evidence the team has gathered to date, it appears that a low volume of methane and or methane from natural gas provided the fuel for the initial ignition on or near the face of the tailgate side of the longwall shearer, or cutting machine. Small methane ignitions are not uncommon in coal mines, but when proper safety measures are followed, these ignitions are generally controlled or extinguished by proper ventilation and safety equipment on the longwall shearer, such as mining bits and water sprayers.

The evidence to date shows, however, that at UBB, the small ignition was not contained or quickly extinguished. The analysis also indicates that a small methane ignition transitioned into a massive explosion, fueled by an accumulation of coal dust that propagated the blast.

While the investigation is not complete, we do know already that explosions in mines are preventable. Most importantly, we know that a workplace culture that puts health and safety first will save lives and prevent tragedy.

I also want to note for the Committee that at the same time MSHA is investigating to determine the cause or causes of the accident to identify how to prevent future accidents, identify any contributory violations and assign penalties for violations found, the Department of Justice (DOJ) also opened its own investigation into possible criminal wrongdoing almost immediately after the explosion. In recognition of the President's instruction for the Department of Labor to cooperate with DOJ to ensure that every tool in the federal government is available in the investigation of the accident, MSHA is working to ensure that the separate criminal investigation is not jeopardized in any way by MSHA's own investigation.

That criminal investigation is ongoing, and on March 1, the U.S. Attorney issued the first indictment related to the disaster. The head of Security at Performance Coal, a Massey subsidiary, was indicted for obstructing justice and making false statements about his role in giving advance notice of underground inspections at the mine. On March 22, 2011, another former employee of Massey who had worked at UBB was also charged in the investigation with two felonies for false statements and for being improperly licensed as a mine foreman.

For the families, the past year has been incredibly difficult. The investigation is taking more time to finish than we would all like, as has been the case in past mining disasters. But we cannot forget that it was not just the UBB disaster that led to mining deaths in 2010. In addition to the 29 miners who died at UBB, 42 other miners died on the job last year for a total of 71 miners, compared to 34 in 2009. And most of these non-UBB related deaths are the types that are recurring in the mining industry.

KEEPING MINERS SAFE AND HEALTHY

I know that it is possible for a mine to be a safe place to work and a profitable business. I arrived at MSHA over a year ago with a clear purpose -- to implement and enforce the nation's mine safety laws and improve health and safety conditions in the nation's mines so miners in this country can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift. After the explosion at UBB, the need

to think how we approach mine safety and health has taken on a new urgency. Our FY 2012 budget priorities reflect this urgency by bolstering resources for mine emergency operations; and for health specialists, health standards and dust sampling and monitoring equipment.

However, MSHA cannot accomplish its goals alone. It is for this reason that the Mine Act places the primary responsibility for preventing and eliminating unsafe and unhealthful conditions on the mine operators. Most of the industry makes the commitment to safety because it is not only the right thing to do, but the smart thing to do. Injuries, illnesses, and fatalities have for too long taken a toll on miners, their families, their communities and the mining industry.

MSHA supports the Secretary's vision of *Good Jobs for Everyone* by working to ensure that workplaces are safe and healthy---by reducing workplace fatalities and injuries---and to assure fair and high quality work environments. MSHA takes a comprehensive approach to achieve these goals by focusing on:

- (1) enforcing health and safety laws and standards through complete, annual inspections of each mine, and targeting the most egregious and persistent violators using MSHA's most aggressive enforcement measures, such as impact inspections, the POV program and injunctive actions;
- (2) targeting the most common causes of fatal mine accidents and disasters through initiatives such as *Rules to Live By* and *Rules to Live By II* and "*Watch Out,*" improving training of miners, including new and inexperienced miners and contractors and fostering and enforcing a focus on prevention;
- (3) promulgating regulations and promoting other actions that reduce risks from exposure to mine dusts such as respirable coal mine dust that has claimed thousands of coal miners' lives and from other contaminants that ruin miners' health;
- (4) promulgating regulations to prevent deaths by requiring coal mine operators to examine underground work places for compliance with mandatory safety and health standards, and to reform the broken pattern of violations program to more effectively enforce the statute;
- (5) improving mine emergency response preparedness by MSHA and the mining industry;

- (6) undertaking extraordinary education, compliance assistance and outreach to the mining industry in order to foster a culture of safety; and
- (7) providing rigorous enforcement of miners' rights to report hazardous conditions with protection from retaliation.

For FY 2012, MSHA will further these goals by activities that specifically enhance miner safety; foster compliance through miner education and making sure that miners have a voice in the workplace; provide compliance assistance to mine operators that want to maintain a safe and healthful workplace; strengthen regulatory programs and improve transparency and public disclosure; and accelerate IT modernization. In addition, continuing to reduce the backlog of cases at FMSHRC is a high priority for the Administration and is crucial to the continued effectiveness of MSHA's enforcement program.

ENHANCING COAL MINE SAFETY AND HEALTH

The FY 2012 budget seeks \$161.3 million for Coal Mine Safety and Health activities, an increase of \$2.6 million from the FY 2010 appropriation. This program area is responsible for enforcing safety and health laws in some 2,100 coal mines throughout the country. The budget will allow Coal to continue to conduct its mandated inspections, and pursue investigations that are prompted by serious accidents, hazard complaints, discrimination complaints and willful or knowing violations. The increase of \$2.6 million would provide an additional:

- o \$2.1 million to purchase continuous personal dust monitors to continue MSHA's aggressive actions to reduce miners' exposure to respirable coal dust. While considerable progress has been made to reduce dust levels in coal mines, miners continue to develop coal workers' pneumoconiosis (CWP) also called "black lung" disease. Although CWP is an incurable and potentially fatal occupational lung disease, it is entirely preventable through the use of effective dust control measures and new monitoring technology; and
- o \$634,000 to support the new District 12 office, which MSHA is establishing in FY 2011 by dividing District 4 into two districts. The funds will support improved management oversight and increased effectiveness.

In FY 2012, Coal will continue its Quality Impact Inspections initiative, which began in April 2010 after the UBB mine disaster. The initiative targets mines whose history of underground conditions indicate a significant number of violations and or conditions that may include problems relating to methane accumulations, ventilation practices, rock dust applications and inadequate mine examinations. Targeted mines are also those that could be at risk of explosions, mines with histories of accidents or fatalities or mines with other warning signs, such as efforts to cover up violations or anonymous complaints.

MSHA has conducted and will continue to conduct these impact inspections in a way that shakes up even the most recalcitrant operators. MSHA has shown up at their mines during "off hours," such as evenings and weekends. In some cases, MSHA has taken hold of the mines' phone lines upon arrival to prevent unscrupulous operators from giving advance notice of inspectors' presence at the mine. Our inspectors have gone into some of those mines in force, with sufficient personnel to cover key parts of the mine quickly before hazards could be hidden or covered up.

Coal will also continue MSHA's *Rules to Live By* initiatives through industry outreach and enhanced enforcement that focuses on the 11 frequently cited standards in nine accident categories that cause or contribute to fatal accidents in the coal mining industry; and "Watch Out" and other safety alerts. Because empowering miners to report hazards is critical to reducing safety and health risks, in FY 2012, Coal will continue to implement policies and procedures to ensure that miners are aware of their right to report hazards without fear of retaliation.

FOSTERING SAFETY AND HEALTH IN METAL AND NONMETAL MINES

The 2012 Budget proposes \$90.0 million for MSHA's Metal and Nonmetal Safety and Health activities, an increase of \$4.6 million from the FY 2010 appropriation. This program area is responsible for enforcing safety and health laws that protect 227,000 workers in nearly 13,500 metal and nonmetal mines. The metal and nonmetal sector provides essential raw materials for the nation's transportation infrastructure, construction and housing, communications, medicine, the arts, manufacturing, consumer goods and agricultural industries. The majority of metal and nonmetal mines are small business operations and many have no formal safety program. The budget will allow the Metal/Nonmetal program to continue to conduct its mandatory inspections in the mines it examines. The increase of \$4.6 million would, in addition to

approximately \$1.3 million to support the backlog reduction project as provided below, also provide:

- \$2.3 million to integrate the Small Mines Office program and personnel; and
- \$950,000 for health specialists who will help ensure that operators provide adequate protection to miners from exposure to hazardous contaminants.

With resources requested in the FY 2012 budget, the Metal and Nonmetal program will continue to perform accident prevention and health outreach activities similar to those being pursued in Coal. These include implementing MSHA's *Rules to Live By* initiatives through industry outreach and enhanced enforcement that focuses on the 13 most frequently cited standards in nine accident categories that cause or contribute to fatal accidents in the Metal and Nonmetal mining industry. MSHA will also implement *Spring Thaw*, which is an annual series of safety and health workshops sponsored by MSHA to increase awareness of mine safety throughout the Metal and Non Metal community, and various safety alerts. In addition, Metal and Nonmetal will vigorously pursue accident investigations and conduct investigations of safety and discrimination complaints made by miners or their representatives. Metal and Nonmetal will also continue to target mine operators who fail to keep hazardous contaminant exposures below established limits and encourage an industry-wide culture in which mine operators take ownership of health and safety through effective, prevention-oriented health and safety management programs; thorough inspections and robust enforcement; stakeholder outreach, education and training; and improved regulations. As with Coal, Metal and Nonmetal will continue to implement policies and procedures to ensure that miners are aware of their right to report hazards without fear of retaliation.

REDUCING THE BACKLOG OF CONTESTED CITATIONS

The UBB disaster enhanced the urgency of our need to address the backlog of contested mine enforcement cases at FMSHRC. Delays in the swift resolution of FMSHRC contested mine cases undermine MSHA's enforcement tools and put miners' lives at risk. In the Supplemental Appropriations Act, 2010 (P.L. 111-212), Congress provided \$18.2 million to allow the Department of Labor to begin to reduce the case backlog before FMSHRC, and for other purposes related to mine safety. The Act allows "such sums" to be transferred to MSHA. Of the \$18.2 million provided to DOL, \$10.9 million is being utilized by the Office of the Solicitor (SOL) to undertake additional litigation

and related legal work, and the remaining \$7.3 million has been transferred to MSHA to be used in the backlog reduction effort and to support the UBB investigation. The extra resources are helping us to resolve cases, and we continue to explore ways in which we can reduce the number of contested cases.

Last fall, I launched a pre-contest conferencing pilot program in 3 MSHA districts. The pilot allowed the mining industry to meet on the local level with MSHA to resolve differences over citations and orders before they contest them and add to the backlog. We are currently assessing the pilot program to determine how we can improve consistency and implement the conferencing program throughout MSHA to provide opportunities to resolve disputes before citations and orders are contested. I believe an effective pre-contest conference program could be an important tool in resolving disputed violations so they do not become part of the backlog. Along with other measures, we will propose revisions in the Part 100 penalty rules that will have a positive effect on the backlog going forward and will improve consistency in the citations issued by MSHA's inspectors.

The FY 2012 budget requests an additional \$18.3 million to allow MSHA to continue to support the Administration's backlog reduction efforts, as follows:

- \$3.3 million for an additional 15 technical advisors and case management support personnel for the Coal Mine Safety and Health (\$2.0 million) and Metal and Nonmetal Mine Safety and Health (\$1.3 million) programs.
- \$15.0 million for MSHA's Program Administration activity, with the flexibility to transfer funds to the Office of the Solicitor. These funds will provide the personnel and activities necessary to match an increase in Administrative Law Judges (ALJs) at FMSHRC.

These investments in addressing the backlog of penalty cases are particularly important because if we do not make progress in this area, mine operators who contest violations would have a longer period of time before those violations would become part of their violation history, delaying the impact of these violations on the operators' civil penalty assessments and POV enforcement actions. This in turn will lead to even higher contest rates and unsafe mines.

SUPPORTING A ROBUST REGULATORY PROGRAM

The FY 2012 budget proposes \$5.55 million for MSHA's Office of Standards, Regulations and Variances (OSRV), an increase of \$2.1 million from the FY 2010 enacted level. The budget will allow MSHA, in coordination with SOL, to develop compliance standards and regulations for the mining industry that protect the safety and health of miners. The FY 2012 request supports MSHA's robust regulatory program by allowing MSHA to:

- Work on health standards which require complex statistical, technical and scientific analyses, and assess the technological feasibility of new engineering controls in other rulemakings;
- Develop regulatory initiatives to require improved technology, such as proximity detection systems to prevent crushing and pinning injuries in underground mines;
- Revise MSHA's Legal Identity, Civil Penalty and POV requirements to allow the Agency to better target the most egregious and persistent violators;
- Assess regulatory needs for the implementation of comprehensive safety and health management programs to prevent injuries and illnesses;
- Assess regulatory needs for design, construction and maintenance requirements for metal and non-metal dams;
- Revise MSHA's examination standards to require operators to examine work areas in underground coal mines for violations of mandatory safety or health standards; and
- Reduce health risks by developing standards to reduce exposure to respirable coal mine dust and respirable crystalline silica.

AN EFFECTIVE CIVIL PENALTY PROGRAM

Civil penalties serve to encourage compliance and promote a safe and healthy workplace for miners. MSHA's Office of Assessments is responsible for all aspects of MSHA's civil penalty program, including assessment of penalties, processing mine operator hearing requests when operators file civil penalty contests with the FMSHRC, accounting for all penalty cases in litigation before FMSHRC and the federal courts, and collecting and accounting for penalty payments.

The FY 2012 budget requests \$6.6 million for MSHA's Office of Assessments, an increase of \$341,000 above the FY 2010 enacted level. The increase would fund two Technical Compliance and Investigations personnel to provide oversight through field

audits and evaluations and assure timely processing of civil, criminal and discrimination cases.

The Office of Assessments coordinates MSHA's POV program, which is responsible for identifying mines exhibiting a potential POV as described in Section 104(e) of the Mine Act. I have said that the pattern of violations, or POV process, is broken and MSHA is committed to fixing it. In the provision's 33-year-old history, no mine has ever been subject to the full measure of the law contemplated by Congress. While we had already launched a review of the POV process prior to the UBB incident, the disaster heightened the urgency of moving forward with reforms.

Therefore, in October 2010, we put new screening criteria in place for the POV program. This was a critical first step in reforming the current POV program to give MSHA an effective enforcement tool to address mines that repeatedly violate safety and health standards. Notifications of potential pattern of violations have been sent to 14 mines using these new screening criteria and procedures. The UBB mine also met the criteria but the POV process has been postponed pending the completion of the investigation into the April 5, 2010 explosion. Three of these mines ceased production with further actions pending. Of the remaining 11, 10 mines have completed their evaluation period. Eight mines met their improvement goals for reducing serious violations and two others did not. One mine's evaluation period is still ongoing. The mines that did not meet their goals now have the opportunity to submit a response to MSHA's evaluation report, and after review, MSHA will determine in each case whether the mine will be given notice of a pattern of violations based on established criteria. Additional mines are still under review for potential pattern of violation actions. We also are moving forward with proposed revisions to the existing POV regulation to make it as effective a tool as possible within the constraints imposed on the POV process in the statute.

RESPONDING TO MINE EMERGENCIES

The UBB disaster reinforced my concerns about MSHA's mine emergency response capabilities. I had already ordered a review to identify gaps in the system before UBB. Sadly, I saw many of those gaps first hand at the UBB site, such as inadequate communications and emergency equipment coordination.

MSHA has made major progress in this area. MSHA's new state-of-the-art mobile command center based in Pittsburgh is in service and nearing full operational capability. The mobile command will greatly improve MSHA's capacity to provide communications, advice and guidance during a mine rescue and recovery operation. At the UBB site, I had difficulty communicating with the Department's headquarters, and even with MSHA emergency response staff who were on the ground with me at the mine. Our new mobile command should help correct these difficulties. In addition, MSHA is updating its technology, developing standard operating procedures and implementing more comprehensive command and control training for the MSHA district personnel who would be responding to mine emergencies.

As a result of these improvements, we are better able to respond to and manage mine emergencies, but as MSHA continues its thorough review of emergency plans and procedures to identify and fix gaps in the system, we know that more needs to be done. The FY 2012 budget request supports this goal. It contains a proposed increase of \$850,000 in the Technical Support budget activity to purchase new mine emergency response equipment and to maintain existing equipment. The budget also includes an increase of \$450,000 for the Program Evaluation and Information Resources budget activity to upgrade mine emergency operations capabilities.

ATTACKING RESPIRABLE DUST

Black Lung still kills hundreds of former coal miners each year and severely impairs the lives of many more; there are alarming indications that it is on the rise, even in younger miners. On the health front, MSHA continues to move forward on its "*End Black Lung -- Act Now!*" initiative, which is a comprehensive strategy to fulfill the promise made 40 years ago with the passage of the 1969 Federal Coal Mine Health and Safety Act to eradicate Black Lung. According to the National Institute for Occupational Safety and Health (NIOSH), in the past decade, thousands of miners have died from Black Lung disease and miners are still getting the disease, including younger miners.

In addition, we strongly believe that coal dust played a role in the UBB disaster. On September 23, 2010, MSHA issued an Emergency Temporary Standard (ETS) on increasing the incombustible content of combined coal dust, rock dust and other dust in coal mines to minimize the potential for coal dust explosions. This ETS is based on research findings and recommendations by NIOSH.

The FY 2012 budget includes two important dust initiatives, totaling \$4 million. They include:

- An additional \$1.9 million to expand, modernize, and secure accreditation for the Mt. Hope laboratory. This lab processes all of MSHA's rock dust and mine atmosphere samples and additional resources are needed to replace outdated analysis equipment, add staff capacity and improve the number, speed and reliability of samples processed.
- \$2,000,000 for the Program Evaluation and Information Resources program to implement software to reengineer the health samples database to ensure sample integrity and support compliance reporting.

EDUCATING THE MINING COMMUNITY

The FY 2012 budget seeks \$36.3 million for Educational Policy and Development (EPD) activities, a decrease of \$2.3 million from the FY 2010 appropriation. This program area is responsible for providing unified and comprehensive direction on all matters related to MSHA's role in educating and training government, industry and labor to recognize, eliminate and prevent hazardous conditions in the mining environment. With these funds, and in addition to its regular activities, EPD proposes to:

- Expand its distance learning program by an additional 10 online courses developed for use by MSHA's entry-level inspectors, bringing the number of courses available to 57; and
- Continue development of its pilot project to identify viable mobile devices and software applications that can improve efficiencies and enhance training services by EPD staff;

The decrease in EPD's request is attributable to MSHA's proposal to integrate the Small Mines Office program and personnel into the Metal and Non Metal district offices. This proposal is designed to increase the effectiveness of the program by allowing managers to focus on areas where their expertise is needed. This will provide more meaningful compliance assistance, leading to reduced overall fatality and accident rates at all mines.

CONCLUSION

Mr. Chairman, overall the Department's FY2012 budget reflects difficult choices that will help put our nation on a sustainable fiscal path while also investing in programs and activities that will fuel economic growth. For MSHA, this cannot mean compromising the safety of our nation's miners, but our budget does include offsets and efficiencies that represent some difficult choices.

At the end of the day, it comes down to this: there could never be enough resources to allow MSHA to be at every mining operation, every shift of every day. Maintaining a safe and healthful workplace is the responsibility of mine operators who must fully exercise their responsibilities under the law. We are not asking too much. Mines all across this country operate safely every day while adhering to sound health and safety programs. I look forward to working with the Committee to ensure that the Mine Safety and Health Administration has the necessary resources to accomplish our shared goal of providing our nation's miners the safety and health protections they deserve.

MINER ACT

Mr. REHBERG. I will point out to you gentleman that the lack of attendance is not a lack of interest. We have quite a few subcommittee chairmen that serve on this committee, so from time to time they are in their own hearings. But we are honored to have our full committee chairman here, Mr. Hal Rogers, and I would like to turn it over to you for any statement.

Mr. ROGERS. Thank you, Mr. Chairman.

Welcome to both you, Mr. Main and Mr. Michaels. Thank you for being with us today and giving us your testimony.

As you know, the mining industry has proved a staple both for our Nation's energy supply and for our economy, and I witnessed generations of miners carry on this proud tradition in my region of Appalachian Kentucky.

As you mentioned, we have recently commemorated the one year anniversary of the tragedy at West Virginia's Upper Big Branch mine. We policymakers and regulators have a special obligation to the 29 men who lost their lives on that fateful day, to their brethren who continue to make a living by traveling deep into those mines, and to their loved ones at home, to remain ever vigilant in ensuring that safety remains paramount and always in the forefront of our mines.

That is why I was proud to support the comprehensive mine safety MINER Act in 2006. Notably, that Act strengthens the Federal Government's ability to enforce safety regulations, holding accountable operators with chronic and persistent health and safety violations.

BACKLOG OF MINE SAFETY CITATIONS

I am pleased that MSHA's fiscal 2012 budget request includes increased funds to reduce the backlog of mine safety citations currently pending before the Mine Safety and Health Review Commission. The number of MSHA inspectors has increased exponentially in the last decade and has resulted in a commensurate increase in safety, but also an increase in the number of citations perceived as "inconsistent" or "arbitrary."

A startling IG report recently indicated more than a quarter of inspectors considered themselves deficient in technical training that is necessary to perform the duties that they were assigned.

As you noted, Mr. Main, this backlog of nearly 20,000 cases has created an unacceptable delay in adjudicating appeals, which are vitally important to ensuring that safety standards are enforced and enforced uniformly across the 14,000 mines under MSHA's purview. Any step to reduce that backlog is a step in the right direction.

All of that said, my colleagues and I have all expressed frequent flabbergastion at wrong-headed policies by this administration that would drive these mining jobs out of our economy when we need them most. Greenhouse gas emissions, surface mining guidance, coal ash regulation, taken together, this administration is poised to regulate all of these miners right out of their jobs.

I look forward to discussing one of these proposed regulations with you today related to respirable coal mining dust. Significant

concerns have risen about the data being utilized to develop this proposal and the availability of technology that would be needed to adhere to any new regulations.

Thank you.

BACKLOG OF SERIOUS VIOLATIONS

Mr. REHBERG. Thank you, Mr. Chairman.

One of the interesting points that has been brought up, you mentioned it in your statement, was the serious backlog of violations, and I think we are all concerned about the serious backlog. We are also concerned about the serious violations. The problem is the backlog of serious violations is not necessarily creating the problem.

I have gone through and spent a little time asking some of the mines around the country, some of the associations, some of the businesses around the country, and a couple of the ones that were sent to me, here is a violation for there were no single service drinking cups provided at the potable water cooler in the shop building.

One of my mines in Montana, the violation was written because the toe spacing between ladder rungs was $2\frac{3}{4}$ inches instead of 3 inches. The ladder had been there for years and was never previously cited by MSHA on other inspections. That becomes a citation.

A citation was written because the mine failed to contact MSHA within 15 minutes of a storage facility catching fire, which would have been perhaps a danger. However, the facility was not owned by the mine or its parent company and was located 30 miles from the mine housed on a railcar full of ore that originated from the mine and was en route to be refined. Therefore, MSHA considered it to be mine property, again, 30 miles away owned in a building by someone else and subject to the requirements of contacting the agency after the accident.

So, I don't think any of us would ever criticize OSHA or MSHA for any citation of a violation of a health safety issue. The problem is, you create problems for yourself when you are creating citations that become part of a backlog where the serious violations cannot be adequately considered.

EMPLOYEE SAFETY COMMITTEE

One of my frustrations as I am talking to one of my facilities in Montana is they had an employee safety committee that was working very well with the old administration and moving along to try and have a safe workplace, and then when the new administration took over, it was canceled. There was no longer a connection between the agency that was enforcing the regulations and the law and the community that wants to work in the healthy workplace.

VOLUNTARY INSPECTIONS

So I guess my question is, do you have a process in place for voluntary inspections? If they want to invite OSHA or MSHA to come in and voluntarily cite issues, or not cite issues, I hate to use that word, but identify potential problems, where they don't then end up

on the list for coming back and then ultimately giving them a citation, because they are trying to do the right thing. And if you ever want to get together with some of the employees, I am not talking about the owners of the company, I am talking about the employees themselves who want to work in a safe environment, and they are as angry at you, MSHA, as they are oftentimes at their own management.

Mr. MAIN. Yes, let me—there are probably about three or four issues in there. On the consistency issue, it is something we have been working hard on. The day I took this job, I realized half my inspectors had, as far as on-the-job inspection experience, about 2 years, and I have launched a number of projects to improve consistency. One of those was a training program for mine supervisors, which we are in the process of running all of our field supervisors through on how to manage the inspection process.

But I have traveled throughout the country, met with several mining associations, aggregate associations, to actually talk through some of the complexities, because we are—

Mr. REHBERG. Do you have a free inspection process?

Mr. MAIN. Do we have a free inspection process?

Mr. REHBERG. Yes, inviting them in, voluntary?

Mr. MAIN. The Mine Act we are currently under was created in 1977 and it has a very straightforward requirement that when MSHA goes to the mine, the inspectors are obligated to cite what they see. That has been in the—

Mr. REHBERG. So they can't just invite you in, voluntarily invite you in. But if you see something, then you are going to ding them. So what is the incentive to invite them in?

Let me ask you, Dr. Michaels. I am going to run out of time.

SMALL BUSINESS CONSULTATION

Mr. MICHAELS. We recognize the problem. In fact, we have a small business consultation program which we fund 90 percent of, but is run by States, so it is absolutely independent of OSHA. In fact, Montana, the Montana Department of Labor and Industry does that. They go to employers, and we like this program because it is before an OSHA inspector gets there. It is an OSHA inspector-type person who goes through and says here are the hazards, here is what you have to do. It is absolutely free to small businesses.

In our budget request, we asked for a \$1 million increase in that program. We think it is a very important program. It is unfortunately in some danger. In some States even 10 percent is difficult for them to match.

Mr. REHBERG. As a courtesy, I always follow very closely the time on every witness and all of my colleagues, just so we can get as many rounds in as possible. I will probably come back to some of that and let you fully answer the question. But I really watch the time very carefully, just as a courtesy to my colleagues.

Ms. DeLauro.

EFFECTS OF H.R. 1 ON OSHA

Ms. DELAURO. Dr. Michaels, H.R. 1, the 2011 appropriations bill passed by the House in February would have cut OSHA's budget almost \$100 million, about 18 percent below last year's level. For-

tunately, the final bill that will be taken up later today does not include any cut to OSHA. Nevertheless, I would like to inquire about the effects of H.R. 1 in the event that cuts of this magnitude are proposed for fiscal 2012.

So let me ask what impact would these cuts have on OSHA's ability to protect the safety and health of American workers. As well, if you could then quickly address this, one of the programs that would have been cut by H.R. 1 is the support for State occupational safety and health enforcement. What is the role of these State programs, what support is provided to States from the OSHA budget, and how important is that assistance to the States?

Mr. MICHAELS. If H.R. 1 or the equivalent were to be passed, it would have a dramatic effect on OSHA's ability to protect workers across America. You know, OSHA and its State partners have about 2,200 inspectors to cover almost 8 million workplaces and 130 million workers. This program would cut 400 OSHA employees, and 200 of those would be inspectors. In addition, another 155 inspectors would be eliminated from State plans.

So it would quite a dramatic effect. We wouldn't be able to train our inspectors nearly as well. We would lose our ability to protect whistleblowers, who raise issues not just in OSHA, but around safe transit, safe commercial nuclear power reactors.

We spend a major amount of our time working on emergency preparedness. OSHA in the Gulf, we had 35 to 40 people full-time down there helping protect the workers, the 60,000 workers involved in the cleanup. It would be a big piece of our emergency budget. I could go on, but there are a lot of very big impacts.

Ms. DELAURO. Quite frankly, what I would like to do and you can get this to us, I really do want to know what the implications are. I think it is important for us to get out what those implications are. We, some could say, dodged a bullet here, but I think we may be re-upping here for 2012.

Mr. MICHAELS. I will provide them.

Ms. DELAURO. Thank you very much.

[The information follows:]

Impact of HR 1 on OSHA

H.R. 1 would have had a catastrophic impact on the Occupational Safety and Health Administration (OSHA) and its programs, had it been enacted into law. Agency programs and initiatives would have been drastically slashed. Given the enormity of the permanent budget cuts coming so far into the fiscal year, a virtual shutdown of OSHA activity for the final 7 months of the fiscal year would have been unavoidable. Meaningful government protection of the workplace and workers would have ceased. OSHA's long-term viability would have been seriously, if not irreparably, compromised.

The severest impacts of H.R. 1, had the legislation become law, include the following:

- HR1 would have required massive involuntary furloughs and layoffs of agency staff if it had become law.
- Reduction in Force (RIFs) would have resulted in a loss of over 400 OSHA staff, including 200 OSHA inspectors, leaving the agency with the lowest number of federal inspectors authorized since 1974.
- OSHA estimated that it would have been unable to obtain abatement of 21,000 fewer violations, leaving thousands of workers vulnerable to injury, illness and death.
- OSHA's website and its entire data collection and analysis capability, along with its computer infrastructure, including e-mail capability would have been eliminated.
- The proposed cut in funding would have resulted in an effective loss of 155 inspectors in the 27 OSHA state plans. And all states would have been forced to severely curtail, if not eliminate, their compliance assistance, training, education, and outreach activities.
- National and Local Emphasis Programs, which target the most hazardous worksites and industries, would have been discontinued in favor of legally mandated fatality, catastrophe and complaint inspections.
- OSHA would have lost 17 whistleblower investigators – an 18 percent decrease in staff.

- OSHA's ability to issue standards to save workers' lives by reducing exposure to silica, falls, confined spaces, and combustible dust would have been severely slowed.
- OSHA would have lost most staff devoted to Emergency Preparedness and Response, eliminating resources that support response to national disasters such as Deepwater Horizon Oil Spill and pandemic influenza preparedness.
- H.R. 1 would have provided no funding to the OSHA Safety and Health Statistics budget activity, which would have resulted in the shut down of day-to-day operations of the agency's information technology, targeting, and workplace safety and health monitoring. The Safety and Health Statistics budget activity provides 100 percent funding for the OSHA's information technology resources – systems that provide information access to the public and agency stakeholders, such as the OSHA website, and systems that support agency operations, from enforcement to compliance assistance to management and operations. Without the appropriate systems and data, the agency virtually would come to a standstill in terms of day-to-day operations.

PATTERN OF VIOLATIONS

Mr. Main, the law gives MSHA certain additional enforcement powers when it finds that there has been a pattern of violation at the mine. I understand that MSHA has been trying to make better use of this authority in order to more effectively deal with some of the worst safety problems in the mining industry.

Would you describe the pattern of violations process for us, the change you have been making and why you believe this authority is important? What have been the results of your efforts so far?

Mr. MAIN. I think the short message is that Congress enacted a law in 1977 establishing a pattern of violations. This was after the Scotia mine disaster in Kentucky in 1976. They intended for the agency to go after mine operators more forcefully than had chronic—

Ms. DELAURO. Repeat offenders.

Mr. MAIN. Repeat offenders. So after the statute was enacted, there was an expectation that the agency responsible would enact regulations and prevent the action. Unfortunately, in the 33 year history, I think I have that right, but it is pretty close to 33 years, no mine had ever been placed on the pattern of violation as intended by Congress.

Ms. DELAURO. In 33 years?

Mr. MAIN. Thirty-three years. And right after I became Assistant Secretary, we began to look at the pattern process and had to deal with the backlog as well, because there is a fear we had that some mine operators may be contesting violations to avoid the potential pattern of violations process that was in place.

We took a look at that, particularly after the Upper Big Branch disaster, and that became a very important issue, and we decided to make some substantive changes in the current administrative process. We looked hard at mines that would be selected, put in stiffer requirements for mine operators to get off, and really made mine operators who had trouble create mine management programs to clean up their act.

We sent notice to 14 mine operators late last fall that they were on the new potential pattern violations, and thus far, eight mines have improved their compliance and two have not, and they have been placed on the actual pattern.

Ms. DELAURO. I don't know if you have anything to say, but my time is going to run out and I wanted you to get that in, because it would appear to me after 33 years, we finally have a process in place because there are repeat offenders, is that correct?

Mr. MAIN. There are repeat offenders, and it is a pretty stiff law that Congress created, and there was an expectation that we as an agency employ that.

Ms. DELAURO. I don't know, Mr. Chairman. I think I have 8 seconds here. If you have anything to say in 8 seconds, Mr. Main, go for it.

Mr. REHBERG. Or two or one.

Mr. ROGERS.

Mr. ROGERS. Thank you, Mr. Chairman. And, by the way, congratulations on your elevation to this great chair.

Mr. REHBERG. Yeah. Thank you.

PROPOSED DUST RULE

Mr. ROGERS. Mr. Main, on the proposed dust rule, tell me when the criteria document that you are relying upon from the Secretary of Labor advisory committee, when was that data first published?

Mr. MAIN. The criteria document issued by NIOSH was in 1995.

Mr. ROGERS. And is that the information that you are relying upon to propose the rule?

Mr. MAIN. There are actually two documents or two different results that were provided that we have relied on. One was the 1995 criteria document, and the second is a 1996 Federal Advisory Committee Report that was a committee comprised of labor, industry, academia, the government that developed recommendations for eradicating this disease.

Mr. ROGERS. Is it common practice for Federal agencies to rely on 15-year old documents when promulgating regulations in this highly technical field?

Mr. MAIN. Well, there is current relevancy with the findings and recommendations made by those two reports. We are trying to deal with a disease that has been plaguing coal miners since we have been mining coal. Thousands of miners have died of this disease. The cost, I think, since the black lung provisions took place in the Mine Act—

Mr. ROGERS. Well, the question is, why did you rely upon 15-year-old information? Surely there is more recent information about this problem. I have read it myself.

Mr. MAIN. The disease is still with us. Miners are still getting the disease. We are finding younger miners showing—

Mr. ROGERS. You are telling me things that you can read in the daily newspaper. Why did you rely on 15-year-old information? Is there not newer information available about the impact of black lung in the mines, of dust in the mines?

Mr. MAIN. Well, the information that was developed is still relevant today.

Mr. ROGERS. But there have been changes in the industry and in the technology since that time.

[The information follows:]

THE NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH

The National Institute of Occupational Safety and Health (NIOSH) just posted the final version of their Current Intelligence Bulletin 64: Coal mine dust exposure and associated health outcomes, a review of information published since 1995. <http://www.cdc.gov/niosh/docs/2011-172/>

In it (p. 11) NIOSH notes reports in 2006 and 2007 that “called attention to advanced pneumoconiosis in working underground miners” where “most of the affected miners had started work after 1969 yet had still developed severe CWP.” Following those reports NIOSH performed additional field studies that showed that “the prevalence of CWP appeared to have stopped declining around 1995–1999, and has risen since then.” They also note, “of particular concern are the prevalence values for the last three five year periods (1995–2009) for miners with <25 years tenure, which are well above those observed in the early 1990s.” These findings are discussed in greater detail with specific reference to scientific studies in the NIOSH publication.

The NIOSH findings were supported by presentations by miners and health care providers at the MSHA public “End Black Lung—Act Now” meetings. In addition, at a rulemaking hearing in Kentucky on the MSHA proposed rule to limit miners’ exposure to coal mine dust, a witness who identified herself as an attorney with 27 years of experience responding on behalf of coal mine employers against claims for benefits under the federal black lung benefits program noted the upsurge of cases

of advanced disease. She indicated that this is a relatively recent phenomenon and emphasized that the problem is widespread and has been noted by lawyers from 12–15 states with whom she meets annually.

CONTINUING DUST MONITORING DEVICE

Mr. MAIN. Well, yes. I think on the technology side there was the development of a device which was just recently approved that is part of the rule making. It is a continuous dust monitoring device that through a partnership with industry, labor, the government, over, I think, about a decade period of time, has been developed, that is going to provide for the first time, real-time sampling capabilities.

Mr. ROGERS. There are all sorts of new machinery and testing equipment and sensors, masks, all sorts—and helmets, all sorts of new equipment, new information. And it puzzles me that you went all the way back to 1995 before all of these things developed to write your regulation. Shouldn't we update that information before you write the regulation that would require things that may be outdated by now?

Mr. MAIN. Well, I think that in previous administrations that have dealt with this unsuccessfully to finalize a rule, I believe that they looked at some of the same data that we have.

Mr. ROGERS. Well, regardless of that, why don't we do the right thing?

Mr. MAIN. Well, we have asked the public, the stakeholders, the mining industry, to provide us information. We have had, I think, seven public hearings. The record is still open. We have asked for comments from the entire mining community to provide us information and guidance about the development of the rule.

Mr. ROGERS. Well, West Virginia University just this past week released a report. Have you read that one?

Mr. MAIN. I haven't seen that report, Mr. Chairman, but if it is something that someone would think is of value, the record is still open. It could be submitted to the public record for the rulemaking process.

Mr. ROGERS. I am puzzled why you don't use the latest information about trying to battle this horrible disease with the latest information and latest gizmos that could protect the miners.

Mr. MAIN. But I think in terms of the gizmos, I think there is a use of new technology. It is a technology that has been developed, like I say, over the past decade or so that was supported by, as far as the testing and development, industry, labor and the government. There was a rule that was put into effect last year that approved a device for use, and it takes a long time—

IMPLEMENTATION OF PROPOSED DUST RULE

Mr. ROGERS. Would you be willing to delay the implementation of this rule until we could get the latest information available to back it up?

Mr. MAIN. I think this rule has been in the development stage, and unfortunately unfinished, since 2000, and miners are still getting the disease, and we believe that it is in the best interests of the Nation's miners to move forward with a rule. In saying that,

we have welcomed all comments, all information that will help us develop the right rule at the end of the day.

Mr. REHBERG. Mr. Chairman, I do want to thank you for allowing me the opportunity to be the chairman of this committee. I went in with eyes wide open. You warned me it was going to be fairly interesting, and you were right. It has been fairly interesting.

Ms. Roybal-Allard.

OSHA'S SAFETY AND HEALTH STATISTICS FUNDING

Ms. ROYBAL-ALLARD. Mr. Michaels, while OSHA enforcement and oversight has made some great progress in improving worker safety, each year we still have 4,400 workers killed and millions are injured on the job. That is one reason that I was glad that the President's request includes a modest increase to OSHA funding to help protect the health and safety of American workers. But what has been the impact on workplace safety since OSHA funding has been restored to its pre-2001 levels?

Also, as a second part, can you elaborate on OSHA's safety and health statistics funding and why the Department of Labor believes it is important to workers and their employers?

Mr. MICHAELS. You know, one of the surprising things in H.R. 1 was eliminating our statistics budget. Our statistics budget includes our ability to track not just injuries, and it should be noted that the Bureau of Labor Statistics actually produces all the statistics that we use publicly, but our computer system is based on our statistics, our ability to figure out have we been to employers before, what did we find there. We give employers a reduction if we find that they don't have a history of OSHA violations in any citation we have. So our ability to do that is all affected by our statistics budget, and that, of course, was eliminated in H.R. 1.

We believe that OSHA is having a great impact. I could give you statistics or perhaps a more powerful story. Just a few weeks ago, we have an inspector named Rick Burns in eastern Ohio got a call about a construction trench being dug and thought there were workers in there unprotected. We have known for many, many years, in fact, the Phoenicians knew how to protect workers from trench excavations. You build the top wider than the bottom.

Unfortunately, if you are in a hurry, you can build it deep but put a box in there to protect workers. Unfortunately, that isn't often done and we lose workers every week to trench cave-ins all across the country.

So we got a call about a trench excavation, and Rick Burns got there and saw a worker in a deep trench and said, you better get out of there. And he got out of there immediately, and 5 minutes later that trench collapsed and that worker would have been seriously injured or probably killed if that man hadn't been there.

Now that is just an example. But we think OSHA has a very big impact and we were pleased that we were able to continue its full funding in the President's budget.

Ms. ROYBAL-ALLARD. I was trying to get two questions in at the same time here with the time I had. I want to go back a little bit on the safety and health statistics funding and if you could elaborate just a little bit more on why that is such a valuable tool both to workers and employers?

SITE SPECIFIC TARGETING

Mr. MICHAELS. One of the things—well, I am sorry, there are a number of things. We require and we have since the beginning of OSHA required employers to keep track of injuries and illnesses. We actually don't get that information. That is employers who have to keep those reports, and not all employers do. Certain small employers don't have to, non-hazard employers don't have to. But employers are supposed to keep track of their injuries and illnesses so they have an understanding of what is going on in their workplace.

Right now we receive only a small portion of those under a special program called site specific targeting where in certain industries we ask them to send us their statistics or actually just the bottom line, how many injuries they have and how many workers they have, and we do some targeting on that basis.

But most statistics are really kept by employers for them to know what is going on so they can assess their hazards and fix them, and our ability to examine those and work with them really would be very much cut by the elimination of our statistics budget.

Ms. ROYBAL-ALLARD. Well, some believe that OSHA regulations impose an unfair burden on business. It is my understanding that studies show OSHA enforcement has little negative economic impact on business and in fact helps to level the playing field for the majority of businesses that care about their workers' safety and follow the rules.

Has OSHA found evidence of regulation and enforcement causing detrimental effects on small business? And in keeping with your mission, what steps has the Department of Labor taken to work with small businesses to minimize any regulatory burden?

OSHA & SMALL BUSINESS ADMINISTRATION

Mr. MICHAELS. Well, that is also a very long question. I don't have much time to answer it. But to the second part, we work extensively with small businesses. We have the program I talked about, the consultation program that did more than 30,000 visits last year with small businesses.

When we put together regulations, we have tremendous outreach to small businesses. For significant regulation we have a whole process with the Small Business Administration's advocacy office. But also for any new regulation we invite comment and we meet with small businesses and many others.

I can get you the other information about what we do with small business.

[The information follows:]

OSHA's Outreach to Small Business Community

OSHA offers multiple services to small businesses throughout the country.

The Agency's On-site Consultation Program offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to high-hazard worksites. On-site Consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing safety and health management systems. In FY 2010, OSHA provided free assistance to over 30,000 small businesses covering 1.5 million workers in helping them create safe and healthy work environments.

Each OSHA Area Office in states under federal jurisdiction has a Compliance Assistance Specialist (CAS). These staffers respond to requests for help from a variety of groups, including small businesses. CAS's put on seminars and workshops for small businesses and other groups. They promote OSHA's cooperative programs; OSHA's training resources, and the OSHA web site. OSHA also offers small businesses the benefit of OSHA elaws (Employment Laws Assistance for Workers and Small Businesses) Advisors which are interactive e-tools that provide easy-to-understand information about a number of federal employment laws, including OSHA Confined Spaces, Fire Safety, Hazard Awareness, and Lead in Construction. Each Advisor simulates the interaction that might occur with an employment law expert by asking questions and providing answers based on responses given. These Advisors are designed to help the user comply with employment laws and are available 24/7, free of charge.

OSHA has always taken employer size into consideration when assessing penalties. OSHA recently amended its penalty reduction structure based on the size of employers. The Agency allows a penalty reduction between 10 and 40 percent for those with fewer than 250 employees.

OSHA offers cooperative programs, such as the agency's voluntary protection programs and partnerships, offer businesses, labor groups and other organizations the opportunity to work cooperatively with the Agency to help prevent fatalities, injuries, and illnesses in the workplace. All States with OSHA-approved programs have their own cooperative programs. OSHA's On-site Consultation Program's Safety and Health Achievement Recognition Program (SHARP) recognizes small employers who operate an exemplary safety and health management system.

OSHA's Hispanic/English-As-Second-Language (ESL) Coordinators assist a variety of groups, including small businesses, trade associations, and community and faith-based groups with outreach, education and training to Spanish-speaking workers. The coordinators are available for Hispanic-related seminars, workshops, and speaking events. They promote cooperative programs, such as the Alliance Program -- agreements

to work together with unions, consulates, trade or professional organizations, faith and community-based organizations, businesses, and educational institutions to promote worker safety and health – to produce Spanish/other than English training materials, compliance assistance resources, and tools available on the OSHA Web site. Through these services, the Hispanic/ESL Coordinators help small businesses meet their responsibility to ensure the safety of all their workers, including those for whom English is not their first language. There is one Hispanic/ESL Coordinator in each of the ten OSHA Regions.

OSHA's Training Institute (OTI) and Training Institute Education Centers across the country provide basic and advanced courses in safety and health. To increase opportunities for small business employers to attend safety/health training, the Training Centers have begun offering one-day or one-half-day seminars.

OSHA's area offices offer information services, such as audiovisual aids, technical advice, and speakers for special engagements. Small businesses can also take advantage of the educational services offered by OSHA including the agency's small business home page, which offers information on compliance assistance and cooperative programs.

Finally, Susan Harwood Training Grants provide training and education programs to small businesses and their workers on the recognition, avoidance, and prevention of safety and health hazards in their workplaces. For example, a grantee in New York is conducting needs assessments and developing workplace safety and health training for low literacy and limited English immigrant day laborers and domestic workers. The training is targeted to Hispanic workers and small businesses in Westchester and Staten Island, New York, and is focused on worker rights and employer responsibilities, and safety and health hazards in their workplaces.

Mr. REHBERG. Thank you very much.

Mr. Alexander.

Mr. ALEXANDER. Thank you. Good morning.

The Secretary was before the committee a few weeks ago and talked about the fiscal year 2012 budget and she said that OSHA is focused on ways to carry out its mission more efficiently, moving toward electronic reporting of data, upgrading computer infrastructure to replace an inefficient and antiquated data system, enabling staff to conduct online meetings rather than traveling across the country and, where possible, replacing printed publications with online publications.

The question is, do you expect to save money with that process, and, if so, will it be reflected in your next budget request?

Mr. MICHAELS. You know, I can't say we will save money. I think a lot of what we do we will do much more efficiently. Certainly it will save travel money, things like that, by having on-line methods. But this in some ways refers back to Ms. Roybal-Allard's question, because one of the components of our statistics budget is our web-based program to reach small businesses. We put all of our compliance materials on the web and now we know that most people can get access to information on the web. We had 180 million unique visitors last year pulling down our information. And we have got to do more of that, we have got to do it better, we have to have more interactive tools, because we can't get to all of the employers in the country. So that is really where we are going with that.

OSHA'S INTENSIFIED COMMITMENT TO PREVENTING INJURIES

Mr. ALEXANDER. The President's request includes an increase of \$7.7 million to continue OSHA's intensified commitment to preventing injuries, illnesses and fatalities by deterring employers in the most hazardous workplace who exhibit a profound disregard for workers' safety and health.

So you are asking for \$7.7 million, as it says, to continue. So what are we going to do with that?

Mr. MICHAELS. That will go to a small number—it will go to FTEs, but better training for our inspectors. We also need—our cases actually require costs. The Kleen energy explosion on Super Bowl Sunday 2 years ago, which everyone is aware of, that involved a fine of over \$16 million, several different employers who were blowing natural gas in large quantities to clean out some pipes while people were welding and they had propane burners on. We issued a large fine, the third largest fine in OSHA history if you combine those three companies. We are now in court and it has cost us already half a million dollars in expert costs and court related costs.

So for us to continue our work and to go after the most recalcitrant employers, the ones who really put workers at risk, who kill workers, that is where that money is going to go.

Mr. ALEXANDER. It says the extra money will be used to ensure that the inspectors are properly qualified. Does that mean they are unqualified today?

Mr. MICHAELS. No, but it is always important to update inspectors with the new gizmos, with the new information. So we have ongoing training, and training costs money. We have to fly inspec-

tors in to our training facility, which is outside Chicago, for a week or two for each course. That means we have got to cover their activities. That is one of the costs. We can't allow our inspectors to fall behind the technology. We recognize that. So we really have to keep training them. Certainly employers want that. Employers want inspectors who really understand what is going on.

Mr. REHBERG. Mr. Flake.

Mr. FLAKE. No questions.

Mr. REHBERG. Mrs. Lummis.

MSHA'S 2012 BUDGET REQUEST

Mrs. LUMMIS. Thank you, Mr. Chairman.

I note that MSHA already spends more than \$1,600 per miner in the U.S., and OSHA spends \$6 for every worker. That is a significant difference, and the President's fiscal year 2012 budget requests a 10 percent increase in MSHA's budget.

Given our fiscal situation, Mr. Main, can you explain to me how you will direct those resources?

Mr. MAIN. Yes. I think as a starting point it is fair to say that there have been urgings from Congress, from the public, from miners and some of the mining community for us to do a better job. That is particularly in light of the Upper Big Branch tragedy. What we are trying to do is focus our energies and resources in ways that bring about safer mines in this country.

One of the things we plan to do is to issue a new regulation on the pattern of violations to add additional reforms to make the law work better. One of the things we plan to do is beef up our emergency response capabilities.

Just a little story. While I was at the—

CRITERIA FOR DETERMINING PATTERNS OF VIOLATIONS

Mrs. LUMMIS. You know, I wish I had time, but I have only got 5 minutes. So let me ask you about your pattern of violation proposed rule. I am concerned that rather than being based on final determinations by the review commission, that the rule will make patterns of violation determinations based on citations.

I have received examples from my constituents of citations that have been overturned. As many as 20 percent of the more serious citations called significant and substantial are knocked down to something less than that by MSHA's own review commission. So is it really fair to use in your rule citations as the criteria for determining patterns of violations rather than the review commission's determinations?

Mr. MAIN. If we wait for the review commission to make determinations, we may have a mine that is sitting there unsafe today. It takes us years to get to an action using those that you discussed. As a matter of fact, I just saw a number of citations cross my desk here not too long ago that was issued in, I think, 2006.

MSHA REVIEW COMMISSION

Mrs. LUMMIS. So it sounds like we should be beefing up the review commission's budget so they can reduce their backlog rather

than basing these repeat violations on citations that have been turned over.

I have an example of a crane being written up as if it were a piece of self-propelled mobile equipment, so the inspector refused to acknowledge MSHA's own definition of mobile equipment and the citation was disputed and eventually vacated, but at a significant cost to the operator. So my question I think is valid.

Mr. MAIN. I don't know the specific citation you are talking about. I know when MSHA inspectors go out to the mines every day, their responsibility is if they see a violation to cite it. That is their obligation under the law.

Mrs. LUMMIS. Let me ask it this way then. Should we be doing more to reward exemplary performance and raise the profile of best practices so we encourage wider adoption by industry?

Mr. MAIN. We are working hard to establish best practices throughout this industry and we are working with associations to do that, the National Sandstone and Gravel Association for one. We have put together a number of compliance assistance tools to help the mining industry.

Mrs. LUMMIS. So have you been working with the mines themselves, employers that have stellar safety records, to see what they are doing that makes them better performers?

Mr. MAIN. Yes. We actually—one of the first things I did in my administration was to establish a process where we would—actually I was looking to see if we needed to do any regulatory action as well. But to look at the safety and health programs that were in effect in the mining industry, get mines and companies that had some of the best ones, and to provide that information to the rest of the mining industry. We had several employers in the coal industry and outside the coal industry participate in these public meetings, and that information is out there to be shared with the entire mining community. We are also doing far more than that.

Mrs. LUMMIS. Thanks. Another question back on the pattern of violations. The tracking tool was a welcome innovation, and I understand that happened on your watch, so I think that is terrific. How can operators be assured that it is up-to-date and reliable?

Mr. MAIN. That is a good question and I think a fair question. I will tell you this: It is my belief that we need to provide the information. The mining industry needs to know what the laws are and what the process is for our enforcement actions. That web tool, it is going to be updated by the 15th of the month for the previous month and we are working hard to keep that data very current.

Mrs. LUMMIS. So it is going to have a 30-day real time—

Mr. MAIN. Fifteen days. It should be real time.

Mrs. LUMMIS. Fifteen days.

Thank you, Mr. Chairman.

Mr. REHBERG. We will start round two.

INSPECTOR TRAINING

Mr. Main, I understand in March the inspector general came out with an audit and it suggested that, at least I think, if I am correct, a number, a quarter of the inspectors considered themselves to have a lack of training.

First of all, I always appreciate a revisitation of H.R. 1. However, it is no longer valid. But the reason for H.R. 1 in many of the decisions we are going to have to make in this subcommittee and the full committee and the House and this Congress is the fact that the debt has doubled in the last 4 years, things like a failed stimulus and some of the other things, the excess of spending that occurred that did not meet our revenues. So, unfortunately, H.R. 1 is a reflection of something we are all going to have to deal with. You are as well within your agencies.

What ought to bite you a bit is the fact that I think that \$70 billion went to the Department of Labor, let's forget that figure for a minute, within the failed stimulus, but let's talk about the \$5 billion in employee training that went to the Department of Labor.

If there is all of this untrained workforce out there, as Chairman Rogers has mentioned and other members of the committee have mentioned, a problem with the quality of inspectors, the lack of education or training of the inspectors, and \$5 billion went to the Department of Labor for employee training, how much went to mine safety, how much went to OSHA as far as employee training? Isn't that the purpose?

I clearly understand employment training for those that don't have jobs. But if you are inspecting jobs that have employees that are currently working, and we don't want to lose them as employees, we want to keep them working, but one of the problems is the companies are being cited by unqualified, untrained inspectors, wouldn't it have made sense to have some of that money go to something that might have maintained a job?

Mr. MAIN. We do our own training in-house within the budget that we have with regard to the dollars that are spent.

Mr. REHBERG. So you didn't get any of the \$5 billion for employment training?

Mr. MAIN. I am not sure exactly what you are talking about, but if it is separate funding outside of our agency, we use our own money within our agency, and we are using a lot of new training tools.

Maybe to take everyone back a bit, there was discussion about more inspectors being added. The agency, because of an aged workforce, had a lot of retirements and there was, I think, a failure to staff up the agency. And right before I came on board, Congress had acted to beef up the new rules. So a lot of the inspectors that we were dealing with are inexperienced.

All of the inspectors go through anywhere from 18 months to a 24-month training program to—

RECRUITING IN THE MINING INDUSTRY

Mr. REHBERG. Let me ask you about some of the inspectors then. What percentage or how many of the inspectors within Mine Health and Safety actually are inspecting mines that they worked at? Because that is one of the complaints I received from some of the groups I have talked to.

Mr. MAIN. We recruit from the mining industry. We try to recruit in the mining industry and bring people in that have experience. As we all know, we hire who comes to—

Mr. REHBERG. Wouldn't you assume that sometimes there is a disgruntled worker that has left the mine for one reason or another and they end up being an inspector and they go back in and they start finding burnt out light bulbs and toe rungs that are of the wrong size and fires 30 miles away that are buildings owned by somebody else?

Mr. MAIN. If we are talking about the same one, I just want to add some context, because it was the one at, I believe, the Troy Mine in Montana. The ladder, and we went back and checked this, the ladder was a homemade ladder. And I have worked on mobile equipment and I have a vision what this is. Whenever the worker stepped on it, it swung up underneath the loader itself, which is not a good thing to have.

I think the fire was a situation where MSHA had been inspecting a facility and that fire was not reported. We went back, the equipment completely burned up, as I understand it, in that case. And after the company did provide information that that was not under the jurisdiction—

Mr. REHBERG. Let me real quickly just give you one of the other citations, a failure to maintain a list of contractors which when the list was subsequently produced for the inspector within the required reasonable time of 12 minutes, they were still cited.

Mr. MAIN. Okay. I have to check into that one. If you send it to us, we will take a look at it.

Mr. REHBERG. I would be happy to do it.
[The information follows:]

MSHA INSPECTORS

Most mine inspectors were employed in the mining industry prior to working at MSHA. Inspectors are not assigned to particular mines; inspectors are rotated among mines. In smaller field offices, inspectors may inspect particular mines more frequently. MSHA does not track the number of times mine inspectors are assigned to inspect a mine where they previously worked. Department of Labor (DOL) ethics rules prohibit a DOL employee from participating in matters involving a former employer for a minimum one year period. MSHA goes beyond that requirement and prohibits inspectors from inspecting or conducting other MSHA-related work at a mine where they were previously employed for a minimum of two years.

Mr. REHBERG. Dr. Michaels, in 12 seconds.

Mr. MICHAELS. Well, just to add, the funding that went to the Department for training went to the Employment Training Administration, a whole separate budget than either MSHA or OSHA. So we didn't see any of that.

Mr. REHBERG. But it could have.

Mr. MICHAELS. I don't know if it could have. It didn't.

Mr. REHBERG. Ms. DeLauro.

CITATIONS VERSUS FINAL AUDIT

Ms. DELAURO. Thank you, Mr. Chairman. Just a couple of things to deal with the record.

I think on the issue of citations versus final audit, I think the issue is about a balance. Should miners die while waiting for litigation to be concluded at mines which are chronic violators? I think that is an important point to make in terms of how we proceed procedurally.

I was taken in your testimony, Mr. Main, that you said black lung is preventable, but you also talked about the increasing incidences, the new cases of black lung in young miners, et cetera. At some point it would be useful to have that information about that rise, I would like to see that, and the age grouping of these folks.

But that gets me to the issue, and I just want to make this comment, about your standards and your rulemaking in which you are trying to deal with the dust issue. I think you said it very, very clearly that the record is still open. The record is open. No one is closing their eyes to new information, new technology, et cetera. Let's get it in, let's review it, let's look at it.

But also let me make this point. After ten years, 11 years, it is time to have a rule. If we wait that long, once again, which is why I mentioned the other piece on citations versus final orders, people die in the interim. That is not acceptable to do that.

So you move with the best information that you have. You keep updating it. Your new rule will allow you to do that. I think it is incredible to note that in 10 years with regard to OSHA, there have just been two new rules with regard to health and safety. What is at risk here is not roads, bridges or parks that we are talking about in this committee or with the work you do, it is people's lives, and the prolonged litigation, the delay, has put people at risk. That is our responsibility—to break that backlog so that in fact we can make sure that people are safe on the job. That is our responsibility.

PENALTY STRUCTURE

Dr. Michaels, 2010, average Federal OSHA penalty for serious violation, \$1,000, below maximum allowed by law for that category of violation. Fatality cases, median initial total penalty, \$7,000. You are supposed to reflect the gravity of the violation, deter it for the future. Do you think that penalty of \$7,000 for a worker death appropriately reflects the gravity of the violation? Do you think it is sufficient to deter future violations? You have done some things to change enforcement initiatives under your leadership. Severe violators enforcement program. Can you describe the policies, how they seem to be working?

Mr. MICHAELS. Yes. Congresswoman DeLauro, I think the penalty structure of it, Congress gave us, is lacking in certain things. The maximum penalty for a serious violation is \$7,000.

We give penalties not because a worker died, but because of the hazard. So we could go into a situation, a workplace, where there is a fatality, but if there was no clear violation of the standard or clear hazard, we don't give any penalty at all.

But when we do give a penalty, we try to do it in a way that deters other employers, because we can't get to every work site. So we find, for example, that a \$7,000 penalty many employers look at that as the cost of doing business. Certainly a large employer, \$7,000, that is nothing, so even if we have multiple citations.

We had a citation against BP for \$80 million following the Texas City explosion. Actually it was a follow-up to the Texas explosion citation, because BP didn't do what they agreed to do. And even

\$80 million we thought probably had no impact on them in terms of an incentive to actually abate the hazards.

So we have a number of new policies. We have made some changes in the way we issue penalties, which I think will have a bigger impact and it will give us a slightly higher penalty for the more serious violations, but it is still way below \$7,000 per citation.

SEVERE VIOLATORS ENFORCEMENT PROGRAM

In addition, we have a new program called SVPS, Severe Violators Enforcement Program. When we find a really significant problem in a facility, we will go back and visit it more often to make sure that problem was eliminated and we will go to other facilities in the same system.

For example, we went to a facility, U.S. Minerals, which was located next to a coal-fired power plant which took the slag and turned it into roofing materials and other things, and workers there, this was outside and the exposure was to what we called nuisance dust and they were still getting black lung. So not only did we issue a citation there, but we went to the other facilities where they do the same and found the same problem.

So we think it is having an impact. We are trying to use some creativity to have that impact.

Ms. DELAURO. If I can, I would like to have a list of those that are repeat offenders and violators. You should have that data. I would like to see that list.

Mr. MICHAELS. Certainly.
[The information follows:]

OSHA List of Repeat Violators

The Severe Violators Enforcement Program (SVEP) is intended to focus enforcement efforts on significant hazards and violations by concentrating inspection resources on employers who have demonstrated recalcitrance or indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations in one or more of the following circumstances: (1) a fatality or catastrophe situation; (2) in industry operations or processes that expose employees to the most severe occupational hazards and those identified as "High-Emphasis Hazards," as defined in Section XII. of the Instruction; (3) exposing employees to hazards related to the potential release of a highly hazardous chemical; or (4) all egregious enforcement actions.

"High-Emphasis Hazards" means only high gravity serious violations and include fall hazards and hazards identified from the following National Emphasis Programs (NEPs): amputations, combustible dust, crystalline silica, excavation/trenching, lead, and shipbreaking. Low and moderate gravity violations will not be considered for a SVEP case.

Here is OSHA's log file of SVEP inspections. Entries are logged if citations have been issued from one or more inspections that have met SVEP criteria.

Fiscal Year	SVEP Log No.	Region	Area Office	Employer	Inspection No.
2011	82	6	Baton Rouge	U. S. Minerals	313030637
2010	2	6	Dallas	Jarden Home Brands	312126535
2010	3	1	Springfield	Sun Roofing, Inc.	313204232
2010	4	10	Boise	Cannon Builders, Inc.	313350449
2010	5	4	Birmingham	R. E. Grills Construction Co.	313948770
2010	6	5	Milwaukee	Rexnord Industries, LLC	313525305
2010	7	5	Milwaukee	Cooperative Plus	313525651
2010	8	5	Calumet City	Hartford & Sons, LLV	313936544
2010	9	5	Chicago North	Armor Shield Construction Inc.	314686064
2010	10	5	Chicago North	Murray Plastering, Inc.	314686098
2010	11	6	Corpus Christi	M&G Equipment Group, Ltd dba M Construction	314197468
2010	12	6	Houston South	Thermal Polymer Systems LC	312921117
2010	13	6	Houston South	Matula & Matula Construction Company, Inc.	312921158
2010	14	2	Albany	Equity One Exteriors, Inc.	313758112
2010	15	2	Avenel	P.M. Construction Corp.	313980138
2010	16	2	Avenel	Christine Stucco Systems	313981235
2010	17	2	Avenel	Montana Construction Corp. Inc.	313979650

2010	18	2	Avenel	Exterior Stucco Systems Inc.	313981144
2010	19	2	Long Island	S G Stucco	311140081
2010	20	2	Marlton	Imperial Stucco	314460478
2010	21	2	Parsippany	313 Jefferson Trust, LLC	314309253
2010	22	2	Hasbrouck Heights	Stucco & Stone Contractor Tibor Kiss	312865132
2010	23	2	Tarrytown	European Masonry of Westchester, Inc.	313000705
2010	24	8	Denver	Alvarado & Sons Plastering	313416901
2010	25	1	Providence	Homeland Builders Inc.	312345564
2010	26	1	Bridgeport	O & G Industries	109179937
2010	27	1	Bridgeport	Keystone Construction and Maint'ce	109179952
2010	28	1	Bridgeport	Bluewater Energy Services	109180067
2010	29	5	Calumet City	Barone Contracting LLC	313935785
2010	30	5	Fairview Heights	U. S. Minerals	313014490
2010	31	5	Calumet City	M.E. Kelly Construction Company	313939001
2010	32	2	Avenel	F & G Sons Contractors Inc.	313981383
2010	33	2	Parsippany	Rich Lapinski Sr. dba Burke Stucco	314197120
2010	34	2	Long Island	Painting & Decorating, Inc.	311140651
2010	35	2	Long Island	Painting & Decorating, Inc.	311140974
2010	36	6	Houston North	Goodman Manufacturing	314258146
2010	37	4	Ft. Lauderdale	E.N. Range Inc.	314259854
2010	38	4	Ft. Lauderdale	E.N. Range Inc.	314260605
2010	39	4	Mobile	MDLG, Inc dba Phenix Lumber	313997124
2010	40	1	Augusta	Columbia Forest Products Inc.	314236381
2010	41	1	Providence	J.A.M. Construction Co., Inc.	312345713
2010	42	1	Bridgeport	New England Landscape Development	314295692
2010	43	3	Harrisburg	Keif Industries Inc.	314237736
2010	44	3	Wilkes Barre	Bridon America	312295306
2011	45	2	Avenel	C Com Construction Corp.	313982241
2011	46	2	Parsippany	Richard Lapinski dba Burke Stucco	314309527
2011	47	2	Tarrytown	Small Company Concrete	313003493
2011	48	2	Tarrytown	Correia Construction	313003501
2011	49	5	Fairview Heights	U. S. Minerals	313014920
2011	50	5	Toledo	Gleason Construction	313782203
2011	51	5	Toledo	Gleason Construction	313783060
2011	52	3	Pittsburgh	Richard Kaposy	314108036
2011	53	4	Tampa	Sea World of Florida LLC	314336850
2011	54	4	Mobile	Wiregrass Construction Company, Inc.	313852675
2011	55	4	Ft. Lauderdale	Flexible Foam Products Inc.	314262353
2011	56	4	Tampa	Cathcart Contracting Company	314415282
2011	57	4	Atlanta-West	Juan Segredo	312778681
2011	58	4	Birmingham	Whitesell Corporation	314294786
2011	59	4	Birmingham	Whitesell Corporation	314198524
2011	60	4	Birmingham	Amos Lumber Company, Inc.	314368309

2011	61	6	Houston North	DSR Construction dba Demetrio Segovia	314426677
2011	62	2	Buffalo	Norampac Industries, Inc.	314441809
2011	63	2	Hasbrouck Heights	Super Plaster LLC	314674185
2011	64	2	Avenel	VGM Construction Corp.	313982530
2011	65	2	Marlton	Impala Construction Inc.	314730334
2011	66	2	Avenel	Exterior Stucco Systems Inc.	313982415
2011	67	9	San Diego	Cooley Enterprises, Inc.	110586161
2011	68	6	Houston-North	Igloo Products Corp.	314426339
2011	69	5	Cleveland	A. Bagnoli and Sons	314382672
2011	70	5	Toledo	Cooper Tire & Rubber Co.	313783144
2011	74	5	Fairview Heights	Complete HVAC Plumbing & Electric Inc.	313015950
2011	75	5	Cleveland	Precision Products	314537010
2011	76	5	Chicago North	C&F Packaging	314420415
2011	77	5	Chicago North	Interstate Brands	314463811
2011	78	5	Indianapolis	Jeffboat LLC	301091526
2011	79	5	Chicago North	Sullivan Roofing	314965260
2011	80	6	Dallas	Fortune Plastic and Metal Texas LLC	314176306
2011	81	6	Dallas	J.A. Bingham Enterprises	314179458
2011	84	1	Concord	Black Mag, LLC	314043290
2011	85	1	Andover	James J. Welch & Co.	314731837
2011	87	2	Avenel	FMJ Construction Inc.	313983249
2011	88	2	Buffalo	Cannon Industries, Inc.	314952672
2011	89	2	Manhattan	Roth Metal Works	314543372
2011	91	6	Dallas	Ignacio Garcia	314179839
2011	92	6	Ft. Worth	Montalvo's Masonry LLC	314275660
2011	93	6	Houston- North	Armando Galvan Leos	314712407
2011	94	6	Houston- North	Osorio Stucco, Inc.	314898032
2011	95	1	Concord	Joseph P. Cardillo & Son, Inc.	314043548
2011	96	1	Concord	Majestic Mechanical Contractors	314043555
2011	97	4	Ft. Lauderdale	Restoration Technology Inc.	314263914
2011	98	7	Wichita	Aerospace Manufacturing Ct Systems, LLC.	314027947
2011	99	6	El Paso	Best Plastering	313498859
2011	100	6	Houston North	Horseshoe Construction	314908765
2011	103	8	Bismarck	LM Glasfiber, Inc.	314600545
2011	104	8	Bismarck	Speedy Rooter, Inc.	314600594
2011	106	2	Avenel	Rejment Construction	313984064
2011	107	2	Avenel	East Coast Stone & Stucco	313983645
2011	108	2	Avenel	Beno Stucco Systems	313983371
2011	109	2	Syracuse	CCI Companies, Inc.	314347758
2011	110	1	Concord	APC Paper Co. Inc.	314043902
2011	111	1	Augusta	Dearborn Construction	314960865
2011	112	1	Bridgeport	Cherry Hill Construction Company, Inc	109178129
2011	113	1	Braintree	NER Cosntruction Management, Inc.	313802118
2011	115	5	Cleveland	Lake Erie Construction	314605767

2011	116	5	Calumet City	Girardi Sewer & Water	313939407
2011	117	5	Chicago North	Girardi Sewer & Water	314735523
2011	118	5	Chicago North	Girardi Sewer & Water	315098426
2011	119	5	Aurora	Girardi Sewer & Water	314036377
2011	120	5	Eau Claire	WRR Environmental	313178154
2011	121	5	Fairview Heights	GSI Group, LLC	313015844
2011	122	5	Columbus	Industrial Ceramic Products	314586181
2011	123	5	Calumet City	Bridford Foods Processing	313937997
2011	124	5	Eau Claire	North Central Power Company, Inc.	313178444
2011	125	5	Aurora	Haasbach, LLC	314037433
2011	126	5	Fairview Heights	U.S. Minerals, Inc.	313016743
2011	127	4	Ft. Lauderdale	Lead Enterprises	314264045
2011	128	4	Ft. Lauderdale	Prologix Distribution Services LLC	314265141
2011	130	8	Englewood	Lucas Oil Production Studios	313720591
2011	131	10	Bellevue	Yakama Forest Products	309098341
2011	132	5	Toledo	Gavilon Grain	313784902
2011	134	6	Ft. Worth	Langford Construction, Inc.	314273392
2011	135	6	Oklahoma City	Five G Construction Inc.	314928995
2011	136	4	Mobile	L & K Contracting Company, Inc.	314601873
2011	137	4	Tampa	Coatings Application & Waterproofing, Inc.	315233494
2011	138	2	Avenel	Kurczak Painting LLC	313985210
2011	139	2	Buffalo	Custom Crews Inc.	315349993
2011	140	8	Billings	RY Timber	314315748
2011	141	1	Bridgeport	Champion Builders LLC	109180158
2011	142	5	Calumet City	Kraft Foods Global	313940033
2011	143	5	Chicago North	Aluminum Services	315298935
2011	144	5	Cincinnati	Seal Tile LLC	315435644
2011	145	5	Cleveland	Erievew Metal Treating Co.	314937814
2011	148	5	Columbus	Tampa Enterprises, Inc. Aka European Craft Const	314589029
2011	149	5	Eau Claire	Bechel Brothers	313178568
2011	153	5	Peoria	Outland Energy Services, Llc	314847708
2011	155	5	Toledo	APBN	313785396

Mr. REHBERG. Mr. Flake.

NO BACKLOG IN OSHA

Mr. FLAKE. Thank you, Mr. Chairman.

You have talked a lot about the backlog and the need to get through the backlog here. I look at some of the other money spent by OSHA here, the 2010 Susan Harwood targeted topic grant recipients. This program handed out a lot of money for programs that to me I think probably have questionable worth compared to the need to get through the backlog of these cases.

Money, \$198,000 to the Texas Engineering Extension Service, work zone safety. This stuff has been done I would think a lot before. You got roofers and waterproofers, research and education, joint trust for green jobs industry standards. Apparently these green jobs, green roofing has different hazards I guess than some other roofing.

I just would question in a time of budget austerity that maybe we have authorized that program, maybe we force you to spend money on it, but we need to know the direction, if you think the backlog is more important than this or this is more important than the backlog?

Mr. MICHAELS. Well, I think the main issue here is a misunderstanding, sir, in that the backlog is in MSHA and this is OSHA. We do very separate things, so there is no backlog.

Mr. FLAKE. OSHA, you have no backlog?

Mr. MICHAELS. No.

SUSAN HARWOOD GRANTS

Mr. FLAKE. And this can't be transferred. The Appropriations Committee can certainly take into account that you have extra money here and we can move it elsewhere.

Mr. MICHAELS. No, but the point of the Harwood grants is compliance assistance. We far prefer employers and workers to know how to work safely and do that work before an OSHA inspector gets there or before someone is killed.

The purpose of these training grants, and we give it to employer groups, we give it to worker groups, we give it to community groups who can reach out to workers we can't reach, is to tell them about certain hazards and how to work safely. That is the purpose of them, so we don't have to go out and give citations. So we think they are quite effective. But the issue of—it is really unconnected to any backlog. This is apples and grapes.

Mr. FLAKE. All right. Well, to us, we can move money and block money, and so it would just seem—I mean, some of these hazards, whether it is a green hazard or something else, it just seems an excuse to me to give out money. Groups that get it, a lot of this has been studied over and over again, and how in the world we mitigate hazards by throwing \$198,000 to Ohio State University or whomever else to look at these things, it just seems to me at a time like this that is probably the first things that should be cut. But you are saying that it is essential.

Mr. MICHAELS. We say they are very useful. These get information out to small businesses and do training of employees that the

businesses couldn't afford to train to work safely. So we think this is actually a very effective use of the funds.

Mr. FLAKE. Here is one, North Carolina Occupational Safety and Health Project, \$80,000. Grantee will implement training on recognizing and reducing and eliminating musculoskeletal, I can't say the word, hazards to workers and employers. That is carpal tunnel, I guess that kind of stuff?

Mr. MICHAELS. That is correct.

Mr. FLAKE. I don't know. I look at that and look at what we are cutting across government, compliance issues and other things, and it would seem to me that these kind of things ought to probably be the first to go. I am hearing you say it is essential, useful.

COMPLIANCE ASSISTANCE PROGRAM

Mr. MICHAELS. Well, you know, we are not supposed to be talking about H.R. 1, but the focus to H.R. 1 was that your compliance assistance programs are really great, but they cut enforcement. This is a compliance assistance program. Because we really don't want to do the enforcement. We want these workers to be safe before we get there. And OSHA can't do it all, so we are trying to get to organizations that do that work. So I think it is useful.

Mr. FLAKE. Thank you.

Mr. REHBERG. Mrs. Roybal-Allard.

MINIMIZING REGULATORY BURDENS ON SMALL BUSINESS

Ms. ROYBAL-ALLARD. Mr. Michaels, before I ask my next question, the previous question I had you said that it would require a lengthy response and you ran out of time. So I want to give you an opportunity to elaborate on that. It has to do with whether or not OSHA had found evidence of regulation and enforcement causing detrimental effects on small business, and in keeping with your mission what steps has the Department taken to work with small business to minimize any regulatory burdens.

Mr. MICHAELS. You know, you have asked the key question. Our regulations are about saving lives, and over and over again we see situations where if an employer had provided the right conditions, no one would have been hurt. On the other hand, we want to take into account the economic needs of the small business. We certainly don't want to close down any jobs. It is very important to keep those jobs and keep them safe.

Now, OSHA has looked at, but more importantly, there are other groups who have looked at this, and the Office of Technology Assessment, which was a branch of Congress until it was ended in the mid-nineties, actually did a study only eight OSHA regulations and what has been their effect on businesses and what their costs are. They found, in general, I think they found seven out of eight, the costs were significantly lower than even what OSHA projected, and they didn't affect the competitiveness of those businesses. So we know that we can write regulations in a way that save lives as well as ensuring that businesses aren't unduly burdened.

What we know from this frankly is OSHA isn't killing jobs. OSHA is stopping jobs from killing workers. That is really what is going on here, and we think that is very effective.

Ms. ROYBAL-ALLARD. And it also protects small businesses that are trying to do the right thing?

Mr. MICHAELS. That is right. It is not that these don't have any costs, but the costs aren't so big. And the other thing though, the costs of injuries to employers is very high. Look, Montana has the second highest Workers' Compensation rate in costs in the country. What we do is drive down those costs, and it is important to businesses as well.

WORKER MISCLASSIFICATION

Ms. ROYBAL-ALLARD. Okay. It has been brought to my attention that in recent years many employers have reclassified their workers as independent contractors to pay less taxes, skimp on employee benefits, and to avoid the cost of Workers' Compensation and overtime pay which is associated with employment of workers classified as employees. Now, the President's budget includes funding to train inspectors to identify and deter the misclassification of employees as independent contractors.

Can you explain why this funding is important to misclassified workers and Federal and State governments?

Mr. MICHAELS. Certainly. The sort of situation that our inspectors report to me, which are very disconcerting, is they will go out and they will see a roofing job, for example, or a construction job, with a bunch of workers working unsafely. Let's say they don't have fall protection. They will go to the operator, the person in charge, and they will say, okay, why didn't you give them fall protection? And they will say, well, they are all independent contractors.

There are certain clear rules about what is an independent contractor. Too often a business person will pretend that those individuals working for them are not really working for them, but they are independent contractors, to avoid Workers' Compensation payments, to avoid giving them safety equipment, things like that. So we train our inspectors on what the law is, and the law is very clear about who is an employee and who is an independent contractor. So when they go to that work site they can figure out is that person really an independent contractor or are they actually a worker who their employer is really trying to avoid the law.

Ms. ROYBAL-ALLARD. I have no further questions.

IMMINENT DANGER ORDER

Mr. REHBERG. Again, I don't want to ever minimize the danger of working in a mine, whether underground or surface mine, and the real danger of a loss of life, and I think the companies take it seriously, the employees take it seriously, and America does as well. I won't belabor the point much longer, but I just want to read a citation of one of my mines in Montana, Westmoreland.

I don't know how much you guys know about coyotes, but one of my mines received an imminent danger order under section such-and-such that two different coyotes had been spotted in the vicinity of the maintenance shop, the welding shop, the employee parking lots and other areas in the vicinity of mine employees. The order requires that all miners be removed from the vicinity when the coyotes are present. All miners will be required to attend a safety

meeting reminding them of the danger of coyotes—some call it coyotes—we don't, and other wild animals, and of the procedures to take when the coyotes are spotted on mine property.

Come on. Coyotes are more afraid of us than we will ever be of them.

Mr. MAIN. I am a hunter. I was in the woods 2 days when—or a day when two coyotes come to me. I got away from those coyotes—and that is a serious story.

Send the citation to us and we will take a look at it. But I just want to make one thing clear. One of the things I did when I first took this job was I took a look at all of the violations—

[The information follows:]

IMMINENT DANGER ORDER

MSHA reviewed the imminent danger order that was issued in connection with a coyote being on mine property. MSHA received an anonymous hazardous condition complaint reporting that a miner at a Montana surface coal mine had been bitten by a coyote. MSHA investigated and found a miner had been bitten by a coyote that was not afraid to approach humans—behavior that is consistent with having rabies. The miner was treated with rabies shots as a preventive measure. MSHA issued an imminent danger order requiring the operator take action to prevent another miner from being bitten. The order was terminated after mine management had the coyote believed to have bitten the miner exterminated and trained employees on safety precautions around wild animals

Mr. REHBERG. I will tell you, OSHA is starting to look better to me every day, and I never liked you guys.

Mr. MICHAELS. If it gets rough, call me.

Mr. MAIN. I took a look at all the citations they issued, because I was concerned too about the inconsistent stories I heard. And here is the fact. In 2009 and 2010, less than 1 percent of the paper that MSHA issued after everything is closed was vacated, which meant that those were standing violations, okay?

The point I am trying to drive here is that the regulations are the regulations, the inspectors, whenever they arrive at the site, are to cite those, and they don't have discretion not to. That is the law. There is a multitude of violations we issue every year.

One of the things that worries me, we talk about contesting something extravagant, 355 companies last year contested 80 percent of the paper they have. Now, if you start with the equation that at some mines you may have some that have—

Mr. REHBERG. As you know, I did ask for a list of the various citations from last year, and, of course, that was a great document dump. I got to admire your ability to drop paper on me. Unfortunately, it didn't really tell me exactly what I wanted, and that is, you know, how much are the fines, how much were the citations, how many times were you successful in those various cases, and ultimately was it a revenue raiser for you or not.

So we are going to go through the process of getting more information. It was nice to get the list of citations, about like that, but we have some more work to do to make a determination are you really creating a safe work environment.

JOURNEYMEN MINE INSPECTORS

And I want to go back to this audit that was done of the journeymen mine inspectors, the quarter that felt they had a lack of train-

ing. Then I look at your budget for fiscal 2012 and your request, and you are reducing that budget. I wrote it—we are always up here trying to do mathematical things, education policy and development is going down 5.7 percent. You are asking for 2.2 less. But your enforcement budget is going up. So it looks like you want to give more citations, you want to give more violations. But we have dwelled on training problems, but your training budget is going down.

Mr. MAIN. Actually it is not. Let me explain what is happening. There is a shift of a program out of education and training, which is our small mines program, and we are shifting that from being managed out of our headquarters to the field level being managed, and there is a transfer of \$2.3 million that is going to go from education policy development to the metal-nonmetal industry where we have the most of our work to help.

You talked about the support that we do, the non-enforcement support, that is the small mines wing. They are not authorized representatives.

SMALL MINES PROGRAM

Mr. REHBERG. I was actually going to ask you that question, because I noted to myself the small mines program or project is being terminated and the employees are being spread out. That always concerns you—

Mr. MAIN. We tried to clear that up. That is a misnomer in our statement. Basically what is happening is there is a small mines wing within education and policy development, and that primarily works on the metal-nonmetal sector of the mining industry. It is managed out of our headquarters in Rosslyn, Virginia. We are eliminating the—

Mr. REHBERG. You will be able to help us identify where that \$2.2 million reduction is going.

Mr. MAIN. It is going into metal-nonmetal, and that is where the small mines program is going in. It is going to be locally managed by the districts, as opposed to out of our headquarters and we hope at the end of the day to have an even more improved program.

[The information follows:]

SMALL MINES OFFICE

MSHA has no intent to cease the functions of the Small Mines Office (SMO). The FY 2012 CBJ proposes to transfer the functions of that office (including \$2,300,000 and 21 FTE) from Educational Policy and Development to Metal and Nonmetal (MNM). The personnel from SMO will be integrated throughout MNM, where MSHA can use their expertise and provide more meaningful compliance assistance, leading to lower overall accident and fatality rates.

Mr. REHBERG. We will go back in the budget justification and look at the numbers and try and rectify that for the record. Thank you.

Ms. DeLauro.

STANDARD ON NATURAL GAS

Ms. DELAURO. Thank you very much, Mr. Chairman. I am going to get parochial here for a moment.

Dr. Michaels, I mentioned in my opening remarks that we had a terrible tragedy at the Kleen Energy plant in Middletown, Connecticut. I believe it could have been avoided with certain specific safety standards in place to deal with natural gas. A similar accident occurred at a ConAgra Slim Jim facility in North Carolina. Catastrophic explosions cost a human life in North Carolina. Seven hundred people lost their jobs. ConAgra decided not to rebuild the factory. We had a field hearing in Middletown last year at the Ed and Labor Committee. We found that natural gas is the only fuel gas not regulated by OSHA, even though its consumption exceeds any other fuel gas.

You are aware the Chemical Safety Board, after extensive investigation of both incidents, recommended that OSHA promulgate regulations that address fuel gas safety for both construction and general industry, at minimum prohibit the use of flammable gas that is released to the atmosphere for the purpose of cleaning fuel gas piping and draft guidelines for employers on the inclusion of workers and contractors in developing safe procedures and training for handling that fuel gas. It failed to become law.

Last year, I worked with the previous chairman of this subcommittee to include language in the House report directing OSHA to develop an interim final standard on natural gas, urging OSHA to adopt the CSB's recommendation. What I would like to do, Mr. Chairman, if I can, is include this language in the record.

Mr. REHBERG. Without objection.
[The information follows:]

**Report Language – Included in FY11 LHHS Appropriations bill**

The Committee is concerned about the lack of a regulatory standard for natural gas. The use of natural gas far exceeds the use of other flammable gases in the U.S., including hydrogen and acetylene – both of which are regulated by OSHA. The Committee believes that two recent natural gas explosions demonstrate the need for OSHA to issue a standard that addresses the safe handling of natural gas – or methane, the primary component of natural gas. On June 9, 2009, the ConAgra Slim Jim production facility in Garner, North Carolina, experienced a catastrophic natural gas explosion that caused 4 deaths, 3 critical life-threatening burn injuries, an amputation, and other injuries that sent 67 people to the hospital. On February 7, 2010, Kleen Energy, a combined-cycle natural gas-fueled power plant under construction in Middletown, Connecticut, experienced a catastrophic natural gas explosion that killed 6 people and injured another 50 people. However, according to the U.S. Chemical Safety Board (CSB), an independent, non-regulatory federal agency that investigates major industrial accidents, there is no specific workplace safety standard to prohibit the intentional release of natural gas into workplaces. Recognizing that approximately 125 new gas-fired power plants are planned for completion between 2010 and 2015, the Committee directs OSHA to develop an interim final standard on natural gas. At minimum, the interim final standard should adopt the CSB’s urgent recommendations to prohibit the following: the use of natural gas for pipe cleaning – the cause of the explosion at Kleen Energy; the venting or purging of fuel gas indoors – the cause of the explosion at ConAgra; any work activity where the flammable gas concentration exceeds a fixed, low percentage of the lower explosive limit. OSHA should also draft guidelines for employers on the inclusion of workers and contractors in developing safe procedures and training for handling fuel gas. The Committee directs OSHA to submit a report to the Committees on Appropriations of the House of Representatives and the Senate within 180 days of enactment, and updated reports every 180 days thereafter, detailing the anticipated timeline for issuing an interim final standard on natural gas, and OSHA’s progress in meeting that timeline.

Ms. DELAURO. So my question is, what is OSHA doing to address the risk of workers handling natural gas. With 125 new gas fired power plants planned for completion by 2015, shouldn't we move to ensure that workers are not put at risk during this inherently dangerous practice? In your view is there a huge gap in our regulatory framework when it comes to natural gas?

NATURAL GAS REGULATION

Mr. MICHAELS. Right now OSHA recognizes the tremendous hazard that is caused by blowing natural gas, especially in an area where there is potential ignition and release to the air. So first we are working very closely with the National Fire Protection Association to develop an updated standard to protect workers. Having a consensus standard out there immediately will be very helpful.

We are considering a rulemaking as we closely monitor the effects of our other activities. Shortly after we issued our citation and very large fine, we contacted every major operator who was planning to build a natural gas power plant and informed them of the hazards associated with this. As you said, there are 120, so it is a relatively small number.

What we have done with them is we told them, you know, while we are looking at regulation and considering doing others things, please, know the hazards. Don't do this. We have been told across the country that they have stopped doing this. In fact, there are three natural gas plants in Connecticut that considered doing this. Two of them stopped, two of them announced they wouldn't before Governor Rell signed her executive order, and now the last one has actually said they are not going to use natural gas either.

So we are monitoring carefully and working closely with NFPA and looking at whether or not we should move forward with regulation.

Ms. DELAURO. So you haven't decided to move forward yet?

Mr. MICHAELS. That is correct.

Ms. DELAURO. When are you going to make that decision?

Mr. MICHAELS. We will be issuing a regulatory agenda sometime in the spring, and then a decision will be made.

Ms. DELAURO. I am going to assume you are aware that a plant in California blew up from using natural gas to purge pipelines. A new plant in Florida is using natural gas to purge instead of using alternatives like compressed air.

I am going to ask you, do you agree with the Chemical Safety Board that this is an inherently dangerous practice?

Mr. MICHAELS. Yes.

Ms. DELAURO. And we have seen loss of life as a result of this practice.

Mr. MICHAELS. Yes.

Ms. DELAURO. So I go back to what I said earlier. I am not for wasting time or waiting in the interim here until we get the perfect subset of data while people die, either here or in mine safety or wherever it exists. We have an obligation, and we know the dangers of natural gas and the hazard there. What I don't understand is why we are not moving more quickly.

Mr. MICHAELS. It is really a resource question.

Ms. DELAURO. What does that mean, a resource question? Can we provide resources to do this?

Mr. MICHAELS. Standard setting is an expensive process and it is also a lengthy process. And we have a number of priorities on the list now and we are looking at what we can add to more. But to take anything on takes significant resources and we have to look at what are the most effective ways we can ensure that workers aren't injured or killed any more from this. We recognize the hazard. There is no question, it is a huge hazard. So the question is what is the most effective way to stop that from happening again. I didn't know about this plant in Florida.

Ms. DELAURO. We will get that to you.

Mr. MICHAELS. Please provide me more information on that.

I2P2

Mr. REHBERG. Thank you. I want to talk about the \$2.4 million you are requesting for your I2P2 regulation. In looking at the Federal Register and all the input, it looks like you have been working on this for about 30 years as far as a prevention program. First of all, tell me a little bit about the history.

Mr. MICHAELS. Well, the history I could give you is I came to the agency in December of 2009 having said beforehand this should be our priority. When I got there I said this should be our priority. Now, OSHA has thought about this before and issued some guidance, but they have never actually moved to issuing a standard on this. There are 15 States, including Montana—

Mr. REHBERG. Well, let me then ask you about California, because it looks like they are headed down a path, I don't know if they have gotten their final approval yet, but it looks like it is a whole lot less onerous than some of the discussion that is already occurring about I2P2. Has it received an approval?

Mr. MICHAELS. California has had this in place for 20 years. It was passed by the State legislature, put into effect by CAL-OSHA, and is widely recognized there and quite accepted by the entire community as being very effective.

Mr. REHBERG. They have to go through an approval process by you now?

Mr. MICHAELS. No, we approve the overall CAL-OSHA program, but this particular regulation is a State regulation set by the legislature. We don't have to approve it or disapprove it. I mean, it is there, it is functioning. We held a stakeholder meeting in Sacramento to hear from employers and from workers and from experts there, who all said it is working quite well.

What we are doing now is gathering information to prepare for our first small business meeting with a proposal. So we are not even at the proposal stage. And so we don't yet have a concrete proposal.

Mr. REHBERG. Could you just, and, boy, I hate to use California as a good example, could you replicate their program?

Mr. MICHAELS. We certainly could, but what we are trying to do is look at all the States and look at the companies in our VPP program that already have safety and health management systems and say what can we learn from them, what is the best things we

can do. So that is why we are having these meetings and having input. So we are getting there.

Mr. REHBERG. So of the \$2.4 million you are requesting, how much of it do you estimate will end up being enforcement as opposed to compliance?

Mr. MICHAELS. None of it. It will all be in putting together the standard. As I was telling Congresswoman DeLauro, for us to do a standard, we have to spend \$1 million just surveying employers around the country to find out what sort of programs they have now and what the costs would be. We have to go out and do all sorts of feasibility studies. We have to have numerous meetings. So that money is strictly for producing materials about the compliance assistance in that case and gather information.

Mr. REHBERG. Ms. DeLauro, I am rapidly coming to the end of my questions. I am going to complete with Mr. Main, and I don't have another set of questions.

VOLUNTARY OR FREE INSPECTIONS

Mr. Main, I wanted to give you an opportunity to finish the conversation we were having about voluntary or free inspections. I got the feeling that Mr. Michaels has got a pretty good handle on that. You do everything you possibly can for helping people clearly understand.

I think your initial answer before I interrupted you was that you have to charge. However, is there a program within your agency? And you started into we—do what?

Mr. MAIN. Thank you, Mr. Chairman. We have a number of programs at MSHA that are aimed at compliance assistance, and one is the small mines program which we are, like I say, transferring to the metal-nonmetal program and hope to beef that up to provide additional support. These are non-authorized reps who do not have the authority to issue citations.

We have our education and training program that works with the mining industry as well. And we are working in a more direct way with—I have a number of partnerships and alliances, the National Sandstone Gravel Association, the associations that produce silica. I have been out and met with I think probably about 15 to 20 State aggregate associations that we are in partnership with and a lot of programs to provide assistance through a lot of conduits that already exist.

We just created a Safety Pro in a Box project with the National Sandstone and Gravel Association, and it is particularly aimed at small mining operations, particularly the sand and gravel industry and new employers who come into the industry, to give them a tool so they will understand what the compliance rules are. But there are a number of things that we are doing in addition to our enforcement program.

Some other things that we are working on which I think would be of interest to you, Mr. Chairman, the contest issue, setting up a system where we can sit down and resolve a lot of these issues that are legitimately to be resolved before they ever go into the litigation pile. I have a pilot conference process that I have launched working with the mining industry which would, and we plan to move forward with this, which will allow mine operators to sit

down with the folks locally and try to resolve these things before you get to litigation and trying to weed out unnecessary litigation that goes into the backlog, and other projects like that.

Mr. REHBERG. Thank you very much.

Ms. DeLauro.

INSPECTORS

Ms. DELAURO. Thank you, Chairman. I have got several questions. I just would like to make a comment with regard to inspectors and whether or not they have worked in the mine. We have all kinds of inspectors in the food safety inspection and we have inspectors in our poultry and our meat plants every day. I am not sure they have worked in those plants either. We usually put people in who have the capabilities and skills and are trained in order to be able to do the job, whether or not they have worked in the particular facility or not. I think otherwise it would be quite a patchwork here.

Mr. MAIN. I think our inspectors do have a lot of experience in the mining field.

FUNDING FOR BACKLOG

Ms. DELAURO. Okay, that is it. It is the inspection in the area, rather than with regard to a particular mine.

With regard to the backlog, a very quick question here, 19,000, as I understand it. Will current funding be able to address that backlog? You have got \$8 million in this CR. Or do you need additional funding in order to deal with this backlog? \$8 million is a small amount of money.

Mr. MAIN. We have a request in the fiscal year 2012 budget for an additional \$15 million for backlog program and an additional \$3.3 million for resources within MSHA. And that will work. That money would be utilized by both the Solicitor of Labor and MSHA. We have the request in.

SILICA STANDARDS

Ms. DELAURO. Let me ask you both about silica standards. I know both of you are working on the revised standards on silica. I am going to ask you to answer the questions quickly. I don't know if the chairman will let me go on. I have got several questions.

How serious a problem is silicosis in this country? What are the current OSHA-MSHA regulations? Why are they inadequate to deal with the problem? Are OSHA and MSHA working together to coordinate their rulemakings on silica?

Mr. MICHAELS. I think I can handle those quickly. The last question, yes, we are working closely. OSHA is moving further ahead. Silicosis remains a significant problem in the United States, but, more importantly, silica causes not just silicosis, but a number of other diseases, kidney disease, other lung diseases, and lung cancer.

Our standard, the OSHA standard for general industry and for construction and for maritime dates to the late 1960s-early 1970s when it was not understood that silica also caused lung cancer. So we are updating our standard. This is the other issue of an old

standard that is really out of date. Our construction standard actually requires equipment that doesn't exist anymore and uses measurements that aren't used anymore. That is how much the industry has changed.

So we are trying to update to the latest information, taking into account what we understand about health effects, ways we understand to protect workers and the new types of measurements. So we think this is a very important standard. We think it will save many lives.

Ms. DELAURO. Do you want to add anything?

Mr. MAIN. I will echo what my counterpart has just laid out. And it doesn't make any difference if you are a miner or construction worker, where you are working at. Silica harms the human being. So we are using the same information.

Ms. DELAURO. Thank you. Your high impact inspections, Mr. Main, good results from that? Will you continue this inspection program in 2012?

Mr. MAIN. Absolutely. I think it is a tool that is long overdue. It lets us identify mines that are getting most out of control in the mining industry. We try to do a good job focusing in on those that have high violation rates or significant problems.

Ms. DELAURO. What are you doing in this instance? Just give me a thumbnail of the process.

Mr. MAIN. We target mines that have exceptional citation orders, beyond the norm, high injury rates, mines that could be prone to explosions, disasters, mines getting advance notice of inspections where they are trying to hide things. We get minor complaints.

DIACETYL HEALTH EFFECTS

Ms. DELAURO. Okay. Diacetyl, Mr. Michaels, you know it is of real interest to me. In my other capacity I pursued this with the FDA and they generally recognize the status of the chemical. The issue before us is workplace safety. I am aware of cases where workers inhaled large quantities of diacetyl and got sick with bronchiolitis obliterans.

Three years ago, popcorn manufacturers moved to substitute diacetyl from their product. Secretary Solis ordered another peer review of diacetyl's health effects last year.

Where are we in pursuing the risks to workers exposed to diacetyl? In your expert opinion, are workers working with this chemical protected from injury or illness under current OSHA standards? If not, can you explain why not?

Mr. MICHAELS. Yes, the concern is that employers, popcorn manufacturers and others, have moved from diacetyl to the substitutes.

Ms. DELAURO. The substitutes may be equally as toxic.

Mr. MICHAELS. Right, but we don't have human evidence, and this is exactly the problem. So if we focus only on issuing a standard on diacetyl, I call this a regulatory whack-a-mole. The industry, and we work very closely actually with FEMA, the Food and Extract Manufacturers Association, they had the name first, to try to figure out how to protect workers on that. But we can't issue a standard just on diacetyl because no one is using it anymore. So now we are now looking at the other chemicals.

But we are out there inspecting plants for all of the exposures. And we have told employers, we know enough that workers have to be protected now from all of the substitutes as well.

Ms. DELAURO. I will just urge you to keep working on it. I think it is important to note for the record that irreversibly this disease destroys the small airways in the lungs, and the only hope for many is a single or double lung transplant, which is not easy to come by. So it is very, serious.

Mr. Chairman, I have two additional questions.

Mr. REHBERG. Sure.

Ms. DELAURO. Thank you. I appreciate that. A different area, different industry.

WORKER INJURIES AT POULTRY AND MEAT PACKING FACILITIES

Dr. Michaels, this is about worker injuries at poultry and meat packing facilities. According to a study, line speed at one beef plant dramatically increased from about 270 head per hour in 1994 to 360 head per hour in 2008. Across the red meat industry, chain speeds have increased 20 percent over the last 20 years. Line speed in poultry plants has also increased phenomenally over the past 20 years.

In 2006, GAO asserted that workplace injuries in the meat packing industry were widely underreported. Of the six recommendations from the same 2006 report, only two would have been implemented.

Does OSHA have any evidence of a correlation between an increase in line speeds and an increase in actual worker injuries? Will you consider collaborating with USDA and NIOSH to study this issue? We need that on this issue and we need research.

Mr. MICHAELS. We have none OSHA doesn't produce scientific information. Our sister agency, NIOSH, does. But it is my understanding that we are working with NIOSH and USDA to do a study in those plants and we are eager to find the results, because we don't know the answer to that.

Ms. DELAURO. Because the research is not there to deal with that. I appreciate that.

Finally, you have a number of important rules or standards that your agencies are working on, and if you could just, you know, just quickly tick them off and why they are important for protecting worker safety and health.

We have a piece of legislation that was introduced in January, H.R. 10, which would make a major change in the way you develop and issue regulations and standards. If a rule is classified as a major one, it would not be allowed to take effect unless both Houses of Congress pass a bill approving it. That would seem to make it easy to block any regulation and hard to adopt one.

What would be the effect of this change on your agency? Why do you need to adopt new standards and rules? What would be the effect on health and safety if you weren't able to complete rule-making?

Mr. MICHAELS. Let me give you an example. We have standards for 500 chemicals; 470 of those standards date to 1969 or before. It is really ancient history in terms of science. We are slowly beginning to issue new standards on some of these chemicals. And it

takes years for us to issue a standard. We have standards in the works not just on silica, but on protecting workers from falls. We have a new standard, our injury and illness prevention program standard. We think that the way we change behavior across the country is with a standard. It is more useful even than enforcement.

When you say, OSHA says do something, employers do the right thing and they do it. So when we issue a standard, it has an impact. So slowing down or stopping our standard setting process I think would really be disastrous.

Mr. MAIN. Yes, I concur. Black lung, the rule we are working on has been in rulemaking for over a decade. Miners are dying. It is time to act. Proximity detection, one of the leading killers now in underground coal mines, believe it or not, are miners getting crushed with equipment. The technology is there, it has been developed over about 10 years, to get it in place to stop these deaths.

The pattern of violations, we have to have a pattern of violations that is respected and works. I think we all agree with that.

WORKPLACE EXAMINATIONS

The regulation on workplace examinations, 175,000 violations were issued in 2009 at mines. 100,000-plus of those are underground coal mines. We think mine operators need to do a better job of examining for compliance with mandatory standards. Congress said that in 1969. Things like that.

Ms. DELAURO. With regard to that, when you are dealing with compliance, are you dealing with outreach, with mine operators, miners, other stakeholders? The outcome of that kind of outreach, do you consider it a success in terms of your compliance?

Mr. MAIN. On the black lung, I think there has been years of information developed on that one that has helped us get to a proposed rule, for example.

Mr. REHBERG. I am going to suggest that if you have additional questions—

Ms. DELAURO. No, I will submit them for the record.

Mr. REHBERG [continuing]. Please submit them for the record. We will leave the record open and we will ask that you in a timely fashion, we will be dealing obviously with the fiscal 2012 budget, give us timely answers to any of the questions that we might submit for the record as well so we can have it before we begin our markup on the fiscal year 2012 budget.

I thank you both for coming in today and appreciate the information. Oversight hearings, we are supposed to learn something, and I think we did. So thank you very much.

[The following questions were submitted to be answered for the record:]

INVOLVEMENT IN COLLECTIVE BARGAINING

Mr. Rehberg: Dr. Michaels, Chapter 5 of OSHA's Field Operations Manual instructs field personnel to evaluate the "credibility and veracity" of complaints associated with a labor dispute with the clear goal being that OSHA should not be used as a tool to advance one side's position in the dispute. Can you discuss what level of resources and funding are being used by OSHA for any inspections or enforcement activities that involve companies that are currently engaged in collective bargaining and/or organizing campaigns directed at them?

Dr. Michaels: OSHA does not track resources or funding for inspections or enforcement activities that involve companies that are currently engaged in collective bargaining and/or organizing campaigns. The Occupational Safety and Health Act requires OSHA to conduct inspections in response to written complaints of workplace hazards filed by workers or representatives of workers if OSHA determines there are reasonable grounds to believe that a violation of a safety or health standard or danger exists. OSHA's procedures for conducting unprogrammed inspections (e.g. complaints, fatalities, referrals, etc.) where there is or may be the potential for labor disputes are outlined in OSHA's CPL 02-00-050, Field Operations Manual (FOM), Chapter 3, IV. H. 2, which states, "Unprogrammed inspections will be performed during strikes or labor disputes.... During the inspection, compliance safety and health officers will make every effort to ensure that their actions are not interpreted as supporting either party

INJURY AND ILLNESS PREVENTION PROGRAM (I2P2)

Mr. Rehberg: OSHA is requesting \$2.4 million to continue developing the I2P2 standard. It's my understanding that this regulation would dictate not only that all employers have an I2P2 plan, but it would prescribe the manner in which that plan is to be developed, including the contents of said plan. When does OSHA plan to implement this standard?

Does OSHA plan to include in this standard an ergonomics component?

Does OSHA plan to mandate that all employers include in their I2P2 standard an ergonomics component? If so, would this not circumvent previous Congressional action under the Congressional Review Act on the ergonomics regulation that was previously revoked?

If OSHA were to direct the contents of a nation-wide I2P2 plan and prescribe the method by which employers must develop this plan, does that not greatly limit the flexibility that employers should have to devise a plan that is more applicable to their specific employment setting?

Dr. Michaels: OSHA's Injury and Illness Prevention Program rulemaking is in its very early stages. We have conducted five stakeholder meetings across the country. The next step is for the Agency to gather comments from small businesses during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process. OSHA plans to initiate this in June of 2011. The SBREFA process will be followed by the publication of a proposed rule, a notice and comment period, and extensive public hearings. In addition to SBREFA, there will be multiple additional opportunities for public input before a final standard is published. OSHA has not yet established a target date for issuing a proposed rule.

No, the Injury and Illness Prevention Program rule will not include a specific ergonomic component.

No, the Injury and Illness Prevention Program rule will not mandate that employers include an ergonomics component in their Injury and Illness Prevention Program. The rule is simply intended to help employers develop a systematic plan to find and fix workplace hazards that are currently covered under OSHA standards or that are currently covered under the General Duty Clause.

The Injury and Illness Prevention Program rule will not be a one-size-fits-all requirement. Employers will be able to tailor the program to the size and nature of their workplace.

WITHDRAWAL OF NOISE/ERGONOMICS REGULATIONS

Mr. Rehberg: In January, OSHA withdrew its proposed new interpretation of the Occupation Noise Exposure Standard. Six days later, the proposal for new ergonomics regulations was temporarily withdrawn. It's my understanding that in both cases, the regulatory initiatives were withdrawn so OSHA could evaluate the impact of the proposals on small business and investigate alternatives. If OSHA had done a proper review of the cost and impact of each of these actions from the beginning, it seems to me that you would not have moved forward with these proposals.

Were these proposed changes being conducted under the rule-making guidelines of the Administrative Procedures Act (APA)? If not, why the need to circumvent the standard rule-making process?

Did OSHA ever conduct an assessment of the impact the regulations would have had on the economy and small business? If not, what was the perceived need to push these new regulations without having been properly informed of what the net economic impact would be?

Can you please provide us the Subcommittee with a list of any other changes in interpretation or other regulatory initiatives that OSHA is considering, and which will be conducted outside the guidelines of the APA?

Dr. Michaels: As a point of clarification, OSHA did not propose any new ergonomics regulations; it simply proposed a change to its recordkeeping rule that would require employers who have already recorded a musculoskeletal injury under the existing recordkeeping standard to also check a box in a new column. Further, the proposal was not withdrawn, but, rather, OSHA pulled back the draft final rule from OMB review to solicit additional input from the small business community. The noise initiative was not a regulatory change, but withdrawal of a previous interpretation of OSHA's noise standard.

The purpose of putting these proposals out for comment was to gather information on the impact of these initiatives. The musculoskeletal disorder column rule was temporarily withdrawn to allow more time to gather input from small businesses. The record was reopened May 16, 2011 for 30 days to allow interested individuals additional opportunities to comment. The noise initiative was withdrawn in order to develop a more comprehensive approach to addressing the problem of work-related hearing loss.

The proposed change to OSHA's recordkeeping rule was conducted under the notice-and-comment rule-making guidelines of the Administrative Procedures Act, and also under the Occupational Safety and Health Act (OSHAct). The change in the noise directive was put out for comment on October 19, 2010. The comment period was extended on December 6, 2010, and the docket remained open until March 21, 2011. As discussed above, the noise directive was not a rulemaking change and therefore was not subject to the APA.

With respect to the proposed recordkeeping modification to add the MSD column, yes, OSHA did conduct an assessment of the impact that the regulations would have on the economy and on small businesses, as it is required to do with every proposed rule, and determined that the rule would not have a significant economic impact on a substantial number of small entities. In light of many comments by small businesses, OSHA decided to conduct a further examination of the evidence to be sure that the evidence fully supported this finding.

OSHA withdrew the noise proposal to better engage and provide outreach to the business community and the public at large. OSHA remains committed to preventing hearing loss and in support of this effort, the Agency will review the comments submitted in response to the Federal Register notice; plan a stakeholder meeting on preventing occupational hearing loss; and continue its discussion with NIOSH experts.

OSHA is not considering conducting any regulatory initiatives outside of the guidelines of the APA. The agency always follows the APA and other regulatory requirements as part of rulemaking. Requests for interpretations of rules are commonly made by the business community. Rapid compliance assistance is frequently needed from the agency to inform businesses of whether they are complying with OSHA's rules to avoid loss of productivity. This kind of interpretative guidance is not subject to the APA. OSHA plans to continue to provide this compliance assistance service to businesses.

CONSTRUCTION FALL PROTECTION INSTRUCTION

Mr. Rehberg: On Dec. 22, 2010, OSHA issued an "Instruction" that cancels the "interim enforcement policy" on fall protection for certain residential construction activities that has been in place since 1995 and replaces it with a new policy. The Instruction (STD 03-11-002) became effective on Dec. 16, 2010, and the agency has indicated that enforcement will begin on June 16, 2011.

Under the instruction, employers...with some exception...must now use safety nets, guardrails or personal fall-arrest systems on roofs where the slope is greater than 4-in-12 and the potential for a fall from one level to another is 6 feet or greater. This Instruction essentially mandates a one-size-fits-all solution (the use of personal fall arrest systems) to fall protection which is extremely impractical in many situations and could actually result in more accidents and injuries in the workplace. Please provide any empirical evidence OSHA has on which to base claims that the Instruction will improve workplace safety.

Please include information with respect to residential roofing which indicates:

1. the number of falls/fatalities that have occurred when personal fall arrest systems and other "conventional" fall protection systems were being used,
2. the number of falls/fatalities that have occurred when "slide guards" or "roof brackets" were being used, and
3. the number of falls/fatalities that have occurred when no fall protection system was employed.

Dr. Michaels: Falls continue to be the leading cause of death among construction workers. Statistics from the Bureau of Labor Statistics and OSHA's own inspection data show that fatalities from falls are consistently high for residential construction activities, including roofing work. The formal risk determination was originally made in OSHA's initial rulemaking for Subpart M [59 FR 40730, Aug. 9, 1994] that positive means of fall protection were necessary to ensure construction worker safety at heights

As you can see in the Agency's responses to your detailed questions below, the Agency is not aware of any recent roofing work fatalities when a conventional fall protection system is used appropriately (whether guard rails, safety nets, or a personal fall arrest system attached to a roof anchor). However, there are instances of failures of slide rails and roof brackets resulting in fatalities. Most falls during roofing work occur when no fall protection at all is used.

Zero. In a search of fatalities in IMIS records, for three years 2005-2007, across only two sectors (roofing contractors and residential home construction), there were no fatalities when fall protection was used as required in Subpart M. (A few fatalities did occur to individuals who were wearing harnesses but were not connected to an anchor point or who had unhooked from their lanyards and fell off the roof.) A total of 84 fatalities in the two residential construction sectors resulted from falls, and 63 involved roofing work.

For the same search in IMIS records noted above (years 2005-2007, across two sectors only), there were three fatalities when slide guards were used and two fatalities when roof brackets failed. Some abstracts do not provide enough information to determine if slide guards or roof brackets were being used, so there may be more such incidents. For the same search parameters noted above (IMIS fatality reports, years 2005-2007, roofers and residential construction only, performing roofing work), there were approximately 50 fatalities that occurred when no fall protection at all was noted in the IMIS records' abstracts, which describe the conditions and cause of accidents.

COST AND ECONOMIC IMPACT OF FALL PROTECTION

Mr. Rehberg: Has OSHA conducted a net economic impact assessment of how the Instruction will impact economic growth and job creation in the construction industry, which currently is experiencing unemployment of 20%?

Dr. Michaels: The costs and economic impact of requiring fall protection were estimated when the standard was originally promulgated. The Agency does not estimate costs or economic impacts of its directives, which only address how a standard is enforced, because the necessary compliance actions, requirements and economic analysis are contained in the Preamble and supporting materials for a final standard [59 FR 40730, Aug. 9, 1994].

It should be noted that the original directive, issued in 1994, was based on feasibility concerns existing at that time and was intended to be temporary. Since 1994, significant advances have been made in fall protection technologies and OSHA's Advisory Committee for Construction Safety and Health, the Occupational Safety and Health State Plan Association and the National Association of Homebuilders have asked OSHA to withdraw the temporary directive. In addition, OSHA notes that several states never adopted the original 1994 directive nor do not permit the use of slide guards in lieu of conventional fall protection. OSHA is not aware of any economic hardship that has resulted to employers in those states.

We also note that the fall protection standard states that if an employer can demonstrate that conventional fall protection is infeasible, or creates a greater hazard, then the employer can use a fall protection plan and alternative protective methods.

Mr. Rehberg: Does the Instruction apply to only new construction or also to roof repair and replacement projects?

- a) If it applies to roof repair and replacement projects did OSHA consider the differences between new construction and repair/replacement work before issuing the Instruction? If so, please provide a detailed description of this analysis.
- b) If not, why was no analysis of this question conducted?

Dr. Michaels: Both. The policy change in the directive applies to all residential construction work performed above a six-foot height, including new construction, remodeling, and re-roofing.

Yes, OSHA considered both new and replacement roofing operations when writing the new Directive. The protective measures that work in new construction namely guard rails, safety nets, or personal fall arrest systems attached to a roof anchor, are also used successfully in roof replacement. The Agency did not create or write an analysis comparing differences in fall protection between new roofs and replacement roofs for the new Directive.

Differences between new and replacement roofing, in regard to fall protection, was not an issue when the temporary Directive was issued in 1995. Directives do not set standards but only show *how* standards will be enforced. Extensive economic and feasibility analyses are conducted when a new standard is issued, as was done in this case when the Fall Protection standard was issued in 1994. Because these analyses are conducted when the standard is issued, no separate analysis of OSHA is conducted when OSHA issues or withdraws compliance directives.

OSHA/MSHA COMPLIANCE ASSISTANCE

Mr. Rehberg: Dr. Michaels, during the hearing, we briefly discussed the idea of state-run, small business consultation programs which seek to help small businesses in meeting workplace safety requirements without the fear of crippling penalties. I remain concerned at your suggestion that this program is in danger due to the fact that states are having trouble contributing their share of the program's cost. Your budget requests a mere \$1.5 million increase over FY10 enacted levels, or roughly 1.4%, for State Programs while Federal Enforcement programs would increase by over \$14 million. In my opinion, this request is a prime example of OSHA's flawed priorities. You speak highly about these State programs, fully recognize that these important programs may be in danger, yet your request is clearly devoted toward increasing federal enforcement.

Dr. Michaels, if OSHA were to play a larger role with small business by engaging in "preventative visits", or perhaps simply by allocating more resources to State programs, would that not provide a more long-term benefit for small business and more positive results when it comes to workplace safety statistics? Or is it your belief, as the request appears to suggest, that more aggressive enforcement is the best approach for accomplishing these results?

Dr. Michaels: First, to clarify, OSHA has two budget line items that provide money to the states: 1) the State Programs item which provides funding under Section 18 of the Act and covers enforcement and other functions in the 27 state programs; and 2) "Compliance Assistance – State" which funds the On-site Consultation Program.

The states are required to match at least 50% of the federal State Program contribution and 10% of the Onsite Consultation Program.

States are offered the opportunity to assume an enforcement role in the national occupational safety and health program through an OSHA-approved State Plan. Twenty-seven (27) States currently operate such programs for the adoption and enforcement of standards, and under Section 23(g) of the Act receive up to 50% Federal funding. The State Plans deliver the OSHA enforcement program to 40% of the nation's workplaces and in addition provide coverage to State and local government workers in their States. In FY 2010, the State Plans received an \$11.8 million funding increase, the first significant increase they had received in many years. Unfortunately, this increase became available in the midst of the State budget crises and some of the States (8) were unable to immediately match the available funding increase. Others were forced to absorb the Federal increase by reducing the amount they were allocating to the program above the required match. The FY 2012 budget request includes a \$1.5 million cost-of-living increase for the State Plans, which currently are funded at \$104,393,000. The State plans matched this amount and initially provided an additional \$83 million in overmatched State funds in FY 2011 for a \$289 million total program effort. The inflationary increase will allow the States to maintain their enforcement programs.

OSHA also funds a separate program of cooperative agreements with the States to provide on-site consultation services to small employers in each of the 50 States and five jurisdictions. The On-site Consultation Program, established under Section 21(d) of the Act, is run by the states, which receive 90% of their funding from OSHA. When additional funds were most recently available in FY 2009, the difficult financial conditions in many states resulted in some being unable or unwilling to provide the modest 10% matching funds, and therefore turned down additional money, which would otherwise have been provided to them for their continued and expanded operations. Instead of asking for money in FY 2012, which states would be unable to match, OSHA recommended resources be allocated to support activities that would aid both On-site Consultation and enforcement activities. This important program is currently funded at \$54.7 million. The FY 2012 budget includes a \$1 million increase to ensure that small employers continue to get all the assistance they need. Last year, the Consultation Program conducted over 30,000 visits to mostly small businesses.

Finally, in FY 2012, OSHA's requested increase for the Federal Enforcement budget activity is \$7.7 million. OSHA is also requesting an increase of \$6 million to adequately fund its whistleblower program.

We believe that American workers and businesses are best served by a balanced approach where enforcement and compliance assistance work hand-in-hand. While most employers want to do the right thing, there are still far too many who endanger workers by cutting corners on safety and health protections. Enforcement of OSHA standards, the main role that Congress gave the agency in the Occupational Safety and Health Act, plays a vital role in preventing workplace injuries, illnesses and deaths before they happen.

But OSHA is not just in the business of issuing and enforcing standards. We are well aware that the vast majority of employers want to do the right thing, but many need information and assistance to do so. OSHA's active and growing compliance assistance program is an important resource, along with the private sector, for employers and employees to ensure that they have the information they need to understand workplace hazards and how to prevent them.

SMALL MINES OFFICE

Mr. Rehberg: I understood from your testimony that the Small Mines office (SMO) provides compliance assistance support, but they are not authorized to issue citations. If this is correct, is the SMO the only "free", voluntary inspections process that exists within MSHA?

- a) If not, what other programs exist within MSHA that could be used as a type of "penalty-free" inspections process?
- b) Are there programs at the State level that would enable mine operators to invite some sort of inspection that would enable these small businesses to address shortcomings without fear of crippling penalties?
- c) Roughly 65% of your budget request is for Coal and Metal/Nonmetal enforcement programs. How much of the remaining 35% would be for compliance assistance programs, such as the "Safety Pro in a Box" project? And, what other smaller compliance assistance programs exist (and how much money is requested for them) that may not necessarily be identified in your budget justification material?

Mr. Main: MSHA's SMO provides compliance assistance services to mine operators through site visits, conferences, training, and other assistance in order to help them understand and comply with mandatory standards. SMO staff are not authorized representatives and therefore cannot issue citations or orders for health and safety violations.

In addition to SMO compliance visits, MSHA will, upon request by an operator, conduct pre-operational compliance assistance visits (CAV) of new or re-opening operations before they begin mining, or newly installed equipment before it is placed in service. These visits are technical assistance conducted under Section 502(b) of the Mine Act.

Further compliance assistance to mine operators is provided by Technical Support personnel, National Mine Health and Safety Academy personnel, and Educational Field Services (EFS) personnel. They visit mines to offer specific guidance, and offer assistance through training and specialized programs pertaining to various standards, e.g., noise, dust, methane, electrical, and impoundments. MSHA's compliance assistance also

includes demonstrations, including inspection procedures, and dust control techniques and strategies.

MSHA has a wide range of programs and resources available to the mining industry to assist in compliance and is constantly working with the mining community to develop more. These include the recent "Safety Pro in a Box," jointly developed with the National Stone, Sand and Gravel Association to provide operators with a collection of compliance resources for operators in the aggregates mining sector, guidance on equipment guarding compliance, and an initiative to educate Metal and Nonmetal operators on meeting requirements to conduct sampling of the workplace for dust and fumes that could expose miners to unhealthy contaminants. There are a number of compliance tools like these available on the MSHA web site or obtainable from our District and field offices. MSHA participates in conferences and seminars across the country working with the mining community to provide information, training, guidance and materials to assist in compliance.

There are various state agencies throughout the United States that have oversight of mining, but those agencies implement and enforce their own mining laws and regulations independent from MSHA. MSHA does not keep track of the specific programs conducted in each state.

MSHA does not track the costs of individual compliance assistance efforts because they are so varied across the MSHA programs, are often components of more comprehensive topical initiatives, are continually changing with the industry, and are often provided in response to operator demand, which varies. As previously noted, MSHA provides a wide range of compliance assistance directly to the mining community. Some additional examples include:

- "End Black Lung – Act Now!" educational programs;
- "Rules to Live By" 1 and 2, which includes stakeholder outreach on the most common causes of mining fatalities;
- "Watch Out" program, which educates on best practices to avoid injury from mobile equipment;
- Ask MSHA – an e-mail link on MSHA's website to which people can submit questions, comments or concerns and receive answers from MSHA;
- Respirable Dust Emphasis teams teach miners/mine operators about good dust controls;
- Spring Thaw seminars – MSHA conducts seminars in cooperation with industry representatives to discuss safety and health issues with seasonal/intermittent mining operations restarting after winter breaks.

MSHA publishes a wide range of training and other materials on compliance and best practices that are available to operators and miners.

It should also be noted that when an inspector visits a mine for a mandated inspection, he or she may be involved in providing compliance assistance as he or she travels the mine

and talks with the mine operator and miner representatives about issues affecting the mine, educating mine operators and miner representatives on compliance and best practices

MSHA – INSPECTOR TRAINING

Mr. Rehberg: Mr. Main, on March 30, 2010, the Department of Labor’s Inspector General (OIG) issued its report on “Journeyman Mine Inspectors Do Not Receive Required Periodic Retraining”. This report included 7 recommendations from the OIG, all of which MSHA appears to be in agreement with. Can you itemize each of these 7 recommendations and provide the Committee with information on how each one of these recommendations have been, or are being, implemented over the last year since this report was published?

Mr. Main: The OIG issued a report titled “Journeyman Mine Inspectors Do Not Receive Required Periodic Retraining” on March 30, 2010 making seven recommendations. MSHA has closed five of the recommendations and resolved the other two recommendations.

Recommendations 1-3 – Closed

- Implement procedures and controls to hold supervisors accountable (e.g., policies, performance standards, etc.) for assuring all journeyman inspectors complete required periodic training.
- Revise MSHA’s training policy to suspend an individual’s health and safety inspection activities if designated retraining is not completed as required.
- Re-emphasize to all personnel, in writing, MSHA’s training requirements, the importance of training, and MSHA management’s commitment to training.

These recommendations were inter-related and MSHA resolved them simultaneously. On 01/19/2011, MSHA issued Administrative Policy Letter (APL) A11-I-01. The APL:

- (a) re-emphasized the importance of continuing education
- (b) restated MSHA’s policy on continuing education for the Secretary’s Authorized Representatives (AR)
- (c) restated management responsibility and accountability for AR’s meeting their continuing education obligations
- (d) stated MSHA’s policy to remove an AR from health or safety activities for failure to timely complete continuing education requirements, and
- (e) provided a process for granting time extensions to complete educational requirements in order to preserve operational continuity.

Recommendation # 4 - Closed

- Develop and implement written policies and procedures to justify and document cases in which completion of minimum training requirements are waived for an inspector.

On 01/19/2011, MSHA issued Administrative Policy Letter (APL) A11-I-02. The APL stated that MSHA would not credit previous training, education or experience in lieu of taking the standard curriculum training requirements established for becoming an AR.

Recommendation # 5 – Closed

- Revise automated training records to include the date that OJT modules are completed.

On 05/25/2010, MSHA provided evidence to the OIG that it had modified the Student Information System to include the date that each OJT module is completed by a trainee.

Recommendation # 6 – Resolved

- Implement controls to assure that training records are fully supported to validate training as it is completed.

On 05/25/2010, MSHA reported to the OIG that it was developing a computer application that would provide a means to track OJT records as individual objectives were completed. Deployment was originally scheduled for 11/08/10.

On 03/09/2011, MSHA informed the OIG that the resource constraints associated with the uncertainty of the FY 2011 appropriations had delayed the project and that requirements development restarted on 03/01/2011. To close this recommendation, MSHA will provide evidence that it has implemented the application.

Recommendation # 7 – Resolved

- Re-emphasize to all inspectors, in writing, the importance of entry-level inspectors performing OJT tasks under proper supervision of an experienced inspector.

On 05/25/2010, MSHA stated its intention to issue a directive highlighting the importance of trainee's successful completion of OJT tasks under proper supervision. MSHA intends to publish the Directive by May 31, 2011. To close this recommendation, MSHA will provide the OIG a copy of the issued directive.

MSHA – ENFORCEMENT PROCESS

Mr. Rehberg: MSHA is required to inspect all mines at regular intervals, which I fully support. But, what I don't support would be an effort by MSHA to send inspectors back for a more critical follow-up inspection of those mines whose last inspection was "clean", or without citation. Such actions would falsely inflate MSHA's inspection statistics, in my opinion. Over the last two years, how many mines have been found to be entirely in compliance with the law after an inspection?

- a) Is there a standard interval between inspections of "clean" mines?
- b) How soon after a "clean" inspection were inspectors sent back to those same mines, and were they sent back ahead of what would be considered a normal interval?

Mr. Main: During FY 2009 through FY 2010, there were 6,311 mines that had at least one complete regular inspection with no violations.

Regardless of the number of violations cited during the previous regular inspection, the Mine Act requires MSHA to make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year. There are no "standard intervals" between inspections; MSHA inspections are required by law to occur without advance notice to the operator.

Again, MSHA conducts inspections of underground mines four times per year and surface mines and facilities two times per year, regardless of the number of violations cited during the previous inspection. In addition, inspectors may visit mines for other types of inspections besides regular inspections. These can include spot inspections such as those conducted under Section 103(i) of the Mine Act at mines which liberate methane or other explosive gasses exceeding certain minimum levels, investigations of hazardous condition complaints, accident investigations, and if violations have been cited, follow-up inspections to confirm that previously issued violations have been abated. The number of violations cited during the previous inspection is not factored into the inspection schedule.

FAMILY PROCEDURE

Mr. Bonner: How can OSHA do more to keep families and next of kin of those injured or killed on the job informed? If there was a better method currently in place in one of OSHA's regions to do so, would OSHA use it nation-wide?

Family Procedure CPL 02-00-137 CH-1 has been in use in OSHA Region 7 since May 2010.

- a) What progress has been made toward implementing this procedure in other regions?
- b) What steps need to be taken to put this procedure in place nation-wide?
- c) What is OSHA's timeline for taking those steps?

Dr. Michaels: OSHA is committed to communicating and involving a victim's family throughout the fatality investigation process. As discussed below, OSHA is in the process of implementing a new nationwide Directive for compliance officers on this subject. Upon issuance, the Communicating OSHA Fatality Investigation Procedures to a Victim's Family directive will provide guidance to ensure OSHA communicates its fatality investigation procedures to the victim's family and facilitates the exchange of information throughout the investigation and settlement process. The directive requires that the family be informed of the status of the investigation, preliminary findings, notice of any proposed citations, and settlement and closure of the case. This directive will be implemented nationwide.

OSHA's national office developed a draft Directive entitled "Communicating OSHA Fatality Investigation Procedures to a Victim's Family." The draft directive was sent to all regional office and national office directorates for review. Several Regional offices and Directorates provided comments and/or recommendations to improve the draft directive. The national office is incorporating the comments into the final directive.

The steps for issuance of the Communicating OSHA Fatality Investigation Procedures to Victim's Family directive nationwide are incorporating the comments and recommendations into the final directive. A final review of the revised draft directive by Regional offices, National Offices and the Solicitor office will be completed. The final Directive will be submitted to the Assistant Secretary for final approval.

The estimated timeline for the issuance of the Communicating OSHA Fatality Investigation Procedures to a Victim's Family directive

SUSAN HARWOOD TRAINING GRANTS

Ms. Roybal-Allard: Dr. Michaels, Congressman Flake raised the issue of the Susan Harwood Training Grant program and whether this was money well spent considering the Agency's other priorities and the Government's current deficit problem. Can you provide information on:

- a) The history of this program, including financial commitments since the program was started in the 1970's.
- b) The purpose of this program in carrying out OSHA's mission.
- c) The importance of this program in protecting workers' health and lives.

Dr. Michaels: The Occupational Safety and Health Administration began awarding training grants in 1978. In FY 1982, OSHA proposed \$17.4 million (uninflated to present dollars) in worker training grants compared with \$10.7 million in FY 2011. Since that time, approximately \$205 million has been awarded to approximately 1,000 non-profit organizations – business associations, labor organizations and universities -- to provide training on a variety of safety and health topics.

Congress passed the Occupational Safety and Health Act of 1970 in order to ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The Susan Harwood program is a key compliance assistance component in support of this mission, having provided outreach and education to an estimated 1.8 million workers since the program's inception. OSHA further extends the benefits of these grants by making the materials produced under the grant available to a broader audience through OSHA's website.

By training workers about the hazards they face and how to prevent them, the compliance assistance provided by the Harwood program prevents workplace injuries and fatalities. Much of the training is conducted on a joint labor-management basis. When workers and employers are educated about their rights, responsibilities and hazards they face, we believe they are more often able to resolve problems before anyone gets hurt and before workers are forced to request an OSHA inspection.

The Susan Harwood grants provide safety and health training to workers and employers on the recognition, avoidance, and prevention of safety and health hazards in their workplaces. These are audiences who might otherwise not receive training, including small business employees and employers, hard-to-reach or low-literacy workers, and especially vulnerable workers in vulnerable and high-hazard industries. Some specific examples included below demonstrate the importance of the program and the diverse audience of workers, whose lives are impacted by these grants:

Highway work zones involve highly hazardous conditions for workers such as flaggers. In the US, approximately 100 construction workers are killed each year in highway work zone accidents, and significantly more are injured. While fatal work zone accidents occur from a variety of activities, approximately 60 percent result from workers being struck by vehicles or mobile equipment within or moving through work zones. Also, as the nation's highways age, more work zones are created, which in turn increases the potential for accidents and injuries to workers from traffic moving through work zones. The Work Zone Safety grant under Laborers International Union of North America (LIUNA) targets highway work zone workers, which are mostly young, minority, entry-level workers. This training program addresses the most common hazards encountered by flaggers. Although the grant is still active, to date LIUNA already exceeded its original goal by training over 7,300 workers.

The University of Georgia Center for Urban Agriculture has received three Susan Harwood training grants since 2004. These funds have been used to develop training materials and train workers involved in the landscape industry. Landscape workers are underserved for several reasons. Many speak Spanish as a first language, they are seasonal workers, and their employers are often small companies with few resources to spare. The work they do is high risk; it is a potentially deadly combination of monotony, heavy equipment, and the elements. It is strenuous and loud. To date this grantee has given 2-6 hour safety trainings to more than 2,000 workers and provide them with easy-to-read bilingual manuals for a total cost of \$3.80 per person.

The Compacion Foundation worked in collaboration with the Hispanic Contractors Association de Tejas (HCAT) have trained more than 500 Spanish-speaking (limited English-speaking) construction employees in the recognition and prevention of Focus Four (falls, electrocutions, caught-in and struck-by) hazards. Training sessions for construction employees were presented on evenings and weekends.

The Asian Immigrant Women Advocates (AIWA) delivered ergonomic training to nearly 300 Asian immigrant women to identify basic workplace hazards and practice injury prevention and mitigation techniques. Recruiting focused on reaching small businesses in multiple low-wage industries including dry cleaning, electronic assembly, packaging, food service, and home health care. Training was offered in Chinese and Korean and targeted this underserved limited English-speaking, low-literacy Asian audience.

Winona ORC conducted safety and health training for employees doing light assembly work. These employees have mild disabilities, have problems with literacy, and some of their cognitive levels are diminished; this segment of the employee population is among the most disabled. The majority of these employees are unable to read, and the ones that can are very limited. The notable impact of the grant training is that these employees, having received more hands-on direction, have a higher level of safety awareness, talk about safety during their lunch hour and are proactively notifying their supervisors about unsafe working conditions.

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